



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

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.)

FILED

MAY 04 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

**PURDUE'S RESPONSE IN OPPOSITION TO THE
STATE'S MOTION TO COMPEL A RESPONSE TO INTERROGATORY NO. 2**

PRELIMINARY STATEMENT

Purdue Pharma, L.P., Purdue Pharma, Inc., and The Purdue Frederick Co. (collectively “Purdue”) respectfully submit this response in opposition to the State’s motion to compel Purdue to respond further to the State’s Interrogatory No. 2, which asks for the gross revenue and net profit earned by Purdue from the sale of opioid medications in Oklahoma. Purdue does not track revenue and profits on a state-by-state basis—a fact that Purdue’s counsel communicated to the State’s counsel multiple times. Nor does it track that information state-by-state for opioid medications separately from non-opioid products. What Purdue does have and made clear that it would produce to the State is data showing the number of prescriptions filled in Oklahoma. Purdue has also offered to produce five years of certain financial records in lieu of a deposition about the financial information in those records. (Purdue’s Apr. 20, 2018 Mot. to Quash & Mot. for a Protective Order at 2.)

Nevertheless, the State seeks to compel Purdue to produce information that it does not have. But Oklahoma law only requires a party to respond to an interrogatory with “such information *as is available* to that party.” 12 O.S. § 3233(A) (emphasis added). The information the State demands is not available to Purdue. The State’s motion should thus be denied.

FACTUAL BACKGROUND

At issue here is Purdue’s response to the State’s Interrogatory No 2:

Interrogatory No. 2: State the amounts of gross revenue and net profits earned by You from the sale of opioids in Oklahoma.

Response to Interrogatory No. 2: Purdue objects to Interrogatory No. 2 on the grounds that it is vague, overbroad, unduly burdensome, calls for information that is neither relevant to the claims or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. Purdue further objects to this interrogatory on the grounds that it fails to specify a time period that is pertinent to this lawsuit.

(Purdue's Resp. & Obj. to Pl's First Set of Discovery Requests at 29.) On April 3, 2018, the parties met and conferred, and Purdue told the State that the company was unable to produce the information the State requested because Purdue did not have it:

MR. HOFF [Counsel for Purdue]: ... I actually don't believe that the company has responsive information to this interrogatory as drafted, and that is because the amount of gross revenue and net profits is not tracked by state, so I do not believe we have that information for Oklahoma. In other words, for sales of opioids in Oklahoma. ... It's also my understanding that we don't have information by which we could reasonably calculate gross revenue and net profits earned from the sale of opioids in Oklahoma.

(Apr. 3, 2018 Meet & Confer Tr. (Ex. 1) at 10:10-16, 12:1-4.) Nevertheless, in the spirit of good faith and cooperation, Purdue also offered to further investigate whether there were alternative ways to obtain the information the State requested:

MR. HOFF [counsel for Purdue]: But having said that, this is a meet and confer, and I'm perfectly happy to talk to Purdue and find out if there's any other way to get at this information and get back to you. ... [W]e're not aware of a way to zero in on the information that you're asking for, which is gross revenue and net profits from the sale of opioids in Oklahoma. But I will discuss that with Purdue.

...

MR. LaFATA [counsel for Purdue]: And I'll add, Drew, for your comfort at least that we're not standing on a technicality with respect to interpreting a word sharply. I think we understand what you're after, and we're in good faith trying to respond in kind We're not saying that we have this information and we're withholding it because it's irrelevant. That's not what's being said.

(*Id.* at 12:5-8, 16:16-19, 18:22-19:1, 20:1-3.) The parties agreed to have a follow-up discussion on April 10. (*See id.* at 33:2-16.)

After the meet-and-confer discussion, counsel for Purdue made additional reasonably diligent inquiries to attempt to reach a compromise and confirmed that Purdue does not track financial information on a state-by-state level, such as net profits, and does not calculate net revenue for its opioid medications independently from its non-opioid products:

MR. HOFF [counsel for Purdue]: I did reach out to a number of people at Purdue and what I continue to understand and be told is that we really don't have a way to precisely and accurately convey or determine, really, net revenue and gross profit [or] essentially financial information resulting from prescriptions in a particular state.

...

I wouldn't be able to answer and verify an interrogatory that provides gross revenue and net profits from the sale of Purdue's opioids in Oklahoma. [T]here are a number of challenges in trying to determine that information even if we start with the prescriptions that were made in the state. You know, among other things, to determine profits, you'd have to determine, you know, costs and expenses that are allocated to prescriptions in a state, and we just don't have the ability to do that, and anything we would try to do in response to an interrogatory that we would have to verify, I just don't know how we could ever get anybody to verify that the information is, you know, accurate because we don't think we can be accurate and we don't think we can be precise.

