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.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JAN 05 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

ANSWER OF DEFENDANTS WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA INC. TO PLAINTIFF'S PETITION

Defendants Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma Inc. (collectively the "Acquired Actavis Entities"), by and through their undersigned attorneys, hereby answer Plaintiff's (the "State's") Petition and assert additional defenses.

PRELIMINARY STATEMENT

The following matters are incorporated by reference into the responses of the Acquired Actavis Entities to each paragraph of the Petition.

A. The Acquired Actavis Entities submit this Answer and Additional Defenses only on behalf of themselves. Where allegations are made against "Defendants" as a group, the responses of the Acquired Actavis Entities apply only to them.

B. Except as otherwise expressly stated herein, the Acquired Actavis Entities expressly deny each and every allegation contained in the Petition, including without limitation any allegations contained in the preamble, unnumbered paragraphs, headings, subheadings, and footnotes of the Petition, and specifically deny any liability to the State.

C. The Acquired Actavis Entities expressly reserve the right to seek to amend and/or supplement their Answer as may be appropriate or necessary.

ADMISSIONS AND DENIALS

AND NOW, incorporating the foregoing, the Acquired Actavis Entities respond to the specific allegations of the Petition as follows:

I. INTRODUCTION[1]

1. The Acquired Actavis Entities admit that the use of opioids carries with it a risk of addiction. The Acquired Actavis Entities deny the remaining allegations in Paragraph 1.

[1] Some headings and subheadings in the Acquired Actavis Entities' Response to Specific Allegations are included for convenience and correspond to headings and subheadings listed in the State's Petition. To the extent any heading or subheading is construed to be an allegation, the Acquired Actavis Entities deny the same.

2. To the extent that the allegations in Paragraph 2 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. The Acquired Actavis Entities deny the remaining allegations in Paragraph 2.

3. To the extent that the allegations in Paragraph 3 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. The Acquired Actavis Entities deny the remaining allegations in Paragraph 3.

4. To the extent that the allegations in Paragraph 4 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. The Acquired Actavis Entities deny the remaining allegations in Paragraph 4.

5. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 5 and therefore deny the same. The Acquired Actavis Entities expressly deny that they engaged in "false and deceptive marketing campaigns" and that their actions "caused" any "damage" to the State.

6. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in Paragraph 6 and therefore deny the same. The Acquired Actavis Entities expressly deny that their actions "caused" any "costs" incurred by the State.

7. Paragraph 7 states conclusions of law to which no response is required. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 7.

II. JURISDICTION AND VENUE

8. The Acquired Actavis Entities admit that the State is asserting the claims set forth in Section V below, one of which is the Oklahoma Medicaid False Claims Act, Okla. Stat. tit. 63, §§ 5053.1-7. The Acquired Actavis Entities further admit that Paragraph 8 contains a partial quote from §5053.7 of the OMFCA. The Acquired Actavis Entities deny that the State has adequately pled any claim against them, or is entitled to any recovery against them.

9. Paragraph 9 states conclusions of law to which no response is required. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 9.

10. Paragraph 10 states conclusions of law to which no response is required. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 10, but do not contest venue in this Court.

11. Paragraph 11 states conclusions of law to which no response is required. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 11, but do not contest venue in this Court.

III. PARTIES

A. Plaintiff

12. Paragraph 12 states conclusions of law to which no response is required. To the extent that a response is required, the Acquired Actavis Entities admit that Oklahoma was established as the 46th State in the Union on November 16, 1907. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 12 and therefore deny the same.

B. Defendants

i. The Purdue Defendants

13. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 13 and therefore deny the same.

14. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 14 and therefore deny the same.

ii. The Actavis Defendants

15. The Acquired Actavis Entities admit only that they became affiliated with the Teva Defendants by virtue of a corporate transaction that was finalized in August 2016, and that they manufacture and sell generic opioids which they do not promote. Insofar as the remaining allegations in Paragraph 15 are pleaded against the Acquired Actavis Entities, the Acquired Actavis Entities deny those allegations.

