

Order to Balkman



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

PURDUE PHARMA L.P.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY; TEVA
PHARMACEUTICALS USA, INC.;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.; ORTHO-
MCNEIL-JANSSEN
PHARMACEUTICALS, INC., n/k/a/
JANSSEN PHARMACEUTICALS, INC.;
JANSSEN PHARMACEUTICA, INC.;
n/k/a JANSSEN PHARMACEUTICALS,
INC.; ALLEGRAN, PLC, f/k/a ACTAVIS
PLC, f/k/a/ ACTAVIS, INC., f/k/a
WATSON PHARMACEUTICALS, INC.,
WATSON LABORATORIES, INC.;
ACTAVIS LLC; and ACTAVIS PHARMA,
INC., f/k/a WATSON PHARMA, INC.,)

Defendants.)

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

DEC 07 2018

In the office of the
Court Clerk MARILYN WILLIAMS

PAWNEE COUNTY'S AND OSAGE COUNTY'S OPPOSED MOTION FOR
EXTENSION OF TIME TO RESPOND TO DEFENDANTS'
PURDUE PHARMA L.P., PURDUE PHARMA INC., AND
THE PURDUE FREDERICK COMPANY INC.'S SUBPOENAS DUCES TECUM TO
THE PAWNEE AND OSAGE COUNTY CLERKS

COMES NOW Pawnee County and Osage County ("Movants") by and through their attorneys of record, Gibbs Armstrong Borochoff, P.C, and move this Court for an Order extending the parties' time to respond to the Defendants', Purdue Pharma, L.P., Purdue Pharma Inc., and the Purdue Frederick Company Inc.'s ("Defendants"); Subpoenas Duces Tecum to the Pawnee and Osage County Clerks. In support of this motion, Movants state as follows:

1. Movants, along with (5) five other Oklahoma counties: Delaware, Garvin, McClain, Ottawa, and Seminole; are represented, by the firm Gibbs Armstrong Borochoff, P.C., in an ongoing litigation regarding issues and matters arising from an opioid crisis where the counties sued the Defendants for misleading marketing which caused a financial burden on the counties combating the damage from the opioid crisis. *See Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-461-GKF-JFJ (N.D. Okla.); *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00459-GKF-FHM (N.D. Okla.); *Board of County Comm'rs of Delaware County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00460-CVE-JFJ (N.D. Okla.); *Board of County Comm'rs of Garvin County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-820-HE (W.D. Okla.); *Board of County Comm'rs of McClain County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-857-HE (W.D. Okla.); *Board of County Comm'rs of Ottawa County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-466-TCK-JFJ (N.D. Okla.); *Board of County Comm'rs of Seminole County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-372-SPS (E.D. Okla.).

2. At this time, counsel for the Movants have only received the Subpoenas Duces Tecum for Osage and Pawnee County and does not know if the other counties that they represent have been served as well.

3. On November 20, 2019, both the Osage County Clerk and Pawnee County Clerk received Subpoenas Duces Tecum from the Defendants requesting twenty (20) itemized subjects of inquiry to produce documents. *See Subpoena Duces Tecum to Osage County Court Clerk attached hereto as "Exhibit 1;" Subpoena Duces Tecum to Pawnee County Court Clerk attached hereto as "Exhibit 2."*

4. The Movants received the Subpoenas Duces Tecum right before the Thanksgiving holiday and were only provided (7) seven business days to produce thousands of documents.¹

5. The Subpoenas Duces Tecum seek to compel Movants to produce documentation in a vast array of subject areas, including training, measuring, reporting, planning, administration, maintenance, communication, and investigations to name a few. Providing documentation in these areas would require Movant to produce thousands of pages of documentation.

6. Many of the requests also fail to provide a specific range of time, and the requests sought would require production of documents spanning over decades.

7. Not only are these requests overly broad and unduly burdensome, but there is a stay entered in the Northern District of Oklahoma cases where Osage and Pawnee filed suit against the Defendants. See Opinion and Order [Doc. 87], *Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-461-GKF-JFJ (N.D. Okla.) attached hereto as "Exhibit 3;" Opinion and Order [Doc. 80] *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00459-GKF-FHM (N.D. Okla.) attached hereto as "Exhibit 4." The Subpoenas Duces Tecum request a number of documents and items which are relevant to discovery in the ongoing cases mentioned above. Defendants should not have the ability to compel the Movants in this case as a strategy to skirt-tail the stay in a pending litigation.

