



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;)
(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
Judge Thad Balkman

Special Master:
William Hetherington

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

AUG 24 2018

In the office of the
Court Clerk MARILYN WILLIAMS

THE STATE'S OMNIBUS OPPOSITION TO TEVA AND PURDUE'S
MOTIONS TO QUASH DEPOSITION SUBPOENAS DUCES TECUM

I. INTRODUCTION

Defendants Teva and Purdue (“Defendants”) move to quash the document requests of five subpoenas duces tecum issued by the State to opioid sales representatives in Oklahoma.¹ These motions to quash are yet another attempt to frustrate and delay discovery. While the motions were filed in part on behalf of the subpoenaed individuals, it is clear that Defendants are pulling the strings. Indeed, the motions filed by Defendants’ counsel go as far as suggesting that the subpoenaed parties—*who they purport to represent*—have improperly taken documents from the Defendants. Further, only one representative is a current employee of either Defendant, and at least two of the three Purdue sales representatives are no longer represented by Purdue’s counsel. *See* Exhibit D. Once again, Defendants are attempting to obstruct legitimate discovery through dubious means.

The subpoenaed sales representatives are at the epicenter of this case. They are the very foundation of Defendants’ fraudulent marketing scheme on which the State’s case rests:

The deployment of our most valuable and substantial promotional resource, the sales force, is critical to the continued success of OxyContin Tablets. Heavy promotional support will continue in order to ensure appropriate awareness of OxyContin Tablets in the opioid market.

Exhibit E (Purdue’s 2001 Budget Plan).



¹ This opposition addresses three motions collectively seeking to quash, on identical grounds, the document production requirement in subpoenas duces tecum directed to Pamela Costa, Tim Mullen, Tyler Bradley, Eric Wayman, and Cullen Bryant. *See* Exhibits A, B, C. Defendants do not challenge the oral depositions commanded in the subpoenas. *See id.*

Exhibit F (2003 Actiq Marketing Plan). Accordingly, the State is entitled to documents and communications related to Defendants' sales representatives in Oklahoma—the information the subpoenas request.

Defendants' counsel argues that the subpoenas must be quashed because the State can get this information directly from the Defendants. But the State requested this information from the Defendants over a year ago and has not received a complete production, and, regardless, there is no guarantee that Defendants possess all of the same documents. The Court cannot allow Defendants to stifle every source of truth in this case. Therefore, in the interests of justice, and for the reasons set forth below, the motions to quash should be denied.

II. BACKGROUND

On May 23, 2018, the State served subpoenas duces tecum on forty sales representatives that it believed from available information marketed opioids in Oklahoma on behalf of the Defendants. The subpoenas requested documents and communications related to the sales representatives' employment and commanded the sales representatives to appear for deposition. As required by Oklahoma law, the State served notice of the subpoenas on the Defendants.

Thereafter, Defendants, through their attorneys, attempted to secure representation of all of the subpoenaed sales representatives. In every instance in which they succeeded, Defendants moved to quash the document subpoena—ostensibly on both their own behalf and on behalf of the sales representative (collectively, "Movants").² However, prior to the State's deadline to respond

² Teva also filed motions to quash the subpoenas of Ashley Feliciano, Jonathan Heil, and Rachel Gregg in their entirety on the basis that those individuals never sold opioids. Notably, Teva made no effort to meet and confer with the State about those subpoenas or notify the State in any way that those individuals did not sell opioids prior to filing motions to quash. Regardless, the State did not reissue subpoenas to those individuals based on the averments in their affidavits. However, the State reserves all rights to pursue discovery from those individuals should additional information come to light implicating them in the sale of opioids.

to the motions to quash, and before the date of production or any deposition, Defendants fraudulently removed this case. Following remand, the State re-issued substantively identical subpoenas to sales representatives with updated production and deposition dates. At the Court's status conference following remand, the State agreed that Defendants did not need to refile their motions to quash. The State now responds to those motions.

III. 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). Relevant discovery is simply that which "*might* lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182, ¶ 4, 557 P.2d 904 (emphasis added). Discovery may be compelled by issuing a subpoena "command[ing] each person to whom it is directed to produce . . . documents, electronically stored information or tangible things in the possession, custody or control of that person" 12 O.S. 2004.1. A party moving to quash a subpoena bears the burden of proof. See *YWCA of Okla. City v. Melson*, 1997 OK 81, ¶ 22, 944 P.2d 304, 311 ("the 'good cause' burden [belongs] to the party who *opposes* discovery"); *EEOC v. Unit Drilling Co.*, No. 13-CV-147, 2014 U.S. Dist. LEXIS 3685, at *5 (N.D. Okla. Jan. 13, 2014) ("The party who moves to quash a subpoena has the burden of persuasion.").

IV. ARGUMENT

Movants have not carried their burden to show good cause to quash the State's subpoenas duces tecum. Movants raise three identical arguments in support of their motions: (1) the subpoenas seek documents from individuals that may be the property of their employer; (2) the

subpoenas request documents from a non-party that can be collected by a party; and (3) the document requests are overbroad. None is a basis for quashing the subpoenas.

a. Ownership of documents is irrelevant to whether they may be subpoenaed.

