IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. (1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	§ §

Case No. CJ-2017-816
JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER STAYING DISCOVERY UNTIL THE COURT RULES ON DEFENDANTS' MOTIONS TO DISMISS

I. INTRODUCTION

Defendants urge the Court to stay discovery and absolve them of their duty to respond to Plaintiff's properly-served discovery requests until *after* the Court rules on Defendants' Motions to Dismiss. To support this request, Defendants contend that (1) discovery will be unnecessary *if* this Court grants any portion of Defendants' Motions to Dismiss (despite the fact that Plaintiff's discovery is not claim-specific and thus, inevitably must be answered); (2) Defendants want a future law they admit is "not yet effective" to be applied to stay discovery in this case; (3) some (unidentified) Defendants *may* not have been served with discovery requests; and (4) some (again unidentified) Defendants *may* raise a challenge to the Court's jurisdiction. These arguments do not establish "good cause" for a protective order. Moreover, Defendants, some of which already are responding to subpoenas for information from other attorneys general, want to unduly delay this litigation, which will result in significant harm to the State.

First, the filing of Defendants' Motions to Dismiss—which are viewed with disfavor—is not a proper basis for a protective order; nor is Defendants' mere *hope* of obtaining dismissal of some or all of Plaintiff's claims. Defendants fail to explain how this case is any different from all other cases in Oklahoma, where discovery is expressly allowed to be served "with the summons and petition or after service of the summons and petition." *See* 12 O.S. §3234(B)(1) (requests for production); 12 O.S. §3233(A) (interrogatories). Further, Plaintiff's discovery requests are not claim-specific, but rather, apply equally to *all* claims. As such, the risk of dismissal of a specific claim in Plaintiff's Petition is irrelevant to Plaintiff's discovery requests. In order for this argument to have any merit, Defendants would have to show that even Plaintiff's non-fraud claims, such as public nuisance, fail to state *any* cognizable legal theory under Oklahoma's liberal notice pleading standard. *See Kirby v. Jean's Plumbing Heat & Air,* 2009 OK 65, ¶5. Defendants cannot make such a showing. Defendants must respond to discovery *now*, as the rules require.

Second, Defendants attempt to invoke a *future* law they admit is "not yet effective," but nonetheless argue the "logic and policy behind its adoption" should apply to bar discovery here even before the law takes effect. Mot. ¶5. Defendants rely on no authority as to why this Court should apply a law not yet in existence to protect Defendants from timely fulfilling their discovery obligations as the current law requires. Even when the law takes effect, it will not apply to Plaintiff's requests, as there is no indication the legislature intended the law to apply retroactively to cases on file prior to the effective date. *See Shepard v. Okla. Dep't of Corr.*, 2015 OK 8, ¶13 ("statutes are generally presumed to operate prospectively only unless there is either a plain legislative intent to the contrary or the nature of the content of the statute invokes a presumption of retroactivity").

Third, Defendants' claim that proper service of Plaintiff's discovery "*on a number of the individual defendant entities*" had not been accomplished as of the date of Defendants' filing is misguided. *See* Mot. at n.1. Counsel for 12 Defendants signed off on the instant Motion. But, Defendants failed to specify *even one* Defendant who had not been served with Plaintiff's discovery. Indeed, subsequent to Defendants' filing, and only *after* being directly questioned by Plaintiff's counsel, all 12 Defendants who signed the instant Motion admitted they were served with Plaintiff's discovery.[1] Indeed, as conceded by counsel for Defendants Teva, Cephalon, Watson Laboratories, Actavis LLC and Actavis Pharma, the only entity that did *not* receive service is the parent of these entities, Allergan, PLC. And the reason Allergan has not received these discovery requests is because the State has not attempted to serve Allergan with the discovery requests due to an agreement with Allergan.

[1] Plaintiff's discovery requests are not intended to impose any discovery obligations on any Defendant that either has not yet been served with the requests or challenges personal jurisdiction.

