



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,  
MIKE HUNTER,  
ATTORNEY GENERAL OF OKLAHOMA,  
  
Plaintiff,

v.

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

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
**FILED**  
**AUG 23 2018**

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816  
Honorable Thad Balkman

William C. Hetherington  
Special Discovery Master

**DEFENDANTS TEVA PHARMACEUTICALS USA, INC. AND CEPHALON INC.'S  
AND NON-PARTY BRIAN VAUGHAN'S OBJECTION AND MOTION  
TO QUASH DEPOSITION SUBPOENA DUCES TECUM**

Pursuant to Okla. Stat. tit. 12, § 2004.1(C), Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc. (collectively "the Teva Defendants"), and non-party Brian Vaughan, by and through undersigned counsel, object and move this Court for an Order quashing the Deposition Subpoena Duces Tecum ("Subpoena," attached hereto as Exhibit A) issued to Brian Vaughan by

counsel for the Plaintiff the State of Oklahoma (“Plaintiff” or “the State”). In support of this Objection and Motion, the Teva Defendants and Mr. Vaughan state as follows:

I. **INTRODUCTION**

Plaintiff filed suit against 13 opioid manufacturers for allegedly causing a “devastating opioid epidemic in Oklahoma.” Plaintiff’s Petition centers around the Defendants’ alleged false and deceptive marketing and promotion of opioid medicines. As it specifically relates to the Teva Defendants, the Petition claims that “Defendant Cephalon, through its sales force and other marketing, misrepresented Actiq and Fentora as being appropriate for non-cancer pain and non-opioid-tolerant individuals, despite their labels’ contrary warnings.” Petition ¶ 53.

Brian Vaughan is a non-party current employee of Defendant Teva Pharmaceuticals USA, Inc. (“Teva”). On August 9, 2018, Mr. Vaughan was served, through counsel, with a deposition subpoena and document request by the Plaintiff.<sup>1</sup> The Subpoena is addressed to Mr. Vaughan personally and lists his home address. The Subpoena commands him to appear in Tulsa, Oklahoma on September 19, 2018, to testify as a witness in a deposition in the above-captioned case. In addition, the Subpoena specifically instructs Mr. Vaughan to “bring with you all documents and things described in Exhibit ‘A.’” Exhibit A lists the following category of documents, which Mr. Vaughan is instructed to produce on or before September 19, 2018:

All documents and communications in *your possession, custody, or control* related to your employment at Teva/Cephalon, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Teva/Cephalon during and since your employment.

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<sup>1</sup> Plaintiffs initially served a nearly identical subpoena on Mr. Vaughan on May 23, 2018, prior to the case being removed and subsequently remanded to Cleveland County District Court. On remand, the State served 42 deposition subpoenas for Teva corporate representatives and (as of the date of this motion) three subpoenas on current Teva employees.

The Subpoena's document request is objectionable on three separate grounds. First, the Subpoena improperly seeks to collect documents from Mr. Vaughan that are the property of his employer, Defendant Teva Pharmaceuticals USA, Inc. Second, the Subpoena places an unfair burden and expense on a non-party when the documents requested can be collected by a party to the action. And third, the document request as drafted is wildly overbroad. For these reasons, the Court should quash the Subpoena and order that Mr. Vaughan need not produce any documents.<sup>2</sup>

## II. ARGUMENTS AND AUTHORITIES<sup>3</sup>

Pursuant to Okla. Stat. tit. 12, § 2004.1(C)(3)(1), on timely motion, this Court has the authority to quash a subpoena if it "subjects a person to undue burden," or it "requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title." Information that is not relevant to the claims or defenses of any party is not permissible discovery. *See* 12 O.S. § 12-3226.