16. The Acquired Actavis Entities admit only that they became affiliated with the Teva Defendants by virtue of a corporate transaction that was finalized in August 2016, and that at various times the Acquired Actavis Entities have been in the business of manufacturing, selling, and distributing certain generic opioids to various customers. Insofar as the remaining allegations in Paragraph 16 are pleaded against the Acquired Actavis Entities, the Acquired Actavis Entities deny those allegations. The Acquired Actavis Entities specifically deny that they ever manufactured, promoted, marketed, or sold the opioids Kadian, Norco, or any other "branded" opioid products.

iii. The Cephalon Defendants

17. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 17 and therefore deny the same.

18. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 18 and therefore deny the same.

iv. The Janssen Defendants

19. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 19 and therefore deny the same.

20. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 20 and therefore deny the same.

IV. FACTUAL ALLEGATIONS

21. To the extent that the allegations in Paragraph 21 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. The Acquired Actavis Entities deny the remaining allegations in Paragraph 21.

22. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in Paragraph 22 and therefore deny the same.

23. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 23 and therefore deny the same. The Acquired Actavis Entities expressly deny that they engaged in "deceptive marketing of opioids."

24. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 24 and therefore deny the same.

25. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 25 and therefore deny the same.

26. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 26 and therefore deny the same.

27. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 27 and therefore deny the same.

28. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 28 and therefore deny the same.

29. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 29 and therefore deny the same.

30. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 30 and therefore deny the same. The Acquired Actavis Entities expressly deny that their actions caused the alleged effects on Oklahoma citizens.

31. Paragraph 31 states conclusions of law to which no response is required. To the extent that the allegations in Paragraph 31 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 31 and therefore deny the same. The Acquired Actavis Entities specifically deny that they engaged in a "deceptive marketing campaign" or otherwise caused the alleged harm.

32. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 32 and therefore deny the same.

The Acquired Actavis Entities expressly deny that their actions have "caused" "costs" and "losses" in Oklahoma.

33. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 33 and therefore deny the same.

34. To the extent that the allegations in Paragraph 34 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 34 and therefore deny the same. The Acquired Actavis Entities specifically deny that they engaged in a "deceptive and misleading marketing campaign" or otherwise caused the alleged harm.

35. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and therefore deny the same.

36. Paragraph 36 states conclusions of law to which no response is required. Further, to the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 36.

37. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and therefore deny the same.

38. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and therefore deny the same.

39. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and therefore deny the same.

40. Paragraph 40 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 40 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 40 and therefore deny the same. The Acquired Actavis Entities specifically deny that their conduct caused the alleged harm.

41. Paragraph 41 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 41 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 41. The Acquired Actavis Entities specifically deny that they engaged in a "false and deceptive marketing campaign" or otherwise caused the alleged harm.

42. Paragraph 42 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 42 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 42 and therefore deny the same. The Acquired Actavis Entities specifically deny that their conduct caused the alleged harm.

43. Paragraph 43 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 43 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 43 and therefore deny the same. The Acquired Actavis Entities specifically deny that their conduct caused the alleged harm.

44. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and therefore deny the same.

45. Paragraph 45 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 45 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 45 and therefore deny the same. The Acquired Actavis Entities specifically deny that they engaged in a "deceptive marketing campaign" or that their conduct caused the alleged harm.

46. Paragraph 46 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 46 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information

sufficient to form a belief regarding the truth of the allegations in Paragraph 46 and therefore deny the same. The Acquired Actavis Entities specifically deny that they engaged in a "deceptive marketing campaign" or that their conduct caused the alleged harm.

47. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and therefore deny the same.

48. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and therefore deny the same.

49. Paragraph 49 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 49 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities have no knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 49 and therefore deny the same. The Acquired Actavis Entities specifically deny that they engaged in a "false and deceptive prescription opioid marketing campaign" or that their conduct caused the alleged harm.

50. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore deny the same. The Acquired Actavis Entities specifically deny that their conduct caused the alleged harm.

