PART B

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. PURDUE PHARMA L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a/ JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC.; n/k/a JANSSEN PHARMACEUTICALS, INC.; ALLEGRAN, PLC, f/k/a ACTAVIS PLC, f/k/a/ ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC.; ACTAVIS LLC; and ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants	Case No. CJ-2017-816 Honorable Thad Balkman Special Discovery Master: William C. Hetherington, Jr.

NON-PARTY OSAGE COUNTY, PAWNEE COUNTY, DELAWARE COUNTY, GARVIN COUNTY, MCCLAIN COUNTY, OTTAWA COUNTY, AND SEMINOLE COUNTY OBJECTION TO THE SPECIAL MASTER'S ORDER ON PURDUE'S SUBPOENAS DUCES TECUM

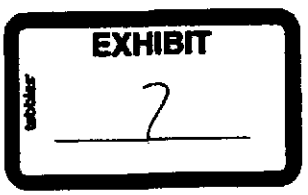
COMES NOW Osage County, Pawnee County, Delaware County, Garvin County, McClain County, Ottawa County, and Seminole County; (hereafter "Movants") and objects to the Order of Special Discovery Master, filed March 5, 2019 ("Order"), denying Movants Motion to Quash and for protective order, ordering compliance or limited compliance to Subpoena

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	
	)	**SPECIAL MASTER COHEN**
THIS DOCUMENT RELATES TO: ***"Track One Cases"***	)	
	)	
	)	**DISCOVERY RULING NO. 5**
	)	

This *Ruling* addresses Interrogatories propounded by defendants that ask plaintiffs to identify (1) specific, inappropriate opioid prescriptions, and (2) specific persons who became addicted due to those prescriptions. Plaintiffs insist this discovery is inappropriate and irrelevant, and also imposes an excessive burden. Defendants respond their Interrogatories are highly relevant and directed at the heart of plaintiffs' claims, and the burden is reasonable.

Having considered the parties' position statements, and also oral arguments related to similar topics, the Special Master concludes as follows. The plaintiffs' objections are upheld in part, to the extent that plaintiffs do not have to identify ***all*** prescriptions and ***every*** person, as requested in the Interrogatories. Rather, the Special Master rules that plaintiffs must respond to the five



Interrogatories at issue ***as rewritten below***.[1]

* * * * *

Manufacturer Interrogatory No. 6

Identify and describe all prescriptions of opioids that were written in [Plaintiff's jurisdiction] in reliance on any alleged misrepresentations, omissions or other alleged wrongdoing by any Defendant. Include in the response the healthcare provider; the patient; the date of prescription; which opioid or opioids were prescribed; the specific misrepresentation, omission, or wrongdoing that allegedly caused the prescription to be written; the Defendant and the specific sales representative(s), employee(s), or agent(s) of the Defendant that made or committed the alleged misrepresentation, omission, or wrongdoing; the person or persons to whom the alleged misrepresentation or omission was made or to whom the alleged wrongdoing was directed; and whether, by whom, and for how much the prescription was approved for reimbursement.[2]

Plaintiffs must answer this Interrogatory, but shall replace 'all prescriptions' with '500 prescriptions.' Plaintiffs' responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this

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[1] The Special Master issued via email an informal ruling on this matter on October 2, 2018. Plaintiffs then timely asked the Special Master to formally document the ruling. *See Order of Appointment* (docket no. 69) at 5 ("If a Special Master issues an informal ruling or order that is not on the record (such as the resolution of a discovery dispute) either orally, via email, or through other writing, and a party wishes to object to that ruling or order, the party shall ask the Special Master to formalize the ruling or order by filing it on the docket or appearing before a court reporter. Such request shall be made within three days of issuance of the informal order or ruling, else the opportunity to object shall be waived.").

[2] In letters, defendants have characterized this Interrogatory as asking: "*Which prescriptions, if any, of each Defendant's opioids were written in Plaintiff's jurisdiction in reliance on any Defendant's alleged misrepresentations, omissions or other alleged wrongdoing?*"

Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether each prescription was "written in [Plaintiff's jurisdiction] in reliance on any alleged misrepresentations, omissions or other alleged wrongdoing by any Defendant," and if so the details thereof (e.g. who made the misrepresentations and what they were).

Manufacturer Interrogatory No. 7

Identify every person who allegedly became addicted to any substance or was otherwise harmed as a result of any prescription of an opioid(s) in [Plaintiff's jurisdiction]. Include in the identification of each such individual: (i) the particular type of alleged harm that the individual experienced, (ii) the particular opioid(s) that he or she took and/or was prescribed, (iii) when each prescription at issue was written, (iv) the condition for which each prescription was written, and (v) the allegedly false, misleading, or deceptive statement or omission that purportedly caused the healthcare provider to write the prescription.[3]

Plaintiffs must answer this Interrogatory, but shall replace 'every person' with '300 persons." Plaintiffs' responses must include information for at least 10 persons who were prescribed an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this Interrogatory to identify 100 specific persons in Plaintiff's jurisdiction and require Plaintiffs to state whether each person became addicted to any substance or was otherwise harmed as a result of any prescription of an opioid(s).

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[3] Defendants have characterized this Interrogatory as asking: "*Who, if anyone, purportedly became addicted or was otherwise harmed as a result of such prescriptions in Plaintiff's jurisdiction?*

Manufacturer Interrogatory No. 10

Identify and describe all prescriptions of opioid(s) that Plaintiff contends were unauthorized, medically unnecessary, ineffective, or harmful. Include in the response as to each such prescription the healthcare provider; the patient; the date of prescription; which opioid or opioids were prescribed; the basis for your assertion that the prescription was unauthorized, medically unnecessary, ineffective or harmful; and whether, by whom, and for how much the prescription was approved for reimbursement.[4]

Plaintiffs must answer this Interrogatory, but shall replace 'all prescriptions' with '500 prescriptions.' Plaintiffs' responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether those prescriptions were "unauthorized, medically unnecessary, ineffective, or harmful," and if so the basis therefor.

* * * * *

(The following Pharmacy Interrogatories are largely duplicative of the Manufacturing Interrogatories above, and so the rulings are essentially the same.)

Pharmacy Interrogatory No. 2

Identify each prescription upon which you base, or which you contend supports, Your claims in this case. For each prescription, identify the prescriber, dispensing pharmacy, dispensing pharmacist, and dispensing date, and explain how it supports Your claims.

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[4] Defendants have characterized this Interrogatory as asking: "*Which prescriptions, if any, were unauthorized, medically unnecessary, ineffective, or harmful?*

Plaintiffs must answer this Interrogatory, but shall replace 'each prescription' with '500 prescriptions.' Plaintiffs' responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Pharmacy Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether and how each prescription supports Plaintiffs' claims.

Pharmacy Interrogatory No. 3

Identify each prescription the filling of which caused or led to harm for which you seek to recover in this case. For each prescription, identify the prescriber, dispensing pharmacy, dispensing pharmacist, and dispensing date, and explain how it supports Your claims.

Plaintiffs must answer this Interrogatory, but shall replace 'each prescription' with '500 prescriptions.' Plaintiffs' responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Pharmacy Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether and how each prescription supports Plaintiffs' claims.

* * * * *

In addition, the Special Master clarifies as follows. For a given plaintiff: (1) the '500 prescriptions' referred to in Manufacturer Interrogatory Nos. 6 and 10 and Pharmacy Interrogatory Nos. 2 and 3 *may* all be the same 500 prescriptions; (2) the '200 specific prescriptions' referred to in Manufacturer Interrogatory Nos. 6 and 10 and Pharmacy Interrogatory Nos. 2 and 3 *must* all be the same 200 prescriptions; (3) the 300 persons identified in Manufacturer Interrogatory No. 7 *may* overlap with the 500 prescriptions; and (4) the '100 specific persons' identified in Manufacturer

Interrogatory No. 7 *may* overlap with the '200 specific prescriptions'.

Finally, the Special Master observes that, if any plaintiff expert or defense expert relies on any specific prescriptions, or specific persons who obtained prescriptions, those prescriptions and persons must be identified with specificity in the expert's disclosure and should also be identified to opposing counsel substantially before the deadline for non-expert discovery. The parties will negotiate this deadline.

In addition, I direct the parties to negotiate deadlines for responding to the re-written interrogatories. My suggestions are that: (a) plaintiffs should identify and provide information regarding prescriptions/persons within 28 days; (b) defendants should identify prescriptions/persons within 21 days, and plaintiffs should provide responsive information within 14 days thereafter.[5] If the parties cannot come to agreement regarding these deadlines on or before October 15, 2018, they must let me know and I will resolve it.

* * * * *

Given the amount of time left for fact discovery; the fact that these issues were first raised by defendants two months ago, on August 4, 2018; and that the parties have been negotiating and briefing this issue since then; the Special Master further orders as follows:

- objections to this *Ruling* must be filed on or before October 10, 2018;
- responses to objections must be filed on or before October 12, 2018; and
- regardless of whether any party files an objection, all parties remain obligated to negotiate the above-described deadlines and take actions consistent with this *Ruling* being affirmed

[5] Defendants' suggested deadline assumes plaintiffs have produced databases from which defendants can identify relevant prescriptions and persons.

by the Court. In other words, no party may rely on the filing of an objection to avoid or postpone any obligation described in this *Ruling*; these obligations remain in full force unless and until the Court modifies this *Ruling*.

RESPECTFULLY SUBMITTED,

/s/ David R. Cohen
David R. Cohen
Special Master

Dated: October 6, 2018

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION ***APPLIES TO ALL CASES***	**Case No. 1:17-MD-2804** **Hon. Dan A. Polster**

GOVERNMENT PLAINTIFF FACT SHEET

Plaintiff (also referred to as "You" throughout) shall provide information responsive to the questions set forth below. Instructions and Definitions are provided at the end of this document. You shall provide information reasonably available to You and are not excused from providing the requested information for failure to appropriately investigate Your case. Plaintiff shall supplement its responses if it learns that they are incomplete or incorrect in any material respect.

PLAINTIFF: _____

Case caption and number: _____

Contact attorney name for MDL: _____

Firm: _____

Telephone number: _____ E-mail address: _____

Description of the citizens and entities that You purport to represent in this lawsuit: _____

_____

I. CLAIM INFORMATION

A. Injuries, Damages, and Persons with Relevant Knowledge:

1. To the best of Your knowledge, for each Defendant You name, identify the approximate date (i.e., month and year) when You claim You were first injured and began to incur damages as a result of the Defendant's alleged conduct. This request is not designed to require an expert evaluation and is not intended to limit any expert testimony related to the damages suffered.

