

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE SUBOXONE	)	Case No. 1:24-md-3092
(BUPRENORPHINE/NALOXONE)	)	
FILM PRODUCTS LIABILITY	)	MDL No. 3092
LITIGATION	)	
	)	Judge J. Philip Calabrese
This Document Applies to All Cases	)	
	)	

**CASE MANAGEMENT ORDER NO. 6  
EVIDENCE RULE 502(D) AND PRIVILEGED MATERIALS**

Based on the respective proposals of counsel, and with the Court being fully advised as to same and for good cause shown, the Court **ORDERS** as follows:

**A. Applicability**

1. This Order shall apply to any privileged or otherwise protected or exempted information contained in deposition transcripts and/or videotapes, and documents produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, affidavits, declarations, and all other information or material produced, made available for inspection, or otherwise submitted by any of the Parties in this litigation under the Federal Rules of Civil Procedure, as well as testimony adduced during any hearing.

2. This Order shall be interpreted to provide the maximum protection allowed by Rule 502(d) of the Federal Rules of Evidence and shall be enforceable in all other State and federal proceedings except as otherwise provided herein.

3. The Parties may agree to extend any of deadlines contained in this Order. A Party shall agree to any reasonable request for such an extension unless

doing so would adversely affect the Party, and nothing in this Order prevents a Party from seeking more time from the Court.

**B. Production of Discovery Materials Containing Potentially Privileged Information**

1. Under Rule 502(d), the production of any privileged or otherwise protected or exempted information in this case shall not be deemed a waiver or impairment of any claim of privilege or protection in this case or in any other federal or State proceeding, including, but not limited to, the attorney-client privilege, the protection afforded to work-product materials, joint defense privilege/common interest doctrine, statutory privileges and protections, or any other privilege, or the subject matter thereof, as to the produced document and any related material.

2. Nothing contained in this Order is intended to or shall serve to limit a Party's right to conduct a review of documents, ESI, or information (including metadata) for responsiveness and/or segregation of privileged or protected information before production, or to limit a Party's right to withhold privileged or work product protected materials.

3. In the event that a Receiving Party discovers a document it reasonably believes to be privileged or protected, the Receiving Party shall not examine the document except to the extent necessary to determine how to proceed and shall promptly notify the Producing Party of such document by Bates number. While the Receiving Party must not use or disclose the privileged or protected information until the privileged or protected status is resolved, such notification shall not waive the Receiving Party's right to subsequently contest any assertion of privilege or

protection with respect to the identified discovery material based upon the forthcoming privilege log entry. If the Party or non-party to which the disclosed privileged or protected material belongs wishes to assert a claim of privilege or protection over the material, it shall, within 14 calendar days of notification by the Receiving Party, provide a written Clawback Notice as defined in Section B, ¶ 4 below.

4. Where the Producing Party discovers that a document has been produced for which the Producing Party asserts privilege and/or other protection, and the Receiving Party has not yet provided a notification pursuant to Paragraph 3 of this Order, the Producing Party must promptly provide the Receiving Party with a written Clawback Notice. This Clawback Notice shall include: (i) the Bates range of the produced materials, and (ii) a new copy of the material (using the same Bates number as the original material) with the privileged or protected material redacted (if the Producing Party claims that only a portion of the document contains privilege or other protected material). If the Producing Party claims that the entire document is privileged or protected, then the Producing Party shall provide a slip sheet noting that the document has been withheld. After the Producing Party provides the Receiving Party with Clawback Notice, the Producing Party must provide a corresponding privilege log within 14 calendar days.

5. Upon receipt of a Clawback Notice, all such information, and all copies thereof, shall be immediately sequestered and the Receiving Party shall not use such information for any purpose, except as provided in Section B, ¶¶ 6 and 7, until further

Order of the Court. The Receiving Party shall also retrieve and sequester all copies of the documents (including any excerpts used in analyses, memoranda, or notes or portions thereof) in electronic format.

6. The Receiving Party may contest the Producing Party's assertion of privilege or other protection. In that instance, within 14 calendar days from receipt of the privilege log referenced in Section B, ¶ 4, the Receiving Party shall give the Producing Party written "Notice of Clawback Challenge" providing the reason for said challenge. The Producing Party will have 14 calendar days to respond to the Notice of Clawback Challenge, in writing, by either: (i) agreeing to withdraw the claim of privilege or other protection; or (ii) stating the reasons for the refusal to withdraw the claim. If the Producing Party's response to the Notice of Clawback Challenge does not resolve the issue, the Parties shall complete a meet and confer within ten calendar days of the response. If the conference does not resolve the dispute, within ten calendar days of the conference, the Parties shall submit the dispute to the Court for resolution per the procedures outlined in Local Rule 37.1. The Producing Party retains the burden of establishing the privilege or other protection as to any inadvertently produced materials. If the Receiving Party does not serve a Notice of Clawback Challenge, then, upon expiration of the ten-calendar-day period, all copies of the disputed material shall be returned or destroyed.

