IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	
Plaintiff,	
vs.	**Case No. CJ-2017-816** **Judge Thad Balkman**
(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.,**	**William C. Hetherington** **Special Discovery Master** **For Judge Balkman's Consideration**
Defendants.	

THE STATE'S RESPONSE TO THE TEVA DEFENDANTS' OBJECTIONS TO SPECIAL MASTER'S RULINGS ON STATE'S MOTION TO QUASH NOTICES TO TAKE 3230 (C)(5) VIDEOTAPED DEPOSITIONS OF CORPORATE REPRESENTATIVES OF THE STATE

The Teva Defendants' unremarkable Objection raises nothing that warrants reconsideration of the Special Discovery Master's Order quashing their Section 3230(C)(5) deposition notice. In his Order, the Special Master sustained the State's contentions that Teva's notice was improper because it: (1) was largely duplicative as to topics for which the State has already produced a witness; (2) sought privileged information; (3) sought information on topics

that were better suited for expert testimony; (4) constituted improper "contention discovery" in several respects; and (5) contained several topics that were either irrelevant and/or overly broad. What was true then remains true today. Unhappy with the ruling from the Special Master they selected, the Teva Defendants, in essence, seek a "do over" from this Court on issues that were fully briefed, argued, considered and rejected by the Special Master. The Teva Defendants' Objection is more akin to a motion to reconsider, and such motions are not vehicles for a party to reargue arguments that were previously rejected or assert new arguments that should have been raised earlier.

Moreover, the Teva Defendants' Objection is yet another attempt to delay this case. For example, as the State argued at the first hearing, the Teva notice, and their arguments in support, would essentially allow for each of the three defendant families to conduct a separate deposition of every single State witness. That is not what the Discovery Code permits and is not reasonable in this case for the reasons previously argued. Accordingly, for these reasons and those stated below, the Teva Defendants' Objection should be overruled.

ARGUMENT

The Teva Defendants' Objection is dead on arrival both procedurally and substantively. Procedurally, as noted above, their purported objection reads like a motion to reconsider, and the law regarding such motions is persuasive and applicable here. For nearly twenty pages, the Teva Defendants regurgitate arguments that the Special Master fully considered at the January 17, 2019 hearing. They cite no new fact or law. They do not state that the Special Master ignored some part of the record or did not have a complete record in front of him. Thus, the Defendants' Objection should be overruled as it seeks to revisit issues fully addressed by the Special Discovery Master without error.

In his now famous letter to the Oklahoma Bar, retired United States District Judge Wayne Alley pointedly observed "with dismay the alarming practice and regularity with which motions to reconsider are filed after a decision unfavorable to a party's case" and asked whether "there [is] some misapprehension widely held in the bar that our court, in ruling on a motion after it is fully briefed, is just hitting a fungo[.]" Wayne E. Alley, *Letter and Attached Order*, 62 OKLA. B.J. 108, 109 (1991). "Many of the motions," Judge Alley continued, "have as their tenor: 'Aw come one, give us a break,' or 'You ruled against us so *ipso facto* you were wrong,' or 'You just didn't understand the issue,' or its variant 'You are just so stupid that you didn't understand the issue.'" *Id.* The Teva Defendants' Objection reads much the same way. Despite the fact the Special Master specifically determined that Teva's deposition notice was, in myriad ways, duplicative, overly broad, vastly overreaching, and impermissible, they raise the same arguments asserting the opposite. Just as the Special Master overruled the Teva Defendants' arguments on these issues, the State respectfully requests that the Court do the same and overrule Defendants' Objection on its face.

Nonetheless, even were this Court to consider the merits of Defendants' Objection, the result is the same because the Teva Defendants are substantively wrong too:[1]

I. The Oklahoma Discovery Code Disfavors Duplicative Discovery

The Oklahoma Discovery Code states that its provisions "shall be construed, administered and employed by courts and parties to secure the just, speedy and inexpensive determination of every action." Okla. Stat. tit. 12, § 3225. To this end, Section 3230 prohibits a deposition of a person who has been deposed in a case without leave of Court. *See id.* § 3230(A)(2)(A)(l). As the Special Master noted, the practice and procedure for discovery was for the defendant groups to participate in each deposition and propound questions that were not

[1] In this regard, the State adopts and incorporates its Motion to Quash as though fully set forth herein.

