

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION**

**MDL 2724
16-MD-2724**

THIS DOCUMENT RELATES TO:

HON. CYNTHIA M. RUFÉ

ALL ACTIONS

**PRETRIAL ORDER NO. 94
(SUPPLEMENTAL PROTECTIVE ORDER GOVERNING PHONE RECORDS)**

AND NOW, this 12th day of July 2019, to expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded to material so entitled in all cases included in this Multi-District Litigation (the “MDL”), the Court enters this Supplemental Protective Order Governing Phone Records pursuant to Rule 26 of the Federal Rules of Civil Procedure. Capitalized terms not defined in this Order shall have the definitions set forth by the Court in Pretrial Order No. 53, MDL Doc. No. 697 (“Protective Order”).

1. DEFINITION OF PHONE RECORD

A. Phone Record: a telephone carrier production, telephone bill or statement, call or text message log, or similar document produced in the above-referenced MDL that memorializes the occurrence of phone calls or text messages.

B. A Phone Record does not include the content of a phone call or text message, and this Order does not relate to materials that contain such content.

2. USE OF PHONE RECORDS

A. As specified for Discovery Material generally in Section 5.1 of the Protective Order, a Phone Record shall be used solely for purposes of prosecuting, defending, or attempting to settle any part of this MDL. A Phone Record shall not be used for any other purpose, including, without limitation, any business or commercial purpose.

B. Except as provided herein, a Phone Record is subject to the Protective Order or subsequent modifications thereof. If any part of the Protective Order conflicts with the terms relating to Phone Records provided for in this Order, this Order shall govern.

C. This Order shall not limit the States' use or disclosure of phone records produced in the States' investigation, as distinguished from Phone Records produced in this MDL.

3. DISCOVERY AND CONFIDENTIALITY DESIGNATIONS

A. A telephone number of any person, if disclosed in any discovery, court paper, or otherwise in this MDL, may be disclosed to a third party telephone carrier in a Rule 45 subpoena. The Parties may do so notwithstanding any confidentiality designation that may be attached to the material in which the telephone number was disclosed.

B. A Party must produce to other parties in the MDL a telephone carrier's response to a Rule 45 subpoena, including any production, within three (3) business days of receipt.

C. Phone Records produced in the MDL, including Phone Records produced pursuant to PTO 70, shall be designated HIGHLY CONFIDENTIAL. Any Party may challenge such designation as a Challenging Party under the procedure in Section 7 of the Protective Order.

D. Parties receiving Phone Records produced in the MDL may seek additional protection or a greater confidentiality designation of a Phone Record in accordance with Section 4.4 of the Protective Order.

E. Without the need to be a Party to this litigation, the owner of, or designated user of a phone number appearing in, specific Phone Records produced in the MDL (“owner/designated user”) may also seek additional protection or a greater confidentiality designation of a Phone Record in accordance with Section 4.4 of the Protective Order. For purposes of this Order, counsel for a Party may seek additional protection or a greater confidentiality designation on behalf of the owner/designated user of specific Phone Records if counsel for that Party also represents the owner/designated user.

4. REDACTION OF PHONE RECORDS

A. If a Party or an owner/designated user believes a confidentiality designation alone is insufficient to protect personal information unrelated to any allegation in the MDL, the Party or owner/designated user may seek additional protection through proposed redactions. Personal information may be redacted only to prevent harm, embarrassment, inconvenience, or unfairness to an individual. Records of telephone calls or text messages between or among individuals who were employed by defendants, drug manufacturers, or manufacturers’ direct customers shall not be redacted.

B. Proposed redactions and the grounds therefor shall be produced to other parties in the MDL within 30 days after the provision of access to a Phone Record (or within 30 days after entry of this order, whichever is later). The redacting Party shall identify the Phone Record at issue, together with the grounds for the redaction. If after meeting and conferring any non-redacting Party disagrees with the redaction, it will be considered by the Special Master pursuant to PTO 68.

C. If a redacted version of a Phone Record exists (whether the proposed redactions are the subject of a challenge or not), only the redacted version may be used or disclosed under Section 5.

5. USE AND DISCLOSURE OF PHONE RECORDS

A. Notwithstanding any confidentiality designation under this Order or the Protective Order, and regardless of whether the witness viewing the Phone Record falls within the categories listed in Sections 5.3, 5.4 or 5.5 of the Protective Order, a Phone Record may be disclosed to:

1. any witness assisting counsel's investigation concerning the claims or defenses in this MDL; or
2. any Federal Rule of Civil Procedure 30 or 45 witness at deposition, or during preparation for such a deposition.

B. When information derived from a Phone Record (i.e., not the Phone Record itself) is included in a brief, memorandum, declaration or other paper filed with the Court, such information need not be redacted or sealed pursuant to Section 9.2 or 9.3 of Pretrial Order No. 7, unless such information includes any of the following: (i) personal information unrelated to any allegation in the MDL as defined in paragraph 4.A above, (ii) a telephone number, or (iii) home address.

C. When a Phone Record is filed with the Court, the Filing Party shall electronically file a placeholder document stating:

DOCUMENT FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

The Filing Party also shall file a paper copy of the document with the Clerk in a sealed envelope, clearly marked:

THIS ENVELOPE CONTAINS DOCUMENTS MARKED AS CONFIDENTIAL, HIGHLY CONFIDENTIAL, AND/OR OUTSIDE COUNSEL EYES ONLY THAT ARE THEREFORE COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF COURT.

The Filing Party shall also provide one courtesy copy of the sealed document to the Court within one business day of filing.

The parties reserve all rights and objections to seek or oppose further protection for Phone Records that become a part of the judicial record.

6. OTHER

A. Nothing herein shall cause a party or individual to waive any rights to object, challenge, move to quash, or otherwise seek relief from subpoenas issued in this litigation seeking Phone Records.

B. Stipulations may be made, between Counsel for the respective Parties, as to the application of this Order to specific situations, provided that such stipulations are recorded in writing or contained in the record of any oral proceeding. Nothing contained herein shall preclude any Party from seeking an Order of the Court modifying or supplementing this Order.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.