8. Considering the large quantity of items that would be produced and the issue before the Court as to whether or not the Movants can be compelled to produce these documents, the Movants request an extension of (30) thirty days or until January 06, 2019 to respond to the Subpoenas Duces Tecum.

¹ Pursuant to Okla. Stat. tit. 25 § 82.1, each Saturday, Sunday, Thanksgiving Day, and the day after Thanksgiving Day shall be designated as a holiday.

9. Counsel for Defendants objected to this extension and provided they would only agree to an extension if Movants would produce all documents and waive all objections.

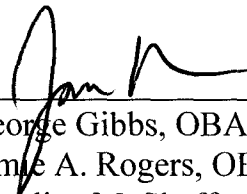
10. No prior extensions have been granted or requested regarding the response to these Subpoenas Duces Tecum.

11. This motion is not being filed for an improper purpose or delay, but in the interest of justice.

WHEREFORE Movants respectfully request that their Motion for Extension of Time to Respond to the Subpoenas Duces Tecum be granted, that Movants have until January 06, 2019 to respond to the Subpoenas Duces Tecum, and for such other relief as this Court deems just and proper.

Respectfully,

GIBBS ARMSTRONG BOROCHOFF, P.C.



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ATTORNEYS FOR MOVANTS

CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2018, a true and correct copy of the above and foregoing instrument was:

- mailed with postage prepaid thereon;
 mailed by certified mail, Return Receipt No. _____;
 transmitted via facsimile; or
 hand-delivered;

to counsel of record:

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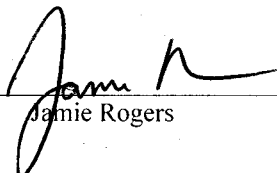
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Counsel for Plaintiff the State of Oklahoma



Jamie Rogers

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

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

v.

PURDUE PHARMA L.P.; PURDUE
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JANSSEN PHARMACEUTICA, INC.,
n/k/a JANSSEN PHARMACEUTICALS,
INC.; ALLERGAN, PLC, f/k/a ACTAVIS
PLC, f/k/a ACTAVIS, INC., f/k/a
WATSON PHARMACEUTICALS, INC.;
WATSON LABORATORIES, INC.;
ACTAVIS LLC; and ACTAVIS PHARMA,
INC., f/k/a WATSON PHARMA, INC.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

FILED
STATE OF OKLAHOMA
2018 NOV 20 PM 1:18
OSAGE COUNTY CLERK
SHELLA BELLAMY
DEP.

SUBPOENA DUCES TECUM

TO: Shella Bellamy
Osage County Clerk
600 Grandview Ave.
Pawhuska, OK 74056

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on Exhibit "A" attached.

PLACE: Law Office of Crowe & Dunlevy, P.C., Brauff Building, 324 North Robinson Avenue, Suite 100, Oklahoma City, OK 73102, where the copying/inspecting will take place

George Gibbs

Jamie Rogers - 918-587-3939



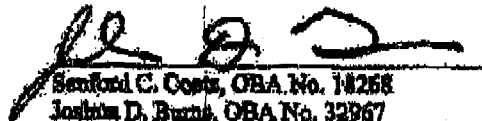
DATE AND TIME: December 7, 2018 at 9:00 A.M., December 7, 2018

It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling or any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objection to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.

YOU ARE ORIENTED NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RESPONSIVE TO THIS SUBPOENA.

Dated this 19th day of November, 2018.



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OSAGE COUNTY CLERK
OSAGE COUNTY CLERK

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

EXHIBIT "A"

Osage County is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

Definitions

The following definitions apply to this Subpoena:

1. "Osage County," "You," and/or "Your" refer to Osage County in the State of Oklahoma, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. The "State of Oklahoma" collectively refers to the State of Oklahoma and any of its agencies, entities, or employees.
3. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
5. "All" or "any" shall mean "any and all."
6. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."
7. "Prescription Opioids" means FDA-approved pain-reducing medications that consist of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in the brain or body to produce an analgesic effect, including, but not limited to, prescription medications containing hydrocodone, oxycodone, fentanyl, and hydromorphone, that may be legally obtained by patients in Oklahoma only through prescriptions filled by dispensers duly licensed and regulated.

Instructions

The following instructions apply to this Subpoena:

1. You are required to comply with this subpoena. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and

(b) why full compliance is not possible. If you object to any request or subset of a request, state with specificity the grounds for each such objection.

