



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, )  
STATE OF OKLAHOMA ) S.S.  
CLEVELAND COUNTY ) No. CJ-2017-816

Plaintiff,

FILED

Honorable Thad Balkman

v.

SEP 18 2018

Special Discovery Master

PURDUE PHARMA L.P., et al.,

William C. Hetherington, Jr.

Defendants.

In the office of the

Court Clerk MARILYN WILLIAMS

**PURDUE'S OPPOSITION TO PLAINTIFF'S MOTION TO SHOW CAUSE**

Contrary to the State's assertions, Purdue has complied and is actively complying with the Court's orders and in particular is actively engaged in producing documents pursuant to the rolling production method that the State proposed and endorsed. The State does not—and cannot—identify any discovery deadline that Purdue has exceeded or any order that it has violated. The State's motion should be denied.<sup>1</sup>

Given the scope of the discovery at issue, Purdue moved early-on for the appointment of a Special Discovery Master, and the Court subsequently appointed Judge Hetherington to oversee the discovery process. Under the Special Discovery Master's supervision, the parties have engaged in rolling productions to expedite the collection and production of documents. The State expressly requested that the Special Discovery Master *not* incorporate deadlines as part of that

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<sup>1</sup> The State's motion was filed on September 11, 2018 and was not timely filed for the conference that was originally schedule for September 20, 2018. To accommodate the State's counsel's schedule, Purdue and the Defendants agreed to reschedule the conference for September 27, 2018, but that courtesy extension does not make the State's motion timely. Without waiving its objection to the untimeliness of the State's motion, to the extent that the Special Discovery Master intends to address the issues at the September 27th conference, Purdue provides its written response in this brief.

production process. T. Duck, April 19, 2018 Hearing Transcript at 19:15-16 (“[O]ur view is I think we don’t want to have a strict rolling production schedule.”). And as the process continued, even *after* the Court’s rulings highlighted by the State in its motion, the State acknowledged that the rolling production system was progressing as intended. R. Whitten, May 17, 2018 Hearing Transcript at 58:2-4 (“[B]oth sides talked about doing rolling production. Both sides are doing it. I’m not complaining that they’re rolling it out on documents.”)

This has continued to be the case. Purdue has continued to steadily produce documents, and to date has produced over 18 million pages. Purdue has been working diligently to attend to the State’s exceedingly broad discovery requests under the extremely compressed schedule and is producing volumes of documents as well as witnesses to testify on the State’s identified corporate representative deposition topics. The State’s complaint that a discrete subset of documents has not yet been produced ignores the full scope of Purdue’s efforts and could easily have been resolved with a single phone call. And as the State even concedes, Purdue *has already produced many of the documents that are the subject of its motion*. State’s Mot. at 3.

The State’s contention that Purdue has stopped its rolling production of documents is demonstrably false. In fact, last week, Purdue produced *15 million pages* of documents and expects to produce another 3 million pages within the next two weeks. Purdue’s most recent production includes the Kentucky litigation documents referenced in the State’s motion. State’s Mot. at 4. Purdue’s prior productions have also been substantive, including promotional materials, sales training materials, marketing documents, sales figures, Standard Operating Procedures, speaker training materials, and more. *See, e.g.* Exhibit A, June 4, 2018 production cover letter (identifying over 15 categories of documents produced to the State). These documents are just a part of the millions of pages of documents that the State has had access to for months. These

figures stand in stark contrast to the State's meager document production, which is largely comprised of documents that came from outside parties subpoenaed by the State. Indeed, after accounting for non-party productions, it is apparent that Oklahoma has produced only *145,000 pages* of documents from its own agencies, *in total*.<sup>2</sup>

The State has repeatedly asserted that it is fully complying with Purdue's requests for production and does not object to them at all,<sup>3</sup> and then simply fails to collect or produce the documents. When Purdue has moved to compel production, the State has agreed to produce the documents at issue,<sup>4</sup> and then has simply failed to produce them. When Purdue filed further motions, and the Special Discovery Master again sustained the motion, the State still did not produce the documents. *See*, August 17, 2018 Purdue's Motion to Compel Production of Documents; August 31, 2018 Hearing Transcript at 50:18-19 ("Okay. I'm going to **again** rule that this motion to compel is **sustained again**.") (emphasis added). While the State has consistently represented that it is collecting documents from a wide swath of State entities, documents appear to have been collected from only ten departments, several of which appear to have made only a cursory attempt to identify relevant documents. For example:

- Oklahoma Employee Group Insurance Division: **4 documents produced**;

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<sup>2</sup> Although the State claimed to have produced "500,000 pages of documents" (T. Duck, August 31, 2018 Transcript at 47:6), that figure apparently includes "productions from third parties" (*id.* at 47:4).

<sup>3</sup> *See, e.g.*, B. Beckworth, April 19, 2018 Hearing Transcript at 19:23-20:14 ("Other than privilege, we're not standing on any objections. And the State is making a good faith effort to produce everything we believe is responsive to what they're asking for. [...] We are going to produce the documents. There's nothing to compel from us.").

<sup>4</sup> *See, e.g.*, April 25, 2018 Orders of Special Discovery Master, sustaining Purdue's motion to compel production of 10 separate categories of documents because "State's objection withdrawn during meet and confer."

