IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

STATE'S MOTION FOR PROTECTIVE ORDER REGARDING DISCOVERY OF MATTERS OCCURING BEFORE THE MULTICOUNTY GRAND JURY

In the Court's Journal Entry filed on December 20, 2018, the State was ordered to produce to Defendant Watson Laboratories, Inc. ("Watson") "all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal, or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional

relating to the prescription of opioids[.]" *See* Journal Entry dated Dec. 20, 2018 (attached as Exhibit 1) at ¶ 2. The apparent rationale for the order was that if the State's investigatory materials were produced in adversarial litigation, the State's work product protections would no longer apply and such materials are therefore subject to disclosure in this case. *See* Transcript of Dec. 20 Hearing (attached as Exhibit 2) at pp. 5-6. While this may hold true for many of the State's civil, criminal, and administrative enforcement proceedings, the proceedings before the Oklahoma multicounty grand jury ("MCGJ") are subject to an entirely different—and statutorily mandated—layer of confidentiality that is separate and apart from common law privileges. With a limited exception discussed below and not relevant here, disclosure by anyone—including attorneys—of "matters occurring before the multicounty grand jury" is statutorily prohibited unless ordered by the judge presiding over the multicounty grand jury. *See* 22 O.S.2011, § 355(A).

Based on this strict prohibition, it is the longstanding practice of the Office of the Attorney General ("OAG") to seek permission from the presiding judge before disclosing ***any*** materials involved in MCGJ proceedings. Thus, the Journal Entry, if read to require production of materials from matters brought before the MCGJ, puts the OAG in the untenable position of potentially violating statutory confidentiality protections that are within the jurisdiction of a separate judicial authority. Accordingly, the State now moves for an order protecting from disclosure a narrow class of materials related to certain specific "matters occurring before the multicounty grand jury."

PROCEDURAL HISTORY

On October 4, 2018, Watson moved to compel the production of, among other things, evidence from the State's criminal investigations and prosecutions of health care providers relating to the prescription of opioids. The Special Discovery Master denied that motion on October 22, recognizing with respect to matters before a grand jury that "Grand Jury information, transcripts,

etc., is also protected and can only be released by the Court presiding over a particular Grand Jury." *See* Order of the Special Discovery Master dated Oct. 22, 2018 (attached as Exhibit 3) at p. 7. Watson appealed this order and the Court heard argument on November 29. In one aspect of its appeal, Watson argued that when the State (1) initiates a criminal, civil, or administrative proceeding against a health care professional relating to his/her prescription of opioids, and (2) produces discovery materials to that person's attorney, those materials can no longer be protected. *See* Transcript of Nov. 29 Hearing (attached as Exhibit 4) at p. 110. As such, Watson argued, the State must produce such material in ***this*** action. *Id.* At the hearing, the Court agreed that documents produced by the State to criminal defense attorneys are not privileged. *Id.* at pp. 111-12.

On December 4, this Court affirmed in part and modified in part the Order of the Special Discovery Master and tasked Watson's counsel with drafting a Journal Entry memorializing the Court's findings. *See* Order dated Dec. 4, 2018 (attached as Exhibit 5). After Watson filed a motion to settle the Journal Entry and the Court heard additional argument, the Journal Entry was filed on December 20 and provides as follows:

> 1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, motions, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids.... For purposes of this Order "Health Care Professional" includes doctors licensed by the Oklahoma Board of Medical Licensure and Supervision, doctors licensed by the Oklahoma Board of Osteopathic Examiners, and dentists licensed by the Oklahoma Board of Dentistry.
>
> 2. The plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal, or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids.... However, if such documents are sealed or are grand jury transcripts, such documents need not be produced or will be produced consistent with the Protective Orders currently in place, as appropriate. In items 1 and 2 above, if a document is withheld because it is sealed, a copy of the sealing order will be provided to counsel for the defendant.

> 3. The plaintiff shall also produce to Judge William Hetherington *in camera* a list identifying all Health Care Professionals previously investigated by the State relating to the prescription of opioids where the investigation did not result in a civil, criminal or administrative proceeding with the reasons why not. Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants. The list shall be produced to Judge Hetherington by January 2, 2019 and shall remain *in camera* and not be part of any production to defendants.