2. Are You seeking in Your lawsuit any monetary damages based on Your payment for allegedly improper opioid prescription claims? Yes_____ No_____

3. Please identify each category of damages or monetary relief that You allege, including all injunctive relief that You seek.

4. Have You or has anyone acting on Your behalf had any communication, oral or written, with any Defendants or their representatives, other than communications through Your attorneys? Yes_____ No_____ Don't Know_____

   If yes, please identify the date(s), method(s), and nature of the communication(s).

5. Have You been involved in opioid-related civil litigation in the past?

   Yes_____ No_____ Don't Know_____

   If yes, please identify the date(s), jurisdiction(s), and partie(s).

6. List Your Departments or Divisions and the current head of each Department/Division.

7. Identify by name, title, and dates of employment Your current employees or representatives with knowledge regarding the abuse, use, misuse, addiction to, and/or diversion of Prescription Opioids, or the possession, abuse, illegal sale, or addiction to other opioids by Your residents.

8. Identify the person(s) who held the following position(s) or their equivalent, since January 1, 2008:

   a. Mayors:

   b. City councilmembers:

   c. County commissioners:

   d. County supervisors:

   e. County executives:

   f. Chief health officers:

   g. Auditors:

   h. Recorders:

   i. Sheriffs or Police Chiefs:

   j. Coroners or Medical Examiners:

   k. Treasurers:

l. Chief accountants:

m. Chief financial officers:

n. Correctional facility supervisors:

o. Wardens:

p. Heads of Department of Public Health:

q. Fire chiefs:

r. Directors of Emergency Medical Services:

9. Identify Your annual budget and the actual expenditure You made since January 1, 2008 with respect to each category of damages You claim, as to the following:

a. Law enforcement expenditures

b. Court expenditures

c. Prison/corrections/incarceration expenditures

d. Public health expenditures

e. Child/family services

f. Workers compensation

g. Health insurance

10. Identify any specific grant, donation, or other funding designated for or allocated to addressing issues related to Prescription Opioids.

B. Claim-Specific Information

1. Identify each physician or other healthcare provider within Your boundaries who, based on information reasonably available to You, has been the target of a law enforcement or administrative investigation You conducted concerning the physician's or provider's prescribing or dispensing Prescription Opioids since January 1, 2008 (this request is only intended to pertain to closed investigations). See also Section II, question 3.

2. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning physicians or other healthcare providers who wrote Medically Unnecessary Opioid prescriptions in Your geographical boundaries? Yes_____ No_____

3. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning whether a Pharmacy receives Prescription Opioids as a result of a Suspicious Order? Yes_____ No_____

4. Identify each Pharmacy within Your boundaries, based on information reasonably available to You, that has been the target of a law enforcement or administrative investigation You conducted concerning the Pharmacy's dispensing of Prescription Opioids since January 1, 2008 (this request is only intended to pertain to closed investigations). See also Section II, question 3.

5. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning whether a Pharmacy filled suspicious orders for Opioids into Your geographic area since January 1, 2008? Yes_____ No_____

6. Based on information reasonably available to You: (a) provide the number of overdose deaths of Your residents since January 1, 2008 on a year-by-year basis; and (b) for each such death, identify the drug(s) on which Your resident overdosed.

7. Did You ever notify any State or Federal agency (e.g., Board of Pharmacy, Department of Medicaid, Department of Public Safety, Drug Enforcement Agency, etc.) of suspected wrongful conduct related to Prescription Opioids since January 1, 2008? If yes, please identify the date of the notification, the subject of the conduct, and the general nature of the suspected wrongdoing.

8. Identify every medical insurance plan or carrier, behavioral health carriers, or workers' compensation program used for any of Your employees since January 1, 2008. For each response, please provide the following information:

Name	Date Offered	Plan's Pharmacy Benefit Manager/Claims Processor

9. Identify every Pharmacy Benefit Manager and other third-party administrator You used since January 1, 2006. For each response, please provide the following information:

Name	Relevant Date	Name and Title of Individuals Who Oversaw Program

C. Opioid-Related Services and Programs:

For the following questions, please provide information since January 1, 2008.

1. Have You formed or participated in an Opioid Task Force or other program or group to address opioid use or diversion? If yes, provide the name, members, and dates.

2. Have You had a prescription disposal program? If yes, provide the name and dates.

3. Have You operated any addiction treatment programs related to Prescription Opioids? If yes, provide the name and dates.

4. Have You provided any drug abuse prevention or education programs related to Prescription Opioids? If yes, provide the name and dates.

II. DOCUMENTS

Please produce the following documents for the period of January 1, 2008 to present, to the extent that these documents are in Your possession, custody, or control.

1. Documents you maintain that refer or relate to the volume of Prescription Opioids prescribed, dispensed, sold, distributed, diverted, or used in Your geographical boundaries.

2. Meeting agendas for any City Council, County Commission, County Health Board/Commission, or their equivalent that reference Prescription Opioids, the misuse of opioids, or related topics.

3. To the extent that You identified any physician, healthcare provider, or Pharmacy in response to questions I.B.1 and I.B.4 above, please provide that investigation file for those physicians, healthcare providers, or Pharmacies.

III. CERTIFICATION

I declare under penalty of perjury that all of the information provided in this Plaintiff's Fact Sheet is complete, true, and correct to the best of my knowledge and information, and that I have provided all of the requested documents that are reasonably accessible to me and/or my attorneys, to the best of my knowledge.

Signature	Print Name	Date

INSTRUCTIONS

1. The Fact Sheet shall be completed in accordance with the requirements and guidelines set forth in the applicable implementing Order.

2. Each Plaintiff must complete this separate form by electronically inserting the responsive information. The electronic version of this Fact Sheet can expand to accommodate as much information as is necessary to fully answer any of these questions. If you are completing this document in a representative capacity, please answer the questions provided herein on behalf of the Plaintiff you represent.

3. All the responses in this Fact Sheet or an amendment thereto are binding upon Plaintiffs as if they were contained in answers to interrogatories. Any responses, however, are without prejudice to future supplementation.

4. In completing this Fact Sheet, you are under oath and must provide information that is true and correct. You must answer every question as specifically as possible. If you cannot recall or locate the details requested, please provide as much information as you can after making a good-faith inquiry and search. For example, if a question asks for a date and the exact date is not known or capable of being ascertained, an approximate date should be provided (e.g., "approximately mid-2001"). You may and should consult records in your possession that contain responsive information to assist you in responding.

5. You must promptly supplement your responses if you learn that they are incomplete or incorrect in any material respect. Each question in this Fact Sheet is continuing in nature and requires supplemental answers if you obtain further information between the time of answering and the trial.

6. Each question in this Fact Sheet should be construed independently, unless otherwise noted. No question should be construed by reference to any other question if the result is a limitation of the scope of the answer to such question.

7. The questions herein do not seek the discovery of information protected by the attorney-client privilege.

8. The words "and" and "or" should be construed as necessary to bring within the scope of the request all responses and information that might otherwise be construed to be outside its scope.

DEFINITIONS

1. "Pharmacy Benefit Manager(s)" means the person or agency that manages Plaintiff's pharmacy network management, drug utilization review, and disease management programs for Plaintiff or on Plaintiff's behalf.

2. "Prescription Opioids" refers to FDA-approved pain-reducing medications consisting of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in a

patient's brain or body to produce an analgesic effect, including, but not limited to, the Prescription Opioids referenced in the Complaint for the wholesale distribution of which You seek to hold Defendants liable.

3. "Medically Unnecessary Opioid" refers to (i) FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to opioid receptors in a patient's brain or body to produce an analgesic effect that (ii) were not prescribed or used for a medically appropriate indication, dosage, or method of administration.

4. "You" and "Your" means each individual Plaintiff named in this action, including, its departments, divisions, agents, and/or employees.

5. "Pharmacy" means a pharmacy located within Plaintiff's geographical boundaries.

7. "Suspicious Order" means any order of Prescription Opioids placed by any source that Plaintiff contends should have been reported to the DEA or State authorities, including the Board of Pharmacy or equivalent. Suspicious Orders are not limited to those placed with the Distributor Defendants, but include those placed with any entity that has a regulatory reporting obligation.

8. "Opioid Task Force" means any group organized for the purpose of studying, evaluating, reporting about, investigating, making recommendations concerning, or otherwise considering the existence, origins, causes, responsible entities, effects, remedies, corrective measures for, or ways of combating the abuse, misuse, or addiction to opioids in Your geographical boundaries.

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. PURDUE PHARMA L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a/ JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC.; n/k/a JANSSEN PHARMACEUTICALS, INC.; ALLEGRAN, PLC, f/k/a ACTAVIS PLC, f/k/a/ ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC.; ACTAVIS LLC; and ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants	Case No. CJ-2017-816 Honorable Thad Balkman Special Discovery Master: William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY
FILED
FEB 22 2019
In the office of the
Court Clerk MARILYN WILLIAMS

NON-PARTY OKLAHOMA COUNTIES' REPLY TO PURDUE'S OPPOSITION TO THEIR MOTION TO QUASH

COMES NOW Osage County, Pawnee County, Delaware County, Garvin County, McClain County, Ottawa County, and Seminole County; (hereafter "Movants") Reply to Purdue Pharma L.P., Purdue Pharma, Inc., and The Purdue Pharma Frederick Company's (hereafter "Defendants") Response to Movants' Motion to Quash *Subpoenas Duces Tecum.*

Defendants' response grossly misstates the facts and circumstances leading up to the Movants' filing of their Motion to Quash. There was never any agreement reached between Movants and Defendants. Defendants refused to grant an extension of time unless there was an agreement for Movants to waive all their objections. This is not a feasible agreement especially when there is a reasonable basis for the Movants to object. Furthermore, Defendants minimize both this Court's Special Discovery Master's rules and the MDL's orders. As shown below, there are specific grounds to support Movants' Motion to Quash.

FACTUAL BACKGROUND

1. As shown in Movants' initial Motion, the Movants and Defendants were in active litigation in the Northern, Western, and Eastern District of Oklahoma Federal Court. A number of these actions were pending before the Judicial Panel on Multidistrict Litigation ("JPML"), these cases may be moved to an MDL where the Movants and Defendants will have to adhere to specific discovery rules and procedures. Several stays were entered with the pendency of the MDL rulings.

