



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
HUNTER, ATTORNEY GENERAL OF )  
OKLAHOMA, CLEVELAND COUNTY, )  
S.S. )

Plaintiff,

Case No. CJ-2017-816

v.

PURDUE PHARMA L.P., et al.

Honorable Thad Balkman

Defendants.

FILED  
MAR 08 2019  
In the office of the  
Court Clerk MARILYN WILLIAMS

**PURDUE'S AMENDED NOTICE OF ADDITIONAL EXHIBIT TO DEFENDANTS'  
REPLY IN SUPPORT OF MOTION FOR A CONTINUANCE**

Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. ("Purdue") hereby respectfully submit this Amended Notice of Additional Exhibit to Defendants' Reply in Support of Motion for a Continuance. Purdue submitted its initial Notice yesterday to provide the Court with the attached, file-stamped copy of Purdue's Emergency Motion to Compel, as an additional exhibit to Defendants' Reply In Support of Motion for a Continuance ("Reply"). The Notice inadvertently omitted several pages from Purdue's Emergency Motion to Compel. This Amended Notice attaches a full copy of Purdue's Emergency Motion to Compel. As Purdue's Emergency Motion to Compel was filed under seal, Purdue files the attached copy of the motion under seal.

Date: March 8, 2019

Respectfully submitted,

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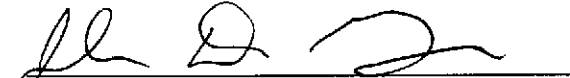
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2019, I caused a true and correct copy of the following:

**PURDUE'S NOTICE OF ADDITIONAL EXHIBIT TO DEFENDANTS' REPLY IN  
SUPPORT OF A MOTION FOR CONTINUANCE**

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

  
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**ADDITIONAL EXHIBIT TO  
DEFENDANTS' REPLY IN SUPPORT OF  
MOTION FOR CONTINUANCE - FILED  
UNDER SEAL PER COURT ORDER  
DATED APRIL 16, 2018**

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

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

Plaintiff,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

STATE OF OKLAHOMA  
CLEVELAND COUNTY } S.S.  
FILED  
MAR 06 2019

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master William

Weatherington  
In the office of the Court Clerk MARILYN WILLIAMS

PURDUE'S EMERGENCY MOTION TO COMPEL

There has been a persistent, pervasive, and pernicious failure by the State to save, collect, and produce responsive documents in this litigation. The State's private attorneys did not timely send the required litigation hold notices to all custodians, so at this time there is no telling how much potentially responsive evidence the State's employees have inadvertently or intentionally destroyed. Recent deposition testimony has revealed for several key witnesses that important documents remain uncollected in custodial files, and the State has not cured the deficiencies, despite being aware of the missing documents. Purdue needs emergency relief to ensure the State preserves, collects, and produces any remaining evidence that is responsive to the Defendants' pending discovery requests.

The State also failed to produce the custodial files from 54 custodians, including nine key witnesses already deposed by the Defendants. The State failed to produce these files even though the Court has at least twice ordered that the Defendants are entitled to get and review custodial files before depositions. The nine witnesses have information that goes to the heart of the State's case, for example:



- Rebecca Pasternik-Ikard. Ms. Pasternik-Ikard is the the CEO of the Oklahoma Healthcare Authority (“OHCA”), which is the agency with the sole authority to decide whether a Medicaid opioid prescription is “medically necessary” and therefore eligible for reimbursement.
- Dr. Burl Beasley. Dr. Beasley is the Director of Pharmacy for the OHCA and runs the day-to-day operations of the OHCA’s Pharmacy Services Department, which administers all pharmacy benefits to SoonerCare members. The State even identified Dr. Beasley as its 30(b)(6) witness on topics related to the OHCA’s authorization and reimbursement decisions.
- Dr. Frank Lawler. Dr. Lawler is the Chief Medical Officer for the State’s Employees Group Insurance Department (“EGID”). The EGID manages the State employee health insurance plan, and it has authority to decide whether the State will cover particular items of medical care for State employees.
- Dr. Travis Tate. Dr. Tate is the Direct of Pharmacy at the EGID. Dr. Tate’s responsibilities include managing the pharmacy benefits for the EGID patient population.

The State’s repeated discovery failures are serious violations of the Oklahoma Rules, and they unfairly prejudice the Purdue Defendants and other Defendants as they prepare for trial. The requested documents go to the heart of the issues in this case. For example, the State must prove that the Defendants caused the OHCA to authorize for dispensing and approve for reimbursement prescriptions that were not medically necessary. Yet the State’s private attorneys have not produced the custodial files of witnesses who are likely to have information relevant to this core issue—including the files of witnesses offered as the State’s 30(b)(6) witnesses. The State has failed to produce—and may not have preserved—the audio recordings for the meetings of the Drug Utilization Review Board (“DURB”), which advises the OHCA on issues like the appropriate and optimal use of medications. These recordings bear on the OHCA’s authorization and reimbursement decisions, the information reasonably available to the State about the efficacy and safety of opioid medications, and the representations made by the Defendants to the DURB and the OHCA.

As another example, the State failed to collect and produce several categories of documents from the Oklahoma Bureau of Narcotics (“OBN”). These uncollected or improperly withheld documents include Threat Assessment Reports from 1996-present (apart from 2017, which the State has produced). The State also failed to produce the custodial files for Mark Woodward, an OBN officer who testified that he has in his possession approximately fifteen years of responsive educational presentations about opioids. The State also did not produce documents related to the OBN’s efforts to track and eliminate diversion of prescription opioids (apart from one annual report, covering the 2006-07 time period).

The remainder of this motion provides details about the specific categories of requested documents that the State has failed to preserve and/or produce. Purdue respectfully moves on an emergent basis for an Order compelling the State of Oklahoma to produce, within *7 days*, (1) the responsive documents within the custody of the individuals listed in Appendix A, and (2) the categories of documents described below, *infra* at pages 10-14. After review of these materials, it may also be necessary to re-open the depositions of some State witnesses. Purdue submits that the State should bear the cost of these depositions. Finally, after the State complies with this Order, Purdue reserves the right to move for any additional spoliation sanctions warranted by the State’s failure to comply with its discovery obligations.

#### **LEGAL STANDARD**

Under Tit. 12, O.S. § 3226(B)(1), “Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party’s claim or defense, “reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case.” Relevant evidence means “evidence having any tendency to make the existence of any fact that is of consequence to

the determination of the action more probable or less probable than it would be without the evidence.” *Id.* § 2401.

Oklahoma’s Discovery Code is modeled after the federal scheme, and Oklahoma courts routinely look “to federal authority construing federal Rule 26 for guidance when applying our similar provision.” *Scott v. Peterson*, 2005 OK 84, ¶ 22. Accordingly, relevance must be “broadly construed at the discovery stage of litigation,” and “a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.” *Miller v. Doctor’s Gen. Hosp.*, 76 F.R.D. 136, 138–39 (W.D. Okla. 1977).

A request for discovery should be allowed “unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.” *Id.* “When the discovery sought appears relevant, the party resisting the discovery has the burden to establish the lack of relevance by demonstrating that the requested discovery (1) does not come within the scope of relevance . . . , or (2) is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.” *Owens v. Sprint*, 221 F.R.D. 649, 652 (D. Kan. 2004).

### ARGUMENT

For almost a year, the State has represented that it will collect and produce documents on behalf of State agencies, and that the State is “not requiring or asking the defendants to go subpoena different agencies.” Ex. 1, Hearing Tr. (Apr. 19, 2018) at 20:4-5. The State has not done what it said it would do, and in the process has also violated the Discovery Code.