(Apr. 10, 2018 Meet & Confer Tr. (Ex. 2) at 5:13-20, 6:9-21.) Purdue did, however, explain that it would produce data showing the numbers of prescriptions that were ultimately filled in Oklahoma. (*Id.* at 5:20-25.)

ARGUMENT

I. PURDUE CANNOT BE COMPELLED TO PRODUCE THE INFORMATION REQUESTED BY INTERROGATORY NO. 2 BECAUSE PURDUE DOES NOT HAVE IT

Section 3233(A) of the Oklahoma Discovery Code makes clear that a party is only required to answer an interrogatory with "such information *as is available* to that party." (Emphasis added). It follows that a party cannot be compelled to answer an interrogatory with information that it does not have. "An interrogatory response is not objectionable because the respondent does not know the answer." *U.S. ex rel. Minge v. TECT Aerospace, Inc.*, 2011 WL 1885934, at *2 (D. Kan. May 18, 2011).¹

¹ Section 3233 of the Oklahoma Discovery Code is similar to Rule 33 of the Federal Rules of Civil Procedure, and it is therefore appropriate for this Court to "look to discovery procedures in the federal rules when construing similar language" in the Oklahoma Discovery

Purdue does not track state-level data for revenue or net profit because Purdue sells prescription medications to third-parties, such as distributors. When these distributors place an order with Purdue, they do not disclose in which state each pill will be eventually sold. The distributors then sell the medications to third party retailers, such as pharmacies or hospitals. Distributors and retailers might know where and in what quantity the different opioid medications are sold in Oklahoma. While publicly available information can illuminate how many prescriptions were filled in Oklahoma (and Purdue proposed to produce that to the State), the number of prescriptions does not directly tie into revenue from a particular state due to the chain of distribution and pricing. Moreover, as explained during the meet and confer process, Purdue cannot allocate costs and expenses to a specific prescription in order to determine the cost element of a profit analysis.

Moreover, Purdue does not track net profits for the sale of its opioid medications separately from its non-opioid products. Purdue's overall costs and expenses as an organization are not allocated between either opioid and non-opioid products. (*See* April 10, 2018 Tr. (Ex. 2) at 20-21). Nor are its costs and expenses allocated among particular opioid medications. As a result, Purdue does not track how much of its expenses making and selling opioid medications are attributed to Oklahoma, which would be necessary to determine the net profits from those third-party transactions in Oklahoma.²

Code. *Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, ¶ 2, 174 P.3d 996, 999, *as corrected* (Okla. 2007).

² The State suggests that Purdue is withholding information that is responsive to Interrogatory No. 2 because the State did not request the information in a form "that perfectly conform[s] to Purdue's own descriptions of its financial record keeping." (Mot. at 5.) However, Purdue made clear during the meet and confer that it was not relying upon a narrow interpretation of the State's interrogatory or playing with semantics. (Apr. 3, 2018 Meet & Confer Tr. (Ex. 1) at 18:22-19:1, 20:1-3.)

The cases cited by the State support Purdue's objections. In *Oklahoma v. Tyson Foods*, a party responded to an interrogatory by saying that it did not track a particular type of data when an expert hired by that party was in fact tracking that information. 262 F.R.D. 617, 634-35 (N.D. Okla. 2009). The court ordered the production of the information because the party could easily obtain it from its expert—who was an agent of the party—and no asserted privilege applied. Here, in contrast, Purdue has no agency relationship to the third-parties who might have information regarding sales in Oklahoma, namely pharmacies and hospitals.³

The State also cites *Protective Health Services*, in which a party responded to interrogatories asking for a summary of its expert's opinion at trial, the expert's qualifications, and a list of cases in which the expert had testified in the past four years. 2007 OK CIV APP 24, ¶ 3, 158 P.3d 484, 486 (Okla. Civ. App. 2006). The party stated for each of these interrogatories that it did not know the answers and that the questions would have to be posed to the expert. *Id.* The court held that this response was inadequate because the party was obligated to ask its expert for the information. *See id.* ¶ 19. Here, the information the State requests is not available to Purdue or its agents and thus cannot be ascertained by simply asking someone.