51. Paragraph 51 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 51 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient

to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 51.

52. Paragraph 52 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 52 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 52.

53. Paragraph 53 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 53 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that the allegations in Paragraph 53 concern the characterization of documents, the documents speak for themselves and Plaintiff's characterizations of same are denied. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 53.

54. Paragraph 54 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 54 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 54.

55. To the extent that the allegations in Paragraph 55 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the

same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 55.

56. Paragraph 56 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 56 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 56.

57. Paragraph 57 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 57 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 57.

58. Paragraph 58 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 58 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 58.

59. Paragraph 59 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 59 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 59.

60. To the extent that the allegations in Paragraph 60 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 60.

61. The Acquired Actavis Entities admit only that Dr. Portenoy is the former Chairman of the Department of Pain Medicine and Palliative Care at Beth Israel Medical Center in New York. The remaining allegations in Paragraph 61 state conclusions of law to which no response is required. Further, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 concerning statements made by Dr. Portenoy and therefore deny the same. To the extent that the allegations in Paragraph 61 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 61.

62. The Acquired Actavis Entities admit only that Dr. Webster is the former Chief Medical Director of Lifetree Clinical Research, a pain clinic in Utah. The remaining allegations in Paragraph 62 state conclusions of law to which no response is required. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 concerning statements made by Dr. Webster and therefore deny the same. To the extent that the allegations in Paragraph 62 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the

extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 62.

63. Paragraph 63 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 63 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 63.

64. Paragraph 64 states conclusions of law to which no response is required. To the extent that the allegations in Paragraph 64 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same. To the extent that the allegations in Paragraph 64 concern the characterization of documents, the documents speak for themselves and Plaintiff's characterizations of same are denied. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 64.

65. To the extent that the allegations in Paragraph 65 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 65.

66. Paragraph 66 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 66 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient

to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 66.

67. Paragraph 67 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 67 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 67.

68. Paragraph 68 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 68 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and therefore deny the same. The Acquired Actavis Entities expressly deny that they made representations that were "false, deceptive, and unsupported."

69. The Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and therefore deny the same. Further, to the extent that the allegations in Paragraph 69 concern the characterization of documents, the documents speak for themselves and Plaintiff's characterizations of same are denied.

70. The Acquired Actavis Entities admit that the FDA-approved labels on their products clearly disclosed that the products carried certain risks. The remaining allegations in Paragraph 70 are denied. Paragraph 70 states conclusions of law to which no response is

required. Further, to the extent that the allegations in Paragraph 70 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the remaining allegations in Paragraph 70.

71. Paragraph 71 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 71 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and therefore deny the same. The Acquired Actavis Entities specifically deny that they made representations that were "false."

72. Paragraph 72 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 72 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 72.

V. CAUSES OF ACTION

A. Oklahoma Medicaid False Claims Act, 63 Okl. St. §§ 5053.1-7

73. The Acquired Actavis Entities reassert their responses to Paragraphs 1 through 72.

74. Paragraph 74 states conclusions of law to which no response is required.

i. Count 1

75. Paragraph 75 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 75 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 75.

76. Paragraph 76 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 76 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 76.

77. Paragraph 77 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 77 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 77.

78. Paragraph 78 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 78 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 78.

79. Paragraph 79 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 79 relate to Defendants other than the Acquired

Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 79.

80. Paragraph 80 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 80 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 80.

81. Paragraph 81 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 81 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 81.

82. Paragraph 82 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 82 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 82.

ii. Count 2

83. Paragraph 83 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 83 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient

to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 83.

84. Paragraph 84 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 84 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 84.

85. Paragraph 85 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 85 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 85.

86. Paragraph 86 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 86 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 86.

87. Paragraph 87 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 87 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 87.

88. Paragraph 88 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 88 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 88.

89. Paragraph 89 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 89 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 89.

90. Paragraph 90 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 90 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 90.