3. Unless otherwise noted, the date range for these requests is from 1996 to the present.

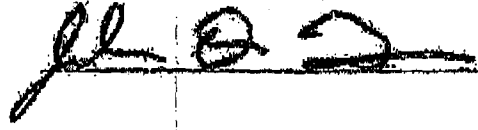
Documents to be Produced

1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crisis.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing or sale of Prescription Opioids.
3. All of Your communications with the State of Oklahoma concerning Prescription Opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis.
4. All of Your Communications with the State of Oklahoma concerning efforts by You, the State of Oklahoma, manufacturers, or distributors of Prescription Opioids to report suspiciously large or frequent orders of Prescription Opioids to law enforcement agencies.
5. Your educational efforts or community outreach efforts, including publications, studies, reports, or other information that You sponsored, disseminated, produced, supported, or participated or engaged in pertaining to Prescription Opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs, including, but not limited to, the legal or illegal use, misuse or abuse of, or addiction to, such drugs.
6. All records of investigations, including, but not limited to, interviews, inquiries, reports, or reviews conducted internally or by a third party on your behalf (including but not limited to any auditor, consultant, law enforcement agency, or regulator), concerning your response to issues concerning opioid misuse, abuse, or the opioid crisis.
7. All your records and communications relating to disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion.
8. All records, analyses, or reports of drug abuse in Osage County prior to 1996, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
9. All records, analyses or reports of drug abuse in Osage County from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
10. Your policies, procedures, manuals, formal or informal guidance, and/or training provided to Your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids.
11. All documents showing actions taken by You in response to the CDC's declaration of an "opioid epidemic" in 2011 and to implement the CDC's proposed guidelines relating to Prescription Opioid prescribing, including, but not limited to, efforts to treat, reduce, or prevent Prescription Opioid abuse, reduce the amount of Prescription Opioids prescribed by physicians or other health care providers, reduce improper Prescription Opioid

- prescribing, and reduce the use of heroin, illicitly manufactured fentanyl and fentanyl-type drugs, and substances containing those drugs.
12. All records relating to the investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids.
 13. All records of emergency or first responder interactions with users of opioids, including overdoses or deaths related to opioids.
 14. To the extent that You believe, claim, or determined that any opioid prescriptions that were written by health care providers in Osage County or written to patients who lived in Osage County were medically unnecessary, inappropriate, or excessive, all records relating to such prescriptions and your basis for your belief, claim, or determination.
 15. All records of Your requests for information or material received from the Oklahoma Prescription Monitoring Program (PMP), actions You took or considered taking based on information You received from PMP, Your policies and procedures relating to PMP, the use of PMP data, and any requirements or guidelines concerning health care providers' use and reporting obligations concerning PMP.
 16. All of Your communications with any local, state or federal agency or task force, including, but not limited to, the U.S. Drug Enforcement Agency, any United States Attorney, the State of Oklahoma Bureau of Narcotics and Dangerous Drugs, and the Oklahoma Commission on Opioid Abuse, relating to the use, misuse, abuse, prescribing, sale, distribution, addiction to, or diversion of Prescription Opioids or illicit, non-prescription opioids.
 17. All of Your annual operating budgets and the annual costs or expenses incurred by You to address misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, nonprescription opioids, and all funding requests made by You to the State of Oklahoma, including any funding requests related to the misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, non-prescription opioids.
 18. All documents or information You provided to or obtained from the National Association of State Controlled Substances Authorities ("NASCSA") or the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") relating to Prescription Opioids.
 19. All of Your communications with any person or entity including, but not limited to, any employee, attorney, or agent of the State of Oklahoma or the United States government, regarding any opioid litigation.
 20. All of Your communications with any person or entity regarding Purdue Pharma L.P., Purdue Pharma Inc., or The Purdue Frederick Company Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "J. E. [unclear]", written over a horizontal line.

SERVICE LIST

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

v.

