IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	
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.,**	**Special Master:** **William Hetherington**
Defendants.	

THE STATE'S RESPONSE TO
PURDUE'S 11/13/18 MOTION FOR CLARIFICATION

The State offered a fully prepared witness for the Department of Corrections. That witness testified for over five hours on September 5, 2018. Nevertheless, Purdue filed a motion to compel claiming the witness was not adequately prepared. The State did not agree. However, as the State told the Court at the hearing, the State agreed to provide three additional witnesses to answer additional questions and to provide the custodial files for those witnesses. Exhibit A, October 18,

2018 hearing transcript at 116:2-8. The Court adopted the State's agreement in its Order on that motion. But rather than take those depositions, Purdue filed a sham Motion to Clarify demanding an additional deposition of an Oklahoma Department of Corrections ("DOC") representative, in addition to the three DOC fact depositions this Court already ordered.

The Court's October 22, 2018 Order is clear: The State will produce for depositions the three individuals from DOC identified in the Court's Order. That is exactly what the State said it would do and what the State will do. No clarification is needed.

I. ARGUMENT

Purdue's Motion for Clarification is a sham. Purdue repeatedly gets caught abusing the discovery process to create delay. So, every time it takes a deposition of the State of Oklahoma, Purdue files a fake motion.[1] Purdue's filings are strategic: More motions mean more delay. This conduct has to stop.

The Court's October 22, 2018 Order addressed Purdue's two related motions concerning testimony from DOC. As the State showed the Court in briefing and oral argument, Clint Castleberry testified knowledgeably and accurately on behalf of DOC as to numerous opioid policies and procedures at DOC. *See* Exhibit B, State's Omnibus Response to Purdue's Bogus Blunderbuss Retaliatory Discovery Motions at 7 (Oct. 11, 2018). For those questions Mr. Castleberry did not know the answers to, he identified a knowledgeable witness at DOC who would

[1] Indeed, on November 13th, Purdue filed a near-identical sham Motion to Compel additional corporate testimony from the State related to the deposition of Jessica Hawkins. *See* Exhibit C, Purdue's Motion to Compel Corporate Witness Testimony (Nov. 13, 2018). This is despite the fact that Mrs. Hawkins prepared for over 100 hours and testified for 12 hours over 2 days. *See* State's Response to Purdue's Motion to Compel Corporate Witness Testimony (Nov. 20, 2018). Mrs. Hawkins answered Purdue's questions in abundant detail. That Purdue did not like the answers provides no basis for their sham motions.

know the answer. *Id.* at 10. The individuals Mr. Castleberry identified were Joel McCurdy, Robin Murphy and Nate Brown.

Following the deposition, the State immediately provided dates for each of these individuals. Purdue declined those dates on the basis that it needed custodial files prior to each respective deposition. As was said at the hearing, the State ***agreed*** to do just that. Ex. A at 116:2-8. Nevertheless, Purdue filed a sham motion to compel, asking the court to compel additional testimony.

The Court's October 22, 2018 Order reflected the State's agreement to make three individual witnesses available and provide their custodial files. Indeed, the Court held:

> Defendant's motion is **Sustained** and Defendants are allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are **Ordered** produced to Defendants in time for preparation.

Exhibit D, October 22, 2018 Order at 5-6.

The Court's Order could not be any more clear. The Order requires exactly what it says: that the State present these specific individual witnesses for deposition and for the State to produce their custodial files beforehand—which is exactly what the State agreed to do at the hearing and which is exactly what the Court ordered.

Importantly, the Court's Order did not say that Mr. Castleberry was unprepared or that the State must present another corporate representative on behalf of the DOC.

Nevertheless, arguing the Court's order needs "clarification," Purdue demands additional corporate testimony from DOC. This is not the first time Purdue has attempted to hi-jack this Court's orders. Purdue's Counsel's sent several aggressive emails to the Court telling this Court what this Court meant to do when the Court entered its order regarding corporate representative depositions. Counsel for Purdue's agent, Stephen Ives—Counsel who Purdue is obligated to pay

for—also aggressively told this Court what this Court's job is and what this Court must do. Now, Purdue is once again telling this Court what this Court really meant to say in its Order. Enough is enough.

Like its initial Motion to Compel, Purdue's Motion for Clarification ***again*** grossly misstates Mr. Castleberry's testimony. Purdue falsely claims that: "The State's designated witness, Clint Castleberry, was only prepared to testify as to the mere *existence* of standards, practices, and procedures, and lacked any knowledge as to their origin, revision, implementation or operation." Purdue Motion for Clarification at 1 (emphasis in original). Not true. Mr. Castleberry was adequately prepared. The Court's Order made no findings or mention to the contrary.

As the State showed in its Response, Mr. Castleberry testified in detail to the current versions of each of these operating procedures and MSRMs and testified that many of these have remain unchanged since their creation. *See* Ex. B at 9. To claim that Mr. Castleberry testified only "to the mere *existence* of standards, practices, and procedures, and lacked any knowledge as to their origin, revision, implementation or operation" is false. Misleading. And just wrong.

II. CONCLUSION

The State respectfully requests that the Court deny Purdue's motion. Just as the Court ordered, and the State already agreed to do on the record, the State will produce the custodial files for these witnesses in advance of these depositions and the State will make Joel McCurdy, Robin Murphy and Nate Brown available for deposition. Nothing more is or was required.

DATED: November 20, 3018

Respectfully submitted,

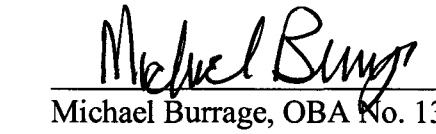

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EXHIBIT A

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS

HAD ON OCTOBER 18, 2018

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR., RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

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consistently throughout the day.

And the defendants noticed those depositions up for three of those people from the Department of Corrections. We gave them dates immediately. They never took those depositions.

Now, this does blend with the other motion you were talking about, the custodial files. That is who the defendants now want independent custodial file productions for. And we are working to get the agency's custodial files as a whole.

They never asked specifically for those individual custodial files until they asked for the depositions, so in a sense, they're trying to get an end around for RFPs, just using that as a way to get more documents. Had they asked for it previously, we would have already been on top of it.

We are working to get the agency custodial files completed in the rolling production process that we've said we would do. But we can't start just picking off individual custodial files in the middle of the process. So we can address that again if you want to take it up later, but I just want to kind of --

THE COURT: No, that helps. Thank you.

MR. LEONOUDAKIS: Okay. Thank you, your Honor.

THE COURT: Anything else?

MR. ALLAN: No, your Honor. Thank you.

THE COURT: Thank you very much.

All right. No. 7, Purdue's motion and request to compel documents. And let me get that up here. Hold on a second.

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

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and Official Court Reporter for Cleveland County, do hereby certify that the foregoing transcript in the above-styled case is a true, correct, and complete transcript of my shorthand notes of

the proceedings in said cause.

I further certify that I am neither related to nor attorney for any interested party nor otherwise interested in the event of said action.

Dated this 29th day of October, 2018.

_____

ANGELA THAGARD, CSR, RPR

EXHIBIT B

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
OCT 11 2018
In the office of the
Court Clerk MARILYN WILLIAMS

THE STATE'S OMNIBUS RESPONSE TO PURDUE'S
BOGUS BLUNDERBUSS RETALIATORY DISCOVERY MOTIONS

Corporate felon Purdue, federally convicted for lying about its products, is mad. Purdue is mad it got sued. It is mad it lost a motion to dismiss. It is mad it lost its fraudulent removal attempt. It is mad it got caught lying. Again—this time about Rhodes. And it is mad that the State refuses to delay this case or be forced to participate in the MDL circus.

So, as has sadly become the norm, Purdue has attempted to retaliate with bogus motions. The State won a Motion to Compel, so Purdue filed its own. Purdue was ordered—twice—to appear for a deposition, so it retaliated by refusing to work with the State in rescheduling a different deposition. The State won a Motion to Show Cause. So, Purdue has retaliated with its own, along with three other bogus discovery motions that are completely unfounded. These four motions the State is responding to are as follows:

- **(Second) Motion to Compel the Production of Documents**

Purdue's Second Motion for Production of Documents is, again, a waste of time, as the State has already stated it would produce most of the documents requested. The remaining documents are privileged and not discoverable.

