IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., *et al.*, Defendants.	Case No. CJ-2017-816 Judge Thad Balkman William C. Hetherington Special Discovery Master

DEFENDANT JANSSEN'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF'S RESPONSES TO ITS FIRST REQUESTS FOR ADMISSION AND THIRD SET OF INTERROGATORIES

Janssen showed in its opening brief why its outstanding discovery requests are proper under Oklahoma discovery rules and this Court's prior orders. The State's Opposition does nothing to justify its continuing obstruction of Janssen's proper discovery into the facts underpinning the State's allegations. Instead, the State misreads the Court's prior orders and mischaracterizes Janssen's discovery requests.

We are now four weeks from the close of fact discovery. The time for delay is long past over. Janssen's outstanding RFA and Interrogatories simply ask the State to identify the facts that underlie the State's pleadings.

Janssen requests that the State (1) identify which doctors the State claims Janssen misled and identify the allegedly misleading statements, (2) identify which doctors the State alleges could not accurately counsel their patients regarding opioids due to Janssen's allegedly misleading statements, and (3) identify any opioids claims the State denied from doctors facing prosecution

or investigation for their prescribing behaviors, the existence of which is public record or not privileged or confidential, or admit that the State reimbursed such claims. The Court should order the State to respond immediately to Janssen's RFA No. 3 and Interrogatories Nos. 20, 21, and 22.[1]

I. ARGUMENT

In response to Janssen's Motion to Compel, the State makes two arguments, each of which misreads the Court's orders and Janssen's Interrogatories and RFAs.

First, the State argues that it need not identify any doctors or claims in response to Janssen's discovery requests because the Court has held that "individualized" discovery is improper. This is not true—the Court has never held that discovery into facts the State alleges is improper merely because a discovery request seeks the identity of certain doctors or claims. Rather, in response to a discovery request for all opioids claims data, the Court held that the State did not need to produce the claims data with unmasked physician and patient identifying information. *See* Order, *State of Oklahoma ex rel. Hunter v. Purdue Pharma L.P. et al.*, CJ-2017-816 (October 10, 2018), at 2;

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[1] Janssen's RFA No. 3 reads: "Admit that the State of Oklahoma reimbursed Claims for Opioid prescriptions that were written by Doctors and submitted for reimbursement while the State of Oklahoma was aware that the Doctor was subject to a pending civil, criminal, or administrative proceeding or subject to an investigation for their Prescribing Behaviors." Email of January 30, 2019, Exhibit F to Janssen's Motion to Compel.

Janssen's Interrogatory No. 20 reads: "To the extent Your response to Request for Admission No. 1 is anything other than an unqualified admission, Identify all Oklahoma Doctors who were misled, and for each, the specific Janssen Communication(s) that misled the Doctor." Janssen's Third Set of Interrogatories, Exhibit B to Janssen's Motion to Compel, at 5.

Janssen's Interrogatory No. 21 reads: "To the extent Your response to Request for Admission No. 2 is anything other than an unqualified admission, Identify all 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 Janssen." *Id.*

Janssen's Interrogatory No. 22 reads: "Identify all Claims for reimbursement of Opioid prescriptions, if any, that were denied by You after they were written by a Doctor who was subject to a civil, criminal, or administrative proceeding or subject to investigation, the existence of which is public record or not privileged or confidential, for their Prescribing Behaviors." Email of January 30, 2019, Exhibit F to Janssen's Motion to Compel.

Request No. 6, Janssen's First Set of Requests for Production, Ex. E to Janssen's Motion to Compel, at 7. Janssen's instant discovery requests are entirely different in scope and type from the discovery requests at issue in the Court's prior order.