Similarly, Defendants' claim that some unidentified Defendants intend to challenge personal jurisdiction (Mot. ¶1) is another red herring because all 12 Defendants who signed the Motion now concede they are not challenging personal jurisdiction. Thus, any purported arguments based on improper service of the discovery requests or a challenge to personal jurisdiction is limited to one defendant who has not been served with discovery due to an agreement that that defendant requested.

Not only have Defendants failed to make any showing of good cause for a protective order, but staying discovery would cause the State to suffer significant harm. As detailed in the Petition and summarized below, the devastating effects of Defendants' conduct are causing ongoing harm to the State and its citizens each and every day.[2] Each week more Oklahomans are dying, overdosing, being incarcerated, going into the foster care system and being born addicted to opioids, and Oklahoma is forced to bear the concomitant costs. Moreover, as detailed below, Defendants are the target of investigations by attorneys general and others across the country for similar conduct at issue in this litigation. And, recent press releases indicate that a coalition of 41 attorneys general already have served subpoenas requesting information from five major opioid manufacturers who are Defendants in this case and who have indicated they will comply with the subpoenas. The State of Oklahoma should not be precluded from timely obtaining similar evidence.

In sum, Defendants have failed to show good cause for a protective order and their Motion should be denied.

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[2] *See, e.g.*, http://newsok.com/despite-state-efforts-high-rate-of-painkiller-prescribing-continues-in-oklahoma/article/5555472 ("Despite state efforts, high rate of painkiller prescribing continues in Oklahoma").

II. FACTUAL BACKGROUND

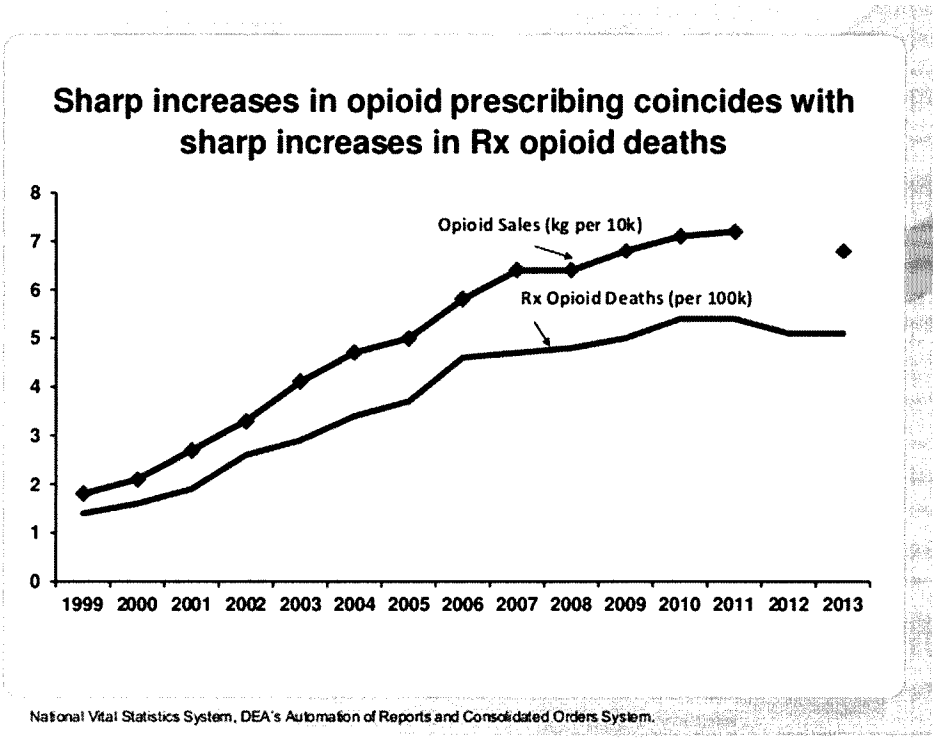
Defendants manufacture and sell opioids. Petition ¶2. Historically, medical professionals only prescribed these highly addictive drugs in limited circumstances, for cancer patients, the terminally ill, and acute short-term pain. *Id.* ¶3. But, in their desire for more profits, Defendants wanted to expand the market for their drugs. To increase opioid sales and thus, their bottom line, Defendants created and implemented a massive, pervasive and insidious marketing campaign to convince medical professionals to prescribe more opioids to a broader range of patients with chronic non-cancer pain. *Id.* Defendants' marketing campaign targeted the medical community with precision to change their perception of opioids and thus their prescribing patterns in two key ways: falsely downplaying the risk of opioid addiction and touting the unsubstantiated benefits of opioids to treat chronic non-cancer pain. *Id.* ¶¶3-4. To encourage physicians to prescribe more opioids, Defendants went so far as to tell prescribers that classic signs of addiction should actually be treated with ***more*** opioids because such signs were actually indicators of "pseudoaddiction," meaning the patient was supposedly experiencing undertreated pain. *Id.*