The Subpoena should be quashed for three reasons. First, the Subpoena issued to Mr. Vaughan improperly seeks documents belonging to the Teva Defendants. Mr. Vaughan is a current Teva sales representative and a non-party to this case. The subpoena was served on Mr. Vaughan in his personal capacity, and it seeks documents in his "possession, custody or control." Yet the Subpoena seeks all documents related to Mr. Vaughan's employment with Teva – documents that are not the property of Mr. Vaughan but rather the property of his current employer, Teva Pharmaceuticals USA, Inc. A non-party employee cannot be ordered to produce documents that belong to his or her employer, a party in the action. *See Bostian v. Suhor Industries, Inc.*, No. 07-151-GFK-FHM, 2007 WL 3005177, at \*2 (N.D. Okla. Oct. 12, 2007) (rejecting plaintiff's

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<sup>2</sup> The Teva Defendants and Mr. Vaughan are not challenging the Subpoena for Mr. Vaughan's oral deposition.

<sup>3</sup> Courts in Oklahoma look to federal case law when construing similar language in the Oklahoma discovery rules. *See Crest Infiniti, II, LP v. Swinton*, 174 P.3d 996, 999 (Okla. 2007).

argument that a non-party employee “should be required to produce requested documents because under Rule 45, regardless of ownership, he has ‘control’ of the documents”). Indeed, on this basis alone, the Court should quash the Subpoena’s request for documents. *See id.*

Second, the Subpoena is objectionable for the additional and related reason that it would place an undue and unnecessary burden on Mr. Vaughan to identify, locate and produce documents that can be (and should be) requested from a party. *See Quinn v. City of Tulsa*, 777 P.2d 1331, 1342 (Okla. 1989) (affirming denial of discovery from a non-party that could have been obtained from a party). Mr. Vaughan should not be tasked with having to search for and produce documents that would be redundant of materials requested from (or could be requested from) and produced by the Teva Defendants.

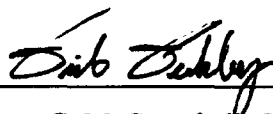
Finally, Mr. Vaughan was served with a document request that, as written, is drastically overbroad and burdensome in scope. The Subpoena’s document request seeks *all* documents and communications related to Mr. Vaughan’s employment at Teva, “including but not limited to all training materials, sales call notes, and communications to or from Teva/Cephalon during and since your employment.” As written, the request encompasses nearly all documents related to Mr. Vaughan’s employment with Teva, even information that has nothing to do with opioid medicines or any other issues relevant to the action. The request contains no reasonable limitation based on time or subject-matter. The request would likely sweep in, for example, Mr. Vaughan’s personnel file, his employee tax documents, and any training materials and communications related to non-opioid products. Such information is clearly not relevant and therefore beyond the scope of permissible discovery.

### **III. CONCLUSION**

The Subpoena for documents issued to Mr. Vaughan should be quashed because it was served on a non-party seeking the Teva Defendants’ documents, it places an undue burden on a

non-party, and it is impermissibly overbroad as drafted.

Dated: August 23, 2018



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Robert G. McCampbell, OBA No. 10390  
Nicholas ("Nick") V. Merkley, OBA No. 20284  
Ashley E. Quinn, OBA No. 33251  
GABLEGOTWALS  
One Leadership Square, 15th Fl.  
211 North Robinson  
Oklahoma City, OK 73102-7255  
T: +1.405.235.3314  
E-mail: [RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)  
E-mail: [NMerkley@Gablelaw.com](mailto:NMerkley@Gablelaw.com)  
E-mail: [AQuinn@Gablelaw.com](mailto:AQuinn@Gablelaw.com)

**OF COUNSEL:**

Steven A. Reed  
Harvey Bartle IV  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
T: +1.215.963.5000  
E-mail: [steven.reed@morganlewis.com](mailto:steven.reed@morganlewis.com)  
E-mail: [harvey.bartle@morganlewis.com](mailto:harvey.bartle@morganlewis.com)

Brian M. Ercole  
MORGAN, LEWIS & BOCKIUS LLP  
200 S. Biscayne Blvd., Suite 5300  
Miami, FL 33131  
T: +1.305.415.3416  
E-mail: [brian.ercole@morganlewis.com](mailto:brian.ercole@morganlewis.com)