As a result, the State's discovery is incomplete and requires immediate supplementation, given the fast-approaching close of fact discovery. These violations have prejudiced Purdue as it tries to prepare for expert discovery, motion practice, and trial.

The State's violations fall into three broad categories:

*First*, the depositions of State witnesses have uncovered that the State did not send proper hold notices, and it did not even attempt to preserve or collect broad categories of potentially responsive documents.

*Second*, the State did not produce custodial files for *54 custodians* who likely have a significant amount of relevant evidence, including nine witnesses already deposed by the Defendants—some of whom the State indicated that it intends to call at trial.

*Third*, as a result of the above violations, and the State's refusal to comply with prior specific discovery requests and Orders, the State has not produced several broad categories of responsive documents that go to heart of this case.

The Defendants tried, without success, to meet and confer with the State to resolve these outstanding discovery issues. Purdue wrote a detailed letter to the State on February 22, 2019 specifically requesting the material that is the subject of this motion. Ex. 2, Ltr. (Feb. 22, 2019). The State never responded. The parties are at an impasse and need the Court's help. The State refuses to meet and confer, refuses to produce responsive documents, and/or refuses to comply with the spirit and letter of the Court's prior discovery Orders.

- 1. DUE TO THE STATE'S FAILURE TO PRESERVE AND COLLECT POTENTIALLY RESPONSIVE DOCUMENTS, THERE IS A SIGNIFICANT RISK THAT THE STATE HAS DESTROYED RELEVANT INFORMATION.**

To comply with its discovery obligations, the State had to collect, review, and produce non-privileged documents responsive to the Defendants' Requests for Production. During the

depositions of State witnesses, however, it became apparent that the State did not produce relevant and discoverable files from the witness' files. The State knows about these deficiencies from the depositions but will not address them. For example, Dr. Burl Beasley, the Senior Director of Pharmacy at the OHCA and a 30(b)(6) witness for a number of topics, [REDACTED]. Ex. 3, Beasley Tr. (Mar. 1, 2019) at 458:20-459:12. The uncollected documents include core evidence like the OHCA Desk Audit Reports, which Dr. Beasley explained [REDACTED].

[REDACTED]. *Id.* at 366:18-368:13, 453:16-455:23. Similarly, Dr. Frank Lawler, the Chief Medical Officer for EGID, testified that [REDACTED]. Ex. 4, Lawler Tr. (Feb. 20, 2019) at 144:5-11. [REDACTED].

[REDACTED]. Ex. 5, Gerszewski Tr. (Mar. 1, 2019) at 10:25-11:13. Finally, while the State asked Dr. Travis Tate, the Director of Pharmacy for EGID, [REDACTED]. Ex. 6, Tate Tr. (Mar. 1, 2019) at 89:19-91:6, [REDACTED].

[REDACTED]. *Id.* at 24:7-10, 90:18-91:6. Dr. Tate's testimony established [REDACTED].

[REDACTED]. *Id.* at 12:8-13:5, 34:22-38:1.

These fundamental discovery violations are even more problematic because it has become clear during discovery that the State did not issue a litigation hold to preserve potentially responsive evidence. For example, the State did not issue a litigation hold to the University of

Oklahoma College of Pharmacy Pharmacy Management Consultants group (“PMC”), until 302 days after it filed its lawsuit. Ex. 7, OUCOP00000259. PMC has contracted with OHCA for more than a decade to administer the SoonerCare pharmacy benefits program. PMC reviews and approves (or denies) all prior authorizations for prescription medications for SoonerCare members, prepares materials for and leads all DURB meetings, and make recommendations to the DURB about prior authorization requirements. PMC also oversees the lock-in program for SoonerCare members—a program OHCA implemented to address the abuse and misuse of prescription opioids.

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 8, ODMHSAS00002760. ODMHSAS is responsible for providing for individuals struggling with mental illness or addiction who could not otherwise pay for their needed services. The State is seeking damages for the costs of ODMHSAS’s treatment programs and services. The State therefore should have instituted a litigation hold for ODMHSAS when it filed its lawsuit, if not sooner. The relevance of information from ODMHSAS cannot be disputed. Indeed, in the State’s initial disclosures from March 15, 2018, the State identified the Commissioner of ODMHSAS, Terri White, as someone who would likely have discoverable information and the State has since identified Ms. White and another ODMHSAS official as experts in this case. Ex. 9, Plaintiff’s Disclosure (Mar. 1, 2018) at 2.

Purdue is entitled to documents that are relevant to the claims and defenses of this case, and there is no justification for the State’s failure to preserve, collect, and produce all non-privileged responsive materials. Accordingly, the Court should compel the State to collect and produce any responsive documents that were not previously collected from State witnesses and

agencies likely to have discoverable information. Given the imminent close of fact discovery, the State should have to produce these materials within 7 days from the entry of the Court's Order.

**2. DUE TO THE STATE'S FAILURE TO PRODUCE ALL REQUESTED CUSTODIAL FILES, THE DEFENDANTS DID NOT HAVE COMPLETE DOCUMENT PRODUCTIONS WHEN THEY DEPOSED SEVERAL WITNESSES, AND DO NOT HAVE A COMPLETE COLLECTION OF RESPONSIVE DOCUMENTS.**

The State has failed to produce custodial files of 54 individuals likely to possess information relevant to the claims and defenses at issue in this lawsuit. Appendix A identifies these custodians and their relationship to the State.

Twice before the Court has recognized that the State needs to produce custodial files for witnesses in sufficient time to allow the Defendants to prepare for the witnesses' depositions. Accordingly, twice before the Court has compelled production of those files. Ex. 10, Order (Oct. 22, 2018) at 5-6; Ex. 11, Order (Dec. 26, 2018) at 3. And in addition to ordering the State to produce deposition witnesses' custodial in its Order on December 26, 2018, the Court also ordered the State to meet-and-confer regarding the remaining individuals who Purdue identified as having a significant amount of discoverable material in its December 6, 2018 motion to compel. Ex. 11, Order (Dec. 26, 2018) at 3. Yet here we are again, nine days before the close of fact discovery, and the State has not produced 54 of these custodial files.

Purdue has repeatedly requested these files. On January 23, 2019, Purdue asked for the custodial files for many of the individuals identified in Purdue's December 6 motion to compel. Ex. 12, Email (Jan. 23, 2019) at 1-2. Purdue reiterated its request on a teleconference the following day, and then again by letter of February 1, 2019. Ex. 13, Ltr. (Feb. 1, 2019) at 2-4. Purdue renewed the request on February 14, 2019. Ex. 14, Email (Feb. 14, 2019) at 2. And again on February 22, 2019. Ex. 2, Ltr. (Feb. 22, 2019) at 1-8.

Yet the State has still not produced the custodial files of 54 individuals identified by the parties as reasonably likely to have evidence relevant to the State's claims and Purdue's defenses. This list includes individuals who appear on the State's list of witnesses that it will or may call to trial, which was disclosed as recently as this past Friday, as ordered by the Court. Ex. 15, Hearing Tr. (Feb. 14, 2019) at 188-92; Ex. 16, Plaintiff's Amended Disclosures (Mar. 1, 2019). This list includes individuals who, [REDACTED]

[REDACTED]. It includes individuals that appear on the State's initial disclosure of individuals likely to have a discoverable information. Ex. 9, Plaintiff's Disclosure (Mar. 15, 2018). For example, according to the State, Terri White likely "possesses knowledge regarding the OMDHSAS, its processes, practices and procedures utilized by OMDHSAS for claims submitted for treatment under OMDHSAS' programs," and "likely possesses knowledge regarding the courses of action, programs, or other efforts the State has considered or implemented regarding preventing unnecessary opioid prescriptions." *Id.* at 2. The State also disclosed that Mark Reynolds likely "possesses knowledge regarding the OMDHSAS, its processes, practices and procedures utilized by OMDHSAS for claims submitted for treatment under OMDHSAS' programs and the OMDHSAS data storage systems." *Id.* But the State has not produced these files, even though the State seeks damages for OMDHSAS expenditures allegedly caused by the Defendants' conduct.

