



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

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

Plaintiff,

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.

FILED

SEP 12 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

NOTICE OF DEFENDANTS' PROPOSED SCHEDULING ORDER

Come now defendants Cephalon, Inc., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc., F/K/A Watson Pharma, Inc. ("Teva defendants") and file this Notice of Defendants' Proposed Scheduling Order. On September 10, 2018, the State filed a Motion for Entry of Amended Scheduling Order including the plaintiff's proposed schedule. On the same day, counsel for the Teva defendants provided a letter on behalf of all the defendants to the Court setting forth the defendants' proposed schedule, and a copy is

attached as Exhibit A. After plaintiff's motion had been filed and the defendants' letter had been sent to the Court, the Court issued an Amended Scheduling Order on September 11, 2018.

The Defendants file this Notice so that the Defendants' letter of September 10 will be in the court file along with the plaintiff's motion filed September 10.

Respectively Submitted,



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

OF COUNSEL:

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

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

Attorneys for non-parties

Pamela Costa and Tim Mullen

Attorneys for Defendants

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

CERTIFICATE OF SERVICE

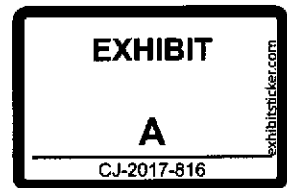
I hereby certify that a true and correct copy of the foregoing was emailed this 12 day of September, 2018, to the following:

<i>Attorneys for Plaintiff</i>	Mike Hunter, Attorney General Abby Dillsaver, General Counsel Ethan Shaner, Dep. Gen. Counsel ATTORNEY GENERAL'S OFFICE 313 N.E. 21st Street Oklahoma City, OK 73105	Bradley E. Beckworth Jeffrey J. Angelovich Lloyd N. Duck Lisa Baldwin NIX, PATTERSON & ROACH 512 N. Broadway Ave., Ste 200 Oklahoma City, OK 73102
	J. Revell Parrish Michael Burrage Reggie Whitten WHITTEN BURRAGE 512 N. Broadway Ave., Suite 300 Oklahoma City, OK 73102	Andrew G. Pate NIX, PATTERSON & ROACH 3600 N. Capital of Texas Hwy. Suite 350 Austin, TX 78746
	Glenn Coffee GLENN COFFEE & ASSOCIATES 915 N. Robinson Ave. Oklahoma City, OK 73102	
<i>Attorneys for Purdue Pharma, LP, Purdue Pharma, Inc. and The Purdue Frederick Company</i>	Sheila L. Birnbaum Mark S. Cheffo Hayden Adam Coleman Paul LaFata DECHERT LLP Three Bryant Park 1095 Avenue of the Americas New York, NY 10036	Sandy Coats Joshua Burns CROWE & DUNLEVY 324 N. Robinson Ave., Ste 100 Oklahoma City, OK 73102
<i>Attorneys for Johnson & Johnson, Janssen Pharmaceutica, Inc., N/K/A Janssen Pharmaceutics, Inc., and Ortho-McNeil-Janssen Pharmaceutics, Inc. N/K/A Janssen Pharmaceutics, Inc.</i>	John Sparks Ben Odom ODOM SPARKS & JONES 2500 McGee Drive, Suite 140 Norman, OK 73072	Charles C. Lifland Jennifer D. Cardelus Wallace M. Allan O'MELVENY & MEYERS 400 S. Hope Street, 18 th Floor Los Angeles, CA 90071
	Stephen D. Brody David Roberts O'MELVENY & MEYERS 1625 Eye Street NW Washington, DC 20006	Daniel J. Franklin O'MELVENY & MEYERS 7 Times Square New York, NY 10036



Robert G. McCampbell

Morgan Lewis



Harvey Bartle, IV
Partner
+1.215.963.5521
harvey.bartle@morganlewis.com

VIA ELECTRONIC MAIL

September 10, 2018

The Honorable Thad Balkman
District Judge, 21st District Court
Cleveland County Courthouse
200 S. Peters Avenue
Norman, Oklahoma 73069

Re: *The State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No. CJ-2017-816

Dear Judge Balkman:

Pursuant to the Court's August 30, 2018 minute order, Defendants submit the enclosed proposed Amended Scheduling Order. Defendants and the State have exchanged differing proposed Amended Scheduling Orders and have not come to an agreement. Defendants' proposed order better addresses the compressed timeline given the present May 2019 trial date, and it should be entered by the Court.¹

Here is a comparison of original remaining pretrial schedule, and Defendants' and the State's proposed schedules:

	Original Pretrial Dates	State's Pretrial Dates	Defendants' Pretrial Dates
Plaintiff's Expert Disclosure/Report	Aug. 17, 2018	Oct. 26, 2018	Nov. 7, 2018
Defendants' Expert Disclosure	Sept. 14, 2018	Nov. 23, 2018	Nov. 23, 2018
Plaintiff's Expert Report	Nov 1, 2018	Dec. 21, 2018	Nov. 7, 2018
Defendants' Expert Report	Nov 29, 2018	Jan. 21, 2019	Dec. 21, 2018
Expert Deposition Completed	Jan. 25, 2019	April 6, 2019	Mar. 8, 2019
Fact Discovery Completed	Jan. 31, 2019	Mar. 15, 2019	Mar. 15, 2019
<i>Daubert</i> Motions Due			Mar. 13, 2019
<i>Daubert</i> Oppositions Due			Mar. 27, 2019
<i>Daubert</i> Replies Due			April 3, 2019

¹ Defendants continue to believe that the May 2019 trial date is unrealistic and maintain their objection to the proposed trial schedule, which prejudices Defendants' due process rights and ability to fairly prepare for trial, especially given the State's abject failure to provide discovery.

Morgan, Lewis & Bockius LLP

1701 Market Street
Philadelphia, Pennsylvania 19103
United States

+1.215.963.5000
+1.215.963.5001

	Original Pretrial Dates	State's Pretrial Dates	Defendants' Pretrial Dates
<i>Daubert</i> Hearing	Mar. 9, 2019	April 27, 2019	April 10, 2019
Dispositive Motions Filed	Mar. 29, 2019	April 27, 2019	April 10, 2019
Motions in Limine	20 Days before pretrial conference	20 Days before pretrial conference	20 Days before pretrial conference
Plaintiff's Witness List Due			
Defendants' Witness Lists Due			
Plaintiff's Exhibit List Due			
Defendants' Exhibit Lists Due			
Trial briefs Due	7 days before trial	7 days before trial	7 days before trial
Stipulations Filed By	May 13, 2019	May 13, 2019	May 13, 2019
Pretrial conference	May 16, 2019	May 16, 2019	May 16, 2019
Trial	May 28, 2019	May 28, 2019	May 28, 2019

The main differences between Defendants' proposal and the State's are the scheduling of expert disclosures, motion practice, and other pretrial practice. The State seeks to push out all dates in lockstep, which results in a logjam of critical motion practice and argument on the eve of trial. For example, under the State's proposal motions in limine, and witness and exhibit lists are due **before** the *Daubert* hearing and the due date for opening motions for summary judgment. That is not workable. Defendants, on the other hand, propose a timeline that will allow for more time, but still insufficient in their view, for the parties and the Court to conduct the *Daubert* hearing, address motions for summary judgment, and to complete pretrial practice.

Further, the State's expert disclosures are critical evidence in this case. The State has represented that it will not be able to provide its damages calculations until its expert completes the statistical sample. Transcript of May 17, 2018 Hearing at 106:1-5 (MR. WHITTEN: "We will give those damages. We will tell you the methodology. We'll tell them the methodology of how we calculated it. They'll get all that. It cannot be given today. And I don't want to produce my expert twice. We don't even have to disclose them yet."). Judge Hetherington noted the critical nature of the State's expert report to Defendants' ability to fairly and appropriately defend this case. *Id.* at 108:20-24 (JUDGE HETHERINGTON: "I think that the State has to do the best you can to get building this cake as quickly as possible, because as I see it, one of the things that could cause significant delay in this case is this area right here.").

As noted, Defendants maintain that due process requires that the trial date be moved to allow for this matter to proceed appropriately. So long as the existing May 2019 trial date nevertheless remains in place, it is critical that Defendants have sufficient time to challenge the State's expert reports – both through their own experts and through fact discovery that will undoubtedly be implicated by the State's yet-to-be-disclosed expert theories. The State should be required to serve expert reports as set forth in Defendants' proposed pretrial schedule. To delay the disclosure of the State's expert reports would further severely disadvantage Defendants' ability to defend this case. Defendants' schedule also provides the Court with sufficient time to consider and rule on challenges to those reports and to consider and resolve dispositive and other pretrial motions. The State's proposed schedule, on the other hand, does not.

Defendants therefore respectfully request that the Court enter their proposed Amended Scheduling Order.

The Honorable Thad Balkman
September 10, 2018
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Respectfully submitted,

s/Harvey Bartle, IV

Harvey Bartle, IV

Enclosure

cc: All counsel of record (via e-mail)
The Hon. Bill C. Hetherington (via e-mail)