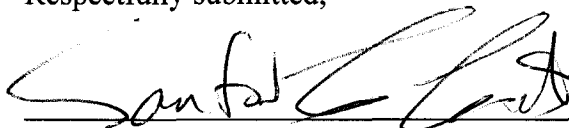
³ Contrary to the State's representation, *Tyson Foods* does not state that it is an improper "response to an interrogatory to simply say, 'we don't have the exact information in the exact way you've asked for it, and so we don't have to provide any answer.'" (Mot. to Compel at 2, 4-5 (purportedly quoting *Oklahoma v. Tyson Foods, Inc.*, 262 F.R.D. 617, 629 (N.D. Okla. 2009).) *Tyson Foods* does not include the language purportedly quoted by the State. The State appears to be quoting from its counsel's own statement during a meet and confer (Apr. 3, 2018 Tr. (Ex. 1) at 11:16-19) and improperly attributing it to a court.

CONCLUSION

For these reasons, Purdue respectfully requests that the Court deny the State's motion to compel.

Dated: May 4, 2018.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify on May 4, 2018, a true and correct copy of the above and foregoing has been served via e-mail to the following:

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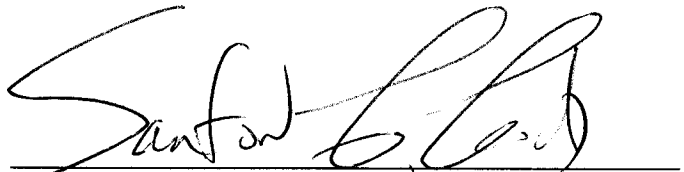
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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER, ATTORNEY)
GENERAL OF OKLAHOMA,)
) Case No. CJ-2017-816
Plaintiff,) Judge Thad Balkman
)
vs.) Special Master:
) William Hetherington
PURDUE PHARMA L.P., et al.,)
)
Defendants.)

DISCOVERY CONFERENCE BETWEEN THE PARTIES
(Purdue Defendants)
April 3, 2018
(Via Telecommunications)

DISCOVERY CONFERENCE BETWEEN THE PARTIES, taken in
the above-styled and numbered cause on April 3, 2018,
from 4:05 p.m. to 5:59 p.m., before WILLIAM M.
FREDERICKS, CSR in and for the State of Texas,
reported by machine shorthand at the offices of
Nix Patterson & Roach, LLP, 3600 North Capital of
Texas Highway, Suite B350, Austin, Texas.

Job No. 2861859
Pages 1 - 86

1 Interrogatory No. 2, it appears that -- which relates
 2 to amounts of gross revenue and net profits earned by
 3 Purdue from the sale of opioids in Oklahoma. We
 4 understand that Purdue is objecting to this and
 5 refusing to answer. So can you please explain the
 6 basis of your objection.
 7 MR. HOFF: Yes. I actually want to
 8 clarify or, you know, just -- this is Rob. I'm sorry.
 9 For the court reporter.
 10 I also want to add that I actually don't
 11 believe that the company has responsive information to
 12 this interrogatory as drafted, and that is because the
 13 amount of gross revenue and net profits is not tracked
 14 by state, so I do not believe we have that information
 15 for Oklahoma. In other words, for sales of opioids in
 16 Oklahoma.
 17 MR. PATE: What information about
 18 revenue and profits does Purdue have?
 19 MR. HOFF: We have other information.
 20 We have information about national revenue, and we
 21 have information about profits nationally. We don't
 22 have that information for Oklahoma.
 23 MR. PATE: Do you guys have a proposal
 24 for what you would provide or how you would answer
 25 this interrogatory?

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1 MR. HOFF: I could consult with my
 2 client about that, but this asks for information about
 3 sales in Oklahoma, and we don't have that. So I don't
 4 know that we need to -- we just don't have the
 5 information responsive to this.
 6 MR. PATE: Well, I think there's -- just
 7 so I'm clear and understanding this right, you know,
 8 this isn't a request for production of a document that
 9 you already have. It's an interrogatory asking you to
 10 state information that's within the reasonable
 11 knowledge base of the company, and surely the company
 12 knows its gross profits and revenue, and I would
 13 assume it does some sort of analysis or provides some
 14 sort of research related to how much it makes in
 15 different areas. Maybe not broken down by state.
 16 But I don't think it's enough to simply
 17 say in response to an interrogatory, We don't have
 18 this exact document in the exact way you've asked for
 19 it, and so we don't have to provide any answer. I
 20 think that you need to explain to us what you can
 21 provide that is within the knowledge of the company
 22 that would answer the interrogatory.
 23 MR. HOFF: Well, I will discuss that
 24 further with Purdue, but my answer is the same. I
 25 didn't mean to imply that we only don't have an

