



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE )  
HUNTER, ATTORNEY GENERAL OF )  
OKLAHOMA, )  
STATE OF OKLAHOMA )  
CLEVELAND COUNTY ) Case No. CJ-2017-816

Plaintiff, )  
FILED ) Honorable Thad Balkman

v. )  
DEC 13 2018 ) Special Discovery Master  
PURDUE PHARMA L.P., et al., ) William C. Hetherington, Jr.

In the office of the  
Defendants. Court Clerk MARILYN WILLIAMS

**PURDUE’S REPLY IN SUPPORT OF MOTION TO QUASH  
AND MOTION FOR PROTECTIVE ORDER  
FOR DEPOSITION NOTICE OF PURDUE VIA BURT ROSEN**

The entirety of the State’s Response revolves around pigeonholing Burt Rosen, an individual tasked with promoting federal public policy advancements, as the face of the Pain Care Forum. Though the State has devoted every single page of its response brief to somehow manipulating Mr. Rosen’s ties to the Pain Care Forum, it fails to address Purdue’s critical point that any testimony Mr. Rosen could provide would be duplicative of the corporate representative witness that Purdue is already providing to testify *on the exact some topics*. Further, the State has made no efforts to follow up on its initial request to depose Mr. Rosen as a fact witness. The State’s entire argument about its need to depose Mr. Rosen due to his individual factual knowledge of the Pain Care Forum crumbles with one fatal strike—nothing is preventing Mr. Rosen from testifying about the Pain Care Forum in his individual capacity. This Court should quash the deposition notice issued to take testimony of Purdue through the deposition of Burt Rosen as a corporate representative.

As an initial matter, the State concedes that Mr. Rosen may not properly provide deposition testimony as a corporate representative on behalf of The Purdue Frederick Co. *See*

Resp. at 4. Thus, if Mr. Rosen is found to be required to testify as a corporate representative, he may only do so on behalf of Purdue Pharma, Inc. and Purdue Pharma L.P.

Moreover, while the State may hope that simple rhetoric will win the day, a concrete look at the facts and the law mandates a different outcome. The State is simply incorrect when it states that “Purdue has provided no evidence to show that Rosen’s testimony will be duplicative or harassing.”<sup>1</sup> *Id.* at 5. To the contrary, Purdue stated that “[t]he parties have already scheduled a corporate representative to testify on behalf of Purdue on the same topics that Mr. Rosen would purportedly testify about here.” Mot. at 3. In January, this witness will be testifying on topics such as:

- Purdue’s involvement with, and contributions to, nonprofit organizations and professional societies;
- Purdue’s use of public relations firms and communication with journalists regarding opioids and/or pain management marketing;
- ***Purdue’s involvement and participation in the Pain Care Forum;***
- Purdue’s efforts or activities in Oklahoma concerning opioids related to: (a) lobbying efforts; (b) campaign contributions; (c) presentations made to the Oklahoma Health Care Authority’s Drug Utilization Review Board; (d) scheduling of opioids; (e) opposing the rescheduling hydrocodone combination products from Schedule III to Schedule II; (f) pain management guidelines in Oklahoma statutes; (g) legislative

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<sup>1</sup> The State is again incorrect when it asserts that Purdue has not clearly requested relief from this Court. Resp. at 5. Though the State appears to be confused about the requested relief, as plainly stated in Purdue’s Motion, Purdue objects to Mr. Rosen being designated as a corporate representative. See Mot. at 2, 5 (“Mr. Rosen ... may not properly provide deposition testimony as a corporate representative on behalf of any of the Purdue entities.”).

efforts or activities; (h) law enforcement; and (i) prosecution of any individual or entity related to use, misuse, abuse, diversion, supply, and prescription.

It is hard to see how Mr. Rosen could offer any non-duplicative testimony that would be relevant here in his limited capacity as an employee tasked with federal legislative matters.

The State's only misguided interest in Mr. Rosen appears to be with his ties to the Pain Care Forum. The State highlights the fact that Mr. Rosen's name appears in over 20,000 Purdue documents. Resp. at 5. With such a large universe of documents, it is telling that the State can only link Mr. Rosen to the Pain Care Forum for relevant testimony in this litigation. Indeed, in less than five pages of argument, the State referenced the Pain Care Forum over 25 times. And instead of addressing Purdue's argument that Mr. Rosen is entirely removed from the issues central to the claims in this litigation—namely the manufacture, marketing, and sales of opioid products—the State simply prattles on about the Pain Care Forum. The State's obsession with the Pain Care Forum and any testimony Mr. Rosen could offer about the Pain Care Forum only serves to highlight the fact that deposing Mr. Rosen as a corporate representative would be duplicative and harassing given that the State is already scheduled to depose a witness on the Pain Care Forum. *See In re Yasmin & Yaz : (Drospirenone) Mktg., Sales Practices & Relevant Prod. Liab. Litig.*, 2011 WL 3759699, at \*6 (S.D. Ill. Aug. 18, 2011) (“any information sought from these witnesses ... will be obtained [] through other deponents and would be duplicative”).

