IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	§	
Plaintiff,	§	STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY }
vs.	§	**FILED**
(1) PURDUE PHARMA L.P.;	§	**NOV 27 2018**
(2) PURDUE PHARMA, INC.;	§	
(3) THE PURDUE FREDERICK COMPANY;	§	
(4) TEVA PHARMACEUTICALS USA, INC.;	§	In the office of the
(5) CEPHALON, INC.;	§	Court Clerk MARILYN WILLIAMS
(6) JOHNSON & JOHNSON;	§	
(7) JANSSEN PHARMACEUTICALS, INC.;	§	
(8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.;	§	Case No. CJ-2017-816 JURY TRIAL DEMANDED
(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.	§	

THE STATE'S REPONSE TO DEFENDANTS' OBJECTIONS TO THE SPECIAL DISCOVERY MASTER'SOVERRULING DEFENDANTS' OBJECTIONS TO THE STATES CORPORATE REPRESENTATIVE TOPICS

One hundred and eighty-eight days have passed since the State first noticed these depositions. At least sixteen discovery motions have been filed since then, eight of which pertain specifically to depositions. Twelve hearings and seven discovery meet and confers have occurred. One hundred and fourteen 3230(C)(5) depositions should have taken place by now. Yet, to date, only six have actually been completed. There have been more hearings than party depositions.

As the State explained in its Request for Status Conference, Defendants continue to try to bury this case under a constant supply of motions about motions, motions about hearings, and hearings about hearings; meanwhile, the number of days remaining until trial continues to dwindle. Defendants' present objection is no exception.

At issue are the same depositions the State has been trying to take since before Defendants fraudulently removed the case, the same depositions this Court ordered be addressed by Judge Hetherington in August, and the same depositions Judge Hetherington compelled Defendants' to sit for in his October 22 Order. To be clear, Defendants are not appealing Judge Hetherington's Order compelling them to sit for these Depositions. They can't. They waived it. The State filed its motion to compel these depositions to go forward on October 4. Each Defendant filed a Response on October 11—none of which raised the objections Defendants now assert. And Judge Hetherington ordered the depositions to proceed—as defined by the State—on October 22. The time to object to the substance of the State's noticed topics, and the Order compelling the depositions on those topics to proceed, has long since passed.

Because Defendants already lost a motion to compel on these deposition topics and Defendants waived any objection to that ruling, Defendants now act as if the first time Judge Hetherington considered these deposition topics was on a short-notice telephonic hearing on a Saturday. That is not true. Judge Hetherington stated during that telephonic hearing that he was clarifying the order previously entered on October 22 related to the State's motion to compel these very depositions. Hearing Transcript, Nov. 17, 2018, at 29:16-19 ("I do want to proceed with this, but I'm treating it as, you know, apparently we need some clarification of my October 22nd order."). Defendants now take issue with the fact that Judge Hetherington made clear his intent to overrule their objections. Defendants claim the State did something wrong when it defined the topics. They

claim they did not have an adequate opportunity to be heard on their objections. And they argue that Judge Hetherington's decision is an abdication of his responsibility as a judge. Defendants are wrong.

First, the State defined the topics at issue consistent with both Oklahoma statute and Judge Hetherington's October 22 Order. The Rule requires that corporate deposition topics be defined "with reasonable particularity." 12 O.S. § 3230(C)(5). That is exactly what the State did. Oddly, Defendants describe the State's definition of the topics as "unilateral," like it is a bad thing, but that is exactly what the statute contemplates: the party noticing the deposition defines the topics; the party being deposed designates the witness for those topics. Under the Rules, the defining of topics is not a collaborative process.

The State also complied with Judge Hetherington's October 22 Order regarding these topics and depositions, which stated:

> State is Ordered to specifically define each topic of requested inquiry . . . . 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.

