

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

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*The County of Summit, Ohio, et al. v. Purdue
Pharma L.P., et al.*, Case No. 18-OP-45090

*The County of Cuyahoga v. Purdue Pharma
L.P.*, Case No. 17-OP-45004

*City of Cleveland v. AmerisourceBergen Drug
Corp.*, Case No. 18-OP-45132

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**MOTION FOR LEAVE TO FILE
THE MANUFACTURER DEFENDANTS' JOINT MOTION TO DISMISS TRACK 1
PLAINTIFFS' CLAIMS FOR DAMAGES PURSUANT TO RULE 41(b)**

The Manufacturer Defendants,¹ by and through their undersigned attorneys, respectively request leave to file a Joint Motion to Dismiss Track 1 Plaintiffs' Claims for Damages Pursuant to Federal Rule of Civil Procedure 41(b). In support, the Manufacturer Defendants state as follows:

¹ "Manufacturer Defendants" refers to Purdue Pharma LP, Purdue Pharma Inc., and The Purdue Frederick Company Inc. ("Purdue"); Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. ("Allergan/Actavis"); Watson Laboratories, Inc., Actavis Pharma, Inc.; Actavis LLC; Teva Pharmaceuticals, USA, Inc.; and Cephalon, Inc. ("Teva"); Johnson & Johnson ("J&J") and Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. ("Janssen"); Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc. ("Endo"); Insys Therapeutics, Inc. ("Insys"); and Mallinckrodt LLC and SpecGX LLC ("Mallinckrodt"). Defendant Noramco, Inc., a company referenced in the Second Amended Complaint ("2AC") as a former affiliate of Janssen (*see* 2AC ¶ 80), joins in this Motion to the extent applicable. Noramco does not (and did not at all material times relevant hereto) manufacture, package, brand, market, distribute, or sell the finished drug products at issue in this litigation, and it reserves all rights and defenses specific to it. Although the arguments raised herein apply equally to Teva Pharmaceutical Industries Ltd., Allergan plc, and Mallinckrodt plc, these Manufacturer Defendants do not join this motion because they are an Israeli corporation, Irish holding company, and Irish company, respectively, that have not been served and over which no personal jurisdiction exists.

1. For the reasons set forth in the Manufacturer Defendants' proposed Motion to Dismiss and supporting Memorandum of Law, attached as Exhibit A, leave to file the Manufacturer Defendants' Motion to Dismiss should be granted, dismissing the Track 1 Plaintiffs' requests for damages, in order to address Plaintiffs' blatant disregard of their obligations under CMO-1 and to remedy, in part, the irreparable prejudice to the Manufacturer Defendants that has resulted.²

2. The Court's Order was clear; Plaintiffs' tactical decision not to provide the required information by the Court's deadline (to which Plaintiffs never objected or sought reconsideration) was deliberate; the Special Master expressly warned Plaintiffs of the consequences of failing to comply (in an Order that Plaintiffs also did not contest); and the Manufacturer Defendants have been prejudiced as a result.

3. Section 6(g) of CMO-1 precludes the filing of non-authorized motions before the Court absent further Order of this Court or express agreement of the parties and, thus, necessitates the Manufacturer Defendants' instant request for leave.

WHEREFORE, the Manufacturer Defendants respectfully request this Honorable Court grant the Manufacturer Defendants' Motion for Leave to File the attached Joint Motion to Dismiss and supporting Memorandum of Law, declaration and exhibits, and proposed form of Order.

² On April 11, 2018, the MDL Court entered Case Management Order One ("CMO-1") (ECF No. 232) and selected three "Track 1" cases for discovery and trial: (1) *The County of Summit, Ohio v. Purdue Pharma L.P.*, Case No. 18-OP-45090 (N.D. Ohio) ("*Summit*"); (2) *The County of Cuyahoga v. Purdue Pharma L.P.*, Case No. 17-OP-45004 (N.D. Ohio) ("*Cuyahoga*"); and (3) *City of Cleveland v. AmerisourceBergen Drug Corp.*, Case No. 18-OP-45132 (N.D. Ohio) ("*Cleveland*"). CMO-1 governs practice and procedure in these cases and is binding on all parties, including Track 1 Plaintiffs. CMO-1 ¶ 1.b, 3.a.

