STATE OF CLEVELAND COUNTY } S.S.
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FILED
JAN 10 2019
In the office of the
Court Clerk MARILYN WILLIAMS

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

PURDUE'S OPPOSITION TO THE STATE'S MOTION TO RECONSIDER DECEMBER 26, 2018 ORDER SUSTAINING PURDUE'S MOTION TO QUASH DEPOSITION NOTICES

The State has failed to establish that reconsideration of the Special Discovery Master's order dated December 26, 2018 (the "Order") is warranted. The State cannot point to any change or error in the controlling law, any new evidence previously unavailable, or any manifest injustice from the Order. On the contrary, the Special Discovery Master correctly determined that: (i) the State's notices seeking to depose Jonathan and Mortimer D.A. Sackler as corporate representatives of Purdue Pharma, Inc., Purdue Pharma, L.P., and The Purdue Frederick Company ("the Notices") are improper because Jonathan and Mortimer D.A. Sackler do not currently serve as directors, officers or agents of Purdue Pharma L.P. and The Purdue Frederick Company, and (ii) it is "premature to find that either [Jonathan or Mortimer D.A.] Sackler has ***unique and independent*** knowledge of the claim related conduct that cannot be explored through witnesses Purdue has already designated or witnesses Purdue represents," and that the State may renew its request for their depositions as to "specific areas of relevant factual knowledge, ... [i]f necessary," on February 14, 2019. Order at 3 (emphasis added). The Special

Discovery Master should deny the State's Motion for Reconsideration ("Motion" or "State's Reconsid. Mot."), which fails to cite a single case, for three principal reasons.

First, the State's Motion merely rehashes arguments it previously made or advances arguments it could have made in its underlying Motion to Quash briefing. *See* Motion to Quash briefing, attached hereto as Ex. A. This is improper on a motion for reconsideration. As it did in its underlying briefing, the State's Motion seeks to depose Jonathan and Mortimer D.A. Sackler because of their family affiliation and alleged status as beneficial owners of Purdue, not because of any unique information they supposedly may have about Purdue that is relevant to this litigation. The State made the exact same argument before and the Special Discovery Master properly rejected it – and it should do so again. Tellingly, the State's Motion does not cite to ***any*** law in support of its argument on reconsideration.

Second, the State has no basis to depose Jonathan Sackler as a corporate representative of Purdue Pharma Inc. because he no longer sits on its board. Courts have recognized that a witness cannot be called to testify as a corporate representative if he or she is no longer a director or managing agent of the corporation. Further, there is no dispute that Jonathan Sackler's decision to step down from the board of Purdue Pharma Inc. predated the Notice, meaning that his resignation was not for the purpose of avoiding testimony.

Third, notwithstanding the State's demand that "these depositions should be conducted ***now***," State's Reconsid. Mot at 4-5 (emphasis in original), the State does not identify any legitimate urgency or prejudice that will result from the Order. The Order reasonably provides that after the completion of corporate representative testimony on the 40 topics identified by the State, the State can depose Jonathan and Mortimer D.A. Sackler ***if and only if*** it can establish by

February 14, 2019 that there are gaps in the record for which either of these individuals has unique and independent knowledge.

ARGUMENT

I. THE STATE DOES NOT MEET THE STANDARD FOR RECONSIDERATION.

Under Oklahoma law, a motion for reconsideration is typically viewed under the standard of a motion for new trial or a motion to vacate. *See White v. White*, 2005 OK CIV APP 99, ¶ 9, 128 P.3d 552, 554; *Ford v. Tulsa Pub. Sch.*, 2017 OK CIV APP 55, ¶ 9, 405 P.3d 142, 145 (treating motion to reconsider, which "does not technically exist within the nomenclature of Oklahoma practice," as a motion for new trial). Under this framework, the State's Motion is warranted only under limited circumstances, such as an irregularity or misconduct by Purdue or the Special Discovery Master, a change or error in the controlling law, new evidence previously unavailable, or a clear error in or manifest injustice from the Special Discovery Master's Order. *See* Okla. Stat. Ann. tit. 12, § 651; *Lewis v. Inman*, 2018 OK CIV APP 66, ¶¶ 24, 34, 429 P.3d 695, 701, 703.[1] In other words, "a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law," but is "not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

The State has offered no evidence suggesting that there was any irregularity in the proceedings before the Special Discovery Master or any misconduct by Purdue. In addition, the State does not even contend that there has been an intervening change or error in law or that

[1] This standard is similar to the standard required under federal law for a motion to reconsider, which requires an intervening change in the controlling law, new evidence previously unavailable, or the need to correct clear error or prevent manifest injustice. *See Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); Fed. R. Civ. P. 54(b). Oklahoma courts may look to federal authority for guidance in interpreting state statutes. *Heffron v. Dist. Court Oklahoma Cty.*, 2003 OK 75, ¶ 13, 77 P.3d 1069, 1076.

there is new evidence that was previously unavailable. The State has further set forth no valid reason that should lead the Special Discovery Master to conclude that there was a manifest injustice that resulted from his Order. The State's Motion should therefore be denied.

Moreover, the State does not contest the Special Master's determination that Jonathan and Mortimer D.A. Sackler are not properly subject to deposition notices on behalf of Purdue Pharma L.P. or The Purdue Frederick Company. That decision should thus remain undisturbed.

A. The Special Discovery Master Correctly Held That Jonathan and Mortimer D.A. Sackler Cannot Be Required to Testify Because The State Has Not Identified Any Unique and Independent Knowledge That They Have About the Issues in this Case.

As the Special Discovery Master recognized, and the State does not dispute, a deposition notice for a corporate representative is improper and should be quashed where the corporate representative does not have unique and independent knowledge. *See* Order at 2; *see also* *Thomas v. Int'l Bus. Machs.*, 48 F.3d 478, 483 (10th Cir. 1995) (protective order warranted when plaintiff did not "demonstrate that the information she seeks to obtain from [executive] could not be gathered from other [corporate] personnel"); *In re Yasmin & Yaz*, 2011 WL 3759699, at *6 (S.D. Ill. Aug. 18, 2011) (quashing notices where "plaintiffs have already deposed (and are scheduled to depose) numerous senior-level employees intimately familiar with" the subjects at issue).

The State's Motion once again does not identify any relevant topics for which Jonathan and Mortimer D.A. Sackler have unique, independent knowledge. Instead, the State improperly repeats arguments it previously made in its underlying Motion to Quash briefing. For example, the State argues that Jonathan and Mortimer D.A. Sackler should be deposed because their "fathers founded the company ... [and they] sit/sat on the Board of Directors for Purdue Pharma, Inc." State's Reconsid. Mot. at 1. It further states that "these two board members in particular

… are uniquely qualified to provide informative testimony" on subjects that "require insight into board-level decision making." *Id.* at 2. The State made the same arguments in its Motion to Quash briefing: "Jonathan Sackler and Mortimer D.A. Sackler are the sons of the co-founders of Purdue and serve on the Board of Directors for Defendant Purdue Pharma, Inc. They have attended board meetings and been actively involved in the decision-making process of this multi-billion dollar company"; "[t]hey are part of the decision-making team for Purdue." Ex. A, State's Resp. to Mot. to Quash at 2, 5. But the Special Discovery Master correctly rejected the State's argument that family status is a proper basis for corporate representative testimony and determined that the information the State sought was "not entirely 'unique' to the Sacklers." Order at 2. The State's attempt to re-litigate the same arguments the Special Discovery Master already considered and rejected is improper. *See Lakeshore Bank, N.A. v. Twin Lakes Bank,* 1982 OK 103, 770 P.2d 547, 551.

