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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	§	STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY
Plaintiff,	§	FILED OCT 11 2018
vs.	§	In the office of the Court Clerk MARILYN WILLIAMS
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,	§	Case No. CJ-2017-816 JURY TRIAL DEMANDED
Defendants.	§	

<u>STATE'S RESPONSE TO WATSON LABORATORIES, INC.'S MOTION TO COMPEL DISCOVERY OF INVESTIGATORY FILES</u>

Defendant Watson Laboratory Inc.'s ("Watson's" or "Defendant's") Motion to Compel Discovery ("Motion") seeks access to the State's privileged criminal, civil, and regulatory investigation files. Defendant wants investigatory files regarding persons that are <u>not</u> parties to this litigation. These documents are historically and statutorily protected from such disclosure. These documents—and their continued confidentiality—are vital to the State's ongoing efforts to

combat the opioid epidemic and to investigate and fulfill its civil, criminal, and administrative duties generally. And, to the extent any such records are not protected from disclosure, the State has already agreed to provide access to them. Accordingly, this Motion should be denied.

I. INTRODUCTION

To address the opioid crisis, the State, among other things, filed civil litigation against the manufacturers of opioids *and* filed criminal charges against certain outlier over-prescribing physicians who operated pill mills. Unlike most litigants, the State has access to civil, criminal and administrative remedies. The State alone has the power to fight this battle on all fronts. It must be allowed to do so.

Watson's Motion asks this Court to order the State to produce the privileged and confidential contents of its investigation files. If the Court grants the Motion, then the Court will be requiring the State to forfeit the tools it needs to effectively prosecute its civil, criminal and disciplinary cases. It will hamstring the State's law enforcement and compliance officers from being able to develop those files to the extent necessary to prove a case to their heightened burdens of proof. And, worse still, it will chill the willingness of witnesses to cooperate out of fear that confidential information will now be on display for the public to see. In short, if the Court grants Watson's Motion, from this point forward the State may be forced to choose between criminal investigations and civil litigation. This cannot and should not happen. For these reasons alone, the Motion should be denied.

Moreover, the State already agreed to produce the requested information that is not otherwise privileged. This is not an illusory promise. This includes any final agency action or filing made in each of the proceedings at issue. Yet instead of allowing the discovery process to proceed as ordered, Defendant has chosen to preemptively challenge the State's privileges, asking

this Court to compel the production of things it knows are privileged—things like attorney work product, patient names, and law enforcement reports in pending investigations. Then, in a contrived attempt to avoid these privileges, Watson claims the State has waived them in sales rep depositions by asking questions about doctors under criminal and administrative prosecution—doctors that Defendants constantly called on. However, Watson knows full well that the information the State has used to this point is public knowledge, frequently appearing in local newspapers and on local news programs. The State has *not* used or relied on any confidential or privileged investigation material from any investigations in this civil case.

Watson's Motion to compel is an effort to frustrate and delay in the face of the State's legitimate desire and duty to protect the privacy of its citizens and the efficacy of its ongoing law enforcement efforts. The law is with the State. The equities are with the State. Watson's Motion should be denied.

II. ARGUMENT AND AUTHORITIES

Documents are only subject to discovery to the extent they are "not privileged," "relevant," and their production is "proportional to the needs of the case." 12 O.S. § 3226(B)(1)(a). The documents sought here do not satisfy those requirements.

A. These Documents are Protected from Discovery

Watson seeks access to the State's files regarding ongoing civil, criminal and regulatory investigations. This includes records containing attorneys' mental impressions, adjudicatory deliberations, and the identities of undercover agents. Not surprisingly then, these documents are subject to layer upon layer of protection designed specifically to prevent their disclosure. The Court should uphold those protections here.

