



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case No. CJ-2017-816

Plaintiff, STATE OF OKLAHOMA, Honorable Thad Balkman
CLEVELAND COUNTY, S.S.

v.

FILED

Special Discovery Master
William C. Hetherington, Jr.

PURDUE PHARMA L.P., et al.,

OCT 03 2018

Defendants.

In the office of the
Court Clerk MARILYN WILLIAMS
**PURDUE'S RESPONSE IN OPPOSITION
TO THE STATE'S MOTION TO SHOW CAUSE**

Under the corporate separateness doctrine that is the law in Oklahoma, Rhodes Pharmaceuticals L.P. ("Rhodes") is a separate, independent company. The State does not—and cannot—provide any factual or legal support for its improper assertion that the Court should simply disregard Oklahoma law on corporate form. The State's outrageous and equally unfounded allegations that Purdue employees are perjuring themselves or that Purdue's counsel is not acting ethically are simply another example of the State's drumbeat of overly aggressive rhetoric that walks a fine line along the outer bounds of acceptable professional conduct. The Court should not only deny the State's motion, but should also strike the motion from the record and admonish the State for filing the motion without fulfilling its duty to investigate in good faith the basis for and the accuracy of filings before this Court.

Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. d/b/a The Purdue Frederick Company (collectively, "Purdue") are under no obligation to produce documents or provide discovery on behalf of non-party Rhodes, over which Purdue has no control. Nor does undersigned counsel represent Rhodes. Rhodes is an independent company that has its own place in the prescription drug market.

- Rhodes was formed in 2008 and at that time entered into the business of marketing and distributing generic pharmaceutical products, some of which are generic opioid products. See rhodespharma.com.
- Rhodes also markets pharmaceuticals for the treatment of ADHD, hyperlipidemia, and asthma. See rhodespharma.com/products/.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Purdue and Rhodes have separate principal places of business in different states. *Id.*

[REDACTED]

[REDACTED]

- Rhodes is not a division or department of Purdue. *Id.*

The State’s argument that Rhodes is an “affiliate” of Purdue as that term is used in the State’s discovery requests, and that Purdue is therefore required to produce discovery from or regarding Rhodes, ignores the facts. Indeed, according to the State, “[t]he term ‘affiliate’ shall include any *entity owned in whole or in part by Purdue* or any entity which owns Purdue in whole or in part.” State’s Mot. at 3 (quoting the State’s First Requests for Production of Documents, and First Set of Interrogatories). Purdue does not own Rhodes in whole or in part.

Nor does Rhodes own Purdue in whole or in part. The State makes this clear in the first sentence of its motion, when it says that “Rhodes Pharma [] is owned by the same family that owns Purdue.” State’s Mot. at 2. Nor is it material whether or not Purdue and Rhodes share any common remote parent ownership because either way, Purdue does not have possession, custody, or control over a non-party, independent company. The State has not cited, because it does not exist, *any* Oklahoma authority for the proposition that discovery served on one company requires the company to produce documents from and provide testimony regarding a completely separate company with a different ownership structure merely because there are ultimately common owners.

Oklahoma law is clear that “a corporation is a distinct legal entity separate and apart from other legal entities.” *Gulf Oil Corp. v. State*, 1961 OK 71, 360 P.2d 933, 936 (Okla. 1961). And that distinction can only be avoided if “(1) [] the separate corp[o]rate existence is a design or scheme to perpetrate fraud, or (2) [] one corporation is so organized and controlled and its affairs so conducted that it is merely an instrumentality or adjunct of another corporation. In other words, it must appear that one corporation is merely a dummy or sham.” *Id*; see also *Buckner v. Dillard*, 1939 OK 144, 184 Okla. 586, 89 P.2d 326, 329; *King v. Modern Music Co.*, 2001 OK CIV APP 126, ¶ 35, 33 P.3d 947, 955. The separation of distinct legal entities has a “long legal history” in Oklahoma and the United States and is a “basic tenet of American corporate law.” *Kenkel v. Parker*, 2015 OK 81, ¶ 12, 362 P.3d 1145, 1148–49. Piercing the corporate veil is rare and severe, “[l]ike lightning.” Frank H. Easterbrook, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985); see also *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) (providing that “[t]he doctrine of piercing the corporate veil [] is the rare exception”). Accordingly, the legal distinction between Purdue and Rhodes cannot be disregarded. There is