The State also refused to produce custodial files of *nine witnesses* deposed without the benefit of their files. These witnesses are:

- Rebecca Pasternik-Ikard (CEO, OHCA)
- Dr. Burl Beasley (Director of Pharmacy Operations, OHCA)



- Deborah Bruce (Executive Director, Oklahoma Board of Osteopathic Examiners)—a witness for whom the State previously agreed to produce custodial files. Ex. 17, Email (Feb. 15, 2019).
- Dr. Steven Crawford (Chairman of Oklahoma University Health Science Center)
- Dr. Frank Lawler (Chief Medical Officer, EGID)
- Susan Rogers (Executive Director, Oklahoma State Board of Dentistry)
- Dr. Travis Tate (Director of Pharmacy, EGID)
- Don Vogt (Former Program Manager, OBN)
- Mark Woodward (Education Officer and Legislative Liaison, OBN)

Defendants had no choice but to depose these witnesses without their files, in light of the scheduled end of discovery. The State's discovery violation impeded the efficiency and completion of the depositions, and these improperly withheld files remain necessary so that the Defendants can test the truthfulness of the testimony and decide whether they need to re-open the deposition.

Given the Court's prior orders and Purdue's many requests to produce these files, the Court should compel the State to produce the custodial files of these individuals **within 7 days from the entry of the Court's Order and re-open those depositions for further questioning, with the costs to be borne by the State**

The Court should also compel the production of the custodial files for the remaining individuals listed in Appendix A. Purdue attempted to meet-and-confer with the State regarding the production of these custodial files, but the State declined. The Court should therefore compel the State to produce the relevant evidence within the custody or control of the individuals identified in Appendix A **within 7 days from the entry of the Court's Order.**

**3. THE STATE HAS NOT PRODUCED DOCUMENTS RESPONSIVE TO PURDUE'S REQUESTS.**

In a February 22, 2019 letter, Purdue identified the categories of documents it had requested, when it first made the request, and to which Requests for Production the documents were responsive. Ex. 2 at 8-11. The categories of requested documents include:

- **Audio recordings of the Drug Utilization Review Board meetings.** The DURB advises the OHCA about the appropriate and optimal use of pharmaceuticals for Oklahoma Medicaid recipients. At its meetings, the DURB discusses the utility and appropriateness of opioid medications, diversion and addiction of prescription opioids, and cases of fraudulent use. Every DURB meeting is recorded. Ex. 18, Preslar Tr. (Nov. 2, 2018) at 120:14-121:14. These recording would contain any representations made to the board regarding prescription opioid medications, as well as any statements made by board members regarding the same. At a minimum, these recordings are responsive to Purdue Pharma L.P.'s First RFP No. 6, Ex. 19, and Purdue Pharma Inc.'s First RFP Nos. 2 and 4, Ex. 20. Purdue and Janssen requested these from the State on February 28, 2019. Ex. 21. The State has not produced these documents.
- **Oklahoma Drug Threat Assessment Report.** The OBN creates these reports, which provide details on diverted opioid medications, opioid abuse (including the specific number of Oklahomans hospitalized in connection with opioid use), and the State's efforts to prevent abuse and diversion. The State produced the Oklahoma Drug Threat Assessment Report from 2017, but has not produced the reports from any other year. Nor has it produced any drafts of the reports. At a minimum, these reports are responsive to Purdue Pharma L.P.'s First RFP Nos. 3, 6, and 8. Ex. 19. On January 7, 2019, Purdue requested the State to produce these reports dating back to 1996 as responsive documents. Ex. 22. Purdue reissued this request on February 22, 2019, asking the State to complete its production. Ex. 2. The State has not responded.
- **Documents from Oklahoma Department of Public Safety.** The Court has already ordered the State to produce documents from the Department of Public Safety or to make an official statement that the Department of Public Safety does not possess material responsive to Purdue's Requests for Production. Ex. 10, Order (Oct. 22, 2018) at 6. The Department of Public Safety is responsible for highway safety, and it keeps data on drug-related incidents. The State has not produced any documents from the custody of the Department of Public Safety, nor has it issued an official statement pursuant to the Court's Order that the Department possesses no material responsive to Purdue's Requests for Production. Purdue again requested these documents on February 22, 2019. Ex. 2. The Court should now issue an Order to Show Cause directing the State to explain why it has not complied

with this Court's Order. After production of the documents, the Court should hold a supplemental hearing to determine what additional sanctions are appropriate.

- **Medical Examiner Summaries.** Medical examiners produce a summary of their investigations to the Oklahoma Department of Health; these summaries note whether an individual's death involved a prescription medication. Ex. 23, Nguyen Tr. (Feb. 1, 2019) at 26:7-16, 28:13-29:1. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 3 and 6. Ex. 19. Purdue requested the State to produce these summaries as responsive documents on January 22, 2019, Ex. 24, and again on February 22, 2019, Ex. 2. The State has not responded.
- **Dr. Burl Beasley's Presentation to the OHCA Regarding Electronic Records Systems.** Dr. Beasley testified that he made a presentation to the OHCA regarding the estimated cost of implementing an electronic records system. Ex. 25, Beasley Tr. (Feb. 12, 2019) at 244:22-245:17. At a minimum, this presentations, working drafts, and all communications regarding the presentation are responsive to Purdue Pharma L.P.'s First RFP Nos. 6 and 8. Ex. 19. Purdue specifically requested these documents on February 15, 2019, Ex. 26, and again on February 22, 2019, Ex. 2.
- **Contracts Between the Oklahoma Health Care Authority and Pharmacy Management Consultants.** Pharmacy Management Consultants provide operational, consultant and educational services to the OHCA. These services primarily support the OHCA's administration of pharmacy benefits to Oklahoma SoonerCare members, and its efforts to meet Federal OBRA requirements related to Drug Utilization Review. The contracts reflect costs incurred by the State to administer prescription opioid dispensing and reimbursement, as well as steps taken by the State and its contractors to monitor and mitigate prescription drug abuse. Purdue specifically requested all contracts between the OHCA and its pharmacy management consultants, as well as all proposals and requests for information from pharmacy management consultants and other interested vendors that were received in connection with those contracts. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP No. 3, Ex. 19, and The Purdue Frederick Company Inc.'s First RFP No. 3, Ex. 27. Purdue requested the State to produce this material as responsive on February 15, 2019, Ex. 26, and again on February 22, 2019, Ex. 2. The State has not responded.
- **Documents Related to the Oklahoma Health Care Authority's Audit and Cease of Coverage for Topical Medications.** The OHCA conducted an audit of claims submitted for topical creams and lotions, some of which contained opioids. Ex. 25, Beasley Tr. (Feb. 12, 2019) at 229:6-230:2, 232:20-233:14. Based on its audit, the OHCA determined that it would no longer cover and reimburse for these medications. Documents relating to the OHCA's audit and subsequent determination are directly relevant to opioid medications, and they show the OHCA's policies and procedures regarding medications that it has determined are medically unnecessary. At a minimum, these documents are responsive to Purdue

Pharma L.P.'s First RFP No. 6 and Purdue Pharma Inc.'s First RFP No. 4. Purdue requested the State to produce these documents as responsive on February 15, 2019, Ex. 26, and again on February 22, 2019, Ex. 2. The State has not responded.