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1 existing document. It's also my understanding that we
 2 don't have information by which we could reasonably
 3 calculate gross revenue and net profits earned from
 4 the sale of opioids in Oklahoma.
 5 But having said that, this is a meet and
 6 confer, and I'm perfectly happy to talk to Purdue and
 7 find out if there's any other way to get at this
 8 information and get back to you.
 9 (Discussion off the record.)
 10 MR. LEONOUKAKIS: This is Ross
 11 Leonoudakis. Do you have that information on a
 12 nationwide basis?
 13 MR. HOFF: Gross revenue and net
 14 profits?
 15 MR. LEONOUKAKIS: Yeah, for the sale of
 16 opioids on a nationwide basis.
 17 MR. HOFF: We have gross revenue and net
 18 profit information on a nationwide basis. Whether or
 19 not it's tied specifically to the sale of opioids or
 20 sale of specific opioids I would have to check, but
 21 the company certainly has information about its gross
 22 revenue and net profits on a nationwide basis.
 23 MR. LEONOUKAKIS: Okay. Because, you
 24 know, if we're trying to work together to come to a
 25 solution, you know, if that's a starting point, my

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1 next guess is that you would object to relevance
 2 producing all of that on a nationwide basis, and then
 3 we're kind of back to where we are now, but we're left
 4 without a resolution if you can't provide it at a
 5 state level.
 6 So, you know, if providing it at a
 7 nationwide level is the only level of granularity you
 8 could provide, we'd like to know that, but, you know,
 9 we would rather be able to get it on a state basis for
 10 Oklahoma.
 11 MR. HOFF: Well, like I said, I will
 12 talk to Purdue about what, if anything, we can do to
 13 get more granular. For now, we're certainly, you
 14 know, preserving an objection to a request to
 15 producing this information on a nationwide basis,
 16 which, you know, for what it's worth we don't have
 17 that request before us, but I understand in this
 18 process you're asking about that as an alternative.
 19 MR. DUCK: Yeah. And, Rob, this is
 20 Trey. A couple of follow-up questions to make sure we
 21 understand exactly what it is you're saying.
 22 Does Purdue receive any information from
 23 distributors regarding the orders that the
 24 distributors receive from pharmacists?
 25 MR. HOFF: I don't know.

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1 MR. DUCK: Okay. Is that something you
2 can find out for us?
3 MR. HOFF: What's that question again to
4 make sure I'm getting it right.
5 MR. DUCK: Sure. Do the distributors
6 that order medication from Purdue provide Purdue with
7 any information regarding the orders that the
8 distributors received from the pharmacies?
9 MR. HOFF: I'm just making a note.
10 Give me a moment.
11 MR. DUCK: Sure.
12 MR. HOFF: I take it that your question
13 goes to whether or not there's some other means to get
14 at the information that this interrogatory is asking
15 for, and I will discuss that with Purdue, and I will
16 discuss that specific question with Purdue as well.
17 MR. DUCK: Thank you. And then my next
18 question, which will overlap with the topic that we're
19 about to get into, is does Purdue, or did Purdue base
20 any of its compensation for sales representatives on
21 the amount of opioids that were sold in a particular
22 region under that sales rep or in a particular state
23 under that sales rep?
24 MR. HOFF: Is that an interrogatory? I
25 just want to make sure I understand what you're

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1 asking.
2 MR. DUCK: It is, but it will also tell
3 us whether or not Purdue tracks its revenue based on a
4 regional or state basis.
5 MR. LaFATA: This is Paul. To be clear,
6 I think Rob has already answered whether the
7 information actually asked for by the interrogatory is
8 reasonably available. We're happy to talk about what
9 other -- you know, if we have a new interrogatory, you
10 want to amend the interrogatory, that's all fine, and
11 perhaps talk about particular interrogatories to which
12 that pertains, but Rob has already explained the basis
13 for the answer that's been provided.
14 MR. PATE: Well, this is Drew. No
15 answer has been provided, just to be clear. So -- and
16 it's not sufficient to just say we don't have exactly
17 what you -- in response to an interrogatory, we don't
18 have it exactly like this and so we don't have to
19 answer.
20 MR. LaFATA: This is Paul. We're going
21 to answer the interrogatories that you frame -- in the
22 way that you choose to frame them, and that's how
23 they're going to be answered. If you want to add new
24 ones or reframe them, you can certainly do that, but
25 it's completely in your control about how you frame

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1 them, and that's how they are answered.
2 MR. PATE: Okay. So right now -- so
3 just so I'm clear, right now it's a pure objection to
4 Interrogatory No. 2 with no answer and no intent to
5 supplement?
6 MR. HOFF: This is Rob. I don't think
7 that's accurate at all. I think that I already said I
8 would talk to Purdue about other ways potentially to
9 get at information that might be responsive to this
10 interrogatory but that at the time of answering and as
11 of now we're not aware of a way to provide the
12 information that is responsive to this interrogatory
13 as framed.
14 It simply -- you know, not only does it
15 not exist in the format in which you've asked for it,
16 but we're not aware of a way to zero in on the
17 information that you're asking for, which is gross
18 revenue and net profits from the sale of opioids in
19 Oklahoma. But I will discuss that with Purdue.
20 MR. DUCK: Okay. So let's -- you know,
21 I'm picking up on little, you know, things here and
22 there such as "as framed," et cetera. Meet and
23 confers are helpful because it helps the parties
24 understand exactly what's being requested and exactly
25 how the other side is interpreting the request. So we