B. The State Cannot Use a Corporate Representative Notice to Seek Information About Sackler Family Assets.

The State's Motion improperly raises a new and equally baseless argument that it could have made in its Motion to Quash briefing. It is thus facially improper as a basis for reconsideration. Specifically, the State argues that it may depose Jonathan and Mortimer D.A. Sackler as corporate representatives because, as "owners . . . of Purdue," they are "uniquely qualified" to testify about "Purdue's ownership structure, as well as the unique aspects of its financial arrangement (sic)—much of which is run right here in Oklahoma through Steven Ives." State's Reconsid. Mot. at 4. But the Sackler family's financial holdings are not relevant to any of the State's claims about Purdue's prescription opioid marketing and, as the Special Discovery Master has held, the State has failed to "justify unfettered exploration in the Sackler family assets, investments, trusts, beneficiaries, or other entity or financial instruments related to the

family" or the "operation of any Sackler family investment office in Oklahoma City." November 20, 2018 Order at 3. The State cannot credibly maintain that the Special Discovery Master erred by preventing it from using corporate representative depositions to explore subjects already held to be off limits.

Additionally, the State's reference to Steven Ives and his relationship with Oklahoma further highlights that its effort to seek the deposition of Mortimer D.A. Sackler is inappropriate. Mr. Ives never worked for Purdue or for Mortimer D.A. Sackler. Mortimer D.A. Sackler has no knowledge with respect to Mr. Ives' activities in Oklahoma or anywhere else.

Nor can the State notice a § 3230(C)(5) deposition for a corporate representative of ***Purdue*** to seek information about the financial holdings of members of "the Sackler family" because the subject matter of corporate representative testimony must be limited to "matters known or reasonably available to the organization." 12 O.S. § 3230. The State's attempt to use purported corporate representative depositions as a subterfuge for obtaining individual witness testimony from Jonathan and Mortimer D.A. Sackler on family assets and finances—matters outside Purdue's corporate knowledge—should be rejected. *See I-Flow Corp. v. Apex Med. Techs., Inc.*, 2009 WL 10674472, at *3-4 (S.D. Cal. Apr. 3, 2009) (plaintiff not "entitled to all information" possessed by the corporate representative and not permitted to depose him on matters related to his role as an officer of a separate company).

C. Jonathan and Mortimer D.A. Sackler Do Not Have Relevant, Unique Knowledge Regarding Other Subject Areas Identified by the State.

Finally, the State asserts, without any showing, that Jonathan and Mortimer D.A. Sackler have unique knowledge regarding the following areas: "(1) the introduction and initial push of OxyContin into the market, (2) the expanded use of opioids to treat non-cancer pain, (3) Purdue's guilty plea to federal criminal charges that it misbranded OxyContin . . . and (4) the

establishment of Rhodes Pharma." State's Reconsid. Mot. at 3-4. This argument—which is also improperly raised for the first time in the State's Motion and not based on any change in law or new evidence that was not previously available—should be rejected because the State has not established that Jonathan or Mortimer D.A. Sackler have unique and independent knowledge regarding any of these areas.

Introduction of OxyContin and "expanded use of opioids to treat non-cancer pain." The State's only justification for seeking the testimony of Jonathan and Mortimer D.A. Sackler regarding these topics is that they were "associated with the company from the beginning and were present during several pivotal moments relevant to this case." *Id.* at 3. The fact that these individuals were on Purdue's board more than twenty years ago, however, does not establish that they have any knowledge, let alone unique knowledge, regarding subject areas identified. The State has other avenues to obtain the information it seeks regarding OxyContin and the treatment of non-cancer pain.

The Purdue Frederick Company Inc.'s 2007 plea. Having established that the State cannot seek corporate representative testimony from Jonathan and Mortimer D.A. Sackler on behalf of Purdue Pharma L.P. and The Purdue Frederick Company because they do not sit on the boards of those entities, the Special Discovery Master should reach the same conclusion regarding the 2007 plea. The State cannot obtain testimony regarding the plea of The Purdue Frederick Company Inc.—which is the only one of the three Purdue entities in this case that entered a plea—because the State has failed to demonstrate that either Jonathan or Mortimer D.A. Sackler has anything unique to offer on this matter that the State could not readily attain from other sources. To the extent the State seeks information about why Purdue entered into the plea, that information is protected from disclosure by the attorney-client privilege.

Rhodes Pharmaceuticals L.P. Jonathan and Mortimer D.A. Sackler indisputably have never served as directors of Rhodes Pharmaceuticals L.P. The State offers no reason to conclude that they have unique, independent knowledge about its establishment.

II. THE STATE CANNOT DEPOSE JONATHAN SACKLER BECAUSE HE NO LONGER SERVES ON THE BOARD OF PURDUE PHARMA INC.

The State argues that the deposition of Purdue Pharma Inc. through Jonathan Sackler should proceed because his planned resignation from the board was not yet effective when the Notice was served. *See* State's Reconsid. Mot. at 4. Not so. Under 12 O.S. § 3232(A)(2), the deposition of "a party or of anyone who at the time of taking the deposition was an officer, director or managing agent" may be used at trial or in other proceedings "for any purpose permitted by the Oklahoma Evidence Code." "The test for determining whether one is a managing agent must be made at the time of the deposition." *In re Honda Am. Motor Co. Dealership Relations Litig.*, 168 F.R.D. 535, 541 (D. Md. 1996).[2] Nor does the application of this settled rule "invite abuse," State's Reconsid. Mot. at 4, as the State erroneously contends, particularly where, as here, Jonathan Sackler's resignation was undisputedly underway months before the deposition was noticed and not for the purpose of avoiding discovery. Indeed, his decision to resign even predated the State's initial e-mail request for his testimony. In *In re Honda*, for example, the court granted a motion to quash a former employee's deposition, reasoning that without evidence that his status changed "to avoid disclosure" or that he "maintains any control," the plaintiff "cannot compel" his testimony. 168 F.R.D. at 542. *See*

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[2] *See also Cleveland v. Palmby*, 75 F.R.D. 654, 656 (W.D. Okla. 1977) (denying motion to compel noticed deposition of individual who is not "a party ... or an officer, director, or managing agent of a party"); *PettyJohn v. Goodyear Tire & Rubber Co.*, No. 91-2681, 1992 WL 168085, at *1 (E.D. Pa. July 9, 1992) (denying motion to compel noticed deposition because "a corporation may not be examined through its former officers, directors, or managing agent . . . .").

also Everlight Elecs. Co. v. Nichia Corp., 2013 WL 12182954, at *2 (E.D. Mich. Aug. 29, 2013) (rejecting motion to compel noticed deposition of a former corporate managing agent whose resignation was not "for the very purpose of avoiding deposition[ ]").