- **Motion to Compel Witness Testimony**

Purdue's Motion to Compel Witness Testimony grossly misstates the testimony of the Department of Correction's representative. The witness was fully prepared. And the witness answered fully. Purdue just failed to ask the witness the right questions.

- **Motion to Compel Production of Custodial Files in Advance of Depositions**

Purdue's Motion to Compel Production of Custodial Files is no better. That Motion is not based on any rule or law. Instead, it is merely a request for the State to prioritize certain types of documents over others.

- **Motion to Show Cause for Plaintiff's Non-Compliance With The Court's August 31, 2018 Order**

Finally, Purdue's Show Cause Motion is baseless. The Motion demands the State show cause for failing to comply with an imaginary order that Purdue has never sought and that the Court has not issued. No Court can require a party to show cause regarding an imaginary order.

All of Purdue's Motions should be denied.

I. PURDUE'S SECOND MOTION TO COMPEL PRODUCTION OF DOCUMENTS SHOULD BE DENIED

Purdue's Second Motion to Compel the Production of Documents, on its face, demonstrates that it is premature, yet another attempt by Purdue to delay, and was filed solely as a retaliatory motion to distract the Special Master from Purdue's misconduct. This issue has already been addressed by the Court and the State. The Court need not address it again.

The relief Purdue really wants is more delay. As predicted, Purdue continues to use the Special Master process to manufacture delay by asking for hearings on top of re-hearings. Discovery closes in five months and we have had more discovery hearings than total depositions of Defendants' corporate witnesses—depositions that were first noticed seven months ago. The State respectfully request the Court see these motions for what they are and deny them accordingly.

a. Production Is Ongoing for Certain Agencies

Purdue specifically lists ten agencies in its Second Motion to Compel. Of these ten agencies, the State is collecting and producing relevant, responsive, and nonprivileged documents from six: the Board of Dentistry, the Board of Nursing, the Board of Pharmacy, the Medical Examiner's Office, the Worker's Compensation Commission, and the Board of Veterinary Medical Examiners. Consistent with the Court's prior Orders, the State is doing so on a rolling basis. The State will continue to comply with the Court's Orders and produce relevant, responsive, and nonprivileged documents on a rolling basis as they are gathered and reviewed. *See* Exhibit A at 2, Order of Special Discovery Master on April 19, 2018 Motion Requests (April 25, 2018). The

State produced over two thousand additional documents throughout September and will continue to do produce documents on a rolling basis.

Further, in regard to the Worker's Compensation Commission in particular, "investigatory files as maintained by the Attorney General's office and by the Unit shall be deemed confidential and privileged" and "may be made open to the public once the investigation is closed." 85A O.S. § 6(F).[1]

Thus, regarding the six agencies discussed above, the Second Motion to Compel does not seek anything that the State is not already producing. The remaining four agencies are either (a) protected by privilege or (b) possess no responsive documents, as set forth below.

b. Privilege Protects Production of Certain Documents from the Office of the Governor and the Legislature

Purdue also claims it lacks production from the Office of the Governor and the Legislature. However, Oklahoma law provides certain privileges that protect production of documents that involve public decision making or privileged information. Specifically, "a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project." 51 O.S. § 24A.9. Further, "records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act," are specifically required by law to be kept confidential. *Id.* at § 24A.5. And, in regard to the Office of the Governor specifically, "the Governor has a privilege to protect confidential advice solicited or received from 'senior executive branch officials' for use in deliberating policy and making discretionary

[1] The State further discusses confidentiality and privilege with more detail in its Response to Watson Laboratories, Inc.'s Motion to Compel Discovery of Investigatory Files at pages 5-6, which was filed on October 11, 2018. The State adopts and incorporates those arguments for this Motion as well.

decisions." *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109. Because no nonprivileged documents exist that can be produced in this litigation, the State objects to production of documents regarding these two agencies.

c. No Relevant Documents Exist from the DPS and the OSBI

Purdue also complains it lacks production from the Department of Public Safety and the Oklahoma State Bureau of Investigations. But, those agencies do not possess documents relevant to this litigation. Purdue provides no basis for its "belief" that these two agencies have any relevant or responsive documents. Generally speaking, the Department of Public Safety does not possess documents related to opioids. The Oklahoma State Bureau of Investigations funnels all documents to the Oklahoma Bureau of Narcotics, which is a separate agency and one that the State already contacted regarding document production. Documents will be produced on a rolling basis from the Oklahoma Bureau of Narcotics.

Further, even if these agencies possessed relevant documents, the State objects to production based on the grounds of privilege. For instance, the Department of Public Safety:

> shall keep confidential all records it maintains. . . relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to training, lesson plans, teaching materials, tests, and test results; policies, procedures, and operations, any of which are of a tactical nature; and the following information from radio logs: (1) telephone numbers, (2) addresses other than the location of incidents to which officers are dispatched, and (3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act,

Id. at § 24A.8. The Department may also redact or obscure any video or audio recording containing "personal medical information that is not already public," those that "would undermine the assertion of a privilege provided in Section 1-109 or Section 3-428 of Title 43A of the Oklahoma Statutes for detention or transportation for mental health evaluation or treatment or drug or alcohol

detoxification purposes," or those that "include personal information other than the name or license plate number of a person not arrested, cited, charged or issued a written warning." *Id.*

Similarly, the Oklahoma State Bureau of Investigation also prohibits a significant amount of production of information based on privilege. For instance, in regard to the crimes information unit, "[r]elease of information compiled pursuant to this section shall be prohibited except for release of information to law enforcement officers and prosecutorial authorities for the purpose of criminal investigation, criminal prosecution, and crime prevention," which includes a prohibition on production even in response to a subpoena or order for production by a court other than for criminal prosecution. 74 O.S. § 150.21a.

As such, the Court should deny Purdue's motion to compel production of documents from these agencies, as no relevant documents exist, and, if any relevant documents did exist, privilege would prohibit such disclosure.

d. The State Cannot Produce Documents Containing Private Information Until Ordered By the Court

Finally, Purdue ignores that many responsive documents that do exist from any of these agencies contain patient and doctor information. Since the filing of Purdue's Motion, the Court ruled that the State is not required to produce patient and prescriber identifying information. Order of Special Discovery Master, October 10, 2018 at 3. Purdue acknowledges that documents containing medical information would not be produced before a Court Order. Exhibit B, August 31, 2018 Hearing Transcript, Mr. LaFata at 49:9-10 ("Let's get the ones that don't have medical information produced."). The State is producing the documents that do not contain such information a rolling basis in compliance with the Court's Order.

There is no easy way to determine which documents contain private information and which documents do not. The State explained this at the August 31 hearing, and Purdue understands this.

Id. at 52:14-19, 22-23, 55:14-23. Nonetheless, after the August 31 hearing, Purdue filed this frivolous motion attempting to compel the production of documents that Purdue knows will contain private health information.

Now that the Court has ruled that the State is not required to produce private patient and prescriber information, the State will undertake the process of redacting and producing responsive, non-privileged documents on a rolling basis. Purdue cannot blame the delay of briefing on the State, nor can it expect the State to produce information that the Court (and Purdue) agree is covered by the pending ruling.

Put simply, the State has complied and will continue to comply with the Special Master's rolling document production ruling. Exhibit A at 2. Purdue's Second Motion to Compel should be denied.