2. Defendants were provided an opportunity for objection prior to the stays being placed, but they failed to do so prior to these rulings. Now, they are seeking information that they were unable to receive in those cases, by issuing subpoenas in this case where none of the Movants are parties.

3. Since that time, the JPML has initiated transfer orders in all but one of Movants' cases against Defendants. *See* Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 84], *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.,* Case No, 18-CV-00459-GKF-FHM (N.D. Okla.) attached hereto as "Exhibit 1;" Transfer Order for United States Judicial Panel on Multidistrict

Litigation for MDL No. 2804 [Dkt. No. 81], *Board of County Comm'rs of Delaware County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-00460-CVE-JFJ (N.D. Okla.) attached hereto as "Exhibit 2;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 88], *Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-461,GFK-JFJ (N.D. Okla.) attached hereto as "Exhibit 3;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 77], *Board of County Comm'rs of Ottawa County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-466-TCK0JFJ (N.D. Okla.) attached hereto as "Exhibit 4;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 78], *Board of County Comm'rs of Garvin County, State of Oklahoma v. Purdue Pharma L.P., et al.*, Case No, 18-CV-820-HE (W.D. Okla.) attached hereto as "Exhibit 5;" Transfer Order for United States Judicial Panel on Multidistrict Litigation for MDL No. 2804 [Dkt. No. 64], *Board of County Comm'rs of McClain County, State of Oklahoma v. Purdue Pharma L.P., et al* Case No, 18-CV-857-HE (W.D. Okla.) attached hereto as "Exhibit 6." Currently, there is a Notice of hearing before the JPML to take place on March 28, 2019 for Seminole County's Case against Defendants. *See* United States Judicial Panel on Multi District Litigation Notice of Hearing Session for MDL No. 2804 [Dkt. No. 36], *Seminole County Board of County Comm'rs v. Purdue Pharma, LP, et al.*, Case No. 18-CV-00372 (E.D. Okla.) attached hereto as "Exhibit 7."

4. Furthermore, the Defendants presented to this Court that Movants and Defendants entered an agreement. Even with the most favorable interpretation of Defendants' Exhibit 2, it is clear that no agreement was reached. In fact, the Movants' counsel informed the Defendants' counsel that they would not waive any valid defenses for an extension.

5. It is clear that the motivations of Defendants are to circumvent discovery procedures in place where they cannot retrieve information at this time and/or cannot get the information at all whether it be in this case or the MDL. This is nothing more than a fishing expedition to annoy, embarrass, oppress, and/or cause undue burden and expense on the Movants.

6. More so, the argument by the Defendants that Movants are merely claiming the requests are "unfair" is a misstatement of Movants Motion. Movants specified several issues with these requests in their Motion to Quash including the relevancy, necessity, and improperly formatted requests.

7. Movants met their burden to Quash the Subpoenas Duces Tecum from Defendants. Not only did Movants enumerate specific requests and their deficiencies, but it was supported by appropriate authority to support these arguments.

ARGUMENTS AND AUTHORITIES

I. DEFENDANTS' SCOPE OF DISCOVERY IS NOT UNLIMITED UNDER THE OKLAHOMA DISCOVERY CODE.

Defendants arguments regarding the broad scope of discovery far exceeds the actual provisions of discoverable information. Under Defendants arguments, tangentially related information, regardless of how far that reach may be, would be discoverable from any non-party. Although the discovery scope is broad, it is not unlimited. *See Buffington v. Gilette Co.*, 101 F.R.D. 400 (W.D. Okla.1980) (citing *Barnett v. Sears, Roebuck and Co.,* 80 F.R.D. 662 (W.D. Okla. 1978)). When the court examines relevancy, it will also evaluate the reasonable possibility that the information sought would lead to admissible evidence. *Buffington, supra.* (citing *Miller v. Doctor's General Hospital,* 76 F.R.D. 136 (W.D. Okla. 1977)). In other words, there actually

needs to be a close enough nexus to the information that the party is seeking to either prove or disprove a claim or defense.

Defendants even admit in their response that this involves what the State expended due to the Defendants' fraudulent actions. Indeed, they even identify that their cases with Movants are "separate," but are still insisting Movants produce documents that are not relevant to the case before this Court. Considering, it would be hard to accept that this information would be of assistance to Defendants' defense in this case. To take Defendants' argument that these cases are separate, but also accept the argument that they need information from a party, in a separate case, contradicts any support for their reliance on this information.

Much of the cases relied upon by Defendants are also factually distinguishable. As shown by Defendants own admission, there is a separation between the cases with the Counties and State (i.e. separate damages, efforts expended, information in possession of the entities, communications with Defendants). Therefore, Defendants reliance upon *U.S. v. Childs* for relevancy of non-party information is misguided. No. 09-cr-146-D, 2018 WL 775018 (W.D. Okla. Feb. 7, 2018). In the *Childs* case, the defendant had pled guilty to wire fraud and money laundering, but he was provided probation with the order to pay restitution. *Id.* In *Childs*, the defendant wrote bad checks issued by Touch 1 Media LLC and signed by Yvonne Washington. *Id.* The government issued subpoenas to these two non-parties in further efforts to obtain restitution. *Id.* at *2. Under the circumstances in *Childs*, unlike in the present case, these non-parties were closely involved with the issue for which discovery was being requested. *Id.* Similarly, the *Management Comp. Group Lee v. Okla. State Univ.*, case involved a non-party that had a financial interest in the outcome of the case. No. 11-cv-967, 2011 WL 5326262 (W.D. Okla. November 3, 2011) at *13. In contrast, here the Movants have their own cases against

Defendants to recover money for their claims and discovery may properly be sought in those actions.

In fact, by Defendants' own arguments, it seems impossible that anything produced by Movants would even remotely prove their defenses in this case. They are seeking information that would be in a county's possession. It is not going to provide the information that Defendants' need regarding: (1) Efforts by the State; (2) the State's policies; (3) Cost expended by the State; (4) Damages to the State; (5) State's communications about opioid litigation or with Purdue. *See, Purdue's Response in Opposition to the Oklahoma Counties' Motion to Quash Purdue's Subpoenas Duces Tecum*, p. 5. Furthermore, the need for this information is misplaced for supporting the Defendants' defense. If the Defendants requested this information, and the State does not have such evidence to present for the State's claim, then the Defendants have their defense (i.e. the State simply doesn't have evidence to support their claims). Ultimately, this proves Defendants truly are just on a fishing expedition and have no actual basis for seeking this information. Likewise, it establishes the subpoenas should be quashed.

II. EVEN IF THE COURT WERE TO DEEM THAT THE DOCUMENTS REQUESTED ARE RELEVANT, WHICH IS DENIED, THE DEFENDANTS WOULD BE CIRCUMVENTING DISCOVERY PROCEDURES PLACED BY THIS COURT AND THE MDL.

Even if there was "marginal relevance" to the Defendants' requests, which is denied, the potential harm by circumventing the discovery procedures in place and the stay to Movants far outweighs the "presumption in favor of broad disclosure." *Beach v. City of Olathe, Kan.*, 203 F.R.D. 489, 496 (D. Kan. 2001). In Defendants' response they do not deny the fact that both this Court and the MDL have entered Orders governing discovery procedures. In fact, the Defendants basically agree they are in place, but just argue that such procedures "will not require them to re-produce discovery that they have previously produced." Defendants seek evidence here they

should be seeking in other more appropriate forums under the proper procedures and time lines available in those more appropriate forums.

Defendants' subpoenas request that this Court disregard the Special Discovery Master's Orders and the MDL's procedures in place for the Defendants' conveniences. *See e.g.*, Movants' *Motion to Quash*, Ex. 6-8. However, Defendants' requested conveniences are not necessary to prove their defenses in this case, as they were able to obtain discovery related to their defenses through the actual parties in this case. Furthermore, Defendants are requesting information that ultimately Movants may not even have to produce in the MDL cases. *See e.g.*, Movant's *Motion to Quash*, p. 13-14 and Defendants' requests No. 2-20. Rather than issuing subpoenas to all the counties in the state, Defendants appear to have specifically selected the ones that have pending litigation in other forums against them. Defendants should not be allowed to use this Court as a tool to abuse the discovery process of active litigation to obtain discovery not relevant to the case at hand, but, if relevant to anything, to matters at issue in other appropriate forums. Such discovery should properly be guided by the procedures and timelines in place in those other appropriate forums.

III. EVEN IF ANY DOCUMENTS MAY BE RELATED TO THIS CASE, WHICH ID DENIED, ANY REQUESTED INFORMATION SOUGHT TO BE PRODUCED BY THE MOVANTS WOULD BE DUPLICATIVE AND CUMULATIVE.

The Defendants in this case have been provided an opportunity to conduct discovery in this case. However, the Defendants insist the Movants possess information that can prove or disprove the State's claims. *See, Purdue's Response*, p. 5. Even if that were true, the State would possess any information that Defendants do not have in their possession to support the State's claims. Such information should have been requested in discovery to the State. If Defendants had requested such documents from the State and received them, then anything from the Movants

that would be remotely related to the State's claims would be duplicative and cumulative information. Specifically, this is true for Requests Nos. 3, 4, 16, 17, and 19, which are the only requests out of 20 that even mention the State of Oklahoma. The remaining requests are facially irrelevant. Therefore, all requests are irrelevant and/or seek duplicative or cumulative information. Defendants also assert in error, that Movants would possess information related to their defenses, which are clearly in Defendants possession such as "statements by Purdue." *See, e.g., Purdue's Opposition to the Oklahoma Counties' Motion to Quash Purdue's Subpoenas Duces Tecum*, p. 8. The feasibility that the Movants would have evidence of the defendants' own statements that relates to the whole entire State of Oklahoma, not just a few counties, is unlikely. However, it also demonstrates that Defendants' concern is not to get information actually needed to support their defenses, but to end-run around the procedures established by this Court and the MDL to seek information that would not normally be discoverable. Further, Defendants should already possess any such evidence.

IV. MOVANTS PROVIDED A SUFFICIENT BASIS FOR ASSERTING PRIVILEGE FOR THESE REQUESTED DOCUMENTS.

The Movants' Motion to Quash specifically outlined a number of requests that would seek information protected by privilege and/or work product. *See* Movants' Motion, p. 19-20. Movants made clear without confusion that these requests will seek information that "include attorney-client privilege and work-product." *See* Movants' Motion, p. 19. This is in complete contrast to the case law relied upon by Defendants where a party made contradictory statements regarding whether the information was privileged and even partially released some of the privileged information already to the opposing party. *See Burke v. Glanz*, No.11-cv-720, 2013WL 3994634, at *7 (N.D. Okla. Aug. 5, 2013). Furthermore, the Movants clearly

demonstrated specific statutory provisions which do not allow disclosure of the requested information. *See* Movants' Motion, p. 21-23.