III. THE ORDER DOES NOT RESULT IN A MANIFEST INJUSTICE.

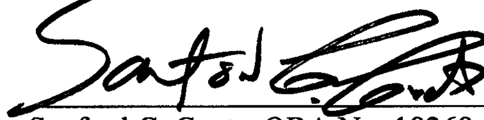
The Special Discovery Master correctly concluded that the State has not established that Jonathan and Mortimer D.A. Sackler have any unique and independent information. The Special Discovery Master also appropriately held that after the conclusion of corporate representative testimony on the 40 topics that the State has requested, the State can depose these individuals if and only if it can establish on February 14, 2019—just one month from now—that there is a gap in the record (which includes corporate witness testimony, fact witness testimony, and millions of pages of documents) for which they have unique and independent knowledge on relevant subject matter. The State cannot complain that "time is of the essence" and that it must depose Jonathan and Mortimer D.A. Sackler "now" when the State has not established that either has unique and independent knowledge that would warrant their testimony as corporate representatives.

CONCLUSION

For the foregoing reasons, the State's Motion for Reconsideration should be denied.

Date: January 10, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2019, I caused a true and correct copy of the following:

PURDUE'S OPPOSITION TO THE STATE'S MOTION TO RECONSIDER DECEMBER 26, 2018 ORDER SUSTAINING PURDUE'S MOTION TO QUASH DEPOSITION NOTICES

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

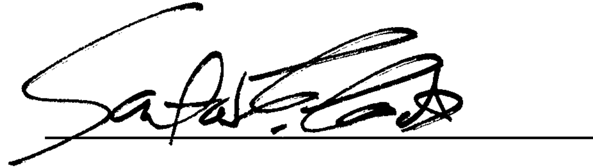

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Exhibit A

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

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

PURDUE'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER FOR DEPOSITION NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER

Pursuant to Title 12 §§ 2004.1(C)(3) and 3226(C) of Oklahoma's Discovery Code, Purdue Pharma, L.P., Purdue Pharma Inc., and The Purdue Frederick Co. (collectively "Purdue") respectfully move for a protective order and request that the Court quash deposition notices issued to take testimony of Purdue through the depositions of Jonathan Sackler and Mortimer D.A. Sackler. (*See* Notices for § 3230 Depo. of Corp. Reps. of Purdue ("Notices") (Exs. A and B).)

Messrs. Jonathan and Mortimer D.A. Sackler do not hold any position for Purdue Pharma, L.P. or The Purdue Frederick Co. They are each members of the Board of Directors for Purdue Pharma Inc., but do not exert executive authority over Purdue Pharma Inc. in that capacity. On October 29, 2018, the State asked Purdue's counsel about deposing Messrs. Jonathan and Mortimer D.A. Sackler as ***individuals*** and asked whether Purdue's counsel represented them for that purpose. After Purdue's counsel responded that they do not represent Messrs. Jonathan and Mortimer D.A. Sackler as individuals on October 30, 2018, the State changed tack. Rather than issue subpoenas seeking the testimony of Messrs. Jonathan and

Mortimer D.A. Sackler in their individual capacity, it issued deposition notices to take testimony ***of the Purdue companies*** through Messrs. Jonathan and Mortimer D.A. Sackler. Despite knowing that Purdue's counsel do not represent Messrs. Jonathan and Mortimer D.A. Sackler, the State did not attempt to meet and confer. These depositions are substantively improper, and the State neglected even to follow the required deposition protocol when issuing the Notices. As a result, and in addition to the reasons set forth below and in the accompanying Objections to Deposition Notices, Purdue moves to quash the Notices, and for a protective order.

Messrs. Jonathan and Mortimer D.A. Sackler are not employees, officers, directors, or agents of Purdue Pharma, L.P. or The Purdue Frederick Co., so they cannot as a matter of fact or law be deposed as representatives of those companies. Moreover, in their capacity as members of the Board of Directors for Purdue Pharma Inc., Messrs. Jonathan and Mortimer D.A. Sackler do not have any role in, or executive authority over, the day-to-day operations for Purdue Pharma Inc. or any of the other Purdue entities. Their knowledge of day-to-day operations is principally based on what they received second hand, *i.e.*, what they have read in board materials and been told by management at the Purdue entities. Accordingly, other corporate witnesses that Purdue will be providing to testify on the several topics that the State has noticed for over 80 hours of deposition testimony—each of whom is personally involved in Purdue Pharma Inc.'s day-to-day operations in a management capacity—are a much better source of the information the State purports to seek.

ARGUMENT

Depositions of a company's high-level or senior executives present the potential for abuse and harassment. *See Thomas v. Int'l Bus. Machines*, 48 F.3d 478, 483 (10th Cir. 1995).[1] Under Oklahoma's Discovery Code, a court "may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense." Okla. Stat. Ann. tit. 12, § 3226(C)(1). The Court should quash the deposition notices of the Purdue companies through Messrs. Jonathan and Mortimer D.A. Sackler here for the following reasons: (i) because Messrs. Jonathan and Mortimer D.A. Sackler do not hold any positions in Purdue Pharma, L.P. or The Purdue Frederick Co., as a matter of fact or law they cannot be deposed as representatives of those companies; (ii) the State is already taking more than 80 hours of corporate deposition testimony of Purdue that cover a sweepingly broad array of subjects on which the State will get the testimony it seeks here, making these deposition requests overly burdensome, duplicative, and harassing; and (iii) the same discovery the State seeks here is available from less burdensome alternatives that Purdue is providing to the State, including the State's depositions of 3230(C)(5) witnesses and fact witnesses and voluminous document discovery.

A. Deposition notices for corporate testimony for Purdue Pharma, L.P. and The Purdue Frederick Co. are improper because the noticed individuals cannot testify as corporate representatives of these entities.

As a threshold matter, the State issued one Notice for testimony from all three Purdue entities—Purdue Pharma, L.P., The Purdue Frederick Co., and Purdue Pharma Inc.—through Jonathan Sackler, and another through Mortimer D.A. Sackler. But, as a matter of fact, Messrs.

[1] The federal counterpart for Section 3226 is Federal Rule of Civil Procedure 26. Since the "Discovery Code was [] adopted from the federal scheme," Oklahoma courts "have looked to federal authority construing federal Rule 26 for guidance when applying our similar provision." *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238.