- **Documents Related to the Oklahoma Health Care Authority's On-Going Initiative to Review Pharmacy Management Consultants' Processing of Prior Authorizations.** The State's corporate representative testified the Oklahoma Pharmacy Services Department is currently undertaking a review of how its contractor, Pharmacy Management Consultants, conducts prior authorizations and, specifically, why PMC frequently denies prior authorizations for prescriptions. Documents related to that review, and any analysis of denials of prescription opioids by PMC, should have been produced. Ex. 25, Beasley Tr. (Feb. 12, 2019) at 237:21-238:23. At a minimum, these documents are responsive to The Purdue Frederick Company Inc.'s First RFP Nos. 5, 6, and 7, Ex. 27, and Purdue Pharma Inc.'s First RFP Nos. 2 and 3, Ex. 20. Purdue requested the State to produce these documents as responsive on February 15, 2019, Ex. 26, and again on February 22, 2019, Ex. 2. The State has not responded.
- **Quarterly Reports to the Center for Disease Control.** The State must make quarterly reports to the Centers for Disease Control on opioid prescribing statistics, including statistics on high prescribers, doctor shoppers, and Prescription Drug Monitoring Programs, among other topics. The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 3, 6, and 8. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.
- **Documents Relating to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control's Diversion Reports.** The OBN has an entire division dedicated to tracking and eliminating the diversion of licit pharmaceutical medications. A review of produced documents shows that the Diversion Division issues yearly reports on trends in prescription drug diversion and the State's efforts to stop those actions. The State has only produced the 2006-2007 report. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 3, 6, and 8. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.
- **Meeting Minutes of the Oklahoma Board of Dentistry.** The Oklahoma Board of Dentistry routinely meets and discusses opioid medications and the diversion of prescription drugs. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 6 and 8. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.
- **Documents and Communications from the Oklahoma Board of Dentistry.** Purdue has requested all communications from the Oklahoma Board of Dentistry or its officers addressing draft or proposed legislation related to opioids. The State

has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP No. 6. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.

- **PowerPoint and Public Education Presentations Made by Oklahoma Bureau of Narcotics and Dangerous Drugs.** The OBN's public information and education officer, Mark Woodward, testified that he has approximately fifteen years of presentations in his possession that specifically address opioids. Ex. 28, Woodward Tr. (Feb. 12, 2019) at 35:21-38:3. Purdue has requested these PowerPoints and public education presentations, including any drafts. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 6 and 8. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.
- **Meeting Minutes from Any State-Sponsored or State-Formed Group or Commission Related to Opioids.** Purdue requested meeting minutes from any State-sponsored or State-formed group or commission related to opioids, including but not limited to the minutes from the meetings of the groups that met to discuss the opioid prescribing guidelines. The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma L.P.'s First RFP Nos. 6 and 8. Ex. 19. Purdue requested the State to produce these documents as responsive on February 22, 2019. Ex. 2. The State has not responded.

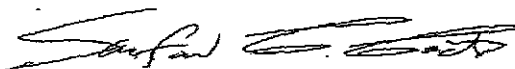
In light of the State's 1.6 million page document dump in the eleventh-hour of discovery—none of which the State produced with a cover letter detailing the production's contents—Purdue asked the State to inform Purdue if the State has in fact produced any of these requested documents. Ex. 2, Ltr. (Feb. 22, 2019) at 11. Unsurprisingly, the State has not responded.

Each of these requests is reasonably calculated to lead to the discovery of admissible evidence, and is proportional—particularly in light of the State's astounding damage demands and the massive amount of discovery produced by Purdue. Indeed, this evidence goes to core issues in the case, such as: why the State authorized and reimbursed prescriptions it now claims were medically unnecessary; whether there is any evidence that the Defendants influenced those decisions of the OHCA; the State's knowledge of prescription opioid diversion, and the State's attempts to stop it; what evidence the State has to support its request for damages relating to opioid abuse in Oklahoma; and steps taken by the State to investigate and address the illicit opioid

problem. Purdue asked repeatedly for these documents, and the State has yet to produce them. The Court should therefore compel the State to produce the documents identified in herein within **7 days from the entry of the Court's Order.**

Date: March 6, 2019

Respectfully submitted,



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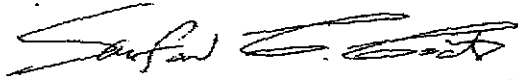
*Counsel for Purdue Pharma L.P.,  
Purdue Pharma Inc., and The Purdue  
Frederick Company Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2019, I caused a true and correct copy of the following:

**PURDUE'S EMERGENCY MOTION TO COMPEL**

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



---



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- Ferris Barger, Office of Management & Enterprise Services
- Frank Lawler, Office of Management & Enterprise Services
- Frank Wilson, Office of Management & Enterprise Services
- Jason Beaman, Oklahoma State University Center for Health Services
- Jean Hausheer, State Medical Association and Opioid Overdose Fatality Review Board
- Jessica Hawkins, Department of Mental Health & Substance Abuse Services
- Jill Geiger, Office of State Finance
- John Scully, Bureau of Narcotics & Dangerous Drugs Control
- Kevin Taubman, Opioid Overdose Fatality Review Board
- Liz Massey, Board of Nursing
- Lyle Kesley Medical Board
- Lynn Mitchell, State Department of Health, Employees Group Insurance Division Board, and Oklahoma Health Care Authority
- Lynne Bajema, Office of Management & Enterprise Services
- Mark Liotta, Workers' Compensation Commission
- Mark Reynolds, Department of Mental Health & Substance Abuse Services
- Mark St. Cyr, State Board of Pharmacy
- Mark Stewart, Bureau of Narcotics and Dangerous Drugs Control
- Mark Woodward, Bureau of Narcotics & Dangerous Drugs Control
- Mary Fallin, Former Governor
- Mike Fogarty, Health Care Authority
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- Rick Adams, State Bureau of Investigation

- Scott Pruitt, Former Attorney General
- Stephanie U'ren, State Department of Health
- Steven Buck, Office of Juvenile Affairs
- Steven Crawford, Oklahoma Health Care Authority
- Steven Montgomery, Employees Group Insurance Division Board
- Susan Rogers, State Dental Board and Bureau of Narcotics and Dangerous Drugs Control
- Sylvia Lopez, Health Care Authority
- Terri White, Department of Mental Health & Substance Abuse Services
- Theresa South, Office of Management & Enterprise Services
- Tom Bates, Former Assistant State Attorney General
- Travis Tate, Employees Group Insurance Division Board
- Vickie Kersey, Oklahoma Health Care Authority

# **Exhibit 1**

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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

**TRANSCRIPT OF PROCEEDINGS**  
**HAD ON APRIL 19, 2018**  
**AT THE CLEVELAND COUNTY COURTHOUSE**  
**BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.**  
**RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER**  
**AND THE HONORABLE THAD BALKMAN**  
**DISTRICT JUDGE**

REPORTED BY: ANGELA THAGARD, CSR, RPR

1           But so long as there is a clear order and ruling on what  
2 must be produced -- so far, I think the rolling production on  
3 an informal basis has worked. I say that with a little bit of  
4 hesitation, because the things we've received so far with  
5 respect to most of the defendants is not the core issue  
6 discovery that we're looking for.

