

IN RE OPIOID LITIGATION

John Oleske, hereby affirms the following under penalties of perjury pursuant to CPLR
2106:

1. I am an attorney duly admitted to practice in the courts of the State of New York and am Senior Enforcement Counsel at the New York State Office of the Attorney General.

2. I submit this affirmation in support of the State’s Motion by Order to Show Cause pursuant to Judiciary Law § 753 and this Court’s inherent authority to adjudge Defendants Endo Pharmaceuticals, Inc., Endo Health Solutions Inc. (together, “Endo”), Par Pharmaceutical Inc. and Par Pharmaceutical Companies, Inc. (together, “Par”) and their counsel in the above-entitled proceeding, Arnold & Porter Kaye Scholer LLP (“APKS”), in civil contempt of the Court’s Interim Trial Order (“Order”) dated August 2, 2021, as modified on the trial record on August 3, 2021, that: “Endo *and all other parties in this action represented by APKS* shall deliver to Plaintiffs a list identifying the bates number and the dates, persons, entities and repositories establishing the chain of custody of each responsive document produced by Endo or any such other party after the

close of discovery in this action no later than 5:00 p.m. on [Wednesday], August [4], 2021.” Order at 3 (emphasis added).

3. I submit this affirmation on the basis of personal knowledge and my review of documents and information made available in this litigation.

Colloquies with the Court Prior to the Court’s Deadline For Production of a List of Previously-Withheld Responsive Documents with Chain-of-Custody Information

4. On Tuesday, August 3, 2021, Arnold & Porter partner Andrew Solow addressed a request for an extension of the then-effective deadline of 5:00 p.m. that day for compliance with paragraph C of the Court’s Interim Order, which request was originally made in correspondence to the Court from new law firms seeking to appear on behalf of Endo and APKS:

Again, your Honor, also my understanding is that you have asked -
- you have ordered in what I have called, and I don’t mean
anything by it, if my phraseology is not correct, interim relief, and
you signed, as part of the Order to Show Cause, your Honor also
signed a provision submitted by the Plaintiff that ordered that by
five o’clock Tuesday there be production made pursuant to
paragraph C of the Order to Show Cause.

*First, your Honor, so that the request is to have both the
requirement to complete paragraph C, instead of being Tuesday at
five o'clock, have that be due Wednesday at five o'clock, and also
Wednesday at five o'clock put in the written submission and
response to the Order to Show Cause. It's not a request for them to
come as trial counsel. It is not a request for a week adjournment.
Still keeping on the return date of Friday. That is the request. So,
again, I did not make the request, but I've read it. I have spoken to
counsel Mayer Brown, so I just wanted to clarify exactly what it is
that is being asked, your Honor.*

I will also note, your Honor, again, *with full reservation of rights
for Endo and their counsel will be arguing this motion*, after the
Order to Show Cause, the proposed Order to Show Cause was
served late Sunday night. *As your Honor heard, early Monday
morning a letter was sent by the Redgrave firm that my
understanding is begins to comply with that paragraph C, not in its
entirety, your Honor hadn't signed the order yet, but that was the*

intent of that, following the meet and confer that Mr. Oleske had with the Redgrave firm.

* * *

Now your Honor has ordered that this detailed paragraph C go back to close of discovery, either March of 2020 or July of 2020. That was the request to ask for from Tuesday at five o'clock until Wednesday at five o'clock to comply, Mr. Oleske's words, to purge, right, they're asking for another 24 hours.

(August 3, 2021 Tr. 9:16–11:6; 11:21-12:4) (emphasis added).

5. The Court stated:

It seems to me that when this event occurred in Tennessee, I don't know how long ago, but certainly more than a few weeks ago I think, that one would anticipate that this was going to become an issue in this courtroom. It would be an issue in this court and that the protocol, let's get our ducks in order because something is coming our way up on Long Island. *I mention that only because of the suggestion that the timeframe, needing additional time to gather data requests.*

(*Id.* 12:12-24) (emphasis added).