II. PURDUE'S MOTIONS TO COMPEL WITNESS TESTIMONY AND FOR CUSTODIAL FILES SHOULD BE DENIED

The next motions in Purdue's frivolous retaliation relate to: (1) the deposition of the State's corporate representative regarding certain standards and procedures at the Department of Corrections; and (2) production of custodial files from other Department of Corrections Witnesses. *See* Motion to Compel Witness Testimony; Motion to Compel Production of Custodial Files. As with Purdue's other motions, they are baseless attacks designed to distract the State away from advancing this case. As set forth below, both motions should be denied.

a. The State's Witness for the Department of Corrections Was More than Adequately Prepared to Testify

Purdue's characterization of Mr. Castleberry's deposition as "fruitless" is a hollow distraction that further demonstrates just how badly Purdue is grasping for something to complain about. Indeed, Purdue's retaliatory strategy is to file a motion about any irrelevant molehill and boldly proclaim it a mountain to create delay. Here, there is nothing for Purdue to complain about.

Mr. Castleberry testified for nearly 6 hours on what was supposed to be a single, broad topic: the "standards, practices and procedures" . . . "for the diagnosis and treatment of pain and for the use of opioid medications and opioid alternative medications for persons in the care and custody of the Oklahoma Department of Corrections" ("DOC"). Mr. Castleberry was designated to testify on behalf of DOC because he has worked there for 18 years and is uniquely knowledgeable about the policies and procedures in place at DOC. During the deposition, Mr. Castleberry covered a wide array of topics including many that were outside the already-broad scope of the designated topic.

Nevertheless, Purdue complains that Mr. Castleberry was unprepared. The basis for Purdue's argument is that Mr. Castleberry did not memorize the contents of certain historical documents. Purdue's argument is misleading and baseless.

As Mr. Castleberry testified early on in his deposition, DOC does not have any specific standard practice or procedure regarding the diagnosis and treatment of pain. Exhibit C at 76:12-77:13, Clint Castleberry deposition, September 5, 2018. Instead, the decision about when and whether to prescribe opioids or opioid alternatives to inmates is within the discretion of the healthcare provider. *Id.* at 52:7-14. At all times, Mr. Castleberry testified fully and truthfully to these matters.

What the DOC does have are certain Operating Manuals and Medical Service Resource Manuals (MSRMs) related to ancillary services the DOC provides that may relate to the use of opioids. *Id.* at 64:9-66:1. For example, the DOC has specific guidelines related to:

- Use of Narcan (for opioid overdoses);
- Controlled Drug Procedures;
- Care of the Actively Chemically Dependent Offender;

- Detoxification;
- Pharmacy Operations;
- Convalescent and Infirmary Care;
- Palliative Care Program;
- Health Assessment for Offender Transfers;
- Emergency Care;
- Outside Providers for Health Care Management;
- Chronic Illness Management; and
- Access to Health Care.

All current and prior versions of these operating procedures were produced to Defendants on August 7, 2018. Mr. Castleberry testified fully and accurately to the current versions of each of these operating procedures and MSRMs and testified that many of these have remain unchanged since their creation. *Id.* at 261:7-14. Of course, Mr. Castleberry did not memorize these documents, nor was he required to do so.

Purdue's Motion to Compel Witness Testimony suggests different policies existed in prior years about which Purdue would have questioned Mr. Castleberry had he been prepared. *See* Motion to Compel Witness Testimony at 6. That is not true. Purdue never questioned Mr. Castleberry about a single prior version of any of these procedures. Furthermore, Purdue's Motion to Compel Witness Testimony confirms Purdue was not prepared to ask those questions because Purdue did not even know it had all prior versions in its possession at the time of deposition. *See* Motion to Compel Witness Testimony at 7, fn. 4. The State produced these documents to Purdue on August 7, 2018, which was 29 days before Mr. Castleberry's deposition. *See* Exhibit D. Thus, Purdue's complaints are all form and no substance.

Further, Purdue complains Mr. Castleberry did not go back and review the DOC formularies (or covered drug lists) for the past 20 years. *See* Motion to Compel Witness Testimony at 5. This complaint is also without merit. First, these formularies are not all archived, and DOC is still in the process of collecting and producing as many prior versions as possible. More importantly, the DOC formularies are simply lists of approved drugs that are covered by the DOC pharmacy provider. Each formulary can be in excess of 50 pages with the names of over 1,000 medications. It would be unreasonable to expect Mr. Castleberry to memorize the contents of each formulary. Nevertheless, Mr. Castleberry testified about how the DOC formulary process works (Exhibit C at 11:8-12:9); the committee that is charge of the DOC formulary (*Id.*); and how DOC providers can prescribe drugs that are not on the formulary (*Id.* at 41:16 - 44:19). Thus, while Mr. Castleberry did not memorize the contents of all historical formularies, he was very knowledgeable about the formulary process and testified fully and accurately as such. That is all that is required.

Mr. Castleberry further testified regarding several other opioid policies and procedures at DOC including how:

- opioids are dispensed in the DOC using pill lines (*Id.* at 165:21-166:19);
- certain controlled substances are kept in stock and tracked at DOC (*Id.* at 51:6-52:6);
- methadone is used to treat pregnant inmates addicted to opioids (*Id.* at 59:13-61:17);
- excess opioids are disposed of (*Id.* at 45:6-14); and
- inmates with existing opioid medications are handled at their initial intake into DOC (*Id.* at 43:24-44:22).

And for questions Mr. Castleberry could not fully address, most of which were outside the noticed topic, he was still able to identify several individuals that work for DOC that have additional knowledge for such areas. Purdue has since noticed these individuals' depositions and the State

has offered several dates for each witness. The fact that Purdue has still not even scheduled these depositions is further proof that this motion is intended only to harass and delay. If Purdue were truly interested in meaningful discovery, they would have taken these depositions instead of filing this motion.

Other areas that Purdue complains about were also outside the scope of the noticed topic. For example, "the volume, scope or reasons for any opioid prescription written by a healthcare provider in the [DOC]" is not part of the standard practices and policies. *See* Motion to Compel Witness Testimony at 8. Similarly, the frequency with which certain opioids were prescribed is also not within the noticed topic. *Id.*

Purdue has nothing to complain about. The State does not have time to fight imaginary battles. The Special Master process Purdue begged to create should not be used to cause more delay. Purdue's motion should be denied.

b. The State Complied With Purdue's Request to Schedule Depositions of the Employees of the Oklahoma Department of Corrections

Similarly misleading and baseless is Purdue's other related, retaliatory motion regarding production of custodial files for DOC witnesses. *See* Motion to Compel Production of Custodial Files. As expected, based on Mr. Castleberry's testimony, Purdue noticed the depositions of three other DOC witnesses including the DOC Chief Medical Officer, Head Pharmacist and Chief Administrator of Program Services on September 7, 2018. The State promptly responded and provided deposition dates for the requested fact witnesses. Purdue now complains that it does not have sufficient information "to meaningfully engage in the discovery process," and requests the Court accelerate the discovery procedures established in this case for its convenience. *See* Motion to Compel Custodial Files at 1. This is improper.

The State has complied and will continue to comply with the Special Master's rulings on

document production, in which documents are to be produced "as soon as practically possible." *See* Exhibit A at 2 (emphasis added). The State has been producing documents on a rolling basis. These documents are not accessible from a single source. Quite the contrary, such documents have to be produced from a number of state agencies. The State began producing documents on April 10 and, since the April 25 ruling, the State has made approximately twenty different production volumes consisting of tens of thousands of pages of documents from more than six different state agencies, including hundreds of documents from DOC.[2] To the extent Purdue believes the State's production is insufficient to allow meaningful depositions of DOC employees, the obvious solution would have been to take these depositions when additional documents – if there are any – have been produced under the procedure established by the Court. Instead, Purdue chose to forge ahead with scheduling the depositions and then point the finger at the State for its alleged dilatory production. The Court should reject Purdue's attempt to hijack control of the State's discovery in this manner.