- Oklahoma Department of Mental Health & Substance Abuse Services: **3 documents produced;**
- Oklahoma Health Care Authority: **3 documents produced;**
- Oklahoma Department of Human Services: **47 documents produced;**
- Oklahoma State Department of Health: **86 documents produced;** and
- University of Oklahoma College of Pharmacy:<sup>5</sup> **6 documents produced.**

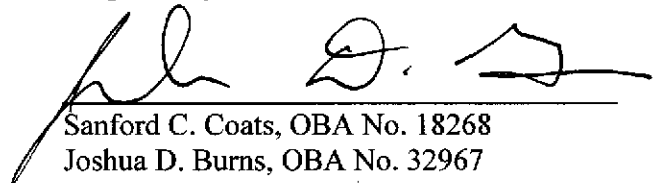
These figures are troubling. As but one example, the Oklahoma Employees Group Insurance Division oversees administration of healthcare benefits for every Oklahoma employee, inmate, and recipient of state-sponsored Medicaid. It is beyond belief that it has only four documents that are discoverable.

The discovery in this case has been largely one-sided. Purdue has diligently collected and produced documents in a rolling fashion, and will continue to do so. The State should do the same.

Purdue has not failed to comply with any order of the Court. Purdue's latest production of 15 million pages includes specific documents demanded by the State, and a substantial number of additional documents will be produced in the coming days. Purdue will continue to produce responsive documents as they are available, and the motion to show cause should therefore be denied.

Date: September 18, 2018

Respectfully submitted,



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<sup>5</sup> The University of Oklahoma College of Pharmacy has a professional services contract with the Oklahoma Healthcare Authority to administer pharmacy benefits to Oklahoma Medicaid recipients.

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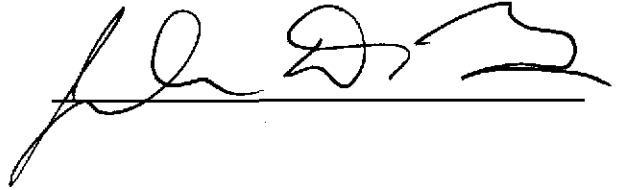
*Counsel for Purdue Pharma L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of September 2018, I caused a true and correct copy of the following:

**PURDUE'S OPPOSITION TO PLAINTIFF'S MOTION TO SHOW CAUSE**

to be served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "J. D. ...", written over a horizontal line.

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June 4, 2018

**VIA FEDERAL EXPRESS**

Reggie Whitten  
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512 North Broadway Avenue, Suite 300  
Oklahoma City, OK 73102

**Re: State of Oklahoma, ex rel., Mike Hunter, Attorney General of Oklahoma v. Purdue Pharma L.P., et al.; District Court of Cleveland County, Oklahoma, Case No. CJ-2017-816**

Dear Counsel:

On behalf of Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (together, "Purdue"), please find enclosed two secure hard drives containing documents responsive to Plaintiff's discovery demands as part of Purdue's rolling production of documents. The documents included in this production are Bates-numbered PPLP003274913 through PPLP003464167 and include the following:

- a. branded promotional materials;
- b. unbranded educational materials;
- c. sales bulletins provided to Purdue's former sales representatives;
- d. press releases from Purdue's Public Affairs Department dated between January 2006 and November 2016 concerning OxyContin®, Butrans®, and Hysingla ER®, or opioids generally;
- e. Contracts identified in Purdue's contract databases as reflecting an engagement of a health care professional to serve as a Purdue advisory board member, other consultant, or promotional speaker;
- f. agreements (including contracts and statements of work) with the key print and digital marketing agencies, market research agencies, marketing consultants, and medical writers identified by Purdue as having been used

**EXHIBIT A**

PROFESSIONAL CORPORATION

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by Purdue in connection with its opioid medications during the period from 2006 through 2016;

- g. available annual, national IMS sales data reflecting the units and sales of Purdue and non-Purdue opioids for the time period since 1992;
- h. available IMS data since 1998 reflecting information available to Purdue regarding the number and strength of prescriptions of Purdue's opioid medications by prescribers in each State;
- i. information concerning all third-party payments between January 1, 2006, and November 7, 2016 attributable to various marketing-related cost centers at Purdue;
- j. information concerning grant payments;
- k. Standard Operating Procedures relating to Purdue's Abuse & Diversion Detection Program;
- l. files containing documentation of advisory boards related to opioids conducted by Purdue since 2008. These files include agendas for advisory boards, materials presented at advisory boards, and documents reflecting information learned from advisory boards;
- m. market research reports dated between January 1, 2006 and November 17, 2016;
- n. marketing plans, marketing strategy plans, and Strengths, Weaknesses, Opportunities and Threats ("SWOT") analyses dated between January 1, 2006 and November 17, 2016;
- o. Standard Operating Procedures for Purdue's Sales Force; and
- p. speaker program training materials related to OxyContin®, Butrans®, or Hysingla®, dated between January 1, 2010, and November 7, 2016.

Some of the documents in this production have been labeled Confidential or Highly Confidential.

Plaintiff's Counsel  
June 4, 2018  
Page 3

Sincerely,



Joshua D. Burns  
For the Firm

JDB:sg

Enclosures

cc: **VIA E-MAIL WITHOUT ENCL.**

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