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
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

For Judge Balkman's Consideration

DEFENDANTS TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S OBJECTIONS TO SPECIAL MASTER'S RULINGS ON STATE'S MOTION TO QUASH NOTICES TO TAKE 3230 (C)(5) VIDEOTAPED DEPOSITIONS OF CORPORATE REPRESENTATIVES OF THE STATE

Pursuant to the Court's Order Appointing Discovery Master, entered January 29, 2019, Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc., (collectively, "Teva Defendants"), and Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a

Watson Pharma, Inc., (collectively, the "Generic Actavis Defendants") by and through their undersigned counsel, object to Special Master Hetherington's January 20, 2019 Order (Ex. A) ("Order") with respect to certain rulings on the State of Oklahoma's (the "State") Motion to Quash Notices to Take 3230(C)(5) Videotaped Depositions of Corporate Representatives of the State (Ex. B) (the "Motion"). The Court reviews the Order *de novo*. For the reasons that follow, the State's objections should be overruled and the Teva Defendants and Generic Actavis Defendants should be permitted to proceed with depositions of the State's representatives as soon as practicable.

I. INTRODUCTION

The State chose to sue more than a dozen pharmaceutical manufacturers on a false marketing theory to recover tens of billions of dollars in damages and penalties. But each manufacturer is different. Each manufacturer sold different opioid medicines, and used different methods of marketing its products, if any,[1] and had different communications, if any, with Oklahoma physicians. Thus, each Defendant's alleged conduct and impact on the State is different. Each Defendant is therefore entitled to defend against the separate allegations and claims against it. In order to do so, the Teva Defendants and Generic Actavis Defendants seek basic and fundamental deposition testimony to which they are entitled under Oklahoma Discovery Code, and the Oklahoma and United States Constitutions.

On December 19, 2018, pursuant to the deposition procedures established by the Court on August 31, 2018, the Teva Defendants and Generic Actavis Defendants sent a letter to the State identifying the Topics ("Topics") and dates on which they sought testimony from the State's

[1] Generic manufacturers, such as Watson, Actavis LLC, and Actavis Pharma, do not market their products to physicians. *New York ex rel. Schneiderman v. Actavis, PLC*, 2014 WL 7015198, at *27 (S.D.N.Y. 2014), *aff'd*, 787 F.3d 638 (2d Cir. 2015) (recognizing that generic manufacturers "compete on price ***and avoid marketing to physicians*** because the costs of such marketing severely impact their ability to offer the significantly lower prices upon which they compete").

corporate representatives. On December 28, 2019, the State requested to meet and confer on the deposition Topics, and on January 3, 2019, the parties held a telephonic conference to discuss the State's objections. On January 8, 2019, the Teva Defendants and Generic Actavis Defendants properly noticed depositions of the State's representatives on 38 discrete Topics tailored to elicit testimony specific to the Teva Defendants and Generic Actavis Defendants. *See* Ex. C (the "Notice"). On January 11, 2019, the State moved to quash 32 of the 38 noticed deposition Topics.[2] *Id.* The State argued that the Notice is improper because: (a) it seeks to depose witnesses "twice;" (b) it seeks information that is precluded by prior rulings and/or privilege; (c) it seeks expert testimony; (d) it seeks "contention" depositions; and (e) it seeks information that is "irrelevant" and "overbroad."

On January 20, 2019, following oral argument, Special Master Hetherington entered the Order, sustaining nearly every single objection raised by the State.[3] Special Master Hetherington essentially adopted and affirmed the State's categories of objections, thereby preventing the Teva Defendants from getting basic deposition testimony regarding fundamental issues applicable to the Teva Defendants and Generic Actavis Defendants—notwithstanding that the State was allotted 80 hours of corporate testimony from the Teva Defendants and Generic Actavis Defendants and now seeks billions in damages. Further, in the few instances where the State's objections were overruled in part, Special Master Hetherington deemed them "expert" or "contention" topics and found them "premature." The State's objections should be overruled for the reasons that follow.

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[2] The State did not move to quash Topics 11, 12, 13, 31, 32 and 33, therefore the Teva Defendants are proceeding with those depositions accordingly.

[3] The Order also addressed other motions which are not the subject of the present Objections.

First, time is of the essence. The discovery period ends in a mere six weeks. The Teva Defendants and Generic Actavis Defendants have offered to schedule certain depositions identified by Special Master Hetherington as "contention" or "premature" towards the end of the discovery period to accommodate the State and alleviate any concerns about prematurity. There is no legal basis to say that a deposition on a valid topic cannot be scheduled at this time. The result of such a ruling—that a topic is permissible but premature—would present significant logistical challenges given the present scheduling, particularly where all depositions of the parties' experts remain to be scheduled (including depositions of the State's twenty-three experts). It also likely will result in the need for additional judicial involvement. The Topics are valid, and the depositions should be scheduled now.

Second, the plaintiff's objections completely ignore the broad discovery guaranteed to parties by the Oklahoma Discovery Code and both the Oklahoma and United States Constitutions. The Topics are neither "irrelevant" or "overbroad." The Teva Defendants and Generic Actavis Defendants are distinct from the other Defendants. Consistent with the Court's prior rulings, they should be entitled to their own 80 hours of deposition testimony from the State on properly noticed topics. The fact that *other* Defendants noticed depositions of the State on *different* topics is irrelevant. The Teva Defendants and Generic Actavis Defendants seek testimony as it relates to them, the claims alleged against them, and the defenses they intend to raise at trial. Construing the deposition Topics as duplicative, cumulative, irrelevant, or overly broad ignores that each topic is meant to elicit testimony as it relates to the Teva Defendants and Generic Actavis Defendants—and the Teva Defendants and Generic Actavis Defendants have clarified that they do not plan to ask repetitive or redundant questions to the extent the State designates previously-deposed

individuals on particular topics. The Teva Defendants and Generic Actavis Defendants are entitled to this discovery. Anything less is a deprivation of due process.

Third, with respect to Special Master Hetherington's "privilege" determinations, none of the Court's prior rulings preclude the Teva Defendants and Generic Actavis Defendants from seeking testimony regarding criminal and administrative proceedings, or patient and provider information. Indeed, the Court has ordered the State to produce materials related to those proceedings. *See* October 22, 2018 Order at 5–6. As to the latter, the Teva Defendants and Generic Actavis Defendants do not seek to obtain the identity of any prescribers or patients in those depositions.[4] The deposition on these Topics should be permitted to proceed and, to the extent any questions are objectionable, the State may make those objections on the record during the course of the deposition.

Fourth, Special Master Hetherington's determination that certain Topics are "expert witness topics," is incorrect and not a proper reason to deny a fact deposition. As is evident from the State's own expert disclosures, experts consider and rely on facts in forming their opinions and preparing their disclosures. *See Nelson v. Enid Med. Assocs., Inc.*, 376 P.3d 212, 217 (Okla. 2016) ("An expert's opinion must be 'based on what is known,' i.e. facts and data, that are then used as part of a reliable method in forming an opinion."). If the State intends to offer fact witnesses or evidence at trial on any subject about which an expert will also testify, the Teva Defendants and Generic Actavis Defendants are entitled to depose a *fact* witness on those subjects. The Teva

[4] By agreeing not to ask questions during these depositions about the specific identities of those prescribers and patients, the Teva Defendants and Generic Actavis Defendants do not waive their objections to this Court's rulings that the defendants are not entitled to that information and that it is not relevant to the case.

Defendants and Generic Actavis Defendants are entitled to depositions from the State related to those *facts*.

The State's objections should not have been sustained, and that result denies the Teva Defendants and Generic Actavis Defendants their fundamental right to this discovery which is proper, proportional, and tailored to obtain information from the State as it pertains to the Teva Defendants and Generic Actavis Defendants. The State chose to file suit against all of these pharmaceutical manufacturers. The State chose to pursue billions of dollars in damages. The Teva Defendants and Generic Actavis Defendants are entitled to their own depositions of the State on key issues as they relate to them. Accordingly, the Teva Defendants and Generic Actavis Defendants respectfully request that the Court reverse Special Master Hetherington's Order on the State's Motion as to the State's objections that were sustained, in whole or in part,[5] and permit the parties to proceed with corporate depositions of the State as noticed.

II. STANDARD OF REVIEW

"A lawsuit is not a contest in concealment, and the discovery process was established so that 'either party may compel the other to disgorge whatever facts he has in his possession.'" *Cowen v. Hughes*, 1973 OK 11, 509 P.2d 461, 463 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). "'***Mutual knowledge*** of all the relevant facts gathered by both parties is essential to proper litigation.'" *Metzger v. Am. Fid. Assurance Co.*, 245 FR.D. 727, 728 (W.D. Okla. 2007)

[5] The Teva Defendants and Generic Actavis Defendants do not object to Special Master Hetherington's overruling in part of objections with respect to deposition Topics: 2–4, 22, and 26. However, to the extent objections were sustained in part as to these Topics, the Teva Defendants and Generic Actavis Defendants disagree with the Special Master's ruling and argue that they should have been overruled in their entirety. The Teva Defendants and Generic Actavis Defendants also seek clarification of these potentially inconsistent rulings.

(quoting *Hickman*, 329 U.S. at 507) (emphasis added). The Oklahoma Discovery Code, consistent with these principles, provides in relevant:

> Parties may obtain discovery regarding any matter, not privileged, which is ***relevant*** to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and ***proportional*** to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Okla. Stat. tit. 12, § 3226(B)(1)(a) (emphasis added).

III. DISCUSSION

A. The Oklahoma Discovery Code Permits Depositions On These Topics.

The Oklahoma Discovery Code permits each party to conduct its own discovery. *See generally* Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a). It entitles each Defendant to "obtain discovery regarding any matter, not privileged, *which is relevant to any party's claim or defense*, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a) (emphasis added). The State's position that it need only produce a single witness, for a single day, on key issues in this case—despite having sued thirteen separate defendants for billions of dollars—is fundamentally inconsistent with Oklahoma law. The fact that the State has produced witnesses in response to *other* defendants' notices to answer questions about those defendants is irrelevant. Special Master Hetherington's ruling deprives the Teva Defendants and Generic Actavis Defendants of the right to conduct their own discovery.

The right to obtain discovery relevant to their defenses is not limited by the fact that the Teva Defendants and Generic Actavis Defendants received notice of and attended depositions of the State on similar topics. Motion at 3. This argument is contrary to the Oklahoma Discovery

Code. It is also in direct conflict with the State's position at prior depositions of its representatives during which if an attending party (as opposed to a noticing party) attempted to question the witness or preserve the right to question the witness at a later date, the State objected. There is certainly no Order in place precluding the Teva Defendants and Generic Actavis Defendants from noticing topics to ask their own questions of the State on fundamental issues, much less any Order requiring the Teva Defendants and Generic Actavis Defendants to ask questions specific to them at any deposition noticed by any other Defendant. The State cannot impose a requirement that simply does not exist under Oklahoma law.

For instance, at the May 16, 2018, deposition of the State's witness Jeffrey Stoneking, noticed by the Janssen Defendants, Purdue sought to preserve its right to question the witness at a later date. The State responded "Purdue . . . has not filed a notice, a cross notice for this deposition, so you guys don't have the right to keep this deposition open. We didn't receive them . . . That's our response to that." May 16, 2018 Stoneking Dep. Tr. 289: 9–15 (Ex. D). The State took the same position regarding cross-noticing at the deposition of Nate Brown. Dec. 18, 2018 Brown Dep. Tr. 49: 10–16; 54: 14–19 (Ex. E) (objecting to questioning based upon failure of Janssen, the Teva Defendants and the Generic Actavis Defendants to cross-notice). Accordingly, the Court should find that the Teva Defendants and Generic Actavis Defendants are entitled to proceed with Topics 15, 18, 22, 23, 25, 26, 28, 29, 30 and 35 because they are neither duplicative, nor unreasonably so, and overrule the State's objections.

B. Discovery Closes In Six Weeks—None of the Topics Are Premature.

The Special Master deemed certain Topics "contention" depositions and therefore improper or premature. This ruling was flawed for multiple reasons. First, labeling Topics 14, 16, 24, 34, 37, and 38 as "improper or premature" requires clarification from the Court. Unlike

interrogatories, there is no rule that allows for the Court to label a deposition topic about a key issue in the case a "contention" one, much less permits the Court to delay the scheduling of such depositions—or worse, to quash a deposition notice on this basis. A deposition on a proper topic that is merely deemed "premature" must be scheduled. Moreover, a deposition on fundamental issues in this case, such as the factual basis for the State's false marketing claims and alleged injuries as to the Teva Defendants and Generic Actavis Defendants, cannot possibly be premature given this late stage of discovery, with trial scheduled for May 2019. *See, e.g.*, Topic 14 (seeking "[t]he nature of and factual basis for the relief requested by the State in the Petition against each of the Teva Defendants"); Topic 24 (seeking "Communications between the State and any Teva Defendant regarding prescription Opioids."). Indeed, the State filed its Petition nearly two years ago. It must now provide a corporate representative to testify about the factual bases, if any, for its claims against each Teva Defendant and Generic Actavis Defendant. As the Teva Defendants and Generic Actavis Defendants previously represented to the Court, they are more than willing to work with the State to schedule these particular depositions towards the end of the discovery period, but these depositions must be scheduled now.

Second, the Topics identified as "contention testimony" are not in fact so. Rather, they seek information that the State should currently have in its possession, and information that the State certainly should have ascertained ***before*** filing a lawsuit seeking billions of dollars against each Teva Defendant.

For example, Topics 14 and 16 seek the factual basis for the harm alleged by the State in its Petition, including non-monetary and injunctive relief, as well as the factual nexus between harm alleged by the State and any of the Teva Defendants and Generic Actavis Defendants' products, actions, or omissions. To the extent that the State intends to proffer expert testimony on

these Topics, it is still required to provide a factual basis for its experts' opinions, as set forth *supra*. The State otherwise provides no reasonable basis to object to these Topics.