Considering that these documents are subject to privilege, the Defendants must "show[] that it has substantial need for the material to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." *Hill v. City of Okla. City*, 2017 U.S. Dist. Lexis 78073, at *2 (May 23, 2017 (citing Fed. R. Civ. P. 26(b)(3)(A)(ii)). As Movants have stated, the information that Defendants need for this case is from their own records and the State's responses to discovery. There is no reason to rummage through the Movants' records which are privileged to support their defenses.

V. BEYOND THE ISSUE OF RELEVANCY, MOVANTS HAVE DEMONSTRATED GOOD CAUSE TO QUASH THE SUBPOENAS AS THE REQUESTS FACIALLY FAIL.

Movants provided more than buzzwords into their Motion to Quash to support their good cause. It is well held by courts that discovery requests are unduly burdensome on their face when they use omnibus terms. *See Movants' Motion*, p. 17-18; *see also Aikens v. Deluxe Fin. Servs., Inc.*, 217 F.R.D. 533, 538 (D. Kan. 2013) (Discovery may be overly broad on its face when it uses terms such as "regarding," "relating to," or "pertaining to"). Specifically, Defendants' requests No. 2-7 and 10-20 contain these terms making the requests facially overbroad and unduly burdensome. Only 3 out of the 20 topics can pass this standard. In short, Defendants improperly seek discovery that is irrelevant, duplicative, overly broad, unduly burdensome, privileged, facially invalid, and more appropriately sought in other forums under other proper procedures and timelines.

CONCLUSION

The Defendants continue to hang on to the assertion that the Subpoenas Duces Tecum will afford them the opportunity to gather evidence relevant to the State's claims and their defenses. This is regardless of the fact that they have been afforded the opportunity to get discovery from the State with agreed upon and fine-tuned provisions set forth by the Special Discovery Master. The Defendants go as far as to grossly assert an agreement that was never obtained between Movants and Defendants to this court to get unnecessary information. Finally, Defendants seek to obtain the information in this Court as an improper end-run around the appropriate other forum court's procedures, where the Movants and Defendants are parties. The information requested is irrelevant to this action, and should be sought, if relevant to the other actions, in the other actions.

WHEREFORE, and for the reasons set forth in the Motion to Quash, Movants requests that the Court quash Defendants' *Subpoenas Duces Tecum.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 21st day of February 2019, a true and correct copy of the above and foregoing instrument was:

X	mailed with postage prepaid thereon;
_____	mailed by certified mail, Return Receipt No. _____;
_____	transmitted via facsimile; or
_____	hand-delivered;

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Discovery Master William Heatherington
Via Email at bill@hethlaw.com

Jamie Rogers

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL No. 2804

18-cv-00459-GKF-FHM

TRANSFER ORDER

Before the Panel:* Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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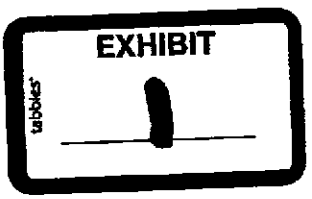
* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

[1] Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

[2] West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

[3] Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs." *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants' alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers' allegedly improper marketing of such drugs. The actions therefore fall within the MDL's ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[4] *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry

R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

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Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

18-cv-460-CVE-JFJ

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL No. 2804

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
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The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry

R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

[7] *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that "the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.") (citations omitted).

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation Transfer Order
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From: JPMLCMECF@jpml.uscourts.gov
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United States

United States Judicial Panel on Multidistrict Litigation

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The following transaction was entered on 12/6/2018 at 11:12 AM EST and filed on 12/6/2018

Case Name:	IN RE: National Prescription Opiate Litigation
Case Number:	MDL No. 2804
Filer:	
Document Number:	3169

Docket Text:
erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in

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Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name:	Board of County Commissioners of Delaware County, State of Oklahoma, The v. Purde Pharma L.P. et al
Case Number:	OKN/4:18-cv-00460
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Document Number:	45

Docket Text:
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Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name:	CITY OF LEWISTON v. PURDUE PHARMA LP et al
Case Number:	ME/2:18-cv-00310
Filer:	
Document Number:	48

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

18-cv-461-GKF-JFJ

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

TRANSFER ORDER

Before the Panel:* Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

[1] Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

[2] West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

[3] Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs." *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants' alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers' allegedly improper marketing of such drugs. The actions therefore fall within the MDL's ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[4] *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry
R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

[7] *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that "the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.") (citations omitted).

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

SCHEDULE A

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL., C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL., C.A. No. 1:18-05288
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE, INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
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Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation Transfer Order
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United States Judicial Panel on Multidistrict Litigation

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Case Number:	MDL No. 2804
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Docket Text:
erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in

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Case Name:	Board of County Commissioners of Osage County, State of Oklahoma, The v. Purde Pharma L.P. et al
Case Number:	OKN/4:18-cv-00461
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Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

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UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL No. 2804

18-cv-466-TCK-JFJ

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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[*] Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

[1] Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

[2] West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

[3] Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs." *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants' alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers' allegedly improper marketing of such drugs. The actions therefore fall within the MDL's ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[4] *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry
R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

[7] *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that "the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.") (citations omitted).

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

SCHEDULE A

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL., C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL., C.A. No. 1:18-05288
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE, INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

Activity in Case MDL No. 2804 IN RE: National Prescription Opiate Litigation Transfer Order
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United States Judicial Panel on Multidistrict Litigation

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Case Name:	IN RE: National Prescription Opiate Litigation
Case Number:	MDL No. 2804
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Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name: Board of County Commissioners of Ottawa County, State of Oklahoma, The

v. Purde Pharma L.P. et al

Case Number: OKN/4:18-cv-00466

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erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ([2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ([2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ([2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ([2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ([2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ([2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ([2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ([2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ([2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ([2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ([2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION, on 12/6/2018.

Associated Cases: MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983,

NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231 (CMD)

Case Name:	Commonwealth of Kentucky et al v. Walgreens Boots Alliance, Inc. et al
Case Number:	KYE/2:18-cv-00126
Filer:	
Document Number:	25

Docket Text:

erTRANSFER ORDER re: pldg. (19 in CAN/3:18-cv-04535, 43 in GAN/1:18-cv-03508, 37 in GAN/1:18-cv-03899, 38 in ILN/1:18-cv-05288, 36 in ILN/1:18-cv-05756, 24 in KYE/2:18-cv-00126, [2784] in MDL No. 2804, 46 in ME/1:18-cv-00298, 47 in ME/2:18-cv-00282, 45 in ME/2:18-cv-00310, 35 in NJ/1:18-cv-11983, 34 in NM/1:18-cv-00795, 45 in OHS/2:18-cv-00719, 16 in OHS/3:18-cv-00295, 14 in OKE/6:18-cv-00236, 11 in OKN/4:18-cv-00459, 11 in OKN/4:18-cv-00460, 11 in OKN/4:18-cv-00461, 11 in OKN/4:18-cv-00466, 43 in OKW/5:18-cv-00820, 9 in OKW/5:18-cv-00857, 31 in PAE/2:18-cv-03637, 31 in WVS/2:18-cv-01231), (13 in CAN/3:18-cv-04535, [2345] in MDL No. 2804), (26 in GAN/1:18-cv-03508, [2324] in MDL No. 2804), (36 in GAN/1:18-cv-03899, [2622] in MDL No. 2804, 33 in NM/1:18-cv-00795), (33 in ILN/1:18-cv-05288, [2397] in MDL No. 2804), (33 in ILN/1:18-cv-05756, [2614] in MDL No. 2804), (17 in KYE/2:18-cv-00126, [2366] in MDL No. 2804), ([2531] in MDL No. 2804, 17 in WVS/2:18-cv-01231), ([2288] in MDL No. 2804, 33 in ME/2:18-cv-00282), ([2497] in MDL No. 2804, 40 in ME/2:18-cv-00310), ([2817] in MDL No. 2804, 37 in OKN/4:18-cv-00459, 37 in OKN/4:18-cv-00460, 37 in OKN/4:18-cv-00461, 37 in OKN/4:18-cv-00466, 34 in OKW/5:18-cv-00857), ([2763] in MDL No. 2804, 39 in OKW/5:18-cv-00820), ([2450] in MDL No. 2804, 41 in ME/1:18-cv-00298), ([2382] in MDL No. 2804, 42 in ME/2:18-cv-00282), ([2398] in MDL No. 2804, 36 in OHS/2:18-cv-00719), ([2355] in MDL No. 2804, 32 in NJ/1:18-cv-11983), ([2663] in MDL No. 2804, 9 in OHS/3:18-cv-00295), ([2625] in MDL No. 2804, 6 in PAE/2:18-cv-03637), ([2462] in MDL No. 2804, 12 in ME/2:18-cv-00310), ([2310] in MDL No. 2804, 6 in OKE/6:18-cv-00236), ([2433] in MDL No. 2804, 26 in ME/1:18-cv-00298)

Transferring 22 action(s) - MDL No. 2804, CAN/3:18-cv-04535, GAN/1:18-cv-03508, GAN/1:18-cv-03899, ILN/1:18-cv-05288, ILN/1:18-cv-05756, KYE/2:18-cv-00126, ME/1:18-cv-00298, ME/2:18-cv-00282, ME/2:18-cv-00310, NJ/1:18-cv-11983, NM/1:18-cv-00795, OHS/2:18-cv-00719, OHS/3:18-cv-00295, OKE/6:18-cv-00236, OKN/4:18-cv-00459, OKN/4:18-cv-00460, OKN/4:18-cv-00461, OKN/4:18-cv-00466, OKW/5:18-cv-00820, OKW/5:18-cv-00857, PAE/2:18-cv-03637, WVS/2:18-cv-01231

Signed by Judge Sarah S. Vance, Chair, PANEL ON MULTIDISTRICT LITIGATION,

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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[*] Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

[1] Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

[2] West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

[3] Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.

country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs." *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants' alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers' allegedly improper marketing of such drugs. The actions therefore fall within the MDL's ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[4] *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry
R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

[7] *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that "the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.") (citations omitted).