Changing the perception of the medical community was a massive undertaking. Defendants spent millions of dollars on branded and unbranded marketing to spread their false messaging far and wide to physicians and consumers throughout the country, including the Oklahoma medical community and Oklahoma consumers. Defendants distributed advertisements in medical journals and promotional videos that falsely minimized the risk of addiction and touted the efficacy of opioid therapy for chronic non-cancer pain. *Id.* ¶53. Defendants trained large sales forces to repeat their false messaging on the low risk of addiction and efficacy of opioids for chronic non-cancer pain directly to health care professionals through office visits, including to Oklahoma medical professionals. *Id.* ¶¶53-54. For example, Defendant Purdue hosted national

speaker-training conferences for the medical community to be trained as part of Purdue's national speaker bureau—speakers that then promoted Purdue's products and further spread its misrepresentations about opioids. *Id.* ¶55.

Defendants also spent millions to manufacture some "scientific" support for their misrepresentations. *Id.* ¶¶59-62. Defendants funded "Key Opinion Leaders" ("KOLs"), members of the medical community, to further spread their false messaging throughout the medical community. *Id.* KOLs, medical doctors acting as Defendants' consultants and advisors, gave countless speeches at continuing medical education seminars about opioids, repeating Defendants' false messaging about the low risk of addiction and unsubstantiated benefits of opioids to improve function in patients diagnosed with chronic non-cancer pain. *Id.* These KOLs also promoted the concept of "pseudoaddiction" which Defendants used to convince prescribers that classic signs of addiction were actually signs that patients were being undertreated for pain and required even more opioids. *Id.* ¶62. Defendants also funded and collaborated with many seemingly neutral third-party organizations ("Front Groups") to promote opioid use and further spread Defendants' false messaging. *Id.* ¶¶63-66. In collaboration with these Front Groups, Defendants funded and created opioid treatment guidelines, standards and training materials promoting the use of opioids for chronic non-cancer pain. *Id.* ¶¶64-65.

Defendants' deceptive marketing campaign proved highly effective. Beginning with Purdue's massive marketing efforts in the late 1990s, and with the other Defendants continuing this deceptive marketing campaign for years, the sales of opioids skyrocketed. And as opioid sales soared, so too did prescription opioid overdose deaths, as demonstrated in the graph below:



The rapid increase in opioid sales is the direct and intended result of Defendants' deceptive marketing campaign to influence doctors' opioid-prescribing habits. Defendants' conduct is egregious, unlawful, and caused extensive harm to the State.