Jonathan and Mortimer D.A. Sackler do not hold any positions in two of the three Purdue entities whose testimony is sought: Purdue Pharma, L.P. and The Purdue Frederick Co.[2] Because no witness can give corporate representative testimony on behalf of a company for which the witness is not an employee, officer, director, or managing agent, *see Minter v. Prime Equip. Co.*, 356 F. App'x 154, 162 (10th Cir. 2009), Messrs. Jonathan and Mortimer D.A. Sackler cannot be deposed as representatives of those companies.

B. Deposition notices for corporate testimony for Purdue Pharma Inc. will only result in duplicative and harassing testimony.

The State's Notices to Purdue Pharma Inc. through Messrs. Jonathan and Mortimer D.A. Sackler should be quashed. Courts consistently hold that depositions of corporate representatives are improper where they are duplicative of testimony already obtained from other sources. For example, in *In re Yasmin & Yaz,* the plaintiffs sought to depose two senior executives of a pharmaceutical company. 2011 WL 3759699, at *1 (S.D. Ill. Aug. 18, 2011). Though the two executives had overarching business responsibilities that encompassed the product at issue, they lacked involvement in the type of day-to-day decision-making that would have given them unique knowledge relevant to the litigation. *Id.* at *6. The court refused to compel the witnesses to appear for depositions, observing that "plaintiffs have already deposed (and are scheduled to depose) numerous senior-level employees intimately familiar with the design, development, safety, marketing, and distribution of the subject drugs." *Id.* Thus, the court reasoned that "any information sought from [the executives] has been obtained (or will be obtained) through other deponents and would be duplicative." *Id.*

[2] In addition, pursuant to a transition that began months before the Notice was served in this case, Jonathan Sackler began the process of effecting his planned resignation from the board of Purdue Pharma Inc., and his resignation from that board is expected to take place in the near term.

For similar reasons, in *Thomas v. International Business Machines*, the Tenth Circuit held that the district court properly issued a protective order blocking the deposition of the defendant's chairman of the board of directors where the company made available for deposition another employee who could properly testify on the matter, and the chairman lacked personal knowledge of facts relevant to plaintiff's claims. 48 F.3d 478, 483 (10th Cir. 1995); *see also Evans v. Allstate Ins. Co.*, 216 F.R.D. 515, 519 (N.D. Okla. 2003) (barring plaintiffs from taking depositions of senior corporate officers who had no unique personal knowledge of claims at issue).

Here, Messrs. Jonathan and Mortimer D.A. Sackler serve as directors at Purdue Pharma Inc. and, in their roles as directors, do not participate in the day-to-day operations of that company or any other Purdue entity. To the extent they receive information about the operations of Purdue Pharma Inc. or the other Purdue entities, such information is reflected in board materials that have been and are being produced to the State. Other witnesses—including corporate witnesses noticed by the State who participated in the operations described in these board materials and fact witnesses—can testify based on the requisite first-hand knowledge that Messrs. Jonathan and Mortimer D.A. Sackler lack.

Not surprisingly, the State has already been taking corporate representative testimony of Purdue by way of the normal mechanism for such testimony under Section 3230(C)(5). The State is seeking to take ***over 80 hours*** of such testimony of Purdue covering many topics, such as research conducted or funded by Purdue related to its opioid medications' risks and efficacy and Purdue's communications and relationships with medical schools in Oklahoma. The State already has deposed two Purdue corporate representatives who testified extensively on a broad array of subjects. The State deposed Purdue on August 29, 2018 on such topics as the alleged

responsibility for the opioid crisis, efforts taken to abate that crisis, and other subjects at deposition. The State further deposed Purdue on August 30, 2018 on the complete consolidated financial documents for Purdue companies, the organizational structure for Purdue companies, and ownership of those companies. In addition, the State has already deposed over 20 fact witnesses, including a territory business manager and the controller of Purdue Pharma, L.P. These depositions have covered a myriad of topics relating to the subject matter at the core of the State's allegations, namely the marketing and promotion of prescription opioid products.

It is inconceivable that there are subject areas that the State cannot cover through deposition of Purdue's fact witnesses or 3230(C)(5) witnesses and that can be obtained only by taking Purdue Pharma Inc.'s corporate representative testimony from Messrs. Jonathan and Mortimer D.A. Sackler. Moreover, the State has already received more than ***40 million pages*** of discovery, including documents from the Board of Directors. The deposition Notices thus do not appear calculated to seek discovery that the State lacks or will not obtain from other sources. The Notices instead appear calculated to harass and delay by merely obtaining duplicative information, and thus should be quashed. *See, e.g.*, *Ameritox, Ltd. v. Millennium Labs., Inc.*, 2012 WL 6568226, at *3 (N.D. Ill. Dec. 14, 2012) (granting motion to quash where discovery requests were cumulative and duplicative of requests already made in the litigation).

C. The same discovery the State seeks is available from less burdensome alternatives.

Not only can depositions of directors result in improperly duplicative testimony, the same discovery can also be obtained from less burdensome alternatives. In *Thomas v. International Business Machines*, the Tenth Circuit stressed the need for parties to obtain information via depositions from individuals "for whom a deposition might [be] less burdensome. 48 F.3d at 483. This is especially important for individuals affiliated with the board of a corporate

defendant as they are "singularly unique and important individual[s] who can be easily subjected to unwarranted harassment and abuse." *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985).

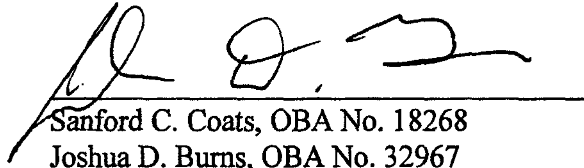
Critically, the State does not, and cannot, identify any corporate information that could not be obtained through other witnesses or documents and can be obtained only through the testimony of Messrs. Jonathan or Mortimer D.A. Sackler. That is because the State's Notices targeting Messrs. Jonathan and Mortimer D.A. Sackler are not part of a genuine effort to obtain relevant evidence that cannot be obtained from another source. Instead, the Notices are a thinly veiled effort to elide the deposition protocols and to misuse deposition notices to subject Messrs. Jonathan and Mortimer D.A. Sackler to duplicative and harassing questions in the guise of "corporate" testimony. The State's ruse should not stand. Because it would be unduly burdensome for Messrs. Jonathan and Mortimer D.A. Sackler to sit for cumulative, duplicative, and harassing depositions on behalf of Purdue, this Court should "regulate the discovery process to avoid oppression, inconvenience, and burden," *Evans*, 216 F.R.D. at 519, by quashing these Notices.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court grant its Motion to Quash and Motion for Protective Order. Specifically, Purdue requests that the Court quash the Notices and enter a protective order preventing the State from taking the depositions of Jonathan Sackler and Mortimer D.A. Sackler as corporate representatives of Purdue.

Date: November 28, 2018

Respectfully submitted,



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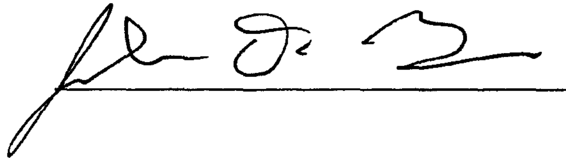
I hereby certify that on this 28th day of November, 2018, I caused a true and correct copy of the following:

PURDUE'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER FOR DEPOSITION NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER

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.