Movants improperly seek to prevent the document production commanded in the subpoenas duces tecum on the basis that the requested documents may not be the “property” of the subpoenaed individuals. A party may properly subpoena any document in a person’s “possession, custody *or* control.” 12 O.S. 2004.1 (emphasis added). “Neither legal ownership nor physical possession of the document, electronically stored information, or tangible thing is required for a non-party to ‘control’ it under rule 45.”³ *Simon v. Taylor*, No. CIV 12-0096, 2014 U.S. Dist. LEXIS 164774, at *92 (D.N.M. Nov. 18, 2014). This is true even where the non-party is a current employee: “An employee’s . . . ability to access the documents in the normal course of business weighs in favor of finding control.” *United States v. 2121 Celeste Rd. SW*, 307 F.R.D. 572, 590 (D.N.M. 2015). There is simply “no requirement that a subpoena be served on the person who owns the documents.” *Musket Corp. v. Star Fuel of Okla., LLC*, No. CIV-11-444-M, 2012 U.S. Dist. LEXIS 129032, at *11 (W.D. Okla. Sep. 11, 2012).

The one case Movants cite in support of their ownership argument is not only at odds with the weight of authority set forth above, it is factually distinguishable. As an initial matter, the court held that the subpoena at issue was properly quashed on the independent ground that it required a non-party to travel more than 100 miles. *See Bostian v. Suhor Indus., Inc.*, No. 4:07-cv-151, Dkt. No. 33 at 1, 3 (N.D. Okla. Oct. 12, 2007). Further, the holding is limited to documents subpoenaed from a current employee. *See id.* at 3. Here, all but one of the sales representatives

³ “[S]ince § 2004.1(C)(1) is taken from Rule 45(C)(1) of the Federal Rules of Civil Procedure, we may look to decisions from the federal courts for guidance in applying and interpreting the duty.” *Young v. Macy*, 2001 OK 4, ¶ 13, 21 P.3d 44, 48.

at issue are former employees. See Exhibit B at 3; https://news.vice.com/en_us/article/xwm3zk/purdue-pharma-company-behind-oxycotin-just-laid-off-its-entire-sales-team. This reality is not only distinguishing, it begs the question of how Defendants' counsel can ethically represent former employees and at the same time throw them under the bus by alleging, without support, that they may have taken Defendants' property without permission. See, e.g., Exhibit B at 3. Finally, there is no indication in *Bostian* that the plaintiff was unable to obtain the subpoenaed documents from the defendant. See No. 4:07-cv-151, Dkt. No. 33 at 3. As set forth below, the State requested the subpoenaed information from the Defendants over a year ago and has either yet to receive a complete production, or the sales representatives have documents the Defendants do not.

In short, relevant documents are properly subpoenaed from individuals with possession, custody, or control over those documents regardless of whether they own them. If a former employee retained documents in violation of some agreement with Defendants—a situation indicated only by Defendants' unsubstantiated conjecture that the subpoenas “may include documents” that belong to them—Defendants' remedy is a breach of contract claim against the former employee, not quashing the production. The subpoenaed former sales representatives must produce the requested documents that they retained, 12 O.S. 2004.1, and the subpoenaed current sales representative must produce the requested documents under her control—documents that she has the “ability to access [] in the normal course of business.” *Celeste Rd.*, 307 F.R.D. at 590. Defendants make no argument—let alone offer any evidence—that such documents contain privileged or otherwise protected information. Accordingly, Movants fail to carry their burden to prove that quashing the subpoenas is warranted on the basis of who owns the requested documents.

b. Defendants do not have standing to object to undue burden on a non-party, and the non-parties provide no proof of undue burden.

Movants next argue that the subpoenas place an undue burden on the non-parties because the requested documents might be obtainable through a party. Defendants do not have standing to raise this argument. *Khumba Film (Pty.), Ltd. v. Doe*, Civil Action No. 14-cv-02075, 2014 U.S. Dist. LEXIS 128045, at *4 (D. Colo. Sep. 12, 2014) (“[E]ven where a party has standing to quash a subpoena based on privilege or a personal right, he or she lacks standing to object on the basis of undue burden.”). And while the subpoenaed individuals may raise this objection, it is their burden to prove that producing the requested documents would constitute an “undue burden”—a burden that they make no effort to carry.

“A party asserting undue burden must present an affidavit or other evidentiary proof of the time or expense involved in responding to the discovery request.” *Speed Trac Techs., Inc. v. Estes Express Lines, Inc.*, No. 08-212-KHV, 2008 U.S. Dist. LEXIS 43572, at *17 (D. Kan. June 3, 2008). Here, Movants provide no evidence whatsoever of the burden required to produce the subpoenaed documents in the producing parties’ possession, custody, or control—no indication of the volume of documents, their location, the effort necessary to review them, or the expense required to do so. Conclusory objections alleging undue burden based on the possibility of duplicative production are not sufficient to prove a motion to quash. *See id.*; *Dimitras v. Robert Brogden's Olathe Buick GMC, Inc.*, No. 13-2544-KHV, 2014 U.S. Dist. LEXIS 142380, at *6-7 (D. Kan. Oct. 7, 2014).

Not only is the possibility of duplicative productions insufficient to quash the subpoenas, the allegation that the State can get the same thing it has requested from the sales representatives from the Defendants is not true. The State requested the same types of documents from Defendants over a year ago. *E.g.*, Plaintiff’s First Request for Production of Documents (served August 3,

2017) (“REQUEST FOR PRODUCTION NO. 3: All Documents constituting or concerning training and education materials for opioid sales representatives . . . provided to such opioid sales representatives by You.”). However, subpoenaed sales representatives not represented by Defendants’ counsel are producing documents that Defendants have not, despite falling squarely within the State’s requests for production. *E.g.*, Exhibit G (Purdue Tactical Memo to Sales Force). Moreover, receiving the subpoenaed documents from the subpoenaed sales representatives—representatives employed and hawking opioids *specifically in Oklahoma*—is important for the State to be able to determine what information Defendants directed specifically to Oklahoma.