October 22 Order at 4. Moreover, as explained above, Defendants had well beyond the three-day's notice required under the statue; Defendants have known about these topics for ***six months***. The topics did not change following Judge Hetherington's October 22 Order. Instead, ***after*** Defendants had been compelled to sit witnesses for these topics, Defendants attempted to re-write the topics—blatantly disregarding both the statute and Judge Hetherington's Order, and attempting to control every aspect of the deposition process. They want to determine who will sit, when, how long they will testify, and what topics the State will cover. That is not how depositions work in Oklahoma (or anywhere else for that matter).

Second, Defendants also complain that the discovery-master process deprived them of a sufficient opportunity to voice their objections. Defendants act as if Judge Hetherington heard about these depositions for the first time on Saturday morning and then summarily deprived them of any opportunity to be heard. That is not true. The State made clear in its Motion that it was requesting the Court "address all issues regarding the scheduling ***and scope of these depositions*** on October 18 (or earlier) so that the State may put a schedule in place regarding these depositions that it first began noticing in April." *See* State's Motion to Compel Depositions, Oct. 4, 2018, at 4. The October 22nd Order was the result of that briefing and hearing. Thus, Defendants had six months, a formal response to the State's motion to compel, and an entire hearing in which to raise these objections. But they did not. Instead, they chose to openly defy the Court's Order and then feign surprise when the Court held firm on its original ruling. Judge Hetherington's decision to overrule these objections was not some unpredictable shot from the hip. It was the careful and well-reasoned result of months of Orders and instructions designed to get these depositions—and this discovery process—on track.

Nothing about this record evidences a lack of due process. Indeed, if anything, the record shows the Court has bent over backwards to indulge Defendants' continued litigation over these depositions. Indeed, at Defendants' request, Judge Hetherington limited the State to 80 hours in which to cover these 41 topics with each Defendant and allowed Defendants to choose topic groupings. The State did not appeal. The State just wants to take the depositions, as ***it has been six months since the depositions were noticed.*** Just as the depositions looked like they were finally going forward, Defendants created a whole new dispute—which fits quite nicely within Defendants overall strategy to frustrate and delay this Court's trial date. Under these circumstances, a Saturday hearing was entirely called for.

But it gets worse. Defendants—not the State—asked for this process in the first place. Defendants asked for a special discovery master over the State's objection, and they won. Defendants asked for Judge Hetherington by name, and they won. Defendants asked for a deposition protocol to amend the Rule with respect to depositions already noticed, again over the State's objection, and again they won. The State did not appeal.

Moreover, the protocol included short-notice telephonic hearings, and Judge Hetherington gave the parties his cell number with explicit instructions to use it for this very scenario:

> [I]f you need a ruling on anything, call me if there's one needed on an objection to a topic or scope so that we can cure that more quickly. And once again, I've got the cell phone, and you all have my cell phone number. That has been used a couple of times, so that's good.

September 27 Hr'g Tr. at 7:10-14. Defendants never objected to this protocol. Defendants waived any objection to this protocol months ago. Defendants have even availed themselves of the protocol by calling Judge Hetherington *during depositions*. The State complied with the protocol here. That Defendants now attempt to disown the protocol they demanded when it works against them is obscene.

Finally, Judge Hetherington has not abdicated his responsibility—he has exercised it. He saw Defendants' disregard for his October 22 Order for what it was: a dilatory, piecemeal abuse of the discovery process. First it was the number of depositions; then it was the groupings; then it was the dates; and now it's the topics. Enough is enough. Something had to be done. This case cannot keep languishing in briefing cycle after briefing cycle on these very same depositions while the days to trial race by.

But, as Defendants' appeal here demonstrates loud and clear, something still must be done to stop the Defendants from writing briefs about these depositions and compel Defendants to start actually sitting for them. Hence, the State filed its Request for a Status Conference. There, the

State points out the exact same egregious behavior cited here—and then some—to show the lengths to which Defendants have gone to delay this case and frustrate this Court's trial date. Their strategy is evident, and this appeal is only further proof of it. The six-month history of these depositions is the epitome of it.

Accordingly, the State proposed a solution: that the Court order the Defendants to present a fully prepared witness on each topic on the dates set forth in the attached calendar, which the State has attached again here as Exhibit A. Otherwise, it is clear that we will just find ourselves back here, writing brief after brief, arguing hearing after hearing, until—sooner or later—there are no days left.