See Ex. 1. With respect to Items 1 and 3, the State has complied or will comply with the terms of the Journal Entry. It is with respect to Item 2 that the State appears before the Court now. The majority of documents responsive to Item 2 will be produced as directed by the Journal Entry. However, the OAG has identified certain documents that are a part of matters occurring before the MCGJ and thus subject to the nondisclosure provision of Title 22, Section 355(A). At the December 20 hearing, the Court seemed to recognize this potential for conflict between the Journal Entry and certain statutory protections with regard to the materials at issue:

> I understand that you're saying that there are statutes that you cannot violate. I understand that. But I – where you think there's a judgement call or discretion, I expect you to [err] on the side of liberal discovery and to produce it. And if you feel so strongly that you're not supposed to, they you can come and seek specific relief from this Court.

See Ex. 2 at p. 18.

While the State is mindful of the Court's instruction to err on the side of producing documents where it has the discretion to do so, that is not the case with the MCGJ materials at issue here. Therefore, the State now appears before the Court seeking specific relief from the Journal Entry's apparent directive that the OAG disclose documents that are protected from production by the Multicounty Grand Jury Act.

ARGUMENT

The MCGJ is convened by order of the Oklahoma Supreme Court upon application of the OAG. 22 O.S.2011, § 351. Each MCGJ serves an 18-month term and has subject matter jurisdiction over a variety of serious crimes. *Id.* §§ 352, 353. As an investigative body, the MCGJ is empowered to, among other things, compel witnesses to give testimony under oath, "require production of documents, records and other evidence," and "exercise any investigative power of any grand jury of the state." *Id.* § 354(A). "[B]ecause the purpose of a grand jury is to determine whether a crime has been committed and who committed it, a grand jury must necessarily use its broad investigatory power to deal with and obtain evidence from suspects and other witnesses who have not yet been and may not be charged with criminal offenses." *Woolverton v. Multi-County Grand Jury Okla. Cty.*, 1993 OK CR 42, ¶ 6, 859 P.2d 1112, 1114 (citing 22 O.S. § 354(A)). "The function of the grand jury is to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred. The grand jury can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not." *Id.* at ¶ 8, 859 P.2d at 1114 (citing *U.S. v. R. Enterpr., Inc.*, 498 U.S. 292, 297 (1991).

Given the broad investigative powers of the MCGJ and the sensitive nature of the crimes within its jurisdiction, the Legislature has strictly limited the disclosure of matters considered by the MCGJ:

> Disclosure of matters occurring before the multicounty grand jury other than its deliberations and the vote of any juror may be used by the Attorney General in the performance of his duties. The Attorney General may disclose so much of the multicounty grand jury's proceedings ***to law enforcement agencies*** as he considers essential to the public interest and effective law enforcement. Otherwise, a grand juror, attorney, interpreter, stenographer, operator of any recording device, or any typist who transcribes recorded testimony ***may disclose matters occurring before the multicounty grand jury only when so directed by the court***. All such persons

> shall be sworn to secrecy and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

22 O.S.2011, § 355(A) (emphasis added).[1] The reasoning behind these protections is similar to the long-recognized secrecy existing for traditional grand juries:

> Several well-established policies underlie the secrecy accorded to matters before the grand jury, including: preventing those persons who may be indicted from escaping; insuring that the grand jury enjoys unfettered freedom in its deliberations; preventing targets of the investigation from tampering with witnesses; encouraging witnesses to testify frankly and truthfully without fear of retaliation; and shielding those who are exonerated by the grand jury.

In re Grand Jury 95-1, 118 F.3d 1433, 1439 (10th Cir. 1997) (*quoting United States v. Procter & Gamble Co.,* 356 U.S. 677, 681–82 n. 6 (1958)).

While Section 355(A) permits the Attorney General a narrow exception to disclose matters occurring before the MCGJ, that exception is limited to sharing information with law enforcement. Otherwise, no persons present for proceedings of the MCGJ may "disclose matters occurring before" the MCGJ unless "so directed by the court." Those who disclose such matters without leave of the presiding judge "shall be held in contempt of court." *Id.*

Importantly, this limitation applies more broadly than the secrecy provisions applicable to traditional grand juries. Under Oklahoma law, only testimony before the grand jury—along with deliberations of the jurors themselves—is deemed secret. *See, e.g.,* 22 O.S.2011, §§ 324, 340, 341. By contrast, Section 355(A) couches its prohibition in broader terms: "***matters occurring before*** the multicounty grand jury" may not be disclosed unless so ordered by the presiding judge. Based on the breadth of this language, it is the longstanding practice of the OAG to hold ***all*** materials

[1] The Multicounty Grand Jury Act provides that "any document produced to a [MCGJ] may be copied or reproduced" and that proceedings before the MCGJ, except for the deliberations and vote of grand jurors, shall be stenographically recorded or transcribed. 22 O.S.2011, § 354(B). The prohibition against disclosure of matters occurring before the MCGJ provided in Section 355 clearly apply to any documents reproduced as well as transcripts of MCGJ proceedings.

generated by an investigation overseen by the MCGJ as confidential until such time as the presiding judge orders their release. This not only includes transcripts—which are not subject to the Journal Entry's order of production—but also investigative reports that form the substance of that transcribed testimony, exhibits introduced and referred to in testimony, and materials produced in response to a MCGJ subpoena. The rationale for maintaining the confidentiality of transcribed testimony applies equally to these materials.