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

SCHEDULE A

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL., C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL., C.A. No. 1:18-05288
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE, INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 22 actions and certain physician defendants[1] in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*[2] support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants[3] oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

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[1] Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

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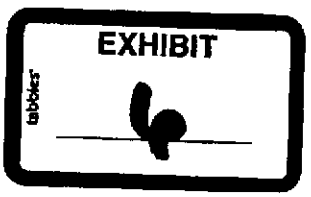
[3] Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.;Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



country. *See In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: "(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates." *Id.* at 1378. We held that "[a]ll actions involve common factual questions about, *inter alia*, the manufacturing
and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs." *Id.*

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The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.[4] Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) ("[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.").

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.[5]

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

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[4] *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

[5] *See In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) ("[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.") (citation and quotes omitted).

outweighed by the substantial factual allegations shared with the MDL actions.[6] Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,[7] and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry

R. David Proctor
Karen K. Caldwell

[6] "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu...").

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

SCHEDULE A

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL., C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL., C.A. No. 1:18-05288
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE, INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF OKLAHOMA, THE v. PURDE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF OKLAHOMA v. PURDE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

NOTICE OF HEARING SESSION

Pursuant to the order of the United States Judicial Panel on Multidistrict Litigation filed today, notice is hereby given that a hearing session has been scheduled to consider various matters under 28 U.S.C. § 1407.

DATE OF HEARING SESSION: **March 28, 2019**

LOCATION OF HEARING SESSION: E. Barrett Prettyman United States Courthouse
Ceremonial Courtroom No. 20, 6th Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001

TIME OF HEARING SESSION: In those matters designated for oral argument, counsel presenting oral argument must be present at **8:00 a.m.** in order for the Panel to allocate the amount of time for oral argument. Oral argument will commence at **9:30 a.m.**

SCHEDULED MATTERS: Matters scheduled for consideration at this hearing session are listed on the enclosed Hearing Session Order and Schedule of Matters for Hearing Session.

- Section A of this Schedule lists the matters designated for oral argument and includes all actions encompassed by Motion(s) for transfer filed pursuant to Rules 6.1 and 6.2. Any party waiving oral argument pursuant to Rule 11.1(d) need not attend the Hearing Session.
- Section B of this Schedule lists the matters that the Panel has determined to consider **without oral argument**, pursuant to Rule 11.1(c). Parties and counsel involved in these matters need not attend the Hearing Session.

ORAL ARGUMENT:

- The Panel carefully considers the positions advocated in filings with the Panel when it allocates time to attorneys presenting oral argument. The Panel, therefore, expects attorneys to adhere to those positions including those concerning an appropriate transferee district. Any change in position should be conveyed to Panel staff before the beginning of oral argument. Where an attorney thereafter advocates a position different from that conveyed to Panel staff, the Panel may reduce the allotted argument time and decline to hear further from that attorney.

- The Panel expects attorneys presenting oral argument to be prepared to discuss what steps they have taken to pursue alternatives to centralization including, but not limited to, engaging in informal coordination of discovery and scheduling, and seeking Section 1404 transfer of one or more of the subject cases.

For those matters listed on Section A of the Schedule, the "Notice of Presentation or Waiver of Oral Argument" must be filed in this office no later than **March 11, 2019.** The procedures governing Panel oral argument (Panel Rule 11.1) are attached. The Panel strictly adheres to these procedures.

FOR THE PANEL:

Jeffery N. Lüthi
Clerk of the Panel

cc: Clerk, United States District Court for the District of Columbia

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

HEARING SESSION ORDER

The Panel issues the following orders in connection with its next hearing session,

IT IS ORDERED that on March 28, 2019, the Panel will convene a hearing session in Washington, D.C., to consider the matters on the attached Schedule under 28 U.S.C. § 1407.

IT IS FURTHER ORDERED that the Panel may, on its own initiative, consider transfer of any or all of the actions in those matters to any district or districts.

IT IS FURTHER ORDERED that the Panel will hear oral argument on the matters listed on Section A of the attached Schedule, unless the parties waive oral argument or unless the Panel later decides to dispense with oral argument pursuant to Panel Rule 11.1(c).

IT IS FURTHER ORDERED that the Panel will consider without oral argument the matters listed on Section B of the attached Schedule pursuant to Panel Rule 11.1(c). The Panel reserves the prerogative, on any basis including submissions of parties pursuant to Panel Rule 11.1(b), to designate any of those matters for oral argument.

IT IS FURTHER ORDERED that the Clerk of the Judicial Panel on Multidistrict Litigation shall direct notice of this hearing session to counsel for all parties involved in the matters on the attached Schedule.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan	Ellen Segal Huvelle
R. David Proctor	Catherine D. Perry
Karen K. Caldwell	Nathaniel M. Gorton

SECTION B
MATTERS DESIGNATED FOR CONSIDERATION WITHOUT ORAL ARGUMENT

MDL No. 1877 - **IN RE: CLASSICSTAR MARE LEASE LITIGATION**

Oppositions of plaintiffs John Goyak, et al., and defendant David Lieberman to remand, under 28 U.S.C. § 1407(a), of the following action to the United States District Court for the Eastern District of Michigan:

Eastern District of Kentucky

GOYAK, ET AL. v. CLASSICSTAR RACING STABLE, LLC, ET AL., C.A. No. 5:08-00053 (E.D. Michigan, C.A. No. 1:07-15260)

MDL No. 2244 - **IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs Pat Patton and Donald Massey and defendants Russell N.A. Cecil, M.D.; Mohawk Valley Orthopedics, P.C.; St. Marys Healthcare; St. Marys Hospital at Amsterdam; and The Ortho Store, Inc., to transfer of their respective following actions to the United States District Court for the Northern District of Texas:

Central District of California

PATTON v. DEPUY ORTHOPAEDICS, INC., ET AL., C.A. No. 2:19-00081

Northern District of New York

MASSEY v. CECIL, ET AL., C.A. No. 1:19-00049

MDL No. 2428 - **IN RE: FRESENIUS GRANUFLO/NATURALYTE DIALYSATE PRODUCTS LIABILITY LITIGATION**

Opposition of plaintiffs Grace Del Rosario Aquino, et al., to transfer of the following action to the United States District Court for the District of Massachusetts:

Central District of California

AQUINO, ET AL. v. FRESENIUS USA, INC., ET AL., C.A. No. 2:18-09987

MDL No. 2742 - **IN RE: SUNEDISON, INC., SECURITIES LITIGATION**

Opposition of plaintiff SESL Recovery, LLC, to transfer of the following action to the United States District Court for the Southern District of New York:

Northern District of California

SESL RECOVERY, LLC v. DEUTSCHE BANK SECURITIES, INC., C.A. No. 3:19-00096

MDL No. 2775 - **IN RE: SMITH & NEPHEW BIRMINGHAM HIP RESURFACING (BHR) HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

Oppositions of plaintiffs Lisa Schehrer and Charles M. Fondren and defendant Greenwood Leflore Hospital to transfer of their respective following actions to the United States District Court for the District of Maryland:

District of Kansas

SCHEHRER v. SMITH & NEPHEW, INC., ET AL., C.A. No. 2:19-02003

Northern District of Mississippi

FONDREN v. SMITH & NEPHEW, INC., ET AL., C.A. No. 4:18-00256

MDL No. 2804 - **IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION**

Oppositions of plaintiffs and defendants Mylan Bertek Pharmaceuticals Inc.; Mark Cieniawski, M.D.; and Michael B. Bruehl, M.D., to transfer of their respective following actions to the United States District Court for the Northern District of Ohio:

Northern District of Georgia

COUNTY OF FANNIN v. RITE AID OF GEORGIA, INC., ET AL., C.A. No. 2:18-00220

District of Maine

CITY OF WATERVILLE v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00014
CITY OF AUGUSTA v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00017
AROOSTOOK COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00018
PENOBSCOT COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00019
WASHINGTON COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00024

SOMERSET COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 1:19-00025
ANDROSCOGGIN COUNTY v. PURDUE PHARMA LP, ET AL.,
C.A. No. 2:19-00012
CITY OF AUBURN v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00013
SAGADAHOC COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00020
LINCOLN COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00021
YORK COUNTY v. PURDUE PHARMA LP, ET AL., C.A. No. 2:19-00022

Western District of Missouri

TUDHOPE, ET AL. v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL.,
C.A. No. 4:18-00932

Southern District of Ohio

MEIGS COUNTY, OHIO v. CARDINAL HEALTH, INC., ET AL.,
C.A. No. 2:18-01582
WASHINGTON COUNTY, OHIO BY ITS COMMISSIONERS, ET AL. v. CARDINAL HEALTH, INC., ET AL., C.A. No. 2:18-01706

Eastern District of Oklahoma

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00372

Western District of Oklahoma

CHEYENNE AND ARAPAHO TRIBES v. PURDUE PHARMA LP, ET AL.,
C.A. No. 5:19-00039
CHEYENNE AND ARAPAHO TRIBES v. WATSON LABORATORIES, INC.,
ET AL., C.A. No. 5:19-00042

Eastern District of Pennsylvania

COUNTY OF CARBON v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-05625
DELAWARE COUNTY, PENNSYLVANIA v. PURDUE PHARMA L.P., ET AL.,
C.A. No. 2:18-05627

Southern District of Texas

COUNTY OF BLANCO v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04705
COUNTY OF JASPER v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04706
COUNTY OF ANGELINA v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-04707

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

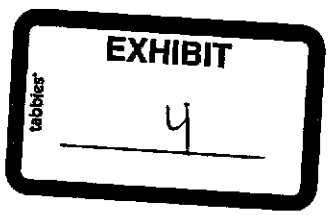
IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER,)
ATTORNEY GENERAL OF OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
)
(1) PURDUE PHARMA L.P.;)
(2) PURDUE PHARMA, INC.)
(3) THE PURDUE FREDERICK COMPANY;)
(4) TEVA PHARMACEUTICALS USA, INC.;)
(5) CEPHALON, INC.;)
(6) JOHNSON & JOHNSON;)
(7) JANSSEN PHARMACEUTICALS, INC;)
(8) ORTHO-MCNEIL-JANSSEN)
PHARMACEUTICALS, INC., n/k/a)
JANSSEN PHARMACEUTICALS;)
(9) JANSSEN PHARMACEUTICA, INC.,)
n/k/a JANSSEN PHARMACEUTICALS, INC.;)
(10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,)
f/k/a ACTAVIS, INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
(11) WATSON LABORATORIES, INC.;)
(12) ACTAVIS LLC; and)
(13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)
)
Defendants.)