Purdue also complains the document production from DOC is insufficient because the names of the three employees "barely appear therein." *See* Motion to Compel Custodial Files at 2. This argument is nonsense. The fact that the employees are not specifically named in the documents does not indicate they have no knowledge about the contents of those documents and

[2] While Purdue complains about the allegedly insufficient volume of documents produced from ODOC, the fact is that the number of documents produced by the parties is meaningless. The quality and nature of the documents is all that matters. The State is engaging in a document production specifically targeted at the categories of documents Purdue has requested, and it is doing so as quickly as possible (and with extremely limited resources and a budget which has only been worsened by the cost of the opioid epidemic). The quality of the State's document production should be the Court's focus—not its size. *See, e.g., State of Oklahoma ex rel Edmondson v. Tyson Foods, Inc.*, 2007 WL 649332, at *5 (N.D. Okla. Feb. 26, 2007) ("As previously ordered in this case, quality, not quantity, is the guiding discovery light for the court and counsel.").

cannot provide meaningful testimony about them. This is particularly true as the employees are testifying as fact witnesses from their personal knowledge of DOC procedures.

c. Purdue's Representations Concerning the Meet and Confer Are False

As it has on other occasions, Purdue falsely argues the State has refused "to even engage with Purdue on the subject of production of custodial files," and Purdue's overtures have "been met with silence." *Id.* at 3. This representation is demonstrably false and misleading. Section 3237(A)(2) provides, in pertinent part, that "[t]he motion **must** include a statement that the movant has **in good faith** conferred or attempted to confer **either in person or by telephone** with the person or party failing to make the discovery in an effort to secure the information or material without court action."12 O.S. § 3237(A)(2) (emphasis added). This requirement was clearly not met in this case.

By email dated September 18, Purdue requested that the State produce the custodial files for the three Department of Corrections' employees by October 1. *Id.* at Ex. B. The State did not accede to Purdue's unreasonable demand. So, Purdue filed its Motion to Compel Custodial Files accusing the State of obstructionist tactics and blaming the State for not taking the lead in resolving the issue. The State is not required to jump whenever Purdue makes a unilateral demand that it do so. It was Purdue's document request, and thus Purdue's corresponding responsibility as the movant, to comply with the meet and confer requirement. Purdue totally failed to live up to its obligation in this regard and, instead, filed a retaliatory motion.

Purdue's refusal to engage in the meet and confer process – and its misrepresentations concerning the facts – are a blatant disregard and disrespect for the discovery rules and the time and resources of this Court, and constitute sufficient grounds without more to deny Purdue's Motion to Compel Custodial Files. The State urges the Court to so hold.

For the reasons set forth above, the State respectfully requests the Court deny Purdue's

motions regarding the DOC in their entirety.

III. PURDUE'S SHOW CAUSE MOTION SHOULD BE DENIED

Lastly, Purdue resorts to imaginary orders it never sought in an attempt to fabricate a Show Cause Motion as part of its retaliation litigation strategy. Purdue's Show Cause Motion falsely accuses the State of not complying with an August 31, 2018 Order from the Special Master to respond to three Purdue interrogatories. Show Cause Motion at 1-2. The Special Master, however, did not Order the State answer any Purdue interrogatories. Thus, Purdue's Show Cause Motion should be denied for two reasons:

(1) Purdue has never filed a Motion to Compel answers to these interrogatories, nor obtained a ruling on the State's objections; and

(2) the Order regarding Teva's interrogatories, which Purdue joined, held that it would be "ridiculous" to require the State to answer interrogatories separately from each subsidiary Defendant, as Purdue is attempting, and does not address how "joint" interrogatories are counted against Purdue's discovery limits.

a. Purdue Has Neither Sought Nor Obtained a Ruling on the Interrogatories at Issue

Purdue cannot require the State to show cause for not complying with an imaginary order. Purdue complains that the State did not answer its Interrogatory Nos. 7-9. *Id.* The State objected to answering the interrogatories on several bases, which Purdue wholly ignores. *See* Exhibit F at 57-66. Purdue has not filed or obtained a ruling on a motion to compel answers to these interrogatories. How can it seek a show cause order for failing to comply with an order when it has sought no such order and the Court has entered no such order?

Instead, Purdue only joined a motion to compel filed by ***Teva*** and only joined that motion with respect to ***Teva's*** arguments regarding the ***numerical limits*** on interrogatories and how those should be counted against each Defendant. *See* August 17, 2018 Purdue Joinder. As explained below, the Court did not overrule all of the State's objections on how interrogatories should be

counted. But, putting that objection aside, Purdue never sought or obtained a ruling on the remainder of the State's objections to these particular interrogatories, including that the interrogatories call for expert testimony, are premature contention interrogatories, and are unduly burdensome and disproportionate. *See id.* Thus, the State has not failed to comply with any Court order because Purdue has never asked for one.

The interrogatories at issue are set forth below:

> Interrogatory No. 7: Identify each instance in which You or any other Oklahoma Agency or entity that provides or administers benefits for Your Programs denied payment or reimbursement for a prescription of any Opioid sold by Purdue Defendants as "unnecessary or excessive," and describe the details of the denial, including the date, claim number, the Opioid prescribed, the identify the name and address of the HCP, identify the name and address of the Patient, the reason(s) given for the denial, and associated records or other documentation.
>
> Interrogatory No. 8: Identify the prescriptions of Opioids sold by Purdue Defendants that were issued to Oklahoma Patients as a result of Purdue Defendants' allegedly false representations about the risks and benefits of Opioids and/or omission of information (*see, e.g.*, Compl. ¶ 53), including the date of each prescription, the identity of the HCP who wrote the prescription, the misrepresentation and/or omission by Purdue Defendants that caused that HCP to write the prescription, the name and address of the Patient who received the prescription, the diagnosis of the Patient receiving the prescription, the amount of the prescription, and any harm to the Patient that allegedly resulted from the prescription.
>
> Interrogatory No. 9: Identify the prescriptions of Opioids sold by Purdue Defendants that were issued to Oklahoma Patients as a result of Purdue Defendants' sale representatives "who spoke directly to doctors and repeated their misrepresentations, falsely representing the risk of addiction was low and touting unsubstantiated benefits of long term opioid treatment," as alleged in paragraph 54 of the Complaint, including the date of each prescription, the identity of the HCP who wrote the prescription, the misrepresentation and/or omission by Purdue Defendants that caused that HCP to write the prescription, the name and address of the Patient who received the prescription, the diagnosis of the patient receiving the prescription, the amount of the prescription, and any harm to the Patient that allegedly resulted from the prescription.

The Court already quashed a deposition notice nearly identical to two interrogatories at issue, and the third relates to providing patient and doctor specific information.[3] Purdue makes no effort in its Show Cause Motion and has never filed a Motion to Compel addressing the State's objections. Interrogatory No. 7 asks for patient identifying information regarding patients who were denied claims for opioids as unnecessary or excessive. *See* Exhibit F at 57. The State has consistently objected to producing such patient identifying information, and the Court is currently considering this issue. The State need not reiterate its position here. Interrogatory Nos. 8 and 9 seek identification of all prescriptions that the State alleges were false and caused by Purdue's false marketing, which are the same as the deposition notice the Court just quashed as premature on August 31 due to, among other things, the fact that it depends heavily on expert testimony. *See* Exhibit B at 99:06-12. The Parties have already briefed and argued this issue, and the Court ruled in favor of the State. Purdue cannot claim the State has violated any order until it files a motion addressing these substantive objections and obtains an order in its favor. That has not happened and, for this reason alone, the Show Cause Motion should be denied.

b. Purdue Misrepresents the Court's Prior Order

Moreover, Purdue even misrepresents the Court's Prior Order regarding the State's objection to the number of interrogatories Purdue (and other Defendants) have served. To be clear, the motion at issue in the August 31, 2018 Order was Teva's Motion to Compel answers to interrogatories from Teva. *See* Exhibit B at 84:16-19. Purdue joined Teva's Motion only with respect to the arguments regarding the State's objection that Purdue (and other Defendants) have exceeded the number of interrogatories allowed. *See* August 17, 2018 Purdue Joinder. Purdue's

[3] The State hereby incorporates by reference the arguments and authorities set forth in its September 14, 2018 Response to Defendants' Motion to Compel Discovery Regarding Claims Data and Brief in Support, October 2, 2018 Notice of Authority Regarding State of Texas v. the American Tobacco Company, August 17, 2018 Motion to Quash and Motion for Protective Order In Response to Purdue's 3230(c)(5) Deposition Notice.

current Show Cause Motion relies on an incomplete portion of the Court's Order with respect to that objection.