Likewise, Topics 34, 37 and 38 go to the core of the State's allegations, including the State's understanding of the causes of the opioid epidemic, its factual basis for its allegation that the Teva Defendants and Generic Actavis Defendants caused fraudulent payments to be made by Soonercare or any other state-funded medical reimbursement program, and its factual basis for its allegation that the Teva Defendants and Generic Actavis Defendants agreed with other defendants—their market competitors—to engage in a false marketing campaign. To the extent the State did not previously possess an understanding of the basis for those claims at the time of its filing, it has had well over a year to do so. The Teva Defendants and Generic Actavis Defendants have the due process right to depose a representative of the State on these—subjects which are directly related to the State's allegations against them.

C. The Topics Are Proportional and Narrowly Tailored Given the Scope of the State's Allegations and Damages Sought—They Are Neither Overbroad Nor Irrelevant.

As noted above, the Oklahoma Discovery Code entitles the Teva Defendants and Generic Actavis Defendants to "obtain discovery regarding any matter, not privileged, *which is relevant to any party's claim or defense*, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a) (emphasis added). And "'relevant' mean[s] those materials either (1) admissible as evidence or (2) which might lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182 (1976).

Topic 19 seeks testimony regarding the use and abuse in Oklahoma of controlled substances other than prescription opioids. Indeed, the State is seeking relief for the abuse of non-prescription opioids in Oklahoma which it alleges the Teva Defendants and Generic Actavis

Defendants caused by making alleged misrepresentations that led to the prescribing of medically inappropriate and unnecessary opioid medicines which in turn led to illicit drug use. Pet. ¶ 29 ("As the State passed stricter legislation to combat opioid over-prescription, Oklahomans addicted to prescription opioids are turning to illicit opioids such as heroin as a cheaper and more accessible alternative."). This topic is specifically designed to lead to the disclosure of evidence regarding the State's regulatory, administrative, abatement, and enforcement efforts related to controlled substances other than opioids. Despite the State's arguments to the contrary, this information is relevant because of the State's allegation that the Teva Defendants and Generic Actavis Defendants contributed to the use and abuse of controlled substances other than prescription opioids.

Topic 27 seeks testimony related to the State's communications with third-party insurers, payors, or pharmacy benefit managers regarding prescription opioids, including Actiq and Fentora—the two unique branded medicines sold by Cephalon. The State seeks reimbursement of billions of dollars in allegedly false claims for prescription opioids it reimbursed. The State's communications with third-party insurers, payors, and pharmacy benefit managers regarding prescription opioids, including Actiq and Fentora, will demonstrate whether the State has previously taken positions on opioid reimbursement and coverage decisions inconsistent with its litigation position. This topic also will provide information as to what steps, if any, the State took to limit reimbursement for prescriptions of Actiq, Fentora, and other opioids medications over time and whether the State paid for such prescriptions with knowledge of their risks and approved indications. Topics 19 and 27 are both relevant, as that term is defined by *Stone*.

Topics 8, 19, 21, 22, 24, 25, and 27 are neither overly broad nor unduly burdensome. In light of the allegations against the Teva Defendants and Generic Actavis Defendants and the relief

sought from them, these deposition Topics are eminently reasonable. These Topics seek testimony regarding the State's communications with the Oklahoma public regarding opioid abuse, and the State's communications with Healthcare Providers, third-party insurers, payors and pharmacy benefit managers regarding opioids manufactured by the Teva Defendants and Generic Actavis Defendants. Those communications go to the heart of the false marketing theory against the Teva Defendants and Generic Actavis Defendants—what, if anything, did the State tell or learn from Oklahoma providers, insurers, or Oklahoma citizens generally regarding the Teva Defendants' and Generic Actavis Defendants' opioid prescriptions. If the State has never had any conversation with any Oklahoma provider or insurer about whether they were influenced by any marketing from the Teva Defendants and Generic Actavis Defendants, or even whether they received any supposedly false marketing from the Teva Defendants and Generic Actavis Defendants, the State must say so. Put simply, these Topics are undoubtedly relevant and tailored to the State's claims in this case against the Teva Defendants and Generic Actavis Defendants—which relate to alleged misrepresentations regarding all prescription opioids prescribed in Oklahoma for the past 25 years.

D. The Teva Defendants and Generic Actavis Defendants Do Not Seek Privileged Information.

The Special Master incorrectly ruled that Topics 1, 5, 17, 20, 24, 25, and 36 are privileged. This ruling, too, is flawed for several reasons. As an initial matter, these Topics are clearly not privileged in their entirety, and the Oklahoma Discovery Code expressly allows for privilege objections to be addressed during the course of a deposition. *See* Okla. Stat. Ann. tit. 12, § 3230(E)(1) ("Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection). Accordingly, the State's

recourse if it has privilege objections to particular questions is to object during the deposition, not quash the Notice entirely. The Special Master erred as a matter of law by doing so.

Moreover, the State's fundamental premise is flawed: none of these Topics is or has been deemed to be privileged. Topic 1 seeks information regarding the State's pre-suit investigation in support of its claims for billions of dollars in this case. Based upon the State's legal positions and expert disclosures in this case, which try to lump all Defendants together without differentiation, the Teva Defendants and Generic Actavis Defendants are entitled to know the facts behind whatever non-privileged investigation the State did before filing its Petition. For instance, whether non-lawyers for the State interviewed any doctors or patients about the Teva Defendants and Generic Actavis Defendants, their medicines, or their alleged marketing conduct (or merely cut and passed allegations from another company in another jurisdiction). Such facts are clearly not privileged.

Likewise, Topic 17, which seeks testimony regarding criminal and administrative investigations, was ruled by this Court to be both discoverable and relevant, as demonstrated by the fact that the State was ordered to produce to the defendants all discovery and publicly available documents that it has produced in criminal or administrative proceedings. *See* December 20, 2018 Journal Entry on Discovery of Criminal, Civil, and Administrative Proceedings, attached hereto as Ex. F. It is inconsistent and incorrect to now say that one mode of discovery (document production) is permissible but another (depositions) is not on the same exact subject. The Teva Defendants and Generic Actavis Defendants have the right to depose the State on materials that it has been ordered to produce. Once again, privilege can be dealt with on a question by question basis as in any other deposition.

Topics 5 and 20 seek testimony regarding the nature and circumstances regarding any Oklahoma patient harmed by a product manufactured by a Teva Defendant or Generic Actavis Defendant, and the State's knowledge of individuals who overdosed on, or became addicted to, an opioid product manufactured by these Defendants. Neither of these Topics requires the disclosure of specific patient identities. These Topics seek information about the State's knowledge of alleged harm to Oklahoma residents as a result of the Teva Defendants' and Generic Actavis Defendants' products. This is not privileged information. And given that the State is seeking billions of dollars in damages from the Teva Defendants and Generic Actavis Defendants to address an array of opioid-related problems purportedly caused by their marketing conduct, such as addiction treatment, overdose deaths, and incarceration of opioid users, it is inarguably relevant. *See* State's Expert Disclosures, Ex. S-1, Report of Dr. Christopher J. Ruhm (attached hereto as Ex. G) at 3 ("As the Defendants in this case have recognized, this crisis is expansive. The crisis affects a great number of Oklahomans. The crisis will be expensive to fix.")

Topic 36 expressly seeks the State's ***factual*** basis and knowledge regarding the 245 prescriptions of Actiq and Fentora, which the State identified in its own Petition, were medically unnecessary. If the State has no factual basis to support those assertions, it should say so under oath.[6] Further, the basic information sought by this notice is nowhere to be found in the State's

[6] As suggested to the parties by Special Master Hetherington, the Teva Defendants also propounded requests for admission aimed at obtaining similar information but the State has refused to provide an answer. *See* State's Responses to Cephalon's First Set of RFAs (Ex. H) at 9 (RFA No. 5). The State refused to respond, and Teva will pursue responses. In the event that the State responds to the Teva Defendants' and Generic Actavis Defendants' RFAs that it is not able to identify a single medically unnecessary prescription written for Actiq or Fentora in the State of Oklahoma, a deposition on this topic will be unnecessary. The State is evading issues critical to the Teva Defendants' and Generic Actavis Defendants' ability to prepare its defenses and avoiding its discovery obligations under the Oklahoma Discovery Code.

"statistical sample" from its expert disclosures, and the Teva Defendants and Generic Actavis Defendants are entitled to it.

E. The Topics Do Not Seek Expert Testimony from the State's Corporate Witnesses.

Special Master Hetherington improperly sustained the State's objections to Topics 6, 7, 9, 21, 26, 36, 37, and 38 on the basis that they are more appropriate for an expert witness. Order at 4. The Notice, however, seeks only factual testimony as to the State's damages claim as it relates to the Teva Defendants' and Generic Actavis Defendants' products, its decision to reimburse any claims made to Soonercare or any other state-funded medical reimbursement plan for the Teva Defendants' and Generic Actavis Defendants' products, and the identification of any false or fraudulent claims for the Teva Defendants' and Generic Actavis Defendants' products made to these plans.[7] Although the State's experts may testify and provide opinions on these Topics, as the disclosures make clear, these experts necessarily will rely on *facts* provided to them by the State in forming their opinions. It is irrelevant that the State's experts may be asked about the facts, data and information that the State provided to them, because the experts are not fact witnesses and have no independent duty to verify the sources, bases, and genesis of this information.[8]

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[7] In addition to Soonercare, Oklahoma has a self-funded insurance plan called "HealthChoice." The State has represented that references under the HealthChoice plan are included in the database for reimbursed prescriptions forming the bases for the State's claims.

[8] For example, if the Teva Defendants and Generic Actavis Defendants seek information about the source of the data which Dr. Gibson relied upon in his disclosures and question Dr. Gibson accordingly, Dr. Gibson will not be able to testify on the collection efforts, etc. Further, even if Dr. Gibson did testify as to his knowledge on the subject, it would not carry the same weight as if a corporate designee testified. And furthermore, the State would likely object to such a line of questioning as beyond the scope of Dr. Gibson's deposition. Thus, if relegated to asking questions about the State's experts about these Topics, the Teva Defendants and Generic Actavis Defendants will be deprived of meaningful responses or any responses altogether.

For example, the State repeatedly alleges that the Teva Defendants' and Generic Actavis Defendants' medications were "unnecessary." *See e.g.* Petition ¶ 6. The Teva Defendants and Generic Actavis Defendants are entitled to understand the metric the State used in making these reimbursement decisions and how these decisions were impacted by any alleged misrepresentation made by the Teva Defendants and Generic Actavis Defendants. The Oklahoma Administrative Code sets forth the standards, policies, practices and procedures by which the State determines whether a claim is reimbursable. *See* Okla. Admin. Code 317:30-3-1(f) (defining medical necessity under Oklahoma's Medicaid Program). The Notice seeks testimony related to the factual basis for this coverage decision, any alleged harm that resulted from that decision, and the State's basis for determining whether any claims made for Teva's products were false or fraudulent. This is *fact* testimony. If the State has no factual basis for its assertions against the Teva Defendants and Generic Actavis Defendants, it must say so. Accordingly, the State's objections that these Topics seek expert testimony is incorrect, and the State's objections should be overruled.

F. <u>The Topics Are Neither Duplicative Nor Cumulative.</u>

This Court may only quash a duly noticed deposition if it finds that a topic is *unreasonably* duplicative or cumulative. Okla. Stat. Ann. tit. 12, § 3226(B)(2)(c). Given the breadth and scope of this case, and the damages and relief sought by the State, the Teva Defendants' and Generic Actavis Defendants' deposition Notice is more than reasonable. The State's witnesses have not previously testified as to these Topics with respect to the Teva Defendants and Generic Actavis Defendants, and the information is not available from any other source or witness. Indeed, the Teva Defendants and Generic Actavis Defendants have repeatedly made clear that they will not seek duplicative testimony (assuming the State choses to designate previously-deposed witnesses), and will focus on the claims and allegations against them, their products, and their defenses.

Even if certain Topics were deemed to be duplicative of previously noticed topics by different and separate parties in this action, they are not unreasonably so, given the amount in controversy, the proportional needs of the parties to mount their own defenses, and the stakes involved. Further, the Topics are not duplicative because the Teva Defendants and Generic Actavis Defendants have not noticed and previously deposed any representative of the State on any topic. As such, the Teva Defendants and Generic Actavis Defendants object to Special Master Hetherington's determination that Topics 10, 15, 18, 23, 25, 28, 29, 30, 34, 35, 36, and 37 are duplicative or cumulative.

Lastly, to the extent the Court agrees with the Special Master's finding that certain Topics are duplicative or cumulative, the proper course is not to quash the deposition notice. Instead, it is to permit the Teva Defendants and Generic Actavis Defendants to narrow them further to make abundantly clear that information is sought only as it relates to the claims alleged against them and their defenses thereto. The Teva Defendants and Generic Actavis Defendants will not seek to elicit duplicative testimony.

III. CONCLUSION

The State cannot prevent the Teva Defendants and Generic Actavis Defendants from obtaining their own deposition testimony in this case, particularly as it relates to the Teva Defendants' and Generic Actavis Defendants' products, alleged conduct, and defenses. The Oklahoma Discovery Code, principles of due process and fundamental fairness, the nature of the allegations, the enormous damages sought, and the rapidly approaching close of discovery all require that the State's objections to the Teva Defendants' and Generic Actavis Defendants' Notice be overruled and that the Teva Defendants and Generic Actavis Defendants be permitted to proceed with the depositions of the State's Rule 3230(C)(5) witnesses immediately.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 29 day of January, 2019, to the following:

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Robert G. McCampbell

A

EXHIBIT A

FILED UNDER SEAL
PURSUANT TO
AMENDED PROTECTIVE ORDER
DATED 04/16/18

B

EXHIBIT B

FILED UNDER SEAL
PURSUANT TO
AMENDED PROTECTIVE ORDER
DATED 04/16/18

C

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.

