IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.*, MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P.; PURDUE PHARMA INC.; THE PURDUE FREDERICK COMPANY, INC.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS LLC; and ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	Case No. CJ-2017-816 Honorable Thad Balkman

PURDUE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Purdue Pharma, L.P. and The Purdue Frederick Co. (collectively "Purdue") respectfully move to compel discovery pursuant to 12 Okla. Stat. § 3237. Purdue seeks a ruling compelling the State of Oklahoma ("the State") to produce documents responsive to the First Sets of Requests for Production of Documents served by Purdue and for an order setting a date certain by which the State must begin producing documents responsive to these requests with a substantial document production.

Purdue Pharma L.P. seeks production of documents responsive to its Requests for Production Nos. 2, 4, and 6-9, and The Purdue Frederick Co. seeks production of documents responsive to its First Requests for Production Nos. 1 and 5-7. Together, these documents cover the criteria, methods, and personnel used to determine whether opioid prescriptions were "medically necessary" and reimbursable under Oklahoma Medicaid laws, details on the State's claims review and reimbursement process, information about Oklahoma's efforts to prevent opioid abuse and diversion, and the identity of personnel knowledgeable about these topics. The State initially objected to these requests on the basis of relevance, scope, and burden, but withdrew those objections after a meet and confer. Yet the State has failed to produce any documents responsive to these requests.

Purdue raised the lack of production in its first meet and confer with the State and followed up on the issue in writing. Purdue noted the lack of production in its status report to Special Master Hetherington, and has mentioned the issue on several meet and confers since the status conference. The State has still not produced a single document.

The parties are working on an accelerated timeline, and the State's protracted delays undermine the timeline set forth by the Court. The State's delays prejudice Purdue's ability to prepare its case and move forward in the discovery process. In light of the compressed discovery calendar and the need to end the State's delays, Purdue moves for production of documents responsive to the following requests: Purdue Pharma's Requests for Production Nos. 2, 4, and 6-9, and The Purdue Frederick Co.'s Requests Nos. 1 and 5-7.

FACTUAL BACKGROUND

The State alleges that physicians and other healthcare providers issued prescriptions for Purdue's opioid medications that were medically unnecessary and that the State paid or

reimbursed the cost of these medications. More than that, the State alleges that ***every*** opioid prescription written in Oklahoma since 1996 was not medically necessary, and seeks payment for each one. (State's Resp. to Purdue Pharma's Rog. No. 1 at 26-27; Original Petition ¶ 40.)

Purdue Pharma and The Purdue Frederick Co. served requests for production seeking documents about criteria the State used to determine "medical necessity," details about the State's decision-making process to reimburse claims for opioid prescriptions, information on state programs to prevent opioid abuse and diversion, and the identities of key personnel with knowledge about these topics. (These requests are attached as Exhibits 1 and 2.) The State then served objections. (State's Resp. to Purdue's RFPs at 11-21; State's Resp. to Purdue Frederick's RFPs at 11-26). The parties then met and conferred about the State's objections. The State agreed not to stand on its objections and indicated it would produce everything responsive to Purdue's requests. (*See* Purdue Letter to Oklahoma Attorney General, attached as Exhibit 3.) But the State has failed to produce a single document. The State refused to identify when it would even start producing documents. The State also refused to identify what documents would be part of its first productions.

Purdue noted the State's ongoing deficiency in its status report to the Special Discovery Master (attached as Exhibit 4), at the March 29, 2018 hearing before the Special Discovery Master, as well as on two subsequent meet-and-confer discussions with the State. But the State continues to fail to produce any document. In contrast, Purdue has produced over 1,800,000 pages of documents.

ARGUMENT

Oklahoma law provides that a party can request documents pertaining to "any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the

discovery of admissible evidence and proportional to the needs of the case." 12 O.S. § 3226(B). Where, as here, a party fails to produce documents, the discovering party may move for an order compelling production in accordance with its request. 12 O.S. § 3237.