1. These Documents are Privileged Under the Work-Product Doctrine

Parties are regularly forbidden from discovering the other side's work product—*i.e.*, "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative, including the other party's attorney, consultant, surety, indemnitor, insurer or agent." 12 O.S. § 3226(B)(3). And when those materials include opinion work product, those protections are even stronger: "the Court ***shall protect against disclosure*** of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation." *Id.* at § 3226(B)(3)(b). Nevertheless, these are exactly the kinds of documents Watson seeks to discover through its Motion.

Watson seeks "All documents concerning any disciplinary, civil, or criminal proceedings brought" against any healthcare provider "related to the prescription of opioids." Watson RFP No. 9. As they admit in their Motion, this includes things like "initiating documents, witness interview notes and transcripts, . . . reports, . . . pleadings, motions, [and] orders," Motion at 3-4, many of which (like investigation notes and reports) are blatantly work product. But Watson conveniently omits from its Motion that these RFPs also seek ***all drafts*** of initiating documents, pleadings, motions, and orders—things that clearly constitute work product and clearly contain the State's opinions and mental impressions. *See* Watson RFP Definition 7 ("The term 'document(s)' includes all drafts and all copies that differ in any respect from the original . . . ."). Moreover, Watson is not shy about why it wants these documents: it wants to know what the State says about the merits of this case. *See* Motion at 7 ("This discovery is important *inter alia*, to: . . . (2) understand whether the State made statements, admissions and uncovered evidence in the course of its investigations that exculpates the defendants . . . ."). This kind of request to serve up the

mental impressions of the State's attorneys, investigators, and administrative judges for Defendant to peruse is entirely inappropriate and flies in the face of the work product doctrine.

Indeed, even if this was a criminal case—where the accused are fighting for their freedom—Watson's discovery requests would *still* be improper. As the Oklahoma Court of Criminal Appeals has made clear:

> [Defendant] is not entitled to discovery of the State's work product. There is no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigation on a case.

Fritz v. State, 1991 OK CR 62, ¶ 12, 811 P.2d 1353, 1358 (internal citations omitted). This example from *Fritz* is particularly instructive here as, just as in this case, the defendant was seeking an Oklahoma State Bureau of Investigation ("OSBI") report regarding another person. *Id.* at ¶¶ 7-15. The Court of Criminal Appeals held that such a report was the State's work product *and* that it was not exculpatory of the defendant, as it went to the criminality of only the person that was the subject of the report. *Id.* at ¶ 12. The fact that the other person in *Fritz* was in fact a co-defendant in the State's case is further proof that the reports sought here are beyond the scope of discovery, as the healthcare providers that are the subjects of these investigation files are not even parties to this litigation—much less co-defendants. *Fritz* was criminal; this is civil. *Fritz* involved records regarding a co-defendant; this case involves records regarding third parties. Since it was not error for the State to withhold those documents in the *Fritz* context, it most certainly would not be an abuse here. Thus, just as in *Fritz*, the State should be allowed to protect this information from disclosure.

2. These Documents are deemed Confidential by Statute

The second layer of protection for the documents requested consists of a litany of statutes expressly deeming these records confidential. Many of these statutes contain operative language

that is nearly identical to a statute the Oklahoma Supreme Court held created a privilege from discovery in *State ex rel. Hicks v. Thompson*, 1993 OK 57, 851 P.2d 1077.[1]

Watson recognizes many of these provisions, and even quotes them in its Motion. Watson's argument to get around this law hinges on the notion that the statutes authorize this confidential information to be used or disclosed in certain circumstances, for example that the Attorney General "***may*** disclose so much of the multicounty grand jury proceedings ***to law enforcement agencies*** as he considers essential to the public interest and effective law enforcement." *See* Motion at 14; 22 O.S. § 355. Nowhere in Watson's Motion does it explain how the circumstances of this litigation meet those criteria, however. Instead, Watson's Motion demonstrates a fundamental misunderstanding of the difference between "may" and "shall" and the circumstances under which these documents ***may*** be shared.

a. Anti-Drug Diversion Act, 63 O.S. § 2-309D

Watson acknowledges but fundamentally misunderstands the protection provided in the Anti-Drug Diversion Act. First, Watson disingenuously argues this statute "expressly authorizes