Movants provide no evidence of undue burden, as they must to quash the subpoenas. And their insufficient conclusory allegation of potentially duplicative discovery is belied by Defendants’ own productions. Accordingly, Movants fail to carry their burden to prove that quashing the subpoenas is warranted on the basis of undue burden.

c. The document requests are properly targeted to discoverable information.

Finally, Movants erroneously argue that the document requests are overbroad because they are not limited to “opioids.” The document requests are specifically limited to the subpoenaed individuals’ *employment* as sales representatives for Defendants—a role at the heart of this case. Indeed, the Purdue sales representatives’ only job was to sell *opioids*. Regardless, discoverable information regarding the sales representatives’ employment is not limited to documents and communications specific to opioids. While communications specifically limited to opioids are plainly relevant, so too are a number of documents that may not be so limited. For example, general sales policies and procedures, general bonus and compensation structure, documents regarding sales representative complaints or termination, and many other categories of documents “might lead to the disclosure of admissible evidence” and are therefore relevant. *See Stone v.*

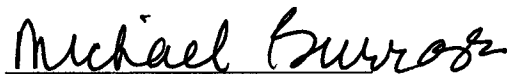
Coleman, 1976 OK 182, ¶ 4, 557 P.2d 904. While it is possible that some documents collected in response to the request may be non-responsive, this does not mean that the request is impermissibly overbroad. Rather, the witness may exclude those documents from production as is routinely done in document collection and production. Accordingly, Movants fail to carry their burden to prove that quashing the subpoenas is warranted on the basis of overbreadth.

Even if the Court does find that the request should be limited to opioids, that is not a reason to quash the document subpoena. Rather, the subpoena should be modified accordingly and the witness compelled to comply. See *W. Convenience Stores, Inc. v. Suncor Energy U.S.A., Inc.*, Civil Action No. 11-cv-01611, 2014 U.S. Dist. LEXIS 42443, at *31 (D. Colo. Mar. 27, 2014) (“[m]odification of a subpoena is preferable . . . to quashing it”) (quoting *Williams v. City of Dallas*, 178 F.R.D. 103, 110 (N.D. Tex. 1998)).

V. CONCLUSION

For the reasons herein, the State respectfully requests that the Court deny the motions to quash subpoenas duces tecum to Pamela Costa, Tim Mullen, Tyler Bradley, Eric Wayman, and Cullen Bryant and compel the production commanded in those subpoenas.

Dated: August 24, 2018



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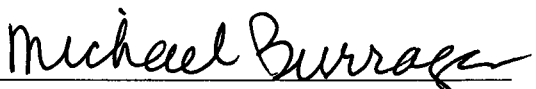

Michael Burrage

Exhibit A

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA STATE OF OKLAHOMA
CLEVELAND COUNTY } S.S.

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;
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JANSSEN PHARMACEUTICALS, INC.;
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- (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.

FILED

JUN 06 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 PAMELA COSTA'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 Pamela Costa, by and through her undersigned counsel, object to and move this Court for an Order quashing the Deposition Subpoena Duces Tecum ("Subpoena," attached hereto as Exhibit A) issued to Pamela

Costa by counsel for the Plaintiff the State of Oklahoma (“Plaintiff” or “the State”). In support of this Objection and Motion, the Teva Defendants and Ms. Costa 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.

Pamela Costa is a non-party current employee of Defendant Teva Pharmaceuticals USA, Inc. (“Teva”). On May 24, 2018, Ms. Costa was served at her home in Broken Arrow, Oklahoma, with a deposition subpoena and document request by the Plaintiff.¹ The Subpoena is addressed to Ms. Costa personally and lists her home address.² The Subpoena commands her to appear in Tulsa, Oklahoma, on July 17, 2018, to testify as a witness in a deposition in the above-captioned case. In addition, the Subpoena specifically instructs Ms. Costa to “produce true and correct copies of the documents, electronically stored information, or objects in *your possession, custody or control* that are identified in Exhibit ‘A.’” Exhibit A lists the following category of documents, which Ms. Costa is instructed to produce on or before June 25, 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.

¹ On May 23, 2018, the State notified Defendants that it was serving deposition subpoenas on 41 individual witnesses, nine of whom are current or former Cephalon or Teva employees.

² Indeed, Plaintiff made no effort to contact Ms. Costa through counsel for Teva, her current employer and a party to this action.

The Subpoena's document request is objectionable on three separate grounds. First, the Subpoena improperly seeks to collect documents from Ms. Costa that are the property of her 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. Third, the document request as drafted is wildly overbroad. For these reasons, the Court should quash the Subpoena and order that Ms. Costa need not produce any documents.³

II. ARGUMENTS AND AUTHORITIES⁴

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 id.*, § 3226.

The Subpoena should be quashed for three reasons. First, the Subpoena issued to Ms. Costa improperly seeks documents belonging to the Teva Defendants. Ms. Costa is a current Teva sales representative and a non-party to this case. The subpoena was served on Ms. Costa in her personal capacity, at her home, and it seeks documents in her "possession, custody or control." Yet the Subpoena seeks all documents related to Ms. Costa's employment with Teva – documents that are not the property of Ms. Costa but rather the property of her 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)

³ The Teva Defendants and Ms. Costa are not challenging the Subpoena for Ms. Costa's oral deposition.

⁴ 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).

(rejecting plaintiff’s 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 Ms. Costa 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). Ms. Costa 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.