NOTICE TO TAKE VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE PURSUANT TO SECTION 3230(C)(5) OF THE DISCOVERY CODE

To: **Corporate Representative**
State of Oklahoma

Via Email
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Please take notice that, pursuant to OKLA. STAT. TIT. 12 § 3230(C), Purdue Pharma L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, "Purdue") will by agreement take the deposition upon oral examination of one or more corporate representative(s) of Plaintiff the State of Oklahoma (the "State") on the matters described on **Exhibit A** on **September 27, 2018, starting at 9:00 AM**, at the offices of Whitten Burrage, 512 North Broadway Avenue, Suite 300, Oklahoma City, OK 73102. The parties have agreed that where there is a reasonable and good faith basis to request additional time at the close of one day of deposition testimony, the deposition can continue on another date that is agreeable to the parties.

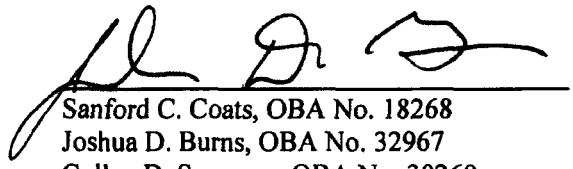
This deposition is to be used as evidence in the trial of the above action, and the deposition will be taken before an officer authorized by law to administer oaths. It will be recorded by stenographic means and will be videotaped, and it will continue from day to day until completed.

Pursuant to OKLA. STAT. TIT. 12, § 3230(C)(5), the State is hereby notified of its obligation to designate one or more officers, directors, managing agents, or other persons who consent to testify on the State's behalf about all matters embraced in the "Description of Matters on Which Examination is Requested" that is attached as **Exhibit A** pursuant to the parties' agreements during the meet-and-confer process.

PLEASE TAKE FURTHER NOTICE that each such officer, director, managing agent, or other person produced by the State to testify under OKLA. STAT. TIT. 12, § 3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the State, along with speaking to all potential witnesses known or reasonably available to the State, in order to provide informed and binding answers at the deposition.

DATED: September 24, 2018.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2018, I caused a true and correct copy of the following:

> **NOTICE TO TAKE VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE PURSUANT TO SECTION 3230(C)(5) OF THE DISCOVERY CODE**

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

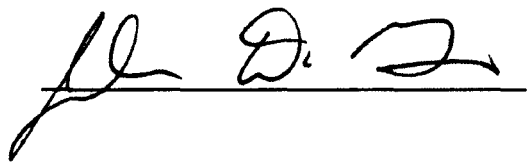

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EXHIBIT A

DESCRIPTION OF MATTERS ON WHICH THE STATE WILL DESIGNATE ITS WITNESS

1. Abatement: All actions You[1] have taken, as well as all actions that You considered but did not take, during the relevant time period to address, counter, abate, and/or reverse what You allege in Your Complaint to be the opioid epidemic, including the staffing and resources that You spent doing so, any steps You have taken to educate physicians and other healthcare providers and facilities about opioid medications, any treatment programs for opioid addiction, and any regulatory and law enforcement steps to detect and prevent the misuse of opioid medications (both legal and illicit opioids, including heroin and fentanyl).

2. Topic 6: Communications between You and members of Your community regarding opioid abuse.

3. Topic 11: The consideration, development, and formation of the Oklahoma Commission on Opioid Abuse and all comments, notes, submissions, testimony, draft papers, actions taken, and actions considered but not taken—including any proposed legislation and drafts of proposed legislation—during the Relevant Time Period, by the Oklahoma Commission on Opioid Abuse to address the abuse of prescription or illegal opioids.

    a. The State designates this witness on this topic at a "high level" and will designate one or more witnesses on the remainder of the topic.

4. Topic 12: Federal or private grants applied for and/or received on a state or local level by Oklahoma entities during the Relevant Time Period, including but not limited to law enforcement and rehabilitation facilities, related in any way to securing funds to address the abuse of prescription or illegal opioids.

5. Topic 15: Steps You have taken to identify each individual alleged to have developed an addiction to or to have abused Prescription Opioids during the Relevant Time Period.

6. September 19 topic: The standards, practices, and procedures during the Relevant Time Period for the use of opioid medications and opioid alternative medications for persons in the care and custody of State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities, university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.

    a. The State designates this witness on this topic with respect to psychiatric facilities and will designate one or more witnesses on the remainder of the topic.

7. September 20 topic: The standards, practices, and procedures during the Relevant Time Period of the diagnosis and treatment of pain that have been taught and applied in State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities,

[1] Unless otherwise defined herein, capitalized terms shall have the meanings assigned to them in Purdue's January 12, 2018 discovery requests to the State.

university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.

a. The State designates this witness on this topic with respect to psychiatric facilities and will designate one or more witnesses on the remainder of the topic.

D

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

VS. Case Number
CJ-2017-816

(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., f/k/a JANSSEN PHARMACEUTICALS, INC.;
(9) JANSSEN PHARMACEUTICA, INC., f/k/a JANSSEN PHARMACEUTICALS, INC.;
(10) ALLERGAN, PLC, 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.

VIDEO DEPOSITION OF JEFFREY EDWARD STONEKING
TAKEN ON BEHALF OF THE DEFENDANTS
ON MAY 16, 2018, BEGINNING AT 10:37 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Reported by:
Cheryl D. Rylant, CSR, RPR
Job No. 2913004
Pages 1 - 291

EXHIBIT
D

process easier. There -- basic example, but there 05:22
are times where I -- I -- I may disagree with the 05:22
direction they want to move, but ultimately it's not 05:22
my call. I may make an argument and offer advice or 05:23
a recommendation, but it's counsel's choice to take 05:23
that advice or recommendation. 05:23
Q. (By Mr. Brody) And have there been instances 05:23
where you've disagreed with the direction of counsel 05:23
in this case? 05:23
MR. DUCK: Objection to the form. 05:23
THE WITNESS: No. We haven't had a -- had 05:23
a disagreement on to the direction that we're moving. 05:23
Q. (By Mr. Brody) You were asked whether you 05:23
thought it would be right for the taxpayers of 05:23
Oklahoma to have to bear the cost of DSi's efforts to 05:23
respond to Defendants' discovery requests by taking 05:23
action to identify and collect potentially relevant 05:23
materials before document requests were served. 05:23
Do you recall that question? 05:23
A. I do. 05:23
Q. Do you know whether the taxpayers of Oklahoma 05:23
are ultimately going to bear the cost of DSi's 05:23
services in this case? 05:23
MR. DUCK: Objection to form. 05:23
THE WITNESS: They may not be physically 05:23

paying our invoices, so to speak, in this particular 05:23
matter, but cost comes in other forms outside of 05:23
dollars. Time. I've always been told by our CFOs, 05:23
time and money, and you can't have both. And I know 05:23
that we're working with a high number of individuals 05:24
who operate in state roles and taxpayer dollars who
are being pulled away from other priorities and 05:24
initiatives to help us deal with the broad discovery 05:24
requests that we're facing right now. So, you know, 05:24
are they going to physically pay DSi's bills? I 05:24
don't believe so. But is there a cost that the 05:24
taxpayers are incurring by me having to be involved 05:24
and communicating with them among dozens of other 05:24
individuals from outside counsel and DSi? 05:24
Absolutely. 05:24
Q. (By Mr. Brody) Do you believe that it's 05:24
right for the taxpayers of -- well, do you believe 05:24
it's right for the State of Oklahoma to have to pay 05:24
up to 25 percent of any recovery in this case to 05:24
outside contingency counsel? 05:24
MR. DUCK: Objection to form. 05:24
THE WITNESS: Again, I don't know enough 05:24
from the landscape of this to have an opinion 05:24
at least as to the damages or whatever it may be or 05:24
how things work out. All I know is, through my 05:24

experiences, working with groups like the state of 05:24
Tennessee -- you know, I'm a taxpayer in Tennessee, 05:24
and it's frustrating when I see Open Records requests 05:24
or unnecessary discovery requests that are so broad 05:24
and so out of left field that we have to even take 05:25
the time to respond to it. 05:25
So my comment about burdening them with time 05:25
is just come -- it's just coming from my personal 05:25
experience in dealing with these same issues in the 05:25
state of Tennessee. 05:25
Q. (By Mr. Brody) So I think you answered the 05:25
question, that you do not have an opinion as to 05:25
whether the State of Oklahoma should have to pay up 05:25
to 25 percent of any recovery in this case to outside 05:25
contingency counsel? 05:25
MR. DUCK: No. Objection to form. 05:25
THE WITNESS: I don't have an opinion on 05:25
that. 05:25
MR. DUCK: Outside the scope. To the 05:25
extent you're really asking him this question, Steve, 05:25
which is -- 05:25
MR. BRODY: That's my -- 05:25
MR. DUCK: -- frankly --
MR. BRODY: -- last question. I have no -- 05:25
MR. DUCK: -- unprofessional. 05:25

MR. BRODY: -- further questions.
MR. DUCK: You're asking him as a -- a 05:25
person at DSi. You understand that, right, Steve? 05:25
MR. BRODY: I have no further questions. 05:25
MR. DUCK: I'll take that as a yes. 05:25
All right. We're done.
MR. LAFATA: Purdue reserves its --
VIDEO TECHNICIAN: We are off the record.
MR. DUCK: Purdue has -- has not -- has not
filed a notice, a cross notice for this deposition,
so you guys don't have a right to keep this
deposition open. We didn't receive them, you guys
were welcome to attend. I know you all have got some
kind of joint defense agreement, but noted. That's
our response to that.
(Record concluded, 5:26 p.m.)

JURAT PAGE

STATE OF OKLAHOMA VS. PURDUE PHARMA, ET AL.

I, Jeffrey Edward Stoneking, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony so given at said time and place, except for the corrections noted.

_____

Jeffrey Edward Stoneking

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, by said witness _____, on this _____ day of _____, 2018.

_____

Notary Public

My Commission Expires: _____

CERTIFICATE

I, Cheryl D. Rylant, Certified Shorthand Reporter, certify that the above-named witness was sworn, that the deposition was taken in shorthand and thereafter transcribed; that it is true and correct; and that it was taken on May 16, 2018, in Oklahoma City, county of Oklahoma, state of Oklahoma, pursuant to Notice and the Oklahoma Rules of Civil Procedure and under the stipulations set out, and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 18th day of May, 2018.

_____

CHERYL D. RYLANT, CSR, RPR

Certificate No. 1448

E

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case Number
CJ-2017-816

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

Defendants.
_____/

VIDEOTEPED DEPOSITION OF NATHAN DANIEL BROWN
TAKEN ON BEHALF OF THE DEFENDANTS
ON DECEMBER 18, 2018, BEGINNING AT 9:08 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Reported by: Cheryl D. Rylant, CSR, RPR
Video Technician: Greg Brown

EXHIBIT
E

MR. CUTLER: Sounds good.

VIDEO TECHNICIAN: We're off the record at 9:52 a.m.

(Break was taken.)

VIDEO TECHNICIAN: We are back on the record at 10:03 a.m.

MR. VOLNEY: So, Mr. Brown, I appreciate your time. I'm going to pass you as a witness to Harvey here.

MR. CUTLER: Harvey, before you go, did you all cross-notice this deposition?

MR. BARTLE: We did not. But I'm happy to call him back if you'd like me to.

MR. CUTLER: No. We'll object to the questioning, but we're not going to -- I'm not going to not let you do it.

MR. BARTLE: Okay.

CROSS EXAMINATION

By Mr. Bartle:

Q. Mr. Brown, I just want to ask you a couple of questions about some of the things you've said today.

First, one of the things you mentioned earlier was when -- when an inmate was discharged, he or she could be discharged to supervision under the DOC --

A. Uh-huh.

programming include any substance abuse treatment?

A. No.

Q. Does substance -- does the DOC's substance abuse treatment programming include cognitive programming?

A. It can, yes, but it's not necessarily required for all substance abuse treatment.

MR. BARTLE: I don't have any further questions.

CROSS EXAMINATION

By Mr. Bowman:

Q. Mr. Brown, my name is Andy Bowman. I represent Janssen.

MR. CUTLER: And, Andy, before you get into it, you all didn't cross-notice this deposition either?

MR. BOWMAN: That's correct.

MR. CUTLER: Then we'll just object to the testimony and the questioning.

MR. BOWMAN: Okay.

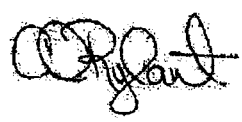
Q. (By Mr. Bowman) Mr. Brown, I just have a couple of quick follow-up questions for you. And you may have done this towards the beginning, but I didn't catch all of them.

Can you give me, as best you can, a list of the

CERTIFICATE

I, Cheryl D. Rylant, Certified Shorthand Reporter, certify that the above-named witness was sworn, that the deposition was taken in shorthand and thereafter transcribed; that it is true and correct; and that it was taken on December 18, 2018, in Oklahoma City, county of Oklahoma, state of Oklahoma, pursuant to Notice and under the stipulations set out, and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 20th day of December, 2018.



CHERYL D. RYLANT, CSR, RPR

Certificate No. 1448

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DEC 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

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

v.

(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
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

JOURNAL ENTRY ON DISCOVERY OF CRIMINAL, CIVIL AND ADMINISTRATIVE PROCEEDINGS

On the 29th day of November, defendant Watson Laboratories, Inc.'s ("Watson") Objection to the Special Discovery Master's Order on Watson's Motion to Compel Discovery Regarding Criminal and Administrative Proceedings (filed November 13, 2018) came on for hearing. Present for the parties were:

Plaintiff: Trey Duck, Abby Dillsaver, Drew Pate, Reggie Whitten, Brad Beckworth, Ethan Shaner, Dawn Cash, Ross Leonoudakis, Lisa Baldwin and Brooke Churchman
Watson: Robert McCampbell and Harvey Bartle
Purdue: Paul LaFata and Trey Cox
Janssen: Larry Ottaway, Amy Fischer, John Sparks and Steve Brody

EXHIBIT
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Having reviewed the briefs of the parties and received argument of counsel, this Court finds that the motion is granted in part as specified below:

1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, motions, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. For purposes of this Order "Health Care Professional" includes doctors licensed by the Oklahoma Board of Medical Licensure and Supervision, doctors licensed by the Oklahoma Board of Osteopathic Examiners, and dentists licensed by the Oklahoma Board of Dentistry.

2. The plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. However, if such documents are sealed or are grand jury transcripts, such documents need not be produced or will be produced consistent with the Protective Orders currently in place, as appropriate. In items 1 and 2 above, if a document is withheld because it is sealed, a copy of the sealing order will be provided to counsel for the defendant.

3. The plaintiff shall also produce to Judge William Hetherington *in camera* a list identifying all Health Care Professionals previously investigated by the State relating to the prescription of opioids where the investigation did not result in a civil, criminal or administrative

proceeding with the reasons why not. Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants. The list shall be produced to Judge Hetherington by January 2, 2019 and shall remain *in camera* and not be part of any production to defendants.

4. The plaintiff shall produce the documents required in items 1 and 2 to the defendants by January 11, 2019.

IT IS SO ORDERED this 20th day of December, 2018.

S/Thad Balkman

THAD BALKMAN, DISTRICT JUDGE

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Costs to the State of Oklahoma of Abating the Opioid Crisis

Prepared by: Christopher J. Ruhm, Ph.D.

December 21, 2018

EXHIBIT
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Qualifications

I received a B.A. degree in Economics from the University of California at Davis in 1978 and an M.A. and Ph.D. in Economics from the University of California at Berkeley in 1981 and 1984. From 1984-1991, I was an Assistant Professor at Boston University. From 1991-2010, I held positions as Associate Professor, Professor and Jefferson-Pilot Excellence Professor of Economics at the University of North Carolina at Greensboro. Since 2011, I have been a Professor of Public Policy and Economics at the University of Virginia. During 1996-1997, I served on President Clinton's Council of Economic Advisers as a Senior Staff Economist with primary responsibilities in the areas of health policy and aging.

I have published 140 books, articles, book chapters or policy publications. The majority of my work has focused on the areas of health and labor economics. Most of my health research examines factors influencing or determining health outcomes, and much of my recent work addresses opioid and other drug problems. My work has appeared in leading economic and health journals including the *Quarterly Journal of Economics, American Economic Review, Journal of Health Economics and American Journal of Preventive Medicine*. I have served as Associate Editor or Editorial Board member for the *Journal of Health Economics, Journal of Population Economics, Southern Economic Journal, European Economic Review, American Journal of Health Economics, Economics Letters* and *Journal of Labor Research*. I am a Research Associate in the Health Economics, Health Care and Children's programs at the National Bureau of Economic Research and a Research Fellow at the Institute for Labor Economics. I serve on the Board of Directors of the American Society of Health Economists and am on the Steering Committee of the Southeastern Health Economics Study Group. I have just completed a two-year term as President of the Southern Economic Association, where I was previously Vice President and member of the Board of Trustees. In 2017 and 2018, I chaired the International Health Economics Association Kenneth J. Arrow Award Committee, which selects the best article in the field of health economics published during the previous year.

My research has received more than 17,000 Google Scholar citations, and I have received grant funding from a variety of foundations, parts of the National Institutes of Health, and other government agencies. I have been ranked as one of the top 50 health economics authors and one of the top 1000 Economists in the world in bibliometric analyses. I received a University-wide Research Excellence Award from the University of North Carolina at Greensboro and two Faculty Excellence awards at the University of Virginia.

I am being compensated at the rate of $750 per hour for research and analysis, and $950 per hour for deposition and trial testimony. My compensation in this matter is not contingent or based on the content of my opinion in this or any other matter or the outcome of this or any other matter. A list of my testimony in the last four years is attached in Appendix D.

Background

Oklahoma, like most of the country, is suffering from an opioid crisis. The 2017 *President's Commission On Combatting Opioid Addiction and the Opioid Crisis* documents the magnitude of this crisis including the following.[1]

- in 2016, 91.8 million (34.1%) or more than one-third of U.S. civilian, noninstitutionalized adults used prescription opioids; 11.5 million (4.3%) misused them and in 2015, 1.6 million (0.7%) of them had an opioid use disorder (OUD).
- 3.4 million people aged 12 or older in 2016 were current misusers of pain relievers (1.2% of this age group).
- At least 630,000 individuals had a heroin use disorder (HUD) in 2016.
- Among people needing substance use treatment, just 8.2%, 7.2% and 12.1% of 12-17, 18-25 and ≥26 year-olds received treatment at a specialty facility in the past year.
- Nonmedical use of prescription opioids is a key risk for conversion to heroin use.
- Opioid misuse and OUD have large negative health, financial and social consequences.

All three of the Defendant corporate families in this case admit Oklahoma is in the midst of an opioid crisis.

- Purdue:

  Q: We've got a crisis. You agree?
  A: We have a crisis. That's right.[2]
  Purdue: https://www.purduepharma.com/ ("Read about our ongoing efforts to help address the opioid crisis here")

- J&J:

  Q: Is there a prescription opioid crisis in Oklahoma?
  MR. LIFLAND: Object to the form of the question.
  A: There's a prescription opioid problem nationally, and I assume that Oklahoma is part of the same problem.
  Q: Is there an opioid addiction crisis in Oklahoma?
  A Same response. I assume that there is an opioid addiction issue problem nationally and I take it that the problem exists in Oklahoma as well.[3]

- Teva:

  Q: Do you agree there's an opioid epidemic in Oklahoma?
  MR. BARTLE: Objection. Beyond the scope. You can answer in your personal capacity if you know.
  A: I agree that there's an opioid epidemic across the country including Oklahoma.[4]

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[1] Christie, Chris, et al. "The president's commission on combating drug addiction and the opioid crisis." *Washington, DC, US Government Printing Office,* (Nov. 1, 2017).
[2] Deposition of Lisa Miller, Aug. 29, 2018 (hereinafter "Lisa Miller"), at 107:13-15.
[3] Deposition of Bruce Moskovitz, Aug. 28, 2018 (hereinafter "Bruce Moskovitz"), at 302:20—303:7.
[4] Deposition of John Hassler, Aug. 29, 2018 (hereinafter "John Hassler"), at 49:4-9.

While this crisis has certainly wreaked havoc across the country, Oklahoma's situation does differ from those of many other states in a variety of ways, the most important probably being that deaths and opioid use problems are much more concentrated among prescription opioid analgesics, and are less likely to involve heroin than in other states. For example, an analysis of CDC-Wonder Multiple Cause of Death data indicates that heroin was mentioned on 6.5% of 2016 death certificates involving drug overdoses in Oklahoma and prescription opioids on 48.2% of them, whereas the comparable figures for the entire US were 24.3% and 51.0%.[5]

The statistics for Oklahoma are staggering. According to the Final Report of the Oklahoma Commission on Opioid Abuse, drug overdose deaths have increased by 91 percent over the last 15 years.[6] Nearly 1,000 Oklahomans die every year from a drug overdose. And over 1,300 newborns tested positive for substance exposure in Oklahoma just in the last three years. As the report described: "If Oklahoma is not ground zero, it is close."

For the purposes of this report, abatement refers to efforts to mitigate or reverse the consequences of the opioid crisis in Oklahoma by preventing new cases of addiction, treating opioid use disorder, and addressing problems related to opioid use. The scope of my work below is limited to providing an objective and independent analysis of the cost to the state of Oklahoma of measures proposed to abate the opioid crisis.

As the Defendants in this case have recognized, this crisis is expansive.[7] The crisis affects a great number of Oklahomans.[8] The crisis will be expensive to fix.[9] And, if something isn't done to abate the crisis, the crisis can still get worse.[10] Accordingly, this abatement plan attempts to match that expanse with a comprehensive, multi-faceted approach to the crisis.

My opinions are stated with a reasonable degree of certainty and are based on the information that has been provided me to date. I reserve the right to supplement my opinions or modify my analysis if additional information becomes available. Unless otherwise noted, all estimates of abatement costs are rounded to the nearest whole dollar and are presented in 2019-year dollars. The net present value of abatement costs is **$8,728,500,581 for the 20-year period 2019-2038, $10,498,300,630 for the 25-year period 2019-2043, and $12,142,704,310 for the 30-year period 2019-2048**. This almost certainly understates the total costs to abate the opioid crisis in Oklahoma because some components of these costs have not been calculated and many costs are likely to extend beyond the 30-year period considered. In addition, the State has previously undertaken a variety of abatement activities, the expense of which has not been

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[5] Source: *CDC Wonder: Multiple Cause of Death*, https://wonder.cdc.gov/mcd-icd10.html. Prescription opioids include natural/semisynthetic opioid, methadone and synthetic opioids. These statistics understate the actual involvement of specific drug categories because they do not account for incomplete reporting (Ruhm, Christopher J. "Corrected US Opioid-Involved Drug Poisoning Deaths and Mortality Rates, 1999-2015" *Addiction* 113(7), July 2018, 1339-1344.) Corrections for this under-reporting are incorporated in other analyses used in this case.

[6] Final Report, The Oklahoma Commission on Opioid Abuse (Jan. 23, 2018) ("Final Report of the Oklahoma Commission on Opioid Abuse"), http://www.oag.ok.gov/Websites/oag/images/Oklahoma%20Commission%20on%20Opioid%20Abuse%20Final%20Report.pdf.

[7] Lisa Miller at 108:1-16; 403:14-22.

[8] Bruce Moskovitz at 303:13 – 304:15; 304:24 – 305:10; John Hassler at 127:2 – 129:13.

[9] Bruce Moskovitz at 287:17-25.

[10] Lisa Miller at 442:21 – 443:13.

included in this report. The calculations and assumptions resulting in these estimates are described below. This report does not offer an opinion on the necessity or propriety of any of the items included in the abatement plan.

Development of Abatement Plan

The abatement plan costs estimated in this report are largely based on recommendations of the State. The abatement costs are calculated for a 20-year period beginning in 2019 and ending in 2038, a 25-year period beginning in 2019 and ending in 2043, and a 30-year period beginning in 2019 and ending in 2048. It should be noted that many expenses associated with abating Oklahoma's opioid crisis are likely to extend beyond the 30-year period. For example, since opioid use disorder (OUD) is often a lifelong condition, individuals receiving medically assisted treatment (MAT) services may need to continue to obtain treatment well after the 2048 end date of this analysis. For this reason, and because some abatement costs have not yet been modeled and added, the estimates provided here are almost certainly conservative, in that the actual costs will be higher than these amounts. It is my understanding that additional abatement areas may be added before trial due to the fact that discovery is still ongoing. Costs were modeled on the best information available at the time of this report and may change.[11] To the extent abatement areas and/or costs change, I reserve the right to modify my opinions as necessary to reflect any such costs.

The Plan proposed for Oklahoma is consistent with a variety of other proposals and recommendations for abating the consequences of the opioid crisis. For instance, the recent President's Commission Report includes the following recommendations.[12]

- Student assessment and screening tools to identify at-risk students.
- Multi-platform media campaigns addressing the hazards of substance use, the danger of opioids and stigma.
- Development of a national curriculum and standard of care for opioid prescribers, including special targeting for primary care physicians.
- Development and dissemination of a model training program to all levels of medical education.
- Enhanced support for prescription drug monitoring programs.
- Encouragement of hospitals/clinics and retail pharmacies to become authorized collectors of drugs.
- Strengthened data collection and surveillance activities.
- Incorporation of measures that address addiction screenings and treatment referrals.
- Broad establishment of drug courts.
- Use of medication-assisted treatment with pre-trial detainees and upon release.
- Expanded use of recovery coaches.

[11] Service and cost information was obtained from at least the following: Oklahoma Department of Mental Health and Substance Abuse Services ("ODMHSAS"), Oklahoma State University ("OSU"), University of Oklahoma ("OU"), Oklahoma Bureau of Narcotics and Dangerous Drugs ("OBNDD"), Oklahoma State Department of Health ("OSDH"), Oklahoma Healthcare Authority ("OHCA"), and Saxum.

[12] Christie, Chris, et al. "The President's Commission on Combating Drug Addiction and the Opioid Crisis." *Washington, DC, US Government Printing Office, Nov* 1 (2017).

- Increases in the number of addiction-trained physicians, nurses and other medical professionals, particularly in localities with above average opioid use/abuse.
- Identification and provision of successful college recovery programs.

A 2018 Surgeon General's Report emphasizes the following activities as important for containing and reversing the opioid crisis.[13]

- Primary prevention and screening.
- Access to medication-assisted treatment combined with behavioral therapies.
- Harm reduction strategies including overdose prevention education, expanded access to naloxone and supervised withdrawal management.
- Staff training and development.
- Recovery support services including ongoing support during and after treatment.

The 2016 Oklahoma state plan for reducing prescription drug abuse highlights the following interventions.[14]

- Increased public education through media campaigns of various types.
- Provider/prescriber education through dissemination of guidelines, provider-oriented programs, pain management courses and other interventions for medical students and practice facilitation services.
- Increased availability of medication disposal sites for both the public and providers/prescribers.
- Enhanced surveillance and monitoring through the Oklahoma Prescription Monitoring Program (PMP), establishment of an emergency department discharge database and public surveillance of neonatal abstinence syndrome (NAS).
- Expanded availability of naloxone, enactment of "Good Samaritan" legislation, increased screening by primary care and emergency departments and ongoing training/consultation services for health professionals.

And the 2018 Final Report of the Oklahoma Commission on Opioid Abuse recommended the following.[15]

- Enact legislation to mandate the use of electronic prescriptions ("e-prescribing").
- Enact a Good Samaritan Law to grant limited immunity to individuals who call to report a drug overdose.
- Enact legislation that imposes maximum quantity limits on first, second, and subsequent opioid prescriptions and includes formal patient notice and informed consent requirements.

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[13] U.S. Department of Health and Human Services (HHS), Office of the Surgeon General, *Facing Addiction in America: The Surgeon General's Spotlight on Opioids.* Washington, DC: HHS, September 2018. https://addiction.surgeongeneral.gov/sites/default/files/Spotlight-on-Opioids_09192018.pdf.

[14] "Reducing Prescription Drug Abuse in Oklahoma, 2016: A Review of Progress and Updated State Plan", https://www.ok.gov/health2/documents/UP_Rx_Abuse_Prevention_State_Plan_2016.pdf.

[15] Final Report of the Oklahoma Commission on Opioid Abuse.

- Enact legislation that requires opioid manufacturers, wholesalers, and distributors to register with the OBNDD.
- Enact legislation to create a Drug Overdose Fatality Review Board or Task Force to study causes of opioid overdoses and identify ways to prevent death and refer appropriate cases for criminal prosecution.
- Encourage use of the ODMap application by law enforcement, first responders, and health officials to track overdose events in real time so that resources can be directed to "hot-spot" areas and criminal investigations can be conducted, if necessary.
- Support expanded and improved utilization of the PMP by providers and proactive programming by OBN administrators which would provide alerts to prescribers and pharmacists regarding dangerous prescription combinations, high daily dosages of opioids, and doctor-shopping.
- Create a statewide emergency department ("ER") discharge database to study overdose events and aftercare results.
- Encourage the mandatory offering of Naloxone by prescribers and pharmacists to individuals receiving their first opioid prescription or those receiving an opioid prescription in addition to a benzodiazepine.
- Provide all first responders with Naloxone and training on how to recognize signs of an overdose and how to use the drug.
- Encourage nursing homes and long-term care facilities to develop best practices with regard to medication safety, storage, and disposal and to promote best practices with regard to accurately documenting patient medications.
- Pursue rule changes with the appropriate medical boards to require at least one hour of continuing education for all prescribers every reporting period on proper prescribing and the risks of opioids and recognizing addiction and diversion.
- Pursue rule changes with the appropriate board to require at least one hour of continuing education every reporting period for pharmacists on how to recognize signs of addiction and diversion.
- Propose and provide specific training for law enforcement personnel and investigators through the Oklahoma Council on Law Enforcement Education and Training ("CLEET") on handling opioid diversion investigations.
- Continue and expand the first responder overdose program through the Department of Mental Health and Substance Abuse Services, which is providing Naloxone to first responders.
- Expand the 19 community-based Naloxone programs in the State to include homeless shelters.
- Make more inpatient treatment beds and outpatient treatment options immediately available.
- Support the expansion of OSU's Project ECHO in order to increase the number of doctors trained in addiction medicine and increase their availability to patients in rural areas of Oklahoma.
- Promote and encourage the use of SBIRT tools by primary care and other providers to increase the identification of addiction and make appropriate referrals for treatment.
- Promote training for middle school and high school student athletes and coaches on the risk of addiction to opioid pain medications after sports injuries and encourage the use of early intervention screening tools.

In addition, the Defendants in this case formerly used sales representatives to detail and target doctors and pharmacies to get them to prescribe (doctors) and stock (pharmacies) opioids. Many publications, including the White House Commission Report, recognize that these (and other) aggressive marketing tactics are a cause of the opioid crisis in America. These aggressive marketing tactics occurred in Oklahoma. Each of the Defendants has stopped detailing doctors in the State of Oklahoma. For example, Purdue has engaged in an extensive marketing campaign via newspaper and online advertising in which Purdue states that one of the primary things Purdue has done to try to help abate the crisis is to fire all of its United States sales staff and stop detailing medical care professionals. The State's Plan includes the cost to provide counter detailing in the State of Oklahoma to correctly train and educate medical care professionals, pharmacists/pharmacies, and the public about opioid use.

The Plan

Table 1 provides a listing of the Plan's programs and services. The first column displays the category and subcategories of programs or services. The second category shows the overall cost of services in the major category for 2019, the first year over which abatement costs are calculated. Details regarding the subcategories and total costs for each subcategory are provided in a set of exhibits in Appendix B. In addition to the component description, the exhibits set forth the net present value of total costs (rounded to the nearest million dollars) for each subcategory for each of the 20-year, 25-year and 30-year plans. Adjustments from 2018 dollars, where needed, are obtained using percentage changes for the relevant price index over the most recent 12-month period shown in Appendix Table A.1. The second column of Table 1 provides estimates of the first-year cost for 2019. The table also shows some entries for subcategories where 2019 cost have not yet been calculated. Costs for these components may be amended if it becomes possible to attribute a cost to these components.

Annual Costs By Category

Table 2 shows the annual abatement cost, between 2019 and 2048, for each of the major categories detailed in Table 1. All entries are rounded to the nearest 2019-year dollars. Total costs for the year are shown in the final column of the table

Table 1: Abatement Plan Major Categories

Brief Description	2019 Cost
Opioid Use Disorder Prevention, Treatment & Recovery Services (TREAT) Medication Assisted Treatment – Medical (MATM) Medication Assisted Treatment – Supplementary Services (MATS) Helpline (HELP) Public Medication Disposal (DISPOSE) Technical Assistance (TECH) Specialty Courts (COURT) Transportation Services (TRANS) Universal Screening (SCREEN) Pharmacy Disposal (PHARM) Pain Services (PAIN) K12 Prevention (K12) K12 Supplementary Prevention (K12SUP) Community Coalitions (COALIT) Higher-Ed Discretionary Prevention Funds (HED) Public Education (PUB)	$474,345,484
Overdose Prevention & Response (PREV) Naloxone Distribution/Education (NALOX) Grief Support Services (GRIEF) University Behavioral Health (UNIVB) Alert System (ALERT)	$5,500,151
Medical Education (EDUC) Continuing Medical Education (CME) Practice Dissemination Program (PRAC) Addiction Medicine Course (COURSE) Medical Case Management/Consultation (CASE) Residency Training Programs (RESID) Academic Medicine (ACAD) Counter-Detailing (DETAIL)	$66,184,773
Neonatal Abstinence Syndrome / Child Services (NAS) NAS Evaluation/Assessment (NASA) Prenatal Screening (PRENAT) Neonatal NAS Treatment (NAST) Other Child Services (CHILD)	$51,710,081
Data Surveillance, Reporting, Research (SURV) Opioid Overdose Review Board (REVIEW) PMP System (PMP) Program Outcome Monitoring/Evaluation (MONTR) Health Information Exchange (HIE) Epidemiological Staffing (EPI) Data Collection (DATA) NAS Reporting (NASR)	$29,253,728
Criminal Justice, Compliance, Monitoring (CRIM) Opioid Law Enforcement (LAW)	$4,024,480
Total	$631,018,697

Table 2: Abatement Costs By Major Cost Category and Year

Year	TREAT	PREV	EDUC	NAS	SURV	CRIM	TOTAL
2019	474,345,484	5,500,151	66,184,773	51,710,081	29,253,728	4,024,480	631,018,697
2020	374,371,879	5,515,055	27,779,685	51,027,001	42,470,618	4,024,480	505,188,718
2021	367,181,609	5,530,128	27,759,597	51,246,921	42,470,618	4,024,480	498,213,353
2022	368,203,767	5,545,371	27,739,509	51,467,798	34,281,618	4,024,480	491,262,543
2023	369,230,371	5,560,787	27,719,421	51,689,636	34,281,618	4,024,480	492,506,312
2024	401,954,499	5,576,378	66,084,332	52,814,485	34,284,689	4,024,480	564,738,864
2025	364,605,054	5,123,600	27,679,244	52,136,210	34,281,618	4,024,480	487,850,206
2026	365,645,114	4,671,001	27,659,156	52,360,955	34,281,618	4,024,480	488,642,323
2027	366,689,698	4,218,582	27,639,068	52,586,677	34,281,618	4,024,480	489,440,123
2028	367,738,825	3,766,346	27,618,980	52,813,382	34,281,618	4,024,480	490,243,631
2029	403,871,088	3,314,295	65,999,962	53,943,120	34,284,689	4,024,480	565,437,633
2030	366,544,363	2,862,430	27,610,945	53,269,754	34,281,618	4,024,480	488,593,590
2031	367,607,241	2,410,755	27,606,927	53,499,430	34,281,618	4,024,480	489,430,451
2032	368,674,743	1,959,271	27,602,909	53,730,105	34,281,618	4,024,480	490,273,126
2033	369,746,889	1,898,434	27,598,892	53,961,783	34,281,618	4,024,480	491,512,096
2034	409,208,699	1,915,884	65,979,874	55,096,517	34,284,689	4,024,480	570,510,143
2035	371,905,192	1,933,532	27,590,857	54,428,168	34,281,618	4,024,480	494,163,847
2036	372,991,390	1,951,380	27,586,839	54,662,883	34,281,618	4,024,480	495,498,591
2037	374,082,313	1,969,430	27,582,821	54,898,619	34,281,618	4,024,480	496,839,282
2038	375,177,982	1,987,685	27,578,804	55,135,381	34,281,618	4,024,480	498,185,949
2039	414,663,417	2,006,146	65,959,786	56,275,219	34,284,689	4,024,480	577,213,737
2040	377,383,638	2,024,817	27,570,768	55,611,998	34,281,618	4,024,480	500,897,320
2041	378,493,668	2,043,699	27,566,751	55,851,863	34,281,618	4,024,480	502,262,078
2042	379,608,526	2,062,795	27,562,733	56,092,771	34,281,618	4,024,480	503,632,923
2043	380,728,233	2,082,107	27,558,716	56,334,727	34,281,618	4,024,480	505,009,881
2044	420,237,812	2,101,638	65,939,698	57,479,783	34,284,689	4,024,480	584,068,100
2045	382,982,282	2,121,391	27,550,680	56,821,801	34,281,618	4,024,480	507,782,252
2046	384,116,665	2,141,367	27,546,663	57,066,929	34,281,618	4,024,480	509,177,722
2047	385,255,983	2,161,570	27,542,645	57,313,122	34,281,618	4,024,480	510,579,418
2048	386,400,257	2,182,001	27,542,645	57,560,387	34,281,618	4,024,480	511,991,389

Note: Table shows annual abatement costs for the specified category in 2019-year dollars.

Discounting to Present Value:

If abatement costs are received in the form of a lump-sum payment, the funds could be invested, in which case they would earn a yield. The net present value (NPV) of a future expense is the amount of money that, if invested, would yield the future payment at a specified date. Future abatement costs should therefore be "discounted" to present value using an appropriate rate of return. Although it is difficult to project the appropriate rate of return with accuracy for any single year, it is possible to estimate an *average* discount rate over a longer period of time. This analysis assumes that any lump sum will be invested in 10-year U.S. Treasury Securities. Over the 1998-2018 period, these yielded an average of 3.68 percent per year (Appendix Table A.1).[16] Over the same period, the average inflation rate, as measured by the change in the Gross Domestic Product Implicit Price Deflator, was 1.93 percent per year.[17] Therefore, the real (inflation-adjusted) discount rate used in this analysis is 1.75 percent (3.68 – 1.93) per year. The lump-sum payment could be invested in different ways. One possibility would be to invest it in shorter-term Treasury securities (or a blend of longer and short-term government bonds). A second would be to pay down some existing Oklahoma debt obligations. Appendix C provides an analysis of these alternatives and shows that each of them would imply a lower discount rate and, subsequently, a lower estimate of the net present value of abatement costs.

Net Present Value of Abatement Costs

Table 3 details the overall abatement costs for the state of Oklahoma covering the period 2019-2048. All costs are expressed in 2019-year dollars. The second column of the table shows the undiscounted total abatement expenses for the specified year. The third column displays the discount factor, assuming a real discount rate of 1.75 percent per year. The fourth column indicates the net present value (NPV) of annual abatement costs, obtained by multiplying the undiscounted costs in column (2) by the discount factor in the third column. The final column of the table presents the cumulative net present value of abatement expenses, through the specified year. The last column indicates that the net present value of abatement costs is **$8,728,500,581 for the 20-year period 2019-2038, $10,498,300,630 for the 25-year period 2019-2043, and $12,142,704,310 for the 30-year period 2019-2048.**

[16] Source: 1998-2017: *Economic Report of the President, 2018*, Table B-25. 2018 yields calculated as monthly average from 12/17-11/18 using data from the Federal Reserve Economic Data (*FRED*), https://fred.stlouisfed.org (series GS10)

[17] Source: Federal Reserve Economic Data (*FRED*) series GDPDEF.

Table 3: Net Present Value of Abatement Expenditure

YEAR	Total Abatement Cost	Discount Factor	Net Present Value (NPV) of Abatement Cost	Cumulative NPV of Abatement Cost
2019	631,018,697	1.000	631,018,697	631,018,697
2020	505,188,718	0.983	496,499,968	1,127,518,665
2021	498,213,353	0.966	481,223,167	1,608,741,833
2022	491,262,543	0.949	466,348,300	2,075,090,133
2023	492,506,312	0.933	459,487,953	2,534,578,086
2024	564,738,864	0.917	517,816,144	3,052,394,230
2025	487,850,206	0.901	439,622,575	3,492,016,805
2026	488,642,323	0.886	432,763,032	3,924,779,837
2027	489,440,123	0.870	426,014,347	4,350,794,184
2028	490,243,631	0.855	419,374,673	4,770,168,857
2029	565,437,633	0.841	475,379,589	5,245,548,447
2030	488,593,590	0.826	403,709,685	5,649,258,131
2031	489,430,451	0.812	397,445,855	6,046,703,986
2032	490,273,126	0.798	391,282,708	6,437,986,694
2033	491,512,096	0.784	385,524,835	6,823,511,529
2034	570,510,143	0.771	439,791,774	7,263,303,303
2035	494,163,847	0.758	374,386,589	7,637,689,891
2036	495,498,591	0.745	368,941,339	8,006,631,230
2037	496,839,282	0.732	363,577,001	8,370,208,231
2038	498,185,949	0.719	358,292,349	**8,728,500,581**
2039	577,213,737	0.707	407,988,856	9,136,489,436
2040	500,897,320	0.695	347,957,284	9,484,446,720
2041	502,262,078	0.683	342,904,509	9,827,351,229
2042	503,632,923	0.671	337,926,695	10,165,277,923
2043	505,009,881	0.659	333,022,707	**10,498,300,630**
2044	584,068,100	0.648	378,532,383	10,876,833,013
2045	507,782,252	0.637	323,431,751	11,200,264,765
2046	509,177,722	0.626	318,742,600	11,519,007,364
2047	510,579,418	0.615	314,122,904	11,833,130,268
2048	511,991,389	0.605	309,574,042	**12,142,704,310**

Note: All costs are in 2019 dollars. Total (undiscounted) abatement costs are obtained from the final column of Table 2. The real discount rate is assumed to 1.75 percent per year.

Appendix A: Additional Supporting Tables

Table A.1: Changes in Price Indices and Treasury Yields (Constant Maturities)

Year	Price Changes			U.S. Treasury Security Yields	
	GDP-Deflator	PCI-Health	PCI-Pharmaceutical/ Medical Products	3-Year	10-Year
1998	75.433	67.636	63.242	5.14%	5.26%
1999	76.462	69.115	65.972	5.49%	5.65%
2000	78.309	71.260	68.454	6.22%	6.03%
2001	80.004	73.543	71.692	4.09%	5.02%
2002	81.194	75.492	74.835	3.10%	4.61%
2003	82.712	78.414	76.964	2.10%	4.01%
2004	85.056	81.199	79.157	2.78%	4.27%
2005	87.783	83.689	81.491	3.93%	4.29%
2006	90.481	86.431	84.717	4.77%	4.80%
2007	92.776	89.355	85.937	4.35%	4.63%
2008	94.690	91.854	87.892	2.24%	3.66%
2009	94.938	94.308	90.693	1.43%	3.26%
2010	96.222	96.710	93.902	1.11%	3.22%
2011	98.553	98.514	97.006	0.75%	2.78%
2012	100.225	100.309	100.000	0.38%	1.80%
2013	101.918	101.423	100.484	0.54%	2.35%
2014	104.029	102.769	103.343	0.90%	2.54%
2015	105.117	103.344	107.163	1.02%	2.14%
2016	106.172	104.575	111.304	1.00%	1.84%
2017	108.097	105.930	114.652	1.58%	2.33%
2018	110.645	108.036		2.57%	2.87%
Ave. Δ: 1998–2018	1.934%	2.369%	3.147%	2.64%	3.68%
Adj. to 2019$	2.36%	1.99%	3.01%		

Sources. Price Changes: Federal Reserve Economic Data (*FRED*), https://fred.stlouisfed.org
Series: Gross Domestic Product: Implicit Price Deflator, Index 2012=100, Quarterly, Seasonally Adjusted (GDPDEF) ; Personal consumption expenditures: Services: Health care (chain-type price index), Index 2012=100 (DHLCRG3Q086SBEAF); Personal consumption expenditures: Nondurable goods: Pharmaceutical and other medical products (chain-type price index), Index 2012=100 (DPHMRG3A086NBEA). U.S. Constant Maturity Treasury Yields - 1998-2017: *Economic Report of the President, 2018*, Table B-25. 2018 yields calculated as monthly average from 12/17-11/18 using data from *FRED* (GS3 & GS10).

Price Indices refer to July 1 of specified year; except PCI-Pharmaceutical which refers to January 1.

20-year Ave. Δ: Average annual Δ in prices from 1998-2018, except 1997-2017 for PCI-Pharmaceutical.
Adj: to 2019$ shows change needed to convert 2018$ to 2019$, based on most recent available one-year change in price index (e.g. 2018 vs. 2017 for GDP-deflator).

Appendix B: Detailed Exhibits Showing Abatement Cost By Subcategory

Exhibit T.1

Service: Medication Assisted Treatment – Medical (MATM).

Full Description: All Oklahoma residents will be eligible to receive assessment and comprehensive treatment/recovery services based on the American Society for Addiction Medicine (ASAM) level of care needed, including early intervention, outpatient, ambulatory detoxification, intensive outpatient, partial hospitalization, residential, medically managed detoxification, and medication. Supportive services such as case management, peer recovery support and healthcare services provided as appropriate. All behavioral health organizations, primary care and pain specialists are MAT capable or connected to MAT providers. MAT waiver training will be offered year-round and care management support services will be offered.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	4,129.0
25-year period (2019-2043):	5,004.0
30-year period (2019-2048):	5,823.9

Program costs expected to increase at medical care inflation rate.

Exhibit T.2

Service: Medication Assisted Treatment – Supplementary Services (MATS).

Full Description: Supplementary services related to medication assisted treatment including: halfway house, recovery housing, housing first, and IPS (employment services). Includes supportive services related to: case management, peer recovery support and healthcare services. Technical assistance and training in evidence-based practices for opiate assessment and treatment. Additional halfway house and residential facilities to be established in high need areas.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	588.4
25-year period (2019-2043):	695.2
30-year period (2019-2048):	793.0

Program costs expected to increase at general inflation rate.

Exhibit T.3

Service: Helpline (HELP).

Full Description: Statewide, 24/7 live helpline (telephonic and text services) for Oklahomans seeking prevention, treatment and crisis resources and support, including service referral, service navigation, follow-up services, and brief education.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	69.8
25-year period (2019-2043):	83.8
30-year period (2019-2048):	96.6

Program costs expected to increase at general inflation rate.

Exhibit T.4

Service: Public Medication Disposal (DISPOSE).

Full Description: Expand and maintain Safe Trips for Scripts drug disposal program.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	2.4
25-year period (2019-2043):	2.9
30-year period (2019-2048):	3.3

Program costs expected to increase at general inflation rate.

Exhibit T.5

Service: Technical Assistance (TECH).

Full Description: Provide technical assistance and training in evidence-based practices for opioid assessment and treatment.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	64.7
25-year period (2019-2043):	77.7
30-year period (2019-2048):	89.5

Program costs expected to increase at general inflation rate.

Exhibit T.6

Service: Specialty Courts (COURT).

Full Description: Expand specialty courts, including family drug courts.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	278.3
25-year period (2019-2043):	334.1
30-year period (2019-2048):	385.2

Program costs expected to increase at general inflation rate.

Exhibit T.7

Service: Transportation Services (TRANS).

Full Description: Develop program covering treatment/recovery transportation services for consumers.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	104.5
25-year period (2019-2043):	125.4
30-year period (2019-2048):	144.6

Program costs expected to increase at general inflation rate.

Exhibit T.8

Service: Universal Screening (SCREEN).

Full Description: Enable all primary care, emergency departments, and specialty practices to enroll in the SBIRT OK practice dissemination program for academic detailing, continuing education, EMR consultation, and embedded practice facilitation services. In addition, face-to-face group training on SBIRT will be offered throughout the State.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	353.5
25-year period (2019-2043):	424.4
30-year period (2019-2048):	489.3

Program costs expected to increase at general inflation rate.

Exhibit T.9

Service: Pharmacy Disposal (PHARM).

Full Description: Pharmacy-based medication take-back programs.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	32.5
25-year period (2019-2043):	39.0
30-year period (2019-2048):	45.0

Program costs expected to increase at general inflation rate.

Exhibit T.10

Service: Pain Services (PAIN).

Full Description: Pain prevention and non-opioid pain management therapies provided to Oklahomans, such as Cognitive Behavioral Therapy for pain, physical therapy and manipulative therapies, exercise programs, meditation, and certain interventional pain therapies.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	93.8
25-year period (2019-2043):	112.6
30-year period (2019-2048):	129.9

Program costs expected to increase at general inflation rate.

Exhibit T.11

Service: K12 Prevention (K12).

Full Description: All K -12 schools to receive training, materials/support from ODMHSAS to implement defined age-appropriate, evidence-based prevention programs, such as Botvin Lifeskills Training, Pax Good Behavior Game, and Penn Resiliency.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	356.3
25-year period (2019-2043):	426.7
30-year period (2019-2048):	491.3

Program costs expected to increase at general inflation rate.

Exhibit T.12

Service: K12 Supplementary Prevention (K12SUP).

Full Description: Discretionary prevention funds to all K-12 schools to plan and implement supplementary/additional evidence-based prevention services.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	61.1
25-year period (2019-2043):	73.3
30-year period (2019-2048):	84.5

Program costs expected to increase at general inflation rate

Exhibit T.13

Service: Community Coalitions (COALIT).

Full Description: Resources for every Oklahoma county to develop or support at least one community-based prevention coalition; major population centers will be provided resources for more than one community coalition. Coalitions will have expert training and support from the ODMHSAS to implement the Communities That Care Model for needs assessment, prevention plan development, implementation of local evidence-based prevention services, and evaluation.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	148.4
25-year period (2019-2043):	178.1
30-year period (2019-2048):	205.4

Program costs expected to increase at general inflation rate.

Exhibit T.14

Service: Higher-Ed Discretionary Prevention Funds (HED).

Full Description: All higher education institutions/colleges in Oklahoma will receive substance use prevention funds to plan and implement evidence-based prevention services, with awards based on need.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	17.4
25-year period (2019-2043):	20.9
30-year period (2019-2048):	24.1

Program costs expected to increase at general inflation rate.

Exhibit T.15

Service: Public Education (PUB).

Full Description: Develop/disseminate sustained, universal marketing campaign related to: access to prevention/treatment services, stigma reduction, opioid education, and skills for preventing/managing pain. Develop/disseminate public education campaign to reach specific high risk/high potential populations, including healthcare, pain patients, young people, caring adults, and those at risk for overdose and addiction. Develop/disseminate campaign to inform public of Good Samaritan protections for people calling for help/staying with person who has overdosed. Print material for distribution by outreach teams, and other stakeholders and internet ads will be developed. Campaigns to utilize social/digital media, television, print, direct mail, outdoor advertising, and news media.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	189.1
25-year period (2019-2043):	210.7
30-year period (2019-2048):	230.4

Program costs expected to increase at general inflation rate.

Exhibit P.1

Service: Naloxone Distribution/Education (NALOX).

Full Description: Targeted naloxone distribution and overdose education to those at high risk of experiencing or witnessing overdose. Populations of focus will minimally include those receiving services at behavioral health provider agencies, those in custody and releasing from county jails/state prisons/juvenile detention centers, at-risk patients in emergency departments/hospitals/pain and primary care offices.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	24.8
25-year period (2019-2043):	30.6
30-year period (2019-2048):	36.2

Program costs expected to increase at a blend between general and medical inflation rates.

Exhibit P.2

Service: Grief Support Services (GRIEF).

Full Description: Contract with regional providers each year to coordinate grief support groups for those impacted by overdose death.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	6.1
25-year period (2019-2043):	7.3
30-year period (2019-2048):	8.5

Program costs expected to increase at general inflation rate.

Exhibit P.3

University Behavioral Health (UNIVB).

Full Description: Clinical integration of behavioral health professionals and screening into practice at health & mental health clinics on each campus; sober living opportunities for individuals in recovery for campuses with ≥20,000 students.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	33.9
25-year period (2019-2043):	33.9
30-year period (2019-2048):	33.9

Program costs expected to increase at general inflation rate.

Exhibit M.1

Continuing Medical Education (CME).

Full Description: Continuing education courses delivered in geographically diverse regions of Oklahoma. Topics should include pain prevention, pain management, opioid management, non-pharmacological/non-opioid therapies, addiction/mental health, overdose, and the critical appraisal of medical evidence.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	2.0
25-year period (2019-2043):	2.1
30-year period (2019-2048):	2.1

Program costs expected to increase at general inflation rate.

Exhibit M.2

Practice dissemination program (PRAC).

Full Description: Hospitals, primary care practices, other specialty healthcare practices offered in-practice training/practice dissemination support services, including academic detailing, elbow-to-elbow practice facilitators, monitoring/feedback of performance improvement related to implementing evidence-based guidelines for pain and opioid management.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	353.5
25-year period (2019-2043):	424.4
30-year period (2019-2048):	489.3

Program costs expected to increase at general inflation rate.

Exhibit M.3

Addiction Medicine Course (COURSE).

Full Description: Addiction medicine course addressing concerns related to drug use, recovery programs, legal aspects of controlled substances and physician addiction. Offered to a variety of health professionals such as medical students, dentists, physician assistants, nurses and physicians.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	9.3
25-year period (2019-2043):	11.2
30-year period (2019-2048):	12.9

Program costs expected to increase at general inflation rate.

Exhibit M.4

Medical Case Management/Consultation (CASE).

Full Description: Project ECHO. Nationwide initiative providing consultation/education through regular video conference composed of brief educational sessions on high yield clinical topics followed by case consultation and real-world recommendation including medications with doses and frequencies provided in written format.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	3.2
25-year period (2019-2043):	3.8
30-year period (2019-2048):	4.4

Program costs expected to increase at general inflation rate.

Exhibit M.5

Residency Training Programs (RESID).

Full Description: Training courses for all second-year medical residents.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	1.8
25-year period (2019-2043):	2.1
30-year period (2019-2048):	2.4

Program costs expected to increase at general inflation rate.

Exhibit M.6

Academic Medicine (ACAD).

Full Description: Establishment of academic addiction medicine departments attending to addiction disorders, providing education and utilizing a comprehensive approach to behavioral health via research, education and treatment. Offer individualized, evidence-based substance use disorder treatment including medication-assisted treatment and therapeutic services.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	167.4
25-year period (2019-2043):	200.9
30-year period (2019-2048):	231.6

Program costs expected to increase at general inflation rate.

Exhibit M.7

Counter-Detailing (DETAIL).

Full Description: Comprehensive direct-to-medical professional detailing program, deploying detailers to all Oklahoma healthcare professionals, pharmacies and pharmacists, with targeted detailing visits. Such a counter-detailing program must include training and compensating qualified personnel, mileage, visual aids, and patient/staff education material, as well as access to and analysis of medical care professional and pharmacy prescription data.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	69.8
25-year period (2019-2043):	83.8
30-year period (2019-2048):	96.6

Program costs expected to increase at general inflation rate.

Exhibit N.1

NAS evaluation/assessment (NASA).

Full Description: NAS treatment evaluation standards developed and disseminated, including continuing education courses, NAS testing and training costs for hospitals.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	2.9
25-year period (2019-2043):	3.5
30-year period (2019-2048):	4.0

Program costs expected to increase at general inflation rate.

Exhibit N.2

Prenatal Screening (PRENAT).

Full Description: Enable all OBGYN and pediatric practices and hospitals to enroll in the SBIRT OK practice dissemination program for academic detailing, continuing education, EMR consultation, and embedded practice facilitation. Additional, face-to-face group training on SBIRT will be offered throughout the state.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	8.3
25-year period (2019-2043):	10.0
30-year period (2019-2048):	11.5

Program costs expected to increase at general inflation rate.

Exhibit N.3

Neonatal Treatment (NAST).

Full Description: Medical treatment for infants born with neonatal abstinence syndrome or suffering from opioid withdrawal.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	892.2
25-year period (2019-2043):	1,081.3
30-year period (2019-2048):	1,258.5

Program costs expected to increase at general inflation rate.

Exhibit D.1

Service: Opioid Overdose Review Board (REVIEW).

Full Description: Staff professionals needed to coordinate the Oklahoma Opioid Overdose Fatality Review Board, prepare cases for review, produce reports, and act on recommendations.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	2.7
25-year period (2019-2043):	3.3
30-year period (2019-2048):	3.8

Program costs expected to increase at general inflation rate.

Exhibit D.2

Service: PMP System (PMP).

Full Description: Fund the Oklahoma PMP Aware program and the necessary administrative staff including a PMP Administrator, PMP support providers, and PMP system educators. Develop needed system enhancements including reports, alerts, and other requested features. Employ data professionals at the OBNDD, ODMHSAS, and OSDH to prepare PMP data for analysis, analyze PMP data, develop special reports and analyses, and link data sets such as health outcome data and claims data.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	22.0
25-year period (2019-2043):	26.4
30-year period (2019-2048):	30.4

Program costs expected to increase at general inflation rate.

Exhibit D.3

Service: Program Outcome Monitoring/Evaluation (MONTR).

Full Description: Employ/contract for process and outcome evaluation related to implementation of state abatement plan and related activities.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	11.1
25-year period (2019-2043):	13.3
30-year period (2019-2048):	15.4

Program costs expected to increase at general inflation rate.

Exhibit D.4

Service: Health Information Exchange (HIE).

Full Description: Purchase technology and hire staff to support connectivity among the state agencies' HIE and private HIEs. Increase HIE use and adoption by healthcare providers through public education through a contract with a marketing firm, and incentivize non-meaningful use providers.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	534.3
25-year period (2019-2043):	639.1
30-year period (2019-2048):	735.3

Program costs expected to increase at general inflation rate.

Exhibit D.5

Service: Epidemiological Staffing (EPI).

Full Description: Develop public health surveillance and descriptive studies with fatal/nonfatal injury, addiction, risk/protective factor, health record/claim, and other data. Support development of web-based data query/reporting systems.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	16.3
25-year period (2019-2043):	19.6
30-year period (2019-2048):	22.6

Program costs expected to increase at general inflation rate.

Exhibit D.6

Service: Data Collection (DATA).

Full Description: Support costs of added indicators in existing surveys and develop new sources of data collection for key measures related to monitoring trends and measuring change.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	5.4
25-year period (2019-2043):	6.5
30-year period (2019-2048):	7.5

Program costs expected to increase at general inflation rate.

Exhibit D.7

NAS Reporting (NASR).

Full Description: Fund the development of neonatal abstinence syndrome as a required reportable condition, including OSDH and hospital-level management and infrastructure costs.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	3.5
25-year period (2019-2043):	4.2
30-year period (2019-2048):	4.9

Program costs expected to increase at general inflation rate.

Exhibit C.1

Service: Opioid Law Enforcement (LAW).

Full Description: Funding for investigatory and regulatory actions related to the opioid crisis.

Total NPV of Costs ($ millions)	
20-year period (2019-2038):	68.6
25-year period (2019-2043):	82.3
30-year period (2019-2048):	94.9

Program costs expected to increase at general inflation rate.

Appendix C: Alternative Methods of Discounting to Net Present Value

Abatement costs are discounted to net present value assuming a discount rate of 1.75 percent per year, the difference between the average yield on 10-year U.S. Treasury Securities over the 1998-2018 period (3.68 percent per year) and the change in the average inflation rate over the same period (1.93 percent per year). The lump-sum payment could be invested in different ways. One possibility would be to invest it in shorter-term Treasury securities (or a blend of longer and short-term government bonds). A second would be to pay down some existing Oklahoma debt obligations. This appendix shows that using either alternative would lead to a lower discount rate and so a larger estimate of the net present value of abatement costs.

The average annual yield on 3-year Treasury Securities, over the 1998-2018 period was 2.64 percent (Appendix Table A.1).[18] Therefore, the relevant real discount rate would be 0.71 (2.64 – 1.93) percent per year, rather than 1.75 percent annually using 10-Year Treasury security yields. A lower discount rate implies a larger value for future abatement costs.

An alternative possibility would be to use the lump-sum payment to reduce outstanding debt owed by the State of Oklahoma. To examine the discount rate resulting when doing so, I first obtained information on the maturity-specific yield on bonds issued by the Oklahoma Capital Improvement Authority as state revenue bonds between 2009 and 2018. This information is provided in Table C.1. Next I used this information to calculate average yields for these bonds at maturity lengths ranging from one to 21 years. These yields are shown in the last column of Table C.1 and the second column of Table C.2. Over the 2009-2018 period, the Gross Domestic Implicit Price Deflator rose by an average of 1.716 % per year ($[110.645/94.938]^{1/9}$) (see Table A.1). Since all calculations of abatement costs are in "real" terms (i.e. using 2019-year dollars) the price deflator is subtracted from the maturity-specific yield to give the maturity-specific real discount rate, shown in the third column of the Table C.2. The fourth column displays the (real) discount factor to be used when converting abatement costs occurring in future years to 2019 net present value. The discount factor is calculated using the maturity-specific discount rates for all maturities through the number of years in the future the abatement costs are incurred. Specifically, for r_t the real discount rate discount rate (in absolute rather than percentage terms) t years after 2019, the discount factor at time t is calculated as:

$$D_t = \prod_{n=0}^{t}\left(\frac{1}{1+r_{t-n}}\right).$$[19]

The final two columns of Table C.2 show corresponding discount factors obtained when basing the discounting on 10-year and 3-year Treasury securities. Since the discount rates are constant across years in these cases, the discount factors can be calculated more simply as:

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[18] Source: 1998-2017: *Economic Report of the President, 2018*, Table B-25. 2018 yields calculated as monthly average from 12/17-11/18 using data from the Federal Reserve Economic Data (*FRED*), https://fred.stlouisfed.org (series GS3)

[19] For example, if the real discount rate was 1% for a 1-year maturity and 2% for a 2-year maturity, the discount factor for abatement costs incurred two years in the future would be $0.9707 = \left(\frac{1}{1.01}\right)\left(\frac{1}{1.02}\right)$.

$$D_t = (\frac{1}{1+r})^t$$

where, r, here is the (time-constant) annual discount rate. For example, the discount factor – which is the amount abatement costs need to be multiplied by to obtain the net present value – in 2018 is 0.7192 when based on 10-year U.S. Treasury security yields, compared to 0.8742 and 0.8598, respectively, when based on 3-Year Treasuries and Oklahoma revenue bonds.

Table C.1: Oklahoma State Bond Offerings and Yields by Time to Maturity

Years to Maturity	Bond Offering																	Average Yield
	2018D	2018c	2018B	2018a	2017b	2017a	2016	2015b	2015a	2014c	2014b	2014a	2013	2012	2010	2009a	2009b	
1				1.57%	0.90%	1.08%			0.20%	0.18%	0.17%	0.28%	0.45%	2.00%		1.00%	0.60%	0.766%
2	2.11%	1.93%		1.74%	1.15%	1.31%		0.79%	0.54%	0.38%	0.40%	0.51%	0.63%	2.00%	0.52%	1.70%	1.11%	1.121%
3	2.21%	2.05%		1.91%	1.36%	1.51%	1.04%	1.15%	0.80%	0.71%	0.73%	1.00%	0.85%	2.00%	0.72%	2.00%	1.53%	1.348%
4	2.34%	2.18%		2.04%	1.58%	1.68%	1.15%	1.41%	1.07%	1.00%	1.15%	1.35%	1.04%	2.00%	0.97%	2.25%	1.91%	1.570%
5	2.46%	2.29%		2.17%	1.86%	1.89%	1.27%	1.69%	1.28%	1.28%	1.49%	1.70%	1.34%	2.00%	1.36%	2.65%	2.31%	1.815%
6	2.58%	2.46%		2.32%	2.13%	2.10%	1.40%	1.99%	1.53%	1.60%	1.83%	2.15%	1.64%	2.00%	1.66%	2.85%	2.55%	2.049%
7	2.71%	2.57%		2.47%	2.39%	2.31%	1.53%	2.27%	1.74%	1.92%	2.12%	2.50%	1.87%	2.00%	1.96%	3.05%	2.81%	2.264%
8	2.87%	2.71%		2.61%	2.58%	2.49%	1.68%	2.41%	1.90%	2.22%	2.35%	2.72%	2.09%	2.00%	2.16%	3.22%	3.06%	2.442%
9	2.99%	2.80%	3.71%	2.72%	2.70%	2.67%	1.77%	2.58%	2.02%	2.45%	2.57%	2.90%	2.32%	2.00%	2.41%	3.42%	3.28%	2.665%
10	3.09%	2.88%	3.82%	2.83%		2.80%	1.89%	2.71%	2.14%	2.66%	2.71%	3.04%	2.51%	2.00%	2.61%	3.62%		2.754%
11	3.19%	2.98%	3.92%	2.94%		3.00%	2.03%	2.85%		2.92%		3.15%	2.68%	2.00%		3.80%		2.955%
12	3.27%	3.19%	3.97%	3.02%		3.13%	2.14%			2.62%		3.30%		2.00%		3.95%		3.059%
13	3.43%	3.12%	4.02%	3.12%			2.23%			3.05%		3.39%		2.00%		4.07%		3.159%
14	3.42%	3.18%	4.07%	3.21%			2.30%			2.99%		3.49%				4.14%		3.350%
15	3.47%	3.45%		3.31%			2.51%			3.14%		3.62%				4.20%		3.384%
16	3.53%	3.30%		3.37%			2.67%			3.15%		3.71%						3.288%
17		3.53%		3.44%			2.38%			3.14%								3.121%
18		3.42%		3.49%			2.77%			3.26%								3.235%
19		3.47%		3.53%						3.48%								3.493%
20		3.50%		3.54%						3.57%								3.537%
21		3.52%																3.520%

Note: Table shows bond yields by time to maturity in nearest whole years. The last column shows the unweighted average yield for all bond offerings shown on table. In cases where bond offering shows two yields for same maturity date, the unweighted average of these is displayed.

Table C.2: Discount Rates and Discount Factors by Year

Year	Based on: Oklahoma Bonds at Various Maturities			Based on Treasury Securities	
				3-Year	10-Year
	Nominal Discount Rate	Real Discount Rate	Discount Factor	Discount Factor	Discount Factor
2020	0.766%	-0.950%	1.0096	0.9930	0.9828
2021	1.121%	-0.595%	1.0156	0.9859	0.9659
2022	1.348%	-0.368%	1.0194	0.9790	0.9493
2023	1.570%	-0.146%	1.0209	0.9721	0.9330
2024	1.815%	0.099%	1.0199	0.9652	0.9169
2025	2.049%	0.333%	1.0165	0.9584	0.9011
2026	2.264%	0.548%	1.0109	0.9517	0.8856
2027	2.442%	0.726%	1.0036	0.9450	0.8704
2028	2.665%	0.949%	0.9942	0.9383	0.8554
2029	2.754%	1.038%	0.9840	0.9317	0.8407
2030	2.955%	1.239%	0.9720	0.9251	0.8263
2031	3.059%	1.343%	0.9591	0.9186	0.8121
2032	3.159%	1.443%	0.9454	0.9121	0.7981
2033	3.350%	1.634%	0.9302	0.9057	0.7844
2034	3.384%	1.668%	0.9150	0.8993	0.7709
2035	3.288%	1.572%	0.9008	0.8930	0.7576
2036	3.121%	1.405%	0.8883	0.8867	0.7446
2037	3.235%	1.519%	0.8750	0.8804	0.7318
2038	3.493%	1.777%	0.8598	0.8742	0.7192

Note: Nominal discount rate is calculated as the average yield of Oklahoma Capital Improvement Bonds for maturities equal to the number of years from 2019 until the specified year. Real discount rates calculated as the nominal discount rate minus 1.176%, which is the average annual change in the GDP Implicit Price Deflator from 2009-2018. Discount factors are calculated as discussed in text.

