



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 §
- (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. §

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

JAN 31 2019

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

The Honorable Thad Balkman

JURY TRIAL DEMANDED

**Discovery Motion Submitted to:
Special Discovery Master
The Honorable William C.
Hetherington, Jr.**

**PLAINTIFF’S MOTION FOR ORDER PERMITTING SERVICE OF REQUESTS FOR
ADMISSION TO AUTHENTICATE DOCUMENTS PRODUCED IN DISCOVERY**

Pursuant to 12 OKLA. STAT. §3236, Plaintiff, the State of Oklahoma (the “State” or “Plaintiff”), files this Motion for Order Permitting Service of Requests for Admission to Authenticate Documents Produced in Discovery (the “Motion”). The 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 towards the parties’ total allotment of 30 requests for

admission set forth in 12 OKLA. STAT. §3236(A). As millions of documents have been produced in this action to date and trial is set to begin in a matter of months, such an Order is practical and necessary. And, such an Order is fair, as it benefits all parties the same. For the reasons below, the State respectfully requests the Motion be granted.

1. To date, approximately 8.6 million documents, including at least 48 million pages, have been produced by the parties in this litigation.¹ Fact discovery closes on March 15, 2019, and trial is set to begin on May 28, 2019. The Court recently glimpsed a small snapshot of the volume of documents involved in this litigation—the information produced in connection with the State’s expert witnesses—and that information, alone, filled part of the courthouse, floor-to-ceiling, in boxes.

2. Given these realities, the State seeks the Court’s approval of a simple and narrow procedure that will substantially benefit all parties and the Court in preparing this matter for trial. Specifically, the State seeks an Order that permits all parties to serve narrow requests for admission that seek *only* to establish the authenticity of documents produced in discovery. Such requests are the most practical, efficient, and economical means through which the parties can establish what should otherwise be an uncontroversial proposition: that the documents a party produced in discovery are authentic. *See, e.g.*, 12 OKLA. STAT. §§2901-2902.

3. Presently, however, the “number of requests for admissions for each party is limited to thirty.” 12 OKLA. STAT. §3236(A). If a party believes that more than thirty such requests are necessary in a given case, the party “shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional

¹ These numbers exclude the more than 100,000 documents produced by non-parties to date.

requests.” *Id.* Clearly, thirty requests cannot account for the millions of documents produced in this unique matter. Because the requirements of §3236(A) are easily satisfied here, the State requests that the Court order that requests for admission seeking *only* to establish the authenticity of documents shall not count against the 30-request limit.

4. First, counsel for the State reached out to counsel for Defendants and proposed that the parties stipulate to the authenticity of documents each party produced in discovery; but Defendants have yet to substantively respond. Given the time-sensitive nature of preparing this matter for trial, the unique circumstances of the discovery process in this case, the time and expense the State (and Defendants) will need to incur to establish authenticity on a document-by-document basis in depositions, and what should be the uncontroversial nature of this request, the State simply cannot afford to keep waiting on a response.

5. Second, as shown above, the unique nature of discovery in this action, coupled with the millions of documents produced, provides good cause to depart from the typical 30-request limit. Every party is preparing this case for trial. Every party must establish that documents produced by another party are authentic—*i.e.*, what they purport to be—prior to trial. And, absent the Court allowing the unlimited use of simple requests for admission to establish these uncontroversial predicate facts, every party will be forced to needlessly expend substantial amounts of time and resources in endless and futile depositions that ask no substantive questions of the witnesses. Good cause exists to grant the State’s Motion.

6. Third, the basic additional requests the State seeks permission from the Court to serve will simply seek to establish the authenticity of documents produced by a party in discovery.

7. Absent an outright stipulation as to authenticity of documents produced by a party—to which the State has offered to agree but has not been taken up on—, any alternative

procedure *in this case* would be a futile endeavor that needlessly wastes the valuable time and resources of the parties, witnesses, counsel, and Court. For example, there are not enough days left to attempt to depose the sponsoring witness of each of the millions of documents produced to date. This would take weeks, if not months or years, of consecutive 6-hour daily deposition sessions. On the other hand, enabling the parties to serve simple written requests for admission that seek only to establish the authenticity of documents produced by the responding party represents a reasonable and efficient procedure that will substantially benefit each party as they prepare for trial. Such a procedure is routinely agreed to among parties. And, this procedure will assist the Court and counsel in streamlining presentation of the facts to the Court and jury in this action. Of course, any party may still deny such a request,² and a party will preserve any evidentiary objections to the admissibility of such documents at trial.

8. A Proposed Order granting the State's Motion is attached hereto as Exhibit 1.

For the reasons above, the State respectfully requests the Court grant the Motion.

