

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION

MDL 2804

OPIATE LITIGATION

Case No.: 1:17-md-2804

THIS DOCUMENT RELATES TO:

Judge Dan Aaron Polster

ALL CASES

**REQUEST FOR ENTRY OF
PROPOSED RULE 23(c)(1)(B)
NEGOTIATION CLASS
MEMBERSHIP ORDER**

Introduction

On September 11, 2019, the Court entered an order certifying a negotiation class, appointing Negotiation Class Counsel, and approving the proposed notice and opt-out procedures (the “Certification Order,” ECF No. 2591, ¶¶ 3, 7, & 11-12). Under the approved opt-out procedures, exclusion requests were to be received (or, if mailed, postmarked) on or before November 22, 2019. On December 2, 2019, Negotiation Class Counsel submitted its report on the Class Notice program and the status of opt outs. ECF No. 2959.

Negotiation Class Counsel now requests entry of the attached proposed Rule 23(c)(1)(B) Negotiation Class Membership Order confirming the entities comprising the Negotiation Class (“Proposed Order”). This request is supported by the accompanying Supplemental Declaration of Cameron Azari (“Suppl. Azari Decl.”), Director of Legal Notice for Hilsoft Notifications (a unit of the Negotiation Class Notice administrator, Epiq Class Action & Claims Solutions, Inc.), which reflects updated information concerning exclusion requests received by Epiq.

Summary of Opt Out Requests

The Negotiation Class consists of local governments (counties, cities, towns, etc.) identified in certain 2010 and 2012 U.S. Census Bureau reports (with certain modifications identified in Plaintiffs’ Renewed and Amended Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class). ECF No. 1820 at p.3, n.3. The December 2, 2019 report demonstrated the success of the notice program in timely reaching these entities and that the overwhelming bulk of the potential class members—more than 98%—remained in the Negotiation Class. This submission confirms the robust support for the Negotiation Class.

Following the December 2, 2019 report, Epiq conducted a further audit of exclusion requests. Suppl. Azari Decl., ¶ 5. Those audits showed that, out of the 34,458 members of the Negotiation Class identified on the list posted on the Negotiation Class website (<https://www.opioidsnegotiationclass.info/>), 569 emailed/mailed requests for exclusion on or

before November 22, 2019 (“Opt Outs”).¹ *Id.*, ¶ 6. Eighteen of those 569 Opt Outs subsequently rescinded their exclusion requests, choosing instead to remain in the Negotiation Class. *Id.*

The 33,884 Negotiation Class members that never requested exclusion are identified in Exhibit A to the Supplemental Azari Declaration. The Proposed Order would include these entities in the Negotiation Class.

The 18 Opt Outs that have rescinded their exclusion requests as of January 10, 2020 are identified in Exhibit B to the Supplemental Azari Declaration. The Proposed Order would include these entities in the Negotiation Class.

The 551 Opt Outs that submitted requests for exclusion on or before November 22, 2019 and have not since rescinded their exclusion requests are identified in Exhibit C to the Supplemental Azari Declaration. The Proposed Order would exclude these 551 Opt Outs from the Negotiation Class.

An additional 5 exclusion requests were emailed/mailed after November 22, 2019. Suppl. Azari Decl. ¶ 7. None of those entities have sought to rescind their exclusion requests. Those five entities are identified in Exhibit D to the Supplemental Azari Declaration. Given the very small number of untimely Opt Outs and the fact that no settlement proposal has been presented to the Negotiation Class, Negotiation Class counsel respectfully requests that the Court exercise its discretion to permit this small number of untimely Opt Outs. The Proposed Order includes a provision that would exclude these five additional entities.

Class Counsel understands that additional Opt Outs are considering rescinding their requests for exclusion and remaining in the Negotiation Class. Given the nature and purpose of the Negotiation Class, Class Counsel may seek leave (on noticed motion) in the future to amend the Negotiation Class membership to add additional members that rescind their exclusion requests and confirm their decision to instead remain in the Negotiation Class.

¹ Epiq also received “exclusion requests” from entities that Negotiation Class counsel confirmed were not identified on the list of potential Negotiation Class members. Suppl. Azari Decl., ¶ 5. These exclusion requests were treated as nullities because the entities that submitted them were not potential Negotiation Class members and, therefore, did not need to exclude themselves from the Negotiation Class.

CONCLUSION

For all of the reasons set forth above, Negotiation Class Counsel respectfully requests that the Court enter the accompanying Rule 23(c)(1)(B) Negotiation Class Membership Order.

Dated: January 10, 2020

Respectfully submitted,

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Class Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 10, 2020, I caused the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send a notification to all counsel of record.

s/ Christopher A. Seeger

CHRISTOPHER A. SEEGER