



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

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

Plaintiff,

v.

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

Defendants.

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

OCT 26 2018

In the office of the  
Court Clerk **MARILYN WILLIAMS**

Case No. CJ-2017-816  
Honorable Thad Balkman

William C. Hetherington  
Special Discovery Master

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**DEFENDANTS TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., WATSON  
LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC., f/k/a  
WATSON PHARMA, INC.'S MOTION FOR A PROTECTIVE ORDER TO PRESERVE  
THE CONFIDENTIAL STATUS OF JOHN HASSLER'S DEPOSITION  
DESIGNATIONS AND BRIEF IN SUPPORT**

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Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc. ("Teva") and Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. (the "Actavis Generic Entities") (collectively, the "Teva Defendants") file this Motion for a Protective Order to

Preserve the Confidential Status of certain excerpts of John Hassler's deposition and deposition exhibit 2 pursuant to the Court's Protective Order and 12 O.S. § 3226(C). The confidentiality designations from Mr. Hassler's corporate-representative deposition are protected as "confidential" under the Protective Order, given that the testimony and the exhibit refer to [REDACTED]

[REDACTED] The State's efforts to force the public disclosure of this properly designated confidential information runs afoul of the mutually-agreed upon Protective Order and Oklahoma law, and would prejudice the Teva Defendants.

**I. RELEVANT FACTS AND PROCEDURAL HISTORY**

On August 8, 2018, the State served forty-two Notices for Rule 3230(C)(5) Videotaped Depositions of Corporate Representatives of Teva Defendants (the "Notices"). On August 29, 2018, the Teva Defendants produced a corporate representative to testify pursuant to the Notice regarding "All actions and efforts previously taken, currently under way, and actions planned and expected to take place in the future which seek to address, fight or abate the opioid crisis." *See Transcript of John Hassler's Corporate Representative Deposition August 29, 2018*, attached hereto as Exhibit 1.

On September 24, 2018, the Teva Defendants sent a letter to Plaintiff designating three exhibits and several portions of the transcript as "confidential." *See Letter from Mark Fiore to Drew Pate September 24, 2018*, attached hereto as Exhibit 2. This designation followed the procedure established under the Protective Order. *See March 20, 2018 Protective Order*, attached hereto as Exhibit 3.

On October 9, 2018, the State responded and challenged several of the Teva Defendants' designations, as well as deposition exhibit 2.<sup>1</sup> See Letter from Drew Pate to Harvey Bartle October 9, 2018, attached hereto as Exhibit 4. These designations, for purpose of analysis, can be grouped into three categories based on the content and the confidentiality claim. [REDACTED]

[REDACTED]

On October 17 and 18, 2018, the parties attempted to resolve this issue, but did not reach an agreement.<sup>2</sup> Thus, pursuant to Paragraph 14 of the March 20, 2018 Protective Order, Defendants move this Court to issue an order protecting the designations as "confidential" material.

**II. ARGUMENTS AND AUTHORITIES**

In resolving discovery disputes, the Court may enter "any order which justice requires," including an order to prevent "unauthorized disclosure" of confidential or sensitive information. 12 O.S. § 3226(C); *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 15, 944 P.2d 304, 309. The Protective Order defines "confidential" information as:

- (a) information prohibited from disclosure by any applicable laws and regulations;
- (b) confidential research, development or commercial information (*see* 12 O.S. §

<sup>1</sup> [REDACTED]

<sup>2</sup> Pursuant to 12 O.S. § 3226(C)(1), the undersigned certifies that counsel for the Teva Defendants and Plaintiff met in good faith to attempt to resolve this dispute without court action but were unable to reach an agreement.

3226(C)(1)(g)); (c) trade secret information, including a formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy....

See *Protective Order, March 20, 2018*, attached hereto as Exhibit 3. As stated below each of the designations contested by the State constitutes a trade secret or other confidential research, development or commercial information within the meanings of the Protective Order and 12 O.S. § 3226.

**A. Applicable Legal Standards**

Defendants need only show that the transcript excerpts and the exhibit fall under the Protective Order's definition of "confidential." However, consistent with the protective order, these excerpts and the accompanying exhibit also meet either the 12 O.S. § 3226 standard or the trade secret standard under Oklahoma law. While it appears the Oklahoma Supreme Court has not decided a case applying 12 O.S. § 3226 to determine whether documents produced were properly designated confidential, federal courts have applied the identical Federal Rule of Civil Procedure<sup>3</sup>. In *Cardenas v. Dorel Juvenile Group, Inc.*, 230 F.R.D. 635 (D. Kan. 2005), a products liability action, the United States District Court for the District of Kansas reviewed "confidential" designations of twelve categories of documents. *Id.* at 637. The court looked at whether categories of materials were trade secret or "confidential research, development or commercial information" and considered the impact disclosure or dissemination of those materials would have on the Defendant. *Id.* at 638. Ultimately, the court held several categories of documents were properly designated confidential as trade secret or commercial information under Rule 26(c)(7). *Id.* These

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<sup>3</sup> Oklahoma courts will look to the federal provisions as instructive. *Hall v. Goodwin*, 775 P.2d 291, 293 (Okla. 1989) ("Because Oklahoma obtained its discovery code from the Federal Rules of Civil Procedure, we will examine the federal cases construing Rule 26.")

included: internal testing documents, internal meeting notes, sales reports, and emails discussing the product at issue. *Id.* at 638-39. The court also concluded disclosure of this internal information would cause significant harm to defendant's business. *Id.* at 638. The common link between the confidential information in *Cardenas* was that it was all generated internally and kept internally for the company's use in its internal processes and business strategies. Only materials which were publicly available were not considered "confidential."