² Refusing to admit the genuineness of a document later proved to be authentic at trial, however, can result in an order requiring the payment of reasonable expenses, including reasonable attorney fees. 12 OKLA. STAT. §3237(D).

DATED: January 31, 2019

Respectfully submitted,



Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
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

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
Trey Duck, OBA No. 33347
Drew Pate, *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@npraustin.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 31, 2019 to:

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

Patrick J. Fitzgerald
R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

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

Benjamin H. Odom
John H. Sparks
Michael Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 73072

Robert S. Hoff
WIGGIN & DANA, LLP
265 Church Street
New Haven, CT 06510

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

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
Paul A. Lafata
Jonathan S. Tam
Lindsay N. Zanello
Bert L. Wolff
Marina L. Schwartz
Mara C. Gonzalez
DECHERT, LLP
Three Byant Park
1095 Avenue of Americas
New York, NY 10036-6797

Robert G. McCampbell
Nicholas Merkley
Jeffrey A. Curan
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Brian M. Ercole
Melissa M. Coates
Martha A. Leibell
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131

Jeffrey A. Barker
O'MELVENY & MEYERS
610 Newport Center Dr.
Newport Beach, CA 92660

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

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
O'MELVENY & MYERS LLP
7 Time Square
New York, NY 10036

Amy Riley Lucas
Lauren S. Rakow
Jessica L. Waddle
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067

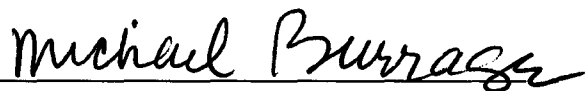
Britta Erin Stanton
John D. Volney
John Thomas Cox III
Eric Wolf Pinker
Russell G. Herman
Samuel B. Hardy, IV
Ruben A. Garcia
Andrea Brown
Elizabeth Y. Ryan
Patrick B. Disbennett
LYNN PINKER COX & HURST LLP
2100 Ross Avenue
Suite 2700
Dallas, TX 75201

Larry D. Ottaway
Amy Sherry Fischer
Andrew Bowman
Jordyn L. Cartmell
**FOLIART, HUFF, OTTAWAY &
BOTTOM**
201 Robert S. Kerr Ave, 12th Floor
Oklahoma City, OK 73102

Eric W. Snapp
Nathan E. Hoffman
DECHERT, LLP
Suite 3400
35 West Wacker Drive
Chicago, IL 60601

William W. Oxley
DECHERT LLP
U.S. Bank Tower
633 West 5th Street
Suite 4900
Los Angeles, Los Angeles, CA 90071-2013

Benjamin Franklin McAnaney
Cory A. Ward
Chelsea M. Nichols
Meghan R. Kelly
Will W. Sachse
Hope S. Freiwald
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104



Michael Burrage

EXHIBIT 1

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR ORDER PERMITTING SERVICE OF REQUESTS FOR ADMISSION TO AUTHENTICATE DOCUMENTS PRODUCED IN DISCOVERY

**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	§	Case No. CJ-2017-816
JANSSEN PHARMACEUTICALS, INC.;	§	
(9) JANSSEN PHARMACEUTICA, INC.,	§	The Honorable Thad Balkman
n/k/a JANSSEN PHARMACEUTICALS, INC.;	§	
(10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,	§	
f/k/a ACTAVIS, INC., f/k/a WATSON	§	JURY TRIAL DEMANDED
PHARMACEUTICALS, INC.;	§	
(11) WATSON LABORATORIES, INC.;	§	
(12) ACTAVIS LLC; and	§	Special Discovery Master
(13) ACTAVIS PHARMA, INC.,	§	The Honorable William C.
f/k/a WATSON PHARMA, INC.,	§	Hetherington, Jr.
	§	
Defendants.	§	

**ORDER GRANTING PLAINTIFF’S MOTION FOR ORDER PERMITTING SERVICE
OF REQUESTS FOR ADMISSION TO AUTHENTICATE DOCUMENTS PRODUCED
IN DISCOVERY**

Pending before the Court is Plaintiff’s Motion for Order Permitting Service of Requests for Admission to Authenticate Documents Produced in Discovery (the “Motion”). For the reasons further set forth in the Motion, the Court finds good cause exists and **grants the Motion**.

By granting the Motion, the Court holds and declares that: (1) the parties may serve requests for admission that seek to establish the authenticity of documents; and (2) any such requests do not and will not count towards the 30-request limitation on requests for admission set forth in 12 OKLA. STAT. §3236(A).

It is so **ORDERED** this ____ day of _____, 2019.

Hon. William C. Hetherington, Jr.
Special Discovery Master