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[1] The statute at issue in *Thompson* was 74 O.S. § 150.5(D), which provides:

> All records relating to any investigation being conducted by the [Oklahoma State] Bureau [of Investigation], including any records of laboratory services provided to law enforcement agencies pursuant to paragraph 1 of Section 150.2 of this title, shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the bureau may disclose, at the discretion of the Director, such investigative information to: (a) officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions, (b) employees of the Department of Human Services in the furtherance of child abuse investigations, and (c) appropriate accreditation bodies for the purposes of the Bureau's obtaining or maintaining accreditation.

To the extent Watson also seeks such OSBI records, the State asserts the privilege under this statute as well.

the State to release information contained in its central repository." Motion at 11-12. The statute is clear: "The information collected at the central repository pursuant to the Anti-Drug Diversion Act ***shall be confidential and shall not be open to the public.***" 63 O.S. § 2-309D (emphasis added). And to the extent the State can permit access to that information, "[a]ccess to the information ***shall be limited to***" the finite list of State and Federal agencies listed in the statute—which does not include Defendants. *Id.*[2] Otherwise, disclosure is solely within the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for the finite set of purposes listed under the statute—none of which Watson contends matches the circumstances of this case. *See id.* at § 2-309D(B)-(D).

Second, Watson is flat wrong when it suggests the State has been utilizing this information at depositions without first providing it to the Defendants. As discussed elsewhere in the State's response, ***the State has not used any information in these depositions that was not either public record or part of Defendants' own production***. One need look no further than the local news to find information regarding Harvey Jenkins's criminal past:

- Kyle Schwab, *'Pill mill' case headed to trial*, THE OKLAHOMAN (Jan 13, 2018), https://newsok.com/article/5579406/pill-mill-case-headed-to-trial
- Andrew Knittle, *Jenkins charged with 29 felonies connected to 'pill mill,'* THE OKLAHOMAN (March 24, 2016), https://newsok.com/article/5487203/jenkins-charged-with-29-felonies-connected-to-pill-mill
- Andrew Knittle, *Doctor fined $36k loses ability to prescribe drugs*, THE OKLAHOMAN (June 18, 2015), https://newsok.com/article/5428261/doctor-fined-36k-loses-ability-to-prescribe-drugs
- M. DeLaTorre, Accused 'pill mill doctor' Harvey Jenkins has medical license revoked, OKLAHOMA'S NEWS 4 (Feb. 4, 2015), https://kfor.com/2015/02/04/imminent-danger-order-issued-against-accused-pill-mill-doctor-harvey-jenkins/

[2] The Statute also permits access to registrants "for the purposes of patient treatment and for determination in prescribing or screening new patients." § 2-309D(G).

Indeed, the excerpts of the deposition in Watson's Motion illustrate this:

> Q (BY MR.PATE) You're aware that Dr. Harvey Jenkins has been charged with 29 felonies and a misdemeanor for running a pill mill?
> A I wasn't aware of the number, ***but I did see in the media where he was – he was charged.***

Motion at 13 (quoting *Deposition of Brian Vaughan*, 190:11-16 (Sept. 19, 2018)). And, for the information related to Dr. Pope, one need look no further than the Federal Register. *See* 82 Fed. Reg. 14,944 (March 23, 2017). The State has not relied on any confidential information related to criminal investigations or prosecutions to assist in taking depositions in this case.