91. Paragraph 91 states conclusions of law to which no response is required.

B. Oklahoma Medicaid Program Integrity Act, 56 Ok. St. §§ 1001-1008

92. The Acquired Actavis Entities reassert their responses to Paragraphs 1 through 91.

93. Paragraph 93 states conclusions of law to which no response is required.

94. Paragraph 94 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 94 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient

to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 94.

95. Paragraph 95 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 95 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 95.

96. Paragraph 96 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 96 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 96.

97. Paragraph 97 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 97 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 97.

98. Paragraph 98 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 98 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 98.

99. Paragraph 99 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 99 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 99.

100. Paragraph 100 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 100 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 100.

101. Paragraph 101 states conclusions of law to which no response is required.

C. Oklahoma Consumer Protection Action, 15 Okl. St. §§ 751-65

102. The Acquired Actavis Entities reassert their responses to Paragraphs 1 through 101.

103. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

104. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

105. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

106. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

i. Count 1

107. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017)

108. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

109. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

ii. Count 2

110. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

111. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

112. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

113. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

114. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

115. The State's claim under the Oklahoma Consumer Protection Act has been dismissed with prejudice and therefore no response is required. *See* Order, *Oklahoma ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Dec. 6, 2017).

D. Public Nuisance, 50 Okl. St. § 2

116. The Acquired Actavis Entities reassert their responses to Paragraphs 1 through 115.

117. Paragraph 117 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 117 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 117.

118. Paragraph 118 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 118 relate to Defendants other than the

Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 118.

119. Paragraph 119 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 119 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 119 and are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same.

120. Paragraph 120 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 120 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 120. The Acquired Actavis Entities specifically deny that they created a public nuisance.

E. Fraud (Actual and Constructive) and Deceit

121. The Acquired Actavis Entities reassert their responses to Paragraphs 1 through 120.

122. Paragraph 122 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 122 relate to Defendants other than the

Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 122.

123. Paragraph 123 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 123 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 123.

124. Paragraph 124 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 124 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 124.

125. Paragraph 125 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 125 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 125.

126. Paragraph 126 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 126 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 126.

127. Paragraph 127 states conclusions of law to which no response is required.

128. Paragraph 128 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 128 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 128.

129. Paragraph 129 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 129 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 129.

F. Unjust Enrichment

130. Paragraph 130 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 130 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information

sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 130.

131. Paragraph 131 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 131 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 131.

132. Paragraph 132 states conclusions of law to which no response is required. Further, to the extent that the allegations in Paragraph 132 relate to Defendants other than the Acquired Actavis Entities, the Acquired Actavis Entities are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same. To the extent that a response is required, the Acquired Actavis Entities deny the allegations in Paragraph 132.

133. Paragraph 133 states conclusions of law to which no response is required.

VI. JURY DEMAND

134. Paragraph 134 states conclusions of law to which no response is required.

VII. PRAYER

WHEREFORE, the Acquired Actavis Entities respectfully request that judgment be entered in their favor against the State and further request that they be awarded costs and attorneys' fees and such other further relief that the Court deems appropriate and just.

ADDITIONAL DEFENSES

The Acquired Actavis Entities hereby assert additional defenses to the allegations and claims in the State's Petition. By asserting the matters below, the Acquired Actavis Entities do not admit that the State is relieved of its burden to prove each element of its claims and the damages or relief sought.

FIRST ADDITIONAL DEFENSE: FAILURE TO STATE A CLAIM

The State's claims are barred because the Petition fails to state a claim upon which relief can be granted.

SECOND ADDITIONAL DEFENSE: STATUTE OF LIMITATIONS

The State's claims are barred, in whole or in part, by the applicable statute(s) of limitations and/or statute(s) of repose, including but not limited to 12 Okla. Stat. § 95(A) and 63 Okla. Stat. § 5053.6. Under Oklahoma law, a cause of action accrues when the plaintiff knew or reasonably should have known of a wrongly caused injury to itself or to Oklahoma consumers. Here, the State alleges wrongfully-caused injuries that occurred over an unspecified period of time. *See* Pet. ¶¶ 4-6, 21-34, 40-51. The State and/or Oklahoma consumers would have known of, or reasonably should have known of, at least some of these purported injuries outside of the relevant limitations period. To the extent that the State knew or reasonably should have known of any wrongfully caused injuries outside of the applicable limitations period, the State's claims are time-barred.