7           So perhaps that rolling production can break down once  
8 they're ordered to produce the highly relevant, important  
9 documents that we're after. But right now the process, which  
10 is kind of an informal produce when you're ready to produce  
11 situation, I think it seems to be working.

12           That's what our plan is as well for the State. We'll  
13 produce when documents are ready. We're moving forward with as  
14 much haste as we can, and we can address those issues later.  
15 But our view is I think we don't want to have a strict rolling  
16 production schedule, and at this point in time, haven't  
17 requested that of the defendants. But it's certainly something  
18 we can entertain.

19           THE COURT: Okay. I'm encouraged by the comments.

20           MR. BECKWORTH: Your Honor, may I just -- what  
21 Trey -- Mr. Duck mentioned one thing about our side of this. I  
22 just want -- we can go ahead and hit that too on rolling  
23 production. What we said in our papers is true. Other than  
24 privilege, we're not standing on any objections.

25           And the State is making a good faith effort to produce



1 everything we believe is responsive to what they're asking for.  
2 And I know you know this because you've been part of it, but  
3 the State has a lot of different subparts, so at least our part  
4 of it. We're not requiring or asking the defendants to go  
5 subpoena different agencies. And as we understand it, other  
6 states are doing that. Not all of them, but some are saying,  
7 if you want to go to the healthcare authority, for example, you  
8 go subpoena them. We're not doing that.

9 We're responding on behalf of everyone that we believe has  
10 responsive information to give them what they've asked for.

11 And we have had a lot less time to contemplate and respond  
12 because of when we were served. But we're in that process. We  
13 are going to produce the documents. There's nothing to compel  
14 from us.

15 And the defendants haven't done this yet, as I understand  
16 it, but if they -- we talked a little bit about it this  
17 morning. If there is a specific item or area they want us to  
18 focus on to try to move an item or category more quickly, we  
19 will endeavor to focus our efforts on that.

20 As it stands, it's a very broad request for us, and we're  
21 moving it along. They will have what they need in abundant  
22 time to take the depositions they need to take of our folks.  
23 So I hope that answers the question.

24 THE COURT: Any brave soul, hop up.

25 MR. LAFATA: Number of things. Paul LaFata, Quinn

# **Exhibit 2**

# LYNN PINKER COX HURST

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February 22, 2019

Mr. Drew Pate  
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**Re: Deficiencies in the State's Document Production in *State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No. CJ-2017-816, pending in the District Court of Cleveland County, Oklahoma**

Dear Drew:

I write to follow up on (1) my January 23, 2019 e-mail to you regarding the State's failure to produce requested custodial files; (2) the January 24, 2019 conference call that you, Trey Cox, and I had regarding fact witness depositions and custodial file productions; (3) my February 1, 2019 letter to you regarding the State's failure to provide deposition dates and custodial files for multiple witnesses; and (4) my February 14, 2019 e-mail to you requesting deposition dates, custodial files, and various other previously requested documents the State has failed to produce. I have addressed each of the outstanding issues for which we need immediate responses from the State below.

**A. Repeatedly Requested Custodial Files that the State Has Not Yet Produced**

Purdue has repeatedly requested the files from the State for the following custodians. I have included the dates of Purdue's requests below. The State has not yet produced files from these custodians. Note that while you have told me that your firm does not represent a few of the individuals on this list, that does not obviate the State of its obligation to gather responsive documents from these custodians. Furthermore, many of these custodians are deponents in this case and the Court has ordered the State to produce files from deponents in advance of depositions. (*See* 10/18/2018 Order on Purdue's Mot. to Compel Custodial Files in Advance of Depos.; 12/26/2018 Order on Purdue's Motion to Compel.) The State has not complied with those orders. Please

Mr. Drew Pate  
 NIX PATTERSON, LLP  
 February 22, 2019

Page 2

produce all responsive documents that are in the following individuals' possession, custody, and control by 5:00 p.m. Central Time on March 1, 2019.

<b><u>Custodian</u></b>	<b><u>State Agency</u></b>	<b><u>Dates Purdue Requested Files</u></b>
Becky Pasternik-Ikard	Health Care Authority	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Bob Ricks	State Bureau of Investigation	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Carrie Daniels	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Carrie Evans	Oklahoma Health Care Authority	12/18/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Carrie Slatton-Hodges	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Christopher Shearer	Osteopathic Association; Opioid Overdose Fatality Review Board	02/14/2019 E-mail
Claire Nguyen	State Department of Health	01/21/2019 Letter 02/15/2019 E-mail
Darrell Weaver	Bureau of Narcotics & Dangerous Drugs Control	01/14/2018 E-mail
Deborah Bruce	Board of Osteopathic Examiners	10/30/2018 Letter

Mr. Drew Pate  
 NIX PATTERSON, LLP  
 February 22, 2019

Page 3

<b>Custodian</b>	<b>State Agency</b>	<b>Dates Purdue Requested Files</b>
		11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Diana O'Neal	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Don Vogt	Bureau of Narcotics & Dangerous Drugs Control	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Drew Edmondson	Former Attorney General	12/10/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Durand Crosby	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Ed Lake	Department of Human Services; Opioid Overdose Fatality Review Board	02/14/2019 E-mail
Ed Long	Health Care Authority	12/18/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Ellen Buettner	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter

<b><u>Custodian</u></b>	<b><u>State Agency</u></b>	<b><u>Dates Purdue Requested Files</u></b>
		02/14/2019 E-mail
Ferris Barger	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Frank Lawler	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Frank Wilson	Office of Management & Enterprise Services	10/30/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Jason Beaman	Oklahoma State University Center for Health Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Jean Hausheer	State Medical Association; Opioid Overdose Fatality Review Board	02/14/2019 E-mail
Jessica Hawkins	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Jill Geiger	Office of State Finance	02/01/2019 02/14/2019
John Scully	Bureau of Narcotics & Dangerous Drugs Control	02/01/2019 Letter 02/14/2019 E-mail

<b><u>Custodian</u></b>	<b><u>State Agency</u></b>	<b><u>Dates Purdue Requested Files</u></b>
Kevin Taubman	Opioid Overdose Fatality Review Board	02/14/2019 E-mail
Liz Massey	Board of Nursing	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Lyle Kesley	Medical Board	02/01/2019 Letter 02/14/2019 E-mail
Lynn Mitchell	State Department of Health; Employees Group Insurance Division Board; Health Care Authority	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Lynne Bajema	Office of Management & Enterprise Services	02/01/2019 Letter 02/14/2019 E-mail
Mark Liotta	Workers' Compensation Commission	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Mark Reynolds	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Mark St. Cyr	State Board of Pharmacy	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Mark Stewart	Bureau of Narcotics and Dangerous Drugs Control	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail

<b><u>Custodian</u></b>	<b><u>State Agency</u></b>	<b><u>Dates Purdue Requested Files</u></b>
Mark Woodward	Bureau of Narcotics & Dangerous Drugs Control	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Mary Fallin	Former Governor	12/10/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Mike Fogarty	Health Care Authority	02/14/2019 E-mail
Mike Hunter	Attorney General	12/10/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Nichole King	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Patricia Sommer	Workers' Compensation Commission	11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail
Paul King	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Reji Varghese	Board of Medical Licensure & Supervision	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Rick Adams	State Bureau of Investigation	02/01/2019 Letter 02/14/2019 E-mail
Scott Pruitt	Former Attorney General	12/10/2018 Letter 02/01/2019 Letter