no evidence to support any allegation that Rhodes is a “sham” company or that it is maintained for some purpose, nefarious or otherwise, for Purdue. Nor is there any evidence that Rhodes is a “mere instrumentality” of Purdue. *Id.* Rhodes has been in the generic pharmaceutical business for 10 years, and according to the State is “one of the largest producers in the market when it comes to generic drugs.” State’s Mot. at 2.¹

The State’s attempt to frame its motion as one for an order to show cause is completely misplaced. Purdue has not failed to comply with any order of the Court. Nor have any of its witnesses perjured themselves. Purdue’s witnesses are Purdue employees and were deposed in their capacity as such. More importantly, the topics Keith Darragh and Lisa Miller, the two witnesses referenced in the State’s motion, were designated to testify about had nothing to do with Rhodes. Keith Darragh was designated to give testimony regarding “[t]he Purdue Defendants’ past and present ownership structure.” Ex. C, Darragh Deposition, Exhibit 1. As stated, this does not include Rhodes. Lisa Miller was designated to testify on the actions Purdue has taken to abate the opioid crisis and Purdue’s open letter in the New York Times. Ex. D, Miller Deposition, Exhibit 22; Ex. E, Miller Deposition, Exhibit 23. Again, neither of these topics includes testimony related to Rhodes. The State tries to blame the witnesses for not volunteering information they did not have, were not asked about, and that pertains to a company by whom they are not employed. It is simply baseless to say that Purdue’s witnesses “committed perjury,” that they were “instructed not to ever mention Rhodes Pharma,” or that “Purdue intentionally chose not to tell [the witnesses] about Rhodes Pharma in preparation for the deposition[s].” State’s Mot. at 5; *see also id.* at 7. These assertions are contrived by the State.

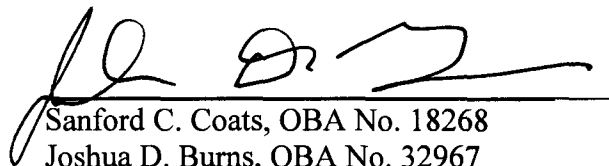
¹ This as well as other assertions by the State regarding Rhodes’ business and market share belie any allegation that Rhodes is a “secret” or “hidden” company. *See* State’s Mot. at 4 & 7. If the State only learned about Rhodes through a recent patent application (State’s Mot. at 3), it is due to its own lack of appropriate diligence.

In fact, the State's assertions are so baseless that they are worthy of admonishment. 12 Okl. Stat. Ann. § 2011 requires an attorney "presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion, or other paper" to do so "*after an inquiry reasonable under the circumstances.*" Okla. Stat. Ann. tit. 12, § 2011 (emphasis added). In *Warner v. Hillcrest Medical Center*, the court issued sanctions where Plaintiff's attempt to pierce the corporate veil "[was] made without basis in fact," as "[t]he showing of a common board of directors and a unity of corporate purpose [was] insufficient to pierce the corporate veil." 1995 OK CIV APP 123, 914 P.2d 1060, 1067-68 (finding that liability stemming from parent company misconduct would "not flow [] to other sibling subsidiary corporations," and that asking for such relief without any basis was sanctionable). Here, the State already had confirmatory non-public discovery regarding Purdue's organization and finances that refutes the State's allegations. Even minimal additional investigation would have made clear that Purdue and Rhodes are separate companies and that Purdue has no ability or legal duty to provide discovery on behalf of Rhodes.

For the reasons described above, the Court should deny the State's motion in its entirety, strike the motion from the record, admonish the State for filing the motion, and remind the State of its duty to make reasonable and good faith inquiries into its filings before submitting them.