THIRD ADDITIONAL DEFENSE: PRIMARY JURISDICTION

The State's claims are barred by the doctrine of primary jurisdiction. The State's allegations implicate medical and scientific issues that are outside the conventional experience of judges and particularly within the FDA's expertise, discretion, and regulatory authority.

FOURTH ADDITIONAL DEFENSE: VIOLATIONS OF DUE PROCESS BASED ON CONTINGENT FEE COUNSEL

The rights of the Acquired Actavis Entities under the Due Process Clause of the U.S. Constitution and Art. II, § 7 of the Oklahoma Constitution are violated by any financial or other arrangement that might distort a government attorney's duty to pursue justice rather than his or her personal interests, financial or otherwise, in the context of a civil enforcement proceeding. *See, e.g., Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980). Any contingency fee arrangement between the State and any third party in connection with this litigation gives that third party a financial interest in the outcome of this proceeding and violates the due process rights of the Acquired Actavis Entities.

FIFTH ADDITIONAL DEFENSE: FAILURE TO JOIN INDISPENSABLE PARTIES

The State has failed to join one or more necessary and indispensable parties, including without limitation health care providers, prescribers, patients, and other third parties whom the State alleges engaged in the unauthorized or illicit prescription, dispensing, diversion, or use of prescription opioid products in Oklahoma. *See, e.g.*, Pet. ¶¶ 3, 27, 51, 59-67, 72. These third parties have a legal interest in the subject matter of the litigation to the extent they facilitated and/or participated in the opioid misuse, abuse, and related misconduct alleged in the Petition. The State has failed to name any such third parties as defendants, however, nor has the State alleged how, if at all, it would be infeasible to join one or more indispensable but absent parties consistent with 12 Okla. Stat. § 2019. Accordingly, the State's claims should be dismissed pursuant to 12 Okla. Stat. § 2012(B)(7).

SIXTH ADDITIONAL DEFENSE: FEDERAL PREEMPTION

The State's claims are barred because they are preempted by federal law. Federal law authorized the Acquired Actavis Entities to promote opioid products for their FDA-approved

indications. To the extent the State's claims seek to hold the Acquired Actavis Entities liable for promoting opioid products for their FDA-approved uses, the claims are preempted. Granting such relief would impede, impair, frustrate, or burden the effectiveness of federal law and would violate the Supremacy Clause of the United States Constitution. To the extent the State's claims are inconsistent with the determinations of FDA based on the information provided to FDA, or otherwise assert that incorrect, incomplete or inaccurate information was provided to the FDA, the claims are also preempted. *See, e.g.*, *Buckman v. Pls.' Legal Comm.*, 531 U.S. 341 (2001); *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, 779 F.3d 34 (1st Cir. 2015); *Yates v. OrthoMcNeil-Janssen Pharms., Inc.*, 808 F.3d 281 (6th Cir. 2015).

SEVENTH ADDITIONAL DEFENSE: LACHES, WAIVER, EQUITABLE ESTOPPEL

The State's claims are barred by the doctrines of laches, waiver, and/or equitable estoppel. The State complains of injuries and conduct that predate the commencement of this action by decades. The State admits that at the time it commenced the instant action, it was continuing to reimburse opioid prescriptions written for indications that the State now contends are not medically necessary, reasonably required, and/or dispensed for an FDA-approved purpose, precluding the State from claiming it was misled by the Acquired Actavis Entities' alleged misconduct. Upon information and belief, the State did not reject, disapprove, or object to claims for reimbursement of the Acquired Actavis Entities' opioids for off-label indications before it filed its Petition. The State's claims against the Acquired Actavis Entities thus are barred by the doctrines of waiver and/or estoppel. The State's failure to exercise diligence in bringing this action has prejudiced the Acquired Actavis Entities by depriving them the opportunity to alter their allegedly improper practices, if necessary. As a matter of equity, therefore, the doctrine of laches should bar the State from recovering on its claims.