<b><u>Custodian</u></b>	<b><u>State Agency</u></b>	<b><u>Dates Purdue Requested Files</u></b>
		02/14/2019 E-mail
Stephanie U'ren	State Department of Health	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 02/01/2019 Letter 02/14/2019 E-mail
Steven Buck	Office of Juvenile Affairs	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Steven Crawford	Oklahoma Health Care Authority	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call
Steven Montgomery	Employees Group Insurance Division Board	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Susan Rogers	State Dental Board; Bureau of Narcotics and Dangerous Drugs Control	10/30/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Sylvia Lopez	Health Care Authority	12/18/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail
Terri White	Department of Mental Health & Substance Abuse Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail

<u>Custodian</u>	<u>State Agency</u>	<u>Dates Purdue Requested Files</u>
Theresa South	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Tom Bates	Former Assistant State Attorney General	02/14/2019 E-mail
Travis Tate	Office of Management & Enterprise Services	10/30/2018 Letter 11/26/2018 Letter 12/06/2018 Motion to Compel 01/23/2019 E-mail 01/24/2019 Conference Call 02/01/2019 Letter 02/14/2019 E-mail
Vickie Kersey	Oklahoma Health Care Authority	12/18/2018 Letter 02/01/2019 Letter 02/14/2019 E-mail

**B. Responsive Documents that the State Has Not Produced**

In addition to files from the relevant custodians identified above, the State has not produced the following documents or categories of documents, which are responsive to Purdue's document requests, including document requests that were the subject of (1) the Court's order from April 25, 2018 compelling production; and (2) the Court's order from the January 17, 2019 hearing, which required the State to produce responsive documents by February 5, 2019. The State has not fully complied with those orders. Accordingly, please produce these documents by 5:00 p.m. Central Time on March 1, 2019.

<u>Document or Category of Documents</u>	<u>Notes</u>
Oklahoma Department of Public Safety documents	The Court ordered production on October 4, 2018. The State has not produced these documents.
Oklahoma Drug Threat Assessments	The State has produced only the 2017 report. Purdue reminded the State to produce these

<b>Document or Category of Documents</b>	<b>Notes</b>
	responsive documents on January 7, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 3, 6, and 8.
Medical examiner summaries relied upon in compiling statistics related to overdose deaths in Oklahoma.	Purdue reminded the State to produce these responsive documents on January 21, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 3 and 6.
Dr. Burl Beasley's February 5, 2019 presentation at the Medicaid Innovations Forum in Orlando, Florida, as well as any drafts or related documents.	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8.
Dr. Burl Beasley's Spring 2018 presentations to the Board of Pharmacy in Oklahoma City and Tulsa, as well as any drafts or related documents.	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8.
Dr. Burl Beasley's presentation to the Oklahoma Health Care Authority related to the estimated cost of implementing an electronic records system, as well as any drafts or related documents.	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production No. 5.
All contracts between the Oklahoma Health Care Authority and Pharmacy Management Consultants, including all proposals and RFIs from Pharmacy Management Consultants and other interested vendors that were received in connection with those contracts.	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production No. 3 and Purdue Frederick's First Requests for Production No. 3.
All documents related to the Oklahoma Health Care Authority's audit of compounded topical medications and subsequent determination to	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are

<b>Document or Category of Documents</b>	<b>Notes</b>
cease coverage and reimbursement for those medications.	responsive to Purdue Pharma LP's First Requests for Production No. 6 and Purdue Pharma Inc.'s First Requests for Production No. 4.
All documents related to the Oklahoma Health Care Authority's ongoing initiative to review Pharmacy Management Consultants' processing of prior authorizations.	Purdue reminded the State to produce these responsive documents on February 15, 2019. At a minimum, these documents are responsive to Purdue Frederick's First Requests for Production Nos. 5, 6, and 7, and Purdue Pharma Inc.'s First Requests for Production Nos. 2 and 3.
Mandatory quarterly reports for the Centers for Disease Control on opioid prescribing statistics, including statistics on high prescribers, doctor shoppers, PDMP alters on conflicting and dangerous prescriptions, none of which contain individualized patient data.	The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 3, 6, and 8.
Oklahoma Bureau of Narcotics & Dangerous Drugs Control's diversion reports.	The State has only produced the 2006-2007 report. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 3, 6, and 8.
All minutes of meetings of the Oklahoma Board of Dentistry during which opioid medications or diversion of prescription drugs were discussed.	The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8.
All communications from the Oklahoma Board of Dentistry or its officers addressing draft or proposed legislation related to opioids.	The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production No. 6.
All meetings of minutes for the Drug Utilization Review Board during which opioid medications, diversion of prescription drugs, addiction to prescription drugs, or Medicaid fraud were discussed.	The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 2, 6, and 8.

<u>Document or Category of Documents</u>	<u>Notes</u>
All Drug Utilization Review Board Reports.	The State has produced very few of the existing reports. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 2, 6, and 8.
Documents within the possession, custody, or control of Employee's Group Insurance Department and the Office of Management and Enterprise Services.	The State has produced only 68 documents from Employee's Group Insurance Department. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8 and Purdue Frederick's First Requests for Production Nos. 5, 6, and 7.
Oklahoma Bureau of Narcotics and Dangerous Drugs' PowerPoints and public education presentations, including drafts, regarding prescription drugs or opioids.	Mark Woodward testified that he has approximately 24 years of presentations in his possession, which the State has not produced. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8.
The meeting minutes from any State-sponsored or State-formed group or commission related to opioids, including but not limited to the minutes from the meetings of the groups that met to discuss the opioid prescribing guidelines.	The State has not produced these documents. At a minimum, these documents are responsive to Purdue Pharma LP's First Requests for Production Nos. 6 and 8.

**C. The State's February 21, 2019 Productions**

Finally, I note that yesterday, the State produced documents through approximately sixty-three separate production e-mails and links. Purdue is beginning its review of that production. If you contend the State's most recent production satisfied the State's production obligations that I have addressed here, then please provide me the Bates label ranges for the responsive custodial files, documents, or categories of documents.

Mr. Drew Pate  
NIX PATTERSON, LLP  
February 22, 2019

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Please contact me if you have any questions.

Thank you,

A handwritten signature in black ink, appearing to read "Elizabeth Yvonne Ryan". The signature is written in a cursive style with a large, looping initial "E".

Elizabeth Yvonne Ryan

EYR:as

**Exhibit 3**  
**(sealed exhibit)**

**Exhibit 4**  
**(sealed exhibit)**



**Exhibit 5**  
**(sealed exhibit)**

**Exhibit 6**  
**(sealed exhibit)**

# **Exhibit 7**

## Oklahoma Opioid Legal Preservation Notices

No.	Custodian Name	Date IT Hold Placed	Date Custodial Letter Sent	Receipt of Custodial Letter Acknowledgment
1	Shellie Keast	4/27/18	4/27/18	4/30/18
2	Terry Cothran	4/27/18	4/27/18	4/30/18
3	Bethany Holderread	5/1/18	5/1/18	5/1/18
4	Jana Sampson	5/7/18	5/7/18	
5	Melissa Shawn	5/7/18	5/7/18	5/7/18
6	Carly Nguyen	5/7/18	5/7/18	
7	Leslie Robinson	5/7/18	5/7/18	5/8/18
8	Sean Monroe	5/7/18	5/7/18	
9	Taylor Shoemake	5/7/18	5/7/18	
10	Beatrice Atoyebi	5/7/18	5/7/18	
11	Justin Wilson	5/7/18	5/7/18	
12	Brandon McLaughlin	5/7/18	5/7/18	
13	Carol Moore	5/7/18	5/7/18	
14	Brandy Nawaz	5/7/18	5/7/18	5/7/18
15	Michyla Adams	5/7/18	5/7/18	5/8/18
16	JoNel Weber	5/7/18	5/7/18	
17	Erin Ford	5/7/18	5/7/18	5/8/18
18	Melissa Abbott	5/7/18	5/7/18	5/7/18
19	Wendi Chandler	5/7/18	5/7/18	5/7/18
20	Thomas Ha	5/7/18	5/7/18	5/7/18
21	Karen Egesdal	5/7/18	5/7/18	
22	Ashley Teel	5/7/18	5/7/18	5/8/18
23	Jacquelyn Travers	5/7/18	5/7/18	
24	Timothy Pham	5/7/18	5/7/18	5/7/18
25	Kristin Dao	5/7/18	5/7/18	
26	Dang Phung	5/7/18	5/7/18	5/8/18
27	LaDonna Hunter	5/7/18	5/7/18	
28	Grant Skrepnek	5/10/18	5/10/18	5/10/18

