

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION)	MDL 2804
)	
THIS DOCUMENT RELATES TO:)	Case No. 1:17-md-2804
)	
<i>Track Three Cases</i>)	Judge Dan Aaron Polster
)	
)	<u>TRACK THREE</u>
)	<u>CASE MANAGEMENT ORDER</u>
)	<u>NUNC PRO TUNC</u> ¹

On April 30, 2020, the Court entered an order identifying the Track Three cases and directing the parties to meet and confer and submit to Special Master Cohen proposed case management deadlines. Doc. #: 3282. The parties submitted a proposal reflecting agreement on many deadlines and identifying competing proposals on disputed deadlines. The Court has reviewed the parties' submission and hereby orders the following:

- A. CT1 Discovery:** All discovery propounded or produced in Track 1 ("CT1")² shall be deemed propounded and/or produced in Track 3. Additional discovery served in Track 3 will be tailored to Track 3 as appropriate. New discovery propounded in Track 3 will not be duplicative of discovery previously propounded.
- B. Motions to Dismiss**³
 - 1. Defendants shall file any motions to dismiss the Amended Complaints **within fourteen (14) days** after the Court rules on both Plaintiffs' Motion for Leave to File Amended Complaints [Doc. #: 3294] and Plaintiffs' Motion to Bifurcate Bellwether Claims, Join Bellwether Cases, and Stay Claims [Doc. #: 3297].⁴

¹ This *nunc pro tunc* order is issued to correct the wording in section B.7. The original order is doc. #: 3325.

² "Track 1" or "CT1" refers the cases designated by the Court in CMO-1, Doc. #: 232.

³ When preparing pleadings, dispositive motions, pretrial motions, and other submissions, the parties should be mindful that the Court intends to adhere to all rulings made in Track 1.

⁴ The Court ruled on Plaintiffs' motions for leave to file amended complaints and for bifurcation/joiner on June 2, 2020. Doc. #: 3314, 3315. Therefore, Defendants shall file motions to dismiss by June 16, 2020.

2. Plaintiffs shall file any responses **within sixteen (16) days** of Defendants' filing of any motions to dismiss.
3. Defendants shall file their replies in support of their motions to dismiss **within ten (10) days** of Plaintiffs' filing of any responses.
4. The parties shall coordinate and consolidate all briefing on motions to dismiss and avoid duplicative briefing by incorporating similar arguments by reference.
5. Each Defendant may also file individual motions to dismiss **on jurisdictional grounds**. The page limits for the memorandum in support, responses, and replies on these defendant-specific jurisdictional issues shall be subject to the limitations set forth in Local Rule 7.1(f). The parties shall meet and confer as soon as possible to discuss whether and the extent to which jurisdictional discovery may be necessary, and shall incorporate the reasoning set out in the Court's Order refer at docket no. 3180.
6. Page limits for motions to dismiss on other issues:
 - (i) Defendants may file a joint memorandum of up to **30 pages** in length on common issues in support of their motions to dismiss the claims against them both in their capacity as dispensers and in their capacity as self-distributors. Plaintiffs may file response briefs collectively totaling up to **30 pages** addressing Defendants' joint memorandum on common issues. Defendants may file a joint reply of up to **15 pages** in length in support of their joint memorandum.
 - (ii) Each Defendant may also file an individual memorandum of up to **5 pages** concerning issues specific to it. Responses to such memorandum shall be limited to **5 pages**, and reply memoranda shall be limited to **3 pages**.
7. The parties may use the pages above as they see fit, though opposition briefs shall not exceed the number of pages permitted in opening briefs.

C. Answers to Amended Complaints. Defendants shall file their answers to any claims that survive Defendants' motions to dismiss and are not severed from Track 3 within **forty-five (45) days** of the date the Court issues its ruling on the motions to dismiss.

D. Third Party Complaints. Defendants shall file any third-party complaints **within fourteen (14) days** after service of their answers.

E. Fact Discovery

1. **June 5, 2020** – Defendants shall reproduce or release from sequester transactional dispensing data for stores located within Lake and Trumbull Counties, Ohio, with the fields ordered in the Special Master’s Discovery Ruling Regarding Pharmacy Data Production for Track One-B Cases, dated January 27, 2020 (Doc. #: 3106).
2. **June 19, 2020** – Plaintiffs shall identify for Defendants (i) the prescriptions they (and their experts) conclude caused them the harm for which they seek relief; (ii) the methodology or methodologies they (and their experts) used to reach such a conclusion; and (iii) the electronic scripts or analytical programs used by Plaintiffs and/or their experts to implement that methodology.
3. **June 26, 2020** – Plaintiffs shall identify their proposed document custodians, for Plaintiffs including titles and timeframes of employment in their relevant position. Defendants shall identify their proposed Track 3 geographic-specific custodians, if any, including titles and timeframes of employment in their relevant position. Defendants’ national custodians identified in Track 1 shall be the national custodians in Track 3. The search terms agreed-upon in Track 1 for defendant custodians shall be the search terms applicable to defendant custodians in Track 3. Defendants shall also identify the search terms for plaintiffs’ custodians.
4. **July 10, 2020** – Defendants shall produce any additional data fields upon which they or their experts intend to rely in defending against Plaintiffs’ “Red Flag” prescriptions identified for Lake and Trumbull Counties.
5. **October 30, 2020** – Document production by all parties will be substantially completed. Document production leading up to this deadline should occur on a rolling basis.
6. **October 30, 2020** – Parties identify persons and entities with relevant knowledge.
7. **December 21, 2020** – Close of fact discovery