Finally, the State has failed to even mention, much less address, Purdue's argument that requiring Mr. Rosen to sit for a corporate representative deposition will be unduly burdensome given the fact that the parties have already scheduled a corporate representative witness to testify on government affairs activities and the Pain Care Forum. Proceeding with this designated witness would be far more convenient as the parties have already agreed to this deposition. A

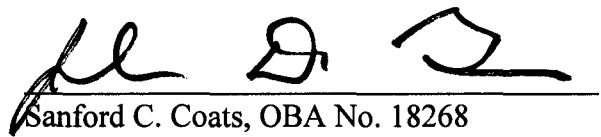
protective order precluding the deposition of Mr. Rosen is warranted since the State has not yet “attempted to obtain information from some other source that is more convenient [or] less burdensome.” *Ciarrocchi v. Unum Grp.*, 2009 WL 10676631, at \*4 (D.N.J. Aug. 27, 2009) (citation omitted) (rebuking plaintiff where “[p]laintiff’s submissions to the [c]ourt contain[ed] no information warranting the conclusion that the information sought from [employees] [was] not available from other sources”).

**CONCLUSION**

For the foregoing reasons, Purdue respectfully requests that this Court grant its Motion to Quash and Motion for Protective Order. Specifically, Purdue requests that the Court quash the State’s deposition notice and enter a protective order preventing the State from taking the deposition of Mr. Rosen as a corporate representative of Purdue.

Date: December 13, 2018

Respectfully submitted,



Sanford C. Coats, OBA No. 18268

Joshua D. Burns, OBA No. 32967

CROWE & DUNLEVY, P.C.

Braniff Building

324 N. Robinson Ave., Ste. 100

Oklahoma City, OK 73102

Tel: (405) 235-7700

Fax: (405) 272-5269

sandy.coats@crowedunlevy.com

joshua.burns@crowedunlevy.com

Of Counsel:

Sheila Birnbaum

Mark S. Cheffo

Hayden A. Coleman

Paul A. LaFata

Jonathan S. Tam

DECHERT, LLP

Three Bryant Park  
1095 Avenue of the Americas  
New York, New York 10036  
Tel: (212) 698-3500  
Fax: (212) 698-3599  
sheila.birnbaum@dechert.com  
mark.cheffo@dechert.com  
hayden.coleman@dechert.com  
paul.lafata@dechert.com  
jonathan.tam@dechert.com

Eric Wolf Pinker  
John Thomas Cox III  
Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201  
epinker@lynnllp.com  
tcox@lynnllp.com

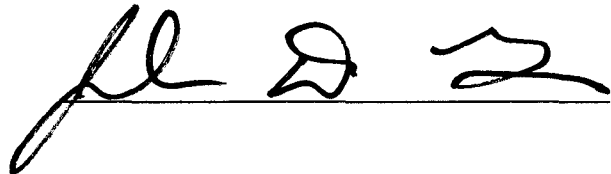
*Counsel for Purdue Pharma L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of December 2018, I caused a true and correct copy of the following:

**PURDUE'S REPLY IN SUPPORT OF MOTION TO QUASH  
AND MOTION FOR PROTECTIVE ORDER  
FOR DEPOSITION NOTICE OF PURDUE VIA BURT ROSEN**

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 'JL D Z', written over a horizontal line.

## SERVICE LIST

### WHITTEN BURRAGE

Michael Burrage  
Reggie Whitten  
512 N. Broadway Avenue, Suite 300  
Oklahoma City, OK 73102  
mburrage@whittenburragelaw.com  
rwhitten@whittenburragelaw.com  
*Counsel for Plaintiff the State of Oklahoma*

### OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

Mike Hunter  
Abby Dillsaver  
Ethan A. Shaner  
313 NE 21st St  
Oklahoma City, OK 73105  
abby.dillsaver@oag.ok.gov  
ethan.shaner@oag.ok.gov  
*Counsel for Plaintiff the State of Oklahoma*

### NIX, PATTERSON & ROACH, LLP

Bradley E. Beckworth  
Jeffrey J. Angelovich  
Lloyd "Trey" Nolan Duck, III  
Andrew Pate  
Lisa Baldwin  
Nathan B. Hall  
512 N. Broadway Ave., Suite 200  
Oklahoma City, OK 73102  
bbeckworth@nixlaw.com  
jangelovich@npraustin.com  
tduck@nixlaw.com  
dpate@nixlaw.com  
lbaldwin@nixlaw.com  
nhall@nixlaw.com  
*Counsel for Plaintiff the State of Oklahoma*