**Exhibit 8**  
**(sealed exhibit)**

# Exhibit 9

**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., )

Defendants. )

**PLAINTIFF'S INITIAL DISCLOSURE OF INDIVIDUALS LIKELY TO HAVE  
DISCOVERABLE INFORMATION THAT MAY BE USED TO SUPPORT THE  
CLAIMS OR DEFENSES**

Plaintiff, the State of Oklahoma, provides these Initial Disclosures of Individuals Likely to Have Discoverable Information That May Be Used to Support the Claims or Defenses pursuant to the Court's January 29, 2018 Scheduling Order (the "Scheduling Order"). Under the Scheduling Order, the parties must "disclose the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses."

These Initial Disclosures are based upon information presently known to Plaintiff, and are made without prejudice to Plaintiff's ability to produce information, documentation, or data that is subsequently discovered. Discovery is ongoing and Plaintiff's investigation is continuing. As such, Plaintiff anticipates it will learn of additional persons that may have such information. Plaintiff further incorporates into these Initial Disclosures all individuals identified by all other parties to this action in their respective Initial Disclosures, and reserves the right to depose and rely upon the testimony of all such individuals. Plaintiff reserves the right to amend and/or supplement these Initial Disclosures at any time, and further reserves the right to use any information provided or produced by Defendant who may join this action subsequent to these Initial Disclosures.

By making these Initial Disclosures, Plaintiff does not concede the relevance of any of the information provided or waive any protections available pursuant to any applicable privileges, such as the attorney-client and/or work product privileges.



<b>Individuals</b>	<b>Area of Knowledge</b>	<b>Contact Information</b>
Terri White	Likely possesses knowledge regarding the OMDHSAS, its processes, practices and procedures utilized by OMDHSAS for claims submitted for treatment under OMDHSAS' programs. Also likely possesses knowledge regarding the courses of action, programs, or other efforts the State has considered or implemented regarding preventing unnecessary opioid prescriptions.	To be contacted through Plaintiff's undersigned counsel.
Nancy Nesser	Likely possesses knowledge regarding the processes, practices and procedures utilized by the OHCA regarding claims, including any claims for medication assisted treatment, submitted for reimbursement from SoonerCare. Also likely possesses knowledge regarding the courses of action, programs, or other efforts the State has considered or implemented regarding preventing unnecessary opioid prescriptions.	To be contacted through Plaintiff's undersigned counsel.
Mark Reynolds	Likely possesses knowledge regarding the OMDHSAS, its processes, practices and procedures utilized by OMDHSAS for claims submitted for treatment under OMDHSAS' programs and the OMDHSAS data storage systems.	To be contacted through Plaintiff's undersigned counsel.
Burl Beasley	Likely possesses knowledge regarding the OHCA, its processes, practices and procedures utilized by the OHCA regarding claims, including any claims for medication assisted treatment, submitted for reimbursement from SoonerCare.	To be contacted through Plaintiff's undersigned counsel.
Don Vogt	Likely possesses knowledge of the State's prescription monitoring program.	To be contacted through Plaintiff's undersigned counsel.
Employees of the Department of Mental Health and Substance Abuse	Likely possess knowledge regarding the OMDHSAS, its processes, practices and procedures utilized by OMDHSAS for claims submitted for treatment under OMDHSAS' programs.	To be contacted through Plaintiff's undersigned counsel.

Employees of the Oklahoma Health Care Authority	Likely possess knowledge regarding the OHCA, its processes, practices and procedures utilized by the OHCA regarding claims, including any claims for medication assisted treatment, submitted for reimbursement from SoonerCare.	To be contacted through Plaintiff's undersigned counsel.
Employees of the Oklahoma Bureau of Narcotics	Likely possess knowledge regarding the State's prescription monitoring program.	To be contacted through Plaintiff's undersigned counsel.
Employees of the Oklahoma Pharmacy Board	Likely possess knowledge regarding Drug Utilization Review Board and approved pharmaceuticals under SoonerCare.	To be contacted through Plaintiff's undersigned counsel.
Employees of the Oklahoma Department of Corrections	Likely possess knowledge regarding incarcerations related to opioids and/or opioid prescriptions and addiction treatment for incarcerated individuals.	To be contacted through Plaintiff's undersigned counsel.
Employees of the Oklahoma State Department of Health	Likely possess knowledge regarding the effect of the opioid epidemic on Oklahomans and their health.	To be contacted through Plaintiff's undersigned counsel.
Employees and former employees of the Purdue Defendants	Likely possess knowledge regarding, <i>inter alia</i> , the Purdue Defendants' opioids, false marketing campaigns, and financial information.	
Employees and former employees of the Janssen Defendants	Likely possess knowledge regarding, <i>inter alia</i> , the Janssen Defendants' opioids, false marketing campaigns, and financial information.	
Employees and former employees of the Teva/Cephalon Defendants	Likely possess knowledge regarding, <i>inter alia</i> , the Teva/Cephalon Defendants' opioids, false marketing campaigns, and financial information.	
Representatives of the American Academy of Pain Medicine	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Representatives of the American Chronic Pain Association	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	

Representatives of the American Pain Society	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Representatives of the Federation of State Medical Boards	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Representatives of the National Pain Foundation/Global Pain Initiative	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Representatives of the Pain & Policy Studies Group	Likely possess knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Richard Sackler	Likely possesses knowledge regarding the Purdue Defendants' misrepresentations and fraudulent marketing campaign regarding opioids.	
Perry Fine	Likely possesses knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Scott Fishman	Likely possesses knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Kathleen Foley	Likely possesses knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
David Haddox	Likely possesses knowledge regarding Defendants' marketing campaigns, particularly the Purdue Defendants.	
Russell Portenoy	Likely possesses knowledge regarding Defendants' marketing campaigns, including Defendants' involvement with the American Pain Foundation and American Academy of Pain Medicine, and funding from Defendants.	

Lynn Webster	Likely possesses knowledge regarding Defendants' marketing campaigns, including Defendants' involvement with the American Academy of Pain Medicine, and funding from Defendants.	
Daniel Alford	Likely possesses knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants.	
Myra Christopher	Likely possesses knowledge regarding Defendants' marketing campaigns, including Defendants' involvement with the Center for Practical Bioethics and American Pain Foundation, and funding from Defendants.	
Aaron Gilson	Likely possesses knowledge regarding Defendants' marketing campaigns, including Defendants' involvement with the Pain & Policy Studies Group, and funding from Defendants.	
Bob Twillman	Likely possesses knowledge regarding Defendants' marketing campaigns, including Defendants' use of the Academy of Integrative Pain Management (formerly the American Academy of Pain Management), and funding from Defendants.	
Charles Argoff	Likely possesses knowledge regarding, <i>inter alia</i> , Defendants' marketing campaigns and funding from Defendants, and funding from Defendants.	