(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
Judge Thad Balkman

Special Discovery Master
William C. Hetherington

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
DEC 05 2018
In the office of the
Court Clerk MARILYN WILLIAMS

THE STATE'S RESPONSE TO PURDUE'S MOTION TO QUASH DEPOSITION NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER

The fact that Purdue does not want to present members of its founding family for depositions to testify on behalf of the company they own comes as no surprise. But, the grounds upon which Purdue is basing its *Motion to Quash and Motion for Protective Order for Deposition Notice of Purdue Via Jonathan Sackler and Mortimer D.A. Sackler* ("Motion")—burden, harassment, and duplication—is ridiculous. It is undisputed that for decades, the Sackler family

has derived its unimaginable wealth from the sale of OxyContin. Purdue's release and marketing of OxyContin played a key role in creating the current opioid epidemic. It is also undisputed that Jonathan Sackler and Mortimer D.A. Sackler are the sons of the co-founders of Purdue and serve on the Board of Directors for Defendant Purdue Pharma, Inc. They have attended board meetings and been actively involved in the decision-making process of this multi-billion dollar company—a company which has reaped staggering profits from the addiction and death of thousands of Oklahomans. *See, e.g., Ex. 1, Purdue Board Minutes (05/03/07); Ex. 2, Rhodes Board Minutes (10/19/05); Exs. 3-4, Quarterly Reports (01/15/08; 10/15/08).* Their ability to provide binding testimony for Purdue Pharma, Inc. cannot legitimately be disputed.

Purdue's arguments in favor of quashing the State's 12 O.S. § 3230(C)(5) deposition notices to Jonathan and Mortimer D.A. Sackler are three-fold: (1) Jonathan Sackler and Mortimer D.A. Sackler do not hold any position for Purdue Pharma, L.P. or The Purdue Frederick Co.; (2) their testimony will be duplicative; and (3) the notices are unduly burdensome and sent for harassment. None of these arguments provide "good cause" for quashing the Notices, and Purdue's *Motion* should be denied.

ARGUMENT AND AUTHORITIES

A. Legal Standard.

Under Oklahoma law, discovery rules and statues are to be liberally construed. *Boswell v. Schultz*, 2007 OK 94, ¶ 14, 175 P.3d 390, 395; 12 O.S. § 3225 ("The Discovery Code shall be liberally construed to provide the just, speedy and inexpensive determination of every action."). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." 12 O.S. § 3226(B)(1). Relevant discovery

is simply that which "**might**" lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182, ¶ 4, 557 P.2d 904, 906 (emphasis added). "The [United States Supreme] Court has more than once declared that the deposition-discovery rules are to be accorded a broad and liberal treatment to effect their purpose of adequately informing litigants in civil trials." *Herbert v. Lando*, 441 U.S. 153, 176 (1979).

The burden of showing good cause is statutorily placed on the party objecting to discovery and is part of that party's motion for protective order. 12 O.S. § 3226(C)(1); *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 15, 944 P.2d 304 (the Oklahoma Discovery Code "*shifts the burden* of showing 'good cause' to the party who *opposes* discovery") (emphasis in original). A showing of "good cause" to support the issuance of a protective order indicates the burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from blanket stereotyped and conclusory statements. *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, 174 P.3d 996, 1004; *Pepsi-Cola Bottling Co. of Pittsburgh, Inc. v. Pepsico, Inc.*, 2002 WL 922082, at *1 (D. Kan. May 2, 2002) ("To establish good cause, that party must make a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.").[1] "As a general rule, courts will not grant protective orders that prohibit the taking of deposition testimony." *U.S. E.E.O.C. v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 432 (D. Nev. 2006). Whether to enter a protective order lies within the Court's discretion. *Thomas v. Int'l Bus. Machs.*, 48 F.3d 478, 482 (10th Cir. 1995).

Based on this standard, Purdue has failed to establish a protective order is warranted for

[1] The Court may look to discovery procedures in federal rules when construing similar language in the Oklahoma Discovery Code. *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238; *Crest Infiniti*, 174 P.3d at 999 (language in 12 O.§ 3230(C) is similar to its federal counterpart, FRCP 30(b)(6)).

the depositions of Jonathan and Mortimer D.A. Sackler.

B. Jonathan And Mortimer D.A. Sackler Should Appear On Behalf Of Purdue Pharma, Inc.

Purdue argues the Notices should be quashed because Jonathan and Mortimer D.A. Sackler do not hold any positions for Defendants Purdue Pharma, L.P. and/or The Purdue Frederick, Co. However, Purdue concedes they do serve on the Board of Directors for Purdue Pharma, Inc. As such, they are certainly capable of providing testimony binding as to Purdue Pharma, Inc. This argument does not provide sufficient grounds to quash the Notices in their entirety.

C. Purdue Cannot Establish Good Cause For Quashing The Notices.

Purdue argues the Notices should be quashed because the testimony of Jonathan and Mortimer D.A. Sackler would only be duplicative of testimony by other more day-to-day employees of Purdue Pharma, Inc. and would already be reflected in documents produced by Purdue. They also argue that such testimony can be obtained from individuals who would find it "less burdensome." There are several problems with these arguments.

First, Purdue's argument implies that it has and will allow the State to conduct depositions of other more "day-to-day" corporate representatives. This is a misrepresentation of how discovery is progressing in this case. Defendants, including Purdue, have joined together to obstruct the discovery process at every turn. The parties have engaged in dozens of discovery battles, and Defendants have fought tooth and nail to prevent the State from moving forward with any depositions. In fact, the State has only been able to proceed with a small fraction of the depositions it is seeking. It is hard to fathom how the testimony of Jonathan and Mortimer D.A. Sackler can be "duplicative" of other depositions when Defendants are systematically refusing to voluntarily put up witnesses in response to the State's deposition notices. In *Thomas*, a case relied upon heavily by Purdue in its *Motion*, in granting the request for protective order, the court

considered whether the plaintiff had attempted to take other depositions, whether the plaintiff had provided adequate notice for the deposition, and whether the plaintiff waited until the eleventh hour to make his request. 48 F.2d at 483-84. **None of those factors are present here.** To the contrary, the State has been fighting for many, many months to conduct corporate representative depositions, and Defendants have engaged in continuous obstructionist tactics to prevent that from happening.

Second, Purdue argues Jonathan and Mortimer D.A. Sackler have no unique knowledge of the facts at issue, **but it provides zero evidence whatsoever in support of this fact.** The State cannot and should not have to take Purdue's word for it. *See Crest,* 174P.3d at 1004-1005 (defendants must show more than blanket statements that "these witness[es] lack any information relevant to the issues in this case."). These men have grown up with Purdue. Their fathers founded it. It is in their family and in their blood. They have served on the Board of Directors for Purdue Pharma, Inc. for years, and they very likely know things about the company that no one else does. They, more than anyone, are in a position to provide answers on behalf of Purdue Pharma, Inc. They are part of the decision-making team for Purdue, and Purdue's position they are mere figure heads with no independent knowledge about the company is disingenuous, at best. In fact, Johnathan Sacker's name appears in **more than two thousand (2,000) documents produced by Purdue.** Regardless, Purdue has provided the Court with no particular or specific facts establishing the propriety of a protective order.