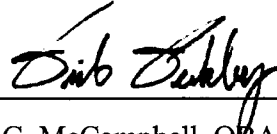
Finally, Ms. Costa was served with a document request that, as written, is drastically overbroad and burdensome in scope. The Subpoena’s document request seeks *all* documents and communications related to Ms. Costa’s employment at Teva, “including but not limited to all training materials, sales call notes, and communications to or from Teva/Cephalon during and since your employment.” As written, the request encompasses literally everything related to Ms. Costa’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, Ms. Costa’s personnel file, her 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 Ms. Costa 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: June 6, 2018



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CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing was emailed this 6th day of June 2018,

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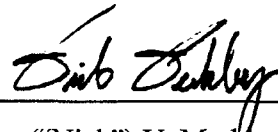
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Nicholas ("Nick") V. Merkle

GREETINGS:

YOU ARE HEREBY COMMANDED on behalf of Plaintiff in the above-captioned case, to produce true and correct copies of the documents, electronically stored information, or objects in your possession, custody or control that are identified in Exhibit "A" attached hereto. You may comply by delivering the requested materials to Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, at 1:00 p.m. on or before June 25, 2018. In the alternative, you may comply by delivering the requested materials to Professional Reporters – Tulsa, c/o Whitten Burrage, 20 E. 5th St. Suite 720, Tulsa, OK 74103 at 1:00 p.m. on June 25, 2018.

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.

YOU ARE ALSO HEREBY COMMANDED to appear at Regus - Memorial Place, 7633 E. 63rd Place Suite 300, Tulsa, Oklahoma, 74133, on July 17, 2018, at 1 p.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case. The deposition shall be recorded by audio/visual means.

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 Brooke Hamilton: tel: (405) 516-7800; email: bhamilton@whittenburrage.com.

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 21st day of May, 2018.



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ATTORNEYS FOR PLAINTIFF

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

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.

Exhibit B

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA } STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

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.

FILED

JUN 06 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 TIM MULLEN'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 Tim Mullen, by and through his undersigned counsel, object to and move this Court for an Order quashing the Deposition Subpoena Duces Tecum ("Subpoena," attached hereto as Exhibit A) issued to Tim

Mullen 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. Mullen 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.

Tim Mullen is a non-party former employee of Defendant Cephalon, Inc. (“Cephalon”). On May 23, 2018, Mr. Mullen was served at his home in Tulsa, Oklahoma with a deposition subpoena and document request by the Plaintiff.¹ The Subpoena is addressed to Mr. Mullen personally and lists his home address. The Subpoena commands him to appear in Tulsa, Oklahoma, on July 18, 2018, to testify as a witness in a deposition in the above-captioned case. In addition, the Subpoena specifically instructs Mr. Mullen to “produce true and correct copies of the documents, electronically stored information, or objects in *your possession, custody or control* that are identified in Exhibit ‘A.’” Exhibit A lists the following category of documents, which Mr. Mullen is instructed to produce on or before June 25, 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.

¹ On May 23, 2018, the State notified Defendants that it was serving deposition subpoenas on 41 individual witnesses, nine of whom are current or former Cephalon or Teva employees.

The Subpoena's document request is objectionable on three separate grounds. First, the Subpoena improperly seeks to collect documents from Mr. Mullen that, to the extent he has any such documents, may be the property of the Teva Defendants. Second, the Subpoena places an unfair and unworkable burden and expense on a non-party when the documents requested can be collected by a party to the action. Third, the document request as drafted is wildly overbroad. For these reasons, the Court should quash the Subpoena and order that Mr. Mullen need not produce any documents.²

II. ARGUMENTS AND AUTHORITIES³

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 id.*, § 3226.

The Subpoena should be quashed for three reasons. First, the Subpoena issued to Mr. Mullen improperly seeks documents belonging to the Teva Defendants. Mr. Mullen is a former Cephalon sales representative and a non-party to this case. The subpoena was served on Mr. Mullen in his personal capacity, at his home, and it seeks documents in his “possession, custody or control.” Yet the Subpoena seeks all documents related to Mr. Mullen's employment with Teva/Cephalon – which may include documents, to the extent Mr. Mullen has any, that belong to the Teva Defendants and not Mr. Mullen. 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*

² The Teva Defendants and Mr. Mullen are not challenging the Subpoena for Mr. Mullen's oral deposition.

³ 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).

Industries, Inc., No. 07-151-GFK-FHM, 2007 WL 3005177, at *2 (N.D. Okla. Oct. 12, 2007) (rejecting plaintiff's 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"). The same rationale would extend to former non-party employees. 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 unreasonable burden on Mr. Mullen 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. Mullen 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.

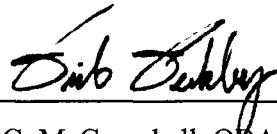
Finally, Mr. Mullen was served with a document request that, as written, is drastically overbroad and burdensome in scope. The Subpoena's document request seeks *all* documents and communications related to Mr. Mullen's employment at Teva/Cephalon, "including but not limited to all training materials, sales call notes, and communications to or from Teva/Cephalon during and since your employment." As written, the request encompasses literally everything related to Mr. Mullen's employment with Cephalon, 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.

Mullen'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. Mullen 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: June 6, 2018



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Attorneys for Non-party Ashley Rice Feliciano

*Attorneys for Defendants Cephalon, Inc., Teva
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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 emailed this 6th day of June 2018,

to:

*Attorneys for
Plaintiff*

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
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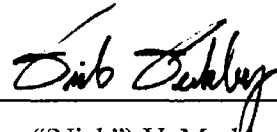
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HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 21st day of May, 2018.