Federal regulations are also instructive in defining the types of information that should be held confidential. The Code of Federal Regulation defines "Confidential Business Information" as "information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value." 19 C.F.R. § 201.6. This definition expressly includes processes, operations, and productions related to a company's business operations.

The Protective Order also recognizes and provides confidential protection for "trade secrets." See Exhibit 3. The Oklahoma Trade Secret Act recognizes that a court should protect trade secrets from disclosure. *See* 78 O.S. § 90. The courts are to protect these trade secrets because an unnecessary disclosure of trade secrets can "jeopardize if not destroy a party's property rights." *Graham v. Dist. Court of Seventh Judicial Dist., Oklahoma Cty.*, 1976 OK 49, 548 P.2d 1010, 1012 (citation omitted). The court is therefore obligated to protect information as a trade secret "by reasonable means," which would include upholding an established protective order. *Id.* Oklahoma's Uniform Trade Secret Act defines a "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

- a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

78 O.S. § 86.<sup>4</sup> This information derives value based upon secrecy and protection from public dissemination. Therefore, the State of Oklahoma provides it ample protection from disclosure.

**B. Specific Testimony and Exhibits Contested by the State**

Because the protections within the Oklahoma Trade Secret Act and § 3226 are clear, Oklahoma case law applying these provisions is scarce. Federal courts have, however, considered similar categories of information and found them to be protected. These issues often come up in the context of sealing documents prior to filing, but those instances provide insight into the categories of documents courts hold must be protected from public disclosure. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>4</sup> Similar to Oklahoma's Uniform Trade Secret act, the Freedom of Information Act ("FOIA") also exempts all "trade secrets and commercial or financial information obtained from a person and privileged or confidential" 5 U.S.C.A. § 552(b)(4).

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]

**III. CONCLUSION**

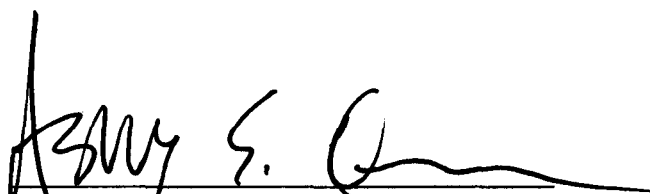
Under both the Protective Order and the standards established within 12 O.S. § 3226 (or the identical Federal counterpart on which it is based), the materials at issue here must be kept confidential. Each category of the deposition transcript designated as confidential represents confidential information and/or trade secrets generated by the Defendants. These designations relate to real, protected, and economically-valuable commercial and trade secret information.

Defendants maintain this information as confidential and ask the court to continue that protection as is expressly contemplated in the Court's March 20, 2018 Protective Order.

For the foregoing reasons, Defendants respectfully request that this Court order the designations to be upheld as confidential under the Protective Order, and Grant Defendants' Motion for a Protective Order to Preserve the Confidential Status of John Hassler's Deposition Designations.

Dated: October 25, 2018.

By:



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Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was emailed this 25th day of October, 2018, to the following:

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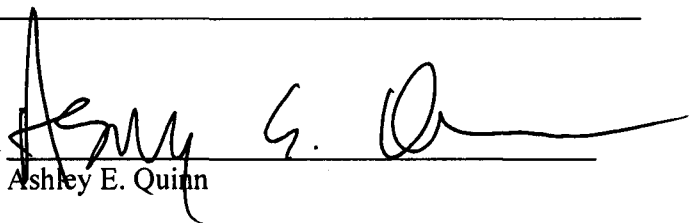
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---

  
Ashley E. Quinn



**EXHIBIT 1**

Deposition Excerpts from  
John Hassler Deposition of 8/29/18

**FILED UNDER SEAL**







# Morgan Lewis

**Mark Fiore**

Associate  
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September 24, 2018

**VIA ELECTRONIC MAIL**

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Lloyd "Trey" Nolan Duck, III  
Andrew Pate  
Nix Patterson & Roach LLP  
512 N Broadway Avenue, Suite 200  
Oklahoma City, OK 73102

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

Re: Oklahoma ex rel. Hunter v. Purdue Pharma, LP, CJ-2017-816

Dear Counsel:

As you know, we represent Teva Pharmaceuticals USA, Inc. and Cephalon, Inc. ("Teva") and Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. (the "Actavis Generic Entities") (collectively, the "Teva Defendants") in the above matter. Pursuant to Paragraph 5 of the Amended Protective Order, the Teva Defendants designate the following portions of the August 29, 2018 Deposition of John Hassler as containing Confidential Information subject to the Amended Protective Order,

[REDACTED]

Pursuant to Paragraph 2 of the Amended Protective Order, this testimony, reflecting "confidential research, development or commercial information," as well as information "that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use," should be designated as Confidential.