PURDUE PHARMA L.P.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY; TEVA
PHARMACEUTICALS USA, INC.;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.; ORTHO-
McNEIL-JANSSEN
PHARMACEUTICALS, INC., n/k/a
JANSSEN PHARMACEUTICALS, INC.;
JANSSEN PHARMACEUTICA, INC.,
n/k/a JANSSEN PHARMACEUTICALS,
INC.; ALLERGAN, PLC, f/k/a ACTAVIS
PLC, f/k/a ACTAVIS, INC., f/k/a
WATSON PHARMACEUTICALS, INC.;
WATSON LABORATORIES, INC.;
ACTAVIS LLC; and ACTAVIS PHARMA,
INC., f/k/a WATSON PHARMA, INC.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

STATE OF OKLAHOMA
PAWNEE COUNTY
FILED FOR RECORD
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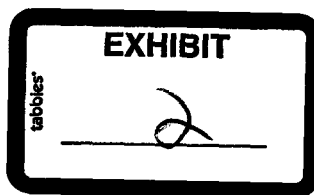
SUBPOENA DUCES TECUM

TO: Kristie Moles
Pawnee County Clerk
500 Harrison St., Room 202
Pawnee, OK 74058

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on Exhibit "A" attached.

PLACE: Law Office of Crowe & Dunlevy, P.C., Braniff Building, 324 North Robinson Avenue, Suite 100, Oklahoma City, OK 73102, where the copying/inspecting will take place



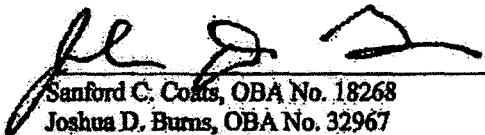
DATE AND TIME: December 7, 2018 at 9:00 A.M.

It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling or any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objection to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.

YOU ARE ORDERED NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RESPONSIVE TO THIS SUBPOENA.

Dated this 19th day of November, 2018.



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Joshua D. Burns, OBA No. 32967

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

EXHIBIT "A"

Pawnee County is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

Definitions

The following definitions apply to this Subpoena:

1. "Pawnee County," "You," and/or "Your" refer to Pawnee County in the State of Oklahoma, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. The "State of Oklahoma" collectively refers to the State of Oklahoma and any of its agencies, entities, or employees.
3. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
5. "All" or "any" shall mean "any and all."
6. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."
7. "Prescription Opioids" means FDA-approved pain-reducing medications that consist of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in the brain or body to produce an analgesic effect, including, but not limited to, prescription medications containing hydrocodone, oxycodone, fentanyl, and hydromorphone, that may be legally obtained by patients in Oklahoma only through prescriptions filled by dispensers duly licensed and regulated.

Instructions

The following instructions apply to this Subpoena:

1. You are required to comply with this subpoena. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and

(b) why full compliance is not possible. If you object to any request or subpart of a request, state with specificity the grounds for each such objection.

3. Unless otherwise noted, the date range for these requests is from 1996 to the present.

Documents to be Produced

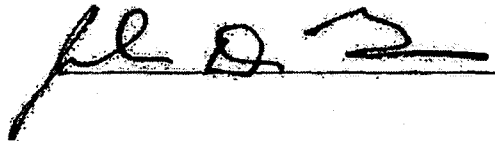
1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crisis.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing or sale of Prescription Opioids.
3. All of Your communications with the State of Oklahoma concerning Prescription Opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis.
4. All of Your Communications with the State of Oklahoma concerning efforts by You, the State of Oklahoma, manufacturers, or distributors of Prescription Opioids to report suspiciously large or frequent orders of Prescription Opioids to law enforcement agencies.
5. Your educational efforts or community outreach efforts, including publications, studies, reports, or other information that You sponsored, disseminated, produced, supported, or participated or engaged in pertaining to Prescription Opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs, including, but not limited to, the legal or illegal use, misuse or abuse of, or addiction to, such drugs.
6. All records of investigations, including, but not limited to, interviews, inquiries, reports, or reviews conducted internally or by a third party on your behalf (including but not limited to any auditor, consultant, law enforcement agency, or regulator), concerning your response to issues concerning opioid misuse, abuse, or the opioid crisis.
7. All your records and communications relating to disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion.
8. All records, analyses, or reports of drug abuse in Pawnee County prior to 1996, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
9. All records, analyses or reports of drug abuse in Pawnee County from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
10. Your policies, procedures, manuals, formal or informal guidance, and/or training provided to Your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids.
11. All documents showing actions taken by You in response to the CDC's declaration of an "opioid epidemic" in 2011 and to implement the CDC's proposed guidelines relating to Prescription Opioid prescribing, including, but not limited to, efforts to treat, reduce, or prevent Prescription Opioid abuse, reduce the amount of Prescription Opioids prescribed by physicians or other health care providers, reduce improper Prescription Opioid

prescribing, and reduce the use of heroin, illicitly manufactured fentanyl and fentanyl-type drugs, and substances containing those drugs.