*Attorneys for Defendants  
Cephalon, Inc., Teva Pharmaceuticals USA, Inc.,  
Watson Laboratoires, Inc., Actavis LLC, and  
Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.*

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the foregoing was mailed this 23rd day of August 2018, by depositing it in the U.S. Mail, postage prepaid to:

*Attorneys for  
Plaintiff*

Mike Hunter, Attorney General  
Abby Dillsaver, General Counsel  
Ethan Shaner, Dep. Gen. Counsel  
**ATTORNEY GENERAL'S  
OFFICE**  
313 N.E. 21st Street  
Oklahoma City, OK 73105

Bradley E. Beckworth  
Jeffrey J. Angelovich  
Lloyd N. Duck  
Lisa Baldwin  
**NIX, PATTERSON & ROACH**  
512 N. Broadway Ave., Suite 200  
Oklahoma City, OK 73102

Michael Burrage  
Reggie Whitten  
**WHITTEN BURRAGE**  
512 N. Broadway Ave., Suite 300  
Oklahoma City, OK 73102

Andrew G. Pate  
**NIX PATTERSON & ROACH**  
3600 N. Capital of Texas Hwy.  
Suite 350  
Austin, TX 78746

Glenn Coffee  
**GLENN COFFEE &  
ASSOCIATES**  
915 N. Robinson Ave.  
Oklahoma City, OK 73102

*Attorneys for Purdue  
Pharma, LP,  
Purdue Pharma, Inc.  
and The Purdue  
Frederick Company*

Patrick Joseph Fitzgerald  
R. Ryan Stoll  
**SKADDEN ARPS SLATE  
MEAGHER & FLOM**  
155 N. Wacker Drive  
Suite 2700  
Chicago, IL 60606

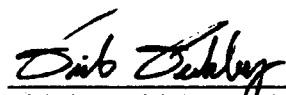
Sheila L. Birnbaum  
Mark S. Cheffo  
Hayden Adam Coleman  
Paul LaFata  
**DECHERT LLP**  
Three Bryant Park  
1095 Avenue of the Americas  
New York, NY 10036

Sandy Coats  
Cullen Sweeney  
**CROWE & DUNLEVY**  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

*Attorneys for  
Johnson & Johnson,  
Janssen  
Pharmaceutica, Inc.,  
N/K/A Janssen  
Pharmaceuticals,  
Inc., and Ortho-  
McNeil-Janssen  
Pharmaceuticals,  
Inc. N/K/A Janssen  
Pharmaceuticals,  
Inc.*

John Sparks  
Ben Odom  
**ODOM SPARKS & JONES**  
2500 McGee Drive, Suite 140  
Norman, OK 73072  
Stephen D. Brody  
**O'MELVENY & MEYERS**  
1625 Eye Street NW  
Washington, DC 20006

Charles C. Lifland  
Jennifer D. Cardelus  
**O'MELVENY & MEYERS**  
400 S. Hope Street, 18<sup>th</sup> Floor  
Los Angeles, CA 90071

  
\_\_\_\_\_  
Nicholas ("Nick") V. Merkley,



**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.,           §  
MIKE HUNTER,                               §  
ATTORNEY GENERAL OF OKLAHOMA,   §

Plaintiff,                               §

vs.   §

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

Defendants.                               §

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**DEPOSITION SUBPOENA DUCES TECUM**

STATE OF OKLAHOMA    )  
  ) ss.  
COUNTY OF CLEVELAND )

TO:                   **BRIAN VAUGHAN**  
                          520 SE 45th St.  
                          Oklahoma City, OK 73129-5314





GREETINGS:

YOU ARE HEREBY COMMANDED to appear at Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, on September 19, 2018, at 1 p.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case, and you are directed to bring with you all documents and things described in Exhibit A attached hereto. The deposition shall be recorded by audio/visual means.

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection.