Dated: March 15, 2018

/s/ Michael Burrage

Michael Burrage, OBA No. 1350

Reggie Whitten, OBA No. 9576

WHITTEN BURRAGE

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Email: gcoffee@glenncoffee.com

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was mailed and emailed on March 15, 2018 to:

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1625 Eye Street NW  
Washington, DC 20006

*/s/ Michael Burrage*

Michael Burrage

# **Exhibit 10**



**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., )

Defendants. )

**ORDER OF SPECIAL DISCOVERY MASTER**

NOW, on this 22<sup>nd</sup> 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 9<sup>th</sup> 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 22<sup>nd</sup> day of October, 2018.

William C. Hetherington, Jr.  
Special Discovery Master

# **Exhibit 11**



**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.,** )

**Defendants.** )

**ORDER OF SPECIAL DISCOVERY MASTER**

**NOW**, on this 26th day of December, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on December 20, 2018.

The undersigned being fully advised in the premises and having considered submitted pleadings, enters the following findings and Orders:

**Purdue's Motion To Quash Deposition Notices And For Protective Orders Re: Burt Rosen and Jonathan and Mortimer Sackler**

**Burt Rosen**

Counsel announce an agreement for the terms and conditions regarding this witness's deposition and Purdue withdraws its Motion to Quash Deposition Notice and Request for Protective Order.

Jonathan and Mortimer Sackler

Neither of these witnesses are properly subject to deposition notices on behalf of Purdue Pharma LP or the Purdue Frederick Company. They do not hold positions in these companies. However, both were members of the Board of Directors for Purdue, Inc. Mortimer still is a member with Jonathan Sackler resigning from the Board of Directors December 8, 2018, after State's deposition Notice was issued. State's argument is both were members of the Purdue Inc. Board for many years actively involved in the decision-making process fully knowledgeable of all policy decisions and both likely to disclose claim relevant and admissible evidence.

Purdue argues Jonathan Sackler's resignation from the Board of Directors was a planned resignation and transition that began months before State's Notice and he therefore is not a party or anyone who at the time of the Notice or the taking of the deposition is an officer, director or managing agent subject to deposition notice as a designated corporate witness. Purdue argues both notices should be quashed as neither witness has any relevant, unique or personal knowledge and, any evidence State seeks to obtain can be explored through witnesses already designated, already deposed, or through other witnesses to be designated. Purdue argues several witnesses have already been deposed with nine former or current Purdue employees currently scheduled and that State will be taking depositions on over 40 topics with Purdue offering witnesses to testify in December on 20 identified topics as stated in their brief and an additional 18 in January.

Purdue argues State does not identify any specific or particular knowledge regarding any topic but State counters these witnesses do have close, careful and active control of all Purdue entities through the Board of Directors of Purdue, Inc. While for the most part, State provides general and conclusory statements about these witnesses likely knowledge, State points specifically to State's inability to obtain adequate testimony from any Purdue designated witnesses to this point or likely in the future, relevant to APIs and other product components and component sources and methods; that with regard to Tasmanian Alkaloids and Rhodes Pharmaceutical, Purdue witnesses are evasive or totally lack knowledge regarding just this one area of highly relevant information known to the Sacklers. State supports this argument by attached redacted Exhibits that demonstrate both were routinely included as Purdue Inc. Board members in e-mail chains and provided copies of other corporate documents, including detailed board minutes, financial statements, and particularly "Quarterly Reports to the Board" that provides detailed and specific information for all Purdue entities regarding sales and marketing, supply chain management, quality control, drug safety evaluations, analytical sciences and pharmaceutical testing results, outsource management and project management strategies, clinical research and development, risk management and health policy initiatives and many others. What is also clear from the evidence is the same facts State is entitled to explore can be done through other witnesses and this knowledge is not entirely "unique" to the Sackler's.

At this point, it is premature to find that either 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 in its brief it will produce in both December and January for the described topics. We will see if witnesses are timely set and adequately prepared with meaningful discovery depositions conducted on these described topics. If not, for various reasons, adequate grounds could exist to compel the Sackler depositions into specific areas of relevant factual knowledge State may demonstrate has not been forthcoming as promised by Purdue. If necessary, Notices will issue and any requests to quash set to be heard on February 14, 2019.

Therefore, Purdue's Motion To Quash these Notices is **Sustained** subject to future consideration into specific topic areas identified by State not adequately provided by Purdue.

**Purdue's Response and Objection to Plaintiffs Statement Regarding Its Purported Compliance With October 22, 2018 Order, And, Purdue's Motion to Compel Production of Custodial Files Prior to Depositions**

Counsel announce and agree there will be a meet and confer by 4pm December 28th for State to provide and set as many witness depositions as possible from Purdue's "Appendix A" to be agreed to and set to the extent possible within the next 30 days. State is to provide "targeted" custodial file "core" document production in a sufficient time prior to each deposition for reasonable deposition preparation. "Targeted" documentation is defined as production of all custodial file documents relevant or potentially relevant to known topics to be explored through each witness. To the extent counsel are not able to agree on any "Appendix A" witnesses, the undersigned has agreed to a telephone hearing on an agreeable date and time to resolve any remaining witness or document production issues.

**Janssen's Motion for Partial Reconsideration and Modification of Discovery Master's December 6, 2018 Order**

Janssen's motion for partial reconsideration and modification is **Sustained** in part and **Overruled** in part pursuant to a separate Amended Order of Special Discovery Master. The undersigned will not file the Amended Order until Friday, December 28, 2018.

**Janssen's Motion for Protection Filed on November 26, 2018 and Supplemental Filed November 27, 2018**

The undersigned heard argument on Janssen's motions and acknowledged Janssen has yet to file its requested Reply which the undersigned allowed and has considered prior to entering this Order. The documents and slides at issue have been reviewed and regarding the documents still at issue, Janssen states they fall into three described categories. Exhibit documents numbered 10, 11 and 12 are described as "Policy Issues"; Exhibit documents numbered 15, 16, 17, 18, 19 and 20 are described as "Internal Sales and Marketing Proposals and Guidelines" containing alleged confidential commercial information; and, Exhibit documents numbered 21, 22 and 25 are described as "Scientific or Competitor Protected" information containing alleged internal policy discussions and not publicly available information.

The second Janssen motion for protection involves designation of two (2) slides in a twelve (12) slide internal slide presentation.

Group I Documents

Ex. 10 – Motion Sustained-Document Protected

Ex. 11 – Motion Overruled

Ex. 12 – Motion Sustained-Document Protected

Group II Documents

Ex. 15 – Motion Overruled

Ex. 16 – Motion Sustained-Document Protected

Ex. 17 – Motion Sustained-Document Protected

Ex. 18 – Motion Sustained-Document Protected

Ex. 19 – Motion Sustained-Document Protected

Ex. 20 – Motion Overruled

Group III Documents

Ex. 21 – Motion Overruled

Ex. 22 – Motion Sustained-Document Protected

Ex. 25 - Motion Sustained-Document Protected

Slides 5 & 6

Motion Overruled

It is so **Ordered** this 26th day of December, 2018.

William C. Hetherington, Jr.

Special Discovery Master