Case No. CJ-2017-816
Judge Thad Balkman

PROTECTIVE ORDER

In recognition of long established Oklahoma jurisprudence that "the plaintiff's right to prepare for trial and to avoid delay in the evidentiary process should be *balanced*



against the defendant's legitimate claim to privacy,"[1] the parties in this action have conferred and agreed to enter into a Protective Order in this matter that provides for procedures regarding the exchange, use and filing of confidential information under Oklahoma law. Here, both parties have a right to prepare for trial in an expeditious manner with legitimate claims to privacy protected. While the parties have agreed to the entry of a protective order, they do not agree on its scope and other terms. Accordingly, and considering the unique circumstances of this case, it is ORDERED:

1. Scope.

(a) Generally. All materials produced or adduced in the course of discovery in this Action including initial or amended disclosures, responses to interrogatories and requests for admission, responses to discovery requests, deposition testimony and exhibits, documents, and testimony, data, and other information produced, adduced and/or disclosed ("Discovery Material"), shall be subject to this Order as defined below. This Order is subject to the Oklahoma Rules of Civil Procedure on matters of procedure and calculation of time periods.

(b) Party Definitions. A Party (or, if applicable, non-party) producing information covered by this Order shall be referred to as the "Designating Party." Any Party (or, if applicable, non-party) receiving Discovery Material covered by this Order shall be referred to as the "Receiving Party."

(c) Derivative Material, Compilations. The protections conferred by this Order cover Discovery Material designated as Confidential or Highly Confidential – Attorneys' Eyes Only and also (1) any information copied or extracted from such Discovery Material;

[1] *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶24, 944 P.2d 304, 311.

and (2) all copies, excerpts, summaries, or compilations of such Discovery Material.

(d) Material Not Covered. The protections conferred by this Order do not cover any information that is in the public domain or that is not Discovery Material as defined in Paragraph 1(a) of this Order.

(e) Designations by a Non-Party. Any non-Party to this Action may designate any Discovery Material it produces as Confidential or Highly Confidential – Attorneys' Eyes Only pursuant to the terms of this Order, so long as the Party reasonably and in good faith believes the information is properly so designated. In so designating the non-party and the Parties agree that the restrictions and terms of this Order shall be applicable to all such Discovery Material to the same extent as Discovery Material produced by a Party. The non-Party producing Discovery Material must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

2. Confidential or Highly Confidential Information. As used in this Order, "Confidential or Highly Confidential Information" means information designated as "Confidential" or "Highly Confidential" by the Designating Party that falls within one or more of the following categories: (a) information prohibited from disclosure by any applicable laws and regulations; (b) confidential research, development or commercial information (*see* 12 O.S. § 3226(C)(1)(g)); (c) trade secret information, including a formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are

reasonable under the circumstances to maintain its secrecy; (d) medical or other "Protected Health Information" concerning any individual that is subject to the entry of a separate order pursuant to the Health Insurance Portability and Accountability Act; (e) personal identity information; (f) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; or (g) personnel or employment records of a person who is not a party to the case.

3. Highly Confidential – Attorneys' Eyes Only Information. As used in this Order, "Highly Confidential – Attorneys' Eyes Only Information" means information that (1) meets the definition of Confidential Information pursuant to Paragraph 2 above; and (2) the Designating Party in good faith believes could reasonably result in commercial, financial, or business injury to the Designating Party (other than injury to the Designating Party's position in this Action) in the event of the disclosure, dissemination, or use by or to any of the persons not enumerated in Paragraph 7(c).

4. Designation

(a) The Designating Party may designate a document or other Discovery Material at the time of production as Confidential Information or Highly Confidential – Attorneys' Eyes Only Information for protection under this Order by placing or affixing the words "Confidential," "Highly Confidential – Attorneys' Eyes Only," "Subject to Protective Order," or similar language respectively on each page of the document or material and on all copies in a manner that will not interfere with the legibility of the document or material. The designation of Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information is a certification by an attorney or a party appearing pro se that the

Discovery Material contains Confidential or Highly Confidential – Attorneys' Eyes Only Information as defined in this Order.

(b) As used in this Order, "copies" includes electronic images, electronic devices, duplicates, extracts, summaries or descriptions that contain the Confidential or Highly Confidential – Attorneys' Eyes Only Information. Electronic media (such as CDs and DVDs) shall, at the time of production, be designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by affixing a label to such media. In the case of initial or amended disclosures, interrogatory answers, responses to requests for admissions, and other similar documents providing information, the designation shall be made by means of a statement in the relevant document specifying that the document or specific parts thereof are designated Confidential or Highly Confidential – Attorneys' Eyes Only.

(c) Any copies that are made of any documents marked Confidential or Highly Confidential – Attorneys' Eyes Only shall also be so marked. Indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential or Highly Confidential – Attorneys' Eyes Only Information are not required to be marked.

5. Depositions. Deposition testimony is protected by this Order only if designated as Confidential or Highly Confidential – Attorneys' Eyes Only on the record at the time the testimony is taken or, within fourteen (14) days after receiving a certified copy of the transcript from the court reporter, by serving a Notice of Designation on all parties of record identifying the specific portions of the transcript that are so designated. Further, any designation of deposition testimony as Confidential or Highly Confidential – Attorneys' Eyes Only shall state the basis for such designations and designate by reference to the

questions and answers, as applicable. All depositions shall be treated as Confidential or Highly Confidential – Attorneys' Eyes Only until the expiration of the 14-day period to make a written confidentiality designation.

6. Non-Documentary and Non-Testimonial Material. Non-documentary and non-testimonial material, such as oral statements, shall be designated as Confidential Information or Highly Confidential – Attorneys' Eyes Only if and as appropriate at the time of disclosure or in writing within fourteen (14) days of their disclosure.

7. Protection of Confidential Material.

(a) General Protections. Confidential Information and Highly Confidential – Attorneys' Eyes Only Information shall not be used or disclosed by the Parties, counsel for the Parties, or any other persons identified in subparagraphs (b) and (c) for any purpose whatsoever other than in this Action and any appeal thereto, except as the Designating Party may agree in writing.

(b) Limited Third-Party Disclosures of Confidential Information. The Receiving Party and counsel for the Receiving Party shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set forth in subparagraphs (1)-(11). Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

(1) Counsel. Counsel for the Parties and employees and consultants of counsel who have responsibility for the Action. For purposes of this Order, the Office of the Oklahoma Attorney General is included in the definition of Counsel for the Parties unless doing so could render any Confidential Information subject to public disclosure;

(2) Parties. Individual Parties and present or former officers, directors, and employees of a Party, to the extent counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Action and provided that if a former employee is shown documents prepared after the date of his or her departure that such person(s) have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(3) The Court and its Personnel;

(4) Court Reporters and Recorders. Court reporters, recorders, and other personnel engaged for transcribing or videotaping testimony in this Action ("Court Reporters and Recorders");

(5) Contractors. Those persons specifically engaged for the purpose of making copies of Discovery Material or organizing or processing Discovery Material, including outside vendors hired to process electronically stored documents, copying services, litigation support services, translation services, graphics and design services, and document review and handling services, as well as investigators, trial consultants, jury consultants, and mock jurors, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound ("Contractors");

(6) Experts. Testifying experts and consulting experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action subject to the provisions of Paragraph 8 below and only after such persons have

completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound ("Experts");

(7) Witnesses at Depositions. In connection with their depositions, witnesses in this Action to whom disclosure is reasonably necessary and after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. Witnesses shall not retain a copy of documents containing Confidential or Highly Confidential – Attorneys' Eyes Only Information, except witnesses may receive a copy of all exhibits marked at their depositions solely in connection with review of the transcripts, and must return all copies after their review. Pages of transcribed deposition testimony or exhibits to depositions that are properly designated as Confidential Information or Highly Confidential – Attorneys' Eyes Only pursuant to the process set out in this Order may not be disclosed to anyone except as permitted under this Order;

(8) Author, Sender or Recipient. Any non-Party witnesses who authored, modified, sent or received the Discovery Material, provided that the non-Party witnesses shall only be shown the Discovery Material authored, sent, or received by the witness that counsel for the Receiving Party determines in good faith that the person's assistance is reasonably necessary to the conduct of this Action, and provided that such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(9) Neutrals. Neutrals, if any, including but not limited to special masters, mediators, arbitrators, or other third parties appointed by the Court or jointly

retained by the Parties for settlement purposes or resolution of discovery or other disputes in this Action and their necessary staff, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound ("Special Masters");

(10) Others by Consent. Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered; and

(11) Law Enforcement Agencies. To the extent the Receiving Party believes it is allowed by state or federal law or regulation to disclose Discovery Material to a state or federal law enforcement agency empowered to investigate matters or prosecute laws, regulations or rules related to the marketing, distribution, and sale of opioid products; provided that Confidential or Highly Confidential – Attorneys' Eyes Only Information shall not be disclosed to any such agency if doing so would render any such information subject to public disclosure. Any law enforcement agency with which Discovery Material is shared in accordance with this paragraph must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(c) Limited Third-Party Disclosures of Highly Confidential – Attorneys' Eyes Only Information. The Receiving Party and counsel for the Receiving Party shall not disclose or permit the disclosure of any Highly Confidential – Attorneys' Eyes Only Information to any third person or entity except as set forth in subparagraphs (1)-(5). Subject to these requirements, the following categories of

persons may be allowed to review Highly Confidential – Attorneys' Eyes Only Information:

(1) Counsel. All Counsel for the Parties in this Action and employees and consultants of counsel who have responsibility for the Action. For purposes of this Order, the Office of the Oklahoma Attorney General is included in the definition of Counsel for the Parties unless doing so could render any Highly Confidential – Attorneys' Eyes Only Information subject to public disclosure;

(2) Court and its Personnel, Court Reporters and Recorders, Contractors, Experts, and Special Masters;

(3) Witnesses at Depositions. In connection with their depositions, witnesses in this Action to whom disclosure is reasonably necessary, only when (1) the witness is or was employed by the Producing Party of the Discovery Material at issue, or (2) when the witness authored, sent, modified or received the Discovery Material in the ordinary course of business. The witness shall only be shown the specific portions of the Discovery Material to which access is reasonably necessary, with all other designated material redacted, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. Witnesses shall not retain a copy of documents containing Highly Confidential – Attorneys' Eyes Only Information, except witnesses may receive a copy of all exhibits marked at their depositions solely in connection with review of the transcripts, and must return all copies after their review. Pages of transcribed deposition testimony or exhibits to depositions that are properly designated as Highly Confidential – Attorneys' Eyes Only

Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order. In no event will a current or prior officer, director, or employee, or affiliate of one defendant be shown the Highly Confidential – Attorneys' Eyes Only Discovery Material of another defendant unless the witness authored, sent, modified or received the Discovery Material in the ordinary course of business.