**EXHIBIT**  
**2**

**Morgan, Lewis & Bockius LLP**

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Bradley E. Beckworth  
Michael Burrage  
September 24, 2018  
Page 2

The Teva Defendants reserve their right to amend this designation notice.

Sincerely,

*s/Mark A. Fiore*

Mark Fiore

MF

c: Counsel of record





\* 1 0 3 9 3 7 8 1 5 1 \*

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

IN THE DISTRICT COURT OF CLEVELAND COUNTY FILED  
STATE OF OKLAHOMA

MAR 20 2018

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

In the office of the  
Court Clerk MARILYN WILLIAMS

Plaintiff, )

vs. )

Case No. CJ-2017-816  
Judge Thad Balkman

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

Defendants. )

**PROTECTIVE ORDER**

In recognition of long established Oklahoma jurisprudence that "the plaintiff's right to prepare for trial and to avoid delay in the evidentiary process should be *balanced*



against the defendant's legitimate claim to privacy,"<sup>1</sup> the parties in this action have conferred and agreed to enter into a Protective Order in this matter that provides for procedures regarding the exchange, use and filing of confidential information under Oklahoma law. Here, both parties have a right to prepare for trial in an expeditious manner with legitimate claims to privacy protected. While the parties have agreed to the entry of a protective order, they do not agree on its scope and other terms. Accordingly, and considering the unique circumstances of this case, it is ORDERED:

**1. Scope.**

**(a) Generally.** All materials produced or adduced in the course of discovery in this Action including initial or amended disclosures, responses to interrogatories and requests for admission, responses to discovery requests, deposition testimony and exhibits, documents, and testimony, data, and other information produced, adduced and/or disclosed ("Discovery Material"), shall be subject to this Order as defined below. This Order is subject to the Oklahoma Rules of Civil Procedure on matters of procedure and calculation of time periods.

**(b) Party Definitions.** A Party (or, if applicable, non-party) producing information covered by this Order shall be referred to as the "Designating Party." Any Party (or, if applicable, non-party) receiving Discovery Material covered by this Order shall be referred to as the "Receiving Party."

**(c) Derivative Material, Compilations.** The protections conferred by this Order cover Discovery Material designated as Confidential or Highly Confidential – Attorneys' Eyes Only and also (1) any information copied or extracted from such Discovery Material;

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<sup>1</sup> *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶24, 944 P.2d 304, 311.

and (2) all copies, excerpts, summaries, or compilations of such Discovery Material.

**(d) Material Not Covered.** The protections conferred by this Order do not cover any information that is in the public domain or that is not Discovery Material as defined in Paragraph 1(a) of this Order.

**(e) Designations by a Non-Party.** Any non-Party to this Action may designate any Discovery Material it produces as Confidential or Highly Confidential – Attorneys' Eyes Only pursuant to the terms of this Order, so long as the Party reasonably and in good faith believes the information is properly so designated. In so designating the non-party and the Parties agree that the restrictions and terms of this Order shall be applicable to all such Discovery Material to the same extent as Discovery Material produced by a Party. The non-Party producing Discovery Material must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**2. Confidential or Highly Confidential Information.** As used in this Order, "Confidential or Highly Confidential Information" means information designated as "Confidential" or "Highly Confidential" by the Designating Party that falls within one or more of the following categories: (a) information prohibited from disclosure by any applicable laws and regulations; (b) confidential research, development or commercial information (see 12 O.S. § 3226(C)(1)(g)); (c) trade secret information, including a formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are

reasonable under the circumstances to maintain its secrecy; (d) medical or other "Protected Health Information" concerning any individual that is subject to the entry of a separate order pursuant to the Health Insurance Portability and Accountability Act; (e) personal identity information; (f) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; or (g) personnel or employment records of a person who is not a party to the case.

**3. Highly Confidential – Attorneys' Eyes Only Information.** As used in this Order, "Highly Confidential – Attorneys' Eyes Only Information" means information that (1) meets the definition of Confidential Information pursuant to Paragraph 2 above; and (2) the Designating Party in good faith believes could reasonably result in commercial, financial, or business injury to the Designating Party (other than injury to the Designating Party's position in this Action) in the event of the disclosure, dissemination, or use by or to any of the persons not enumerated in Paragraph 7(c).

