

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS, )
v. )
PURDUE PHARMA L.P., PURDUE PHARMA INC., )
RICHARD SACKLER, THERESA SACKLER, KATHE )
SACKLER, JONATHAN SACKLER, MORTIMER D.A. )
SACKLER, BEVERLY SACKLER, DAVID SACKLER, )
ILENE SACKLER LEFCOURT, PETER BOER, PAULO )
COSTA, CECIL PICKETT, RALPH SNYDERMAN, )
JUDITH LEWENT, CRAIG LANDAU, JOHN )
STEWART, MARK TIMNEY, and RUSSEL J. GASDIA. )

C.A. NO. 1884-CV-01808
(BLS2)

DEFENDANT PURDUE’S RESPONSE TO THE MEDIA CONSORTIUM’S
EMERGENCY MOTION TO TERMINATE IMPOUNDMENT

Defendants Purdue Pharma L.P. and Purdue Pharma Inc. (collectively, “Purdue”)
respectfully submit this memorandum in response to the Media Consortium’s Emergency Motion
to Terminate Impoundment of First Amended Complaint and Accompanying Exhibits, dated
January 18, 2019.1 The Media Consortium’s demand that this Court jettison all of the parties’
operative agreements and governing court Orders and instead grant immediate access to the fully
unredacted Amended Complaint is supported by neither relevant case law nor appropriate factual
assertions. Moreover, the Media Consortium’s motion disregards the important work of both this
Court and the MDL Special Master in resolving confidentiality determinations. Because this
analysis is currently ongoing, Purdue requests that this Court deny the Media Consortium’s
motion as premature. There is simply no urgent or compelling need to justify the Media

1 Earlier today, Learn To Cope, Inc. submitted a joinder in the Media Consortium’s
“Emergency” Motion. Purdue acknowledges receipt of this submission and reserves its right to
make a supplemental submission in response to this last minute joinder.

Consortium's demand to immediately receive confidential information contained in the Amended Complaint.

**I. The Media Consortium Seeks To Interrupt The Ongoing Processes Of Two Courts.**

The Media Consortium's request for immediate termination of the impoundment of the Amended Complaint trivializes the important work being done by not one, but two courts, in evaluating Purdue's confidentiality designations. The Commonwealth's Amended Complaint contains nearly 800 potentially confidential references, drawn from approximately 500 confidential Purdue documents. The Commonwealth was able to gain access to these confidential documents because, in a good faith effort to facilitate discovery and streamline litigation, Purdue agreed to a process by which its MDL production was made available to state attorneys general. Rather than use this discovery in the typical manner, the Commonwealth instead elected to unnecessarily and gratuitously quote from and refer to Purdue's confidential documents in its pleading to support an inaccurate and sensationalist effort to litigate its case through the court of public opinion, rather than through substantive claims. This strategy has already caused a flurry of articles to appear in various media outlets (including many by members of the Media Consortium) all parroting the Commonwealth's distorted narrative about Purdue and the individual defendants. The Commonwealth's actions have also led directly to the Media Consortium's self-styled "Emergency Motion," which seeks the immediate release of dozens of allegations that disclose Purdue's confidential information.

As this Court is aware, Purdue has been working in good faith both with the MDL Special Master and with the Commonwealth in order to resolve these confidentiality disputes. Purdue has already spent numerous hours reviewing and closely evaluating the confidentiality designations of the hundreds of documents referenced in the Commonwealth's Amended

Complaint. In doing so, Purdue has voluntarily agreed to remove redactions from over 500 paragraphs of the Amended Complaint. The remaining redactions are currently being evaluated by MDL Special Master Cathy Yanni, per the procedure laid out in the MDL Protective Order. The Special Master is reviewing each redaction individually, and will likely issue a ruling in the near future that resolves the confidentiality status of these allegations. This important and precise process is an integral part of the agreement that formed the basis for the receipt of the documents in question – not just in this case, but in *thousands* of other cases. To accede to the Media Consortium’s request to disregard the MDL court’s order and process would deter future litigants from engaging in such interjurisdictional cooperation. Moreover, such a decision would be highly prejudicial to Purdue. The Commonwealth has seriously mischaracterized certain of these documents and baited the Media Consortium into manufacturing an “emergency.” It would be unfair to reward the Commonwealth’s mischaracterizations by allowing for the evasion of Purdue’s rights under the terms of the MDL Protective Order. The Media Consortium’s motion also disregards the MDL Court’s December 20, 2018 Order which provides that “While those discussions are ongoing, however, the Massachusetts Attorney General’s Office may file a redacted version of its amended complaint in its state court proceeding *and may provide an unredacted version to Judge Janet Sanders for her own review in camera.*” (emphasis added) *In Re: National Prescription Opiate Litigation*, Case: 1:17-md-02804-DAP [Doc #: 1206] (December 20, 2018), attached hereto as Exhibit A. The Commonwealth thus does not, at this time, have the ability to provide the unredacted complaint to the Media Consortium, and any non-MDL order to do so would put the Commonwealth in the position of defying a federal court order. Accordingly, the Media Consortium’s attempt at circumvention should not be allowed to

interfere with the MDL court's ongoing confidentiality review, which is presently under way and proceeding with all deliberate speed.

Once the Special Master has issued a decision, if there are remaining disagreements about confidentiality designations, the Commonwealth and Purdue have agreed to a process for challenging those designations in this Court, which is memorialized in the Protective Order governing this case. *See* Protective Order ¶ 16. Once again, the Media Consortium attempts to evade the parties' agreed-to, court-ordered processes for challenging confidentiality designations. By demanding all of the documents immediately, the Media Consortium seeks to deprive the parties of their agreed-upon process for adjudicating confidentiality disputes, as well as of their right to be heard on these issues. Furthermore, the Media Consortium's requested relief would deprive this Court of additional briefing with which to make an informed decision regarding any outstanding confidentiality issues. Accordingly, the Media Consortium's request should be denied.

