

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

This document relates to:

*Jennifer Artz, et al. v. Endo Health Solutions Inc., et al.*  
Case No. 1:19-OP-45459

*Michelle Frost v. Endo Health Solutions Inc. et al.*  
Case No. 1:18-OP-46327

*Salmons v. Purdue Pharma L.P., et al.<sup>1</sup>*  
Case No. 1:18-OP-45268

**MDL No. 2804**

**Case No. 17-md-2804**

**Judge Dan Aaron Polster**

**DEFENDANTS' OPPOSITION TO NAS PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION**

<sup>1</sup> Defendants list *Salmons* here because it is included in the caption of Plaintiffs' Motion, even though no plaintiff in *Salmons* is proposed as a representative of any class. The fourth case included in the caption to Plaintiffs' motion, *Flanagan v. Purdue Pharma, L.P.*, has since been dismissed.

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iv
INTRODUCTION .....	1
BACKGROUND .....	5
I.      Neonatal Abstinence Syndrome.....	5
II.     The Proposed Classes and Class Representatives.....	6
A.    Jacqueline Ramirez, Birth Mother and Legal Guardian of R.R.....	9
B.    Melissa Barnwell, Birth Mother and Legal Guardian of C.G. and E.G.....	11
C.    Erin Doyle, Birth Mother of D.F. ....	13
D.    Ashley Poe, Birth Mother and Legal Guardian of P.P.R.P.....	15
LEGAL STANDARD.....	17
ARGUMENT .....	19
I.    The Individualized Nature of Plaintiffs' Personal Injury Claims Prevent Them From Satisfying the Requirements of Rule 23(a). .....	19
A.   Plaintiffs Have Failed to Demonstrate Typicality. ....	20
1.   Typicality Is Absent Because the Proposed Class Representatives Are Not Even Class Members.....	20
2.   Plaintiffs Have Not Demonstrated Typicality Because Their Claims Pose Distinct Factual and Legal Questions. ....	24
3.   Typicality Cannot Be Established for Defendants' Conduct (or Lack of Conduct) With Respect to Individual Class Members. ....	31
B.   Plaintiffs Cannot Establish Commonality.....	34
C.   Plaintiffs Cannot Avoid Their Obligation to Demonstrate Typicality and Commonality by Citing This Court's Negotiation Class Decision and the Potential Use of Aggregate Proof. ....	36
D.   Plaintiffs Have Failed To Demonstrate Adequacy. ....	37

1.	The Claims of the Proposed Class Representatives Will Require Substantial Individual Examination.....	38
2.	Plaintiffs Lack Standing to Represent a Class for RICO Claims.....	39
3.	No Nationwide RICO Class Can Be Certified Against Defendants Against Whom Plaintiffs Have Not Asserted Such Claims.....	40
4.	The Proposed Class Representatives Do Not Have Claims Against All Defendants .....	41
5.	Members of the Proposed Classes Have Divergent Interests. ....	42
II.	Plaintiffs Also Fail to Satisfy Rule 23(b).....	45
A.	Plaintiffs' Claims May Be Considered for Certification Only Under Rule 23(b)(3) Because They Request Significant Monetary Relief.....	45
B.	Plaintiffs' Proposed Classes Do Not Satisfy Rule 23(b)(3).....	47
1.	Plaintiffs Fail to Demonstrate Predominance. ....	47
2.	A Class Action Is Not The Superior Method For Adjudicating These Claims.....	53
C.	Plaintiffs Fail to Meet the Requirements for Certification Under Rule 23(b)(2). ....	57
1.	Plaintiffs Cannot Show that Any Defendant Has Acted or Refused to Act on Grounds That Apply Generally to the Class. ....	57
2.	Plaintiffs' Proposed Classes Lack Cohesion.....	57
3.	Considerations of Equity Weigh Against Certification Under 23(b)(2). ....	59
III.	Plaintiffs Have Failed to Provide Legally Sufficient Class Definitions. ....	60
	CONCLUSION.....	65