Although Defendants' conduct indiscriminately targeted prescribers across the nation, Oklahoma has been particularly hard hit by Defendants' false and deceptive marketing campaign. *Id.* ¶5. Indeed, according to 2016 statistics, Oklahoma ranks *number one* in the nation in milligrams of opioids distributed per adult resident, with approximately 877 milligrams of opioids distributed per adult resident. *Id.* This high rate of distribution and the resulting dependency on these drugs has caused the State of Oklahoma millions of dollars in health care costs, including unnecessary and excessive opioid prescriptions, substance abuse treatment services, ambulatory services, inpatient hospital services and emergency department services, among others. *Id.* ¶6. Defendants' conduct also caused the State of Oklahoma to incur substantial social and economic costs including criminal justice costs, and lost work productivity costs, among others. *Id.*

In order to remedy these wrongs, the State of Oklahoma, by and through its Attorney General, Mike Hunter ("Plaintiff"), filed its Original Petition in this Court against thirteen opioid manufacturers ("Defendants"), asserting causes of action for: (i) violations of the Oklahoma Medicaid False Claims Act, 63 Okl. St. §§ 5053.1-7; (ii) violations of the Oklahoma Medicaid Program Integrity Act, 56 Okl. St. §§ 1001-1008; (iii) violations of the Oklahoma Consumer Protection Action, 15 Okl. St. §§ 751-65; (iv) public nuisance; (v) fraud (actual and constructive) and deceit; and (vi) unjust enrichment. *See generally*, Original Petition.

Following service of the Original Petition on twelve of the thirteen Defendants, the served Defendants and the State entered into a Stipulation in which the State agreed to extend the served Defendants' answer date by 60 days, until September 22, 2017. The Stipulation further provided that the claims set forth in the Original Petition are properly brought in this Court and the served Defendants will not remove this case to federal court, nor will they agree to, join in, or consent to, the removal of this case by any other Defendant.

On or about August 7, 2017, and in accordance with 12 O.S. §3234(B)(1) and 12 O.S. §3233(A), the State served its discovery requests, which consist of 29 requests for production and 13 interrogatories. The State's discovery requests seek nonprivileged information relevant to the subject matter of this action that is reasonably calculated to lead to the discovery of admissible evidence. 12 O.S. §3226(B)(1)(a).

On September 15, 2017, Defendants filed the instant Motion for Protective Order. On September 22, 2017, Defendants filed their Motions to Dismiss.

III. LEGAL STANDARD

Upon motion by a party from whom discovery is sought, and "***for good cause shown***," a court "may enter any order which justice requires to protect a party or person from annoyance,

harassment, embarrassment, oppression or undue delay, burden or expense." 12 O.S. §3226(C) (emphasis added). In Oklahoma, the burden of showing "good cause" is statutorily placed on the party objecting to discovery and is part of that party's motion for a protective order. *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, ¶17; *see also Fisch v. Stuart*, 2014 OK 59, ¶1 ("The burden of proof is upon the person...requesting a protective order.").

Defendants do not acknowledge their good cause burden, nor do they meet it.

IV. ARGUMENT & AUTHORITIES

A. Staying Discovery Will Not Conserve Any Resources Because This Case Will Proceed Past Defendants' Motions to Dismiss

Defendants argue "discovery is not appropriate prior to the Court's resolution of the Motions to Dismiss." Mot. ¶8. That is incorrect. The current—and applicable—law in Oklahoma allows discovery to be served "with the summons and petition or after service of the summons and petition." *See* 12 O.S. §3234(B)(1); 12 O.S. §3233(A). There is no law or mechanism by which Defendants can avoid their obligation to respond to Plaintiff's properly-served discovery by predicting a "win" on their Motions to Dismiss.

Like any other hotly contested litigation, Defendants intend to "challenge the viability of each and every claim in the Petition." Mot. ¶5. This is expected and unremarkable. Likewise, Plaintiff intends to vehemently *oppose* all Motions to Dismiss, as Plaintiff's claims are properly pled under the relevant pleading standards, including Oklahoma's liberal "notice" pleading standard. *See Gens v. Casady Sch.*, 2008 OK 5 at ¶9 (Oklahoma has been a "notice pleading state" since 1984). Motions to dismiss are generally viewed with disfavor under this liberal standard. *Simonson v. Schaefer,* 2013 OK 25, ¶3; *Indiana Nat'l Bank v. State Dep't of Human Servs.*, 1994 OK 98, ¶4.