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GENERAL COUNSEL TO
THE ATTORNEY GENERAL
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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.

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- (1) fails to allow reasonable time for compliance,
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- (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.

Exhibit C

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JUN 07 2018

In the office of the
Court Clerk MARILYN WILLIAMS

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.)

Case No. CJ-2017-816

**DEFENDANTS PURDUE PHARMA L.P., PURDUE PHARMA, INC., AND THE
PURDUE FREDERICK COMPANY AND NON-PARTIES TYLER BRADLEY, ERIC
WAYMAN AND CULLEN BRYANT OBJECTIONS AND MOTIONS TO QUASH
DEPOSITION SUBPOENAS DUCES TECUM**

Pursuant to Tit. 12, O.S. § 2004.1(C), Purdue Pharma L.P., Purdue Pharma, Inc., and the
Purdue Frederick Company (collectively “the Purdue Defendants”), and non-parties Tyler
Bradley, Eric Wayman and Cullen Bryant, object to and move to quash the Deposition

Subpoenas Duces Tecum ("Subpoenas," attached hereto as Exhibits 1-3) issued by Plaintiff the State of Oklahoma (the "State"). In support of this Objection and Motion, the Purdue Defendants join in "Defendants Teva Pharmaceuticals USA, Inc. and Cephalon Inc.'s and Non-Party Pamela Costa's Objection and Motion to Quash Deposition Subpoena Duces Tecum" filed on June 6, 2018 (attached hereto as Exhibit 4) and state as follows:

Tyler Bradley, Eric Wayman and Cullen Bryant are non-parties to this case and are current employees of Defendant Purdue ("Purdue Employees"). These Purdue Employees were served with deposition subpoenas and document requests by the State. The subpoenas command the Purdue Employees to "produce true and correct copies of the documents, electronically stored information, or objects in your possession, custody or control that are identified in Exhibit 'A'." Exhibit A lists the following category of documents which the Purdue Employees are instructed to produce on or before June 25, 2018:

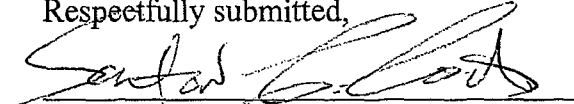
All documents and communications in your possession, custody or control related to your employment at Purdue, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Purdue during and since your employment.

(Exhibits 1-3, p. 7).

The Purdue Defendants and the Purdue Employees object to these Deposition Subpoenas Duces Tecum on three grounds: (1) the Subpoenas improperly seek to collect documents from the Purdue Employees that are the property of their employer, Purdue; (2) the Subpoenas place an unfair burden and expense on non-parties when the documents requested can be collected by a party to the action; and (3) the document requests are clearly overbroad. The Purdue Defendants and the Purdue Employees adopt and join in the arguments and authorities in Teva's objection and motion to quash (Exhibit 4). For the reasons stated therein, the Purdue Defendants and the

Purdue Employees respectfully request the Court quash the subpoenas for documents to the
Purdue Employees.

Respectfully submitted,



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Joshua D. Burns, OBA No. 32967
Cullen D. Sweeney, OBA No. 30269
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*Counsel for Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue
Frederick Company Inc.*

CERTIFICATE OF MAILING

This is to certify on June 7, 2018, a true and correct copy of the above and foregoing has been served via e-mail to the following:

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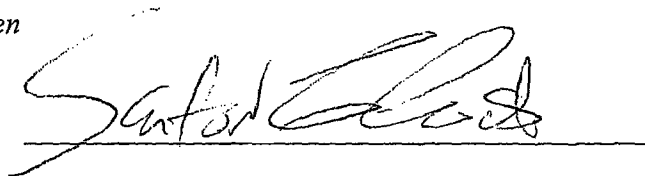
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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

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: **TYLER BRADLEY**
 3201 SE 32ND ST
 MOORE, OK 73165-7361

Exhibit 1

GREETINGS:

YOU ARE HEREBY COMMANDED on behalf of Plaintiff in the above-captioned case, to produce true and correct copies of the documents, electronically stored information, or objects in your possession, custody or control that are identified in Exhibit "A" attached hereto. You may comply by delivering the requested materials to Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, at 1:00 p.m. on or before June 25, 2018.

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.

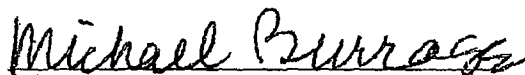
YOU ARE ALSO HEREBY COMMANDED to appear at Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, on July 17, 2018, at 8 a.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case. The deposition shall be recorded by audio/visual means.

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 Brooke Hamilton: tel: (405) 516-7800; email: bhamilton@whittenburrage.com.

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 21st day of May, 2018.



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ATTORNEYS FOR PLAINTIFF

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

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.

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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. "Purdue" means Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company 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 Purdue or any entity which owns Purdue in whole or in part. The term "Purdue," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by Purdue or who provide services on behalf of Purdue.
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 Purdue, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Purdue during and since your employment.

GREETINGS:

YOU ARE HEREBY COMMANDED on behalf of Plaintiff in the above-captioned case, to produce true and correct copies of the documents, electronically stored information, or objects in your possession, custody or control that are identified in Exhibit "A" attached hereto. You may comply by delivering the requested materials to Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, at 1:00 p.m. on or before June 25, 2018. In the alternative, you may comply by delivering the requested materials to Professional Reporters—Tulsa, c/o Whitten Burrage, 20 E. 5th St., Suite 720, Tulsa, OK 74103 at 1:00 p.m. on June 25, 2018.

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.