Moreover, this prohibition does not expire once an indictment is handed down and the materials are provided to the attorney for the defendant pursuant to the defendant's constitutional and statutory rights. Section 355(A) is a confidentiality provision that applies equally, and without limitation, to grand jurors, stenographers, interpreters, ***and attorneys*** who gain access to "matters occurring before the multicounty grand jury." It allows for the disclosure of MCGJ materials only upon order of the presiding judge or upon their introduction into evidence in a criminal prosecution that is open to the public.

As directed by the Journal Entry and stated above, the OAG has reviewed documents responsive to Item 2 and will be producing those which it has discretion to disclose. However, during the course of that review, the OAG also identified a subset of responsive documents that are a part of matters occurring before the MCGJ. It is the position of the OAG that Section 355 of Title 22 prohibits the disclosure of such documents without an order from the judge presiding over the MCGJ.

CONCLUSION

The State has faithfully responded to this Court's order requiring it to produce certain documents relating to criminal, civil, and administrative proceedings involving Health Care Professionals relating to the prescription of opioids. The State, however, is bound by other statutes

limiting its ability to produce certain documents that are a part of matters occurring before the MCGJ. The practical effect of Title 22, Section 355 is the same as a sealing order. Thus, pursuant to the Court's suggestion at the December 20 hearing, the State now seeks an order from the Court recognizing the mandate of Section 355 and protecting these records from disclosure. The order sought by the State balances the State's discovery obligations in this matter and its statutory obligation to protect matters occurring before the MCGJ.

WHEREFORE, for the above and foregoing reasons, the State respectfully requests the Court grant its Motion and issue a protective order excluding from production in this case any materials produced to opposing counsel in criminal proceedings that "occurred before the multicounty grand jury."

Dated January 17, 2019

Respectfully Submitted,

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EXHIBIT 1

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DEC 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,
Plaintiff,

v.

(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, INC.;
(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
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

JOURNAL ENTRY ON DISCOVERY OF CRIMINAL, CIVIL AND ADMINISTRATIVE PROCEEDINGS

On the 29th day of November, defendant Watson Laboratories, Inc.'s ("Watson") Objection to the Special Discovery Master's Order on Watson's Motion to Compel Discovery Regarding Criminal and Administrative Proceedings (filed November 13, 2018) came on for hearing. Present for the parties were:

Plaintiff: Trey Duck, Abby Dillsaver, Drew Pate, Reggie Whitten, Brad Beckworth, Ethan Shaner, Dawn Cash, Ross Leonoudakis, Lisa Baldwin and Brooke Churchman
Watson: Robert McCampbell and Harvey Bartle
Purdue: Paul LaFata and Trey Cox
Janssen: Larry Ottaway, Amy Fischer, John Sparks and Steve Brody

Having reviewed the briefs of the parties and received argument of counsel, this Court finds that the motion is granted in part as specified below:

1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, motions, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. For purposes of this Order "Health Care Professional" includes doctors licensed by the Oklahoma Board of Medical Licensure and Supervision, doctors licensed by the Oklahoma Board of Osteopathic Examiners, and dentists licensed by the Oklahoma Board of Dentistry.

2. The plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. However, if such documents are sealed or are grand jury transcripts, such documents need not be produced or will be produced consistent with the Protective Orders currently in place, as appropriate. In items 1 and 2 above, if a document is withheld because it is sealed, a copy of the sealing order will be provided to counsel for the defendant.

3. The plaintiff shall also produce to Judge William Hetherington *in camera* a list identifying all Health Care Professionals previously investigated by the State relating to the prescription of opioids where the investigation did not result in a civil, criminal or administrative

proceeding with the reasons why not. Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants. The list shall be produced to Judge Hetherington by January 2, 2019 and shall remain *in camera* and not be part of any production to defendants.

4. The plaintiff shall produce the documents required in items 1 and 2 to the defendants by January 11, 2019.

IT IS SO ORDERED this 20th day of December, 2018.