Although Defendants suggest "Oklahoma state courts are instructed to look for guidance from federal cases...when construing the Oklahoma pleading rules" (Mot. ¶11), Oklahoma courts ***expressly*** have declined to adopt the more stringent federal "plausibility" pleading standard set forth in *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 554 (2007). *See Edelen v. Bd. of Comm'r*, 2011 OK CIV APP 116, at ¶3 ("Despite the Oklahoma Supreme Court's consistent articulation of this standard, the defendants argue that Edelen's petition, to the extent it relies on federal constitutional claims, should be tested pursuant to federal pleading standards and dismissed because it fails to state a 'plausible' claim...***Oklahoma has not adopted this pleading standard...We decline to adopt a different pleading standard here.***") (emphasis added).

"All that is required under notice pleading is that the petition give fair notice of the plaintiff's claim and the grounds upon which it rests." *Gens*, 2008 OK 5, ¶9. "The Pleading Code does not require a plaintiff to set out in detail the facts upon which the claim is based but merely requires 'a short and plain statement of the claim showing that the pleader is entitled to relief; and ... [a] demand for judgment for the relief to which he deems himself entitled.'" *Fanning v. Brown*, 2004 OK 7, ¶19 (citing 12 O.S. 2001, § 2008(A)(1) & (2)). This requirement is not onerous, but is merely to give an opposing party fair notice of the claim and the grounds upon which it rests. *Id.* Under this standard, a "petition can generally be dismissed only for lack of any cognizable legal theory to support the claim or for insufficient facts under a cognizable legal theory." *Kirby v. Jean's Plumbing Heat & Air,* 2009 OK 65, ¶5.

Indeed, when reviewing a motion to dismiss, the court must take as true all of the challenged pleading's allegations together with all reasonable inferences which may be drawn from them. *Schaefer,* 2013 OK 25, ¶3; *Great Plains Fed. S&L Ass'n v. Dabney,* 1993 OK 4 n.3. "A pleading *must not* be dismissed for failure to state a legally cognizable claim *unless* the

allegations indicate *beyond any doubt* that the litigant can prove *no* set of facts which would entitle him to relief." *Frazier v. Bryan Memorial Hosp. Auth.,* 1989 OK 73, ¶13 (emphasis in original); *see also Schaefer,* 2013 OK 25, ¶3; *Fanning v. Brown,* 2004 OK 7, ¶4. Further, "the burden to show the legal insufficiency of the petition is on the party moving for dismissal and a motion made under § 2012(B)(6) must separately state each omission or defect in the petition; if it does not, the motion shall be denied without a hearing." *Indiana Nat'l Bank,* 1994 OK 98, ¶3 (citing *Curlee v. Norman,* 1989 OK CIV APP 25, ¶4); *see also Schaefer,* 2013 OK 25, ¶3 ("The party moving for dismissal bears the burden of proof.").[3]

Further, Plaintiff's fraud claims satisfy the pleading requirements of 12 O.S. § 2009(B), which requires, in pertinent part, that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity..." *Gay v. Akin,* 1988 OK 150, ¶8. To meet this standard, it is unnecessary to plead *each element* of fraud in detail if the *circumstances* constituting fraud are stated with particularity." *Id.* (emphasis in original). Moreover, the particularity requirements of Section 2009(B) must be read in conjunction with 12 O.S. § 2008, which requires only a "short and plain statement of the claim" showing that the pleader is entitled to relief. 12 O.S. § 2008(A)(1); *Gay,* 1988 OK 150, ¶17. Section 2009(B) "**requires only the degree of specificity necessary to enable the opposing party to prepare his responsive**