duplicative, but particular to that group's facts, circumstances and defense of this case. Teva's notice flouted this rule and sought to depose witnesses who had been deposed where Teva was noticed, present and either participated or had the opportunity to participate. *See* Order of Special Discovery Master at 4 (Jan. 20, 2019) (Exhibit A to Defendants' Objection) ("Here, Teva appears to seek to depose witnesses, many of whom have already been deposed where Teva was noticed, present and did participate or had the opportunity to participate."). Despite this, the Teva defendants' notice seeks, for example, testimony related to abatement and other topics about which previous witnesses—specifically, Jessica Hawkins, Jessica McGuire, and Jeff Stoneking—testified at their respective depositions. Teva was present at *all* of these depositions and made an appearance on the record. They do not get a second opportunity. And, Teva offers zero evidence that these topics were not already covered by the prior State witnesses on these topics.

The Special Master, who has been deeply involved in the discovery process and is in an appropriate position to evaluate the parties' respective claims on this issue, agreed with the State's contentions and quashed several of Defendants' topics for this very reason. *See* Order of Special Discovery Master at 4 (Jan. 20, 2019). Nothing in the Teva Defendants' Objection alters or changes this conclusion. The Special Master was correct to grant the State's Motion to Quash as to those topics addressed in his Order and his decision should be affirmed.

II. Defendants' Notice Included Several Improper Contention Depositions That Were Premature

Several topics in Teva's notice (Topic Nos. 2, 3, 4, 10, 14, 16, 24, 34, 37, and 38) were clearly contention depositions that requested information going to the heart of the State's factual and legal bases for its claims and asking for identification of every single instance the State alleges something occurred. As noted, "[c]ontention discovery, whether in the form of contention interrogatories or contention depositions, can be disruptive mainly because the very nature of

such questions will normally require the help of an attorney to assist the client in providing answers." *BB & T Corp. v. United States*, 233 F.R.D. 447, 449 (M.D.N.C. 2006) (citation omitted). This is problematic because "[t]his type of discovery can add considerable expense to any lawsuit," and "[i]n addition to the extra cost, when lawyers craft responses they will necessarily do so in a way that minimizes jeopardy to their client and, therefore, contention discovery may yield little additional useful information." *Id.* 449-50.[2] Courts often find such discovery unnecessary because "contention discovery essentially requires a party to prepare a trial brief at an earlier time in the litigation process than normally occurs." *Id.* The Special Master referred to this type of deposition as "very distasteful." January 17, 2019 Hearing Transcript at 120:25-121:08, attached as Exhibit A hereto. Courts need a specific reason to require "such an acceleration," because a court may find the "burden to outweigh the benefit." *BB & T Corp., supra.* Typically, "the complaint, answer, disclosures, and discovery will provide sufficient information about a party's position until such time as the filing of dispositive motions or trial briefs." *Id.* Try as it may to reinvent the substance of its discovery requests, Teva's contention deposition topics were improper and the Special Master's Order should be upheld.

Moreover, the topics were premature. Even if a court finds a contention discovery to be necessary (which is rare), it is premature to allow for a contention deposition until the end of discovery. *Id.* at 450. Indeed, Oklahoma law states that courts "may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time." Okla. Stat. tit., 12 § 3233(B). Thus, contention discovery in general is disfavored by courts, whether by interrogatory or deposition, and these topics were and remain premature. As the Special Master ordered, the State should not be required to sit for such depositions until such time as Teva completes its responses to the State's long outstanding

[2] This is counterintuitive to the Discovery Code's goal of securing the just, speedy and inexpensive determination of every action.

discovery requests and has provided witnesses for the remaining depositions. *See* Order at 5. Other than recycled arguments, Defendants have presented no new grounds for review and the Special Master's decision should be affirmed.

III. The Teva Defendants' Notice Was Overly Broad

The Teva Defendants' Objection on this issue overlooks the mandate from Section 3226 that discovery be *reasonably calculated* to lead to admissible evidence and *proportiona*l to the needs of the case. Several topics noticed by Teva were irrelevant and/or overly broad. As observed by the State, the Teva Defendants sought information relating to "[t]he use and abuse in Oklahoma of controlled or regulated substances other than prescription opioids," despite the fact this case is about opioids. The Teva Defendants also sought to inquire about communications between the State and third-party insurers, payors or pharmacy benefits managers; communications between the State and any Oklahoma resident regarding opioid abuse, the State and any Healthcare Provider, and the State and any third-party insurer, payor or pharmacy regarding opioids manufactured by Teva. The Teva Defendants also sought deposition testimony on the entire State's "annual budget." These requests were plainly overbroad, unduly burdensome, and place an unfair burden on the State. The Special Master agreed and granted the State's Motion as to Topic Nos. 8, 19, 21, 24 25 and 27. The Teva Defendants have produced no new grounds for overturning the Special Master's decision and his Order should be affirmed.

