



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER,)
ATTORNEY GENERAL OF OKLAHOMA)
CLEVELAND COUNTY } S.S.

Plaintiff,

FILED

Case No. CJ-2017-816

vs.

FEB 07 2019

PURDUE PHARMA L.P., et al,

In the office of the
Court Clerk MARILYN WILLIAMS

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR ORDER PERMITTING SERVICE OF RFAs
TO AUTHENTICATE DOCUMENTS PRODUCED IN DISCOVERY**

Defendants Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc., respectfully submit this Opposition to the State's motion for an order permitting service of requests for admission to authenticate documents produced in discovery. The motion should be denied as moot. The parties already resolved the issue of whether the parties may serve extra RFAs to determine whether a document is authentic.

The State's motion "seeks a narrow Order that permits the parties to serve requests for admission, which seek only to authenticate documents produced in discovery, that do not count toward the parties' total allotment of 30 requests for admission." (Mot. at 1-2.) The parties discussed this issue with the Special Discovery Master almost a year ago and resolved it by agreeing –without need for any order – that the parties may exchange extra RFAs on

authenticity:

MR. DUCK: But also, the RFAs, we would like to have – and maybe the defendants can stipulate to this today – an agreement or an order that the RFA count isn't affected by just simple requests for admissions on the authenticity or admissibility of documents; to have those unlimited so we avoid issues at, you know, trial down the road. This is really just looking forward to trial. And have the RFAs, at least the 30 that are in the rules for each party to respond to, be substantive RFAs. That's just another suggestion.

THE COURT: I absolutely don't see a problem with that. Mr. Coats? Mr. McCampbell? Ben? Do you understand the point? I think I do.

MR. ODOM: If he's asking that none of the RFAs be simply admitted or denied, that this is the accurate record of the documents submitted to you or whatever?

THE COURT: That's the way I understand it.

MR. ODOM: I don't think we have a problem with that if that's what he's addressing here.

MR. DUCK: Yes, your Honor. Authenticity and admissibility. We don't want to be arguing about the admissibility of a document if there's no argument, and a great way to deal with that is through requests for admission. They're fairly easy to answer and beneficial to both sides because you know what the documents are about before trial because the other side's asking you about their authenticity or admissibility. So it seems to make sense. I don't think it's controversial. Maybe it is.

MR. BRODY: I think if we're talking about admissibility, it might be controversial. But *if we're talking about your standard requests for admission to authenticate a document and to clear the authentication hurdle, which is obviously just one step in the process of whether it's admissible, that's fine.* I don't think we're going to be -- I hope we're not going to see RFAs saying, Tell us that this is admissible at trial before we've gotten it to where we can see the context or if something's being offered.

THE COURT: *That makes sense as well. In other words, authentication, not a problem, I don't think.* I don't see it as a problem, because no matter what we do, there's going to be requests to -- you know, motions in limine and requests to strike certain exhibits. *Authentication, not a problem.* We'll have to, I think, just let the process take its course as it relates to whether or not a document's admissible ultimately after discovery is completed. You know, that could be a -- I mean, I get that could be

a fairly significant period of time, I guess, prior to trial, but again, that's the nature of this case. I don't see how we can really avoid that.

MR. DUCK: Yes, your Honor.

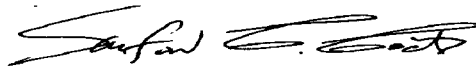
THE COURT: Anything unclear there? I mean, again, do I need an order of any kind or clarification on the record for that? [No response.] All right. Thank you, Mr. Brody. Thank you, sir, very much.

(March 9, 2018 H'rg Tr. at 46:13-48:17 (attached as Ex. A) (emphasis added).)

Notably, an RFA about the authenticity of a particular document produced by a party is different than agreeing categorically that every document produced by a party is authentic, as raised by the State. (Mot. at 3.) Among other things, the parties have produced responsive documents that they obtained from third parties or from the Internet. Either way, the parties should be able to cooperatively exchange lists of trial exhibits and resolve whether there is any dispute about the authenticity of a document that is proposed to be used at trial.¹

Date: February 7, 2019

Respectfully submitted,



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¹ Whether any particular document is admissible under other rules of evidence is not at issue.