[3] Moreover, even if Defendants obtained dismissal of some or all of Plaintiff's claims, Title 12 O.S. 2001, § 2012(G) provides "(o)n granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed." (emphasis added). The Oklahoma Supreme Court has interpreted the statute as a mandatory duty placed on trial courts, as long as the defect can be remedied. *See Kelly v. Abbott,* 1989 OK 124, ¶6. In order for the courts to dismiss a claim for failure to state a cause of action without giving the plaintiff the opportunity to amend, it must appear that the claim does not exist rather than the claim has been defectively stated. *See Lockhart v. Loosen,* 1997 OK 103, ¶5 (drawing a distinction between a petition that is dismissible for want of a cognizable legal theory of liability and one that is dismissible for insufficient facts under a recognized theory). The Petition here clearly pleads claims that exist.

pleadings and defenses" but does not require that **"the plaintiff has to plead detailed evidentiary matters."** *Gay*, 1988 OK at ¶¶17-18 (emphasis added). Measured by this standard, Plaintiffs' Petition adequately satisfies the specificity mandated by Section 2009(B), as Plaintiffs will show in response to Defendants' Motions to Dismiss.

Under the foregoing standards, at a bare minimum, Plaintiffs' non-fraud claims satisfy the notice pleading requirements. And, Plaintiff's discovery requests are not claim-specific, but rather apply equally to *all* claims in the Petition. Thus, Defendants inevitably must respond to the discovery requests, even if, assuming arguendo, the Court were to dismiss one of Plaintiff's other claims.[4] Therefore, the scope of discovery will not be "narrowed" as Defendants suggest if some claims are dismissed. Simply put, this case will proceed past Defendants' Motions to Dismiss. As such, discovery should not be stayed.[5]

Moreover, the State of Oklahoma is not the only party or state seeking to hold Defendants accountable for their actions. Indeed, in addition to this litigation against Defendants, dozens of state attorneys general and federal agencies are investigating and/or have sued these same opioid manufacturers for similar conduct at issue in this litigation. These ongoing investigations are continually broadening and have already resulted in the gathering of a mounting mass of

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[4] For example, Plaintiff's Request for Production No. 1 seeks: "All Documents produced by You, whether as a party or non-party, in other litigation related to the promotion, marketing, distribution, and/or prescription of opioids, including, without limitation, any and all Documents produced by You in the Other Opioid Cases." Defendants fail to show how this request, or any request, for that matter, applies *only* to certain claims or causes of action.

[5] Defendants' argument that a discovery stay "would also promote judicial economy and conserve the Court's resources by sparing the Court the burden of resolving potentially unnecessary discovery disputes" lacks merit. Mot. ¶10. Again, because this case will proceed past Defendants' Motions to Dismiss, the possibility of discovery disputes is inevitable. In any event, the Court has the discretion to resolve those disputes after ruling on Defendants' Motions to Dismiss if it so chooses. And, Defendants' threat of serving a broad range of discovery requests on Plaintiff "at this time if the Motion is not granted" is of no moment. *Id.*

documentary evidence regarding Defendants' unlawful conduct. For example, recent press releases indicate that, as part of the ongoing investigation by a coalition of 41 attorneys general into whether manufacturers have engaged in unlawful practices in the marketing and sale of opioids, the attorneys general are using a variety of legal means—including subpoenas for documents and testimony—to help determine what role drug manufacturers may have played in creating or prolonging the opioid epidemic.[6] In fact, the working group of attorneys general already have served subpoenas requesting information from five major opioid manufacturers who are Defendants in this case, including Janssen, Allergan, Purdue Pharma and Teva.[7] These Defendants have indicated they will comply with the subpoenas, and likely will be required to provide documents and information pre-suit. *Id.* And, some states have tolling agreements with one or more Defendants that allow discovery. Even some federal entities have served discovery and investigatory requests on Defendants. The State of Oklahoma should not be precluded from obtaining similar evidence.