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>6803 Boulevard E., LLC v. DIRECTV, LLC,</i> 17 F. Supp. 3d 427 (D.N.J. 2014) .....	42
<i>Aaron v. Durrani,</i> 2014 WL 996471 (S.D. Ohio Mar. 13, 2014).....	40
<i>Abrams v. Bute,</i> 27 N.Y.S.3d 58 (N.Y. App. Div. 2016) .....	28
<i>Am. Express Co. v. Italian Colors Rest.,</i> 570 U.S. 228 (2013).....	17
<i>In re Am. Med. Sys.,</i> 75 F.3d 1069 (6th Cir. 1996) .....	20, 21, 47, 49
<i>Amchem Prods., Inc. v. Windsor,</i> 521 U.S. 591 (1997).....	<i>passim</i>
<i>Arnett v. Mong,</i> 65 N.E.3d 72 (Ohio Ct. App. 2016).....	48
<i>Baker v. Chevron U.S.A. Inc.,</i> 533 Fed. App'x 509 (6th Cir. 2013) .....	28
<i>Barnes v. Am. Tobacco Co.,</i> 161 F.3d 127 (3d Cir. 1998).....	19
<i>Barraza v. C.R. Bard Inc.,</i> 322 F.R.D. 369 (D. Ariz. 2017) .....	19, 46, 57
<i>Barrette v. Lopez,</i> 725 N.E.2d 314 (Ohio Ct. App. 1999).....	48
<i>Beach v. Healthways, Inc.,</i> 2009 WL 3245393 (M.D. Tenn. Oct. 5, 2009) .....	38
<i>Beattie v. CenturyTel, Inc.,</i> 511 F.3d 554 (6th Cir. 2007) .....	18, 20, 43
<i>Berisford v. Sells,</i> 331 N.E.2d 408 (Ohio 1975) .....	48

<i>Bridging Communities Inc. v. Top Flite Fin. Inc.</i> , 843 F.3d 1119 (6th Cir. 2016) .....	18
<i>Bromley v. Mich. Educ. Ass'n-NEA</i> , 178 F.R.D. 148 (E.D. Mich. 1998) .....	41
<i>Burkhead v. Louisville Gas &amp; Elec. Co.</i> , 250 F.R.D. 287 (W.D. Ky. 2008).....	44
<i>In re Carrie W.</i> , 110 Cal. App. 4th 746 (2003) .....	64
<i>Castano v. Am. Tobacco Co.</i> , 84 F.3d 734 (5th Cir. 1996) .....	53, 54
<i>Chavers v. Gatke Corp.</i> , 107 Cal. App. 4th 606 (Cal. Ct. App. 2003) .....	52
<i>Clemons v. Norton Healthcare Inc. Ret. Plan</i> , 890 F.3d 254 (6th Cir. 2018) .....	18
<i>Cole v. City of Memphis</i> , 839 F.3d 530 (6th Cir. 2016) .....	62
<i>Coleman v. GMAC</i> , 296 F.3d 443 (6th Cir. 2002) .....	59
<i>Colley v. Procter &amp; Gamble Co.</i> , 2016 WL 5791658 (S.D. Ohio Oct. 4, 2016).....	1, 19, 38
<i>Comcast Corp. v. Behrend</i> , 569 U.S. 27 (2013).....	47
<i>Creech v. Emerson Elec. Co.</i> , 2019 WL 1723716 (S.D. Ohio Apr. 18, 2019) .....	58
<i>DaFonte v. Up-Right, Inc.</i> , 828 P.2d 140 (Cal. 1992) .....	51
<i>Dash v. FirstPlus Home Loan Owner Tr. 1996-2</i> , 248 F. Supp. 2d 489 (M.D.N.C. 2003) .....	41
<i>Davis-Miller v. Automobile Club of S. Cal.</i> , 134 Cal. Rptr. 3d 551 (Cal. Dist. Ct. App. 2011) .....	52
<i>Doane v. Givaudan Flavors Corp.</i> , 919 N.E.2d 290 (Oh. Ct. App. 2009).....	52

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.