7. Pursuant to Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure, either Party may submit the item(s) listed in the Clawback Notice to the Court under

seal for determination of the claim either as part of the Local Rule 37.1 process and/or in connection with any subsequent briefing ordered by the Court.

8. If any information is found to be privileged or protected in accordance with the procedures described in this Order, all copies of the information shall be returned or destroyed.

9. Any analyses, memoranda, notes, or portions thereof that were internally generated and contain or were based upon the item(s) listed in the Clawback Notice shall immediately be sequestered and shall be destroyed if either (a) the Receiving Party does not contest that the information is privileged or subject to other protection under Section B, ¶ 6 above, or (b) the Court rules that the information is privileged or otherwise protected. Such analyses, memoranda, notes, or portions thereof may be removed from sequestration only if either (a) the Producing Party agrees in writing that the information is not privileged or otherwise protected, or (b) the Court rules that the information is not privileged or otherwise protected.

10. If, during a deposition, a Producing Party claims that a document being used in the deposition (*e.g.*, marked as an exhibit, shown to the witness, or made the subject of examination) contains material that is subject to the attorney-client privilege, the attorney-work-product doctrine, or other protection, the Producing Party may (a) instruct the witness not to answer questions concerning the parts of the document containing privileged or protected material; or (b) object to the use of the document at the deposition to the extent the entire document is privileged or protected, in which case no testimony may be taken relating to the document during

the deposition until the matter is resolved by agreement or by the Court. As to any testimony subject to a claim of privilege or other protection, the Producing Party shall serve a Clawback Notice within ten calendar days of the date of the deposition testimony during which the claim was invoked, after which the Parties shall follow the procedures set forth in Section B, ¶¶ 5, 6, and 7. If after the deposition the Producing Party discovers inadvertently produced privileged or protected information within an exhibit, the Producing Party may provide a Clawback Notice within 30 days of the receipt of the official deposition transcript. With respect to any document or testimony that is the subject of a Clawback Notice that is sent more than 30 days after the receipt of the deposition transcript, the asserted privilege or protection will be deemed as waived absent good cause, subject to Section B, ¶ 1. Pending determination of the clawback dispute, all Parties with access to the deposition transcript shall treat the relevant testimony in accordance with Section B, ¶¶ 5–7.

11. If the Producing Party instructs the witness not to answer or provide testimony under Section B, ¶ 10 (a) or (b), and the information is later determined not to be privileged or protected (either by the Court or by agreement of the Parties), if requested the Producing Party shall make the witness available for deposition regarding that document and its contents along with any documents or subject matter that logically flow from or relate to the disputed document within a reasonable time frame after the determination but not to exceed 30 days unless otherwise agreed. The parties must discuss what the proper scope, length and subject matter of the re-

opened deposition is and it must be proportional to the improperly invoked privilege. If the parties cannot agree on these matters the producing party will raise with the Court before the deposition. The Producing Party shall pay the costs associated with such continued deposition.

12. If a Receiving Party uses produced material in a brief or at a hearing, and the Producing Party believes the material is privileged or protected and has not served a Clawback Notice in advance of the briefing event or hearing, the Producing Party shall serve a Clawback Notice within seven calendar days of the briefing event or hearing and will file an unopposed motion to temporarily seal, redact, and/or otherwise remove the privileged or protected information from the public record pending a determination from the Court on the invocation of the privilege or protection. Thereafter, the procedures set forth in Section B, ¶¶ 5–7 shall apply.

13. With respect to any produced material used in a brief or in testimony that is the subject of a Clawback Notice that is sent more than seven calendar days after the filing of the brief or conclusion of the hearing, the asserted privilege or protection will be deemed as waived, subject to Section B, ¶ 1.

14. This Order does not preclude a Party from voluntarily waiving any claims of privilege or protection. The provisions of Rule 502(a) apply when a Party uses privileged or other protected information to support a claim or defense.

15. When the Producing Party has asserted a Clawback Notice regarding privilege or protection in a document, the Producing Party shall use best efforts to identify exact duplicates of privileged or protected evidence in other produced

documents and notify Plaintiffs' Co-Lead Counsel and Plaintiffs' Liaison Counsel of those documents within 30 days. This does not preclude the Producing Party from asserting a Clawback Notice or privilege over such a document located after the 30-day period.