The State has not produced any documents. This deficiency prejudices Purdue's ability to understand the State's allegations and prepare its defenses for trial. The parties are on an extremely accelerated timeline and the State's protracted delays undermine the timeline set forth by the Court. Oklahoma law instructs that documents should be produced in response to requests for production "in a timely and orderly fashion." *Hicks v. Cent. Oklahoma United Methodist Ret. Facility, Inc.*, 2017 OK CIV APP 23, ¶ 8 (Trial Order) (Sep. 21, 2016).[1] Since the State has withdrawn its objections to this discovery, but has not produced any documents, the State should be ordered to produce all documents responsive to Purdue's requests beginning immediately. Against this background, this Court need go no further in being able to order production beginning immediately. Yet for the convenience of the Court, the requests at issue are described below.

Purdue Pharma, L.P.'s Request No. 2: Purdue Pharma, L.P. requested documents sufficient to identify the structure and membership of Oklahoma's Drug Utilization Board, an advisory committee to the State's public health programs on the appropriate use of prescription drugs in state programs like Medicaid, as well as other State groups or committees that review the use of opioid medications. (Purdue Pharma RFP No. 2). Although it initially objected to the scope of the request, the State withdrew its objections during the meet and confer. But the State has failed to produce any document in response to this request.

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[1] While the parties are finalizing a protective order for HIPAA material, the absence of such an order cannot excuse the State's protracted deficiency in producing any of the vast bulk of its documents that do not implicate HIPAA.

Purdue Pharma, L.P.'s Request No. 4: Purdue Pharma, L.P. requested documents relating to any assessment of any harm to patients stemming from the sale or marketing of opioid medications. (Purdue Pharma's First RFPs at 8.) Information about the State's assessment of alleged harm stemming from opioid medication use is relevant to the claims and defenses at issue in this case, in particular the State's allegation that Purdue's sale and marketing of opioids constitutes a Public Nuisance under 50 Okl. Stat. §2. Purdue's request seeks the documents that underlie the State's detailed allegations of harm in the Original Petition, and any allegations of harm it may rely on at trial. (*See, e.g.,* Orig. Pet. ¶¶ 5, 23-28, 45, 116-20.) Yet the State objected that documents about any harm stemming from opioid medication marketing were "irrelevant" and that the request was broad. During the meet-and-confer discussion, the State withdrew its objections to this request, but it has failed to produce a single document in response.

Purdue Pharma, L.P.'s Request No. 6: Purdue Pharma, L.P. requested documents and analyses relating to the risks, benefits, and effects of the prescription medications at issue in this case. (Purdue Pharma's First RFPs 8.) Purdue requested the State's internal and external communications about those subjects, which are at the core of the issues at hand. To the extent that the State alleges Purdue misrepresented the risks and effects of opioids, the State should produce documents about what it says in its internal communications are the true effects and risks of opioids. Although the State initially objected to the scope of the request, the State withdrew its objections during the meet-and-confer discussion but has failed to produce a single document.

Purdue Pharma, L.P.'s Request No. 7: Purdue Pharma, L.P. requested documents and communications relating to any Oklahoma therapeutic intervention programs to encourage patients taking opioid medications to switch to different medications. (Purdue Pharma's First

RFPs at 8.) Though the State initially objected to this request, it withdrew those objections in the meet and confer, but the State has failed to produce any documents in response.

Purdue Pharma L.P.'s Request No. 8: Purdue Pharma, L.P. requested documents relating to any healthcare provider's decision whether to prescribe or dispense a medication at issue in this case. (Purdue Pharma's First RFPs at 8.) Inexplicably, the State objected that these documents would be irrelevant to the case and that the scope of the request is too broad. Yet the State has placed healthcare providers' decisions to prescribe opioid medications at the core of its case. The State makes repeated allegations to the effect that Purdue's marketing somehow caused healthcare providers to exercise their medical judgment in the care and treatment of their patients by prescribing opioid medications. (*See, e.g.,* Orig. Pet. ¶¶ 75-76, 88-89, 152.) The State has the burden of proving a causal link between any allegedly false statements and the damages it seeks. The State repeatedly referenced the impact of Purdue's marketing on the decision-making process of Oklahoma health care providers in its Petition. The State has documents on these key issues and must produce them. During the parties' meet and confer, the State withdrew its objections to this request but has failed to produce a single document.