#### **4. Designation**

**(a)** The Designating Party may designate a document or other Discovery Material at the time of production as Confidential Information or Highly Confidential – Attorneys' Eyes Only Information for protection under this Order by placing or affixing the words "Confidential," "Highly Confidential – Attorneys' Eyes Only," "Subject to Protective Order," or similar language respectively on each page of the document or material and on all copies in a manner that will not interfere with the legibility of the document or material. The designation of Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information is a certification by an attorney or a party appearing pro se that the

Discovery Material contains Confidential or Highly Confidential – Attorneys’ Eyes Only Information as defined in this Order.

(b) As used in this Order, “copies” includes electronic images, electronic devices, duplicates, extracts, summaries or descriptions that contain the Confidential or Highly Confidential – Attorneys’ Eyes Only Information. Electronic media (such as CDs and DVDs) shall, at the time of production, be designated “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by affixing a label to such media. In the case of initial or amended disclosures, interrogatory answers, responses to requests for admissions, and other similar documents providing information, the designation shall be made by means of a statement in the relevant document specifying that the document or specific parts thereof are designated Confidential or Highly Confidential – Attorneys’ Eyes Only.

(c) Any copies that are made of any documents marked Confidential or Highly Confidential – Attorneys’ Eyes Only shall also be so marked. Indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential or Highly Confidential – Attorneys’ Eyes Only Information are not required to be marked.

**5. Depositions.** Deposition testimony is protected by this Order only if designated as Confidential or Highly Confidential – Attorneys’ Eyes Only on the record at the time the testimony is taken or, within fourteen (14) days after receiving a certified copy of the transcript from the court reporter, by serving a Notice of Designation on all parties of record identifying the specific portions of the transcript that are so designated. Further, any designation of deposition testimony as Confidential or Highly Confidential – Attorneys’ Eyes Only shall state the basis for such designations and designate by reference to the



questions and answers, as applicable. All depositions shall be treated as Confidential or Highly Confidential – Attorneys' Eyes Only until the expiration of the 14-day period to make a written confidentiality designation.

**6. Non-Documentary and Non-Testimonial Material.** Non-documentary and non-testimonial material, such as oral statements, shall be designated as Confidential Information or Highly Confidential – Attorneys' Eyes Only if and as appropriate at the time of disclosure or in writing within fourteen (14) days of their disclosure.

**7. Protection of Confidential Material.**

**(a) General Protections.** Confidential Information and Highly Confidential – Attorneys' Eyes Only Information shall not be used or disclosed by the Parties, counsel for the Parties, or any other persons identified in subparagraphs (b) and (c) for any purpose whatsoever other than in this Action and any appeal thereto, except as the Designating Party may agree in writing.

**(b) Limited Third-Party Disclosures of Confidential Information.** The Receiving Party and counsel for the Receiving Party shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set forth in subparagraphs (1)-(11). Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

**(1) Counsel.** Counsel for the Parties and employees and consultants of counsel who have responsibility for the Action. For purposes of this Order, the Office of the Oklahoma Attorney General is included in the definition of Counsel for the Parties unless doing so could render any Confidential Information subject to public disclosure;

**(2) Parties.** Individual Parties and present or former officers, directors, and employees of a Party, to the extent counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Action and provided that if a former employee is shown documents prepared after the date of his or her departure that such person(s) have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

**(3) The Court and its Personnel;**

**(4) Court Reporters and Recorders.** Court reporters, recorders, and other personnel engaged for transcribing or videotaping testimony in this Action ("Court Reporters and Recorders");

**(5) Contractors.** Those persons specifically engaged for the purpose of making copies of Discovery Material or organizing or processing Discovery Material, including outside vendors hired to process electronically stored documents, copying services, litigation support services, translation services, graphics and design services, and document review and handling services, as well as investigators, trial consultants, jury consultants, and mock jurors, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound ("Contractors");

**(6) Experts.** Testifying experts and consulting experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action subject to the provisions of Paragraph 8 below and only after such persons have

completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound (“Experts”);

**(7) Witnesses at Depositions.** In connection with their depositions, witnesses in this Action to whom disclosure is reasonably necessary and after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. Witnesses shall not retain a copy of documents containing Confidential or Highly Confidential – Attorneys’ Eyes Only Information, except witnesses may receive a copy of all exhibits marked at their depositions solely in connection with review of the transcripts, and must return all copies after their review. Pages of transcribed deposition testimony or exhibits to depositions that are properly designated as Confidential Information or Highly Confidential – Attorneys’ Eyes Only pursuant to the process set out in this Order may not be disclosed to anyone except as permitted under this Order;

**(8) Author, Sender or Recipient.** Any non-Party witnesses who authored, modified, sent or received the Discovery Material, provided that the non-Party witnesses shall only be shown the Discovery Material authored, sent, or received by the witness that counsel for the Receiving Party determines in good faith that the person’s assistance is reasonably necessary to the conduct of this Action, and provided that such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

**(9) Neutrals.** Neutrals, if any, including but not limited to special masters, mediators, arbitrators, or other third parties appointed by the Court or jointly

retained by the Parties for settlement purposes or resolution of discovery or other disputes in this Action and their necessary staff, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound (“Special Masters”);