This subpoena is authorized pursuant to 12 O.S. § 2004.1 and all parties to this case are being given notice of the issuance of this subpoena. The provisions of 12 O.S. § 2004.1(C), relating to your protection as a person subject to a subpoena, and 12 O.S. § 2004.1(D) & (E), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Please direct inquiries regarding this subpoena to Winn Cutler: tel: (512) 328-5333; email: [winncutler@nixlaw.com](mailto:winncutler@nixlaw.com).

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 8th day of August, 2018.

*/s/ Michael Burrage*

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Mike Hunter, OBA No. 4503  
ATTORNEY GENERAL FOR  
THE STATE OF OKLAHOMA  
Abby Dillsaver, OBA No. 20675  
GENERAL COUNSEL TO  
THE ATTORNEY GENERAL  
Ethan A. Shaner, OBA No. 30916  
DEPUTY GENERAL COUNSEL  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
Telephone: (405) 521-3921  
Facsimile: (405) 521-6246  
Emails: [abby.dillsaver@oag.ok.gov](mailto:abby.dillsaver@oag.ok.gov)  
[ethan.shaner@oag.ok.gov](mailto:ethan.shaner@oag.ok.gov)

Michael Burrage, OBA No. 1350

Reggie Whitten, OBA No. 9576  
WHITTEN BURRAGE  
512 N. Broadway Avenue, Suite 300  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Emails: mburrage@whittenburrage.com  
rwhitten@whittenburrage.com

Bradley E. Beckworth, OBA No. 19982  
Jeffrey J. Angelovich, OBA No. 19981  
NIX, PATTERSON & ROACH, LLP  
512 N. Broadway Avenue, Suite 200  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Emails: bbeckworth@nixlaw.com  
jangelovich@npraustin.com

Glenn Coffee, OBA No. 14563  
GLENN COFFEE & ASSOCIATES, PLLC  
915 N. Robinson Ave.  
Oklahoma City, OK 73102  
Telephone: (405) 601-1616  
Email: gcoffee@glenncoffee.com

**ATTORNEYS FOR PLAINTIFF**

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2004.1, as last amended by Section 5, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2009, Section 2004.1), is amended to read as follows:

Section 2004.1.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. a. A person commanded to produce and permit inspection, copying, testing or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection, copying, testing or sampling or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection, copying, testing or sampling of any or all of the designated materials or of the premises, or to producing electronically stored information in the form or forms requested. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. 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.

b. If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### D. DUTIES IN RESPONDING TO SUBPOENA.

1. a. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

b. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena shall produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

c. A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

d. A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If such showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of paragraph 2 of subsection B of Section 3226 of this title. The court may specify conditions for the discovery.

2. a. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

b. If information is produced in response to a subpoena that is subject to a claim or privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for such claim. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, such shall take reasonable steps to retrieve the information. The person who produced the information shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as trial preparation material or whether such privilege or protection has been waived.

#### E. CONTEMPT.

Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court from which the subpoena issued.

## **EXHIBIT "A"**

### **DEFINITIONS**

1. "Teva/Cephalon" means Teva Pharmaceuticals USA, Inc. and Cephalon, Inc. and any and all predecessors, merged entities, subsidiaries and affiliates, whether individuals, corporations, LLC's or partnerships. The term "affiliate" shall include any entity owned in whole or in part by Teva/Cephalon or any entity which owns Teva/Cephalon in whole or in part. The term "Teva/Cephalon," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by Teva/Cephalon or who provide services on behalf of Teva/Cephalon.
2. "Communication" means the transmission, exchange, or transfer of information in any form between two or more persons, including by telephone, facsimile, telegraph, telex, text message, letter, email, mobile messaging application, or other medium.
3. "Document" includes, but is not limited to, any electronic, written, printed, handwritten, graphic matter of any kind, or other medium upon which intelligence or information can be recorded or retrieved.

### **DOCUMENTS TO BE PRODUCED**

1. All documents and communications in your possession, custody, or control related to your employment at Teva/Cephalon, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Teva/Cephalon during and since your employment.