(4) Others by Consent. Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered; and

(5) Law Enforcement Agencies. To the extent the Receiving Party believes it is allowed by state or federal law or regulation to disclose Discovery Material to a state or federal law enforcement agency empowered to investigate matters or prosecute laws, regulations or rules related to the marketing, distribution, and sale of opioid products; provided that Confidential or Highly Confidential – Attorneys' Eyes Only Information shall not be disclosed to any such agency if doing so would render any such information subject to public disclosure. Any law enforcement agency with which Discovery Material is shared in accordance with this paragraph must first complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(d) Control of Documents. Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential and Highly Confidential – Attorneys' Eyes Only Information. Counsel to the Party employing, examining, or interviewing witnesses shall be responsible for obtaining the

executed Acknowledgment of Understanding and Agreement to Be Bound, shall maintain the originals of that form for a period of three years after the termination of the case, and shall serve it on counsel upon request.

8. Disclosure to Experts and Expert Consultants. Confidential or Highly Confidential – Attorneys' Eyes Only Information may be provided to experts and expert consultants assisting counsel to the Parties in this Action only to the extent necessary for the expert or expert consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution or defense of this Action and provided that the expert or expert consultant is using said Confidential or Highly Confidential – Attorneys' Eyes Only Information solely in connection with the rendition of expert services in this Action and is not currently a partner, director, officer, employee, or other affiliate of the Designating Party. Nothing herein shall be construed as a waiver of any objection to retaining a former partner, director, officer, employee or other affiliate of the Designating Party to serve as a retained expert or expert consultant in this Action.

9. Limitations. Entering into, agreeing to, producing, or receiving Confidential or Highly Confidential – Attorneys' Eyes Only Information pursuant to this Order, or the taking of any action pursuant to this Order shall not:

(a) Limit or restrict a Party's handling and use of its own Confidential or Highly Confidential – Attorneys' Eyes Only Information that has been designated as such solely by that Party.

(b) Prejudice in any way the rights of any Party to petition the Court to seek additional protection for Discovery Material for any reasons not specifically addressed by this Order;

(c) Prejudice in any way the rights of any Party to object to the relevancy, authenticity, or admissibility into evidence of any document or other information subject to this Order, or otherwise constitute or operate as an admission by any Party that any particular document or other information is or is not relevant, authentic, or admissible into evidence at any deposition, at trial, or in a hearing; or

(d) Prevent the interested Parties from agreeing, in writing, to alter or waive the provisions or protections of this Order with respect to any particular document, information, or person.

10. Inadvertent Failure to Designate and Mis-Designation. An inadvertent failure to designate Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information or mis-designation of Discovery Material does not, standing alone, waive the right to designate or re-designate the Discovery Material or constitute a waiver of a claim of confidentiality. A failure to designate or correctly designate Discovery Material may be corrected by prompt written notice upon discovery of such failure, accompanied by appropriately designated substitute copies of the Discovery Material within thirty (30) days of disclosure. No Party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information, even where the failure to so designate was inadvertent and where the material is subsequently designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information. If a party designates or re-designates Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information after it was initially produced, the Receiving Party, on notification of the designation and receipt of substitute

copies, must make a reasonable effort to promptly destroy or return to the Designating Party all copies of such non-designated or mis-designated Discovery Material and shall treat the substitute Discovery Material as Confidential or Highly Confidential – Attorneys' Eyes Only Information as appropriate as if it had been initially so designated. If the Receiving Party disclosed Discovery Material that was subsequently designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information, it shall in good faith assist the Designating Party in retrieving such Discovery Material from all recipients not entitled to access to such Discovery Material and prevent further disclosures except as authorized under the terms of this Order.

11. Inadvertent Production of Privileged Information.

(a) Generally. Any inadvertent disclosure of Discovery Material subject to a claim of attorney client privilege, attorney work product protection, common interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information") will not in any way prejudice or otherwise constitute a waiver of, or estoppel as to, such Privileged Information or generally of such privilege. As used herein, "Privileged Information" means any documents, materials, or information that the producing party reasonably and in good faith believes to be subject to the attorney-client privilege, attorney work-product privilege, and/or any other applicable privilege available to the Parties and/or third parties under Oklahoma law.

(b) Notice of Inadvertent Production. If a Party or non-Party discovers that it has inadvertently produced Privileged Information, it shall promptly notify the Receiving Party of the inadvertent production in writing, shall identify the inadvertently produced Privileged Information by Bates range where possible, and may demand that the Receiving Party

return or destroy the Privileged Information. In the event that a Receiving Party receives information that it believes is subject to a good faith claim of privilege by the Disclosing Party, the Receiving Party shall immediately refrain from examining the information and shall promptly notify the Disclosing Party in writing that the Receiving Party possesses potentially Privileged Information. The Disclosing Party shall have fourteen (14) business days to assert privilege over the identified information. If the Disclosing Party does not assert a claim of privilege within the fifteen-day period, the information in question shall be deemed non-privileged.

(c) Claw Back of Privileged Information. If the Designating Party has notified the Receiving Party of inadvertent production, or has confirmed the inadvertent production called to its attention by the Receiving Party, the Receiving Party shall within fourteen (14) days of receiving such notification or confirmation: (1) destroy or return to the Designating Party all copies or versions of the inadvertently produced Privileged Information requested to be destroyed returned or destroyed; (2) delete from its work product or other materials any quoted or paraphrased portions of the inadvertently produced Privileged Information; (3) ensure that inadvertently produced Privileged Information is not disclosed in any manner to any Party or non-Party. Notwithstanding the above, the Receiving Party may segregate and retain one copy of the clawed back information solely for the purpose of disputing the claim of privilege. The Receiving Party shall not use any inadvertently produced Privileged Information in connection with this Action or for any other purpose other than to dispute the claim of privilege. The Receiving Party may file a motion pursuant to 12 O.S. § 3226(B)(5)(b) disputing the claim of privilege and seeking an order compelling production of the material at issue; the Disclosing Party

may oppose any such motion, including on the grounds that inadvertent disclosure does not waive privilege. If the Receiving Party disclosed Discovery Material that was subsequently designated as Privileged Information, it shall in good faith assist the Designating Party in retrieving such Discovery Material from all recipients not entitled to access to such Discovery Material and prevent further disclosures except as authorized under the terms of this Order.

12. Unauthorized Disclosure. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential or Highly Confidential – Attorneys' Eyes Only Information to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify the Designating Party in writing of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Confidential or Highly Confidential – Attorneys' Eyes Only Information, (c) inform the person or persons to whom unauthorized disclosures were made of this Order, and (d) request such person or persons complete the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

13. Filing of Confidential or Highly Confidential – Attorneys' Eyes Only Information. Any party wishing to file a document designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information in connection with a motion, brief or other submission to the Court, or file a motion, brief, or other submission containing Confidential or Highly Confidential – Attorneys' Eyes Only Information, may file such motion, brief or other submission to the Court under seal pursuant to 12 O.S. § 3226(C)(2) and 51 O.S. §§ 24A.29-30 and must also file a public version of such motion, brief or other submission to the Court wherein all Confidential or Highly Confidential – Attorneys' Eyes Only

Information is redacted. The Designating Party shall have the opportunity to join in a motion to file under seal and file supplemental briefing in support of the motion.

14. Challenges by a Party to Designation as Confidential or Highly Confidential – Attorneys' Eyes Only Information. The designation of any material or document as Confidential or Highly Confidential – Attorneys' Eyes Only Information is subject to challenge by any Party. The following procedure shall apply to any such challenge.

(a) Meet and Confer. A Party challenging the designation of Confidential or Highly Confidential – Attorneys' Eyes Only Information must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party. In conferring, the challenging Receiving Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. If the Receiving Party believes that portion(s) of a document are not Confidential or Highly Confidential – Attorneys' Only Information, it will identify the specific information that it believes is not confidential and the Designating Party will review and respond, as laid out in paragraph (b) below, with respect to that specific information.

(b) Judicial Intervention. If the Parties are not able to reach an agreement pursuant to the provisions set forth in the preceding paragraph, the Designating Party shall have seven (7) days after the meet and confer to file a motion with the Court seeking protection under this Order and must set forth in detail the basis for retention of the confidentiality designation. Each such motion must be accompanied by a competent

declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The Objecting Party must thereafter file a response setting forth in detail the basis for such Objection within seven (7) days of service of the Motion. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all parties shall continue to treat the materials as Confidential or Highly Confidential – Attorneys' Eyes Only Information, as appropriate, under the terms of this Order. If a Party fails to file such motion during the time frames set forth in this paragraph, the challenged document(s) at issue will no longer be entitled to protection and such designation may be disregarded.

15. Action by the Court. Applications to the Court for an order relating to materials or documents designated Confidential or Highly Confidential – Attorneys' Eyes Only Information shall be by motion. Nothing in this Order or any action or agreement of a Party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

16. Use of Confidential or Highly Confidential – Attorneys' Eyes Only Information at Trial or Hearings. A Party that intends to present Confidential or Highly Confidential – Attorneys' Eyes Only Information at a hearing shall bring that issue to the Parties' attention so that the Parties may meet and confer to determine whether to stipulate to the handling of the information as appropriate, including whether to apply to the Court for any relief. The Court may thereafter make such orders, including any stipulated orders, as are necessary to govern the use of Confidential Information or Highly Confidential – Attorneys' Eyes Only Information at the hearing. The use of any

Confidential Information or Highly Confidential – Attorneys' Eyes Only Information at trial shall be governed by a separate stipulation and/or court order.

17. Confidential or Highly Confidential – Attorneys' Eyes Only Information Requested by Third Party; Procedure Following Request.

(a) If any person receiving Discovery Material covered by this Order (the "Receiver") is served with a subpoena, a request for information, or any other form of legal process that would compel disclosure of any Confidential or Highly Confidential – Attorneys' Eyes Only Information that was produced by a person or entity other than the Receiver ("Request"), the Receiver must so notify the Designating Party, in writing, immediately and in no event more than three business days after receiving the Request. Such notification must include a copy of the Request.