YOU ARE ALSO HEREBY COMMANDED to appear at Regus - Memorial Place, 7633 E. 63rd Place Suite 300, Tulsa, Oklahoma, 74133, on July 16, 2018, at 8 a.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case. The deposition shall be recorded by audio/visual means.

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 Brooke Hamilton: tel: (405) 516-7800; email: bhamilton@whittenburrage.com.

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 21st day of May, 2018.



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ATTORNEYS FOR PLAINTIFF

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

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. "Purdue" means Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company 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 Purdue or any entity which owns Purdue in whole or in part. The term "Purdue," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by Purdue or who provide services on behalf of Purdue.
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 Purdue, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Purdue during and since your employment.

GREETINGS:

YOU ARE HEREBY COMMANDED on behalf of Plaintiff in the above-captioned case, to produce true and correct copies of the documents, electronically stored information, or objects in your possession, custody or control that are identified in Exhibit "A" attached hereto. You may comply by delivering the requested materials to Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, at 1:00 p.m. on or before June 25, 2018. In the alternative, you may comply by delivering the requested materials to Professional Reporters - Tulsa, c/o Whitten Burrage, 20 E. 5th St. Suite 720, Tulsa, OK 74103 at 1:00 p.m. on June 25, 2018.

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.

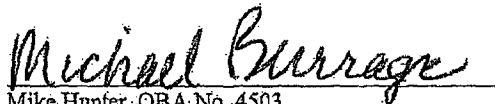
YOU ARE ALSO HEREBY COMMANDED to appear at Regus - Memorial Place, 7633 E. 63rd Place Suite 300, Tulsa, Oklahoma, 74133, on July 12, 2018, at 8 a.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case. The deposition shall be recorded by audio/visual means.

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 Brooke Hamilton: tel: (405) 516-7800; email: bhamilton@whittenburrage.com.

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 21st day of May, 2018.



Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
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GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

ATTORNEYS FOR PLAINTIFF

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

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.

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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.

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1. "Purdue" means Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company 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 Purdue or any entity which owns Purdue in whole or in part. The term "Purdue," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by Purdue or who provide services on behalf of Purdue.
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 Purdue, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from Purdue during and since your employment.

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA
CLEVELAND COUNTY } S.S.

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.

FILED

JUN 06 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 PAMELA COSTA'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 Pamela Costa, by and through her undersigned counsel, object to and move this Court for an Order quashing the Deposition Subpoena Ducēs Tecum ("Subpoena," attached hereto as Exhibit A) issued to Pamela

Costa by counsel for the Plaintiff the State of Oklahoma (“Plaintiff” or “the State”). In support of this Objection and Motion, the Teva Defendants and Ms. Costa 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.

Pamela Costa is a non-party current employee of Defendant Teva Pharmaceuticals USA, Inc. (“Teva”). On May 24, 2018, Ms. Costa was served at her home in Broken Arrow, Oklahoma, with a deposition subpoena and document request by the Plaintiff.¹ The Subpoena is addressed to Ms. Costa personally and lists her home address.² The Subpoena commands her to appear in Tulsa, Oklahoma, on July 17, 2018, to testify as a witness in a deposition in the above-captioned case. In addition, the Subpoena specifically instructs Ms. Costa to “produce true and correct copies of the documents, electronically stored information, or objects in *your possession, custody or control* that are identified in Exhibit ‘A.’” Exhibit A lists the following category of documents, which Ms. Costa is instructed to produce on or before June 25, 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.

¹ On May 23, 2018, the State notified Defendants that it was serving deposition subpoenas on 41 individual witnesses, nine of whom are current or former Cephalon or Teva employees.

² Indeed, Plaintiff made no effort to contact Ms. Costa through counsel for Teva, her current employer and a party to this action.

The Subpoena's document request is objectionable on three separate grounds. First, the Subpoena improperly seeks to collect documents from Ms. Costa that are the property of her 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. Third, the document request as drafted is wildly overbroad. For these reasons, the Court should quash the Subpoena and order that Ms. Costa need not produce any documents.³

II. ARGUMENTS AND AUTHORITIES⁴

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 id.*, § 3226.

The Subpoena should be quashed for three reasons. First, the Subpoena issued to Ms. Costa improperly seeks documents belonging to the Teva Defendants. Ms. Costa is a current Teva sales representative and a non-party to this case. The subpoena was served on Ms. Costa in her personal capacity, at her home, and it seeks documents in her "possession, custody or control." Yet the Subpoena seeks all documents related to Ms. Costa's employment with Teva – documents that are not the property of Ms. Costa but rather the property of her 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)

³ The Teva Defendants and Ms. Costa are not challenging the Subpoena for Ms. Costa's oral deposition.

⁴ 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).

(rejecting plaintiff's 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 Ms. Costa 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). Ms. Costa 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.

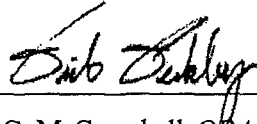
Finally, Ms. Costa was served with a document request that, as written, is drastically overbroad and burdensome in scope. The Subpoena's document request seeks *all* documents and communications related to Ms. Costa's employment at Teva, "including but not limited to all training materials, sales call notes, and communications to or from Teva/Cephalon during and since your employment." As written, the request encompasses literally everything related to Ms. Costa'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, Ms. Costa's personnel file, her 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 Ms. Costa 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: June 6, 2018



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Nicholas ("Nick") V. Merkley, OBA No. 20284
Ashley E. Quinn, OBA No. 33251
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Attorneys for Non-party Pamela Costa

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

Exhibit D

Subject: RE: State of Oklahoma v. Purdue et al. - Sales Representatives
Date: Tuesday, August 21, 2018 at 2:49:43 PM Central Daylight Time
From: Cohen, Joseph D.
To: Ross Leonoudakis
CC: Winn Cutler

Ross, the five individuals below are the only individuals that I currently represent in the connection with the above-referenced matter.