The State has admitted to Janssen that it can—so it says—identify doctors it alleges Janssen misled and doctors who it claims could not properly counsel their patients regarding the risks and benefits of opioids due to Janssen's allegedly misleading communications. *See* Plaintiff's First Supplemental Response to Janssen's First Requests for Admission, Exhibit G to Janssen's Motion to Compel, at 8. But it refuses to say who those doctors are. This is central to this case. The State alleges that Janssen misled doctors; Janssen is entitled to know who those doctors are so that it can test the State's allegations. That the State is unwilling to provide that information speaks volumes about the strength of it claims. But its inability to provide any details supporting its allegations is no basis for its discovery failures. Put simply, no prior order of the Court and no aspect of Oklahoma law allows the State to refuse to provide this essential information. The Court should order the State to produce this information to Janssen as proper and relevant discovery into the State's allegations.

Second, the State argues that Janssen's RFA No. 3 and Interrogatory No. 22 are improper under the Court's orders on the ground that the Court has held that the production of files from investigations into doctors' prescribing behaviors is outside of the scope of proper discovery. But this argument ignores the fact that Janssen's RFA No. 3 and Interrogatory No. 22 request only non-privileged and non-confidential information the Court has explicitly held to be discoverable. Plaintiffs' objection is therefore entirely beside the point and should be rejected.

A. Janssen's Request for the Factual Underpinnings of the State's Allegations are Proper Under the Court's Claims Data Order.

The State claims that the Court has held that "individualized information related to prescribers and patients" is outside the proper scope of further discovery. Opposition at 3. But the State's argument misreads the Court's order regarding claims data.

The Court's claims data order does not bar Janssen's instant discovery requests. On October 10, 2018, the Court ruled that Defendants already have access to claims data (with personal information redacted). The Court stated that it was "satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery" because of Defendants' access to various databases and possession of "approximately 9,000,000 pages of prescriber, prescription and patient information with personal information redacted." Order, *State of Oklahoma ex rel. Hunter v. Purdue Pharma L.P. et al.*, CJ-2017-816 (October 10, 2018), at 2. The Court therefore held that State need not produce a "full disclosure of all claims data information . . . in the scope sought to be compelled by Defendants" in response to a discovery request for all opioids claims data. *See* Order, *State of Oklahoma ex rel. Hunter v. Purdue Pharma L.P. et al.*, CJ-2017-816 (October 10, 2018), at 2.

The State's attempt to conflate a ruling regarding "discovery into approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers" with Janssen's instant discovery requests regarding ***details about the State's allegations*** is unconvincing and misleading. *See id.* Janssen's instant requests are entirely different in nature and scope—they seek the factual underpinnings of the State's pleadings and impose far less burden on the State than discovery into "approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers." *See id.*

Contrary to the State's assertions, the Court never relieved the State of its obligation to respond to discovery requests because those requests ask the State to identify the subset of doctors

that form the basis of the State's pleadings. The Court has never held that the State may conceal the identity doctors whom ***the State itself alleges*** were misled (let alone conceal the allegedly misleading communications the State alleges Janssen made to those doctors). Nor has the Court held that the State may ignore Janssen's request that the State admit that it reimbursed doctors for opioid claims while those doctors were facing prosecution or investigation or identify claims the State denied (to the extent the existence of such investigations is public record or not privileged or confidential).

In an attempt to fit Janssen's instant discovery requests within the ambit of the Court's prior order, the State also mischaracterizes Janssen's discovery requests. The State claims that Janssen's RFAs and Interrogatories are an attempt to "obtain confidential prescriber and patient data" and "to force the State to take on the burden of marshaling individualized proof related to patients and prescribers." Opposition at 3. Of course, the State is correct that Janssen asks the State to identify certain relevant doctors. Yet the State fails to note that Janssen's discovery request seek information regarding the identity of doctors only to the extent ***the State alleges*** that Janssen misled them or they were unable to counsel their patients accurately about opioids.

The State's is also incorrect that Janssen's Interrogatories place improper burdens of proof on the State. *See* Opposition at 3. Janssen's Interrogatories do not create *any* burdens of proof for the State—indeed, Janssen does not have the power to create burdens of proof for the State, through its discovery requests or otherwise. Instead, Janssen asks for facts underlying the State's allegations—and the State admits that it possesses that information. *See* Plaintiff's First Supplemental Response to Janssen's First Requests for Admission, Exhibit G to Janssen's Motion to Compel, at 8.