Purdue Pharma L.P.'s Request No. 9: Purdue Pharma, L.P. requested documents and communications that the State obtained from non-parties pursuant to its subpoenas in connection with this case and underlying investigation into the facts. (Purdue Pharma's First RFPs at 8.) The State objected that the documents it has been obtaining from third parties about this case are somehow not relevant but then later withdrew its objections to this request during the parties' meet and confer. While the State agreed to produce the responsive documents and communications, the State has failed to produce a single document responsive to this request.

The Purdue Frederick Co.'s Request No. 1: The Purdue Frederick Co. requested documents and communications relating to the Oklahoma Health Care Authority and similar entities used to determine eligibility or criteria for paying for opioids medications, permitting their prescription and use, and any restrictions or limitations on their prescription and use. (Purdue Frederick's First RFPs at 7.) The State objected that these documents about the payment and use of opioid medications are irrelevant and that the request is too broad. Yet the State put this information at issue by claiming reimbursement for opioid prescriptions and costs for the State's efforts to identify, prevent, and address illegal opioid use. (*See* Orig. Pet. ¶¶ 31-49; Prayer for Relief.) When Purdue discussed this request with the State during a meet and confer, the State withdrew its objections to producing the responsive documents. But the State has failed to produce a single document.

The Purdue Frederick Co.'s Request No. 5: The Purdue Frederick Co. requested documents relating to claims submitted to State healthcare agencies for opioid prescriptions, including the State's claims data, documents reviewed to assess and pay those claims, and communications about those subjects. (Purdue Frederick's First RFPs at 7.) Purdue requested information about the State's claims data for opioid prescriptions to understand which opioid prescriptions the State contends were improper. For example, the State alleges that Purdue caused healthcare providers to prescribe opioid medications for conditions other than cancer, post-surgery pain management, and end-of-life care. (Orig. Pet. ¶ 51.) The State further alleges that prescriptions for conditions outside of these three categories are improper. Purdue needs the State's documents to see how the State assessed the validity of these prescriptions and determined that they were proper, medically appropriate, and warranting payment by the State.

The State initially objected that these documents were not relevant, not within its control, and overly broad. Upon meeting and conferring with Purdue, the State withdrew its objections to this request and stated that it would produce the responsive documents. But it has failed to do so.

The Purdue Frederick Company's Request No. 6: The Purdue Frederick Co. requested documents and communications related to the methods, reports, studies, and persons involved in determining whether a claim for an opioid medication involved a medical necessity or was otherwise eligible for payment by the State. (Purdue Frederick's First RFPs at 8.) This information is relevant because the State alleges that vast numbers of opioid prescriptions dispensed in Oklahoma – including prescriptions reimbursed under the State's healthcare programs – were not medically necessary. Purdue needs the State's documents about how the State defined "medical necessity" and applied that understanding to the actual claims at issue in the case, as well as information about the identity of the persons who selected that definition.

The State objected that these documents would be irrelevant and that the request is too broad, including because there are many claims at issue in the case and that producing documents on them would involve too many claims. Yet when meeting and conferring with Purdue, the State withdrew its objections to producing the documents and communications in response to this request. But the State has failed to produce a single document.

The Purdue Frederick Company's Request No. 7: The Purdue Frederick Co. requested documents relating to the circumstances in which opioid prescriptions are medically necessary or reasonably appropriate for treating chronic pain. (Purdue Frederick's First RFPs at 8.) Documents about the State's coverage of opioids for chronic pain are highly relevant to this case. The State alleges that opioid medication use for managing chronic pain is not medically

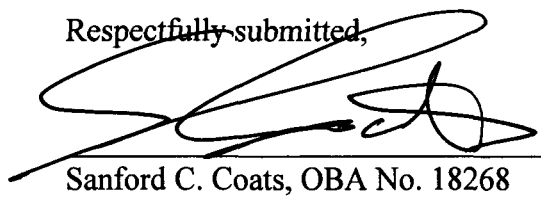
necessary and suggested that opioids should be used for a narrow class of patients recovering from surgery, suffering from cancer-related pain, or receiving end-of-life care. (Orig. Pet. ¶ 51.) Although the State initially objected to providing these documents and communications, the State withdrew its objections during the parties' meet and confer. But the State has not produced a single document.