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1 want to make sure there is no issue at all about how
2 it is you all are reading our request.
3 So I'll tell you -- there's a court
4 reporter here putting it on the record -- we want to
5 know how much money Purdue made from selling its
6 opioids in Oklahoma or from its opioids being sold in
7 Oklahoma.
8 Are we on the same page so far?
9 MR. HOFF: Well, I understand that.
10 When you say how much money it made, if that's what
11 you're intending to get at with gross revenue and net
12 profits, yes, I understand that's what you're trying
13 to get at.
14 MR. DUCK: Okay. I don't want there to
15 be any confusion. We're not asking you all to provide
16 us any information about how much money Johnson &
17 Johnson or Janssen made on the sale of their opioids.
18 MR. HOFF: Oh, I understand that.
19 MR. DUCK: Okay. Well, it seems like
20 there's some quibbling over the language, and I just
21 want to be really clear about what it is we want to
22 know. And, you know, there are limits to the use of
23 the English language and I get it and reasonable
24 people can potentially construe some things different
25 ways, but what we want to know is how much money,

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1 stated in numbers, Purdue made from the sale of
2 Purdue's opioids in the State of Oklahoma. Okay?
3 MR. HOFF: I understand that's the
4 request, and like I said I'm going to discuss with
5 Purdue whether there is a way to provide an answer to
6 that question.
7 MR. DUCK: If there is a way to provide
8 an answer to that question, are there remaining
9 objections for why you wouldn't provide that
10 information to us?
11 MR. HOFF: It's very hard for me to
12 answer that without knowing what my client says about
13 it and without consulting with them about what kind of
14 information is available.
15 MR. PATE: Well, let's just --
16 MR. LaFATA: This is Paul. Just to add
17 to that, part of this too may be -- I mean, in theory,
18 if we have to, say, hire some consultant to spend
19 months and months to answer this question -- you know,
20 this is just a hypothetical example -- then there may
21 be a burden issue that's presented by the question.
22 And I'll add, Drew, for your comfort at
23 least that we're not standing on a technicality with
24 respect to interpreting a word sharply. I think we
25 understand what you're after, and we're in good faith

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1 trying to respond in kind; that we're not saying that
2 there -- I think we -- we've answered this based on
3 the information that was available when we answered
4 it, and we're not, you know, saying that that's the
5 end of the discussion. I think we're saying we're
6 going to go back and see if there's more that can be
7 done, but that doesn't mean that in the course of
8 trying to figure that out there may an objection like
9 a burden objection that could come up. We certainly
10 looked at this when we answered it to try to get an
11 answer, and that's what we provided.
12 MR. PATE: So if you can't tell us about
13 burden -- you know, I understand you're going to go
14 talk to your client about what additional information
15 they may have, but you've got, for example, an
16 objection in here for -- as to relevance.
17 Are you -- are you standing on that to
18 the extent we -- you know, you locate additional
19 information? Is there any real objection to the
20 relevance of this information?
21 MR. LaFATA: This is Paul. One thing
22 that's hard to tell is if the -- if the so-called
23 alternative way of answering this ends up kind of
24 venturing beyond the scope of relevance, and I don't
25 think that that objection is limiting the answer

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1 that's been provided. We're not saying that we have
2 this information and we're withholding it because it's
3 irrelevant. That's not what's being said. But it's
4 possible that in the course of trying to look at this
5 further it could stray into that.
6 So we have to leave that open in the
7 case that whatever information, if any, can be
8 discovered that's supplemental to this strays into
9 that. But as far as the answer that's been provided
10 to you, I don't believe that information is being
11 withheld on the grounds of relevance.
12 MR. PATE: Okay. And, I mean, I -- you
13 know, I find it hard to believe that if the only --
14 let's say you go back to Purdue and the only
15 information you have is on a national level and they
16 don't do any sort of analysis or any further
17 information within the company that could provide any
18 more granular information about revenue and profits
19 that that would then entitle you to make a relevance
20 objection, because if that's the only information that
21 you have that answers this interrogatory, then I think
22 that's the information that we're entitled to.
23 So I don't want to argue too much about
24 hypotheticals, you know, because I don't know if that
25 would be the result, but it concerns me a little bit