S/Thad Balkman

THAD BALKMAN, DISTRICT JUDGE

EXHIBIT 2

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS

HAD ON DECEMBER 20, 2018

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE

AND WILLIAM C. HETHERINGTON, JR.,

RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

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from what I filed with the Court last week, because Mr. Duck and I have continued to work through issues.

My request today is that the Court not change its mind and the Court simply enter an order reflecting what the Court ordered on November 29th. The Court asked me to prepare a journal entry reflecting the Court's rulings. That's what I've done. That's all I'm asking today. Let's not relitigate. Let's not back up. Let's just enter an order on what the Court has already done.

There are two issues that I think are separating the parties here. One, is the plaintiff wants to insert language about they can keep documents out based on various statutes; the Antidrug Drug Diversion Act, the Multicounty Grand Jury Act, the Medicaid Program Integrity Act.

These are the exact issues that we argued on November 29th. This is the exact same argument that plaintiff had. Their brief, page 13, page 15, and page 17, is the exact same argument. And the Court ruled against the State.

And it's important to remember what the Court did. You didn't give me everything I wanted. It was a measured and careful ruling. But remember the logic of it. If documents are already public, they are publicly available documents, they cannot possibly be secret, they cannot possibly be privileged. That's one category the State has to produce.

The second category the Court ordered was if the document

was produced to your adversary in discovery, it can't possibly be secret. It can't possibly be privileged. It was produced to your adversary. If it was produced to your adversary in that case, it can be produced to your adversary in this case. And all I'm asking the Court is to stick with that ruling, those two categories, where the Court ended up on documents that can't possibly be privileged.

The other issue separating the parties is the time when the documents have to be produced. In our motion, we asked the Court to order 30 days to produce the documents. That's our motion to this Court.

The State, in their brief, did not make a single objection that 30 days was insufficient. In all of the argument we had before the Court on November 29th, the State did not make a single objection that 30 days was insufficient. And I think it's way too late now, after all of this litigation, to say, Wait, let's start again now with a new round of objections. I think it's way too late.

Further, the Court ordered this on November 29th. The issue's been coming a long time. The Court ordered it on November 29th. The State's already had three weeks to be working on this. And not unreasonable for the Court to, again, as the Court did, order production.

Now, the State is proposing March 15th as the date they would do the production, and that's just running out the clock.

So, your Honor, you know, we would ask that the protections that are already in the statutes simply be carried over into an order of this Court.

MR. MCCAMPBELL: Your Honor, it was not an agreement on November 29th. We were in disagreement. We briefed opposing sides. We argued opposing sides. The Court made a ruling because there wasn't an agreement. All I'm asking is that ruling be reduced to writing.

I do agree with Mr. Duck, we ought to get this resolved today. And I would agree with him, let's get it resolved, let's get an order in place.

And just one last thing. Right at the end of my draft where I say the documents are produced January 2nd. If the Court wants to pick a different date, pick a different date. Let's write it in, let's get the order in place. And I'll say again it shouldn't be long after January 22nd. The State's the one that wants to go -- it shouldn't be long after January 2nd. The State's the one that wants to go fast; they ought to be able to produce the documents.

THE COURT: All right. Thanks, gentlemen.

The Court's well informed about what it is that the defendants are seeking from the State. You briefed it, we discussed it in depth on November 29th. The defendants made the request for these documents a significant amount of time before the court hearing.

I'll just try to be more clear. I expect the State to produce documents that have already been produced. If they're sealed, I expect the State to produce them. I understand that you're saying that there are statutes that you cannot violate. I understand that.

But I -- where you think there's a judgment call or discretion, I expect you to air on the side of liberal discovery and to produce it. And if you feel so strongly that you're not supposed to, then you can come and seek specific relief from this Court. Otherwise, I expect you to produce it.

I think that's in keeping with what I decided back on November 29th in response to Mr. McCampbell's arguments. And so I'm going to order that the journal entry not include specific reference to those statutes. I think it's implied that you're going to follow the law, but at the same time, I want it to be clear that the State's going to produce the documents that may be sealed; that if they were produced to other parties before, I expect them to be produced to the defendant. Okay?

MR. MCCAMPBELL: I would ask that your Honor give us a ruling on the date the documents have to be produced.

THE COURT: Well, I'm going to pick Monday, January 21st.

MR. MCCAMPBELL: Thank you, your Honor.

THE COURT: We've had a request -- yeah, go ahead.

EXHIBIT 3

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

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 22nd day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on October 18, 2018.