12. All records relating to the investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids.
13. All records of emergency or first responder interactions with users of opioids, including overdoses or deaths related to opioids.
14. To the extent that You believe, claim, or determined that any opioid prescriptions that were written by health care providers in Pawnee County or written to patients who lived in Pawnee County were medically unnecessary, inappropriate, or excessive, all records relating to such prescriptions and your basis for your belief, claim, or determination.
15. All records of Your requests for information or material received from the Oklahoma Prescription Monitoring Program (PMP), actions You took or considered taking based on information You received from PMP, Your policies and procedures relating to PMP, the use of PMP data, and any requirements or guidelines concerning health care providers' use and reporting obligations concerning PMP.
16. All of Your communications with any local, state or federal agency or task force, including, but not limited to, the U.S. Drug Enforcement Agency, any United States Attorney, the State of Oklahoma Bureau of Narcotics and Dangerous Drugs, and the Oklahoma Commission on Opioid Abuse, relating to the use, misuse, abuse, prescribing, sale, distribution, addiction to, or diversion of Prescription Opioids or illicit, non-prescription opioids.
17. All of Your annual operating budgets and the annual costs or expenses incurred by You to address misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, nonprescription opioids, and all funding requests made by You to the State of Oklahoma, including any funding requests related to the misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, non-prescription opioids.
18. All documents or information You provided to or obtained from the National Association of State Controlled Substances Authorities ("NASCSA") or the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") relating to Prescription Opioids.
19. All of Your communications with any person or entity including, but not limited to, any employee, attorney, or agent of the State of Oklahoma or the United States government, regarding any opioid litigation.
20. All of Your communications with any person or entity regarding Purdue Pharma L.P., Purdue Pharma Inc., or The Purdue Frederick Company Inc..

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "P. D. S.", is written over a horizontal line.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THE BOARD OF COUNTY
COMMISSIONERS OF OSAGE COUNTY,
STATE OF OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

Case No. 18-CV-461-GKF-JFJ

OPINION AND ORDER

Before the court is the motion to stay [Doc. 62] of defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation. The movants seek a stay of proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation (“JPML”) as to the transfer of this action to a multidistrict litigation pending in the Northern District of Ohio, *In re National Prescription Opiate Litigation*, MDL No. 2804. For the reasons set forth below, the motion is granted.

I. BACKGROUND

On December 5, 2017, the JPML formed MDL 2804 in the Northern District of Ohio to coordinate the resolution of numerous opioid-related actions then pending in federal court. *See In re Nat’l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1378 (JPML 2017). The plaintiffs in the actions alleged that “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed . . . these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* Those plaintiffs brought “claims for violation of RICO statutes, consumer protection laws, state analogues to the Controlled Substances Act, as well



as common law claims such as public nuisance, negligence, negligent misrepresentation, fraud and unjust enrichment.” *Id.* The JPML concluded that centralization would “substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions.” *Id.*

On March 26, 2018, the plaintiff filed a petition in the District Court of Osage County, State of Oklahoma. [Doc. 2, pp. 36–323]. The plaintiff later filed an amended petition and, on June 13, 2018, filed a second amended petition. [Doc. 2, pp. 630–920]. The second amended petition asserts causes of action for violation of Oklahoma consumer protection and RICO statutes, public nuisance, fraud, unjust enrichment, negligence, and negligent marketing in connection with the distribution of prescription opioids. [*Id.*].

On September 6, 2018, defendant McKesson Corporation removed this action on the basis of federal question jurisdiction, asserting that the plaintiff’s claims arise under the federal Controlled Substances Act, 21 U.S.C. § § 801, *et seq.* (“CSA”) and related regulations. [Doc. 2, p. 5]. That same day, defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. filed a supplemental notice in support of removal arguing that the action was also removable based on diversity jurisdiction because the plaintiff had fraudulently misjoined the non-diverse dealer physicians. [Doc. 7, p. 2].

On September 19, 2018, the plaintiff moved to remand this action back to state court. [Doc. 43]. That same day, the JPML issued a conditional transfer order to the MDL on the ground that the action appears to “involve questions of fact that are common to the actions previously transferred.” Conditional Transfer Order (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (JPML Sept. 19, 2018), ECF 2529. Thereafter, the plaintiff filed an opposition to

transfer with the JPML. Notice of Opposition (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (Sept. 26, 2018), ECF 2621.