**C. Privilege Logging**

1. Unless otherwise provided in this Order, any document falling within the scope of any request for production or subpoena that is withheld on the basis of a claim of attorney-client privilege, attorney work product, or any other claim of privilege or immunity from discovery is to be identified by the Producing Party on a privilege log, which the Producing Party shall produce in Excel format.

2. Within 45 days of each production of documents or ESI or as otherwise agreed to by the parties, the Producing Party shall provide a privilege log or privilege logs concerning any privileged or protected information that has been redacted or withheld in whole or in part from that production. The following documents presumptively need not be included on a privilege log:

- a. Attorney-client-privileged communications between a Party and its outside counsel on or after January 12, 2022 (for Defendants) or date of the first contact with the Plaintiff's law firm (for Plaintiffs);
- b. Communications among Plaintiffs' counsel in similar actions relating to dental adverse-event claims against Defendants;
- c. Communications among Defendant's outside counsel;



- d. Communications authored by in-house counsel at the direction of outside Counsel on or after January 12, 2022; or
- e. Attorney work product created on or after January 12, 2022.

3. The privilege log shall set forth the privilege or protection relied upon and specify separately for each document the following to the extent such information is available from the metadata of the document:

- a. Bates-number range, or if no Bates-number range, a unique identifier;
- b. Family relationship, if applicable (*i.e.*, identification of parent emails and all attachments);
- c. A description of the nature of the document, including a factual basis sufficient to enable the party to assess the claim that the document is privileged and/or protected;
- d. The name(s) of the author(s);
- e. The name of the sender;
- f. The names of all addressees and recipients, including copies (“ccs”) and blind copies (“bccs”);
- g. The document date;
- h. File Path(s);
- i. File Extension;
- j. Last Saved/Edited By;
- k. Custodian(s);

- l. Hash Value;
  - m. Conversation ID or Thread ID;
  - n. An indication of whether the document has been produced in redacted form or withheld in its entirety; and
  - o. The privilege designation asserted (attorney-client, attorney work product, joint defense, and/or common interest, etc.).
4. Attachments to emails shall be logged as separate documents on the log, with family relationships identified.
5. Attorneys or their staff must be identified on the log with an asterisk (or similar notation or a chart of attorneys or their staff).
6. Where multiple email messages are part of a single chain or “thread,” a Party is only required to include on a privilege log the most inclusive message (“Last In Time Email”) and need not log earlier, less inclusive email messages or “thread members” that are fully contained within the thread, provided that the log entry contains the names of the authors, addressees, and recipients (including ccs and bccs) for all thread members by each individual email (*i.e.*, not limited to the last message in the thread), that the description of the thread is sufficient to enable the Receiving Party to assess the claim of privilege for each thread member over which privilege is asserted. This inclusive email and any unique attachments found in the thread that a Party claims is entirely privileged or protected may be logged in a single entry.

7. Privilege logs will be produced in an Excel format, or other agreed-upon format, which allows the Receiving Party to search and sort any and all columns and entries of the privilege log.

8. Privilege logs should build on the previously produced privilege log with a clear indication of which log entries have been revised (*e.g.*, with yellow shading) or added.

9. After the receipt of a privilege log, any Party may dispute a claim of privilege or protection. Before seeking Court intervention, the Party disputing, questioning, or otherwise objecting to a claim of privilege or protection shall provide in writing the identification of the documents or category of documents for which it challenges the claim of privilege or protection and the reasons for disputing, questioning, or otherwise objecting to the privilege designation. Within 14 calendar days, the Party that designated the documents as privileged or protected will provide a written response explaining the basis for its claim or privilege or protection, or if applicable, de-designating documents as privileged or protected and producing such documents in accordance with this Order. Thereafter, if the Parties continue to disagree, they will then meet and confer in good faith as to the claims of privilege or protection. If agreement has not been reached after 14 calendar days of the Designating Party's timely response to the Disputing Party's written identification, the Parties may submit the dispute to the Court for resolution pursuant to Local Rule 37.1.

**D. Modifying This Order**

1. Nothing in this Order shall be construed to prohibit the Parties from agreeing to modify any provision of this Order or seeking relief from the Court. Nor shall anything in this Order or any Party's compliance with it be construed as a waiver of any Party's rights under applicable law.

**SO ORDERED.**

Dated: May 21, 2024



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J. Philip Calabrese  
United States District Judge  
Northern District of Ohio