

Kevin Díaz, OSB No. 970480
Email: kdiaz@aclu-or.org
ACLU Foundation of Oregon
PO Box 40585
Portland, OR 97240
Tel.: (503) 227-6928; Fax: (503) 227-6948

Nathan Freed Wessler (*pro hac vice* application pending)
Email: nwessler@aclu.org
Ben Wizner (*pro hac vice* application pending)
Email: bwizner@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500; Fax: (212) 549-2654

Attorneys for the Plaintiffs-Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**OREGON PRESCRIPTION DRUG
MONITORING PROGRAM**, an agency of
the **STATE OF OREGON**,

Plaintiff,

v.

**UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION**,
an agency of the **UNITED STATES
DEPARTMENT OF JUSTICE**,

Defendant.

Case No.: 3:12-cv-02023-HA

**DECLARATION OF JOHN DOE 1 IN
SUPPORT OF MOTION TO FILE
COMPLAINT IN INTERVENTION USING
PSEUDONYMS**

JOHN DOE 1, et al.,

Plaintiffs-Intervenors,

v.

**UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION,**
an agency of the **UNITED STATES
DEPARTMENT OF JUSTICE,**

Defendant in Intervention.

I, John Doe 1,¹ hereby declare and state as follows:

1. I submit this declaration based on my personal knowledge in support of Intervenors' Motion to File Complaint in Intervention Using Pseudonyms, in the above-captioned case.

2. I am one of the individuals seeking to intervene in this action.

3. I am a retired CEO and a resident of Oregon.

4. I currently take four medications that are classified in schedules II or IV under the federal Controlled Substances Act.

5. These medications are prescribed by doctors in Oregon and I fill my prescriptions at pharmacies in Oregon. As a result, I believe that records of these prescriptions are recorded by the Oregon Prescription Drug Monitoring Program ("PDMP").

¹ This is not my real name. I am proceeding under a pseudonym in order to protect my constitutional right to privacy. The use of the name "John Doe" and gender pronouns is not intended to signify that I am either male or female.

6. I suffer from a type of restless leg syndrome that prevents me from getting adequate sleep at night. As the night progresses my restless legs get worse and, unless I take medication to help me sleep, my condition prevents me from sleeping through the night.

7. If I do not take medication to help me sleep, I might wake up at 1:00 AM and not be able to sleep again until 8:00 AM. Or I might not be able to fall asleep at all until three or four o'clock in the morning.

8. When I am unable to get adequate sleep during the night, my ability to function during the daytime is seriously impaired.

9. To treat my restless leg syndrome, my neurologist has prescribed two medications, Ambien and Sonata.

10. Ambien is a trade name for the drug zolpidem. It is classified in schedule IV under the Controlled Substances Act.

11. Sonata is a trade name for the drug zaleplon. It is classified in schedule IV under the Controlled Substances Act.

12. I usually take Ambien at the start of the night in order to be able to fall asleep. Most nights, I wake up during the night to use the restroom. If I can't fall back asleep after that, I take Sonata.

13. I have been taking Ambien and Sonata for approximately the last ten years and I expect to continue taking them for the foreseeable future.

14. Ambien and Sonata are dispensed in 30-day supplies. Therefore, every 30 days I refill my prescriptions at my pharmacy.

15. I have tried alternative medications to help me sleep, but none of them is as effective in treating my restless leg syndrome and allowing me to sleep as the combination of

Ambien and Sonata. I have also gone to a sleep clinic for assessment, and these medications are the best treatment that doctors have offered.

16. I also suffer from frequent kidney stones, which are extraordinarily painful when they occur. Although I have a high pain threshold, I would not be able to tolerate the pain of kidney stones without medication.

17. In order to control the pain associated with kidney stones, my physician prescribes me two painkillers, oxycodone and hydrocodone.

18. Both oxycodone and hydrocodone are classified in schedule II under the Controlled Substances Act.

19. Over the course of a typical year, I have approximately three kidney stone episodes. When I feel a stone developing, I need to be able to take oxycodone or hydrocodone immediately to prevent debilitating pain. Therefore, I must always have a supply of these medications on hand.

20. I also travel internationally frequently, sometimes to areas with limited health care services. When I travel it is important that I carry supplies of oxycodone and hydrocodone with me so that I can deal with a kidney stone episode.

21. If I do not take oxycodone or hydrocodone to treat a kidney stone episode, I will end up in the emergency room where I will require intravenous painkillers.

22. The frequency with which I need to fill new prescriptions for oxycodone and hydrocodone depends on the severity and frequency of kidney stones.

23. Information about my drug prescriptions and my medical conditions is private, and should remain between me and my health care providers. I believe strongly that the

government should not be able to snoop around in my confidential medical records without good reason.

24. I have followed the debate over the creation and implementation of the Oregon Prescription Drug Monitoring Program. I am generally skeptical of government databases that contain confidential information of private individuals, particularly sensitive information like medical records. In my experience, the government is not adept at maintaining good security for its records and information is sometimes released or put to uses for which it was not intended.

25. When the PDMP was created, I took some solace from the fact that law enforcement would not be able to obtain prescription records from it without a court order based on probable cause. The possibility that the DEA might be able to obtain my prescription records easily, without a warrant, is upsetting to me. It would be an intrusion on my privacy for a law enforcement agent to have easy access to my medical information.

26. If the DEA is allowed to obtain prescription records from the PDMP without a warrant, it would give me pause next time I visited the doctor to discuss my treatment. I rely on my physicians to decide what the best medications are to treat my medical conditions, but I would inform my doctors of the DEA's easier access to the PDMP records and would ask their advice. At a minimum, my behavior would change each time I refilled my prescriptions and I would seriously consider whether I had other treatment options.

27. If I had a way to obtain prescriptions without the DEA being able to easily obtain them from the PDMP without a warrant, I would do so. However, given the frequency with which I must refill my prescriptions for Ambien and Sonata and the urgency attached to my access to adequate supplies of oxycodone or hydrocodone, it would be impractical and expensive for me to travel to a jurisdiction that does not have a prescription drug monitoring program.

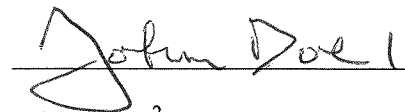
28. Although I want to protect my right to the privacy of my prescription records and the medical information that they reveal, I also want to be able to assert my constitutional rights in court to ensure that the DEA cannot obtain personally identifying information from the PDMP that reveals my private prescription information without complying with the Fourth Amendment. The only way for me to do that is to proceed under a pseudonym because, otherwise, I will have to disclose to the DEA (and the public at large) the very information—my name, connected with the specific schedule II and IV drugs I take, the frequency with which I take them, and the conditions they treat—that my Complaint in Intervention is seeking to protect.

29. Additionally, it would be embarrassing and uncomfortable if my private and confidential medical information were disclosed to the public.

30. Neither my name nor any other personally identifying information about me (including my image) will be revealed in any public statement that I or my representatives make about this case.

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 18th day of January, 2013.


John Doe 1²

² As noted above, this is a pseudonym.