CONCLUSION

The State is deficient in responding to Purdue's discovery requests because it has failed to produce any documents, thereby unfairly prejudicing Purdue's ability to prepare its case and unduly frustrating the timeframe for this case that the Court has set forth. Purdue requests that the Court enter an order compelling production of documents responsive to Purdue Pharma's Requests for Production Nos. 2, 4, 6, 7, 8, and 9 and The Purdue Frederick Company's Requests for Production Nos. 1, 5, 6, and 7 and setting a date certain by which the State must begin producing responsive documents by making a substantial document production.

Dated: April 5, 2018.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify on April 5, 2018, a true and correct copy of the above and foregoing has been served via the United States Postal Service, First Class postage prepaid, and by e-mail to the following:

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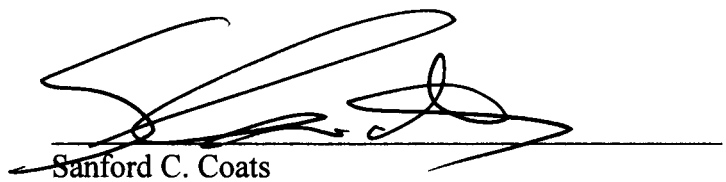

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EXHIBIT 1

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
PURDUE PHARMA L.P., et al,	)	
Defendants.	)	

DEFENDANT PURDUE PHARMA, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

Pursuant to 12 O.S. § 3234, Defendant Purdue Pharma, L.P. ("Purdue Pharma") requests that the Plaintiff State of Oklahoma ("the State") respond to Purdue Pharma within 30 days to this request to produce the below-described documents which are in the State's possession, custody, or control.

INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.

2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.

3. You should produce electronically stored information ("ESI") and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g.,

Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and Purdue Pharma requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

a. The date of the document;

b. The author of the document;

c. The recipient of the document;

d. All persons to whom copies of the document have been furnished;

e. The subject matter of the document;

f. The file in which the document is kept in the normal course of business;

g. The current custodian of the document; and

h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Purdue Pharma in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

1. "Claim" is any request for payment or reimbursement.

2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Complaint, e.g., ¶¶3, 22, 51, 67, 122.

3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.

4. "Complaint" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.

5. "Defendants" are the individual Defendants named in the Complaint.

6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.

7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other

Electronically Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.

8. "Drug Utilization Review Board" is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.

9. "Educational Activity" refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.

10. "Electronically Stored Information" is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term "employee" includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)" is any person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any person or animal.

13. "Key Opinion Leader(s)" or "KOL(s)" is used herein consistent with its meaning in the Complaint, ¶58.

14. "Medication Assisted Treatment" is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

15. "Medical Necessity" has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

16. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

17. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a patient's brain or body to produce an analgesic effect.

18. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

19. "Person(s)" is any natural or legal person.

20. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, person or persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or

utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

21. "Prior Authorization" is any program that implements scope, utilization, or product based controls for drugs or medications.

22. "Program(s)" is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

23. "Relevant Time Period" means January 1, 2007 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side's discovery requests in this action.

24. "Relevant Medication(s)" includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to opioid receptors in a Patient's brain or body to produce an analgesic effect, whether or not listed in the Complaint, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

25. "Third-Party Group(s)" is used herein consistent with its meaning in the Complaint, including any "seemingly unaffiliated and impartial organizations to promote opioid use." Complaint, ¶¶58, 63, 72.

26. "Vendor" means any third-party claims administrator, pharmacy benefit manager, HCP, or person involved in overseeing, administering, or monitoring any Program.

27. "You," "Your," "State," "Oklahoma," and "Plaintiff" refer to the sovereign State of Oklahoma and all its departments, agencies, and instrumentalities, including current and former employees, any Vendor, and other persons or entities acting on the State's behalf.