EIGHTH ADDITIONAL DEFENSE: LEARNED INTERMEDIARY

The State's claims are barred by the learned intermediary doctrine. At all relevant times herein, the physicians and other health care providers who prescribed the Acquired Actavis Entities' opioid products at issue were in the position of learned intermediaries, who are presumed to have knowledge of a drug label's contents and who used their informed, independent medical judgment in making their prescribing and treatment decisions for a given patient. These prescribers had many sources of information about those products available to them, including the products' FDA-approved labeling, which informed prescribers of the risks and benefits of the Acquired Actavis Entities' products, *see, e.g.*, Pet. ¶¶ 53, 67, 70, and these prescribers relied on a variety of factors separate from and unrelated to the Acquired Actavis Entities' alleged misrepresentations in making their prescribing decisions, *see, e.g.*, *id.* ¶¶ 47-48.

NINTH ADDITIONAL DEFENSE: MISJOINDER AND SEVERANCE

The State's claims against the Acquired Actavis Entities and other Defendants do not arise out of the same transaction, occurrence, or series of transactions or occurrences as required by 12 Okla. Stat. § 2020 for joinder of parties. The State fails to connect any of the alleged marketing activities of the Acquired Actavis Entities to those of other Defendants, nor could it. Accordingly, the Court should sever or dismiss the State's claims against the Acquired Actavis Entities pursuant to 12 Okla. Stat. §§ 2020 and 2021.

TENTH ADDITIONAL DEFENSE: RATIFICATION

The State's alleged loss, damage, injury, harm, expense, diminution, or deprivation, if any, was caused in whole or in part by the State's ratification of the Acquired Actavis Entities' allegedly deceptive or misleading conduct. Such ratification would include, for example, the State's continuing reimbursement of opioid prescriptions after it had concluded such

prescriptions were ineffective or harmful to Oklahoma consumers, medically unnecessary, or otherwise ineligible for payment by the State.

ELEVENTH ADDITIONAL DEFENSE: THIRD-PARTY ACTIONS

The State's claims against the Acquired Actavis Entities are barred to the extent that any rely on or implicate the negligent, intentional, malicious, criminal, and/or otherwise unlawful acts or omissions of the State or third parties that are not subject to the Acquired Actavis Entities' control or authority and for which the Acquired Actavis Entities are not responsible and cannot be held liable. These include but are not limited, to health care providers, prescribers, patients, and other third parties whom the State alleges engaged in the unauthorized or illicit prescription, dispensing, diversion, or use of prescription opioid products in Oklahoma. The Acquired Actavis Entities' liability, if any, therefore must be reduced or negated to the extent that third parties have contributed to, or caused, the State's injuries.

TWELFTH ADDITIONAL DEFENSE: PROTECTED SPEECH

The State's claims are barred by, in whole or in part, the applicable provisions of the United States Constitution and the Oklahoma Constitution, including but not limited to the First Amendment to the United States Constitution and/or Article II, Section 22 of the Oklahoma Constitution. The State's claims rely on allegations that the Acquired Actavis Entities engaged in various marketing activities relating to opioid products, including advertisements, detailing, speaker programs, and other promotional efforts. These activities concern lawful activity, are neither false nor misleading, and thus constitute constitutionally protected commercial speech.

THIRTEENTH ADDITIONAL DEFENSE: LACK OF PROXIMATE CAUSE

The State's claims, or at a minimum, its requests for relief are barred because the Acquired Actavis Entities' alleged misrepresentations were not the proximate or legal cause of

the purported injuries or damages incurred by the State or any other party. The physicians and other health care Professionals who prescribed the Acquired Actavis Entities' opioid product(s) at issue in the Petition had many sources of information about those products available to them, including the products' FDA-approved labeling, which informed physicians of the risks and benefits of these products, and these prescribers relied on a variety of factors separate from the Acquired Actavis Entities' alleged misrepresentations in making their prescribing decisions, if they relied upon the Acquired Actavis Entities' marketing at all. Furthermore, prescriber decisions were also affected by other independent superseding causes and/or intervening events that broke any causal chain, including individual patients' preferences, patients' decision to fill a prescription, patients' decision whether and how to use the medication, and the State's decision whether and when to cover the drug for the particular indication and reimburse for the particular prescription.

