IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., et al., Defendants.	Case No. CJ-2017-816 Honorable Thad Balkman Special Discovery Master William C. Hetherington, Jr.

PURDUE'S OPPOSITION TO THE STATE'S
MOTION TO RECONSIDER APRIL 25, 2018 ORDER

The State's motion to revisit an issue long-settled by this Court is without merit and should be denied. The motion merely repackages arguments that the Court and the Special Discovery Master already considered. It mischaracterizes documents, ignores binding Oklahoma Supreme Court authority, and does nothing but burden and distract the Court and Purdue from crucial discovery in this expedited case. The State has not, and cannot, identify *any* newly discovered information that would warrant a reconsideration of the Court's April 25 Discovery Order almost five months later. As previously recognized by the Court, expanding the temporal scope would cause immense burden to Purdue and massively increase the amount of discovery in this case. The State's inappropriate request is not based on a legitimate need, nor does it put any new argument before the Court. Because it merely rehashes the same arguments previously presented to and addressed by Special Discovery Master Hetherington and Judge Balkman when the appropriate temporal limitations on the parties' productions were set, the State's motion should be denied.

ARGUMENT

Discovery that imposes undue burden or expense on a party may be appropriately limited or tailored by Oklahoma courts. *See,* 12 O.S. § 3226. In this case, after multiple rounds of briefing and three separate hearings, the Court established the scope of discovery that balanced the State's need for discovery and the burden on the defense. *See,* State's Ex. 2: Orders of Special Discovery Master on April 19th 2018 Motion Requests. The April 25 Discovery Order specifically recognized that the expansive discovery demands made by the State were "overly burdensome on Purdue" and in some cases were "likely impossible to comply with." *Id.* at 8. Nevertheless, several of the categories of documents the State sought dating back to 1996 were approved, and the Court held that the Special Discovery Master's ruling was proper:

> The special discovery master's order reflects, I think, a proper balance of the burdens and the benefits from the production to the parties. I believe his order and his rulings on these motions has been -- I think he's found the sweet spot so to speak balancing or finding what a proper limitation is on the scope of discovery that's supported by our discovery statutes and by the case law.

May 17, 2018 Hr'g Tr. at 5:5-11. The State did not seek appellate review of that ruling or take any other steps to challenge it.

Almost five months later, the State belatedly challenges the April 25 Discovery Order, even though it granted the State a massive amount of discovery, including, in some instances, discovery going as far back as 1996. Pursuant to that Order, at significant cost and effort, Purdue has already produced about ***twenty-five million pages*** of documents. To do so all over again, this time going back to 1996 for all categories, would be an overly burdensome undertaking that the Court has already rejected. As the Oklahoma Supreme Court has held, "[d]iscovery may be limited or denied when discoverable material is sought in an excessively burdensome manner." *Farmers Ins. Co. v. Peterson*, 2003 OK 99, ¶ 3, 81 P.3d 659, 660 (Okla. 2003). That is the case

here. Purdue showed that the Supreme Court's analysis in *Farmers Insurance* applies to the State's requests here: that it is an abuse of discretion to order discovery as broad as the State seeks. The State continues to disregard that binding precedent, where the Supreme Court issued a writ of prohibition against the kind of overly burdensome discovery that the State sought here. This Court, however, applied that reasoning and held that the Discovery Order appropriately "balance[d] all of the burdens" of the parties in the discovery process. May 17, 2018 Hr'g Tr. at 14:8-9. The State disregards the Court's reasoning on this fundamental issue and barely acknowledges the burden the requested discovery would impose on Purdue. Yet that burden was a key basis for the imposition of the reasonable limitations on discovery that are being challenged. To simply ignore it is to utterly disregard this Court's rulings.

Rather than address the incredible burden to Purdue, the State's motion suggests that entirely new categories of documents have now been discovered and, as a result, the State is entitled to vastly greater discovery. There is no basis for these claims. The fact that Purdue advertised and sold its product in 1996 when it was approved by the FDA and launched was previously repeatedly highlighted by the State in multiple rounds of briefing and argument, acknowledged by Purdue, and recognized by both the Special Discovery Master and the Court. Purdue produced the documents showing its marketing of OxyContin even before the Court ruled on the scope of discovery. Nevertheless, the State acts as though it has made some extraordinary discovery that calls for rewinding the clock in these proceedings by five months. It has not.