### GLENN COFFEE & ASSOCIATES, PLLC

Glenn Coffee  
915 N. Robinson Ave.  
Oklahoma City, OK 73102  
gcoffee@glenncoffee.com  
*Counsel for Plaintiff the State of Oklahoma*

### ODOM, SPARKS & JONES PLLC

Benjamin H. Odom  
John H. Sparks  
Michael W. Ridgeway  
David L. Kinney  
HiPoint Office Building  
2500 McGee Drive Ste. 140  
Oklahoma City, OK 73072  
odomb@odomsparks.com  
sparksj@odomsparks.com  
ridgewaym@odomsparks.com  
kinneyd@odomsparks.com  
*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-*

### FOLIART, HUFF, OTTAWAY & BOTTOM

Larry D. Ottaway  
Amy Sherry Fischer  
201 Robert S. Kerr Avenue, 12th Floor  
Oklahoma City, OK 73102  
larryottaway@oklahomacounsel.com  
amyfischer@oklahomacounsel.com  
*Attorneys for Defendants Johnson & Johnson,  
Janssen Pharmaceutica, Inc., Janssen  
Pharmaceutica, Inc. n/k/a Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceutica, Inc. n/k/a/ Janssen  
Pharmaceutica, Inc and Ortho-McNeil-  
Janssen Pharmaceutica, Inc. n/k/a/ Janssen  
Pharmaceutica, Inc.*

*Janssen Pharmaceuticals, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc.*

O'MELVENY & MYERS LLP

Stephen D. Brody  
David K. Roberts  
1625 Eye Street NW  
Washington, DC 20006

sbrody@omm.com  
droberts2@omm.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc.*

DECHERT, LLP

Sheila Birnbaum  
Mark S. Cheffo  
Hayden A. Coleman  
Paul A. LaFata  
Jonathan S. Tam  
Erik Snapp  
Three Bryant Park  
1095 Avenue of the Americas  
New York, New York 10036  
sheila.birnbaum@dechert.com  
mark.cheffo@dechert.com  
hayden.coleman@dechert.com  
paul.lafata@dechert.com  
jonathan.tam@dechert.com  
erik.snapp@dechert.com

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

O'MELVENY & MYERS LLP

Charles C. Lifland  
Jennifer D. Cardelús  
400 S. Hope Street  
Los Angeles, CA 90071

clifland@omm.com  
jcardelus@omm.com

*Counsel for Defendants Janssen  
Pharmaceuticals, Inc., Johnson & Johnson,  
Janssen Pharmaceutica, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc., and Ortho-McNeil-  
Janssen Pharmaceuticals, Inc. n/k/a/ Janssen  
Pharmaceuticals, Inc.*

LYNN PINKER COX &  
HURST, LLP

Eric Wolf Pinker  
John Thomas Cox III  
Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue, Suite 2700

Dallas, TX 75201  
epinker@lynnllp.com  
tcox@lynnllp.com

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

GABLEGOTWALS

Robert G. McCampbell  
Nicholas V. Merkley  
Ashley E. Quinn  
One Leadership Square, 15th Fl.  
211 North Robinson  
Oklahoma City, OK 73102-7255  
RMcCampbell@Gablelaw.com  
NMerkley@Gablelaw.com  
AQuinn@Gablelaw.com

*Attorneys for Defendants Cephalon, Inc., Teva  
Pharmaceuticals USA, Inc., Watson  
Laboratories, Inc., Actavis LLC, and Actavis  
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

MORGAN, LEWIS & BOCKIUS LLP

Steven A. Reed  
Harvey Bartle IV  
Rebecca Hillyer  
Lindsey T. Mills  
1701 Market Street  
Philadelphia, PA 19103-2921  
steven.reed@morganlewis.com  
harvey.bartle@morganlewis.com  
rebeccahillyer@morganlewis.com  
lindsey.mills@morganlewis.com

*Attorneys for Defendants Cephalon, Inc., Teva  
Pharmaceuticals USA, Inc., Watson  
Laboratories, Inc., Actavis LLC, and Actavis  
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*

MORGAN, LEWIS & BOCKIUS LLP

Brian M. Ercole  
200 S. Biscayne Blvd., Suite 5300  
Miami, FL 33131  
[brian.ercole@morganlewis.com](mailto:brian.ercole@morganlewis.com)

*Attorneys for Defendants Cephalon, Inc., Teva  
Pharmaceuticals USA, Inc., Watson  
Laboratories, Inc., Actavis LLC, and Actavis  
Pharma, Inc. f/k/a/ Watson Pharma, Inc.*