(b) The Receiver also must immediately inform the party who made the Request ("Requesting Party") in writing that some or all the requested material is the subject of this Order. In addition, the Receiver must deliver a copy of this Order promptly to the Requesting Party.

(c) The purpose of imposing these duties is to alert the Requesting Party to the existence of this Order and to afford the Designating Party in this case an opportunity to try to protect its Confidential or Highly Confidential – Attorneys' Eyes Only Information. The Designating Party shall bear the burden and the expense of seeking protection of its Confidential or Highly Confidential – Attorneys' Eyes Only Information, and nothing in these provisions should be construed as authorizing or encouraging the Receiver in this Action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the Receiver has in its possession, custody or control

Confidential or Highly Confidential – Attorneys' Eyes Only Information by any other Party in this Action.

(d) Materials that have been designated as Confidential or Highly Confidential-Attorneys' Eyes Only shall not be provided or disclosed to any third party in response to a request under the Oklahoma Open Records Act or any similar federal, state or municipal law (collectively, the "Public Disclosure Laws"), and are exempt from disclosure pursuant to 51 O.S. § 24A.12, and may be exempt under other provisions. If the Oklahoma Attorney General receives a request for so designated Discovery Materials pursuant to the Oklahoma Records Act, 51 O.S. §§ 24A.1-24A.30, it shall (i) provide a copy of this Order to the requesting party and inform it that the requested materials are exempt from disclosure and that the Oklahoma Attorney General is barred by this Order from disclosing them, and (ii) promptly inform the party that has produced the requested material that the request has been made, identifying the name of the requesting party and the particular materials sought. The restrictions in this paragraph shall not apply to materials that (i) the Designating Party expressly consents in writing to disclosure; or (ii) this Court has determined by court order to have been improperly designated as Confidential or Highly Confidential-Attorneys' Eyes Only Discovery Material. The provisions of this section shall apply to any entity in receipt of Confidential or Highly Confidential-Attorneys' Eyes Only Discovery Material governed by this Order. Nothing in this Order shall be deemed to (1) foreclose any party from arguing that Discovery Material is not a public record for purposes of the Oklahoma Open Records Act or Public Disclosure Laws, (2) prevent any party from claiming any applicable exemption to the Oklahoma Open Records Act or

Public Disclosure Laws; or (3) limit any arguments that a party may make as to why Discovery Material is exempt from disclosure.

18. Information Subject to Existing Obligation of Confidentiality. In the event that a Party is required by a valid discovery request to produce any information held by it subject to an obligation of confidentiality in favor of a third party, the Party shall, promptly upon recognizing that such third party's rights are implicated, provide the third party with a copy of this Order and inform the third party in writing (i) of the Party's obligation to produce such information in connection with this Action and of its intention to do so, subject to the protections of this Order; (ii) of the third party's right within fourteen (14) days to seek further protection or other relief from the Court if, in good faith, it believes such information to be confidential under the said obligation and either objects to the Party's production of such information or regards the provisions of this Order to be inadequate; and (iii) seek the third party's consent to such disclosure if it does not plan to object. Thereafter, the Party shall refrain from producing such information for a period of twenty-one (21) days in order to permit the third party an opportunity to seek relief from the Court, unless the third party earlier consents to disclosure. If the third party fails to seek such relief within fourteen (14) days, the Party shall promptly produce the information in question subject to the protections of this Order.

19. Obligations on Conclusion of Litigation.

(a) Order Continues in Force. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Obligations at Conclusion of Litigation. Within sixty (60) days after dismissal or entry of final judgment not subject to further appeal, all Confidential and Highly

Confidential – Attorneys' Eyes Only Information under this Order, including copies as defined in Paragraph 4(b) above, shall be destroyed or returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; and (2) as to documents bearing the notations, summations, or other mental impressions of the Receiving Party, that Party elects to destroy the documents and certifies to the producing party that it has done so. Nothing in this paragraph shall modify the State's obligations under Paragraph 17 of this Order. It is also agreed and understood that the confidential business information at issue is not of historical value and these records are not of the type to be provided to the State archivist.

(c) Retention of Work Product and one set of Discovery Material. Notwithstanding the above requirements to return or destroy documents, State's counsel and Defendants' outside counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential or Highly Confidential – Attorneys' Eyes Only Discovery Material so long as that work product does not duplicate verbatim substantial portions of Confidential or Highly Confidential--Attorneys' Eyes Only Information, and (2) one complete set of all documents filed with the Court including those filed under seal, deposition and trial transcripts, and deposition and trial exhibits. Any retained Confidential or Highly Confidential – Attorneys' Eyes Only Discovery Material shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information or Highly Confidential – Attorneys' Eyes Only Information.

20. Order Subject to Modification. This Order shall be subject to modification by

the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

21. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the Parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any Discovery Material designated as Confidential or Highly Confidential – Attorneys' Eyes Only Information is entitled to protection under 12 O.S. § 3226(C) or otherwise until such time as the Court may rule on a specific document or issue.

22. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

ENTERED THIS 20 DAY OF MARCH, 2018:

Thad Balkman
Judge, District Court of Cleveland County, Oklahoma

William C. (Bill) Hetherington, Jr.
Special Discovery Master

ATTACHMENT A

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)

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

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order entered in the above-captioned action on _____, 2018, and attached hereto, understands the terms. The undersigned submits to the jurisdiction of the District Court of Cleveland County of the State of Oklahoma in matters relating to

the Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as Confidential or Highly Confidential--Attorneys' Eyes Only Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties of contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature: _____

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.	

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
OCT 10 2018
In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 10th day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on Defendants' Motion To Compel Discovery Regarding Claims Data and State's Response thereto on October 3, 2018.

The undersigned finds as follows:

State argues it proceeds under the Okla. Medicaid False Claims Act (FCA) and will utilize statistical modeling to prove causal connection between Defendant's promotion and marketing conduct and damage to State. As argued, State's proof approach does not require proof of individualized doctor and patient interaction as a global population of individualized

EXHIBIT
tabbies
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proof of each physician's reliance on false and/or misleading promotion and marketing resulting in individual excessive or unnecessary prescriptions. State argues that under this statistical modeling manner of proof, it does not have to establish an individualized and complex chain of causation flowing through thousands of marketing "providers" to thousands of physician "prescribers" ultimately issuing prescriptions to individual patients, many of whom became State Medicaid claims recipients. State chooses to limit this inquiry arguing a proof method that seeks to provide the quantity and quality of proof necessary for the State to carry its burden of proof. While the question of legal sufficiency of State's proof method shall be left for another day, 12 O.S. § 3226(B)(1)(a) requires the undersigned to structure a discovery process based upon reality and in the context of this unique case "... reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action,...". I also have an obligation to weigh privacy rights against the Defendant's desire to individually personalize their discovery. In the context of this case, proportionality would prohibit individualized discovery as it would not be feasible to allow discovery into approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers contained in the State data bases.

The State of Oklahoma is the plaintiff, not individual patients. As such, it is not an individualized proof process which State argues to be unnecessary and in fact would likely result in an unreasonably lengthy and highly burdensome discovery process as Defendants have stated intentions to depose all patients with claims.

State argues it has produced approximately 9,000,000 pages of prescriber, prescription and patient information with personal information redacted. State in its response to Purdue's First Set of Interrogatories – No. 3(May 8, 2018 Oklahoma Medicaid Claims Data for all opioid prescriptions for 1996-2017), describes these data base information sources and data parameters for what constitutes "unnecessary or excessive" prescriptions to be supplemented subject to ongoing discovery requiring State to produce additional documents, information, reports studies and research gathered as a part of State's ongoing investigation. The record also indicates Defendants do have the doctor/prescriber names but do not have patient names. The data bases do provide individual identifying numbers to allow for tracking of State Medicaid claims through the system while protecting the patient's personal information.

I am satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery through a combination of access to data information already in their possession and by way of access to numerous State databases such as the Oklahoma Medicaid Management Information System (MMIS) and Enhanced Code System, Online Query System (ODMHSAS or OOmQues) and the Oklahoma Fatal Unintentional Poisoning Surveillance System which reviews Medical Examiner's Reports. To the extent Defendants do not have access to these data bases, State has been and again is **Ordered** to produce the data base information according to our rolling production process.

It appears most likely true that through this database information, Defendants' have a fair and proportional way to defend this case and can bring in their own experts, doctors/providers and patients as they choose to defend and test the State's theory. Also, I am not satisfied patient

private information protection is fully waived in this case under the terms of the HIPPA Protective Order.

Defendants argue patient and prescriber identities and personal information are required in order to compare to marketing and promotional activities, to research utilization of services such as treatment facilities, overdose records, law enforcement contact emergency service contacts and State Medical Examiner records. Pursuant to the above findings and scheduling order deadlines, Defendants now have and will receive more specific patient and prescriber information in this manner and as a part of the proposed expert statistical modeling sample, and will be entitled to appropriate discovery.

Regarding Cephalon, State argues evidence of a history of joint promotion efforts and agreements to promote and market drugs generally and specifically even though it appears this Defendant may have a total of 245 prescriptions for either Actiq or Fentora issued in Oklahoma. Regardless, Cephalon is entitled, and it is not unreasonable in scope, to full production of all information relevant to details pled and as referenced in Ex. 3 to State's Petition as to these 245 prescriptions. Again, as found above, Cephalon has in its possession or has the same access to data base information that protects patient private personal information. That personal information protection remains protected here, but State **shall** produce any and all other information that has not yet been produced and consistent with this Order as to these 245 claims (prescriptions).

At this time, I do not agree with Defendants' argument that to deny them full disclosure of all claims data information as requested precludes them from meaningful discovery. An aggregation approach to this case I find to be reasonable and can fairly fit the needs of all parties. Personal individualized discovery is not the only way Defendants can fairly defend this case. A broad view of the factors of this unique case must be taken into consideration and equally weighed in determining the scope and propriety of discovery. Defendants argument that this claims data is "relevant" and discoverable I find to be insufficient to warrant discovery of personal patient and doctor/prescriber information in the scope sought to be compelled by Defendants.

Therefore, Defendant's Motion To Compel Discovery Regarding Claims Data as requested is **Denied** consistent with findings made in this Order.

It is so **Ordered** this 10th day of October, 2018.

William C. Hetherington, Jr.
Special Discovery Master