On September 24, 2018, the moving defendants filed this motion to stay proceedings pending a final transfer decision by the JPML. [Doc. 62]. On October 23, 2018, the plaintiff filed a response in opposition to the motion to stay.¹ [Doc. 80]. On November 6, 2018, the moving defendants filed a reply. [Doc. 86].

II. LEGAL STANDARD

This court's power to stay proceedings is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "When a motion to transfer has been filed with MDL, a district court should consider three factors in determining if a case should be stayed pending a ruling on the motion to transfer: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicate litigation if the cases are in fact consolidated." *Bd. of Cty. Commissioners of Delaware Cty., Oklahoma v. Purdue Pharma L.P.*, No. 18-CV-0460-CVE-JFJ, 2018 WL 5307623, at *1 (N.D. Okla. Oct. 26, 2018) (quoting *Oklahoma ex rel. Pruitt v. U.S. E.P.A.*, No. 15-CV-0381-CVE-FHM, 2015 WL 4607903, at *2 (N.D. Okla. July 31, 2015)).

"As a general rule, courts frequently grant stays pending a decision by the MDL panel regarding whether to transfer a case." *Oklahoma ex rel. Pruitt*, 2015 WL 4607903, at *2 (quoting *Cheney v. Eli Lilly & Co.*, No. 14-CV-02249-KMT, 2014 WL 7010656, at *1 (D. Colo. Dec. 9, 2014)). As explained in the Manual for Complex Litigation, a "stay pending the Panel's decision

¹ As noted by the moving defendants, the plaintiff's response was untimely pursuant to LCvR7.2(e). Nevertheless, the court elected to consider the arguments contained therein.

can increase efficiency and consistency, particularly when the transferor court believes that a transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.” MCL 4th § 22.35.

III. ANALYSIS

In opposition to the stay, the plaintiff suggests that stays are categorically improper when jurisdictional issues are pending. Such a rule is inconsistent with the weight of authority, as “courts have repeatedly noted that the ‘general rule is for federal courts to defer ruling on pending motions to remand in MDL litigation until after the [JPML] has transferred the case.’” *Little v. Pfizer, Inc.*, No. C-14-1177 EMC, 2014 WL 1569425, at *3 (N.D. Cal. Apr. 18, 2014) (quoting *Robinson v. DePuy Orthopaedics, Inc.*, No. 3:12-cv-00003, 2012 WL 831650 (W.D. Va. Mar. 6, 2012)). Indeed, courts have granted stays despite pending remand motions in similar opioid-related cases. See, e.g., *Bd. of Cty. Commissioners of Delaware Cty.*, 2018 WL 5307623, at *1 (“[A]lthough plaintiff will endure some delay in adjudication of its remand motion if the case is stayed, any prejudice resulting from that delay is outweighed by the benefits of centralized consideration of the jurisdictional issues and conservation of judicial resources.”); Opinion & Order, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. McKesson Corp.*, No. 18-cv-286-jdp (W.D. Wis. May 25, 2018), ECF 26, available at [Doc. 66-2] (“Staying the proceedings so that one court can issue one ruling on a difficult issue appears to be the best option for all involved.”).

The plaintiff argues that it will be prejudiced by the delay in the hearing of its motion to remand. If the JPML does not transfer this action to the MDL, the only prejudice to the plaintiff resulting from a stay will be the minimal delay until the JPML’s final transfer decision, as this court would then decide the motion to remand. The court is mindful that, if the JPML does transfer this action, the plaintiff will likely endure some delay in the adjudication of its remand motion.

The plaintiff argues that it will be “irreparably harmed” by a transfer to the MDL because “Judge Polster of the MDL has held that he will not act on any motions to remand and placed a moratorium on filing such motions.” [Doc. 80 at 5]. However, at a hearing on December 13, 2017, Judge Polster expressed his preference for a “framework” that would allow consistent resolution of remand motions. Transcript of Teleconference Proceedings, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 10, pp. 14–15. On April 11, 2018, Judge Polster entered a case management order providing in relevant part that “the Court will adopt a procedure, based on input from the parties, to efficiently address the filing and briefing of motions for remand at an appropriate time in the MDL proceedings.” Case Management Order One, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 232, p. 19.

