



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

NOV 02 2018

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.

in the office of the
Court Clerk MARILYN WILLIAMS

**PURDUE'S MOTION FOR PARTIAL RECONSIDERATION
OF OCTOBER 22, 2018 ORDER RE: RHODES**

Purdue respectfully requests that the Special Discovery Master reconsider a portion of the October 22, 2018 Order (at 2) stating that non-parties Rhodes Pharmaceuticals L.P. and Rhodes Technologies ("Rhodes") are "affiliates" of Purdue Pharma L.P. The undisputed evidence shows that Purdue and Rhodes are not affiliates, even using the State's definition of the term, rendering the statement in the Order factual and legal error.

To be clear, Purdue does not seek reconsideration of the ruling to the extent it requires Purdue to produce responsive documents concerning Rhodes. Indeed, pursuant to the Special Discovery Master's October 22, 2018 Order, Purdue has been making reasonably diligent searches for additional responsive documents within its possession, custody, and control related to Rhodes. Purdue is unable, however, to compel an independent non-party, Rhodes, to produce its own documents that are within its possession, custody, or control.

The State used the term "affiliate" in its discovery requests as part of its definition of "Purdue" and specified that "affiliate" includes "any entity owned in whole or in part by Purdue or any entity which owns Purdue in whole or in part." (Ex. A: Excerpt of State Req. for Production at 4.) Purdue objected to the definition of "Purdue" as overly broad and made clear

that it would “limit its productions to information and/or documents from and about the Purdue defendants that are named in this lawsuit.” (Ex. B: Excerpt of Purdue Res. to Req. for Production at 8.) The evidentiary record for the underlying motion was undisputed: Purdue does not own Rhodes (in whole or part), and Rhodes does not own Purdue (in whole or part). (Ex. C: Darragh Decl. ¶¶ 4-7.) The State, during oral argument, acknowledged that its motion does not turn on whether Purdue and Rhodes are affiliates because the State sought documents in Purdue’s possession.¹ Thus, the State did not argue and the undisputed record did not show that Purdue and Rhodes are affiliates.

Although the October 22 Order refers to Rhodes as an “affiliate” of Purdue, Oklahoma law on corporate form cannot be rewritten by way of a discovery definition. To serve a discovery request on one company, like Purdue Pharma L.P., and define it to include another independent and separate company, like The Coca-Cola Co., cannot have any effect on the corporate separateness of the distinct entities. A discovery definition cannot override Oklahoma law on corporate form and cannot make one company produce documents under the control of another.

Oklahoma courts view corporate affiliates as including a parent company and its subsidiaries, *see, e.g., Postal Fin. Co. v. Okla. Tax. Comm’n*, 594 P.2d 1205, 1205 (Okla. 1977) (tax form filed by parent of an Oklahoma company is filed by an affiliate), and Oklahoma courts respect the corporate separateness of affiliated companies, *see, e.g., Tulsa Tribune v. Okla. Tax Comm’n*, 768 P. 2d 891, 895 (Okla. 1989) (tax on Oklahoma company does not reach income of its subsidiaries and affiliates). Courts respect the distinctiveness of separate corporate entities even where a parent owns all the stock of its subsidiary. *See, e.g., Cont’l Oil Co. v. Jones*, 113

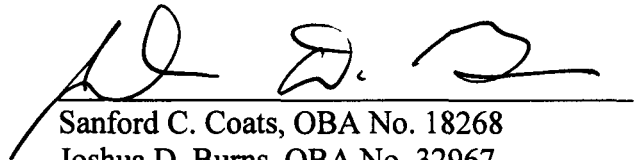
¹ As of the filing of this motion, the argument transcript was not available from the court reporter.

F.2d 557, 562 (10th Cir. 1940) (“The mere fact that a parent corporation owns all of the stock in a subsidiary, standing alone and without more, is not enough to warrant the disregard of their separate juridical entities.”).

Quite simply, Purdue is producing documents in its possession, custody, and control, including regarding Rhodes, but cannot force a separate non-party to produce anything. Regardless, as the State acknowledged at argument, whether Purdue and Rhodes are “affiliates” is immaterial to resolving the underlying discovery motion. The undisputed record shows that Purdue and Rhodes are separate companies that do not control each other. Accordingly, Purdue respectfully requests that the Special Discovery Master reconsider in part the Order by rescinding its statement that Purdue and Rhodes are “affiliates” and making clear that the Order does not require Purdue to produce documents from non-party Rhodes.

DATED: November 2, 2018

Respectfully submitted,



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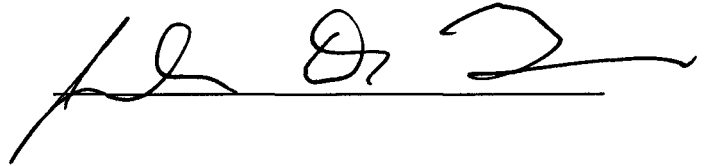
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Purdue Pharma Inc., and The Purdue
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November 2018, I caused a true and correct copy of the following:

**PURDUE'S MOTION FOR PARTIAL RECONSIDERATION
OF OCTOBER 22, 2018 ORDER RE: RHODES**

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 loops and a long horizontal stroke at the end, positioned above a solid 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, 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.,

Defendants.