Purdue intentionally cites only the first statement by the Special Master regarding the grouping of interrogatories and how many each Defendant group would be allotted. Purdue cites the following statement by the Special Master: "The State is required to answer interrogatories, 30 per defendant, that has been sued, and is not entitled to a limit by group." *See* Motion at 2 (citing Hearing Transcript 65:06-12). But, that ignores the rest of the hearing and extensive statements by the Special Master on the remaining interrogatories and this very issue. For example, the Court held:

- [I]t is somewhat senseless I think in most circumstances – well, many circumstances – that it should be done by group. I mean, to inundate the State with 30 interrogatories by each defendant for – you know, that's senseless also. And so, you know, I'm going to see what happens. *Id.* at 66:20-25.

- But I'm looking at this table over here to be reasonable, and it can be done by groups. It should be done by groups, in my view, but the law allows each defendant to make those interrogatory requests[.] *Id.* at 67:05-08.

Further, Counsel for the State specifically asked if the question regarding discovery limits was resolved. *Id.* at 86:20-24. The Special Master responded: "Well, I'm not sure we did. Again, I entered an order under Oklahoma law, but if I – I mean, if you wall want to talk about that more...." *Id.* Counsel for the State then asked to clarify whether the Special Master was suggesting the Parties attempt to reach an agreement on this issue, and the Special Master answered yes. *Id.* at 86:25-87:02. Finally, the Court also held that subjecting the State to 390 interrogatories "is ridiculous," and "I would hope it's three groups and in interrogatories, and that's all you have to answer." *Id.* at 87:05-12.

The State agrees with the Court that it is ridiculous to require the State to answer 390 interrogatories (30 from each subsidiary defendant), when there are truly only 3 separate defendant

families, and those families are also working together. Purdue's own interrogatories at issue demonstrate that the interrogatories are not unique to a particular subsidiary company. Each one asks for information about the "Purdue Defendants," not one specific Purdue Defendant. *See, e.g.*, Exhibit F at 57. The Purdue Defendants do not hide that they function as a group in their own requests, yet they ask to be treated as if they were separate entities with separate interests necessitating separate interrogatories. It is a farce.

Purdue is working with the other Defendants pursuant to a joint defense agreement in this litigation. A cursory review of Purdue's original interrogatories makes this clear, as all of the interrogatories ask the State's allegations against "Defendants," "Defendants' Opioids," or all "Opioid Prescriptions.". *See* Exhibits F, G. The State has consistently argued that a "joint interrogatory" should be counted against each Defendant. The Court did not rule on how each such joint interrogatory should be counted or whether the joint interrogatories should count against each Defendant. Defendants have issued at least 24 joint interrogatories. When counted appropriately, based on the number of discrete subparts, Defendants have served, and the State has answered, 66 joint interrogatories already, well over the 30 interrogatory limit that it should have been required to answer.

In light of these facts and the Court's statements, suggesting that the State has "failed to comply" with an Order is as ridiculous as suggesting the State should have to respond to thirty interrogatories from each subsidiary Purdue Defendant when they are all represented by the same counsel and function as one unit.

The Court should recognize this Purdue Show Cause Motion for what it is: the latest in a string of retaliatory litigation tactics designed for delay, not progress of this litigation. Purdue is

grasping at straws to deflect the Court from its own discovery misconduct. The State respectfully requests the Show Cause Motion be denied, along with the rest of Purdue's retaliatory motions.

Dated: October 11, 2018

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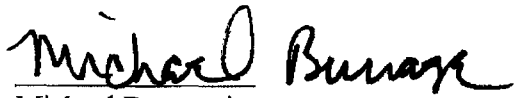

Michael Burrage*

EXHIBIT C

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., et al., Defendants.	Case No. CJ-2017-816 Honorable Thad Balkman Special Discovery Master William C. Hetherington, Jr.

PURDUE'S MOTION TO COMPEL CORPORATE WITNESS TESTIMONY

Purdue Pharma, L.P., Purdue Pharma Inc., and The Purdue Frederick Co. (collectively "Purdue") respectfully move to compel discovery pursuant to 12 Okla. Stat. § 3237. Purdue seeks an order that requires the State to present a properly educated and prepared corporate representative to testify as to the following two topics:

> The standards, practices, and procedures during the Relevant Time Period for the use of opioid medications and opioid alternative medications for persons in the care and custody of State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities, university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.
>
> The standards, practices, and procedures during the Relevant Time Period of the diagnosis and treatment of pain that have been taught and applied in State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities, university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.

Purdue previously issued a deposition notice to the State for testimony on these topics pursuant to 12 Okla. Stat. § 3230(C)(5), but the State failed to comply with the notice. Instead, the State presented a witness who was not educated on the topics and, as a result, was not adequately prepared to testify. In preparing her testimony, the witness chose to interpret the

topics in an unreasonable way and in the most limited manner possible, determining that Purdue sought a corporate representative to testify solely as to whether standards, practices, and procedures *existed*—a yes/no answer—rather than to provide any substantive testimony as to the standards themselves.

Purdue now moves the Court for an order that requires the State to present a corporate representative who prepares for the deposition in advance by properly educating himself or herself on the relevant standards, practices, and procedures of the State as to treatment of pain and use of opioids and opioid alternatives in advance of the deposition.

If Purdue's motion sounds familiar, that is because it is. Purdue filed a similar motion to compel following the deposition of the State's last corporate representative, Clint Castleberry, who was designated by the State to provide testimony related to the "standards, practices, and procedures" for the "diagnosis and treatment of pain and for the use of opioid medications" in the Oklahoma correctional system. Just like Ms. Hawkins, Mr. Castleberry testified that he was aware of the existence of State standards, but that he did not know their particulars. In fact, Mr. Castleberry knew nothing about those policies, and Purdue subsequently moved to compel the State to produce a properly educated witness on the subject. *See*, Purdue's October 4, 2018 Motion to Compel Witness Testimony. That motion was sustained by the Special Discovery Master. October 22, 2018 Order of Special Discovery Master at 5-6.

Accordingly, the Court should further admonish the State for repeatedly presenting unprepared corporate representative witnesses and instruct the State that remaining witnesses designated on these topics must be prepared to testify about the applicable standards, practices, and procedures – not just to their mere existence. Without such admonishment and instruction, the State will continue to play games and avoid providing testimony on the noticed topics. The

Court should note that failure to comply with the Court's order may result in the imposition of sanctions as permitted under 12 Okla. Stat. § 3237(B)(2), which includes dismissal of the action.

BACKGROUND

Given the State's claims in this case, it is crucial to Purdue's defense that it be able to investigate whether the State was actually misled by any of Purdue's actions, and whether the state paid for medically unnecessary or excessive opioid prescriptions. In order to allow Purdue to fairly develop a defense, discovery regarding how the State makes medical decisions for its citizens and those in its care is required. The State administers medical and pharmaceutical benefits to individuals in its healthcare facilities, and Purdue is entitled to discovery on how, when, and why the State does or does not opt to employ opioid prescriptions. To that end, Purdue noticed a corporate representative to provide testimony on the State's standards, practices, and procedures related to the diagnosis and treatment of pain, as well as the prescription of opioid medications and their alternatives.

On October 25, 2018, the State presented Jessica Hawkins, the Senior Director of Prevention Services with the Oklahoma Department of Mental Health and Substance Abuse Services, to testify on several topics, including those related to the State's standards, practices, and procedures for treatment of pain and prescription of opioid medications. At the start of her testimony, Ms. Hawkins produced six separate policies from various Oklahoma state-run psychiatric facilities. Those policies established standards for the diagnosis and treatment of pain as well as the prescription of opioids at those facilities. Those policies were not produced to Defendants in advance of the deposition. The face of the policies indicated that they had been revised, often several times, since their initial enactment. Ms. Hawkins did not bring any prior versions of the policies to her deposition. Ms. Hawkins revealed that she was first made aware

of the existence of the policies the night before her deposition, when they were given to her by plaintiff's counsel. Ex. A, Oct. 25 Hawkins Tr. at 83:2-3 ("I reviewed [the policies] for the first time yesterday.") Ms. Hawkins testified that she was not involved in the drafting of the policies, and had not spoken to any State employees to educate herself on the policies. *See e.g.*, Appendix A, a compendium of Ms. Hawkins's inability or refusal to answer questions on the State's policies related to diagnosis or prescription of opioid medications.