6. Mr. Solow replied:

Your Honor, again, I implore you, you have now seen the papers, you've heard argument, not oral argument, you heard argument last Tuesday, Wednesday, again this morning, I believe we are entitled and we will set forth exactly what happened in Tennessee, the difference between Tennessee and what is being complained of here.

* * *

My understanding is right now, with the current deadline of something due at five o'clock today and something due at 9:30 tomorrow morning, the thought was all hands on deck to put that written response in. So, as your Honor used the phrase earlier last week, between a rock and a hard place. So that was -- the request was, again, to move the interim deadline of Tuesday, five o'clock, till Wednesday, five o'clock to move the response to the Order to Show Cause from Wednesday 9:30 to Wednesday 5 p.m.

(Id. 13:7-14; 15:18-16:2-6).

7. Shortly thereafter, the Court again sought confirmation of prospective compliance with its order:

So, essentially, what you're suggesting Mr. Bullock is asking for is 24 hours for production, but otherwise ready, willing to go on Friday; is that what you're asking for?

(Tr. 19:21-25).

8. Mr. Solow replied:

Well, ready, willing and able to go forward on Friday, *but I want to be clear, your Honor has signed the order that says Tuesday at five o'clock paragraph C of the interim relief needed -- a letter needed to be provided to the State and the joiner for the Counties of these list of [bates] ranges. They are asking for instead of Tuesday at five, Wednesday at five, that's the first request.*

(Id. 20:2-11) (emphasis added).

9. After Mr. Solow explained that counsel was also seeking to extend time to submit papers opposing Plaintiffs' motion, the Court replied:

So a little while you said the order of the day, so to speak, was *all hands on deck*, right?

(Id. 21:4-6) (emphasis added).

10. And Mr. Solow replied:

Your Honor, but for the four of us sitting here, again, we're not doing this, *that's what I understand they're all working on.*

(Id. 21:7-10) (emphasis added).

11. Later that day, Mr. Henninger Bullock of Mayer Brown LLP appeared on behalf of Endo, and stated:

As you had discussed this morning, as Mr. Solow ably tried to explain to the Court, we have filed a short application simply

seeking relief on two interim deadlines, *one which I believe occurs at 5:00 p.m. today regarding chain of custody of the documents;* and one at 9:30 tomorrow morning.

(*Id.* 235:19-236:1) (emphasis added).

12. The Court granted Mr. Bullock's request on behalf of Endo, saying:

I'll give you until tomorrow at 5:00. I have no problem with that. *And I'm sure as we speak, and all day as we were speaking, your people have been busy assembling things that are to be assembled in the fear that I was going to say no.*

(*Id.* 304:12-17) (emphasis added).

13. Mr. Bullock replied:

Your Honor, I think it's fair to say that we have been assembling since the moment we received the papers at 10:30 Sunday evening, everything we could.

And we have asked for the extension, not because we want to delay things. As we've said this morning, I think Mr. Solow said, we are not seeking to move the hearing. I understand completely when the jury is here, they need to focus on the evidence. We are certainly willing and able to work within that.

We are simply asking for a few extra hours. As you said, of course, we are working as fast as we can. These are very serious accusations raised by the plaintiffs. They are very serious consequences that they seek in terms of relief.

And that is why, of course, every additional minute that we've requested and that you have been kind enough to grant, we will use as we can to get all the evidence forth.

(*Id.* 304:18-305:17) (emphasis added).

14. The Court then stated:

As I mentioned this morning, I suspect you or your firm has been viewing it live stream, one would expect that when this problem occurred in Tennessee, it was anticipated that the problem was going to resurface in Ohio, in Chicago, West Coast, West Virginia, and here.

You would think in some ways, let's get moving on this, because we're going to hear about it.

(*Id.* 304:18-305:17).

15. Mr. Bullock then represented that:

Your Honor, we will discuss this, obviously, in great details in our papers, as well as on Friday. *But I think that is, in fact, the story you are going to hear; that that's what we did.*

Now, without going into too much detail, I know the plaintiffs want to paint this picture as simply Tennessee redo. *Tennessee is a much different story. There were much different accusations there.* I think there's far more notice here of documents that were being produced.