In sum, neither the filing nor possible success of Defendants' Motions to Dismiss satisfies their burden of showing "good cause." Indeed, Defendants do not even acknowledge their burden. Nor have Defendants shown in any detail how responding to Plaintiff's discovery requests would inflict "annoyance, harassment, embarrassment, oppression or undue delay, burden or expense sufficient for issuance of a protective order," particularly given they are already complying with subpoenas from other attorneys general regarding the same conduct. *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, ¶18 (petitioners must show more than "blanket statements" to satisfy their

[6] https://texasattorneygeneral.gov/news/releases/ag-paxton-announces-ongoing-investigation-to-help-address-the-opioid-crisis

[7] http://www.cnn.com/2017/09/19/health/state-ag-investigation-opioids-subpoenas/index.html

burden for a protective order). Defendants' Motion should be denied.

B. Defendants Cannot Rely Upon a Law Not Yet Effective to Avoid Their Obligation to Respond to Plaintiff's Discovery Requests

To avoid their obligation to timely respond to Plaintiff's properly-served discovery requests, Defendants attempt to invoke a statute they admit is "not yet effective." Mot. ¶5. Specifically, Defendants argue that on November 1, 2017, the amended Oklahoma Rules of Civil Procedure will go into effect and under those rules, parties will be prohibited from serving discovery requests without leave of court before a party has answered the petition. *Id.* Defendants do not and cannot argue this statute currently applies, nor that it will apply retroactively to this case. *See Shepard*, 2015 OK 8, ¶13 ("statutes are generally presumed to operate prospectively only unless there is either a plain legislative intent to the contrary or the nature of the content of the statute invokes a presumption of retroactivity"). Instead, Defendants contend "the logic and policy behind its adoption are no less viable today than they will be six weeks from now." Mot. ¶5. But the Oklahoma Legislature did not intend for this statute to apply prior to its effective date, as evidenced by the lack of "plain legislative intent" of retroactivity. This Court should decline Defendants' invitation to substitute the current laws in effect for those not yet in existence.

As discussed above, the current—and applicable—law in Oklahoma allows discovery to be served "with the summons and petition or after service of the summons and petition." *See* 12 O.S. §3234(B)(1); 12 O.S. §3233(A). That is the law this Court is bound to follow. Defendants provide no authority that would allow this Court to apply a future law to bar discovery now. Nor does the mere existence of this future law somehow satisfy Defendants' burden of showing "good cause" entitling them to a protective order. *See Crest Infiniti II, LP v. Swinton*, 2007 OK 77, ¶18.

C. A Discovery Stay Would Cause the State of Oklahoma Significant Harm

Not only have Defendants failed to satisfy their burden to show good cause for a protective order, Defendants' requested discovery stay will cause the State of Oklahoma monumental harm. The harm caused by Defendants' egregious conduct in this case is devastating the State and its citizens each and every day. Each week Oklahomans are dying, overdosing, being incarcerated, going into the foster care system and being born addicted to opioids. Nearly 10 Oklahomans die every week of a prescription drug overdose. And, each week, the State of Oklahoma is forced to bear the resulting massive health care, criminal justice, foster care and lost productivity costs, among others. Needlessly delaying discovery serves only to unnecessarily prolong the harm to the State and the critical relief the State seeks from Defendants.

Moreover, given the expansive and intensifying state and federal investigations discussed above, in which Defendants have indicated they are providing information, it would be highly prejudicial to allow the State of Oklahoma to fall behind by preventing it from fully developing the facts surrounding the allegations in the Petition. Especially given the fact that in many public health drug cases such as this, the defendants often go to working groups, provide *some* discovery, then enter into a lower settlement amount for participating states or with the federal government. Moreover, the conduct at issue goes back as far as ten years ago. Even assuming Defendants preserve all relevant documents going back that far, memories will routinely fade, individuals may pass away, and key employees and executives may depart these companies. Thus, every day is a loss of information.

Oklahoma has suffered long enough. Defendants' Motion should be denied.

V. CONCLUSION

Defendants have failed to carry their burden of showing "good cause" for entry of a protective order. Therefore, Defendants' Motion for Protective Order must be denied.

Dated: September 26, 2017

Respectfully submitted,

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