



STATE OF OKLAHOMA } S.S.
 CLEVELAND COUNTY }
 IN THE DISTRICT COURT OF CLEVELAND COUNTY
 STATE OF OKLAHOMA

FILED
 OCT 04 2018

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

at the office of the
 Court Clerk MARILYN WILLIAMS

Plaintiff,

vs.

PURDUE PHARMA L.P., et al,

Defendants.

Case No. CJ-2017-816

**PURDUE'S MOTION TO COMPEL PRODUCTION OF CUSTODIAL FILES IN
 ADVANCE OF DEPOSITIONS**

Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. ("Purdue") respectfully move this Court for an Order compelling Plaintiff the State of Oklahoma to produce custodial files of State employees in advance of their fact depositions. The custodial files are a necessary precursor to productive depositions and should have been produced as a matter of course so Purdue can continue to meaningfully engage in the discovery process and prepare its defenses for trial. Lacking any response from the State following a request for their production, Purdue must now seek judicial relief to avoid further delay.

On September 5, 2018, Purdue took the deposition of Clint Castleberry, the State's corporate designee on the topic of the Oklahoma Department of Corrections' policies regarding the diagnosis and treatment of pain. Unfortunately, Mr. Castleberry was unprepared to testify on the topic and Purdue has filed a separate motion to compel the State to produce a properly prepared witness. See, Purdue's Motion to Compel Witness Testimony, filed 10/4/18. Nevertheless, Mr. Castleberry did manage to identify several other individuals who are likely to have relevant factual evidence, including the Department of Corrections' Chief Medical Officer, Head Pharmacist, and

Chief Administrator of Program Services. On September 7, two days after Mr. Castleberry's deposition, Purdue notified the State that it intended to take the depositions of those three individuals. *See*, Ex. A, 9/7/18 letter from M. Cheffo to Plaintiff's Counsel. The State did not object to the request and provided proposed deposition dates for the witnesses in early October.

On September 19, two days after receiving the State's proposed dates, Purdue requested that the State produce custodial files for the witnesses in advance of their depositions. *See*, Ex. B, 9/19/18 email from J. Tam to D. Pate. The State did not object, request additional time, or seek to meet and confer on the subject. Instead, the State simply ignored the request. Purdue has not received any response from the State, and the deadline by which Purdue requested production of the custodial files has elapsed by several days. *Id.*

The State's refusal to produce custodial files for the deponents will cause Purdue significant prejudice and prevent the discovery of relevant information that is a condition precedent to taking depositions. As this Court has recognized, "[you have] got to have document production and proper preparation before that for witnesses to be prepared." Ex. C, (8/31/18 Hearing Tr.) at 24:20-22. While the Department of Corrections' production was *already* deficient, comprising a mere 191 documents that purport to cover over two decades of relevant documents in this case, a review of the Department of Corrections' production shows these key witnesses barely appear therein. Joel McCurdy, the Department of Corrections' Chief Medical Officer, appears in only *four* production documents (three publicly available Department of Corrections policies and an inapposite legal filing). Neither Robin Murphy, the Department of Corrections' Head Pharmacist, nor Nate Brown, the Department of Corrections' Chief Administrator of Program Services, appear in the production *at all*. Purdue is therefore without documents or information to allow for a meaningful deposition of any of these witnesses.

Further, the State's refusal to even engage with Purdue on the subject of production of custodial files is discourteous and is directly contrary to the State's prior representations to this Court regarding productions:

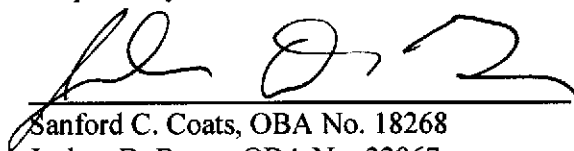
If there is a specific item or area they want us to focus on to try to move an item or category more quickly, we will endeavor to focus our efforts on that. They will have what they need in abundant time to take the depositions they need to take of our folks.

Ex. D, (4/19/18 Hearing Tr.) at 20:17-22 (Mr. Beckworth).

Purdue has made a routine request for necessary discovery and has been met with silence. The Court should compel the State to produce the custodial files for the three witnesses within 5 days of the Court's order on this motion.

Date: October 4, 2018

Respectfully submitted,



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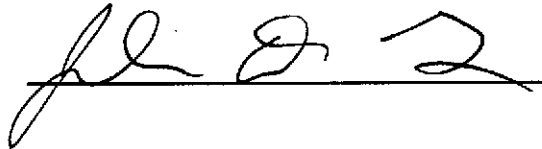
*Counsel for Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue
Frederick Company Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2018, I caused a true and correct copy of the following:

**PURDUE'S MOTION TO COMPEL PRODUCTION OF CUSTODIAL FILES IN
ADVANCE OF DEPOSITIONS**

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

A handwritten signature in black ink, appearing to be 'J. D. D.', is written above a horizontal line.