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1 if your position is going to be that -- with what you
2 just said, Paul, that if your position is going to be
3 that if the only information we have is -- is, you
4 know, broader than Oklahoma we might then object to
5 relevance, in which case we don't get any answer to
6 this interrogatory. That's going to be a problem for
7 us.
8 So to the extent we can work that out
9 now, let's go ahead and talk about that now and work
10 it out now.
11 MR. HOFF: This is Rob. I agree we
12 should not be arguing about hypotheticals, and it's
13 very hard to try to work something out now when we've
14 told you we're going to talk to our client, see what
15 we can do, we'll come back to you, we'll talk about
16 it, and then we could talk about what we can or cannot
17 do, what objections we're standing by, and then we
18 could figure out, you know, where to go from there.
19 But this interrogatory asks for information about the
20 sale of Purdue's opioids in Oklahoma. That's what
21 we're talking about responding to.
22 MR. LEONOUKAKIS: Okay. And as it's
23 written -- are you standing on your objection as it's
24 written with response to the State of Oklahoma,
25 though? Are you arguing that that's not relevant?

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1 to sales representatives and sales managers in
2 Oklahoma, and I don't really understand your response,
3 so it might just be helpful if you could tell us how
4 you intend to respond to this interrogatory or provide
5 this information.
6 MR. HOFF: Well, the response is
7 basically agreeing to meet and confer on it after
8 identifying who the sales reps are because I think
9 that the way this is framed, "the amount of each and
10 every bonus paid to each and every sales rep, sales
11 manager or other individual responsible for the sale
12 or promotion of your opioids in Oklahoma," is
13 extremely broad and really not limited in any
14 reasonable way.
15 And so I think we wanted to talk about,
16 you know, what, if anything, you could explain in
17 terms of narrowing this or what types of bonuses and
18 for what purpose you're interested in. In other
19 words, all compensation information or all bonus
20 information without regard to -- you know, sort of
21 tied to the claims in your case seems overbroad.
22 MR. DUCK: So this is Trey, and it goes
23 back to a question that I asked earlier. You know,
24 you all understand the compensation structure of the
25 sales representatives and we don't because we haven't

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1 seen it, and we -- you know, so we're kind of blind
2 here, but to the extent you can shed some light on
3 that, that would help us narrow what it is we're
4 seeking.
5 So my earlier question was, you know,
6 does or did Purdue base its compensation, whether
7 through bonus or otherwise, for sales representatives
8 on the amount of prescription opioids that are
9 purchased in the State of Oklahoma.
10 MR. HOFF: So let me suggest -- this is
11 Rob. Let me suggest an approach here that I think can
12 help answer that question.
13 To the extent that we can provide
14 information about how sales rep compensation and bonus
15 is determined, can we produce that to you with an
16 understanding that that will be reviewed, considered,
17 and then we can talk further about how to, you know,
18 narrow this request further, if at all.
19 MR. DUCK: Okay. Thank you. I think
20 that would be helpful, and, you know, based on what we
21 know the compensation is in some way based on the
22 volume of the medication pills sold. So that would be
23 helpful to know. And maybe there is a way we can
24 narrow it, but right now it's hard for us to do.
25 When can you provide us the information

