

it is the government's basic duty to represent the public interest.” *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013). MDL Plaintiffs are some 800+ governmental entities² asserting the rights of the public to abate the national prescription opiate epidemic. Consequently, MDL Plaintiffs are obligated to support public access to certain facts contained within the ARCOS database.

Second, something less than full disclosure to the public may serve the balance of equities. For instance, the DOJ/DEA publishes statewide summary reports online from data extracted from the ARCOS database.³ Moreover, the DOJ/DEA did not request the sealing of the Second Amended Complaints filed in the Case Track One cases (which included data retrieved from the ARCOS database). It is apparent that the DOJ/DEA’s interests in confidentiality are dependent upon which facts from the ARCOS database are made public. Consequently, something less than a blanket order sealing all extracted data seems appropriate. For instance, historic summaries by county which demonstrate aggregate doses, milligrams and morphine milligram equivalency (MME) by opioid family may provide temporary translucency (if not transparency) sufficient to serve the public interest.

Third, MDL Plaintiffs wish to acknowledge the DOJ/DEA has been open, cooperative and provided valuable guidance since the Court has ordered disclosure of the ARCOS database to the Plaintiffs’ Executive Committee (PEC). See *Order Regarding Arcos Data* (Doc #: 233) (Filed: 04/11/18). MDL Plaintiffs do not wish to interfere with any ongoing criminal investigations related to diversion and applaud its renewed emphasis on regulatory control of the marketplace.

² These governmental entities are subject to a wide and diverse range of public record laws. Plaintiffs favor disclosure in this instance because of its unique importance and relevance to broad and urgent public health and public safety concerns. Moreover, the data at issue has been acknowledged to be unrelated to any current criminal investigation and does not implicate any confidential health care information nor any individuals.

³ https://www.deadiversion.usdoj.gov/arcos/retail_drug_summary/index.html

Fourth, and finally, MDL Plaintiffs wish to emphasize the conflicting positions taken by the Distributor Defendants in this litigation. Distributor Defendants have consistently opposed efforts to gain access to its transactional data as well as the ARCOS database as “trade secrets.” See Transcript of Proceedings, *Kanawha County Commission v. AmerisourceBergen Drug Co. et al.*, Civil Action No. 3:17-cv-01666 (Doc. # 81) (S.D.W. Va. **May 2, 2017**). Nonetheless, Distributor Defendants have refused to voluntarily enter into tolling agreements which will force the PEC to widely disseminate the ARCOS data to some 800+ governmental Plaintiffs in MDL2804.⁴ The inescapable conclusion is that Distributor Defendants value preserving its affirmative defenses more than maintaining the tightest control over the data. The same balancing of equities should be afforded to the public.

Respectfully submitted,

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⁴ See MDL PEC correspondence to Judge Polster dated July 5, 2018 attached as Exhibit A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

s/Peter H. Weinberger

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