

EXHIBIT A
Sim's Declaration

DAVID N. WOLF (6688)
Assistant Utah Attorney General
OFFICE OF THE UTAH ATTORNEY GENERAL
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
E-mail: dnwolf@utah.gov

Counsel for Respondents

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES DEPARTMENT OF
JUSTICE, DRUG ENFORCEMENT
ADMINISTRATION,

Petitioner,

v.

UTAH DEPARTMENT OF COMMERCE and
UTAH DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING,

Respondents.

DECLARATION OF MARVIN H. SIMS

Case No. 2:16-cv-611-DN

Judge David Nuffer

I, MARVIN H. SIMS being over the age of 18, make the following statements based upon my own personal knowledge.

1. I am competent to testify as to the matters stated herein, and base these statements on personal knowledge.
2. I am the Administrator of the Controlled Substance Database (the "Database") for the Utah Department of Commerce/Division of Occupational & Professional Licensing. My

principle responsibilities as the Administrator include overseeing day-to-day operations of the Database and providing information from the database when the Division of Occupational and Professional Licensing receives warrants requesting information from the Database.

3. I received an email on June 17, 2015 from the Drug Enforcement Administration (“DEA”), United States Department of Justice. A subpoena was attached to that email, requesting information from the Database. I responded to the email, through counsel, and explained that, under Utah law, I could not provide the DEA with the information it sought unless the DEA obtained a warrant.¹

4. I was served an identical subpoena on October 30, 2015.

5. The Database was established by the Utah State Legislature in 1995. Utah was one of the first states to establish a prescription data monitoring program or “PDMP” as they are generically referred to around the country. Forty-nine states either currently have a PDMP or are in the process of establishing one.

6. The Database has two major roles. The Database assists prescribing practitioners and pharmacists in identifying individuals who seek controlled substances from more than one source. The Database also serves as a tool for law enforcement authorities in investigating and prosecuting drug-related offenses.

7. Drugs listed as controlled substances and tracked by the Database include a number of frequently prescribed medications used to treat a wide range of serious medical conditions, including anxiety disorders, panic disorders, post-traumatic stress disorder, weight loss associated with AIDS, nausea and weight loss in cancer patients undergoing chemotherapy,

¹ (Letter, attached as Ex. A-1.)

alcohol addiction withdrawal symptoms, opiate addiction, testosterone deficiency, gender identity disorder/gender dysphoria, chronic and acute pain, seizure disorders, narcolepsy, insomnia, and attention deficit hyperactivity disorder.

8. There are more than 70 million prescription records in the Database, with approximately 5.2 million prescription records uploaded to the system annually.

9. Prescribing practitioners are not required to report any information to the Database, unless they seek to dispense certain controlled substances from their office. However, they are required to be registered to use the Database.

10. Prescribing practitioners and pharmacists are not required to access the Database before prescribing or dispensing a controlled substance, but they are encouraged by the Division to do so in educational training sessions.

11. Most prescribing practitioners and pharmacists access the Database either through an online account they establish with the database, or through a direct request (fax, mail, email, telephone) to Database personnel.

12. Any person with an online account must agree to limit their search of Database information to those purposes set forth in statute.

13. Online access to the Database can only search information within the past year. Older Database information is obtainable through a request to Database personnel.

14. Out-of-state prescribing practitioners and pharmacists may also obtain information from the Database.

15. Out-of-state pharmacies that possess a Utah controlled substance license and dispense a controlled substance to Utah residents must also report to the Database.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: August 4, 2016.

/s/ Marvin Sims
MARVIN H. SIMS