As with other information, to the extent Watson seeks documents and data that are not protected, the State is willing to produce and has been producing it. But what Watson seeks through the Anti-Drug Diversion Act repository is a database of patient names, addresses, birth dates, and sensitive medical information related to prescription-medication history. *See* Motion at 12. The Court has already ordered that the State does not have to produce patient-identifying information. Watson should not get access through the back door for things they cannot get through the front.

b. Multi-County Grand Jury Act, 22 O.S. § 355

The story of the Oklahoma Multi-County Grand Jury Act is much the same. As Watson recognizes, grand jury proceedings are confidential, but the Attorney General "***may***" use or disclose some of that information "***to law enforcement agencies*** as he considers essential to the public interest and effective law enforcement." 22 O.S. § 355(A). Again, just like the confidentiality surrounding litigation and investigation files, the choice to disclose the confidential grand jury transcripts Watson requests is committed to the discretion of the Agency (in this case, the Attorney General). And, just like with the data in the Anti-Drug Diversion Act database, such disclosure is only appropriate when directed to specified entities (in this case, the Attorney General

and law enforcement agencies)—none of which include Defendants. Accordingly, nothing in this statute allows production of the information sought.

But Watson also omitted the rest of § 355(A), which further emphasizes the degree of protection surrounding grand jury transcripts:

> Otherwise, a grand juror, attorney, interpreter, stenographer, operator of any recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the multicounty grand jury ***only when so directed by the court. All such persons shall be sworn to secrecy and shall be in contempt of court if they reveal any information which they are sworn to keep secret.***

(emphases added).[3] And to be clear, when the statute says persons can reveal grand jury matters "when so directed by ***the*** court," it does not mean any court; it means the presiding judge over the multicounty grand jury. *See* 22 O.S. § 351(B)(2). No such order has been entered here.

Finally, Watson's reliance on *Rush v. Blasdel*, 1991 OK CR 2, 804 P.2d 1140, is just plain wrong. As Watson concedes, the person in *Rush* asking for the grand jury transcript was the accused himself, Criston Eugene Rush—it was not some third party in a separate civil litigation. *See* 1991 OK CR 2, ¶1. Moreover, the reason the Court of Criminal Appeals ordered the transcript released to Rush was not out of some nebulous and unarticulated notions of due process; it was because a statute said that "[u]pon request, a transcript of the testimony or any portion thereof shall be made available to ***an accused.***" *See id.* at ¶¶ 5-6; 22 O.S. § 340.[4] *Rush* is entirely inapposite. Any grand jury transcripts should remain confidential.

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[3] *See also In re Proceedings of Multicounty Grand Jury*, 1993 OK CR 12, ¶ 7, 847 P.3d 812, 814 ("Throughout history grand jury proceedings have been conducted in, and surrounded by, secrecy. Commentators consider the basic principle, that grand jury proceedings are nonpublic, to be universal and the policies underlying that principle to be widely recognized. The United States Supreme Court has consistently recognized that the proper functioning of the grand jury system depends upon the secrecy of the grand jury proceedings . . . .").

[4] *See also In re Proceedings of Multicounty Grand Jury*, 1993 OK CR 12 at ¶ 10 ("We also find that . . . an accused may only request grand jury transcripts which are applicable to the crime for

c. Medicaid Program Integrity Act, 56 O.S. § 1004(D)

The argument under the Medicaid Program Integrity Act touches on all the points mentioned above—a general blanket of confidentiality protecting the records at issue; a discretionary authority to produce them; Watson's attempt to convert that discretionary authority into a mandatory duty it is not. *See* 56 O.S. § 1004(D) ("Records obtained or created by the Authority or the Attorney General pursuant to the Oklahoma Medicaid Program Integrity Act ***shall be classified as confidential information and shall not be subject to*** the Oklahoma Open Records Act or to ***outside review or release by any individual except, if authorized by the Attorney General***, in relation to legal, administrative, or judicial proceeding.") (emphasis added). Moreover, a number of cases involving Medicaid fraud are protected from disclosure by virtue of a state or federal court sealing order, which cannot be set aside or ignored here.

Further, the State has already provided Defendants with the universe of potential Medicaid claims from which the State will show the Defendants caused false claims to be made—a universe of some 9,000,000 records. These are the only Medicaid records relevant to the State's claims and the only records on which the State relies. Yet, Watson wants more. Once again, it want access to the sensitive patient records related to these claims so that they can target the individual patients as part of their campaign to harass and intimidate. In open Court, the State challenged Defendants to vow that, if given this information, they would not use it to contact the patients. Defendants would not accept that challenge.

