IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	
Plaintiff,	
	Case No. CJ-2017-816
vs.	**Judge Thad Balkman**
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC; (8) ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,	**Special Master: William Hetherington**
Defendants.	

STATE OF OKLAHOMA } CLEVELAND COUNTY } S.S.
FILED
MAY 02 2018
In the office of the
Court Clerk MARILYN WILLIAMS

<u>THE STATE'S OPPOSITION TO STEPHEN A. IVES' MOTION TO QUASH DEPOSITION SUBPOENA</u>

I. INTRODUCTION

Defendants Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, "Purdue") are all privately owned by the reclusive Sackler family. Though little is known about the Sackler family, at least one thing is certain: the Sacklers have made billions from the marketing and sale of Purdue's OxyContin, one of the most deadly, dangerous and widely used opioids. The Sacklers—in their capacity as Purdue owners, executives and board members—are believed to have been instrumental in Purdue's massive fraudulent marketing campaign, which blanketed the nation and Oklahoma with sales representatives, advertisements, key opinion leaders, and front groups. The goal of Purdue's campaign was to change the perception of opioids to sell enormous volumes of OxyContin. Purdue's campaign worked. An epidemic ensued. Thousands of people have died from the epidemic. And, the Sacklers accumulated massive wealth.

A key individual the Sackler family uses to move, store, and invest its money is located right here in Oklahoma: Stephen A. Ives.

Mr. Ives has worked for the Sackler family for years. He holds various executive positions at numerous Oklahoma-based entities owned by the Sackler family. He frequently carries out and manages the Sackler family's financial investments and purchases (including a $22 million mansion in California). He signs and certifies documents filed with the Securities and Exchange Commission on behalf of Sackler-family businesses. And, perhaps most importantly, the State believes Mr. Ives has personally known Richard Sackler, David Sackler, and other members of the Sackler family for years, if not decades. Put simply, Mr. Ives is a "person having knowledge of discoverable matters." 12 O. S. §3226(E)(1)(a).

On April 9, 2018, the State served Mr. Ives with a deposition subpoena ("Subpoena"). On April 17, 2018, Mr. Ives filed a Motion to Quash the Subpoena ("Motion"), arguing that Mr. Ives

possesses no relevant knowledge and speculating that the Subpoena *might* seek privileged information. Notably, the Motion omits any mention of the names "Sackler" or "Purdue." Rather, the Motion misleadingly claims, "Mr. Ives' only conceivable connection to any of the parties in this case is that from time to time he performs and oversees tax and accounting work for certain entities only tangentially related to one group of the Defendant companies—a relationship due solely to partial common ownership." Motion at 4. This opaque statement minimizes Mr. Ives' role and relationship with the Sacklers and Purdue, as public records suggest he is more than a passive accountant for the Sacklers. Whatever the truth is, the State has a right to find out.

Because Mr. Ives provides no legal or procedural basis for quashing the Subpoena, and because he likely possesses discoverable information, the State requests that the Court deny the Motion.

II. LEGAL STANDARD

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." 12 O.S. §3226(B)(1). This includes deposition testimony of third-party witnesses under subpoena, even if the testimony is ultimately inadmissible. *See id.* at §2004.1. "It is not necessary that questions be limited to those which would be admissible in court." *Unit Rig & Equip. Co. v. East*, 1973 OK 100, ¶ 4, 514 P.2d 396, 397. With respect to quashing third-party subpoenas, the Oklahoma Code of Civil Procedure narrowly provides:

> On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
>
> (1) fails to allow reasonable time for compliance,
> (2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies,
(4) subjects a person to undue burden, or
(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

Id. at 2004.1(C)(3)(a). Notably, "irrelevance" is *not* a basis for quashing a deposition subpoena. Mr. Ives' Motion only attempts to implicate one of the above five reasons for quashing a subpoena—subpart (3) related to privileged information. However, as explained herein, Mr. Ives' argument lacks merit.

III. ARGUMENT

Mr. Ives argues the Subpoena should be quashed because (1) Mr. Ives does not possess any knowledge relevant to the litigation, and (2) the Subpoena *may* seek information protected by the accountant-client privilege. Neither argument is persuasive. First, alleged irrelevance is not a reason for quashing a deposition subpoena. Even so, the State believes Mr. Ives does possess relevant knowledge and the State is entitled to the opportunity to elicit it. Second, the State does not intend to seek information protected by any applicable privilege and any objection to privilege can be made in response to actual questioning during a deposition. The Subpoena is procedurally proper and provides no additional basis for being quashed. Therefore, the Motion should be denied.

a. The Subpoena Seeks Relevant Information.

Mr. Ives argues the Subpoena should be quashed because Mr. Ives does not possess information relevant to the case. Motion at 3-5. Even if true (which it is not), alleged irrelevance is not a ground for quashing a deposition subpoena. *See* 12 O.S. §2004.1(c)(3)(a). Oklahoma "discovery procedures are broad and, with certain limitations[,] it is not necessary that questions be limited to those which would be admissible in court." *Unit Rig & Equip. Co. v. East*, 1973 OK

100, ¶ 4, 514 P.2d 396, 397 (internal citations omitted). Rather, "[e]vidence which might lead to the disclosure of admissible evidence is discoverable." *Id.* It is well established that **"[t]he right to *take* the deposition is not limited by the restrictions on its *use*."** *State ex rel. Westerheide v. Shilling*, 1942 OK 106, ¶ 15, 190 Okla. 305, 309, 123 P.2d 674, 678 (italics original). Thus, Mr. Ives' irrelevance argument can be dismissed out of hand.