28. The words "and" and "or" shall be construed conjunctively as well as disjunctively, whichever makes the request more inclusive.

29. "Any" includes "all" and vice versa.

30. "Each" includes "every" and vice versa.

31. The term "including shall be construed to mean "including but not limited to."

32. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All Documents, Communications, and Claims referenced, cited, or relied upon by You in drafting the Complaint.

2. Documents sufficient to show the identity, title, and reporting relationships of each member of the Drug Utilization Review Board or any P & T Committee, formulary committee, other equivalent committee(s) or group(s) involved in the review and evaluation of the Relevant Medications under any Program, including any relevant organizational charts.

3. All Documents and Communications relating to any system or service used by You or anyone acting on Your behalf to monitor prescribing activities or potentially suspicious prescribing of the Relevant Medications.

4. All Documents and Communications concerning or relating to any assessment of actual or potential harm to Patients or other individuals as a result of the Relevant Medications or any Defendants' marketing, Educational Activities, or statements about the Relevant Medications.

5. All Documents and Communications relating to or any evaluation, assessment, analysis, modeling, or review of any financial or economic impact associated with coverage of the Relevant Medications, including the use of Opioids to treat any cause of pain (e.g., acute, chronic, cancer, or non-cancer causes of pain).

6. All Documents and Communications relating to the risks, benefits, safety, side effects, or efficacy of the Relevant Medications, including but not limited to Documents and Communications relating to summaries, studies, and/or analyses of any potential, alleged, or actual risks associated with any of the Relevant Medications.

7. All Documents and Communications relating to the creation or modification of any therapeutic intervention or switching programs (or any other program intended to encourage Medicaid or other Program beneficiaries or their physicians to switch to different medications or treatments) related to the Relevant Medications.

8. All Documents and Communications reflecting or relating to any Health Care Provider's decision whether to prescribe or dispense a Relevant Medication.

9. All Documents and Communications received by any non-parties pursuant to subpoenas that You have issued in connection with the pending litigation.

Dated: January 12, 2018

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2018, I caused a true and correct copy of the following:

DEFENDANT PURDUE PHARMA, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

to be served upon the counsel of record listed on the attached Service List.

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EXHIBIT 2

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
PURDUE PHARMA L.P., et al,	)	
Defendants.	)	

DEFENDANT THE PURDUE FREDERICK COMPANY'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

Pursuant to 12 O.S. § 3234, Defendant The Purdue Frederick Company ("Purdue Frederick") requests that the Plaintiff State of Oklahoma ("the State") respond to Purdue Frederick within 30 days to this request to produce the below-described documents which are in the State's possession, custody, or control.

INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.

2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.

3. You should produce electronically stored information ("ESI") and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g.,

Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and Purdue Frederick requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

a. The date of the document;

b. The author of the document;

c. The recipient of the document;

d. All persons to whom copies of the document have been furnished;

e. The subject matter of the document;

f. The file in which the document is kept in the normal course of business;

g. The current custodian of the document; and

h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Purdue Frederick in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

1. "Claim" is any request for payment or reimbursement.

2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Complaint, e.g., ¶¶3, 22, 51, 67, 122.

3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.

4. "Complaint" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.

5. "Defendants" are the individual Defendants named in the Complaint.

6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.

7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other

Electronically Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.

8. "Drug Utilization Review Board" is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.

9. "Educational Activity" refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.

10. "Electronically Stored Information" is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term "employee" includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)" is any person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any person or animal.

13. "Key Opinion Leader(s)" or "KOL(s)" is used herein consistent with its meaning in the Complaint, ¶58.

14. "Medication Assisted Treatment" is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

15. "Medical Necessity" has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

16. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

17. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a patient's brain or body to produce an analgesic effect.

18. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

19. "Person(s)" is any natural or legal person.

20. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, person or persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or

utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

21. "Prior Authorization" is any program that implements scope, utilization, or product based controls for drugs or medications.

22. "Program(s)" is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

23. "Relevant Time Period" means January 1, 2007 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side's discovery requests in this action.