The State alleges that Janssen misled doctors, who were then unable to counsel their patients accurately about opioids. The State also claims it can identify those doctors and that it reimbursed improper opioids claims due to Janssen's allegedly misleading statements. Yet the State continues to refuse Janssen's discovery requests for facts regarding those very allegations. The Court should order the State to give Janssen that information.

B. Janssen's RFA No. 3 and Interrogatory No. 22 Request Only Non-Privileged and Non-Confidential Information that the Court has Already Held to be Discoverable.

The State also argues that Janssen requests information from files from investigations into doctors that the Court has held to be outside of the scope of proper discovery. That is not true—Janssen has taken care to ensure that its RFA No. 3 and Interrogatory No. 22 stay within the bounds of material the Court has explicitly held to be discoverable. As the State acknowledges, the Court ordered the State to produce "non-sealed pleadings and other documents filed with a tribunal" related to civil, criminal, or administrative proceedings against doctors for their prescribing behaviors. Opposition at 4 n.2; *See* Order, *State of Oklahoma ex rel. Hunter v. Purdue Pharma L.P. et al.*, CJ-2017-816 (December 20, 2018), at 2. The Court has also ordered the State to "produce materials from [investigatory] files that are of public record or are not privileged or confidential." Order, *State of Oklahoma ex rel. Hunter v. Purdue Pharma L.P. et al.*, CJ-2017-816 (January 17, 2019), at 2.

Janssen's RFA No. 3 and Interrogatory 22 request only information within these bounds. Janssen's RFA No. 3 simply asks for an admission that the State reimbursed opioid claims for doctors facing prosecution or investigation for their prescribing behaviors and thus does not seek impermissible or privileged material. And Janssen's Interrogatory No. 22 explicitly carves out an exception for privileged or confidential material. Janssen's Interrogatory No. 22 asks the State to identify claims the State denied only with respect to doctors subject to "a civil, criminal, or

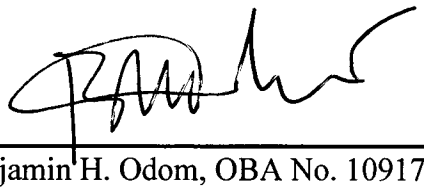
administrative proceeding or subject to investigation, ***the existence of which is public record or not privileged or confidential***." Email of January 30, 2019, Exhibit F to Janssen's Motion to Compel (emphasis added).

The State cites the Court's concerns that "production of criminal investigatory files" is likely to jeopardize confidential prosecutor work product. *See* Opposition at 4. But the Court's concerns regarding prosecutor work product do not apply to Janssen's RFA No. 3 and Interrogatory No. 22 for two reasons. First, Janssen does not request any files containing prosecutor work product. Instead, Janssen asks the State to admit it has reimbursed claims for doctors facing investigation or prosecutions or identify claims the State has denied. Second, Janssen only asks the State to identify claims from doctors under investigation ***to the extent investigations into those doctors are matters of public record and not privileged or confidential***. Contrary to the State's assertion, nothing in the Court's October 22, 2018 order, or any other order, indicates that the State itself need not examine records in its possession to develop a response to Janssen's proper discovery requests. *See* Opposition at 4. Janssen's RFA No. 3 and Interrogatory No. 22 in no way require the State to divulge any protected prosecutor work product or any other privileged or confidential material.

II. CONCLUSION

For the foregoing reasons, the Court should order the State to respond immediately to Janssen's RFA No. 3 and Interrogatories Nos. 20, 21, and 22.

Respectfully submitted,



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CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), and by agreement of the parties, this is to certify on February 11th, 2019, a true and correct copy of the above and foregoing has been served via electronic mail, to the following:

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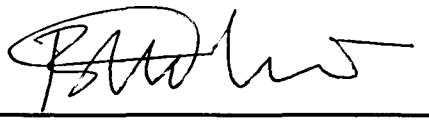

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