Rulings entered herein regarding the following Motions:

1. **Cephalon's Motion for State to Show Cause for Failure to Comply with Court Orders**

The undersigned entered rulings on August 31, 2018 overruling State's objections to the nature and number of interrogatories. The record and argument indicates that State

has complied with some production for interrogatories 1 through 6 and then at the October 3rd hearing the undersigned ordered State to fully answer interrogatories it can answer by October 9th. I further ordered that State identify interrogatories for which answers are being withheld.

The record indicates State has not responded to interrogatories numbered 7 through 16 contending Defendants have collectively exceeded the 30 interrogatory limit. The undersigned once again reiterates that in the interest of time and efficiency, it is best for the three Defendant groups to respond as a group to 30 interrogatories per group, however, as ordered before, when that is not possible, State is **required** to fully answer interrogatories limited to 30 per defendant sued.

The specific medications and damage formula defendant is interested in will be identified and fully developed in discovery as part of the State's expert testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

Therefore, I again order compliance and State is Ordered to fully answer to the extent possible, and in compliance with my previous orders protecting patient and physician personal information, interrogatories 1 through 6 and the motion is **Sustained** to that extent.

The undersigned enters the same Order for State to Respond to interrogatories 7 through 16 under the same conditions.

Responses to all of these interrogatories are Ordered to be fully completed and answered within 15 working days from the date of this Order and shall be State's final and complete answers subject to newly acquired evidence that must be produced.

2. **State's Second Motion To Show Cause as to Purdue**

This motion asks the undersigned to reenter my original Order (Withdrawn by October 5, 2018 Order) with regard to Rhodes entities. Now following argument, review of the record, testimony and pleadings, find State is entitled to full disclosure and discovery regarding Rhodes Pharma and Rhodes Technologies as affiliates related to Purdue Pharmaceutical and involved with Sackler family ownership. The testimony and record now before the undersigned demonstrates significant control over the creation of, reasons for its creation and daily control, such as "to provide a cost competitive API platform to support our Rhodes Pharmaceuticals generic dosage form initiative". Argument and evidence confirms that Rhodes Technologies and Rhodes Pharma fall within the definition of an "Affiliate" about which production is required. I further find pursuant to State's request, State is entitled in this context only, to complete discovery back to the point in time of Rhodes entity creation or 1996, whichever is earlier. I further find the evidence is insufficient to indicate Purdue Pharmaceutical was intentionally concealing or hiding the identity of these affiliates. The evidence is in dispute, however, documentary evidence had been produced to the State prior to depositions disclosing the existence of these entities.

Therefore, State's request to reenter my previously withdrawn order with regard to Rhodes entities is **Sustained** to this extent.

3. Purdue's Motion to Show Cause Against the State

Findings entered with regard to this motion overlap in part with agenda item number 1 as to Cephalon's motion. Again, the undersigned has previously ordered State to answer in full and allowed State to answer only 30 interrogatories from each Defendant group if possible. Regarding interrogatories numbered 7, 8 and 9, I have previously ordered State to answer with specificity and to the extent possible. Consistent with item number 1, final and complete answers to be provided within 15 working days subject to newly discovered evidence required to be produced.

The specific medications and damage formula will be identified and fully developed in discovery as part of the State's expert reports and testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

I agree with State's argument and I have encouraged a joint Defendant group interrogatory count of 30 interrogatories to be submitted to the State from the three groups and State to Defendant groups when possible. When a "joint" interrogatory request is made, the State is required to answer the 30 interrogatories to the group as a whole. The State is not required to then answer another set of interrogatories covering the same information propounded to it by individual members of the Defendant group, unless that individual Defendant has a **clearly** unique and independent grounds for separate inquiry following a meet and confer. Once again, as indicated above, in the interest of time and judicial efficiency, it is reasonable in this case to conduct discovery, for the most part, in a three-defendant group format.

Privacy and confidentiality orders have been entered and the issue ruled upon. Therefore, by this Order I order full compliance as to each numbered interrogatory properly propounded consistent with this Order, with State to fully comply within 15 working days from the date of this Order with final and complete responses subject to newly discovered evidence required to be produced.

Purdue's motion to show cause and requests made therein are **Sustained** to this extent.

4. State's Motion to Compel Depositions and Group Topics

The undersigned has reviewed this motion and Purdue's opposition to it, Teva group's response and opposition to it, redacted and unredacted versions containing argument and record evidence relevant to State's motion and, considered Janssen group's response and objection.