24. "Relevant Medication(s)" includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to opioid receptors in a Patient's brain or body to produce an analgesic effect, whether or not listed in the Complaint, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

25. "Third-Party Group(s)" is used herein consistent with its meaning in the Complaint, including any "seemingly unaffiliated and impartial organizations to promote opioid use." Complaint, ¶¶58, 63, 72.

26. "Vendor" means any third-party claims administrator, pharmacy benefit manager, HCP, or person involved in overseeing, administering, or monitoring any Program.

27. "You," "Your," "State," "Oklahoma," and "Plaintiff" refer to the sovereign State of Oklahoma and all its departments, agencies, and instrumentalities, including current and former employees, any Vendor, and other persons or entities acting on the State's behalf.

28. The words "and" and "or" shall be construed conjunctively as well as disjunctively, whichever makes the request more inclusive.

29. "Any" includes "all" and vice versa.

30. "Each" includes "every" and vice versa.

31. The term "including shall be construed to mean "including but not limited to."

32. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All Documents and Communications related to any formulary utilized by the Oklahoma Health Care Authority or any Vendor for determining reimbursement eligibility or criteria, including Documents and Communications related to formulary tier structure, formulary position, copayment obligations, and any restrictions on or prerequisites to the coverage, reimbursement, purchase, or prescription of the Relevant Medications.

2. All Documents relating to any Communications between You and the suppliers or manufacturers of the Relevant Medications relating to the Relevant Medications.

3. All agreements or contracts entered into with any Vendor, including but not limited to all agreements or contracts with prescription drug manufacturers that pertain directly to purchases of any Relevant Medications.

4. All Documents and Communications relating to summaries, studies, or analyses of the labeling or product inserts pertaining to any of the Relevant Medications.

5. All Documents and Communications reflecting, identifying, or relating to each Claim submitted under any Program for reimbursement of an Opioid prescribed for chronic pain, including but not limited to adjudication and reimbursement claims data, Documents reviewed or relied upon in evaluating or deciding whether to pay for or reimburse the Claim, Communications with claimants, Health Care Providers, or Vendors, and paper or electronic claim forms relating to such Claims.

6. All Documents and Communications related to methods, criteria, information, reports, studies, and Person(s) involved in or utilized to determine whether a claim for an Opioid prescription involved a Medical Necessity and was otherwise eligible for payment.

7. All Documents and Communications identifying, discussing, describing, or otherwise relating to the circumstances in which Opioid use is or is not a Medical Necessity, reasonably required, or otherwise appropriate for the treatment of chronic pain.

8. All Documents and Communications describing the Oklahoma Workers Compensation Commissions' funding, budgeting, and changes in prescription drug coverage.

9. All Documents and Communications reflecting or concerning any Educational Activities, marketing materials, or other Communications regarding a Relevant Medication that You contend are false, deceptive, or misleading, or contain actionable omissions that You attribute to Defendants or for which You seek to hold Defendants liable.

Dated: January 12, 2018

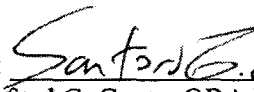
By: 

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EXHIBIT 3

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April 5, 2018

VIA EMAIL

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Re: Deficiencies in the State's Discovery Responses

Dear Mr. Pate,

We write regarding the State's responses to Purdue's First Sets of Requests for Production, which Purdue served on January 12, 2018 and Plaintiff answered on February 14, 2018. In its answers, the State agreed to produce documents responsive to Purdue's requests. However, the State has not produced ***any*** documents pursuant to its discovery responses.

Purdue's discovery requests seek basic information in the State's possession, custody, or control, including the following documents that Plaintiff has agreed to produce but has not produced:

- Documents regarding which prescriptions the State alleges were improper, as requested in Purdue Pharma L.P.'s Requests for Production Nos. 3-4, 8-9 and the Purdue Frederick Company's Requests for Production Nos. 5-6;

- Documents regarding why the State alleges certain opioid prescriptions were medically unnecessary, as requested by Purdue Pharma L.P.'s Requests for Production Nos. 5-7 and The Purdue Frederick Company's Requests of Production Nos. 1 and 7; and

- Documents regarding the structure of Oklahoma's Drug Utilization Review Board (or its equivalent) and identifying its members, as requested in Purdue Pharma L.P.'s Document Request No. 2.