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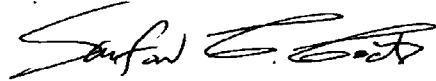
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February 2019, I caused a true and correct copy of the following:

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR ORDER PERMITTING SERVICE OF RFAs
TO AUTHENTICATE DOCUMENTS PRODUCED IN DISCOVERY**

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



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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.)

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK)
- COMPANY;)
- (4) TEVA PHARMACEUTICALS)
- USA, INC;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS,)
- INC.;)
- (8) ORTHO-McNEIL-JANSSEN)
- PHARMACEUTICALS, INC.,)
- 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.)

TRANSCRIPT OF PROCEEDINGS
HAD ON MARCH 9, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.
RETIRED ACTIVE JUDGE and DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

EXHIBIT A

1 MR. DUCK: Sure, your Honor.

2 THE COURT: I mean, I'm trying to think about -- I
3 mean, I don't know how to avoid this. I mean, this is the
4 heart of the discovery issues in this kind of a case, and you
5 can't avoid it.

6 MR. DUCK: Sure.

7 THE COURT: Go ahead.

8 MR. DUCK: Just one other point. I think we will
9 need more RFPs, and we can deal with that as it comes up.
10 Right now I don't think that it's something that we need to
11 nail down if the Court would like to leave it the way it is
12 right now. 50 was our recommendation for a total.

13 But also, the RFAs, we would like to have -- and maybe the
14 defendants can stipulate to this today -- an agreement or an
15 order that the RFA count isn't affected by just simple requests
16 for admissions on the authenticity or admissibility of
17 documents; to have those unlimited so we avoid issues at, you
18 know, trial down the road. This is really just looking forward
19 to trial. And have the RFAs, at least the 30 that are in the
20 rules for each party to respond to, be substantive RFAs.
21 That's just another suggestion.

22 THE COURT: I absolutely don't see a problem with
23 that.

24 Mr. Coats? Mr. McCampbell? Ben? Do you understand the
25 point? I think I do.

1 MR. ODOM: If he's asking that none of the RFAs be
2 simply admitted or denied, that this is the accurate record of
3 the documents submitted to you or whatever?

4 THE COURT: That's the way I understand it.

5 MR. ODOM: I don't think we have a problem with that
6 if that's what he's addressing here.

7 MR. DUCK: Yes, your Honor. Authenticity and
8 admissibility. We don't want to be arguing about the
9 admissibility of a document if there's no argument, and a great
10 way to deal with that is through requests for admission.

11 They're fairly easy to answer and beneficial to both sides
12 because you know what the documents are about before trial
13 because the other side's asking you about their authenticity or
14 admissibility. So it seems to make sense. I don't think it's
15 controversial. Maybe it is.

16 MR. BRODY: I think if we're talking about
17 admissibility, it might be controversial. But if we're talking
18 about your standard requests for admission to authenticate a
19 document and to clear the authentication hurdle, which is
20 obviously just one step in the process of whether it's
21 admissible, that's fine.

22 I don't think we're going to be -- I hope we're not going
23 to see RFAs saying, Tell us that this is admissible at trial
24 before we've gotten it to where we can see the context or if
25 something's being offered.

1 THE COURT: That makes sense as well. In other
2 words, authentication, not a problem, I don't think. I don't
3 see it as a problem, because no matter what we do, there's
4 going to be requests to -- you know, motions in limine and
5 requests to strike certain exhibits. Authentication, not a
6 problem. We'll have to, I think, just let the process take its
7 course as it relates to whether or not a document's admissible
8 ultimately after discovery is completed. You know, that could
9 be a -- I mean, I get that could be a fairly significant period
10 of time, I guess, prior to trial, but again, that's the nature
11 of this case. I don't see how we can really avoid that.

12 MR. DUCK: Yes, your Honor.

13 THE COURT: Anything unclear there? I mean, again,
14 do I need an order of any kind or clarification on the record
15 for that?

16 All right. Thank you, Mr. Brody. Thank you, sir, very
17 much.

18 Now have we solved all of the modification of default
19 discovery limits?

20 MR. DUCK: I think so. Your Honor, one other point
21 that's kind of related. Mr. Pate brought up the issue of a
22 page limit to discovery disputes. I think it makes sense from
23 an efficiency standpoint, and based on what Judge Balkman and
24 your Honor have said, efficiency's kind of the watchword of
25 this whole process.