The State, meanwhile, has remained steadfast in its promise to protect the confidentiality of these records. The Medicaid Program Integrity Act supports that confidentiality.

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which he/she is now charged. The holding in *Rush v. Blasdel*, 804 P.2d 1140 (Okla. Cr. 1991), is limited in accordance with this decision.").

3. The HIPAA Protective Order does not require production

As has become common, Watson mistakes the HIPAA protective order in this case for a production order. They are not the same. The presence of a HIPAA protective order does not magically convert privileged, confidential information into documents subject to discovery. Just because information can be protected on the back end does not mean it should be produced on the front. As the State has demonstrated before, this argument is a total red herring.

4. The State has not Waived these Protections by Referencing Matters of Public Knowledge

Under any standard, the State has not waived the privileges or protections listed above because the State has never disclosed or relied on privileged information. To the contrary, as explained above, the State has pursued this action on information available to the public and from Defendants' own files.

Watson places the entire weight of its waiver argument on what federal courts "applying Oklahoma law" have said about the matter, all the while overlooking the Oklahoma state court case imbedded within its own convoluted string cite. This makes sense, however, given that actual Oklahoma law articulates a test that doesn't fit with Defendant's narrative.

In *Gilson v. State*, the Oklahoma Court of Criminal Appeals articulated the rule for "at issue" waiver to require: "1) the party asserting the privilege does so as a result of an affirmative act; 2) through the affirmative act the privilege holder has made ***the substance of the confidential communications a material issue in the case;*** and 3) use of the privilege to suppress privileged information needed to address the material issue brought out by the holder would be manifestly unfair to the party against whom it is asserted." As demonstrated throughout the preceding sections, however, the State has never made the substance of its litigation files or investigatory reports, grand jury transcripts, or patient data a "material issue" in this litigation.

What the State has put at issue—what *is relevant to this case*—is the fact that Defendants engaged in a massive campaign to generate and expand the market for opioids across the State and to get Oklahoma citizens hooked on their dangerous narcotics; that said campaign involved a coordinated and sophisticated marketing effort whereby Defendants collected volumes of information to target and convince Oklahoma physicians to prescribe their drugs. This does not open the door for Defendants to obtain work-product and other privileged information related to the State' criminal prosecutions and investigations.

B. To the Extent these Documents Are Relevant and Not Protected from Disclosure, the State has Already Agreed to Provide Access to Them; Anything More would be Unduly Burdensome to the State

To reiterate, the State has already agreed to produce non-privileged records related to the investigations Watson identified. To the extent the State further objects to the requests, it is because the requests themselves are vague, overly broad, and place an undue burden on the State.

Specifically, the State refers to Watson RFPs 9 and 10, which request "All documents concerning ***any*** disciplinary, civil, or criminal proceedings brought by You against ***any*** other HCP not previously requested related to the prescription of Opioids," and "All documents concerning ***any*** complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of disciplinary, civil, or criminal proceeding." These requests seek every conceivable document ever created in relation to an unlimited number of proceedings that either did or did not take place. Moreover, with respect to the request regarding complaints that did not result in disciplinary action, there is no link whatsoever to opioids, which makes the vast majority of information culled by this request irrelevant to this case. Accordingly, the minimal degree of relevance captured by these improper catch-all requests is vastly outweighed by the substantial

burden the State would incur to gather, collect, review—redact—and produce the information. The State should not be forced to engage in such an open-ended fishing expedition.

But the heaviest burden the State would incur if ordered to produce these files is the cost to the State's ability to conduct these criminal, civil and administrative investigations going forward. The law recognizes that the contents of these files are confidential,[5] and the State's prosecutors and investigators rely on that confidentiality in carrying out their duties. These files contain the identities of undercover agents and witnesses.[6] And, as discussed above, these files contain the mental impressions and strategies of these offices and agencies, the disclosure of which would be just as harmful in those proceedings as would be ordering the State to share its litigation strategy in this one. Defendants are asking this Court to disclose the blueprints of how the State conducts its investigations.