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

I hereby certify that counsel for Purdue has attempted in good faith to confer with counsel for the State in an effort to secure the information that is the subject of this motion without court action. The State did not respond to Purdue's attempt to confer.

A handwritten signature in black ink, appearing to be 'J. D. D.', is written above a horizontal line.

SERVICE LIST

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September 7, 2018

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

Dear Counsel:

Purdue hereby gives the State notice that it intends to take the depositions of the following individuals, who are likely to have information relevant to the claims and defenses in this case:

- **Nate Brown**, Chief Administrator of Program Services, Department of Corrections;

EXHIBIT A

- **Joel B. McCurdy, M.D.**, Chief Medical Officer, Department of Corrections; and
- **Robin Murphy**, Director of Pharmacy Services, Department of Corrections.

Kindly let us know available dates for each of these individuals to be deposed so we can schedule them so as to minimize inconvenience for all parties.

Sincerely,

/s/ Mark Cheffo

Cc: Counsel of record for Defendants

From: Tam, Jonathan <Jonathan.Tam@dechert.com>
Sent: Wednesday, September 19, 2018 5:49 PM
To: Drew Pate
Cc: LaFata, Paul
Subject: OK v. Purdue -- DOC Custodial Files

Hi Drew,

Thanks for offering dates for depositions of Joel McCurdy, Robin Murphy, and Nate Brown. While we work out scheduling, can you please produce the custodial files for those individuals by October 1, 2018?

Best,
Jonathan

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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,)

Plaintiff,)

vs.)

Case No. CJ-2017-816

- (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.)

TRANSCRIPT OF PROCEEDINGS
HAD ON AUGUST 31, 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

EXHIBIT C

DISTRICT COURT OF OKLAHOMA - OFFICIAL TRANSCRIPT

1 little bit. Take about a ten-minute break, maybe 15 minutes at
2 the most, and ask you to sort of get together to visit about
3 this.

4 One, I think before noticing a deposition, I think you
5 should confer and each other -- you know, and try to pick dates
6 if you can for the depositions and topic, scope, 30(b)(6),
7 fact, testimony getting discussed.

8 And if you cannot arrive at a conclusion and an agreement,
9 what I'm going to do, what I would like to do is ask that the
10 notice is limited to five business days, you know, which
11 expands it from our 3-day notice provision, objection within 3
12 days, business days, of the notice, and a response, if
13 required, within two days of an objection.

14 Then I want to put in place a way to where you can contact
15 me day or night by cell phone, 405-413-2250, if there's an
16 objection or we need discussion or rulings on topics and
17 expanding things, and then I'll rule or ask for oral argument
18 if I think I need it. Then the deposition is to be held within
19 ten working days after a ruling.

20 Now, that doesn't -- you know, ~~we've got to have document~~
21 ~~production and proper preparation before that for witnesses to~~
22 ~~be prepared,~~ and I know that's an issue. But that gets a
23 process structure started that I think is fair, speeds up
24 things, helps things along a little.

25 And I want to sort of take a break and let you all talk

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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,)
)
Plaintiff,)

vs.)

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK)
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- (4) TEVA PHARMACEUTICALS)
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- (5) CEPHALON, INC.;)
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- (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.)

TRANSCRIPT OF PROCEEDINGS
HAD ON APRIL 19, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER
AND THE HONORABLE THAD BALKMAN
DISTRICT JUDGE

REPORTED BY: ANGELA THAGARD, CSR, RPR

EXHIBIT D

DISTRICT COURT OF OKLAHOMA - OFFICIAL TRANSCRIPT

1 everything we believe is responsive to what they're asking for.
2 And I know you know this because you've been part of it, but
3 the State has a lot of different subparts, so at least our part
4 of it. We're not requiring or asking the defendants to go
5 subpoena different agencies. And as we understand it, other
6 states are doing that. Not all of them, but some are saying,
7 if you want to go to the healthcare authority, for example, you
8 go subpoena them. We're not doing that.

9 We're responding on behalf of everyone that we believe has
10 responsive information to give them what they've asked for.
11 And we have had a lot less time to contemplate and respond
12 because of when we were served. But we're in that process. We
13 are going to produce the documents. There's nothing to compel
14 from us.

15 And the defendants haven't done this yet, as I understand
16 it, but if they -- we talked a little bit about it this
17 morning. If there is a specific item or area they want us to
18 focus on to try to move an item or category more quickly, we
19 will endeavor to focus our efforts on that.

20 As it stands, it's a very broad request for us, and we're
21 moving it along. They will have what they need in abundant
22 time to take the depositions they need to take of our folks.
23 So I hope that answers the question.

24 THE COURT: Any brave soul, hop up.

25 MR. LAFATA: Number of things. Paul LaFata, Quinn