When asked how Ms. Hawkins was able to provide testimony on the noticed topics if she had just been given the State's policies the night before and had not spoken to anybody to understand the background of the policies or their operation, her response was simple: "**The topic was about whether there were standards and procedures, not how they operate or why they were developed.**" Ex. A, Oct. 25 Hawkins Tr. at 170:20-23 (emphasis added). The witness repeatedly refused to testify as to anything related to the policies beyond their mere existence:

> Q. So is it fair to say if I was to ask you any questions about how that [Policy] actually works in practice, you couldn't tell me?
>
> A. So how I would characterize that is that my understanding of this topic was that I was to prepare about whether there were standards, practices and procedures, not necessarily speak to the hows, the whys, wheres, whens, those sort of operationalization of the policy.

Ex. A, Oct. 25 Hawkins Tr. at 77:17-78:1.

> Q. Does [the policy] talk about how it's supposed to be used?
>
> A. So, again, with respect to how and why this policy is in place and how it's operationalized, because of the topic that I was prepared to speak to today, I did not prepare to be able to answer questions such as that.

Ex. A, Oct. 25 Hawkins Tr. at 78:25-79:6.

> Q. So with respect to any State controlled psychiatric facility, am I correct that you can't testify as to whether any patient has been prescribed an opioid in any of those since 1996?
>
> A. I'm testifying that that is not in the information that I prepared for today.

Ex. A, Oct. 25 Hawkins Tr. at 64:2-7.

Ultimately, Ms. Hawkins conceded that she could not even be sure if the policies she was given by the State's attorneys were in effect, or if there were additional policies that she was unaware of:

> Q. So what are the standards, practices and procedures for doctors who prescribe narcotics and opioids at this facility?
>
> A. This policy is the procedure.
>
> Q. That's it?
>
> A. It appears to be the procedure.
>
> Q. That's the only procedure?
>
> A. I don't know the answer to that.

Ex. A, Oct. 25 Hawkins Tr. at 187:15-22.

The State's witness, presented to testify about the State's standards, practices, and procedures, engaged in self-help by unreasonably redefining the topic to require her only to testify as to whether policies existed or did not exist.[1] She stonewalled in this fashion anytime counsel for Purdue attempted to glean any information about the policies. *See*, Appendix A.

Ms. Hawkins's preparation to testify as to the policies was limited to reading them the night before her deposition. On that basis, she testified that she was "willing to answer questions about them if [she was] able to answer about them." Ex. A, Oct. 25 Hawkins Tr. at 111:5-7. But even that was untrue, as she feigned ignorance about the interpretation of clear terms in the

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[1] Cephalon previously requested production of all "guidelines" that pertained to the treatment of pain. *See*, Cephalon's First Requests for Production, No. 2. The State, however, never produced the policies Ms. Hawkins received the night before her deposition.

policies. For example, the first policy discussed at the deposition, on the use of "Controlled Substances" at the State's Griffin Memorial Hospital, lists "Oxycodone" for use as an analgesic, with the number "30" under the heading "Maximum Days per Order." Ex. B, Griffin Memorial Hospital Controlled Substances Policy. Ms. Hawkins, a Senior Director with the State's Department of Mental Health and Substance Abuse Services, developed an assumed lack of understanding as to what those terms could possibly mean:

> Q. Are you prepared to talk in any detail or at all about how the policies operate in practice?
>
> A. I'm not a clinician and I don't have direct oversight of these facilities. I wasn't involved in developing them.
>
> ***
>
> Q. Look at Page 3, please. There's a list of scheduled medicines on Page 3. Do you see that?
>
> A. I do.
>
> Q. And it has a maximum dosage of 30 days per order next to the various medicines. Do you see that?
>
> A. I do.
>
> Q. And one of them is amphetamine, the second one, right?
>
> A. Yes.
>
> Q. And then five from the bottom is oxycodone. Do you see that?
>
> A. Yes.
>
> Q. And it has a maximum 30 days. Do you see that?
>
> A. I see that.
>
> Q. And right below it it says, "All medication orders, legend or controlled, not specifically prescribed as to time or number or doses will have an automatic stop date of 30 days." Do you see that?
>
> A. I do.
>
> Q. What do you understand that to mean?
>
> A I can't speculate about what that means other than exactly what it reads.
>
> Q. What is your takeaway?

A. That all medication orders not specifically prescribed as to time or number of doses will have an automatic stop date of 30 days.

Q. Do you read this to mean that a doctor can write up to 30 days of prescriptions for the medicines on this list?

A. I would be speculating at that point how this is operationalized at Griffin.

Q. What do you think maximum days per order means, 30?

A. I don't know.

Q. You don't think that is a guideline as to what doctors are supposed to write, no more than 30? Is that really your testimony?

A. My testimony is that I reviewed this yesterday. I do not have specific knowledge about what the definition of an order is or the meanings of these terms and how they operate within Griffin Memorial. So I would not be able to answer that.

***

Q. What could it possibly mean "maximum days per order"? What are the variations? What do you think that could mean?

A. I can't speculate about that.

Ex. A, Oct. 25 Hawkins Tr. at 170:24-174:14

This behavior was not isolated. Ms. Hawkins's feigned ignorance throughout her deposition as to the basic interpretation of terms in the policies rendered much of her testimony useless.

ARGUMENT

Oklahoma's discovery code requires designated corporate representatives to testify "as to matters known or reasonably available to the organization." 12 Okla. Stat. § 3230(C)(5). The recipient of a deposition notice seeking corporate testimony has "an affirmative duty" to designate a knowledgeable representative, which includes an "obligat[ion] to make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought ... and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed." *ZCT Sys. Grp., Inc. v. Flightsafety Int'l*, 2010 WL 1541687,

at *2 (N.D. Okla. Apr. 19, 2010).[2] Further, "[i]f the organization fails to produce a designee with sufficient knowledge, it is required to produce an additional designee with adequate knowledge." *Id.* And even if a party, in good faith, *thought* its designee would satisfy a deposition notice, "it ha[s] a duty to substitute another person once the deficiency of its [corporate representative] designation became apparent during the course of the deposition." *Marker v. Union Fid. Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989). "An inadequate [corporate representative] designation amounts to a refusal or failure to answer a deposition question." *Id.* at 126; *see also*, 12 Okla. Stat. §3237(A)(2) ("If a deponent fails to answer a question propounded or submitted...the discovering party may move for an order compelling an answer.")

There are many phases of discovery during litigation. In the usual course, documents are collected, reviewed, and produced, followed by depositions where, in most cases, key documents are discussed and the witnesses have the opportunity to explain or contextualize the documents. In the case of a corporate representative, the deposition provides an opportunity for an opposing party to discover binding testimony on the subjects of its choosing for trial. For example, in a breach of contract case, a party may seek a corporate representative to testify on the contract that is the subject of the litigation.

Consider if, following such a request, the opposing party presented a witness who: 1) first received the contract the night before the deposition; 2) had no prior knowledge of or experience with the contract; 3) never spoke to anyone at the company about the contract; 4) refused to speculate as to the meaning of common terms within the contract; and 5) claimed that the

---

[2] Oklahoma courts "may look to discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code." *Crest Infiniti, II, LP v. Swinton*, 174 P.3d 996, 999 and n.4 (Okla. Oct. 10, 2007) (recognizing parallels between Oklahoma Discovery Code 12 Okla. Stat. § 3230(C)(5) and Fed R. Civ. P. 30(b)(6)).

deposition topic only related to whether the contract existed, and not anything in the contract itself. That witness would be judged unprepared and the designating party would have breached its discovery duties. That, however, is *exactly what the State did in this case*. Ms. Hawkins received the State policies the night before her deposition, had never seen them before, never spoke to anybody who drafted or enacted them, refused to speculate as to how they operated, and claimed that the deposition topic was limited to testimony about their mere existence.