**(10) Others by Consent.** Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered; and

**(11) Law Enforcement Agencies.** To the extent the Receiving Party believes it is allowed by state or federal law or regulation to disclose Discovery Material to a state or federal law enforcement agency empowered to investigate matters or prosecute laws, regulations or rules related to the marketing, distribution, and sale of opioid products; provided that Confidential or Highly Confidential – Attorneys’ Eyes Only Information shall not be disclosed to any such agency if doing so would render any such information subject to public disclosure. Any law enforcement agency with which Discovery Material is shared in accordance with this paragraph must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**(c) Limited Third-Party Disclosures of Highly Confidential – Attorneys’ Eyes Only Information.** The Receiving Party and counsel for the Receiving Party shall not disclose or permit the disclosure of any Highly Confidential – Attorneys’ Eyes Only Information to any third person or entity except as set forth in subparagraphs (1)-(5). Subject to these requirements, the following categories of

persons may be allowed to review Highly Confidential – Attorneys’ Eyes Only Information:

**(1) Counsel.** All Counsel for the Parties in this Action and employees and consultants of counsel who have responsibility for the Action. For purposes of this Order, the Office of the Oklahoma Attorney General is included in the definition of Counsel for the Parties unless doing so could render any Highly Confidential – Attorneys’ Eyes Only Information subject to public disclosure;

**(2) Court and its Personnel, Court Reporters and Recorders, Contractors, Experts, and Special Masters;**

**(3) Witnesses at Depositions.** In connection with their depositions, witnesses in this Action to whom disclosure is reasonably necessary, only when (1) the witness is or was employed by the Producing Party of the Discovery Material at issue, or (2) when the witness authored, sent, modified or received the Discovery Material in the ordinary course of business. The witness shall only be shown the specific portions of the Discovery Material to which access is reasonably necessary, with all other designated material redacted, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. Witnesses shall not retain a copy of documents containing Highly Confidential – Attorneys’ Eyes Only Information, except witnesses may receive a copy of all exhibits marked at their depositions solely in connection with review of the transcripts, and must return all copies after their review. Pages of transcribed deposition testimony or exhibits to depositions that are properly designated as Highly Confidential – Attorneys’ Eyes Only

Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order. In no event will a current or prior officer, director, or employee, or affiliate of one defendant be shown the Highly Confidential – Attorneys' Eyes Only Discovery Material of another defendant unless the witness authored, sent, modified or received the Discovery Material in the ordinary course of business.

**(4) Others by Consent.** Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered; and

**(5) Law Enforcement Agencies.** To the extent the Receiving Party believes it is allowed by state or federal law or regulation to disclose Discovery Material to a state or federal law enforcement agency empowered to investigate matters or prosecute laws, regulations or rules related to the marketing, distribution, and sale of opioid products; provided that Confidential or Highly Confidential – Attorneys' Eyes Only Information shall not be disclosed to any such agency if doing so would render any such information subject to public disclosure. Any law enforcement agency with which Discovery Material is shared in accordance with this paragraph must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**(d) Control of Documents.** Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential and Highly Confidential – Attorneys' Eyes Only Information. Counsel to the Party employing, examining, or interviewing witnesses shall be responsible for obtaining the

executed Acknowledgment of Understanding and Agreement to Be Bound, shall maintain the originals of that form for a period of three years after the termination of the case, and shall serve it on counsel upon request.

**8. Disclosure to Experts and Expert Consultants.** Confidential or Highly Confidential – Attorneys’ Eyes Only Information may be provided to experts and expert consultants assisting counsel to the Parties in this Action only to the extent necessary for the expert or expert consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution or defense of this Action and provided that the expert or expert consultant is using said Confidential or Highly Confidential – Attorneys’ Eyes Only Information solely in connection with the rendition of expert services in this Action and is not currently a partner, director, officer, employee, or other affiliate of the Designating Party. Nothing herein shall be construed as a waiver of any objection to retaining a former partner, director, officer, employee or other affiliate of the Designating Party to serve as a retained expert or expert consultant in this Action.

**9. Limitations.** Entering into, agreeing to, producing, or receiving Confidential or Highly Confidential – Attorneys’ Eyes Only Information pursuant to this Order, or the taking of any action pursuant to this Order shall not:

(a) Limit or restrict a Party’s handling and use of its own Confidential or Highly Confidential – Attorneys’ Eyes Only Information that has been designated as such solely by that Party.

(b) Prejudice in any way the rights of any Party to petition the Court to seek additional protection for Discovery Material for any reasons not specifically addressed by this Order;

(c) Prejudice in any way the rights of any Party to object to the relevancy, authenticity, or admissibility into evidence of any document or other information subject to this Order, or otherwise constitute or operate as an admission by any Party that any particular document or other information is or is not relevant, authentic, or admissible into evidence at any deposition, at trial, or in a hearing; or

(d) Prevent the interested Parties from agreeing, in writing, to alter or waive the provisions or protections of this Order with respect to any particular document, information, or person.