This issue concerns corporate designation of witnesses for topic testimony, scope and relevant topic grouping. State argues through this date, State has only been able to reach an agreement with Defendants for designation on topics number 39 and 41

currently scheduled with Janssen group for November 9th and has taken five other depositions (Briefs indicate State has taken depositions of 9 other corporate designated witness). Notices for all of these designated witness depositions have been out since prior to the attempted removal of this case to Federal jurisdiction and subsequent remand. State is asking for a scheduling order with time limitations and grouping of 42 topics for each of the three Defendant groups pursuant to State's Ex. B to the motion. The State and each of the three Defendant groups have submitted exhibits proposing a formula for topic grouping, timing and witness designation. Defendants generally argue State cannot dictate how Defendant groups join topics for each of their representatives and urge the undersigned to set a maximum total time limit for the completion of all corporate designated depositions adopting Defendant Group topic groupings.

Having heard arguments and reviewed each suggestion the following orders are entered:

A. State is Ordered to specifically define each topic of requested inquiry and serve on counsel for each Defendant group (or a specific Defendant where a topic is unique to that Defendant) within **five (5)** working days following this Order;
B. Each Defendant group, or individual Defendant, whichever is appropriate, is Ordered to group State defined topics and designate a corporate witness who can testify to as many topics or groupings as possible. While it is appropriate to allow Defendant groups or individual Defendants to group topics, I do so recognizing the potential for abuse but with a clear Order and expectation this will minimize designated witness deposition numbers and provide State with witnesses fully informed, knowledgeable and fully prepared to testify to the designated topic or topic grouping. Each Defendant group or individual Defendant is Ordered to designate corporate witnesses consistent with this Order and provide State with a corporate witness designation matrix pairing witnesses with topic or topic groupings and to so notify State no later than **ten (10)** working days following the receipt of State topic definitions;
C. Some topics will justifiably require more deposition time than others. Generally, in similar type cases to this case, Courts have approved 6 to 10 hours of deposition time for a designated corporate witness. Under the circumstances of this case, State shall be limited to a total of **eighty (80)** hours to be divided up as State chooses. I recognize that some depositions are currently scheduled and ready to take place. However, review of these proposed depositions indicate they are offered by individual Defendants based upon their own topic definitions and groupings where topics have not been defined by State. In order to minimize delay, I encourage these depositions to proceed even though the above time limits for topic definitions and groupings have not expired.
D. Regarding State topic witness designations, the record is unclear as to the total number of topics Defendants' wish to take. Purdue's brief indicates it defines

27 topics. Therefore, it is **ordered** that each Defendant group or individual Defendant shall define each topic with State ordered to designate a corporate witness matrix pairing witnesses with topic or topic groupings and notify each defendant group or individual defendant, according to the same deadlines set forth above in paragraph (B). The same **order** is entered regarding State designated witnesses who shall be witnesses fully informed, knowledgeable and prepared to testify. State is not required to designate any corporate witness for a Defendant defined topic that will be the subject of State's expert witness claim proof and damage model and State must so state in its topic designation matrix.

E. It does appear from briefs and argument that some topics should be subject to written responses and certain Defendants have so offered. While encouraged, State has the right to accept or reject a written response for any particular topic. The same applies to Defendant groups or individual Defendants as to Defendant topics.

5. State's Motion To Reconsider April 25, 2018 Order on Relevant Time Period

State has developed and produced evidence requesting the undersigned to modify its April 25th order to reflect the general "relevant time period" to begin in 1996. State has established a relationship between Defendants and the marketing and promotional strategies some of which began taking shape and were established and ongoing as early as 1996 and moving forward. The relevant time period does cover and effect responses that have been given in various RFPs relating to creation of, funding and coordination of marketing and promotional strategies involving the sale of branded and unbranded opioid and other related drugs. Discovery therefore is relevant in this context only, back to the point in time when the evidence now shows those efforts began but no earlier than 1996. Under State's stated claims for relief and proposed proof model, State should not be limited to inquiry with regard to Oklahoma promotion, marketing and sales efforts and discovery involving Oklahoma relevant promotional representatives or entities. By this amendment, I do not intend to fully modify my previous order that was upheld by Judge Balkman. State is not allowed to request again or explore again from any Defendant group or individual Defendant records, documents and information State already has in its possession or has access to, and not related to marketing and promotional planning and strategies.

Therefore, State's request to modify is **Sustained** to this extent.