Defendants' Objection should be denied. The State respectfully reasserts its recommendation that the Court set these depositions—as noticed—according to the calendar attached hereto.

Respectfully submitted,

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EXHIBIT A

December 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Purdue – CR - Rosen	4 Purdue – CR - Cramer Noramco - Grubb	5 Purdue- CR- R. Sackler	6 Teva – FW - Beader Purdue – CR – D. Sackler	7 Purdue – CR – J. Sackler JJ – FW – Kuntz. (agreed)	8
9	10 Purdue – CR – K. Sackler	11 Purdue – CR – I. Sackler JJ – CR – 35, 36, 37, 38	12 JJ – FW – Moskowitz (agreed)r JJ – CR- 42, 43, 44	13 Purdue – CR – S. Sackler JJ – FW - Rohm	14 Purdue – CR – M. Sackler	15
16	17 Purdue – CR - Haddox JJ – FW - Chupa	18 JJ – CR – 11, 12, 14, 15, 16 Purdue – CR - 34	19 Purdue – CR- Gasdia JJ – CR – 21, 25, 27, 28	20 Hearing	21 Purdue- CR- 42, 43 JJ – CR – 6, 7, 8, 9	22
23	24	**25**	26	27 Purdue – CR- Lang JJ – FW - Yap	28 Purdue – CR- Alfonso JJ – FW - Panico	29
30	31					

CR = Corporate Representative
FW – Fact Witness

January 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 JJ – FW - Tewell	3 Purdue – FW - Bennet Purdue – CR – 6, 7, 21	4 JJ – FW - Westfall Purdue – CR – 8, 9, 25	5
6	7 Teva – FW - Bearer Purdue – CR – Hogen JJ- FW-Buel	8 Teva – FW - Caminiti JJ– FW – DeMiro	9 Teva – FW - Condodina JJ – FW - Day	10 Teva – FW - DeWildt JJ – CR - 30	11 Teva – FW – Judge Purdue – CR - 33	12
13	14 Teva – FW - King JJ – CR- Witness 1	15 Teva – FW - Larijani JJ – CR – 2, 26	16 Teva – FW - Reedy JJ – CR – 3, 4, 5, 10 JJ – FW – Beck	17 Hearing	18 Teva – FW - Reilly Purdue – CR – 13, 38 JJ – CR - 32	19
20	21 Teva – FW - Richardson	22 Teva – FW – Spokane Purdue- CR – 2, 26	23 Teva – FW 0 Thatcher Purdue – CR- 3, 4, 22, 32	24 Teva – FW - Warner Purdue – CR – 11, 12, 14, 15, 16	25 Teva – FW - Williams Purdue – CR- 10, 28	26
27	28 JJ – CR – 17, 18, 24 Purdue – CR- 1	29 JJ – CR – 33, 34 Purdue – CR- 23, 39, 41	30 JJ – CR-22, 23, 31 Purdue – CR- 17, 18, 30, 31	31 JJ – CR – 22, 23 Purdue – CR- 35 36, 37		

CR = Corporate Representative
FW – Fact Witness

February 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Purdue – CR – 5, 27	2
3	4 Teva – CR - 1	5 Purdue – CR – 24 Teva – CR - 2	6 Purdue – CR – 40 Teva – CR – 23, 5, 17	7 JJ – CR – 40 Teva-CR – 3, 4	8 Teva – CR - 40	9 Teva – CR – 27, 10
10	11 Teva – CR – 11, 12, 14, 15, 16	12 Teva – CR – 22, 25, 26	13 Teva – CR – 28, 31, 32	14 Hearing	15	16 Teva – CR – 30, 8
17	18	19 Teva – CR – 6, 18	20 Teva – CR, 7, 9	21 Teva – CR – 39, 41	22 Teva – CR – 33, 34	23 Teva – CR- 35, 36, 37
24	25	26 Teva – CR - 24	27 Teva – CR- 42, 43	28		

CR = Corporate Representative
FW – Fact Witness