Best regards,

--Joe

From: Ross Leonoudakis <rossl@nixlaw.com>
Sent: Tuesday, August 21, 2018 2:34 PM
To: Cohen, Joseph D. <JCohen@porterhedges.com>
Cc: Winn Cutler <winncutler@nixlaw.com>
Subject: State of Oklahoma v. Purdue et al. - Sales Representatives

Joe,

Following up on who all you represent regard to the subpoenas we have issued to former sales representatives in this case. Please confirm.

Norman Sandusky
Kristi Carter
Jennifer Wells
Eric Wayman
Cullen Bryant

Are there any others that you represent at this time?

Thanks,
Ross

Ross Leonoudakis
Nix, Patterson & Roach, LLP
3600 N. Capital of Texas Hwy, Suite B350
Austin, TX 78746
Phone: 512.328.5333
Email: Rossl@nixlaw.com

Exhibit E

2001
BUDGET PLAN

PP 00252

VI. TACTICS

A. Sales Force Allocation

The deployment of our most valuable and substantial promotional resource, the sales force, is critical to the continued success of OxyContin Tablets. Heavy promotional support will continue in order to ensure appropriate awareness of OxyContin Tablets in the opioid market.

Due to the launch of Ultram SR, 50% of the calls to oncologists and surgeons will be allocated to OxyContin Tablets. OxyContin Tablets will remain the primary product accounting for 100% of calls on all other specialties, with the exception of anesthesiology, where OxyContin Tablets will account for 70% of primary calls.

The share of voice for OxyContin Tablets among anesthesiology will be critical to the continued success. The physicians in this important specialty are the innovators and early adopters of new products and technology. An effort to remain the dominant voice with anesthesiologists will prevent market penetration by future competition.

B. Representative Delivered Promotional Materials

Wholesalers/Chain Headquarters (National Account Managers)

Contacts will be made with wholesalers to ensure that there are appropriate inventory levels for the 10 mg, 20 mg, 40 mg, 80 mg, and the 160 mg strength tablets. Adequate inventory levels of OxyIR and OxyFAST will also be ensured.

Pharmacies

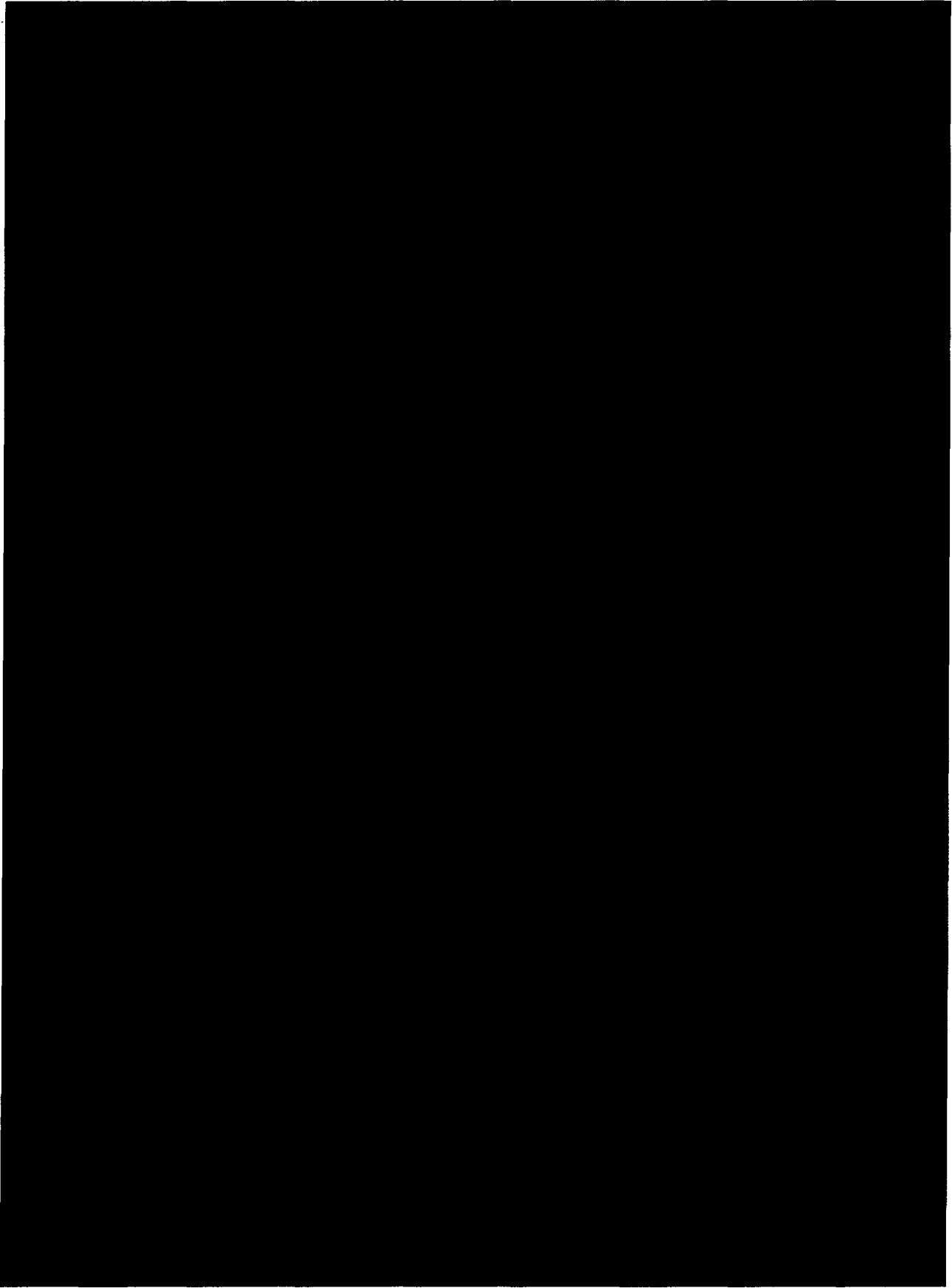
Representatives will call on chain and independent retail stores to make sure there is adequate stocking of the OxyContin Tablets strengths, with particular emphasis on increasing distribution of the 40 mg, 80 mg, and the 160 mg strength. Representatives will also continue to increase the distribution of OxyIR and OxyFAST at the retail level.