Further, the disclosure of investigatory files would generally have negative impact on the criminal justice system at large, as it runs the risk of eroding the presumption of innocence and putting the accused on trial in the court of public opinion. Indeed, this is exactly why the Oklahoma Rules of Professional Conduct generally require prosecutors to:

> refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an

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[5] *See generally* 51 O.S. § 24A.12 ("Except as otherwise provided by state of local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.").

[6] Some of these files may also contain the identities of confidential informants, which are also protected by their own statutory privilege. *See* 12 O.S. § 2510 ("The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.").

> extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule[.]

ORPC 3.8(f). Requiring disclosure of this information entirely defeats that purpose.

Once those files are released, the damage cannot be undone. For instance, if the Defendants have access to the State's investigatory files, Defendants may inadvertently disclose the information in those files—including the State's ongoing strategies to conduct those investigations—to the very persons under investigation, whether during a deposition of the accused or in a public filing in this case. If the Court grants access to this information, there is nothing to stop Defendants from asking a doctor under investigation if he or she knew that a patient was actually an undercover agent, or whether the doctor knew that one of his or her employees had come forward as a witness—all of which would put both the investigation *and the persons involved* in jeopardy. And it would be in Defendants financial interests to do so given that these doctors and their continued overprescribing are exactly how Defendants built their empire. Defendants kept libraries of data on these doctors, yet none of them told their sales reps that these doctors were engaged in criminal activity or that their prescribing habits were cause for concern. Quite the contrary; even after sales reps themselves reported suspicious activity, Defendants own documents show that they continued to send reps to call on those doctors. This case demonstrates that there is no limit to Defendants' greed.

Only now are any of the Defendants interested in the criminal files of these pill-mill doctors. But the disclosure of investigation files and other privileged information would undermine the credibility of the State in other contexts. Specifically, many of the records in these criminal cases have been filed under seal. *See e.g.*, Docket Sheet, *State v. Jenkins*, CF-2016-2325 (Okla. Cnty. Dist. Ct.) (noting the transcripts of the preliminary hearings in Harvey Jenkins's case have been filed under seal). The same is true for civil litigation (such as *qui tam* FCA cases)

currently under seal pursuant to a federal or state court sealing order. If the Court were to grant the present Motion, litigants in myriad criminal and civil cases across Oklahoma could point to this case and say that this Court's decision casts doubt on the confidentiality of historically privileged documents. That would be a travesty.

Moreover, ordering disclosure also undermines the credibility of the State in the eyes of federal and out-of-state law enforcement agencies with whom continued cooperation is vital. Put simply, if those agencies are not confident in the State's ability to protect the sensitive information they share with Oklahoma, it significantly decreases their willingness to do so in the future, and thus severely hampers the State's ability to protect its citizens from the criminal acts that so often do not discriminate between one state and the next.

As noted above, forcing prosecutors and investigators to give up their notes, their contacts, their thoughts and impressions, sends an irreversible chill across the whole of the State's law enforcement and administrative bodies. It will cause invaluable civil servants to hesitate the next time they think to send one of their own under cover. It will make them think twice the next time they consider whether to press a novel argument or seek conviction under a new and untested statute. It will make them waiver the next time a witness asks if they can keep their identity safe. This is too high a price to pay in this or any litigation. It is unprecedented, and for good reason.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Watson Laboratories, Inc.'s Motion to Compel Discovery.

Respectfully submitted,

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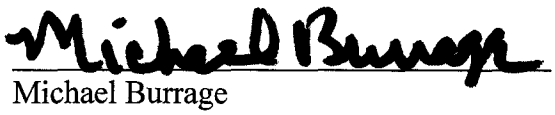

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