

As an initial matter, Mr. Rosen is not employed by The Purdue Frederick Co. Thus, he may not be summoned by notice to give corporate deposition testimony on behalf The Purdue Frederick Co. In addition, Mr. Rosen, by mere status of being a Vice President, may not properly provide deposition testimony as a corporate representative on behalf of any of the Purdue entities. The State is already seeking, and Purdue will be providing, a corporate representative witness to testify on the same topics that the State is purportedly seeking to obtain from Mr. Rosen.

Not only have the parties scheduled such a deposition, Mr. Rosen is an individual who has never been involved with the marketing or sales of opioid products—the issues central to this litigation. Mr. Rosen is the Vice President of Federal Policy and Legislative Affairs for Purdue Pharma, L.P. Ex. B, Declaration of Burt Rosen (“Rosen Decl.”) ¶ 2. Mr. Rosen is responsible for promoting federal public policy advancements and providing advice to the senior management of Purdue. *Id.* ¶ 4. Mr. Rosen has never had any involvement with the manufacture, marketing, promotion, or sales of opioid products. *Id.* ¶ 6. Instead, his work largely revolves around public policy advancements. *Id.* ¶ 4. He has no executive authority over any of the Purdue entities, and his role in the day-to-day operations of Purdue Pharma, L.P. is limited to federal legislative matters. *Id.* ¶¶ 5, 8.

ARGUMENT

Under Oklahoma’s Discovery Code, a court “may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense.” Okla. Stat. Ann. tit. 12, § 3226(C)(1). In analyzing whether an individual may properly provide testimony as a corporate representative, courts consider whether the discovery sought is “relevant to any party’s claim or defense” and whether it is

“unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Okla. Stat. Ann. tit 12, § 3226; *see also Bradley v. Lorillard Tobacco Corp.*, 2014 WL 12628519, at *2 (M.D. Fla. June 25, 2014).¹

The Court should quash the Notice of the Purdue companies through Mr. Rosen here for the following reasons: (i) because Mr. Rosen does not hold any position in The Purdue Frederick Co., as a matter of fact or law he cannot be deposed as a representative of that company; (ii) the State’s deposition request will only result in duplicative testimony; and (iii) the same discovery the State seeks here is available from less burdensome alternatives.

A. Deposition notice for corporate testimony for The Purdue Frederick Co. is improper because Mr. Rosen cannot testify as a corporate representative of that entity.

The State issued one Notice for testimony from all three Purdue entities—Purdue Pharma, L.P., The Purdue Frederick Co., and Purdue Pharma Inc.—through Mr. Rosen. However, as a matter of fact, Mr. Rosen does not hold any position in The Purdue Frederick Co. Because no witness can give corporate representative testimony on behalf of a company for which the witness is not an employee, officer, director, or managing agent, *see Minter v. Prime Equip. Co.*, 356 F. App’x 154, 162 (10th Cir. 2009), Mr. Rosen cannot testify on behalf of The Purdue Frederick Co.

B. Deposing Mr. Rosen as a corporate representative will only result in duplicative and harassing testimony.

The parties have already scheduled a corporate representative to testify on behalf of Purdue on the same topics that Mr. Rosen would purportedly testify about here. Specifically, Purdue will be providing a 3230(C)(5) witness to testify on legislative efforts and activities and

¹ Since the “Discovery Code was [] adopted from the federal scheme,” Oklahoma courts look to federal authority construing the Federal Rules of Civil Procedure for guidance when applying similar provisions. *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238.

the Pain Care Forum, among other topics. Because the State is already “scheduled to depose” a corporate representative on these topics, any information sought from Mr. Rosen “will be obtained[] through other deponents and would be duplicative.” *In re Yasmin & Yaz*, 2011 WL 3759699, at *6 (S.D. Ill. Aug. 18, 2011).

In addition, Burt Rosen has never had any involvement with the manufacture, marketing, or sales of opioid products—the issues central to the claims in this litigation. Rosen Decl. ¶ 6. All of the State’s causes of action in this case revolve around allegations that Purdue made misrepresentations and omissions regarding the marketing of opioid medications. However, Mr. Rosen was never involved in the creation of any marketing materials; nor was he involved in the promotion or sale of opioid medications. *Id.* As a result, Mr. Rosen does not have any “unique personal knowledge about the controversy,” *see Evans v. Allstate Ins. Co.*, 216 F.R.D. 515, 519 (N.D. Okla. 2003), to testify as a corporate representative in this case. *See also Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir.1979) (prohibiting deposition of defendant's president in a wrongful death action against drug manufacturer because he was “extremely busy and did not have any direct knowledge of the facts”).

