



STATE OF OHIO
CLEVELAND PART B
FILED In The
Office of the Court Clerk
FEB 01 2019

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.)

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

William C. Hetherington
Special Discovery Master

For Judge Hetherington'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 MOTION TO COMPEL DISCOVERY**

Defendants Teva Pharmaceuticals USA, Inc. ("Teva USA"), Cephalon, Inc. ("Cephalon"),
Watson Laboratories, Inc. ("Watson"), Actavis LLC ("Actavis LLC"), and Actavis Pharma, Inc.,
f/k/a Watson Pharma, Inc. ("Actavis Pharma") (collectively, the "Moving Defendants")
respectfully move to compel discovery from Plaintiff the State of Oklahoma ("Plaintiff" or "the

F

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Teva Pharmaceuticals USA, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 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 29, 2019

Respectfully submitted,

/s/ Michael Burrage

Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
J. Revell Parish, OBA No. 30205
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburrage.com
rwhitten@whittenburrage.com
rparish@whittenburrage.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347

Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31946
Nathan B. Hall, OBA No. 32790
Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
rossl@nixlaw.com
winncutler@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on January 29, 2019 to:

Sanford C. Coats
Joshua D. Burns
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Marina L. Schwarz
Lindsay Zanello
Erik Snapp
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jonathan S. Tam
Jae Hong Lee
DECHERT LLP
One Bush Drive, Suite 1600
San Francisco, CA 94104

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jervonne Denise Newsome
Jared Daniel Eisenberg
John Thomas Cox III
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Robert S. Hoff
WIGGIN AND DANA LLP

265 Church Street
New Haven, CT 06510 Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Jeffrey Barker
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Times Square

New York, NY 10036

Amy Riley Lucas

Jessica Waddle

O'MELVENY & MYERS LLP

1999 Avenue of the Stars, 8th Floor

Los Angeles, California 9006

Robert G. McCampbell

Travis J. Jett

Nicholas V. Merkle

Ashley E. Quinn

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson

Oklahoma City, OK 73102-7255

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

Steven A. Reed

Harvey Bartle IV

Jeremy A. Menkowitz

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

Mark A. Fiore

MORGAN, LEWIS & BOCKIUS LLP

502 Carnegie Center

Princeton, NJ 08540

/s/ Michael Burrage

Michael Burrage

G

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 29, 2019

Respectfully submitted,

/s/ Michael Burrage

Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
J. Revell Parish, OBA No. 30205
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburragelaw.com
rwhitten@whittenburragelaw.com
rparish@whittenburragelaw.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31946
Nathan B. Hall, OBA No. 32790
Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102

Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
rossl@nixlaw.com
winncutler@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on January 29, 2019 to:

Sanford C. Coats
Joshua D. Burns
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Marina L. Schwarz
Lindsay Zanello
Erik Snapp
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jonathan S. Tam
Jae Hong Lee
DECHERT LLP
One Bush Drive, Suite 1600
San Francisco, CA 94104

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jervonne Denise Newsome
Jared Daniel Eisenberg
John Thomas Cox III
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Robert S. Hoff
WIGGIN AND DANA LLP

265 Church Street
New Haven, CT 06510 Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Jeffrey Barker
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Times Square

New York, NY 10036

Amy Riley Lucas
Jessica Waddle
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 9006
Robert G. McCampbell
Travis J. Jett
Nicholas V. Merkle
Ashley E. Quinn
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131

Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
502 Carnegie Center
Princeton, NJ 08540

/s/ Michael Burrage

Michael Burrage

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

**PLAINTIFF’S FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
DEFENDANT WATSON LABORATORIES, INC.’S FIRST REQUESTS FOR
ADMISSION TO PLAINTIFF**

Pursuant to 12 OKLA. STAT. §3236, Plaintiff, the State of Oklahoma (the “State” or “Plaintiff”), hereby submits its Responses and Objections to Defendant Watson Laboratories, Inc.’s (“Watson” 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.

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 prescription Opioid medications by any Communication made, sponsored, or supported by Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 2: 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 Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 3: 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 Watson Laboratories, 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. 4:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 5: Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communication made, sponsored, or supported by Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 7: Admit that you cannot identify, by name, any Oklahoma Doctors who received any false or misleading Communications about any Opioid medication from Watson Laboratories, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 8: 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. 9: Admit that You cannot identify any Oklahoma patient who suffered harm as a result of receiving 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. 10: 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 29, 2019

Respectfully submitted,

/s/ Michael Burrage

Michael Burrage, OBA No. 1350

Reggie Whitten, OBA No. 9576

J. Revell Parish, OBA No. 30205

WHITTEN BURRAGE

512 N. Broadway Avenue, Suite 300

Oklahoma City, OK 73102

Telephone: (405) 516-7800

Facsimile: (405) 516-7859

Emails: mburrage@whittenburrage.com

rwhitten@whittenburrage.com

rparish@whittenburrage.com

Mike Hunter, OBA No. 4503

ATTORNEY GENERAL FOR

THE STATE OF OKLAHOMA

Abby Dillsaver, OBA No. 20675

GENERAL COUNSEL TO

THE ATTORNEY GENERAL

Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31946
Nathan B. Hall, OBA No. 32790
Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
rossl@nixlaw.com
winncutler@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on January 29, 2019 to:

Sanford C. Coats
Joshua D. Burns
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Marina L. Schwarz
Lindsay Zanello
Erik Snapp
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jonathan S. Tam
Jae Hong Lee
DECHERT LLP
One Bush Drive, Suite 1600
San Francisco, CA 94104

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jervonne Denise Newsome
Jared Daniel Eisenberg
John Thomas Cox III
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Robert S. Hoff
WIGGIN AND DANA LLP

265 Church Street
New Haven, CT 06510 Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Jeffrey Barker
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Times Square

New York, NY 10036

Amy Riley Lucas

Jessica Waddle

O'MELVENY & MYERS LLP

1999 Avenue of the Stars, 8th Floor

Los Angeles, California 9006

Robert G. McCampbell

Travis J. Jett

Nicholas V. Merkle

Ashley E. Quinn

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson

Oklahoma City, OK 73102-7255

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

Steven A. Reed

Harvey Bartle IV

Jeremy A. Menkowitz

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

Mark A. Fiore

MORGAN, LEWIS & BOCKIUS LLP

502 Carnegie Center

Princeton, NJ 08540

/s/ Michael Burrage

Michael Burrage

1

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 prescription Opioid medications by any Communication made, sponsored, or supported by Actavis LLC.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 2: 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 Actavis LLC.

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 3: 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 Actavis LLC. 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. 4:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Actavis LLC 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Actavis LLC 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Actavis LLC 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 7:

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

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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 8:

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. 9:

Admit that You cannot identify any Oklahoma patient who suffered harm as a result of receiving 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. 10: 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 29, 2019

Respectfully submitted,

/s/ Michael Burrage

Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
J. Revell Parish, OBA No. 30205
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburrage.com
rwhitten@whittenburrage.com
rparish@whittenburrage.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31946
Nathan B. Hall, OBA No. 32790
Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
rossl@nixlaw.com
winncutler@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on January 29, 2019 to:

Sanford C. Coats
Joshua D. Burns
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Marina L. Schwarz
Lindsay Zanello
Erik Snapp
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jonathan S. Tam
Jae Hong Lee
DECHERT LLP
One Bush Drive, Suite 1600
San Francisco, CA 94104

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jervonne Denise Newsome
Jared Daniel Eisenberg
John Thomas Cox III
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Robert S. Hoff
WIGGIN AND DANA LLP

265 Church Street
New Haven, CT 06510 Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Jeffrey Barker
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Times Square

New York, NY 10036

Amy Riley Lucas

Jessica Waddle

O'MELVENY & MYERS LLP

1999 Avenue of the Stars, 8th Floor

Los Angeles, California 9006

Robert G. McCampbell

Travis J. Jett

Nicholas V. Merkle

Ashley E. Quinn

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson

Oklahoma City, OK 73102-7255

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

Steven A. Reed

Harvey Bartle IV

Jeremy A. Menkowitz

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

Mark A. Fiore

MORGAN, LEWIS & BOCKIUS LLP

502 Carnegie Center

Princeton, NJ 08540

/s/ Michael Burrage

Michael Burrage

J

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 Opioid medications by any Communication made, sponsored, or supported by Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 2: 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 Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 3: 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 Actavis Pharma, Inc. f/k/a Watson Pharma, 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. 4:

Admit that You cannot identify, by name, any Oklahoma Doctors who relied upon any false or misleading Communications made, sponsored, or supported by Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

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 Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 7:

Admit that you cannot identify, by name, any Oklahoma Doctors who received any Communication about any Opioid medication from Actavis Pharma, Inc. f/k/a Watson Pharma, 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).

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 8:

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. 9:

Admit that You cannot identify any Oklahoma patient who suffered harm as a result of receiving 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. 10: 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 29, 2019

Respectfully submitted,

/s/ Michael Burrage

Michael Burrage, OBA No. 1350

Reggie Whitten, OBA No. 9576

J. Revell Parish, OBA No. 30205

WHITTEN BURRAGE

512 N. Broadway Avenue, Suite 300

Oklahoma City, OK 73102

Telephone: (405) 516-7800

Facsimile: (405) 516-7859

Emails: mburrage@whittenburragelaw.com

rwhitten@whittenburragelaw.com

rparish@whittenburragelaw.com

Mike Hunter, OBA No. 4503

ATTORNEY GENERAL FOR

THE STATE OF OKLAHOMA

Abby Dillsaver, OBA No. 20675

GENERAL COUNSEL TO

THE ATTORNEY GENERAL

Ethan A. Shaner, OBA No. 30916

DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Emails: abby.dillsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*
Brooke A. Churchman, OBA No. 31946
Nathan B. Hall, OBA No. 32790
Ross Leonoudakis, *pro hac vice*
Robert Winn Cutler, *pro hac vice*
NIX PATTERSON, LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
tduck@nixlaw.com
dpate@nixlaw.com
bchurchman@nixlaw.com
nhall@nixlaw.com
rossl@nixlaw.com
winncutler@nixlaw.com

Glenn Coffee, OBA No. 14563
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on January 29, 2019 to:

Sanford C. Coats
Joshua D. Burns
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. LaFata
Marina L. Schwarz
Lindsay Zanello
Erik Snapp
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jonathan S. Tam
Jae Hong Lee
DECHERT LLP
One Bush Drive, Suite 1600
San Francisco, CA 94104

Benjamin Franklin McAnaney
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104

Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Jervonne Denise Newsome
Jared Daniel Eisenberg
John Thomas Cox III
LYNN PINKER COX & HURST LLP
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Robert S. Hoff
WIGGIN AND DANA LLP

265 Church Street
New Haven, CT 06510 Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY &
BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Jeffrey Barker
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Times Square

New York, NY 10036

Amy Riley Lucas

Jessica Waddle

O'MELVENY & MYERS LLP

1999 Avenue of the Stars, 8th Floor

Los Angeles, California 9006

Robert G. McCampbell

Travis J. Jett

Nicholas V. Merkle

Ashley E. Quinn

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson

Oklahoma City, OK 73102-7255

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

Steven A. Reed

Harvey Bartle IV

Jeremy A. Menkowitz

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

Mark A. Fiore

MORGAN, LEWIS & BOCKIUS LLP

502 Carnegie Center

Princeton, NJ 08540

/s/ Michael Burrage

Michael Burrage