Third, Purdue argues that any information can be gleaned from documents, rendering deposition testimony from these men unnecessary. Purdue does not get to decide how the State engages in discovery. The Oklahoma Discovery Code allows the party seeking discovery to decide the methods it wants to use to obtain information, and here the State seeks depositions.

Fourth, Purdue argues the Notices should be quashed because the State already took two corporate representative depositions and twenty (20) fact witness depositions. The sheer magnitude of this lawsuit highlights the absurdity of this argument. The State's claims against Purdue relate to conduct spanning more than two decades. The State alleges Purdue created this epidemic by engaging in a complicated, nationwide marketing campaign to convince an entire country of medical professionals they had an ethical obligation to treat pain with what it touted as non-addictive, effective drugs. The complexity and breadth of Purdue's deception is difficult to comprehend, yet Purdue wants this Court to believe the State can get everything it needs in just a couple of depositions. This is simply not possible.

Fifth, Purdue argues there are other people for whom a deposition would be "less burdensome" than Jonathan and Mortimer D.A. Sackler. Setting aside the implication that individuals who have profited wildly for years from getting Oklahomans addicted to opioids cannot be bothered to sit for a deposition, courts routinely permit the depositions of high-level executives "when conduct and knowledge at the highest corporate levels of the defendant are relevant in the case." *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 205 F.R.D. 535, 536 (S.D. Ind. 2002) (citing *Six W. Retail Acquisition v. Sony Theatre Mgmt.*, 203 F.R.D. 98 (S.D.N.Y. 2001)). As members of the Board of Directors, Jonathan and Mortimer D.A. Sackler are leaders of Purdue. While it may be inconvenient for them to answer the State's questions, Purdue's overall management decisions relating to the production and marketing of opioids are central to the State's claims. *See Gaither v. The Hous. Auth. Of The City Of New Haven*, No. CIV. NO. 3 07CV0667, 2008 WL 2782728, at *1 (D. Conn. July 7, 2008) ("Highly placed executives are not immune from discovery, and the fact that an executive has a busy schedule cannot shield that witness from being deposed."). The State should be allowed to obtain testimony from these

man that binds Purdue Pharma, Inc., and Purdue's *Motion* should be denied.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Purdue's *Motion* and order Jonathan and Mortimer D.A. Sackler to appear for 12 O.S. § 3230(C)(5) depositions on behalf of Purdue Pharma, Inc., and for such further relief the Court deems proper.

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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,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master
William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY
FILED
DEC 13 2018
In the office of the
Court Clerk MARILYN WILLIAMS

PURDUE'S REPLY IN SUPPORT OF MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER FOR DEPOSITION NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER

The State's Response only confirms that the notices seeking to depose Jonathan and Mortimer D.A. Sackler as corporate representatives of Purdue Pharma Inc., Purdue Pharma L.P., and The Purdue Frederick Co (the "Notices") are improper and should be quashed. The Notices suffer from multiple fundamental deficiencies:

First, the Notices served on Purdue Pharma L.P. and The Purdue Frederick Co. are invalid because, as the State now concedes, Jonathan and Mortimer D.A. Sackler do not hold positions at those two entities. Response Br. at 4. Further, Jonathan Sackler resigned as director of Purdue Pharma Inc. on December 8, 2018, as part of a long-planned transition. *See* Opening Br. at 4 n.2. He cannot be a corporate representative of Purdue Pharma Inc. The Notice to Purdue Pharma Inc. through Jonathan Sackler is therefore also invalid and must be quashed in its entirety. *See* Section A, below.

Second, the State fails to identify a shred of unique, relevant, or first-hand information that Jonathan and Mortimer D.A. Sackler bring to bear on the issues in this case. To date, the State has had access to over 40 million pages of documents and has deposed multiple Purdue fact

witnesses and corporate representatives. The parties anticipate an additional 80 hours of deposition testimony on more than 40 designated topics. The State fails to identify any issue on which testimony from Jonathan or Mortimer D.A. Sackler would not be entirely cumulative.

In its Response, the State relies on erroneous arguments that do not provide any basis to deny Purdue's Motion:

Dated, Second-Hand Information Establishes No Unique Knowledge. The State attempts to show that Jonathan and Mortimer D.A. Sackler are "actively involved" in decision-making at Purdue by relying on four documents attached to Purdue's response. Notwithstanding that the State had access to 40 million pages of Purdue documents, none of the documents selected by the State establish that Jonathan or Mortimer D.A. Sackler have unique knowledge. To the contrary, these documents — each of which is more than a decade old — confirm that Jonathan and Mortimer D.A. Sackler's knowledge is entirely derivative, based on what they have been told by management. *See* Section B below.

Family Status Does Not Justify A Corporate Representative Deposition. The State also resorts to the improper suggestion that Jonathan and Mortimer D.A. Sackler's heredity — they are the "sons of the co-founder of Purdue," who have "grown up with Purdue" "in their family" (Response Br. at 2, 5) — is a basis for hailing them into an out-of-state deposition. It is not. The key question for whether an executive's deposition is warranted "is whether the record evidence demonstrates that [the executive] has unique personal knowledge of the controversy." *See Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, No. 05-CV-329-GKF-PJC, 2009 WL 10694083, at *4 (N.D. Okla. Apr. 24, 2009) (internal quotation marks omitted). Here, the State's references to Jonathan and Mortimer D.A. Sackler's family status and its inflammatory allegations, such as the claim that they have "been actively involved in the decision-making

process of this multi-billion dollar company—a company which has reaped staggering profits from the addiction and death of thousands of Oklahomans" (Response Br. at 2) demonstrate that the State's actual objective is harassment of Jonathan and Mortimer D.A. Sackler simply because of their family name.

Alternatively, the Court should quash the Notices pending the depositions of all of Purdue's fact witnesses and corporate representatives, who will offer testimony regarding 40 topics designated by the State. At that time, the State will have an opportunity to establish whether there are any areas that have not been addressed by testimony from these corporate representatives and upon which Jonathan and Mortimer D.A. Sackler have unique knowledge.