Date: October 3, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October 2018, I caused a true and correct copy of the following:

PURDUE'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO SHOW CAUSE

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

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

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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,)

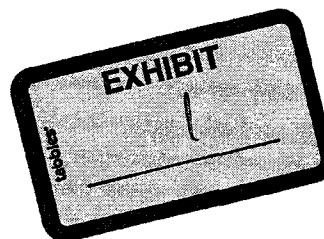
vs.)

- (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



AMENDED NOTICE FOR 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND THE PURDUE FREDERICK COMPANY

TO:

VIA email

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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(s) 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(C)(5). The Purdue Defendants shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the Purdue Defendants' behalf regarding the subject matters identified in Appendix A.

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

DATE	TIME	LOCATION
August 29, 2018	9:00 a.m.	511 Couch Drive Suite 100 Oklahoma City, Oklahoma 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.

PLEASE TAKE FURTHER NOTICE that each such officer, agent or other person produced by the Purdue Defendants to so testify under 12 O.S. §3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the Purdue Defendants, along with all potential witnesses known or reasonable available to the Purdue Defendant in order to provide informed binding answers at the deposition(s).

Dated: August 8, 2018

/s/ Michael Burrage

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/s/ Michael Burrage

Michael Burrage

Appendix A

The matters on which examination is requested are itemized below. The Purdue Defendants must designate persons to testify as to each subject of testimony. This designation must be delivered to Plaintiff prior to or at the commencement of the taking of the deposition. *See* 12 O.S. §3230(C)(5).

1. The Purdue Defendants' past and present ownership structure; financial status and financial health, including but not limited to information contained in any pro forma financial statements, such as gross revenue, liabilities, profits, and cash flow, for the past five years; distributions of any revenue and/or profits to owners in the past five years; and past and present formal and informal policies and procedures related to the distribution of any revenue and/or profits to owners.

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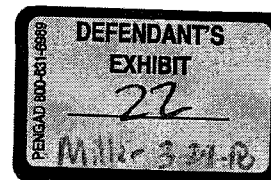
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REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND
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Dated: August 6, 2018

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/s/ Michael Burrage

Michael Burrage

Appendix A

The matters on which examination is requested are itemized below. The Purdue Defendants must designate persons to testify as to each subject of testimony. This designation must be delivered to Plaintiff prior to or at the commencement of the taking of the deposition. *See* 12 O.S. §3230(C)(5).

1. The open letter published by or on behalf of the Purdue Defendants in the New York Times on Thursday, December 14, 2017, entitled, "*We manufacture prescription opioids. How could we not help fight the prescription and illicit opioid abuse crisis?*" ("Open Letter"), including but not limited to all actions taken by the Purdue Defendants in support of the recommendations and initiatives identified in the Open Letter, and the reasons the Open Letter was written and published.

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.,)

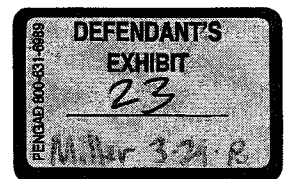
Defendants.)

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

**NOTICE FOR 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND
THE PURDUE FREDERICK COMPANY**

EXHIBIT E



TO:

VIA email

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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(s) 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(C)(5). The Purdue Defendants shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the Purdue Defendants' behalf regarding the subject matters identified in Appendix A.

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

DATE	TIME	LOCATION
August 30, 2018	9:00 a.m.	511 Couch Drive Suite 100 Oklahoma City, Oklahoma 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.

PLEASE TAKE FURTHER NOTICE that each such officer, agent or other person produced by the Purdue Defendants to so testify under 12 O.S. §3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the Purdue Defendants, along with all potential witnesses known or reasonable available to the Purdue Defendant in order to provide informed binding answers at the deposition(s).

Dated: August 6, 2018

/s/ Michael Burrage

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Reggie Whitten, OBA No. 9576

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on August 6, 2018 to:

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1. All actions and efforts previously taken, currently under way, and actions planned and expected to take place in the future which seek to address, fight or abate the opioid crisis.