F. Depositions

1. Plaintiffs may depose **28 fact witnesses** of all Defendants total, with no more than 7 witnesses of an individual defendant family.
2. Plaintiffs may use the approximately **85 depositions** they have already taken of the Retail Pharmacy Defendants in Track 1, as permitted by the Federal Rules, in Track 3. The parties shall meet and confer on the number of depositions of Plaintiffs that Defendants may take of Plaintiffs; to the extent agreement cannot be reached, the dispute shall be submitted to Special Master Cohen.
3. The number of depositions allowed of Plaintiffs shall be no more than **75 combined**.
4. In addition to the fact witnesses above, plaintiffs may depose one 30(b)(6) witness from each defendant family regarding document production, and one 30(b)(6) witness from each defendant family regarding other topics. Defendants may depose one 30(b)(6) witness from each plaintiff regarding document production, and one 30(b)(6) witness from each plaintiff regarding other topics.
5. All 30(b)(6) depositions of Defendants will be limited to 4.5 hours per defendant family and may not be repetitive of 30(b)(6) (or the equivalent) depositions of Defendants taken in other MDL or New York opioid litigation. All 30(b)(6) depositions of Plaintiffs will be limited to 7 hours each.
6. Depositions of party fact witnesses not previously deposed in any opioid litigation shall be limited to 7 hours each.
7. All depositions of party fact witnesses who have already been deposed in this MDL shall not be re-taken in Track 3 absent: (1) agreement of the parties, or (2) order of the Special Master or the Court, upon good cause shown. The parties should presume that, if re-deposition of such a witness is necessary, the additional deposition will be limited to 4.5 hours, absent good cause shown, and the parties should endeavor to agree to less time. The parties should also endeavor to agree to similarly limit re-deposition of: (a) fact witnesses who were deposed in other, non-MDL opioid litigation (e.g. in state court); and (b) expert witnesses and third-party witnesses who were deposed in this MDL or other, non-MDL opioid litigation. By June 16, 2020, the parties will submit a joint proposal for deposition of witnesses who have been previously deposed (including time limitations), noting any areas of disagreement.

8. Deposition questioning of witnesses who have already been deposed may not be repetitive.
9. Production of custodial files of a deponent shall be substantially completed 14 days before the deposition, and fully completed 7 days before the deposition. Depositions may begin before the deadline for substantial completion of document production in Section D.5 above.
10. The foregoing limitations do not apply to the depositions of third parties or place a limit on the number of depositions the parties may take of third parties.
11. The Deposition Protocol Order (Doc. #: 643) continues to apply except as modified by this Order.

G. Expert Discovery Deadlines

1. **December 21, 2020** – Plaintiffs shall serve expert reports and, for each expert, provide two proposed deposition dates between January 4, 2021 and January 13, 2021.
2. **January 20, 2021** – Defendants shall serve expert reports and, for each expert, provide two proposed deposition dates between January 27, 2021 and February 8, 2021.

H. *Daubert* and Dispositive Motions

1. **February 15, 2021** – Deadline for *Daubert* and dispositive motions.
2. **March 8, 2021** – Deadline for responses to *Daubert* and dispositive motions.
3. **March 15, 2021** – Deadline for replies in support of *Daubert* and dispositive motions.

I. Motions *in limine*

1. **March 15, 2021** – Motions *in limine* due.
2. **April 7, 2021** – Responses to motions *in limine* due.
3. **April 19, 2021** – Replies to motions *in limine* due.

J. With respect to *Daubert*, summary judgment, and *in limine* motions, the parties agree to meet and confer on mechanisms to avoid unnecessarily lengthy or duplicative briefing while preserving the record based on motions filed in separate tracks of the MDL.

K. Pre-Trial Deadlines

1. **March 1, 2021** – Parties to exchange proposed jury instructions, verdict forms and interrogatories.
2. **March 8, 2021** – Parties to email jury questionnaire to the Special Master.
3. **March 15, 2021** – Parties to exchange affirmative deposition designations.
4. **March 15, 2021** – Parties to email joint preliminary statement to Chambers.
5. **March 15, 2021** – Parties to file jury instructions, verdict forms, and interrogatories, including objections where agreement is lacking.
6. **March 15, 2021** – Parties to email exhibit-list form to Chambers.
7. **March 15, 2021** – Parties to exchange witness lists and exhibit lists.
8. **March 26, 2021** – Parties to file witness lists and exhibit lists. Plaintiffs as a group and Defendants as a group will each jointly identify no more than 50 fact witnesses whom they are most likely to call at trial.
9. **April 2, 2021** – Deadline to depose “most likely” witnesses who were not earlier deposed. A party must make a showing of good cause why they did not take the deposition of such a witness during the regular discovery period. Such depositions may also be taken by agreement. A party must show good cause to call at trial a witness who was not among the identified “most likely” trial witnesses.
10. **April 2, 2021** – Parties to exchange responsive deposition designations, objections to affirmative designations, and non-repetitive and non-responsive designations from depositions previously affirmatively designated during this period.
11. **April 9, 2021** – Parties to file proposed questions for the Court’s *voir dire*.

12. **April 19, 2021** – Trial briefs due.
13. **April 19, 2021** – Parties to exchange final deposition designations and objections.
14. **April 23, 2021** – Parties to file objections to witnesses and exhibits.
15. **April 23, 2021** – Parties to file objections to deposition designations.
16. **April 23, 2021** – Completed jury questionnaires to be distributed to trial counsel.
17. **April 27, 2021** – Court and trial counsel to review jury questionnaires.
18. **May 4, 2021** – Final pretrial conference.

L. Trial

1. **May 5, 2021** – Jury selection begins.
2. **May 10, 2021** – Opening statements.

IT IS SO ORDERED.

/s/ Dan Aaron Polster June 8, 2020
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE