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.,	§	Case No. CJ-2017-816 The Honorable Thad Balkman *Submitted to*: Judge Thad Balkman
Defendants.	§	

STATE'S COMBINED RESPONSE TO DEFENDANTS' MOTION FOR CONTINUANCE AND EMERGENCY MOTION TO STAY EXPERT DEADLINES

Defendants didn't listen to Judge Balkman on November 29, 2018 when the Court made it very clear that:

> [The trial date] was deliberately set, and it's going to be kept. And I'll tell you it was deliberately set to influence and to mandate the conduct of the State and the defendants to be prepared. And that's why, even though there's been removals and motions and everything else, one thing's remained constant, and that's the trial date and it's going to stay that way.

There is no way—no way—any of these Defendants can face a jury. They know it. Their witnesses know it. Their consultants know it. Their attorneys know it. Morality. Facts. Law. None of them align with the decades-long sinister conduct of these Defendants.

So here are their choices:

1. File bankruptcy (Purdue)
2. Settle (all 3)
3. Try to move the trial date (all 3)

Defendants are right about one thing: The State has been saying since the trial date was set that Defendants would do whatever they can—grasp at whatever straws they can find—to avoid sitting in an Oklahoma courtroom and answering for their role in causing Oklahoma's opioid crisis. But this? This is desperate. This is so desperate that Defendants tried to have the Court hear their motion to stay, before any responsive briefing, at a third-party motion to quash hearing where Defendants knew none of the State's counsel was present.

The basis of Defendants' most recent attempt to delay this trial is that the State—under a ***rolling***-production schedule—"continue[s] to . . . ***roll***[] ***out***" document productions. That's right; Defendants complain that the State is producing documents during the fact-discovery window and according to the Court-ordered schedule.

The irony gets worse—much worse.

Defendants complain that the State produced 165,0000 documents totaling 1.59 million pages of documents last week. ***Since that time, Defendants have produced over 480,000 documents totaling over 2.88 million pages.*** That's 2.88 million pages the State could not review when it was preparing to take the 95 depositions it's taken to date. But do you hear the State complaining? No. We're too busy preparing for trial and actually taking depositions.

It gets even worse.

Defendants complain that their experts have not had time to review the 1.59 million pages, produced *prior to* their expert disclosures, before filing their expert disclosures. ***Defendants have produced approximately 13.7 million pages since the State filed its expert disclosures.*** That's 13.7 million pages the State's experts could not consider when they formed their opinions. But do you hear the State complaining? No. We're too busy preparing for trial and actually providing expert disclosures.

Additionally, the accusation that the State's efforts in collecting and producing documents has been less than diligent is just plain wrong. To date, the State has gathered documents from nearly 300 different custodians. The State has produced over 328,000 documents, totaling over 3.2 million pages. The State has produced over 1,000,000,000 lines of data. And the State has produced 80,000 documents (nearly another 1 million pages) that the State has gathered from third parties.

Moreover, the insinuation that the State is hiding some sort of smoking gun from Defendants is ridiculous. The only party with a smoking gun here is Defendants—and they've had it trained on Oklahoma for over two decades. The State did not grow opium poppies. The State did not process opium into active pharmaceutical ingredients. The State did not manufacture opioids. The State did not target veterans. The State did not target legislators. The State did not target doctors. The State did not target nurses. The State did not target pharmacists. The State did not target attorneys general. The State did not target attorneys. The State did not target the media. The State did not get unborn babies—still in their mothers' wombs—dependent on opioids. The Defendants did all that—*and it is so, so bad.* Meanwhile, the State is left trying to clean up

the mess. Any notion that the State, its employees, or its attorneys, are less than diligent in their efforts to address this crisis is offensive.

Even the relief Defendants seek is ironic. They complain that the time for fact discovery is passing them by, but do they ask for more time to complete fact discovery? No. They ask to continue "all pretrial dates ***other*** than the close of fact discovery." They don't actually want more time to review the State's documents and take depositions—and they certainly don't want the State to have more time to review their documents and depose their witnesses. Defendants know all too well what happens when their witnesses are forced to sit in the chair and answer for their lies. They don't want to answer for devastation like Oklahoma babies born dependent on opioids and writhing in pain during a deposition, and they are terrified of the thought of having to do so in an Oklahoma courtroom, live, on-camera, for the world to see.

Defendants know they can't hide anymore. Now they're trying to run.

But Defendants are not just trying to run here; they are filing motions like this all across the country. They know what's coming. And they know all they can do is delay it—like they have tried to do in this case from day one. They wanted to stay discovery for six months while they went through the motions of a motion to dismiss. Then, after discovery began, they halted discovery with their fraudulent removal, costing everyone another three months. And now, as fact discovery is concluding and Defendants realize they are on a collision course with an unwavering trial date, they once more seek to delay the inevitable. Again, it's ironic that the parties who fought so hard to prevent and delay discovery are now the ones complaining that discovery is inadequate. Meanwhile, the State is busy preparing for trial.

The final irony in Defendants' motion is that they filed it together. This week we saw the Teva Defendants file a motion seeking to avoid being associated with their partners at Purdue.

They are so afraid of Purdue's taint that they don't even want to sit together at the same table at trial. They, of course, are more than happy to eat at Purdue's table—buying drugs from Purdue, selling Purdue's drugs, paying Purdue a royalty in exchange for the ability to sell its drugs. And they were more than happy to set the table together—collaborating through the Pain Care Forum to expand the market for their narcotics generally. And, now (and throughout this litigation), they are more than happy to join together in an attempt to avoid answering for their role in causing Oklahoma's opioid crisis. So, which is it? Are they separate, or are they working together? Of course, the State knows the truth: these Defendants have always been working together. They are working together right now under a joint defense agreement. And, once the State is done at trial, the whole world will see that truth too.

There is no reason to move the trial date. Defendants' attempt to do so with this motion is frivolous, desperate, and disingenuous—as is their last-minute request to once again delay their expert disclosures. This Court has been clear: we are going to trial on May 28, 2019. And, as demonstrated here and at every point in this case, the State is going to be there and we're going to be prepared—even if Defendants dump another 50,000,000 pages on us at the close of discovery.

Defendants' motions should be denied, and they should be ordered to immediately produce their expert disclosures in accordance with this Court's Orders under penalty of sanction. It's time to go.

DATED: March 1, 2019

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