IV. The Teva Defendants' Notice Sought Privileged Information

Continuing with their revisionist narrative, the Teva Defendants next argue that they do not seek privileged information, despite the fact the notice sought testimony on the State's investigatory files, pre-suit investigations, and patient data, to which some areas were previously deemed privileged by this Court and the Special Master, and others (i.e., pre-suit investigations)

clearly constitute documents prepared in anticipation of litigation. The Special Master's ruling on this issue was correct and should not be disturbed.

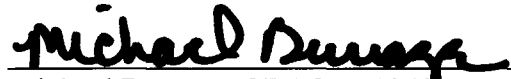
V. The Teva Defendants' Notice Impermissibly Sought Duplicative Expert Testimony

The Teva Defendants' Objection contends they only seek factual information as to the State's damages claim, its decision to reimburse any claims made to Soonercare or any other state-funded medical reimbursement plan for the Teva Defendants and Generic Actavis Defendants' products, and the identification of any false or fraudulent claims for the Teva Defendants and Generic Actavis Defendants' products made to these plans. However, the Teva Defendants conveniently ignore the fact that the State's damages model and issues related to causation are topics for which the State designated ***expert*** witnesses and provided expert disclosures. As the Stated noted in its Motion to Quash, deposing an additional corporate representative on these issues would be duplicative, cumulative, and not proportional to the needs of the case, in derogation of Oklahoma law. The Special Master weighed Defendants' need for evidence against these stated policies, and rightfully determined that Defendants' notice was duplicative and essentially sought testimony from the State's expert witnesses. The Teva Defendants have presented no new evidence or argument on this issue and the Special Master's Order should be affirmed.

CONCLUSION

WHEREFORE, the State respectfully requests that the Court overrule the Teva Defendants' Objection, affirm the Special Discovery Master's Order of January 20, 2019, and grant such further relief deemed equitable and just.

Respectfully submitted,



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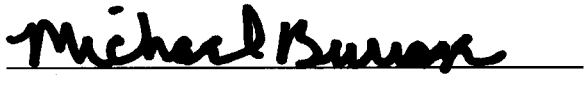

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. (1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (9) JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; AND (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	Case No. CJ-2017-816

EXHIBIT
A

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON JANUARY 17, 2019
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

disclosures. You're going to hear more about that from Mr. Whitten later.

They have all the claims data. They have all the services data. They have our expert reports. If they want to depose an expert about what they say, they can do that. Having two witnesses, again, sit for the same thing, doesn't make sense. It's completely unnecessary. It's burdensome and cumulative.

There are several other topics that fall in this category, your Honor. We've kind of drifted over into expert testimony areas where we said in our brief that a lot of what they're asking for, again, are things that we've said time and time again are subject to expert testimony.

We've provided them our disclosures. We've provided them dates that every single one of those experts can be deposed. And what we said in our brief, your Honor, is that it doesn't make sense to have, again, two people sit to testify about the same thing; depose our experts.

Topics 6, 7, and 9 are all about expert testimony. They're about damages and causation, the exact types of things that this Court has already addressed with respect to the interrogatories and said that we've got a scheduling order in place, it says when expert disclosures are going to happen, says when expert discovery is going to close, and that's what we're going to go with. So that's what we're doing.

The next category of topics, your Honor, falls into what

we call contention depositions. It's a lot like a contention interrogatory, except you say you want a witness to say everything instead of writing it down on paper.

And I see you smiling. And I don't know if it's because you have a question or if it's because you've dealt with these a lot before, but --

[redacted]

MR. PATE: Well, maybe I'll just move on then. I agree that they're distasteful.

THE COURT: I mean -- well, go ahead.

MR. PATE: Here's what I'll say about these, Judge. I think that the ones that they've asked for here are in large part a waste of time. I think that the case law says that they're burdensome. I think the case law actually says that an interrogatory is better than a contention deposition.

What the cases all agree on is that if you are going to do this and if the Court chooses to allow it, then it needs to happen at the end of the discovery.

THE COURT: Yeah. And let me sort of help frame a response on this one. You know, of course, this is a unique case. And in the past when I've dealt with this, it's always been, Look, let's do this through interrogatory answers and then get the interrogatory answer done, and then if it is a witness that's going to be called to testify, whether it's a