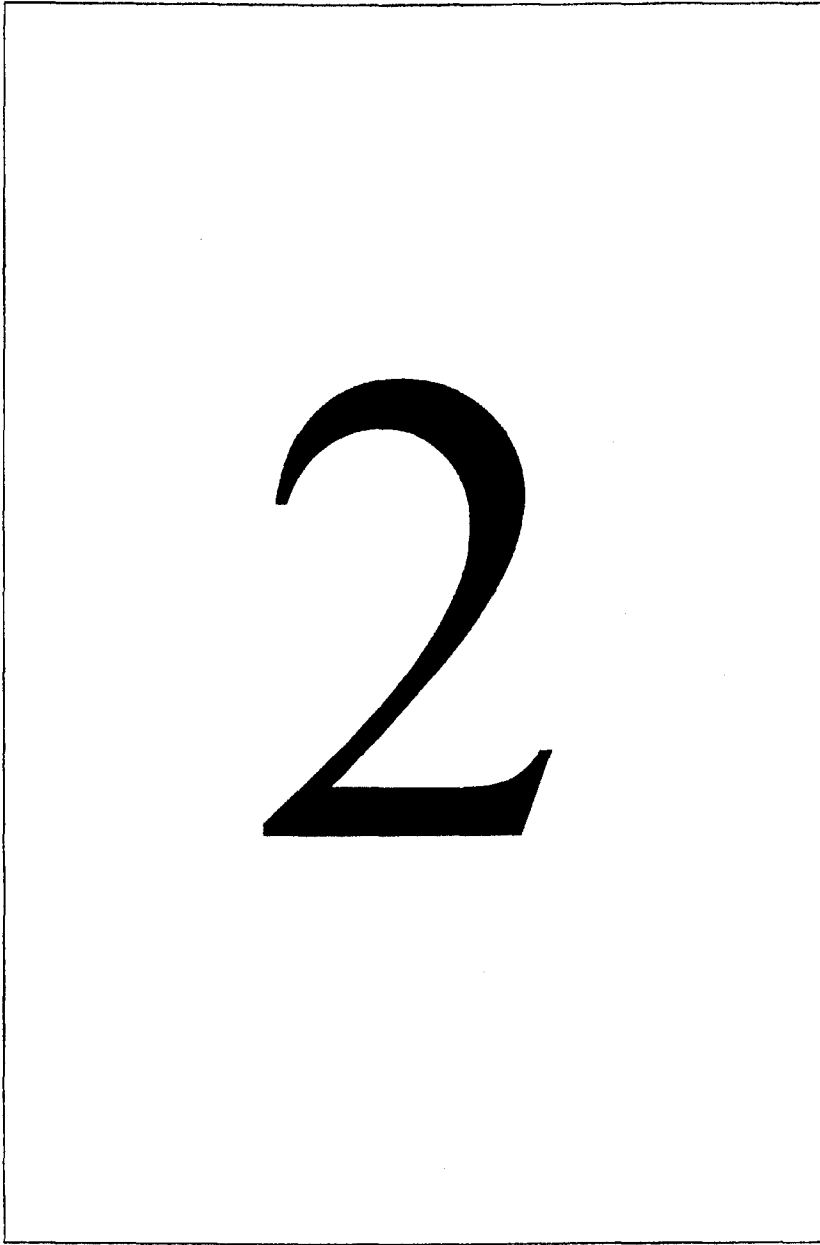
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1 related to the compensation structure?
2 MR. HOFF: So in response to all your
3 questions about when I can do all of these things, you
4 know, certainly I'm going to start to meet with my
5 client immediately about the follow-up, and when I do
6 that and I get a sense for what's there, both in terms
7 of this interrogatory response and the others, I'll
8 have a better sense of timing. One thing I certainly
9 will do is begin to meet with them and discuss with
10 them immediately, meaning tomorrow.
11 MR. DUCK: Okay. And, you know, we've
12 done this with some of the other Defendants. What we
13 would recommend is at the end of the call after we
14 have gone over the universe of issues that you feel
15 you need to go speak with your client about or speak
16 amongst yourselves about, let's pick a date, you know,
17 sometime in the future, a reasonable amount of time at
18 least for us to have an update on where you are so
19 that we can come back together and find out, you know,
20 where things stand.
21 And at some point in time, you know, we
22 have to make a decision as the Plaintiff in the case,
23 you know, whether a motion is necessary, and so
24 obviously the more information we have about the
25 progress you're making the less likely it is that

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1 we'll file a motion.
2 But our hope is that if we pick a date,
3 say a week from today to get an update from you all,
4 you'll have a better sense of a timeline. If you
5 don't have answers to the specific questions, then you
6 might have a better sense of when you will have an
7 answer is our hope.
8 So does that sound like a good plan to
9 you all?
10 MR. HOFF: This is Rob. I think that's
11 a very fair plan, and I think that's in the spirit of
12 what a meet and confer should be, so I appreciate
13 that.
14 MR. DUCK: Sure.
15 MR. LaFATA: This is Paul. I agree with
16 that proposal. Was that Trey speaking?
17 MR. DUCK: Yeah.
18 MR. LaFATA: Yeah, I agree with the
19 proposal with Rob. May I suggest that just in terms
20 of the particular time that we can maybe pick a time
21 over e-mail, because I know that, for example, on
22 Tuesday I'm in a hearing, but I still think that I
23 would like to kind of use that framework and get a
24 time, but I think that maybe the afternoon or
25 something. I just got to figure out the timing.

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex	§
rel., MIKE HUNTER,	§
ATTORNEY GENERAL OF	§
OKLAHOMA,	§ Case No. CJ-2017-816
	§ Judge Thad Balkman
Plaintiff,	§
	§
v.	§ Special Master:
	§ William Hetherington
PURDUE PHARMA L.P., et	§
al.,	§
	§
Defendants.	§

DISCOVERY CONFERENCE BETWEEN THE PARTIES
(Via Telecommunications)
April 10, 2018

DISCOVERY CONFERENCE BETWEEN THE PARTIES, taken
in the above-styled and numbered cause on
April 10, 2018, from 3:05 p.m. to 3:54 p.m., reported
by machine shorthand by JOSEPH D. HENDRICK, CSR in and
for the State of Texas, and the following telephonic
proceedings were had, to-wit:

Job No. 2863506
Pages 1 - 39

1 information about or at least try to gather more
2 information about and let us know kind of where you're
3 at.