FOURTEENTH ADDITIONAL DEFENSE: MITIGATION

The State's claims are barred or limited by the State's failure to mitigate its alleged damages.

FIFTEENTH ADDITIONAL DEFENSE: OUTSIDE SCOPE

To the extent any agents, employees, or contractors of the Acquired Actavis Entities caused any of the damages alleged by the State, such agents, employees, or contractors were acting outside the scope of the agency employment, or contract with the Acquired Actavis Entities.

SIXTEENTH ADDITIONAL DEFENSE: SET OFF

Any damage or injury to the State must be set off against the benefits to the State as a result of Acquired Actavis Entities' lawful activity.

SEVENTEENTH ADDITIONAL DEFENSE: DOUBLE RECOVERY

The State's claims seek duplicate or double recovery on the same injury or damage, contrary to Oklahoma law.

EIGHTEENTH ADDITIONAL DEFENSE: INTEREST AND FEES

The State is not entitled to attorneys' fees, costs, pre-judgment interest, or post-judgment interest.

NINETEENTH ADDITIONAL DEFENSE: STATUTORY PENALTIES AND PUNITIVE DAMAGES UNCONSTITUTIONAL

The State seeks the recovery of civil penalties and punitive damages from the Acquired Actavis Entities for, *inter alia*, alleged violations of the Oklahoma Medicaid False Claims Act and the Oklahoma Medicaid Program Integrity Act, and common-law fraud. Pet. ¶¶ 91, 101, 115, 127-29. The State's punitive damages or statutory penalties claims against the Acquired Actavis Entities:

a. have no basis in law or fact;

b. are not recoverable because the Petition's allegations of fact are legally insufficient to support or allow the imposition of punitive damages or statutory penalties on the Acquired Actavis Entities consistent with the United States Constitution or Oklahoma law;

c. cannot be sustained because the laws setting forth the standard(s) for determining liability for, and the amount(s) of, punitive damages or statutory penalties fail to give the Acquired Actavis Entities prior notice of the conduct for which punitive damages or statutory penalties may be imposed and the severity of the penalty that may be imposed, and are void for vagueness in violation of the Acquired Actavis Entities' due process rights guaranteed by the Fifth and Fourteenth

Amendments to the United States Constitution and Art. II, § 7 of the Oklahoma Constitution;

d. cannot be sustained because any award of punitive damages or statutory penalties exceeding the limits authorized by law would violate the Acquired Actavis Entities' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Art. II, § 7 of the Oklahoma Constitution and would be improper under the laws and common law of Oklahoma;

e. cannot be sustained because an award of punitive damages or statutory penalties in this case, combined with any prior, contemporaneous, or subsequent judgments against the Acquired Actavis Entities for punitive damages or statutory penalties arising from the distribution, supply, marketing, sale, promotion, or use of the Acquired Actavis Entities' products would constitute constitutionally impermissible multiple punishments for the same wrong and double jeopardy under the Fifth Amendment to the United States Constitution and Art. II, § 21 of the Oklahoma Constitution;

f. cannot be sustained because any award of punitive damages or statutory penalties without the apportionment of the award separately and severally between or among the alleged joint tortfeasors, as determined by the percentage of the wrong(s) allegedly committed by each tortfeasor, would violate the Acquired Actavis Entities' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Art. II, § 7 of

the Oklahoma Constitution and would be improper under the laws and common law of Oklahoma;