It is clear that the State did not make a good faith effort to present a knowledgeable witness to provide testimony on Purdue's deposition topics. Indeed, it appears that the State has recycled a tactic employed by its last corporate representative, Clint Castleberry, who also was unable to testify as to the Oklahoma Department of Correction's standards, practices, and procedures on the same issues because he was only aware of their existence, and not their substance. Purdue moved to compel the State to supplement that incomplete testimony, and the Special Discovery Master sustained that motion. *See* Purdue's Oct. 4, 2018 Motion to Compel Witness Testimony. The State was fully aware that it was objectionable to merely present a witness to testify as to the existence of policies, but did so anyway. The State's artifice should not be permitted to continue. Purdue has requested other corporate representative depositions on similar State standards, practices, and procedures, and now needs an Order on this issue to avoid having to revisit the topic for each deposition. Purdue will never get the discovery it is entitled to under the case schedule if the State continues to engage in these games.

CONCLUSION

The discovery sought is relevant and important to Purdue's defense, and the State should be compelled to designate a new corporate representative who is properly educated and prepared on the deposition topic. The Court should admonish the State for repeatedly presenting

unprepared corporate representative witnesses and instruct the State to ensure that remaining witnesses designated on related topics must to be prepared to testify about the applicable standards, practices, and procedures – not just to their mere existence. Further, the Court should order that that failure to comply with the Court's Order may result in the imposition of sanctions as permitted under 12 Okla. Stat. § 3237(B)(2), which includes dismissal of the action.

Date: November 13, 2018

Respectfully submitted,

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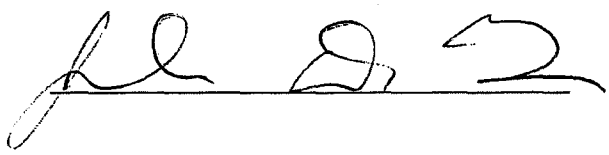
CERTIFICATE OF SERVICE

I hereby certify that on this November 13, 2018, I caused a true and correct copy of the following:

PURDUE'S MOTION TO COMPEL CORPORATE WITNESS TESTIMONY

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



CERTIFICATE OF COMPLIANCE WITH 12 OKLA. STAT. § 3237(A)(2)

I hereby certify that counsel for Purdue has in good faith conferred with counsel for the State in an effort to secure the information that is the subject of this motion without court action. The parties were unable to reach a resolution.

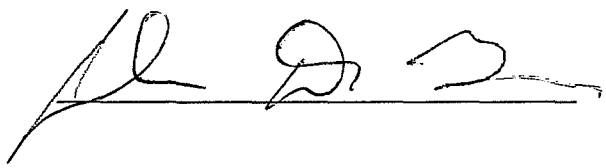


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EXHIBIT D

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
	)	**Case No. CJ-2017-816**
vs.	)	
	)	**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.	)	

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 22nd day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on October 18, 2018.

Rulings entered herein regarding the following Motions:

1. **Cephalon's Motion for State to Show Cause for Failure to Comply with Court Orders**

The undersigned entered rulings on August 31, 2018 overruling State's objections to the nature and number of interrogatories. The record and argument indicates that State

has complied with some production for interrogatories 1 through 6 and then at the October 3rd hearing the undersigned ordered State to fully answer interrogatories it can answer by October 9th. I further ordered that State identify interrogatories for which answers are being withheld.

The record indicates State has not responded to interrogatories numbered 7 through 16 contending Defendants have collectively exceeded the 30 interrogatory limit. The undersigned once again reiterates that in the interest of time and efficiency, it is best for the three Defendant groups to respond as a group to 30 interrogatories per group, however, as ordered before, when that is not possible, State is **required** to fully answer interrogatories limited to 30 per defendant sued.

The specific medications and damage formula defendant is interested in will be identified and fully developed in discovery as part of the State's expert testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

Therefore, I again order compliance and State is Ordered to fully answer to the extent possible, and in compliance with my previous orders protecting patient and physician personal information, interrogatories 1 through 6 and the motion is **Sustained** to that extent.

The undersigned enters the same Order for State to Respond to interrogatories 7 through 16 under the same conditions.

Responses to all of these interrogatories are Ordered to be fully completed and answered within 15 working days from the date of this Order and shall be State's final and complete answers subject to newly acquired evidence that must be produced.

2. **State's Second Motion To Show Cause as to Purdue**

This motion asks the undersigned to reenter my original Order (Withdrawn by October 5, 2018 Order) with regard to Rhodes entities. Now following argument, review of the record, testimony and pleadings, find State is entitled to full disclosure and discovery regarding Rhodes Pharma and Rhodes Technologies as affiliates related to Purdue Pharmaceutical and involved with Sackler family ownership. The testimony and record now before the undersigned demonstrates significant control over the creation of, reasons for its creation and daily control, such as "to provide a cost competitive API platform to support our Rhodes Pharmaceuticals generic dosage form initiative". Argument and evidence confirms that Rhodes Technologies and Rhodes Pharma fall within the definition of an "Affiliate" about which production is required. I further find pursuant to State's request, State is entitled in this context only, to complete discovery back to the point in time of Rhodes entity creation or 1996, whichever is earlier. I further find the evidence is insufficient to indicate Purdue Pharmaceutical was intentionally concealing or hiding the identity of these affiliates. The evidence is in dispute, however, documentary evidence had been produced to the State prior to depositions disclosing the existence of these entities.

Therefore, State's request to reenter my previously withdrawn order with regard to Rhodes entities is **Sustained** to this extent.

3. Purdue's Motion to Show Cause Against the State

Findings entered with regard to this motion overlap in part with agenda item number 1 as to Cephalon's motion. Again, the undersigned has previously ordered State to answer in full and allowed State to answer only 30 interrogatories from each Defendant group if possible. Regarding interrogatories numbered 7, 8 and 9, I have previously ordered State to answer with specificity and to the extent possible. Consistent with item number 1, final and complete answers to be provided within 15 working days subject to newly discovered evidence required to be produced.

The specific medications and damage formula will be identified and fully developed in discovery as part of the State's expert reports and testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

I agree with State's argument and I have encouraged a joint Defendant group interrogatory count of 30 interrogatories to be submitted to the State from the three groups and State to Defendant groups when possible. When a "joint" interrogatory request is made, the State is required to answer the 30 interrogatories to the group as a whole. The State is not required to then answer another set of interrogatories covering the same information propounded to it by individual members of the Defendant group, unless that individual Defendant has a **clearly** unique and independent grounds for separate inquiry following a meet and confer. Once again, as indicated above, in the interest of time and judicial efficiency, it is reasonable in this case to conduct discovery, for the most part, in a three-defendant group format.

Privacy and confidentiality orders have been entered and the issue ruled upon. Therefore, by this Order I order full compliance as to each numbered interrogatory properly propounded consistent with this Order, with State to fully comply within 15 working days from the date of this Order with final and complete responses subject to newly discovered evidence required to be produced.

Purdue's motion to show cause and requests made therein are **Sustained** to this extent.

4. State's Motion to Compel Depositions and Group Topics

The undersigned has reviewed this motion and Purdue's opposition to it, Teva group's response and opposition to it, redacted and unredacted versions containing argument and record evidence relevant to State's motion and, considered Janssen group's response and objection.

This issue concerns corporate designation of witnesses for topic testimony, scope and relevant topic grouping. State argues through this date, State has only been able to reach an agreement with Defendants for designation on topics number 39 and 41

currently scheduled with Janssen group for November 9th and has taken five other depositions (Briefs indicate State has taken depositions of 9 other corporate designated witness). Notices for all of these designated witness depositions have been out since prior to the attempted removal of this case to Federal jurisdiction and subsequent remand. State is asking for a scheduling order with time limitations and grouping of 42 topics for each of the three Defendant groups pursuant to State's Ex. B to the motion. The State and each of the three Defendant groups have submitted exhibits proposing a formula for topic grouping, timing and witness designation. Defendants generally argue State cannot dictate how Defendant groups join topics for each of their representatives and urge the undersigned to set a maximum total time limit for the completion of all corporate designated depositions adopting Defendant Group topic groupings.