Case No. CJ-2017-816
JURY TRIAL DEMANDED

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, AND
FIRST SET OF INTERROGATORIES**

Everett v. Purdue Pharma et al., No. 17 2-00469 31, Superior Court of the State of Washington In and For Snohomish County; *The Town of Kermit v. McKesson Corporation, et al.*, No. 17-C-13, Circuit Court of Mingo County, WV; *The City of Huntington v. AmerisourceBergen Drug Corp., et al.*, No. 17-C-38, Cabell County Circuit Court, WV; *County of Broome v. Purdue Pharma, LP, et al.*, No. EFCA2017-000252, Supreme Court of the State of New York, County of Broome; *The County Commission of Lincoln County v. West Virginia Board of Pharmacy, et al.*, Case No. 17-C-46; Circuit Court of Lincoln County, West Virginia; *County of Orange v. Purdue Pharma LP, et al.*, No. EF003572-2017, New York State Supreme Court, Orange County; *State of Mississippi v. Purdue Pharma, LP, et al.*, Case No. 15-cv-1814 (25CH1:15-cv-001814); 5th Chancery Court, Hinds Chancery Court, Jackson; *State of Ohio, ex rel. Mike DeWine, Ohio Attorney General v. Purdue Pharma L.P., et al.*, Case No. 17-CI-000261, Common Pleas Court of Ross County, Ohio – Civil Division; *City of Dayton v. Purdue Pharma, et al.*, Case No. 2017-cv-02647, Court of Common Pleas, Montgomery County, Ohio; and *Barry Staubus, Tony Clark, Dan Armstrong and Baby Doe v. Purdue Pharma, et al.*, Case No. C-41916, Circuit Court of Sullivan County, Kingsport, TN.

- g. "PBM" means any pharmacy benefits manager.
- h. "Purdue" shall mean Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company and any and all predecessors, merged entities, subsidiaries and affiliates, whether individuals, corporations, LLC's or partnerships. The 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. The term "Purdue," where appropriate, shall also include entities and individuals, such as officer, directors, sales representatives, medical liaisons, etc., who are employed by Purdue or who provide services on behalf of Purdue.

**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

**PURDUE'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND FIRST SET OF INTERROGATORIES**

Pursuant to 12 O.S. §§ 3233 and 3234 of the Oklahoma Rules of Civil Procedure, Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (together "Purdue") hereby respond and object to Plaintiffs' First Set of Requests for Production of Documents to the Purdue Defendants (the "Requests") and Plaintiffs' First Set of Interrogatories to the Purdue Defendants (the "Interrogatories").

Purdue makes these responses and objections in good faith, based on presently available information and documentation, and without prejudice to Purdue's right to conduct further investigation and utilize any additional evidence that may be developed. Purdue's discovery and investigations are ongoing and not complete as of the date of these responses and objections. Purdue does not waive any right to modify or supplement its responses and objections to any Request or Interrogatory and expressly reserves all such rights. Purdue reserves the right to present additional information, as may be disclosed through continuing investigation and discovery and reserves the right to supplement or modify these responses and objections at any time in light of subsequently discovered information.

EXHIBIT B

5. Purdue objects to the Definitions of “Purdue,” “You,” and “Your” on the grounds that they are overbroad, unduly burdensome, and not likely to lead to the discovery of admissible evidence, including to the extent that they purport to seek the discovery of information or documents that are in the possession, custody, or control of Purdue’s affiliates, subsidiaries, predecessors, successors, parents and assigns, and/or any employees, agents, directors or independent contractors acting on behalf of any of those entities, acting individually or in concert. Purdue will limit its productions to information and/or documents from and about the Purdue defendants that are named in this lawsuit.

6. Purdue objects to the definition of “document” on the grounds that it is overbroad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Purdue further objects to the definition of “document” to the extent it seeks documents “known to You wherever located” on the grounds that such definition is inconsistent with Applicable Rules. Purdue will produce responsive, non-privileged documents in its possession, custody, or control. Purdue also objects to the definition of “document” to the extent it requests from Purdue all duplicate originals and copies of the same document. Purdue also objects to the definition of “document” to the extent that it seeks metadata, however, Purdue is willing to meet and confer with Plaintiffs to discuss production of certain metadata.

7. Purdue objects to the instruction that “[d]ocuments not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this discovery request” on the grounds that such instruction is overbroad, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

5. Purdue Pharma Inc. ("PPI") is a New York corporation. PPI is not owned by and does not own Rhodes.

6. The Purdue Frederick Company Inc. ("PF") is a New York Corporation. PF is not owned by and does not own Rhodes.

7. Rhodes is not a shareholder of Purdue, and Purdue is not a shareholder of Rhodes.

8. Since Rhodes formation, Rhodes and Purdue have been separate corporate entities and maintain the formalities of separate corporations. Purdue maintains its own corporate governance procedures and records and does not maintain such for Rhodes. Further, Purdue and Rhodes maintain their principal places of business in different states.

9. Purdue does not prepare or maintain Rhodes' financial statements. Rhodes and Purdue are separately capitalized.

10. Rhodes is not a division or department of Purdue.

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

Executed this 3rd day of October 2018.