GOOD CAUSE EXISTS TO QUASH THE NOTICES

A. The State Concedes That Jonathan and Mortimer D.A. Sackler Cannot Testify For Entities Where They Hold No Position — Including Purdue Pharma Inc. for Jonathan Sackler

The State concedes that Jonathan and Mortimer D.A. Sackler are not properly subject to Notices on behalf of Purdue Pharma L.P. or The Purdue Frederick Co., where they hold no positions. Response Br. at 4. *See Cleveland v. Palmby*, 75 F.R.D. 654, 656 (W.D. Okla. 1977) (denying motion to compel noticed deposition of individual who is not "a party to the instant action or an officer, director, or managing agent of a party"); *PettyJohn v. Goodyear Tire & Rubber Co.*, No. 91-2681, 1992 WL 168085, at *1 (E.D. Pa. July 9, 1992) (denying motion to compel noticed depositions because "a corporation may not be examined through its former officers, directors, or managing agents . . . ."). For the same reason, the State does not and cannot dispute that the deposition of Jonathan Sackler, as a representative of Purdue Pharma Inc., should not proceed after his previously planned resignation from that entity's board. Jonathan Sackler's resignation is part of a transition planned months before the Notice was served, *see* Opening Br. at 4 n.2, and which was effected on December 8, 2018.

Jonathan Sackler's status as a director of Purdue Pharma Inc. at the time the Notice was served does not alter the analysis. Under 12 O.S. § 3232(A)(2), the deposition of "a party or of anyone who at the time of the taking the deposition was an officer, director or managing agent" may be used at trial or in other proceedings "for any purpose permitted by the Oklahoma Evidence Code." Interpreting the analogous federal provision, "most courts have ruled that a person being deposed on behalf of a corporation must be an employee of the requisite seniority *at the time the deposition is taken*," 7 *Moore's Federal Practice* § 30.03 (Matthew Bender 3d Ed.) (emphasis in original), which Jonathan Sackler is not. *See also In re Honda Am. Motor Co. Dealership Relations Litig.*, 168 F.R.D. 535, 541 (D. Md. 1996) ("The test for determining whether one is a managing agent must be made at the time of the deposition."). Moreover, where, as here, former director Jonathan Sackler's planned resignation was in process long before the Notice was issued and not effected for the "purpose of avoiding depositions," *Everlight Elecs. Co., v. Nichia Corp.*, No. 12-cv-11758, 2013 WL 12182954, at *2 (E.D. Mich. Aug. 29, 2013), there are no grounds to require Purdue Pharma Inc. to produce him for a deposition. *See In re Honda*, 168 F.R.D. at 542 (granting motion to quash former employee's noticed deposition; "While his interests may still be closely identified with the defendant," without evidence that his status changed "to avoid disclosure" or that he "maintains any control," the plaintiff "cannot compel" his testimony).

B. The Notices Should Be Quashed Because Jonathan and Mortimer D.A. Sackler Do Not Have Any Relevant Unique, Personal Knowledge

The State does not and cannot dispute that depositions of corporate representatives are improper and should be quashed where they are duplicative of prior and scheduled depositions. *See Thomas v. Int'l Bus. Machs.*, 48 F.3d 478, 483 (10th Cir. 1995) (protective order warranted when plaintiff did not "demonstrate that the information she seeks to obtain from [executive]

could not be gathered from other [corporate] personnel"); *In re Yasmin & Yaz*, No. 3:09-md-02100-DRH-PMF, 2011 WL 3759699, at *6 (S.D. Ill. Aug. 18, 2011) (quashing notices where "plaintiffs have already deposed (and are scheduled to depose) numerous senior-level employees intimately familiar with" the subjects at issue). That is the case here.

As the State is aware, *see* Response Br. at 4-5, Purdue fact witnesses and corporate representatives have already been deposed. The witnesses who have been deposed include:

- Lisa Miller: Ms. Miller is currently the Head of Corporate Social Responsibility. Ms. Miller has worked at Purdue since 2001, and has worked as a medical-science liaison, and in the areas of medical affairs, market access, and compliance. Ms. Miller was designated to testify as a corporate representative regarding (i) a letter published by Purdue in the New York Times in 2017 and (ii) all actions and efforts that Purdue has taken, are underway, or are anticipated to take place in the future about the opioid crisis. Although not within the scope of the deposition, the State asked Ms. Miller numerous questions about Purdue's marketing of prescription opioids.

- Keith Darragh: Mr. Darragh is Purdue's controller. Mr. Darragah was designated to testify as a corporate representative regarding topics including "Purdue's past and present ownership structure, Purdue's finances, and the distribution of revenue and/or profits to Purdue owners."

- Nine former and current Purdue employees who were sales or business personnel. These individuals were asked extensive questions about Purdue's promotion of prescription opioids and their interactions with healthcare providers.

Additionally the State will be taking depositions of corporate representatives on over 40 additional topics. For example, in December, Purdue will be offering witnesses to testify on 20 topics, including:

- Purdue's involvement with, and contributions to, KOLs regarding opioids and/or pain treatment;
- Purdue's use of branded and unbranded marketing for opioids nationally and in Oklahoma, including the scope, strategy, purpose and goals with respect to such marketing;
- All drugs for the treatment of opioid overdose manufactured, owned, contemplated, developed, and/or in development by Purdue including the nature of each such opioid overdose drug, its intended use, the stage of development of each (e.g. released to market, in development, abandoned), and profits earned by Purdue from the sale of any such drug in Oklahoma.

In January, Purdue will be offering witnesses to testify on another 18 topics, including:

- Research conducted, funded directed and/or influenced by Purdue related to opioid risks and/or efficacy;
- Purdue's research conducted, funded, directed and/or influenced related to pseudoaddiction;
- Purdue's role, influence, or support for any campaign or movement to declare pain as the "Fifth Vital Sign";
- Purdue's use of continuing medical education regarding opioids nationally and in Oklahoma, including the scope, strategy, purpose and goals with respect to such continuing medical education;
- Purdue's use and/or establishment of any opioid abuse and diversion program it established and implemented to identify healthcare professionals' and/or pharmacies' potential abuse or diversion of opioid;
- Policies, practices, and procedures regarding complaints Purdue received related to addiction or abuse of its opioids in Oklahoma;
- Total compensation paid to employees and contractors who detailed and/or promoted to any heath care practitioners and /or pharmacies in Oklahoma;
- Purdue's use of public relations firms and communication with journalists regarding opioids and/or pain management marketing;
- Purdue's efforts or activities in Oklahoma concerning opioids related to, among other things, lobbying efforts and campaign contributions.

The State's conclusory responses illustrate that it has no substantive grounds that justify enforcement of the Notices. The State contends that it is permitted to seek depositions simply because "[t]he Oklahoma Discovery Code allows the party seeking discovery to decide the methods it wants to use to obtain information." Response Br. at 5. The State cites no authority for the remarkable assertion that there are no constraints on what discovery a plaintiff may take. To the contrary, courts regularly quash improper notices, particularly if issued for purposes of harassment. *See, e.g.*, *Stubbs v. Stanford*, No. CJ-2003-9510, 2004 WL 5314496 (Okla. Dist. Oct. 15, 2004); *HE&M, Inc. v. Sec. Bank*, No. CJ201102467, 2015 WL 1606009 (Okla. Dist. Mar. 26, 2015); *Rackley v. BNSF Ry. Co.*, No. CJ-2009-743, 2013 WL 8118565 (Okla. Dist. Apr. 09, 2013); *see generally Newell v. Nash*, 1994 OK CIV APP 143, 889 P.2d 345, 348 ("The trial court has the right to place limits . . . on discovery."). Similarly, the State's claim that "it is

simply not possible" for it to obtain the information it needs "in just a couple depositions" does not identify what information it supposedly needs or why the testimony of Jonathan and Mortimer D.A. Sackler is non-duplicative where the State has already taken almost two dozen depositions and has many scheduled more witnesses, including 80 hours of testimony from corporate representatives.