Having heard arguments and reviewed each suggestion the following orders are entered:

A. State is Ordered to specifically define each topic of requested inquiry and serve on counsel for each Defendant group (or a specific Defendant where a topic is unique to that Defendant) within **five (5)** working days following this Order;
B. Each Defendant group, or individual Defendant, whichever is appropriate, is Ordered to group State defined topics and designate a corporate witness who can testify to as many topics or groupings as possible. While it is appropriate to allow Defendant groups or individual Defendants to group topics, I do so recognizing the potential for abuse but with a clear Order and expectation this will minimize designated witness deposition numbers and provide State with witnesses fully informed, knowledgeable and fully prepared to testify to the designated topic or topic grouping. Each Defendant group or individual Defendant is Ordered to designate corporate witnesses consistent with this Order and provide State with a corporate witness designation matrix pairing witnesses with topic or topic groupings and to so notify State no later than **ten (10)** working days following the receipt of State topic definitions;
C. Some topics will justifiably require more deposition time than others. Generally, in similar type cases to this case, Courts have approved 6 to 10 hours of deposition time for a designated corporate witness. Under the circumstances of this case, State shall be limited to a total of **eighty (80)** hours to be divided up as State chooses. I recognize that some depositions are currently scheduled and ready to take place. However, review of these proposed depositions indicate they are offered by individual Defendants based upon their own topic definitions and groupings where topics have not been defined by State. In order to minimize delay, I encourage these depositions to proceed even though the above time limits for topic definitions and groupings have not expired.
D. Regarding State topic witness designations, the record is unclear as to the total number of topics Defendants' wish to take. Purdue's brief indicates it defines

27 topics. Therefore, it is **ordered** that each Defendant group or individual Defendant shall define each topic with State ordered to designate a corporate witness matrix pairing witnesses with topic or topic groupings and notify each defendant group or individual defendant, according to the same deadlines set forth above in paragraph (B). The same **order** is entered regarding State designated witnesses who shall be witnesses fully informed, knowledgeable and prepared to testify. State is not required to designate any corporate witness for a Defendant defined topic that will be the subject of State's expert witness claim proof and damage model and State must so state in its topic designation matrix.

E. It does appear from briefs and argument that some topics should be subject to written responses and certain Defendants have so offered. While encouraged, State has the right to accept or reject a written response for any particular topic. The same applies to Defendant groups or individual Defendants as to Defendant topics.

5. State's Motion To Reconsider April 25, 2018 Order on Relevant Time Period

State has developed and produced evidence requesting the undersigned to modify its April 25th order to reflect the general "relevant time period" to begin in 1996. State has established a relationship between Defendants and the marketing and promotional strategies some of which began taking shape and were established and ongoing as early as 1996 and moving forward. The relevant time period does cover and effect responses that have been given in various RFPs relating to creation of, funding and coordination of marketing and promotional strategies involving the sale of branded and unbranded opioid and other related drugs. Discovery therefore is relevant in this context only, back to the point in time when the evidence now shows those efforts began but no earlier than 1996. Under State's stated claims for relief and proposed proof model, State should not be limited to inquiry with regard to Oklahoma promotion, marketing and sales efforts and discovery involving Oklahoma relevant promotional representatives or entities. By this amendment, I do not intend to fully modify my previous order that was upheld by Judge Balkman. State is not allowed to request again or explore again from any Defendant group or individual Defendant records, documents and information State already has in its possession or has access to, and not related to marketing and promotional planning and strategies.

Therefore, State's request to modify is **Sustained** to this extent.

6. Purdue's Motion to Compel Witness Testimony from Department of Corrections

State has indicated in previous discovery that Department of Corrections does not prescribe opioids to prisoners. The record indicates there has been differing testimony and Defendants' Motions and argument support ordering testimony by way of deposition from knowledgeable personnel. Defendant's motion is **Sustained** and Defendants are

allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are **Ordered** produced to Defendants in time for preparation.

Purdue's Motion to Compel is **Sustained.**

7. **Purdue's Second Motion to Compel Documents**

Purdue argues document production requested from various State agencies on January 12th with partial production from 17 State agencies and none from a list of 10 remaining agencies. The undersigned had previously ordered production on April 25th and August 31st as to Purdue's requests resulting in partial production. These orders did require State to produce under the rolling production process, at one time within seven days and to fully produce within 30 working days. Confidentiality orders regarding personal and private information were entered and will be more fully addressed in the "Watson" motion below.

State is **Ordered** to produce within 30 working days from the date of this order, final and complete responses and production, subject to newly discovered evidence required to be produced, relevant production in support of State's evidentiary proof model and Defendants' defense thereto, from the Office of the Medical Examiner, Oklahoma Department of Public Safety, Oklahoma State Board of Dentistry, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy and the Oklahoma State Board of Veterinary Medical Examiners, all subject to previous orders entered regarding protection of physician and patient privacy information. State argues in its brief that the Department of Public Safety and the Oklahoma State Bureau of Investigation possessed no documents relevant to this litigation. To that extent, State must so answer but is required to produce any documentation not found protected by our Protective Order, this order or any previous order. Regarding any Agency requests, information related directly to a criminal investigation to include investigative notes, reports, witness interview notes, contacts and transcripts are deemed protected work product.

Purdue's Second Motion to Compel is **Sustained** to that extent. The same is **Denied** as it relates to The Oklahoma Office of the Governor, the Oklahoma State Bureau of Investigation, the Oklahoma Legislature and the Oklahoma Worker's Compensation Commission involving protected "deliberative process privilege", consistent with the findings made here and to be made below regarding the "Watson" motion.

8. **Purdue's Motion to Compel Custodial Files In Advance of Depositions**

Sustained consistent with findings made in agenda item No. 6 above.

9. **Watson Lab's Motion to Compel Investigatory Files**

Watson argues it made 12 requests to obtain documents as to eight physicians, one medical center and "other unknown healthcare providers" relevant to their defense because State must prove Defendants' fraudulent promotion and misrepresentation either,

1. Caused provider to submit alleged false claims; 2. Caused provider to make a false statement material to each false claim or; 3. Caused the State to reimburse a particular prescription. Watson argues the Oklahoma Anti-Drug Diversion Act has no privilege provision and expressly authorizes the State to release information contained in the central repository. However, the Act provides that any information contained in the central repository shall be confidential and not open to the public, and, to the extent the State can permit access to the information, it shall be limited to release to a finite list of State and Federal agencies listed in the statute. Otherwise, disclosure is solely within the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs to control and only for specific purposes listed. The record does not support Watson's allegation that the State is relying on the same confidential information when taking depositions in this case. State argues it is not and will not rely on any confidential investigatory information that might be included in investigation files in this case. I must also weigh relevant access to this information against practical privacy considerations, and I have previously ordered the confidential information contained in these databases protected. Therefore, if the information Watson seeks is contained in databases I have previously dealt with, Watson has access to these databases with the personal information protected. The same considerations regarding Grand Jury information, transcripts etc., is also protected and can only be released by the Court presiding over a particular Grand Jury. Regarding the Oklahoma Medicaid Program Integrity Act, State has brought claims under this Act and it specifically allows for the Atty. Gen. to authorize release of confidential records, but, to the extent disclosure is essential to the public interest and effective law enforcement only. Any production of criminal investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving disciplinary proceedings. Again, State argues it will not rely on any confidential or privileged investigatory material for use in this case and the undersigned will watch carefully for any indication that State is violating this representation.

Therefore, Watson's Motion to Compel Investigatory Files is **Denied**.

It is so **Ordered** this 22nd day of October, 2018.

William C. Hetherington, Jr.

Special Discovery Master