Purdue is prejudiced by the State's ongoing deficiencies in responding to discovery requests. Accordingly, please be prepared to discuss the State's responses and objections to these discovery requests during the parties' meet and confer.

Very truly yours,

/s/ Paul LaFata

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Benjamin H. Odom
Michael Burrage
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March 22, 2018

VIA E-MAIL
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Re: State of Oklahoma, ex rel., Mike Hunter, Attorney General of Oklahoma v. Purdue Pharma L.P., et al.; District Court of Cleveland County, Oklahoma, Case No. CJ-2017-816

Dear Judge Hetherington:

Defendants respectfully submit a brief status report on developments since the last hearing before Your Honor.

- No discovery from the State. The State has still not produced a single document. In a meet-and-confer discussion with Purdue on March 15, 2018, the State indicated that it would not withhold documents in discovery under any of its objections, except for privileged documents and certain documents in open criminal investigation files. (See Ltr. from P. LaFata to A. Pate, et al. (Mar. 19, 2018) (Ex. A).) Although counsel indicated they have been working toward document productions for Defendants, the State could not identify when it would start producing any documents. Nor could the State identify even in general terms what documents were first in line to be produced.

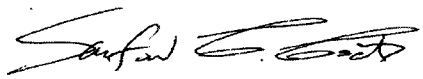
- Defendants have produced documents. In sharp contrast to the State, Defendants have begun to produce documents. For example, Purdue has produced more than 800,000 pages of documents covering an array of issues, ranging from marketing documents to scientific articles, labeling, regulatory analysis, and related communications. Likewise, Janssen has produced more than 130,000 pages of marketing, sales, and regulatory documents and will produce more than 280,000 additional pages before the parties appear for the March 29, 2018

conference. Similarly, Teva has produced approximately 9,000 documents comprising almost 130,000 pages.

- Discovery motions. Several Defendants held initial meet-and-confer discussions with the State on March 15, 2018. These Defendants participated in these discussions in good faith, with the aim of narrowing or eliminating discovery disputes. Although these initial discussions made progress in several areas, several other areas remained open for discussion. Nevertheless, the next day, the State filed a motion to compel discovery, including on many topics that were not raised for any meet-and-confer discussion. (See Ltr. from P. LaFata to A. Pate, et al. (Mar. 19, 2018) (Ex. B).) Purdue requested that the State take down several of the issues raised in its motion so that the parties could in good faith meet and confer in an effort to cooperate and resolve or narrow the issues. (Id.) The State refused.

- HIPAA protective order. The parties continued to confer and exchange mark up drafts of a proposed order to protect certain medical information from public disclosure. The State proposed to expand the scope of the order to include certain additional federal statutes and regulations, and Defendants are not conceptually opposed to this approach. Defendants continue to believe that the parties will be able to iron out the details and submit a proposal. Defendants do not believe that the timing of the submission is causing any delay in discovery.

Sincerely,



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SCC:sg

Attachments

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EXHIBIT A

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March 19, 2018

VIA E-MAIL

Andrew G. Pate
Bradley E. Beckworth
Jeffrey J. Angelovich
Nix Patterson & Roach LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102

Re: *Oklahoma v. Purdue Pharma L.P.* – March 14, 2018 Meet-and-Confer

Dear Counsel:

We write in follow-up to the one-hour meet-and-confer discussion that the State and Purdue held on March 14, 2018. We spent about 35-40 minutes discussing Purdue's responses to document requests and the balance of time discussing the State's responses to Purdue's document requests before the State discontinued the discussion on the hour. Purdue wrote to the State identifying document requests for the discussion.

The State was not able to provide a date when it expected to start producing documents. Nor could it identify the general nature of the documents that would be covered by its first production. Please promptly inquire into this information, and provide it to Purdue.