At its core, the State's argument is that it should be permitted to depose Jonathan and Mortimer D.A. Sackler because they "grew up with Purdue," the company is "in their blood," and they "*very likely* know things about the company that no one else does." Response Br. at 5. But speculative claims that these individuals *might* possess non-duplicative knowledge because "[t]heir fathers founded Purdue," *id.*, does not suffice to compel their depositions. *See In re Yasmin & Yaz*, 2011 WL 3759699, at *6 (plaintiffs not permitted to depose executives when they "only provided general, conclusory statements about the witnesses' alleged knowledge," including that "ultimate decisions and visions were surely promulgated by [the] witnesses"); *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, 2009 WL 10694083, at *4 (granting protective order when plaintiff "believe[d]" an executive had unique knowledge but offered no basis for its belief beyond the executive's signature on a corporate policy statement). Further, the State's inflammatory characterization of Jonathan and Mortimer D.A. Sackler as "individuals who have profited wildly for years while getting Oklahomans addicted to opioids" demonstrates that the State's principal objective is to harass these individuals because of their family name.

The State had the opportunity to select from 40 million pages of documents to support their claim that Jonathan and Mortimer D.A. Sackler have "independent knowledge about the company." Response Br. at 5. The State's Response, however, attaches four documents, each of which is more than a decade old. These documents include:

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These documents confirm that Jonathan and Mortimer D.A. Sackler, like most corporate directors, received information concerning corporate activities from others responsible for the day-to-day operations of the company. These documents do not show Jonathan or Mortimer D.A. Sackler undertaking any activities relating to the development, manufacture, marketing, or sale of prescription opioids. Nor do these documents establish that either Jonathan or Mortimer D.A. Sackler possesses any unique or non-derivative Purdue Pharma Inc. information, much less any first-hand knowledge which other management witnesses cannot provide. These are precisely the circumstances under which deposition of corporate directors should be quashed. *See In re Yasmin & Yaz*, 2011 WL 3759699, at *6 (denying motion to compel when documents did not indicate that "either executive was included as a first line scientist, investigator, marketer, or regulator lobbyist" and showed only that they were kept "in the loop").

The State's attempt to justify deposing Jonathan and Mortimer D.A. Sackler by attributing, without substantiation, "Purdue's overall management decisions relating to the production and marketing of opioids" to Jonathan and Mortimer D.A. Sackler, Response Br. at 6, is likewise unavailing. The State's case focuses on how opioid manufacturers allegedly

marketed their products to doctors and patients. To the extent that the State seeks information regarding "management decisions," the appropriate witnesses are managers, not directors.

The State has never alleged, and has no evidence, that Jonathan or Mortimer D.A. Sackler personally participated in the challenged marketing activities (because they did not). The State has not made a sufficient showing under the authorities on which it relies, which support the proposition that executive depositions should proceed where there was evidence that the executive was ***personally*** involved in, or had unique knowledge of, claim-related conduct. *See Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 205 F.R.D. 535, 536 (S.D. Ind. 2002) (plaintiffs presented evidence that "Mr. Ford has referred to his personal knowledge of and involvement in certain relevant matters, including the Firestone tire recall, Explorer safety issues, and Ford's response to the tire and Explorer issues"); *Six W. Retail Acquisition v. Sony Theatre Mgmt.*, 203 F.R.D. 98, 102-05 (S.D.N.Y. 2001) (evidence showed that CEO had "unique knowledge on several issues" and "was substantially involved" in managing theaters and planning a merger at issue in the case); *Gaither v. Hous. Auth. of the City of New Haven*, No. 3:07CV0667(WWE), 2008 WL 2782728, at *1 (D. Conn. July 7, 2008) (executive "interacted personally" with the household of plaintiff who brought housing discrimination claims and was involved in decisions regarding housing accommodation requests). Indeed, in *Burns v. Bank of America*, No. 03-civ-1685(RMB)(JCF), 2007 WL 1589437 (S.D.N.Y. June 4, 2007), the court quashed the deposition of the defendant's general counsel, explaining that "[u]nlike the plaintiff in *Six West*, the plaintiffs in this case have not support[ed] [their] allegations with evidence sufficient for this Court to infer that [the proposed deponent] has some unique knowledge on a number of relevant issues." *Id.* at *5.

The Notices are not calculated to seek discovery that the State lacks or will not obtain from other sources. Instead, the Notices are calculated to harass corporate representatives without unique knowledge about duplicative information and should thus be quashed. *See, e.g., Ameritox, Ltd. v. Millennium Labs., Inc.*, No. 12-cv-7493, 2012 WL 6568226, at *3 (N.D. Ill. Dec. 14, 2012) (granting motion to quash cumulative requests).

* * *

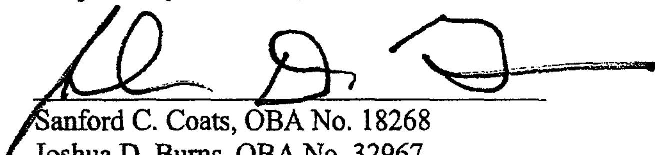
In the alternative, the Court should defer the noticed depositions until after other corporate depositions have been completed. At that time, the State will have the opportunity to establish whether there are issues (if any) for which deposition testimony has not been provided as to which Jonathan or Mortimer D.A. Sackler have unique, non-duplicative knowledge, questioning can be limited to any such subjects, *see Bridgestone*, 205 F.R.D. at 537 (noting that deposing executive after other depositions enabled the parties to "identify more readily the appropriate areas of questioning"), and held at the corporation's principal place of business. *See Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, 174 P.3d 996, 1003 n.16 ("Depositions of corporate officials are ordinarily taken at the corporation's principal place of business unless justice requires otherwise." (citation and internal quotation marks omitted)).

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court grant its Motion to Quash and Motion for Protective Order. Specifically, Purdue requests that the Court quash the Notices and enter a protective order preventing the State from taking the depositions of Jonathan Sackler and Mortimer D.A. Sackler as corporate representatives of Purdue.

Date: December 13, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2018, I caused a true and correct copy of the following:

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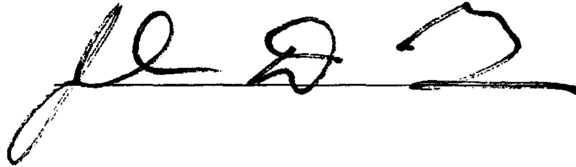

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