Instead, Mr. Rosen’s job responsibilities have focused on speaking with lawmakers about legislation in Congress regarding the pharmaceutical industry. Whether a bill passed or did not pass, and whether Mr. Rosen had any role in advocating for its passage, are all matters removed from the issues central to this case. Critical to this point is that Mr. Rosen is only involved with *federal* legislative matters—he has no involvement with state matters. Rosen Decl. ¶ 5. Despite this, the State improperly seeks his testimony as a corporate representative for their state-based claims.

C. Requiring Mr. Rosen to sit for a corporate representative deposition will be unduly burdensome.

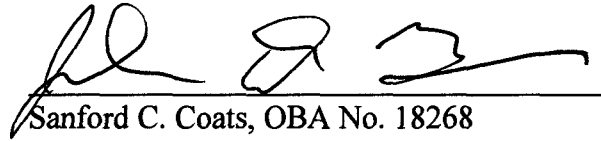
The State has already requested to depose Mr. Rosen as a fact witness, and after rejecting the date that Purdue offered, the State issued the underlying Notice to depose the Purdue companies via Mr. Rosen. This is in addition to the fact that the State is already taking more than 80 hours of corporate deposition testimony of Purdue. Finally, as detailed above, the State is already seeking, and Purdue will be providing, a corporate representative witness to discuss government affairs activities. This witness, instead of Mr. Rosen, will be more apt to discuss such matters on behalf of Purdue, and will certainly be a “source that is more convenient [and] less burdensome.” *Ciarrocchi v. Unum Grp.*, 2009 WL 10676631, at *4 (D.N.J. Aug. 27, 2009). As a result, the State’s Notice improperly seeks testimony from Mr. Rosen as a corporate representative.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court grant its Motion to Quash and Motion for Protective Order. Specifically, Purdue requests that the Court quash the State’s deposition notice for Burt Rosen and enter a protective order preventing the State from taking the deposition of Mr. Rosen as a corporate representative of Purdue.

Date: November 28, 2018

Respectfully submitted,



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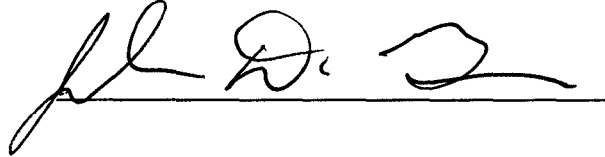
*Counsel for Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue
Frederick Company Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 2018, I caused a true and correct copy of the following:

**PURDUE'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER
FOR DEPOSITION NOTICE OF PURDUE VIA BURT ROSEN**

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

A handwritten signature in black ink, consisting of several stylized, cursive letters, is written above a horizontal line.

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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
Judge Thad Balkman

Special Master:
William Hetherington

**NOTICE FOR 3230 VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND
THE PURDUE FREDERICK COMPANY**

TO:

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COUNSEL FOR THE PURDUE DEFENDANTS

Please take notice that, on the date and at the time indicated below, Plaintiff will take the deposition(s) upon oral examination of the corporate representative, Burt Rosen, of Defendants, Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, the “Purdue Defendants”) in accordance with 12 O.S. §3230.

The oral and video deposition(s) will occur as follows:

DATE	TIME	LOCATION
December 3, 2018	8:00 am	Braniff Building 324 N. Robinson Avenue, Suite 100 Oklahoma City, OK 73102

Said depositions are to be used as evidence in the trial of the above cause, the same to be taken before a qualified reporter and shall be recorded by videotape. Said depositions when so taken and returned according to law may be used as evidence in the trial of this cause and the taking of the same will be adjourned and continue from day-to-day until completed, at the same place until it is completed.

Dated: November 7, 2018

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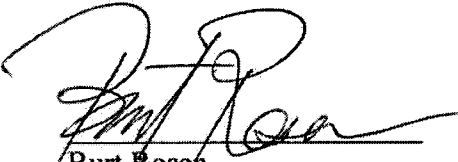
/s/ Michael Burrage

Michael Burrage

EXHIBIT B

9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: 11/28/18


Burt Rosen