The State also stated that it would not be withholding any documents on the basis of any objection in the State's responses to Purdue's document requests with the exception of privilege and documents that are in criminal investigation files that are open and active. With respect to the latter group of documents, please specify whether the documents being withheld are limited to those held by the Attorney General's Office or, if other offices or agencies, what those offices or agencies are. The State further agreed to search for responsive documents in all the Oklahoma agencies

identified in Purdue's document requests and possibly others that the State may believe to have responsive documents.

The State further indicated that it intended to redact certain patient identifying information, such as names and social security numbers, from medical records. The State intended to replace that information with a unique identifying number that would allow the parties to identify documents that refer to the same person. The State agreed to set forth in a letter its plan to apply these redactions so that the parties may evaluate the proposal, meet and confer, and reach an agreement.

Very truly yours,
/s/ Paul LaFata
Paul LaFata

CC (by email):
Michael Burrage
Reggie Whitten

EXHIBIT B

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March 19, 2018

VIA E-MAIL
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Re: *Oklahoma v. Purdue Pharma L.P.*, No. CJ-2017-816

Dear Counsel:

This letter concerns the State's motion to compel in which the State seeks judicial intervention on subjects of discovery that the State has failed to meet and confer about with Purdue. For that discovery, which we identify below, the State should withdraw the relevant parts of the Motion and meet and confer in good faith pursuant to Section 3237 of the Discovery Code.[1]

On March 5, 2018, the State sent a letter to Purdue concerning Purdue's responses to the State's First Set of Requests for Production ("Discovery Requests"). In that letter, the State identified certain categories of document requests for which it sought to confer: documents from other litigation or investigations and "information related to the marketing and materials [Purdue] distributed and influenced through Key Opinion Leaders ('KOLS') and purportedly unbiased organizations ('Front Groups')." The State sought confirmation that Purdue's responses would not be limited to Oklahoma.

On March 14, 2018, the State and Purdue participated in a meet-and-confer teleconference about the State's Discovery Requests. Purdue explained that documents relating to Oklahoma—as well as documents relating to certain national activities such as marketing—would be produced. Purdue further explained that documents that would not be produced are those that are not discoverable in this Oklahoma case, including call notes from sales representatives for calls outside of Oklahoma as well as Abuse Diversion and Detection program documents that relate only to prescribers outside of Oklahoma. One hour after the teleconference began, the State discontinued it because of its schedule. Purdue offered repeatedly to continue the meet and confer when convenient for the State. But the State stated that it would move to compel responses Discovery Requests regardless and that the parties can meet and confer some time thereafter. Moving first and conferring second is precisely backwards under Oklahoma law.

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[1] "The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action." 12 O.S. § 3237.

On March 15, 2018, the State filed the Motion in which it raises certain Discovery Requests that the State did not identify in its March 5 letter and did not raise during the meet-and-confer discussion, including the following:

- Training materials for sales representatives, medical liaisons, and related communications (Motion § IV.b.iii);
- Communications and information about money spent on branded marketing materials (*id.* § IV.b.iv);
- Communications among opioid manufacturers and with wholesale distributors (*id.* § IV.b.v);
- Research on Oklahoma health care professionals (*id.* § IV.b.vi);
- "[A]nything" provided to Oklahoma agencies, medical boards, and medical schools related to opioids and pain treatment (*id.* § IV.b.vii);
- Medical research and studies relating to opioids (*id.* § IV.b.viii);
- Documents relating to any abuse and diversion programs established by Purdue (*id.* § IV.b.ix); and
- Research on payments by Medicare and Oklahoma Medicaid (*id.* § IV.b.x).

Oklahoma law requires a movant to first meet and confer in good faith before seeking judicial intervention. 12 O.S. § 3237. The State's filing of a motion first and then later seeking to meet and confer conflicts with the plain language of Section 3237 of the Discovery Code.

Please confirm by Tuesday, March 20 that the State will withdraw its Motion as to the Discovery Requests not identified in its March 5 letter or discussed during the March 14 teleconference, including those listed above, and provide dates and times at which the State is available to meet and confer in good faith pursuant to Section 3237 of the Discovery Code.

Respectfully submitted,

/Paul A. LaFata

Counsel for Defendants Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue Frederick Company Inc.
cc: Counsel of Record