6. Purdue's Motion to Compel Witness Testimony from Department of Corrections

State has indicated in previous discovery that Department of Corrections does not prescribe opioids to prisoners. The record indicates there has been differing testimony and Defendants' Motions and argument support ordering testimony by way of deposition from knowledgeable personnel. Defendant's motion is **Sustained** and Defendants are

allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are **Ordered** produced to Defendants in time for preparation.

Purdue's Motion to Compel is **Sustained.**

7. Purdue's Second Motion to Compel Documents

Purdue argues document production requested from various State agencies on January 12th with partial production from 17 State agencies and none from a list of 10 remaining agencies. The undersigned had previously ordered production on April 25th and August 31st as to Purdue's requests resulting in partial production. These orders did require State to produce under the rolling production process, at one time within seven days and to fully produce within 30 working days. Confidentiality orders regarding personal and private information were entered and will be more fully addressed in the "Watson" motion below.

State is **Ordered** to produce within 30 working days from the date of this order, final and complete responses and production, subject to newly discovered evidence required to be produced, relevant production in support of State's evidentiary proof model and Defendants' defense thereto, from the Office of the Medical Examiner, Oklahoma Department of Public Safety, Oklahoma State Board of Dentistry, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy and the Oklahoma State Board of Veterinary Medical Examiners, all subject to previous orders entered regarding protection of physician and patient privacy information. State argues in its brief that the Department of Public Safety and the Oklahoma State Bureau of Investigation possessed no documents relevant to this litigation. To that extent, State must so answer but is required to produce any documentation not found protected by our Protective Order, this order or any previous order. Regarding any Agency requests, information related directly to a criminal investigation to include investigative notes, reports, witness interview notes, contacts and transcripts are deemed protected work product.

Purdue's Second Motion to Compel is **Sustained** to that extent. The same is **Denied** as it relates to The Oklahoma Office of the Governor, the Oklahoma State Bureau of Investigation, the Oklahoma Legislature and the Oklahoma Worker's Compensation Commission involving protected "deliberative process privilege", consistent with the findings made here and to be made below regarding the "Watson" motion.

8. Purdue's Motion to Compel Custodial Files In Advance of Depositions

Sustained consistent with findings made in agenda item No. 6 above.

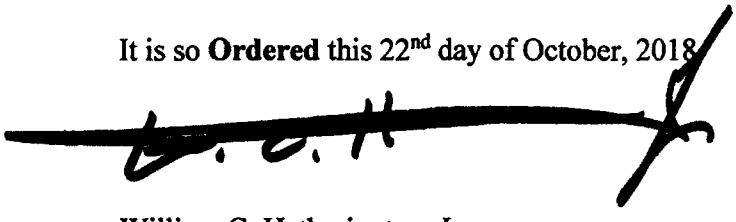
9. Watson Lab's Motion to Compel Investigatory Files

Watson argues it made 12 requests to obtain documents as to eight physicians, one medical center and "other unknown healthcare providers" relevant to their defense because State must prove Defendants' fraudulent promotion and misrepresentation either,

1. Caused provider to submit alleged false claims; 2. Caused provider to make a false statement material to each false claim or; 3. Caused the State to reimburse a particular prescription. Watson argues the Oklahoma Anti-Drug Diversion Act has no privilege provision and expressly authorizes the State to release information contained in the central repository. However, the Act provides that any information contained in the central repository shall be confidential and not open to the public, and, to the extent the State can permit access to the information, it shall be limited to release to a finite list of State and Federal agencies listed in the statute. Otherwise, disclosure is solely within the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs to control and only for specific purposes listed. The record does not support Watson's allegation that the State is relying on the same confidential information when taking depositions in this case. State argues it is not and will not rely on any confidential investigatory information that might be included in investigation files in this case. I must also weigh relevant access to this information against practical privacy considerations, and I have previously ordered the confidential information contained in these databases protected. Therefore, if the information Watson seeks is contained in databases I have previously dealt with, Watson has access to these databases with the personal information protected. The same considerations regarding Grand Jury information, transcripts etc., is also protected and can only be released by the Court presiding over a particular Grand Jury. Regarding the Oklahoma Medicaid Program Integrity Act, State has brought claims under this Act and it specifically allows for the Atty. Gen. to authorize release of confidential records, but, to the extent disclosure is essential to the public interest and effective law enforcement only. Any production of criminal investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving disciplinary proceedings. Again, State argues it will not rely on any confidential or privileged investigatory material for use in this case and the undersigned will watch carefully for any indication that State is violating this representation.

Therefore, Watson's Motion to Compel Investigatory Files is **Denied.**

It is so **Ordered** this 22nd day of October, 2018.



William C. Hetherington, Jr.