A preliminary assessment of the jurisdictional issues in this case suggests that they are not straightforward. Moreover, similar issues have already arisen in cases that have been transferred to the MDL. *See, e.g., City of Paterson v. Purdue Pharma L.P.*, No. 2:17-cv-13433 (D.N.J.); *N. Mississippi Med. Ctr., Inc. v. McKesson Corp.*, No. 1:18-cv-0078 (N.D. Miss.); *Cty. of Hudson v. Purdue Pharma L.P.*, No. 2:18-cv-9029 (D.N.J.). A stay will allow for centralized consideration of the jurisdictional issues and conservation of judicial resources. The court finds that, under the circumstances, the gains in judicial efficiency and consistency allowed by a stay outweigh the potential prejudice to the plaintiff resulting from delay in the adjudication of its motion to remand.

WHEREFORE, the moving defendants’ joint motion to stay proceedings pending a final transfer decision by the JPML [Doc. 62] is granted and this matter is stayed.

IT IS SO ORDERED this 14th day of November, 2018.


GREGORY K. ERIZZELL, CHIEF JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THE BOARD OF COUNTY
COMMISSIONERS OF PAWNEE
COUNTY, STATE OF OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

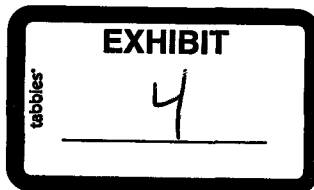
Case No. 18-CV-459-GKF-FHM

OPINION AND ORDER

Before the court is the motion to stay [Doc. 66] of defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation. The movants seek a stay of proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation (“JPML”) as to the transfer of this action to a multidistrict litigation pending in the Northern District of Ohio, *In re National Prescription Opiate Litigation*, MDL No. 2804. For the reasons set forth below, the motion is granted.

I. BACKGROUND

On December 5, 2017, the JPML formed MDL 2804 in the Northern District of Ohio to coordinate the resolution of numerous opioid-related actions then pending in federal court. *See In re Nat'l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1378 (JPML 2017). The plaintiffs in the actions alleged that “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed . . . these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* Those plaintiffs brought “claims for violation of RICO statutes, consumer protection laws, state analogues to the Controlled Substances Act, as well



as common law claims such as public nuisance, negligence, negligent misrepresentation, fraud and unjust enrichment.” *Id.* The JPML concluded that centralization would “substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions.” *Id.*

On June 13, 2018, the plaintiff filed a petition in the District Court of Pawnee County, State of Oklahoma. [Doc. 1, pp. 35–324]. The petition asserts causes of action for violation of Oklahoma consumer protection and RICO statutes, public nuisance, fraud, unjust enrichment, negligence, and negligent marketing in connection with the distribution of prescription opioids. [*Id.*].

On September 5, 2018, defendant McKesson Corporation removed this action on the basis of federal question jurisdiction, asserting that the plaintiff’s claims arise under the federal Controlled Substances Act, 21 U.S.C. § § 801, *et seq.* (“CSA”) and related regulations. [Doc. 1, p. 5]. The following day, defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. filed a supplemental notice in support of removal arguing that the action was also removable based on diversity jurisdiction because the plaintiff had fraudulently misjoined the non-diverse dealer physicians. [Doc. 13, p. 2].

On September 19, 2018, the plaintiff moved to remand this action back to state court. [Doc. 43]. That same day, the JPML issued a conditional transfer order to the MDL on the ground that the action appears to “involve questions of fact that are common to the actions previously transferred.” Conditional Transfer Order (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (JPML Sept. 19, 2018), ECF 2529. Thereafter, the plaintiff filed an opposition to transfer with the JPML. Notice of Opposition (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (Sept. 26, 2018), ECF 2621.

On September 28, 2018, the moving defendants filed this motion to stay proceedings pending a final transfer decision by the JPML. [Doc. 66]. On October 23, 2018, the plaintiff filed a response in opposition to the motion to stay.¹ [Doc. 73]. On November 6, 2018, the moving defendants filed a reply. [Doc. 79].

II. LEGAL STANDARD

This court's power to stay proceedings is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "When a motion to transfer has been filed with MDL, a district court should consider three factors in determining if a case should be stayed pending a ruling on the motion to transfer: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicate litigation if the cases are in fact consolidated." *Bd. of Cty. Commissioners of Delaware Cty., Oklahoma v. Purdue Pharma L.P.*, No. 18-CV-0460-CVE-JFJ, 2018 WL 5307623, at *1 (N.D. Okla. Oct. 26, 2018) (quoting *Oklahoma ex rel. Pruitt v. U.S. E.P.A.*, No. 15-CV-0381-CVE-FHM, 2015 WL 4607903, at *2 (N.D. Okla. July 31, 2015)).