**10. Inadvertent Failure to Designate and Mis-Designation.** An inadvertent failure to designate Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information or mis-designation of Discovery Material does not, standing alone, waive the right to designate or re-designate the Discovery Material or constitute a waiver of a claim of confidentiality. A failure to designate or correctly designate Discovery Material may be corrected by prompt written notice upon discovery of such failure, accompanied by appropriately designated substitute copies of the Discovery Material within thirty (30) days of disclosure. No Party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information, even where the failure to so designate was inadvertent and where the material is subsequently designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information. If a party designates or re-designates Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information after it was initially produced, the Receiving Party, on notification of the designation and receipt of substitute



copies, must make a reasonable effort to promptly destroy or return to the Designating Party all copies of such non-designated or mis-designated Discovery Material and shall treat the substitute Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information as appropriate as if it had been initially so designated. If the Receiving Party disclosed Discovery Material that was subsequently designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information, it shall in good faith assist the Designating Party in retrieving such Discovery Material from all recipients not entitled to access to such Discovery Material and prevent further disclosures except as authorized under the terms of this Order.

**11. Inadvertent Production of Privileged Information.**

**(a) Generally.** Any inadvertent disclosure of Discovery Material subject to a claim of attorney client privilege, attorney work product protection, common interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information") will not in any way prejudice or otherwise constitute a waiver of, or estoppel as to, such Privileged Information or generally of such privilege. As used herein, "Privileged Information" means any documents, materials, or information that the producing party reasonably and in good faith believes to be subject to the attorney-client privilege, attorney work-product privilege, and/or any other applicable privilege available to the Parties and/or third parties under Oklahoma law.

**(b) Notice of Inadvertent Production.** If a Party or non-Party discovers that it has inadvertently produced Privileged Information, it shall promptly notify the Receiving Party of the inadvertent production in writing, shall identify the inadvertently produced Privileged Information by Bates range where possible, and may demand that the Receiving Party

return or destroy the Privileged Information. In the event that a Receiving Party receives information that it believes is subject to a good faith claim of privilege by the Disclosing Party, the Receiving Party shall immediately refrain from examining the information and shall promptly notify the Disclosing Party in writing that the Receiving Party possesses potentially Privileged Information. The Disclosing Party shall have fourteen (14) business days to assert privilege over the identified information. If the Disclosing Party does not assert a claim of privilege within the fifteen-day period, the information in question shall be deemed non-privileged.

**(c) Claw Back of Privileged Information.** If the Designating Party has notified the Receiving Party of inadvertent production, or has confirmed the inadvertent production called to its attention by the Receiving Party, the Receiving Party shall within fourteen (14) days of receiving such notification or confirmation: (1) destroy or return to the Designating Party all copies or versions of the inadvertently produced Privileged Information requested to be destroyed returned or destroyed; (2) delete from its work product or other materials any quoted or paraphrased portions of the inadvertently produced Privileged Information; (3) ensure that inadvertently produced Privileged Information is not disclosed in any manner to any Party or non-Party. Notwithstanding the above, the Receiving Party may segregate and retain one copy of the clawed back information solely for the purpose of disputing the claim of privilege. The Receiving Party shall not use any inadvertently produced Privileged Information in connection with this Action or for any other purpose other than to dispute the claim of privilege. The Receiving Party may file a motion pursuant to 12 O.S. § 3226(B)(5)(b) disputing the claim of privilege and seeking an order compelling production of the material at issue; the Disclosing Party

may oppose any such motion, including on the grounds that inadvertent disclosure does not waive privilege. If the Receiving Party disclosed Discovery Material that was subsequently designated as Privileged Information, it shall in good faith assist the Designating Party in retrieving such Discovery Material from all recipients not entitled to access to such Discovery Material and prevent further disclosures except as authorized under the terms of this Order.

**12. Unauthorized Disclosure.** If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential or Highly Confidential – Attorneys’ Eyes Only Information to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify the Designating Party in writing of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Confidential or Highly Confidential – Attorneys’ Eyes Only Information, (c) inform the person or persons to whom unauthorized disclosures were made of this Order, and (d) request such person or persons complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

**13. Filing of Confidential or Highly Confidential – Attorneys’ Eyes Only Information.** Any party wishing to file a document designated as Confidential or Highly Confidential – Attorneys’ Eyes Only Information in connection with a motion, brief or other submission to the Court, or file a motion, brief, or other submission containing Confidential or Highly Confidential – Attorneys’ Eyes Only Information, may file such motion, brief or other submission to the Court under seal pursuant to 12 O.S. § 3226(C)(2) and 51 O.S. §§ 24A.29-30 and must also file a public version of such motion, brief or other submission to the Court wherein all Confidential or Highly Confidential – Attorneys’ Eyes Only

Information is redacted. The Designating Party shall have the opportunity to join in a motion to file under seal and file supplemental briefing in support of the motion.