Special Discovery Master

EXHIBIT 4

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON NOVEMBER 29, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

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what they've actually requested, and if they requested it and it's the pleadings, et cetera, that you just mentioned, then I think that we can do it.

MR. MCCAMPBELL: So on that one, your Honor, we have requested it. We're here, we've litigated it in front of Judge Hetherington, we've litigated with you. I think we're entitled to an order on that.

If I could also address Item B1, the items that have already been produced to a criminal defense lawyer or a civil defense lawyer, if it's already been produced to them, it's not privileged. None of these things Mr. Duck's complaining about applies. If it can be produced to those lawyers, it ought to be produced to us.

The expert reports. The expert reports are going to be important because they're going to tell us how many pills are at issue. And once again, on the cases that are done, that would have been turned over in discovery anyway, so that would be done.

And I say again, if it's a current case against a doctor who doesn't know he or she is under investigation yet, we can talk about those. I understand the sensitivity on that. But there's thousands and thousands of pages out there on cases that either they've already been done, or they're not going to happen for some reason, and everybody knows they're not going to happen. And none of that is sensitive. That ought to all

be produced, given the case the State has chosen to bring.

Thank you.

THE COURT: Okay. You've asked me to -- I mean, this is a de novo review of Judge Hetherington's decision, and I'm just kind of struggling to figure out what it is that you didn't like about it. I think I understand it now, and that is the defendants are wanting to look at, you know, things that are -- the State might have the key to that are criminal administrative proceedings that are not privileged. Again, I'm having a hard time getting my head around what that might be, and you've kind of helped define it.

I think I'm inclined to deny the request to overrule, but I want to make sure that I also leave the door open so that the State is required to produce to the defendants documents that have previously been produced, as Mr. McCampbell I think just said just a minute ago, to other criminal defense attorneys. I think that's a reasonable request. I think that's probably in line with Judge Hetherington's previous ruling anyway.

My concern in not expanding or not granting the defendants' further relief is I do believe that we have to be careful to not have a chilling effect on law enforcement and prosecution. Mr. McCampbell even stated as much a minute ago with the recognition that in some cases, open investigations, that that could definitely be a concern.

And so the bottom line is I think that the parties need to

have further meet and confers on whether or not the State has complied with the request. But I think to the extent that the defendants just want to completely open the door to any information that the State has by virtue of it being an entity that prosecutes people, I don't think that they just get unfettered right to have all those documents.

I agree with what Mr. Duck stated earlier. Just because the State of Oklahoma prosecutes cases, doesn't mean that in the civil case they have a requirement to turn all that information over to the defendants. And I'm not sure the defendants necessarily want all that either.

Mr. McCampbell, I have in my notes that, you know, at the beginning you said, who are the doctors, we want to know who are the doctors. Tell me what further clarification you need from me so that you feel like you can get the information you need from the State as far as who are the doctors.

MR. MCCAMPBELL: Well, yes, your Honor. Documents, certainly every case, every civil, administrative, or criminal case brought against a doctor, and the documents that they know where they had suspicions or probable cause, or whatever you want to call it, that a doctor was prescribing opioids illegally, and that a case was not brought for some reason.

And --

THE COURT: So cases brought against doctors and --

MR. MCCAMPBELL: Cases brought, or they've received

EXHIBIT 5

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

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
DEC 04 2018
In the office of the
Court Clerk MARILYN WILLIAMS

ORDER

The parties appear by counsel for oral arguments on various motions. The State's request for a Status Conference was granted and a status conference was conducted. The Court restated the jury trial will begin May 28, 2019 and admonished the parties to cooperate in discovery in order to adhere to all deadlines leading up to trial.

A de novo review was held on the Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Claims Data, Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Criminal and Administrative Proceedings, and Discovery Master's Order Overruling Defendants' Objections to the State's Corporate Representative Topics.

The Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Claims Data is affirmed.

The Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Criminal and Administrative Proceedings is affirmed in part, and the State is ordered to produce a list of doctors previously investigated and the reasons for such investigations for in camera

review by the Discovery Master by January 1, 2019. Mr. McCampbell is to prepare a proposed order with other amendments to the Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Criminal and Administrative Proceedings.

The Discovery Master's Order Overruling Defendants' Objections to the State's Corporate Representative Topics is affirmed.

IT IS SO ORDERED this 3 day of December, 2018!

Thad Balkman, District Judge

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of December, 2018, a true and correct copy of the above and foregoing instrument was emailed to the following:

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Reggie Whitten

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Attorney General for State of OK
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Ethan Shaner

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