



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

Civil Action No. 19-C-9000

THIS DOCUMENT APPLIES TO ALL CASES:

ORDER REGARDING PLAINTIFFS' MOTION TO COMPEL KROGER

AND NOW, this 14th day of October 2020, upon consideration of *Plaintiffs' Motion to Compel Defendant Kroger to Provide Complete Responses and Responsive Documents to Plaintiffs' First and Second Sets of Discovery Requests Directed at Kroger* (Transaction ID 65916893) and the record on this Motion, Plaintiffs' Motion is Granted with respect to the Discovery Requests discussed below.

In accordance with the Supervised Meet and Confer process in which both parties participated, Defendant Kroger is Ordered to provide responses and responsive documents to the following Discovery Requests:

Plaintiffs First Set of Discovery Interrogatory No. 4;
Plaintiffs First Set of Discovery Request for Production No. 5;
Plaintiffs First Set of Discovery Request for Production No. 14;
Plaintiffs First Set of Discovery Request for Production No. 15; and
Plaintiffs First Set of Discovery Request for Production No. 20.

Specifically, Request No. 14 seeks communications between Kroger and third-party distributor, Cardinal Health. As a result of the Supervised Meet and Confer, this topic is narrowed to require Kroger to produce documents and communications (1) related to the contracts and/or agreements and the policies and practices between Kroger and Cardinal related to the provision of opioids including thresholds, quotas and due diligence investigations of opioid orders, if any; (2) any documents or communications between Kroger and Cardinal concerning policies and procedures for investigating and or conducting due diligence on suspicious orders of opioids, if any; and (3) any documents or communications related to opioid

orders placed by Kroger to Cardinal for sale in West Virginia which were investigated by Cardinal as potentially suspicious, if any. This request does not encompass daily, routine, communications between Cardinal Health and Kroger. Request No. 20 refers to organizational and/or work charts. Kroger must produce work charts and/or organizational charts only to the extent such documents exist. If no such documents exist they, of course, cannot be produced. The Parties are also ordered to continue to meet and confer further to narrow this request and select custodians for the purpose of efficient execution of depositions.

Kroger is further Ordered to provide responses and responsive documents to the following Requests, with the guidance of a specific prescription drug-list provided by Plaintiffs to Defendant Kroger designating which prescription drugs the Requests encompass:

Plaintiffs First Set of Discovery Request for Production No. 8;
Plaintiffs First Set of Discovery Request for Production No. 9; and
Plaintiffs First Set of Discovery Request for Production No. 10.

The definition of “due diligence” as it is employed in any Request is as follows: “any information that a defendant may be relying upon to defeat a claim that they did not provide due diligence. . . .” Supervised Meet and Confer Tr. at 37 (Oct. 7, 2020).

Defendant Kroger will make all good faith efforts to comply within 30 days of the entry of this Order. If some information is not be available in that timeframe Kroger is under a duty to update and supplement any of the requested discovery in a timely manner as it becomes available. It is so Ordered.

ENTERED THIS 14th day of October, 2020.

/s/ Christopher Wilkes
Discovery Commissioner

Prepared by:

/s/ John D. Hurst

John D. Hurst, Esq. (WVSB # 10861)

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Edited by Discovery Commissioner

Read and Agreed to by:

/s/ Ronda Harvey

Ronda L. Harvey (WVSB #6326)

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