**14. Challenges by a Party to Designation as Confidential or Highly Confidential – Attorneys’ Eyes Only Information.** The designation of any material or document as Confidential or Highly Confidential – Attorneys’ Eyes Only Information is subject to challenge by any Party. The following procedure shall apply to any such challenge.

**(a) Meet and Confer.** A Party challenging the designation of Confidential or Highly Confidential – Attorneys’ Eyes Only Information must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party. In conferring, the challenging Receiving Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. If the Receiving Party believes that portion(s) of a document are not Confidential or Highly Confidential – Attorneys’ Only Information, it will identify the specific information that it believes is not confidential and the Designating Party will review and respond, as laid out in paragraph (b) below, with respect to that specific information.

**(b) Judicial Intervention.** If the Parties are not able to reach an agreement pursuant to the provisions set forth in the preceding paragraph, the Designating Party shall have seven (7) days after the meet and confer to file a motion with the Court seeking protection under this Order and must set forth in detail the basis for retention of the confidentiality designation. Each such motion must be accompanied by a competent

declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The Objecting Party must thereafter file a response setting forth in detail the basis for such Objection within seven (7) days of service of the Motion. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all parties shall continue to treat the materials as Confidential or Highly Confidential – Attorneys' Eyes Only Information, as appropriate, under the terms of this Order. If a Party fails to file such motion during the time frames set forth in this paragraph, the challenged document(s) at issue will no longer be entitled to protection and such designation may be disregarded.

**15. Action by the Court.** Applications to the Court for an order relating to materials or documents designated Confidential or Highly Confidential – Attorneys' Eyes Only Information shall be by motion. Nothing in this Order or any action or agreement of a Party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

**16. Use of Confidential or Highly Confidential – Attorneys' Eyes Only Information at Trial or Hearings.** A Party that intends to present Confidential or Highly Confidential – Attorneys' Eyes Only Information at a hearing shall bring that issue to the Parties' attention so that the Parties may meet and confer to determine whether to stipulate to the handling of the information as appropriate, including whether to apply to the Court for any relief. The Court may thereafter make such orders, including any stipulated orders, as are necessary to govern the use of Confidential Information or Highly Confidential – Attorneys' Eyes Only Information at the hearing. The use of any

Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information at trial shall be governed by a separate stipulation and/or court order.

**17. Confidential or Highly Confidential – Attorneys’ Eyes Only Information Requested by Third Party; Procedure Following Request.**

(a) If any person receiving Discovery Material covered by this Order (the “Receiver”) is served with a subpoena, a request for information, or any other form of legal process that would compel disclosure of any Confidential or Highly Confidential – Attorneys’ Eyes Only Information that was produced by a person or entity other than the Receiver (“Request”), the Receiver must so notify the Designating Party, in writing, immediately and in no event more than three business days after receiving the Request. Such notification must include a copy of the Request.

(b) The Receiver also must immediately inform the party who made the Request (“Requesting Party”) in writing that some or all the requested material is the subject of this Order. In addition, the Receiver must deliver a copy of this Order promptly to the Requesting Party.

(c) The purpose of imposing these duties is to alert the Requesting Party to the existence of this Order and to afford the Designating Party in this case an opportunity to try to protect its Confidential or Highly Confidential – Attorneys’ Eyes Only Information. The Designating Party shall bear the burden and the expense of seeking protection of its Confidential or Highly Confidential – Attorneys’ Eyes Only Information, and nothing in these provisions should be construed as authorizing or encouraging the Receiver in this Action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the Receiver has in its possession, custody or control

Confidential or Highly Confidential – Attorneys’ Eyes Only Information by any other Party in this Action.

**(d) Materials that have been designated as Confidential or Highly Confidential-Attorneys’ Eyes Only shall not be provided or disclosed to any third party in response to a request under the Oklahoma Open Records Act or any similar federal, state or municipal law (collectively, the “Public Disclosure Laws”), and are exempt from disclosure pursuant to 51 O.S. § 24A.12, and may be exempt under other provisions. If the Oklahoma Attorney General receives a request for so designated Discovery Materials pursuant to the Oklahoma Records Act, 51 O.S. §§ 24A.1-24A.30, it shall (i) provide a copy of this Order to the requesting party and inform it that the requested materials are exempt from disclosure and that the Oklahoma Attorney General is barred by this Order from disclosing them, and (ii) promptly inform the party that has produced the requested material that the request has been made, identifying the name of the requesting party and the particular materials sought. The restrictions in this paragraph shall not apply to materials that (i) the Designating Party expressly consents in writing to disclosure; or (ii) this Court has determined by court order to have been improperly designated as Confidential or Highly Confidential-Attorneys’ Eyes Only Discovery Material. The provisions of this section shall apply to any entity in receipt of Confidential or Highly Confidential-Attorneys’ Eyes Only Discovery Material governed by this Order. Nothing in this Order shall be deemed to (1) foreclose any party from arguing that Discovery Material is not a public record for purposes of the Oklahoma Open Records Act or Public Disclosure Laws, (2) prevent any party from claiming any applicable exemption to the Oklahoma Open Records Act or**

Public Disclosure Laws; or (3) limit any arguments that a party may make as to why Discovery Material is exempt from disclosure.