I am not trying to argue that motion now. We have a hearing on Friday. We should do it then. But suffic[e] it to say, Your Honor, of course the Endo defendants take these accusations seriously. *They have been working on them since Tennessee, and they have been working on them in this case around the clock, and we will obviously address your order in every way possible, both in our written submission and before Your Honor on Friday morning.*

(*Id.* 306:4-307:2) (emphasis added).

16. Yesterday, I told the Court that APKS's production in related opioid litigation in Georgia, *Georgia v. Teva Pharmaceutical Industries, Ltd.*, for its client Par did not include—as the Court's Order required— information “identifying the bates number and the dates, persons, entities and repositories establishing the chain of custody of each responsive document.” (August 4, 2021 Tr. 165:3–19).

17. In response, Mr. Solow stated that Endo's submission at 5:00 pm will comply with Paragraph C of the Court's Interim Orders and would “address what just was sent over at 2:30” in the Georgia action. (*Id.* 166:13–24.)

Endo and its Counsel's Response to Paragraph C of the Court's Interim Trial Order

18. Later that day, just before 5:00 pm, I received a five-page letter from Ryan Guilds, of counsel at APKS who is not admitted to practice in this state or *pro hac vice* in this proceeding, purporting to provide "information" in response to the Paragraph C Court's Interim Order. The letter and its nine separate attachments appeared to contain several thousand pages of nonresponsive material, but did not appear to contain the list the Court had ordered.

19. After reviewing the letter and the attachments and being unable to locate the list the Court ordered produced, I responded to Mr. Guilds by email at 5:17 p.m., stating and inquiring:

Please direct me to the attachment and page of your email containing "a list identifying the bates number and the dates, persons, entities and repositories establishing the chain of custody of each responsive document produced by Endo or any such other party after the close of discovery in this action," as your firm was required to have produced 15 minutes ago. I am unable to locate it in the materials you sent.

20. Nearly two hours later, at 7:05 p.m., Mr. Guilds responded:

Thank you for your note. I am not sure if you had an adequate opportunity to review all of the materials provided with my letter and the explanations set forth in my letter prior to sending your email at 5:18. I am hoping that, as of now, you have had a chance to review the letter and all of its attachments. *Assuming you have now done so, I hope you will realize that we endeavored to provide you with necessary cross-walks to use the information we have now provided, including bates lists, as well as the voluminous information already provided to you, to meet the requisites of the August 2, 2021 Order.*

As such, we believe that our submission complied with the Court's order. Consistent with our submission, however, we would be happy to meet and confer with you tonight to understand any concerns you may have. Please let me know your availability.

(emphasis added).

21. I replied to Mr. Guilds for the final time that evening at 7:30 p.m., stating:

I understand your email as: (1) *acknowledging that your submission does not contain actually contain*: “a list identifying the bates number and the dates, persons, entities and repositories establishing the chain of custody of each responsive document produced by Endo or any such other party after the close of discovery in this action;” and (2) *suggesting that Plaintiffs should use “cross walks” inferred from your submission to attempt to create for ourselves the list* Endo and APKS were ordered to deliver more than two hours ago.

If Endo and APKS knew (as they clearly did) that they could not or would not comply with the Court’s order, and intended instead to comply with an order of their own imagination, they should have told the Court that today instead of lying, again.

(emphasis added).

22. At 10:45 p.m., Mr. Guilds sent me his final reply of the evening, stating:

I’m sorry you were apparently unable to meet and confer with us tonight. We remain willing to do so tomorrow at your convenience. For the record, please note that we do not agree with your assertions or understanding.

We remain willing and able to meet and confer but your continued name-calling and accusations about our intent or motive are counterproductive.

Please advise if you would like to attempt to meet and confer tomorrow.

(emphasis added).

23. As of this writing, Plaintiffs have still not received “a list identifying the bates number and the dates, persons, entities and repositories establishing the chain of custody of each responsive document produced by Endo or [Par] after the close of discovery in this action.”

New York, New York
August 5, 2021

By: /s/ John Oleske
John Oleske
Senior Enforcement Counsel