4 So the first related, we had a couple of
5 questions in relation to the State's Interrogatory
6 Number 2 for information about the profits and revenue
7 generated from the sale of opioids in Oklahoma. And I
8 know, Robert, I believe you were the one primarily
9 talking at the time, said that you were going to go
10 look into what additional information might be
11 available at Purdue to answer this interrogatory. So
12 can you tell us where you're at on that?

13 MR. HOFF: Yes. I did reach out to a
14 number of people at Purdue and what I continue to
15 understand and be told is that we really don't have a
16 way to precisely and accurately convey or determine,
17 really, net revenue and gross profit - if I remember
18 correctly, that was how it was worded, but essentially
19 financial information resulting from prescriptions in a
20 particular state. There's obviously prescription
21 information in states and there is information about
22 prescriptions that were made by Oklahoma HCPs and we do
23 plan to produce that information, but that is not, in
24 turn, tied to, you know, precise financial metrics by
25 which we can answer this interrogatory.

1 MR. PATE: So what information do you have
2 about revenues and profits that you can provide to
3 answer the interrogatory?

4 MR. HOFF: Well, we wouldn't be able to
5 answer a verified interrogatory based on the
6 information I currently have and understand. I
7 wouldn't be able to answer and verify an interrogatory
8 that provides gross revenue and net profits from the
9 sale of Purdue's opioids in Oklahoma. I mean, there --
10 there are a number of challenges in trying to determine
11 that information even if we start with the
12 prescriptions that were made in the state. You know,
13 among other things, to determine profits, you'd have to
14 determine, you know, costs and expenses that are
15 allocated to prescriptions in a state, and we just
16 don't have the ability to do that, and anything we
17 would try to do in response to an interrogatory that we
18 would have to verify, I just don't know how we could
19 ever get anybody to verify that the information is, you
20 know, accurate because we don't think we can be
21 accurate and we don't think we can be precise.

22 MR. PATE: This is Drew. I hear what you
23 are saying about, you know, what information they have
24 about Oklahoma and wanting to be precise about Oklahoma
25 and I appreciate that since that's what the

1 we have information from, you know, a distributor in
2 one state that we, you know, that -- that purchases
3 opioids from us, distributes them outside of the state
4 that they're in. So we know who we sell our opioids
5 to, we sell our opioids to distributors, but we can't
6 then tie it to where does -- where do they distribute
7 the products to? That depends on, you know, where
8 prescriptions are, but we don't then have insight into,
9 you know, from the time it leaves, you know, our hands,
10 goes to the distributor and then gets distributed, you
11 know, how does that tie to different states?

12 So we do have some financial data, you
13 know, in terms of our relationships with distributors;
14 but, again, the challenge is to get as precise as where
15 did this prescription go and how much revenue and how
16 much profit do we make from it?

17 The other -- the other piece of this that I
18 mentioned already and I'll just repeat that the
19 challenge is that, you know, Purdue sells several
20 products, mostly opioids, as you know, but it sells
21 other products, too, and its financial statement takes
22 into account, you know, all of its activities, not just
23 the sale of opioids, and it's -- the -- the metrics
24 that go into things like net profits like the cost of
25 goods sold is, you know, sort of company-wide; it's not

1 attributed to a certain product.

2 So, again, to calculate net profits for
3 just opioids for a particular state, we just can't be
4 precise to answer it in a verified interrogatory.

5 Are there ways to, you know, guesstimate
6 and perform analyses? There might be, but they would
7 never get us to a level where we can answer this
8 interrogatory under oath.

9 MR. PATE: Okay, so just so I'm
10 understanding this, are you -- well, we need to
11 understand your position. This is Drew. We just need
12 to understand your position on this interrogatory
13 before we move on.

14 Is your answer that you don't have
15 information related to Oklahoma profits and so you
16 can't answer the interrogatory as phrased and you're
17 not going to go get additional information or willing
18 to provide any broader information in answering this
19 interrogatory?

20 MR. HOFF: I think that if you formulated a
21 request such that I knew what additional information
22 you are asking for, we could formulate a response. I
23 don't know what else to say, because, you know, your
24 request for just additional information to try to help
25 answer this, I don't even know where to go to get