**18. Information Subject to Existing Obligation of Confidentiality.** In the event that a Party is required by a valid discovery request to produce any information held by it subject to an obligation of confidentiality in favor of a third party, the Party shall, promptly upon recognizing that such third party's rights are implicated, provide the third party with a copy of this Order and inform the third party in writing (i) of the Party's obligation to produce such information in connection with this Action and of its intention to do so, subject to the protections of this Order; (ii) of the third party's right within fourteen (14) days to seek further protection or other relief from the Court if, in good faith, it believes such information to be confidential under the said obligation and either objects to the Party's production of such information or regards the provisions of this Order to be inadequate; and (iii) seek the third party's consent to such disclosure if it does not plan to object. Thereafter, the Party shall refrain from producing such information for a period of twenty-one (21) days in order to permit the third party an opportunity to seek relief from the Court, unless the third party earlier consents to disclosure. If the third party fails to seek such relief within fourteen (14) days, the Party shall promptly produce the information in question subject to the protections of this Order.

**19. Obligations on Conclusion of Litigation.**

**(a) Order Continues in Force.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

**(b) Obligations at Conclusion of Litigation.** Within sixty (60) days after dismissal or entry of final judgment not subject to further appeal, all Confidential and Highly



Confidential – Attorneys' Eyes Only Information under this Order, including copies as defined in Paragraph 4(b) above, shall be destroyed or returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; and (2) as to documents bearing the notations, summations, or other mental impressions of the Receiving Party, that Party elects to destroy the documents and certifies to the producing party that it has done so. Nothing in this paragraph shall modify the State's obligations under Paragraph 17 of this Order. It is also agreed and understood that the confidential business information at issue is not of historical value and these records are not of the type to be provided to the State archivist.

**(c) Retention of Work Product and one set of Discovery Material.**

Notwithstanding the above requirements to return or destroy documents, State's counsel and Defendants' outside counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential or Highly Confidential – Attorneys' Eyes Only Discovery Material so long as that work product does not duplicate verbatim substantial portions of Confidential or Highly Confidential--Attorneys' Eyes Only Information, and (2) one complete set of all documents filed with the Court including those filed under seal, deposition and trial transcripts, and deposition and trial exhibits. Any retained Confidential or Highly Confidential – Attorneys' Eyes Only Discovery Material shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information or Highly Confidential – Attorneys' Eyes Only Information.

**20. Order Subject to Modification.** This Order shall be subject to modification by

the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

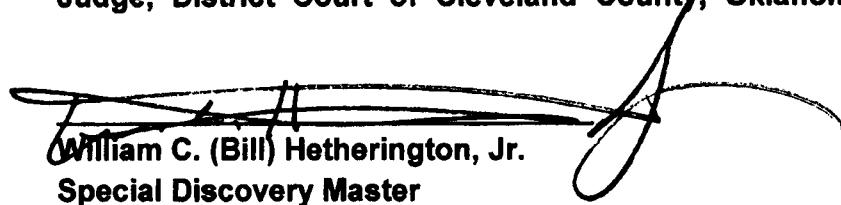
**21. No Prior Judicial Determination.** This Order is entered based on the representations and agreements of the Parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any Discovery Material designated as Confidential or Highly Confidential – Attorneys’ Eyes Only Information is entitled to protection under 12 O.S. § 3226(C) or otherwise until such time as the Court may rule on a specific document or issue.

**22. Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

ENTERED THIS 20<sup>th</sup> DAY OF MARCH, 2018:



**Thad Balkman**  
Judge, District Court of Cleveland County, Oklahoma



**William C. (Bill) Hetherington, Jr.**  
Special Discovery Master

**ATTACHMENT A**

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

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order entered in the above-captioned action on \_\_\_\_\_, 2018, and attached hereto, understands the terms. The undersigned submits to the jurisdiction of the District Court of Cleveland County of the State of Oklahoma in matters relating to

the Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as Confidential or Highly Confidential--Attorneys' Eyes Only Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties of contempt of court.

**Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Employer:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_





NIX PATTERSON, LLP

Drew Pate  
Attorney at Law  
E-mail: dpate@nixlaw.com

October 9, 2018

**ELECTRONIC MAIL**

Harvey Bartle IV  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Re: *Oklahoma ex rel. Hunter v. Purdue Pharma, LP*, CJ-2017-816

Harvey,

We have reviewed the designations provided for John Hassler. Under the Amended Protective Order, we are challenging Teva's designations to the following pages and lines:



Teva's designations, as set forth above, do not meet the definition of the term "Confidential or Highly Confidential Information." Please advise if Teva will withdraw the designations or, if not, when you are available to meet and confer on this issue.

Sincerely,

Drew Pate