"As a general rule, courts frequently grant stays pending a decision by the MDL panel regarding whether to transfer a case." *Oklahoma ex rel. Pruitt*, 2015 WL 4607903, at *2 (quoting *Cheney v. Eli Lilly & Co.*, No. 14-CV-02249-KMT, 2014 WL 7010656, at *1 (D. Colo. Dec. 9, 2014)). As explained in the Manual for Complex Litigation, a "stay pending the Panel's decision can increase efficiency and consistency, particularly when the transferor court believes that a

¹ As noted by the moving defendants, the plaintiff's response was untimely pursuant to LCvR7.2(e). Nevertheless, the court elected to consider the arguments contained therein.

transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.” MCL 4th § 22.35.

III. ANALYSIS

In opposition to the stay, the plaintiff suggests that stays are categorically improper when jurisdictional issues are pending. Such a rule is inconsistent with the weight of authority, as “courts have repeatedly noted that the ‘general rule is for federal courts to defer ruling on pending motions to remand in MDL litigation until after the [JPML] has transferred the case.’” *Little v. Pfizer, Inc.*, No. C-14-1177 EMC, 2014 WL 1569425, at *3 (N.D. Cal. Apr. 18, 2014) (quoting *Robinson v. DePuy Orthopaedics, Inc.*, No. 3:12-cv-00003, 2012 WL 831650 (W.D. Va. Mar. 6, 2012)). Indeed, courts have granted stays despite pending remand motions in similar opioid-related cases. *See, e.g., Bd. of Cty. Commissioners of Delaware Cty.*, 2018 WL 5307623, at *1 (“[A]lthough plaintiff will endure some delay in adjudication of its remand motion if the case is stayed, any prejudice resulting from that delay is outweighed by the benefits of centralized consideration of the jurisdictional issues and conservation of judicial resources.”); Opinion & Order, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. McKesson Corp.*, No. 18-cv-286-jdp (W.D. Wis. May 25, 2018), ECF 26, available at [Doc. 66-2] (“Staying the proceedings so that one court can issue one ruling on a difficult issue appears to be the best option for all involved.”).

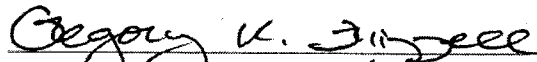
The plaintiff argues that it will be prejudiced by the delay in the hearing of its motion to remand. If the JPML does not transfer this action to the MDL, the only prejudice to the plaintiff resulting from a stay will be the minimal delay until the JPML’s final transfer decision, as this court would then decide the motion to remand. The court is mindful that, if the JPML does transfer this action, the plaintiff will likely endure some delay in the adjudication of its remand motion.

The plaintiff argues that it will be “irreparably harmed” by a transfer to the MDL because “Judge Polster of the MDL has held that he will not act on any motions to remand and placed a moratorium on filing such motions.” [Doc. 73 at 4]. However, at a hearing on December 13, 2017, Judge Polster expressed his preference for a “framework” that would allow consistent resolution of remand motions. Transcript of Teleconference Proceedings, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 10, pp. 14–15. On April 11, 2018, Judge Polster entered a case management order providing in relevant part that “the Court will adopt a procedure, based on input from the parties, to efficiently address the filing and briefing of motions for remand at an appropriate time in the MDL proceedings.” Case Management Order One, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 232, p. 19.

A preliminary assessment of the jurisdictional issues in this case suggests that they are not straightforward. Moreover, similar issues have already arisen in cases that have been transferred to the MDL. *See, e.g., City of Paterson v. Purdue Pharma L.P.*, No. 2:17-cv-13433 (D.N.J.); *N. Mississippi Med. Ctr., Inc. v. McKesson Corp.*, No. 1:18-cv-0078 (N.D. Miss.); *Cty. of Hudson v. Purdue Pharma L.P.*, No. 2:18-cv-9029 (D.N.J.). A stay will allow for centralized consideration of the jurisdictional issues and conservation of judicial resources. The court finds that, under the circumstances, the gains in judicial efficiency and consistency allowed by a stay outweigh the potential prejudice to the plaintiff resulting from delay in the adjudication of its motion to remand.

WHEREFORE, the moving defendants’ joint motion to stay proceedings pending a final transfer decision by the JPML [Doc. 66] is granted and this matter is stayed.

IT IS SO ORDERED this 14th day of November, 2018.


GREGORY K. FRIZZELL, CHIEF JUDGE