In support of its motion, the State identifies three documents that show only what was already known:

- State's Ex. 3: a 1997 budget plan identifying Purdue's sales teams as a valuable resource and laying out a plan to advertise Purdue's new product and build brand awareness;

- State's Ex. 3: a 2001 budget plan with a stated objective of convincing doctors to prescribe Purdue's product in lieu of other opioids; and

- State's Ex. 4: a CEO's message to his employees, thanking them for their hard work and congratulating them for their success.

The State asserts, without support, that these documents have somehow changed the relevance of the time period between 1996 and 2006. State's Mot. at 4. What exactly has changed is never explained, but the implication is that the Court would have never issued the April 25 Discovery Order if it had only been aware that, when Purdue was launching its new product in 1996, Purdue also intended to brand, market, and sell that product.

The State's argument is misguided. The Court was already aware that Purdue marketed and sold its product after the FDA approved it as safe, effective, and ready for doctors to prescribe. The Court was already aware of this because the State repeatedly told the Court about it:

- Plaintiff's First Motion to Compel Discovery at 8: "The Purdue Defendants started this sweeping false marketing campaign in May of 1996 when it released Oxycontin."

- Mar. 29, 2018 Hr'g Tr. at 36:8-10 (Pate): "And our claim is they have engaged in a nationwide fraudulent marketing scheme for the last 20 years, more than 20 years."

- *Id.* at 53:14-16 (Pate): "[May, 1996 is] when the fraudulent marketing campaign started, and that's the scope and the time period of conduct that we're look at that relates to our claims and defenses."

- Apr. 19, 2018 Hr'g Tr. at 109:7-14 (Pate): "[W]e haven't asked for things prior to 1996. ... It's just limited to the time period that they were actually conducting this sweeping massive conspiracy and fraudulent marketing campaign."

- May 17, 2018 Hr'g Tr. at 6:23-24 (Whitten): "[I]t was not until 1996 that Purdue Pharmaceutical launched this marketing campaign."

Purdue acknowledged[1] that it has been manufacturing, marketing, and selling opioid products since then:

- April 11, 2018 Affidavit of Robert S. Hoff, at ¶ 4: "Purdue has been manufacturing, promoting, marketing, and selling opioid products since at least May 1, 1996. ... Purdue primarily sells opioids, and has done so since May 1, 1996."

Nevertheless, the State claims this "uncovered evidence" should force the Court and the parties to go back to square one in document discovery. It should not. The State is rehashing old arguments that have been fully briefed, argued, and resolved. Nothing has changed in the interim.

CONCLUSION

The parties thoroughly briefed and argued these issues months ago, the Special Discovery Master reached its decision, and the Court affirmed that decision. The Special Discovery Master's compromise discovery order balanced the need for discovery against the immense burden to Purdue and ruled accordingly. The State's reconsideration motion should be denied.

Date: October 11, 2018

Respectfully submitted,

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[1] The affidavit by Mr. Robert S. Hoff, attached to Purdue's April 11, 2018 Objection to the Special Master's April 4th Discovery Order, described at length the excessive burden the State's requested discovery would impose, and Mr. Hoff was made available to the Special Discovery Master prior to issuing the April 25 Discovery Order.

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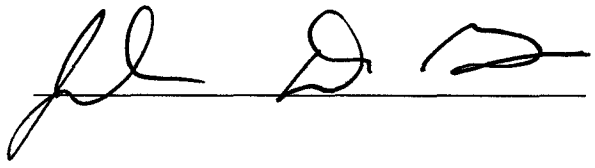
CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October 2018, I caused a true and correct copy of the following:

PURDUE'S OPPOSITION TO THE STATE'S MOTION TO RECONSIDER APRIL 25, 2018 ORDER

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



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