Dated: November 1, 2018

Respectfully submitted,

/s/ Steven A. Reed

Steven A. Reed
Eric W. Sitarchuk
Rebecca J. Hillyer
MORGAN LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
steven.reed@morganlewis.com
eric.sitarchuk@morganlewis.com
rebecca.hillyer@morganlewis.com

Brian Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 South Biscayne Boulevard, Suite 5300
Miami, FL 33131
Telephone: (305) 415-3000
Facsimile: (305) 415-3001
brian.ercole@morganlewis.com

*Attorneys for Teva Pharmaceuticals U.S.A., Inc.,
Cephalon, Inc., Watson Laboratories, Inc., Actavis
LLC, and Actavis Pharma, Inc.*

/s/ Charles C. Lifland (consent)

Charles C. Lifland
Sabrina Heron Strong
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
clifland@omm.com
sstrong@omm.com

*Attorney for Defendants Janssen
Pharmaceuticals, Inc., Johnson &
Johnson, Janssen Pharmaceutica, Inc.
n/k/a Janssen Pharmaceuticals, Inc., and*

*Ortho-McNeil-Janssen Pharmaceuticals,
Inc. n/k/a Janssen Pharmaceuticals, Inc.*

/s/ Mark S. Cheffo (consent)

Sheila L. Birnbaum
Mark S. Cheffo
Hayden A. Coleman
DECHERT
Three Bryant Park
1095 Avenue of the Americas
New York, NY
Telephone: (212) 698-3500
Fax: (212) 698-3599
sheila.birnbaum@dechert.com
mark.cheffo@dechert.com
hayden.colemen@dechert.com

*Counsel for Defendants Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue Frederick
Company*

/s/ Jonathan L. Stern (consent)

Jonathan L. Stern
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave. NW
Washington, DC 20001
Phone: 202-942-5000
Fax: 202-942-5999
[Email: jonathan.stern@arnoldporter.com](mailto:jonathan.stern@arnoldporter.com)

Sean O. Morris
Arnold & Porter Kaye Scholer LLP
777 S. Figueroa St., Suite 4400
Los Angeles, CA 90017
Phone: 213-243-4000
Fax: 213-243-4199
[Email: sean.morris@arnoldporter.com](mailto:sean.morris@arnoldporter.com)

*Attorneys for Endo Health Solutions Inc. and
Endo Pharmaceuticals Inc., as well as Par
Pharmaceutical, Inc., and Par Pharmaceutical
Companies, Inc.*

/s/ Donna M. Welch (consent)

Donna M. Welch, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
(312) 862-2000
donna.welch@kirkland.com

*Counsel for Allergan Finance LLC f/k/a Actavis,
Inc. f/k/a Watson Pharmaceuticals, Inc.*

/s/ J. Matthew Donohue (consent)

J. Matthew Donohue
Joseph L. Franco
HOLLAND & KNIGHT LLP
2300 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204
Telephone: 503.243.2300
matt.donohue@hklaw.com
joe.franco@hklaw.com

Nicholas A. Sarokhanian
HOLLAND & KNIGHT LLP
200 Crescent Court, Suite 1600
Dallas, TX 75201
Telephone: 214.964.9500
nicholas.sarokhanian@hklaw.com

Counsel for Insys Therapeutics, Inc.

/s/ Brien T. O'Connor (consent)

Brien T. O'Connor
Andrew J. O'Connor
ROPES & GRAY LLP
Prudential Tower
800 Boylston St.
Boston, MA 02199-3600
(617) 235-4650
Brien.O'Connor@ropesgray.com

Andrew.O'Connor@ropesgray.com

*Attorneys for Defendant Mallinckrodt LLC and
SpecGX LLC*

/s/ Daniel G. Jarcho (consent)

Daniel G. Jarcho
ALSTON & BIRD LLP
950 F Street, N.W.
Washington, D.C. 20004-1404
(202) 239-3254
Daniel.jarcho@alston.com

Counsel for Noramco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018, a copy of the foregoing **MOTION FOR LEAVE TO FILE THE MANUFACTURING DEFENDANTS' JOINT MOTION TO DISMISS TRACK 1 PLAINTIFFS' CLAIMS FOR DAMAGES PURSUANT TO RULE 41(b)** and supporting papers were filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: November 1, 2018

/s/ Steven A. Reed