g. cannot be sustained because any award of punitive damages or statutory penalties is barred by the Due Process Clauses of the United States and Oklahoma Constitutions because due process requires that any award of punitive damages bear a close relationship to appropriate civil fines or penalties established by the legislature, or by administrative agencies under authority delegated by the legislature, and Oklahoma law fails to incorporate this due process requirement, and therefore no award of punitive damages may be constitutionally made under Oklahoma law;

h. cannot be sustained because any award of punitive damages or statutory penalties is barred by the Due Process Clauses of the United States and Oklahoma Constitutions by the Commerce Clause of the United States Constitution and by principles of federalism embodied in the Constitution, to the extent that any claim is based on any conduct by the Acquired Actavis Entities that occurred outside Oklahoma;

i. cannot be sustained because any award of punitive damages or statutory penalties is barred by the Due Process Clauses of the United States and Oklahoma Constitutions, because Oklahoma law permits the introduction of evidence of a defendant's financial condition or "net worth" with respect to the quantum of punitive damages and the introduction of such evidence violates Due Process by inviting the jury to award an arbitrary amount of punitive damages based on the Acquired Actavis Entities' status as an industrial enterprise;

j. cannot be sustained because any award of punitive damages or statutory penalties is barred by the Due Process Clauses of the United States and Oklahoma Constitutions because the conduct that is alleged to warrant punitive damages is unrelated to the claimant's harm. Punitive damages may not be awarded to punish and deter conduct that bears no relation to the claimant's harm; and

k. cannot be sustained because subjecting the Acquired Actavis Entities to punitive damages or statutory damages that are penal in nature without the same protections accorded to criminal defendants would violate the Acquired Actavis Entities' rights guaranteed without limitation by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and would be improper under the laws and common law of Oklahoma.

TWENTIETH ADDITIONAL DEFENSE: JURY-AWARDED PUNITIVE DAMAGES UNCONSTITUTIONAL

The State seeks the recovery of punitive damages from the Acquired Actavis Entities for common-law fraud. Pet. ¶ 129. The State's claims for punitive damages against the Acquired Actavis Entities cannot be sustained and would violate the Acquired Actavis Entities' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Art. II, § 7 of the Oklahoma Constitution and would be improper under the laws and common law of Oklahoma to the extent punitive damages are awarded by a jury that:

a. is not provided constitutionally adequate standards of sufficient clarity for determining whether to impose, and the appropriate size of, any punitive damages;

b. is not adequately instructed on the limits of punitive damages set by the applicable principles of deference and punishment;

c. is not required to make specific findings of fact establishing constitutionally permissible factors;

d. is not expressly prohibited from awarding or calculating punitive damages based, in whole or in part, on invidiously discriminatory characteristics, including without limitation the residence, financial condition, and corporate state of the Acquired Actavis Entities;

e. is permitted to award punitive damages under a standard that is vague and arbitrary or does not define with sufficient clarity the conduct or mental state permitting the imposition of punitive damages;

f. cannot be sustained because any award of punitive damages or statutory penalties is barred by the Due Process Clauses of the United States and Oklahoma Constitutions by the Commerce Clause of the United States Constitution and by principles of federalism embodied in the Constitution, to the extent that any claim is based on any conduct by the Acquired Actavis Entities that occurred outside Oklahoma;

g. is not instructed upon, and required to make specific findings of fact with respect to the comparable civil fine that could be imposed on the Acquired Actavis Entities for the conduct in question;

h. is not instructed upon, and required to make specific findings of fact with respect to the direct relationship between the conduct and the specific injury suffered by the State;

i. is not properly instructed regarding the State's burden of proof with respect to each and every element of a claim for punitive damages; or

j. is not subject to judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards.

TWENTY-FIRST ADDITIONAL DEFENSE: ECONOMIC LOSS RULE

The State's claims against the Acquired Actavis Entities are barred or limited by the economic loss rule. The State alleges purely economic losses in the form of increased spending on opioid prescriptions allegedly resulting from the Acquired Actavis Entities' challenged conduct. The State nonetheless seeks to recover these losses in tort. The economic loss rule bars any such recovery.

Dated: January 5, 2017

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CERTIFICATE OF MAILING

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