## **II. The Media Consortium Provides No Appropriate Basis For Its "Emergency Motion."**

The Media Consortium ignores the fact that review of Purdue's confidentiality designations is currently pending before the MDL Special Master, and that the ongoing meet-and-confer process has already resulted in the lifting of the vast majority of the redactions in the Amended Complaint. It may well be that when the MDL process is completed and this Court has finished the impoundment process, there are no remaining outstanding issues. Yet the Media Consortium seeks to immediately terminate both these processes, while providing no compelling reasoning for doing so. The Media Consortium states that its "motion is filed on an emergency basis because the Court has scheduled a hearing on the issue of impoundment for January 25,

2019.” A previously-scheduled hearing is not an “emergency” nor is it an appropriate basis for a motion that seeks to do an end-run around the agreed-upon processes currently pending before two courts.

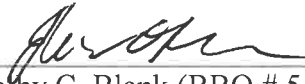
The Memorandum filed in support of the Media Consortium’s Motion argues that the briefing schedule on impoundment laid out by the Commonwealth is “far too long a period.” But the cases cited by the Media Consortium in support of this position are all inapposite. For example, the Media Consortium relies upon *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497 (1st Cir. 1989). But that case dealt with the delay imposed by the *automatic* sealing of court records. Here, the record is not only not automatically sealed, it is being vetted line-by-line by two courts in order to ensure the public’s access to the greatest extent possible. The Media Consortium’s reliance on *Soto v. Romero-Barcelo (In re San Juan Star Co.)*, 662 F.2d 108 (1st Cir. 1981), is even more misplaced. In that case, the First Circuit Court of Appeals found that information produced in discovery did not engender the same level of First Amendment protection as is implicated in reports of public judicial proceedings. *Soto*, 662 F.2d at 115. This is because in discovery “[t]he information revealed may be irrelevant, prejudicial, or pose an undue invasion of an individual’s privacy.” *Id.* Accordingly, the appellate court upheld the lower court’s order prohibiting the disclosure of evidence to third parties, including the press, prior to trial. *Id.* at 116. The Media Consortium’s remaining support comes from two out-of-circuit cases, which are likewise inapposite. See *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897-98 (7th Cir. 1994) (noting that “until admitted into the record, material uncovered during pretrial discovery is ordinarily not within the scope of press access”); *Courier-Journal & Louisville Times Co. v. Peers*, 747 S.W.2d 125, 127 (Ky. 1988) (this Kentucky state court case involved a motion after the completion of proceedings).

The urgency cited in the Media Consortium's emergency request is also not supported by the nature of the redacted information. While the confidential documents in question contain highly commercially sensitive business information and/or proprietary information, they do not relate to any continuing activity. Thus, the documents do not implicate any ongoing conduct that would justify the Media Consortium's assertion that "time is of the essence" with regard to their publication. Accordingly, for the foregoing reasons, the Media Consortium's Motion to Terminate Impoundment of the Amended Complaint should be denied.

Dated: January 24, 2019

Respectfully submitted,

**DECHERT LLP**



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served via e-mail upon the following counsel of record on January 24, 2019:

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# **Exhibit A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	MDL 2804
	)	
	)	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:	)	
	)	Judge Dan Aaron Polster
<i>The County of Summit, Ohio, et al. v. Purdue Pharma L.P., et al.,</i>	)	<u>MINUTES AND ORDER</u>
Case No. 18-OP-45090	)	
	)	
<i>The County of Cuyahoga v. Purdue Pharma L.P.,</i>	)	
Case No. 17-OP-45004	)	
	)	
<i>City of Cleveland v. AmerisourceBergen Drug Corp.,</i>	)	
Case No. 18-OP-45132	)	

On December 20, 2018 the Court held an impromptu emergency telephonic hearing regarding Purdue's Motion for Leave to File Emergency Motion to Enjoin the Massachusetts Attorney General's Office from Violating the MDL Protective Order. **Doc. #: 1204**. In attendance were Gillian Feiner from the Massachusetts Attorney General's Office; Mark Cheffo and Shelia Birnbaum representing Purdue; and Special Masters Francis McGovern, David Cohen, and Cathy Yanni.

The Court first clarifies that its Protective Order, Doc. #: 441, governs all documents and information produced in the MDL and applies to all persons who receive documents or information produced in accordance with its provisions. Because the Massachusetts Attorney General's Office

received many of the documents relied on in amending its complaint from the MDL, this Court's Protective Order governs the disclosure of that information.

The Court understands that the parties have been working in good faith towards an agreement that will allow the Massachusetts Attorney General's Office to file an unredacted amended complaint. The Court directs the parties to continue to do so. While those discussions are ongoing, however, the Massachusetts Attorney General's Office may file a redacted version of its amended complaint in its state court proceeding and may provide an unredacted version to Judge Janet Sanders for her own review in camera. If the parties are unable to reach an agreement, they are directed to follow the protocols set forth in the Court's Protective Order and Protocol for State and Federal Court Coordination, Doc. #: 1029, for resolving such conflicts first seeking guidance from the Special Masters and then, if necessary, appealing to this Court for a final determination.

Accordingly, Purdue's Motion for Leave to File Emergency Motion, Doc. #: 1204, is **DENIED** as moot.

**IT IS SO ORDERED.**

/s/ Dan Aaron Polster December 20, 2018  
**DAN AARON POLSTER**  
**UNITED STATES DISTRICT JUDGE**