Even so, the State believes that Mr. Ives *does* possess relevant information, and the purpose of the Subpoena is to elicit (or attempt to elicit) such information. For years, if not decades, Mr. Ives has personally known and worked for numerous members of the Sackler family who—as owners, executives, and board members of Purdue—were instrumental in the creation and implementation of Purdue's fraudulent marketing scheme and reaped enormous profits therefrom. Mr. Ives may now manage those profits. The State is entitled to ask Mr. Ives questions about the Sacklers, their involvement in or direction of Purdue's fraudulent actions, and any conversations Mr. Ives has had with the Sacklers about opioids and the opioid epidemic. The answers to these questions are undoubtedly relevant. The State can also use this witness to discover information about Purdue's motive, opportunity, and any direct financial interest in the sale of the opioid products which would place Purdue in a position of having a financial interest in opioids generally and possible motive relevant to issues raised in this case. This witness may also have information about how Purdue distributes and/or disperses its money to the owners (i.e. the Sacklers), what organizations those owners have funded or influenced related to opioids and pain management, and who may have a role in issues involved in this case. Similarly, this witness may have

information regarding doctors, hospitals and other organizations who the Sacklers have given money to and which may have been influenced by or have some bias because of such funding.

If Mr. Ives truly does not know any answers to the State's questions, he can say so on the record under oath. Or, Mr. Ives may be able to point the State to other individuals who might know the answers to its questions. Again, "[e]vidence which might lead to the disclosure of admissible evidence is discoverable." *Unit Rig & Equip.*, 1973 OK 100, ¶ 4. Whatever the case, the State is allowed answers from Mr. Ives on these and other topics.

Further, Mr. Ives is not the arbiter of relevance in this case and is not in position to declare what subjects are relevant to the claims or defenses at issue. Given the schedule in place, the State is not interested in and does not have time for irrelevant depositions, and the State would not have issued the Subpoena if it did not believe Mr. Ives possesses relevant information. The State should be permitted to attempt to elicit such relevant information as allowed by the Rules.

b. The State Does Not Seek Privileged Information.

Mr. Ives also argues that the Subpoena should be quashed because it *might* seek information protected by the accountant-client privilege contained in 12 O.S. § 2502.1. Motion at 3 ("*to the extent* Plaintiff seeks to depose Mr. Ives in connection with work he does as a CPA, the Subpoena implicates the accountant-client privilege." (emphasis added)).[1] Mr. Ives' speculation is wrong. While the application of the accountant-client privilege is dubious, Mr. Ives' counsel can object to questions she believes would implicate any such privilege.[2] Further, as explained

[1] Mr. Ives admits that the accountant-client privilege belongs to his clients (*i.e.*, the Sackler family), not to him. Motion at 6. However, the Motion also states, "Mr. Ives' clients do not waive this privilege..." *Id* at 3. This suggests that Mr. Ives has spoken to the Sacklers about the deposition and this lawsuit, further evidencing the relevance of the deposition.

[2] Notably, "[t]here is no accountant-client privilege...[w]hen the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime including, but not limited to, fraud[.]" 12 O.S. §2502.1(D)(1).

above, Mr. Ives likely possesses relevant knowledge beyond any accounting function as an accountant for the Sackler family. Indeed, Mr. Ives is not *just* an accountant for the Sacklers. The State believes he knows the Sacklers personally. And, according to public documents, Mr. Ives serves as a vice president or manager of multiple Sackler family businesses, including M3C Holdings, LLC, which is based in Oklahoma City.

The fact that Mr. Ives has performed accounting work for the Sacklers is an insufficient reason alone to quash the Subpoena. Therefore, the Motion should be denied.

c. The Subpoena is Procedurally Proper.

Finally, the Subpoena meets the standards set forth in the Oklahoma Discovery Code. Section 2004.1 allows parties to subpoena third parties to appear at a deposition to give testimony. 12 O.S. §2004.1(A). Oklahoma law requires that a subpoena "be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice." 12 O.S. §3230B(2). Here, the Subpoena requested the deposition of Mr. Ives on April 18, 2018—eight days after the Subpoena was served. *See* Motion at 1-2 (stating Mr. Ives was served on April 9).

In addition, a "witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or her residence or the county where he or she is located when the subpoena is served." *Id.* at §3230(B)(1). Here, the Subpoena requested the deposition of Mr. Ives to occur in Oklahoma City, Oklahoma—the county of Mr. Ives' residence and his location at the time he was served.

Further, the State took "reasonable steps to avoid imposing undue burden or expense" on Mr. Ives, as required by §2004.1(C)(1). Indeed, the Subpoena requests a deposition in Mr. Ives'

home county, gives more than a week's notice and a reasonable time for compliance, and does not request the production of any documents whatsoever. The Subpoena simply asks that Mr. Ives show up and tell the truth.

Thus, the Subpoena is procedurally proper and provides no basis to be quashed.

IV. CONCLUSION

For the reasons herein, the State respectfully requests that the Court deny Mr. Ives' Motion to Quash and compel Mr. Ives to appear for deposition on May 17, 2018.

Dated: May 2, 2018

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CERTIFICATE OF SERVICE

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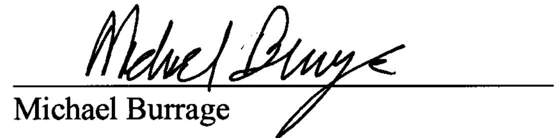

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