Appendix D: Christopher Ruhm Deposition and Trial Testimony in Last Four Years

Date	Case	Court	Party Represented (Attorney)	Description
9/5/2018	Jacquelyn Burton Harvey and Alfred Harvey II, GAL for Gabriel Christopher Flip Harvey, et al. v. Lindsay Gray, MD et al.	Deposition, Durham County Superior Court, NC	Plaintiff (Bailey Melvin)	Economic damages, medical malpractice
7/9/2018	Trinity Fayte Owen & Koenig v. Healthcare Foundation of Wilson, Daniel Peter Michalak MD, Wilson Ob/gyn, PA, Ketarah C. Robinson, MD, Eastern Carolina Pediatrics	Deposition, Nash County Superior Court, NC	Plaintiff (Bailey Melvin)	Economic damages, medical malpractice
6/28/2018	Estate of Jerry D. Beasley v. Mateen Akhtar, MD, Matthew A. Hook, MD, Craig S. Carter MD, 17 CVS 1179	Deposition, Johnson County Superior Court, NC	Plaintiff (Bailey Melvin)	Economic Damages, wrongful death
10/16/2015	Jeffrey Allen Webster v. Alamance Regional Medical Center, Lankford Protective Services, Paul Malinda, M.D., Eugene Wilson Griner M.D., Michael Greenberg, M.D., Emcare Inc.	Deposition, Guilford County Superior Court, NC	Plaintiff (Mark Gray)	Economic Damages from injury

H

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 The Honorable Thad Balkman JURY TRIAL DEMANDED

<u>PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT CEPHALON, INC.'S FIRST REQUESTS FOR ADMISSION TO PLAINTIFF</u>

Pursuant to 12 OKLA. STAT. §3236, Plaintiff, the State of Oklahoma (the "State" or "Plaintiff"), hereby submits its Responses and Objections to Defendant Cephalon, Inc.'s ("Cephalon" or "Defendant") First Requests for Admission to Plaintiff ("Requests"). The State specifically reserves the right to supplement, amend and/or revise these Responses and Objections in accordance with 12 OKLA. STAT. §3226.

EXHIBIT
H

GENERAL OBJECTIONS

1. By responding to Defendant's Requests, the State concedes neither the relevance nor admissibility of any information provided or documents or other materials produced in response to such Requests. The production of information or documents or other materials in response to any specific Request does not constitute an admission that such information is probative of any particular issue in this case. Such production or response means only that, subject to all conditions and objections set forth herein and following a reasonably diligent investigation of reasonably accessible and non-privileged information, the State believes the information provided is responsive to the Request.

2. The State objects that much of the Requests sought are premature and, as such, provides the responses set forth herein solely based upon information presently known to and within the possession, custody or control of the State. Discovery is ongoing in this action. Subsequent discovery, information produced by Defendant or the other named Defendants in this litigation, investigation, expert discovery, third-party discovery, depositions and further analysis may result in additions to, changes or modifications in, and/or variations from the responses and objections set forth herein. Accordingly, the State specifically and expressly reserves the right to supplement, amend and/or revise the responses and objections set forth herein in due course and in accordance with 12 OKLA. STAT. §3226.

3. The State objects to Defendant's Requests as ambiguous, overly broad, disproportionate to the needs of the case, seeking to impose a burden on the State that exceeds what is permissible under Oklahoma law, seeking information protected from disclosure by privilege and/or the work product doctrine, and calling for information that is not in the possession, custody or control of and is not reasonably accessible to the State. To the extent the State can and does provide a response to any Request, the State's response is based on the information known to

and within the possession, custody and control of the State following a reasonably diligent investigation.

4. The State objects to Defendant's Requests as seeking information within Defendant's possession, custody or control. Specifically, Defendant monitors and tracks healthcare providers' prescribing practices and is aware of the providers who prescribe its medications. Indeed, Defendant utilizes such information to strategically determine which doctors to attack with its sales force and what sales tactics to deploy and is aware of the identity of Oklahoma doctors receiving communications made, sponsored, and/or supported by Defendant.

5. The State objects to Defendant's Requests to the extent they attempt to suggest or assume the elements of any of the State's causes of action or otherwise seek to impose any burden(s) or element(s) of proof that do not exist under or that are inconsistent with Oklahoma law.

6. The State objects to Defendant's Requests as seeking confidential and sensitive information protected from disclosure under both State and federal statutes, rules, regulations. Specifically, the State objects to Defendant's Requests as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations.

7. The State objects to Defendant's Requests as seeking information regarding health care providers and patients that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018 Order.

8. The State further objects to the Defendant's Requests as calling for information regarding ongoing investigations or confidential criminal investigatory files that the Court has held to be outside of the scope of proper discovery. *See* October 22, 2018 Order; December 3, 2018 Order; December 20, 2018 Order.

OBJECTIONS TO DEFINITIONS

1. The State objects to Defendant's Definition Number 2 of the term "Claim" as vague, overbroad, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, irrelevant and unworkable. "[A]ny request for payment or reimbursement" encompasses an infinitely unlimited amount of information that has no bearing whatsoever on the parties to this action or the claims or defenses asserted in this action. Based on the claims and defenses at issue in this case, the State will reasonably interpret the term "claim" to mean a request for payment or reimbursement submitted to the Oklahoma Health Care Authority pursuant to Oklahoma's Medicaid Program as related to the claims and defenses at issue in this litigation.

2. The State objects to Defendant's Definition Number 3 of the term "Communication(s)" as vague, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, unworkable and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. Specifically, the State objects to the terms "conduct" and "omissions" in Defendant's purported Definition Number 3. The State will reasonably interpret the term "communication(s)" to mean the transmittal of information between two or more persons, whether spoken or written.

3. The State objects to Defendant's Definition Number 4 of the term "Doctor(s)". Defendant's proposed definition is overly broad, irrelevant to the claims and defenses at issue, unduly burdensome and disproportionate to the needs of the case in that the definition is not limited in any way to the State of Oklahoma or any particular time period. The State will reasonably construe the use of these terms to mean doctors who provided medical or health care services in the State of Oklahoma to citizens—not "animals"—in the State of Oklahoma from the relevant time period as ordered by the Court to the date Defendant's Requests were served.

4. The State objects to Defendant's Definition Number 5 of the terms "Oklahoma Agency" or "Oklahoma Agencies" as overly broad, unduly burdensome, irrelevant to the claims and defenses in this action, disproportionate to the needs of the case, and improperly calling for information that is not in the possession, custody or control of the State. The State will reasonably construe the terms "Oklahoma Agency" or "Oklahoma Agencies" to mean agencies of the State of Oklahoma represented in this action and over whom the State of Oklahoma, through the Office of the Attorney General, maintains sufficient control to allow the State to have reasonable access to and possession of responsive information maintained by the agency.

5. The State objects to Defendant's Definition Number 6 of the term "Opioid(s)" as misleading because of its use of the terms "FDA-approved" and "pain-reducing" and because it is defined without regard to any of the pharmaceutical products or drugs at issue in this case. The State will reasonably construe the terms "Opioid(s)" to mean the opioid medications or drugs related to the claims and defenses at issue in this litigation.

6. The State objects to Defendant's Definition Number 7 of the term "Patient(s)." This definition—"any human being to whom an Opioid is prescribed or dispensed"—is overly broad, unduly burdensome, irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of the case on its face because it lacks any geographical or temporal limitation that has any bearing on this case, and could be construed to seek information outside the State's possession, custody, or control. The State will reasonably construe the term "patient" to mean an individual who was prescribed an Opioid in the State of Oklahoma from the relevant time period as ordered by the Court to the date Defendant's Requests were served.

7. The State objects to Defendant's Definition Number 9 of the term "Prescribing Behaviors" as vague, ambiguous, overly broad, unduly burdensome, irrelevant to the claims and defenses at issue in this action, and disproportionate to the needs of the case. The State will

reasonably interpret the term "Prescribing Behaviors" to relate to investigation or prosecution by the State of Oklahoma of a doctor licensed in Oklahoma related to opioids during the relevant time period as ordered by the Court.

8. The State objects to Defendant's Definition Number 11 of the terms "You," "Your," "State," "Oklahoma," and "Plaintiff" as overly broad, unduly burdensome, disproportionate to the needs of the case, seeking to impose a burden upon the State that exceeds what is permitted under Oklahoma law, and calling for information that is not within the State's possession, custody or control because the definition attempts to require the State to not simply respond on its own behalf, but also on behalf of "all its departments, agencies, and instrumentalities" without regard for whether the State represents such entities in this litigation and maintains sufficient control over such entities to enable the State to have reasonable access to or possession, custody or control of such entities' records. The State will respond on behalf of the State and those State agencies represented in this litigation and over which the State, through the Office of the Attorney General, maintains sufficient control to allow the State to have reasonable access to and possession of responsive information maintained by the agency.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that You cannot identify, by name, any Oklahoma Doctors who were misled about the risks or benefits of ACTIQ or FENTORA by any Communication made, sponsored, or supported by Cephalon, Inc.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the terms "You," "Doctor", "Opioid", and "Communication" as if fully set forth herein.

The State further objects to this Request because it is a premature attempt to force the State to marshal all of its evidence before required or appropriate under the Oklahoma Code of Civil Procedure or the Court's scheduling Order.

The State objects to this Request as seeking information within Defendant's possession, custody or control. Specifically, Defendant monitors and tracks healthcare providers' prescribing practices and is aware of the providers who prescribe its medications. Indeed, Defendant utilizes such information to strategically determine which doctors to attack with its sales force and what sales tactics to deploy and is aware of the identity of Oklahoma doctors receiving communications made, sponsored, and/or supported by Defendant.

The State objects to this Request to the extent it attempts to suggest or assume the elements of any of the State's causes of action or otherwise seeks to impose any burden(s) or element(s) of proof that do not exist under or that are inconsistent with Oklahoma law. Specifically, the State objects to this Request to the extent it suggests or assumes Defendant must have made a misrepresentation directly to an Oklahoma doctor to be liable for the State's claims under the Oklahoma Medicaid False Claims Act.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 2: Admit that You cannot identify, by name, any Oklahoma Doctors who were misled about the risks or benefits of any prescription Opioid medication other than ACTIQ or FENTORA, by any Communication made, sponsored, or supported by Cephalon, Inc.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 3: Admit that You cannot identify, by name, any Oklahoma Doctors who were unable to accurately counsel their patients about the risks or benefits of prescription Opioid medications as a result of any Communication made, sponsored, or supported by Cephalon, Inc.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 4: Admit that, for every Doctor who has been investigated or prosecuted by the State of Oklahoma for their Prescribing Behaviors, You cannot identify any false or misleading Communication made, sponsored, or supported by Cephalon, Inc. that caused these Doctors to prescribe Opioids.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", "Prescribing Behaviors," and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

The State further objects to this Request as calling for information, in violation of the Court's orders, regarding ongoing investigations or confidential investigatory files that the Court has held to be outside of the scope of proper discovery. *See* October 22, 2018, Order; December 3, 2018, Order; December 20, 2018, Order.

REQUEST FOR ADMISSION NO. 5:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Cephalon, Inc. to prescribe an unnecessary, excessive, or medically inappropriate Opioid prescriptions.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 6:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Cephalon, Inc. to prescribe an Opioid prescription that harmed the State.

RESPONSE: The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State further directs Defendant to the State's Original Petition (¶¶ 5-50), filed June 30, 2017, and to the State's Expert Disclosures, served on December 21, 2018.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order

(order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 7:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Cephalon, Inc. to prescribe an unnecessary, excessive, or medically inappropriate prescription of ACTIQ or FENTORA.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 8:

Admit that you cannot identify, by name, any Oklahoma Doctors who received any false or misleading Communications about any Opioid medication from Cephalon, Inc.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You", "Doctor", "Opioid", and "Communication" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding healthcare providers that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 9:

Admit that You cannot identify any lawfully-written prescription of ACTIQ or FENTORA that was ineffective in treating the pain of any Oklahoma patient.

RESPONSE: The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You" and "Patient" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State objects to this Request as it seeks information regarding individual patients that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 10:

Admit that You cannot identify any Oklahoma patient who suffered harm as a result of receiving a lawfully-written prescription of ACTIQ or FENTORA.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You" and "Patient" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State further objects to this Request to the extent it attempts to imply that the State must prove or submit evidence regarding personal-injury-type damages related to each Oklahoman who received a prescription for Defendants' drugs by requiring the State to "identify any Oklahoma patients who suffered harm." The State does not assert in this litigation any claims for damages related to personal injury, which claims belong to those individuals who were or will be harmed by their or another's consumption of or addiction to opioids.

The State objects to this Request as it seeks information regarding individual patients that the Court has held to be outside of the scope of proper discovery. *See* October 10, 2018, Order (order by Judge Hetherington denying Defendants' motion to compel); December 4, 2018, Order (order by Judge Balkman affirming October 10 order).

REQUEST FOR ADMISSION NO. 11: Admit that You reimbursed Claims for Opioid prescriptions that (a) were written by Doctors who had been investigated or prosecuted by the State of Oklahoma for their Prescribing Behaviors and (b) were submitted for reimbursement while such investigation or prosecution was ongoing.

RESPONSE:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definition of the term "You," "Doctor", "Opioid", "Claim", and "Prescribing Behaviors" as if fully set forth herein.

See Objections and Response to Request for Admission No. 1 above, which are hereby incorporated by this reference as if fully set forth herein.

The State further objects to this Request as calling for information, in violation of the Court's orders, regarding ongoing investigations or confidential investigatory files that the Court has held to be outside of the scope of proper discovery. *See* October 22, 2018, Order; December 3, 2018, Order; December 20, 2018, Order.

DATED: January 17, 2019

Respectfully submitted,

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