Hospitals

In an effort to continue gaining hospital formulary acceptance of OxyContin Tablets, representatives will work with their Abbott counterparts to make calls on all Pharmacy and Therapeutic (P&T) committees.

The hospital formulary kit and product data brochure will be utilized by the sales force to provide the appropriate clinical data necessary to continue to add OxyContin Tablets to hospital formularies. In addition, representatives will continue to use the OxyContin Tablets tabletop hospital display panels. Speakers' Bureau lectures will be conducted during grand rounds, tumor boards, etc. The focus of these presentations will be the addition of OxyContin Tablets to the analgesic treatment armamentarium.

Exhibit F



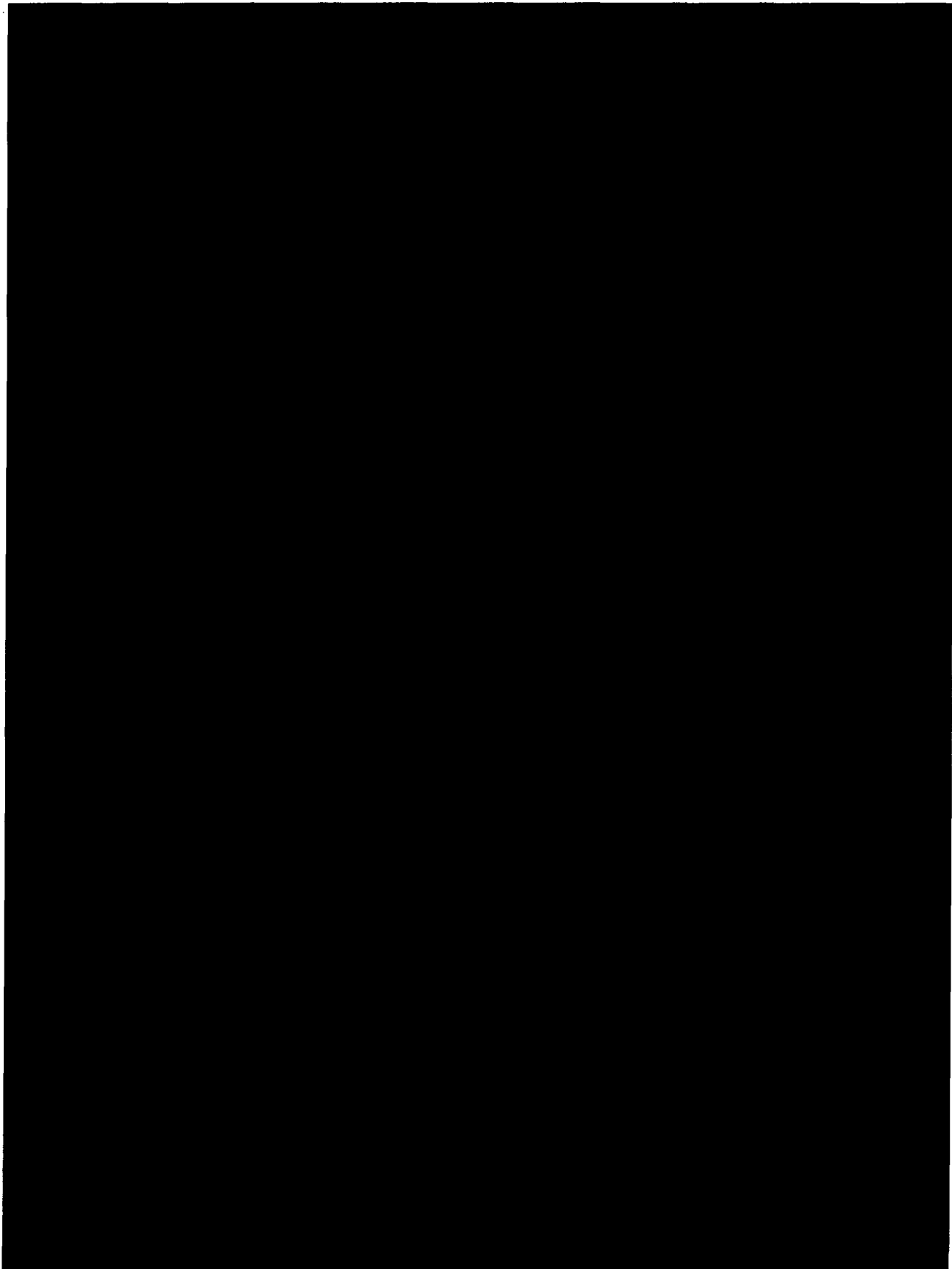


Exhibit G

