



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

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

Plaintiffs, )

v. )

- (1) PURDUE PHARMA L.P.; )
- (2) PURDUE PHARMA, INC.; )
- (3) THE PURDUE FREDERICK COMPANY; )
- (4) TEVA PHARMACEUTICALS USA, INC.; )
- (5) CEPHALON, INC.; )
- (6) JOHNSON & JOHNSON; )
- (7) JANSSEN PHARMACEUTICALS, INC.; )
- (8) ORTHO-MCNEIL-JANSSEN )  
PHARMACEUTICALS, INC., n/k/a )  
JANSSEN PHARMACEUTICALS, INC.; )
- (9) JANSSEN PHARMACEUTICA, INC., n/k/a )  
JANSSEN PHARMACEUTICALS, INC.; )
- (10) ALLERGAN, PLC, f/k/a/ ACTAVIS PLC, )  
f/k/a/ ACTAVIS, INC., f/k/a 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., )

Case No. CJ-2017-816

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

FILED

MAR 14 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

Defendants.

**NONPARTY KIMBERLY DAWN WEEKS' OBJECTION AND  
MOTION TO QUASH PLAINTIFF'S SUBPEONA FOR DEPOSITION TESTIMONY**

Nonparty Kimberly Dawn Weeks hereby specially appears, objects and moves the Court for an Order quashing the Subpoena for Deposition Testimony to a Non-Party issued to her by Plaintiff on March 7, 2019.<sup>1</sup>

<sup>1</sup> Pursuant to 12 O.S. § 2004.1(C), the filing of this Objection and Motion to Quash stays any enforcement of the subpoena.

## INTRODUCTION

Kimberly Dawn Weeks is a general ledger accounting clerk of Cheyenne Petroleum, an oil and gas company. Ms. Weeks is not an agent, employee, officer, director or independent contractor for any of the Defendants in this case. She holds no officer titles and makes no decisions in any capacity for any company or business organization for whom she works. Her employer, Cheyenne, is not affiliated with any of the Defendants and does not have any business dealings with them. Through Cheyenne's shared services arrangement, Ms. Weeks assists with accounting functions for a certified public accountant who in turn works for a partial, indirect owner of one of the Defendants. The information in Ms. Weeks' work is confidential and proprietary.

The accounting office in which Ms. Weeks works is managed by Stephen Ives. On December 13, 2018, Mr. Ives gave six hours of deposition testimony in this case under strict limitations directed by Special Discovery Master William C. Hetherington, Jr. [Order dated November 20, 2018]. Ms. Weeks has no demonstrative connection to this case, and what limited information she may have would be outside proper bounds of discovery under Judge Hetherington's November 20<sup>th</sup> Order. In that Order, Judge Hetherington ruled that Plaintiff had not justified "unfettered exploration" into companies and assets only tangentially related to this matter, which included "Sackler family assets, investments, trusts, beneficiaries and other entity or financial instruments related to the family, to include that of Cheyenne Petroleum." Order at 3 (Nov. 20, 2018).

The Court should quash the Subpoena Plaintiff issued to Ms. Weeks for two reasons. First, Ms. Weeks has no knowledge of facts relevant to the claims and defenses asserted in this matter. Second, as an accounting clerk, Ms. Weeks has performed duties exclusively in furtherance of the rendition of accounting services and, accordingly, her testimony would be subject to Oklahoma's accountant-client privilege.

## ARGUMENT AND AUTHORITIES

### **A. Ms. Weeks has no relevant knowledge to offer in discovery.**

When determining the propriety of a subpoena issued to a nonparty, the Court must first discern if “the information sought is relevant and material to the allegations and claims at issue” in the underlying litigation. *Cannon v. Correctional Medical Care, Inc.*, Civ. No. 9:15-CV-1417 (GLS/DJS), 2017 WL 2790531, at \*3 (N.D.N.Y. June 27, 2017) (citation omitted).<sup>2</sup> And “to establish the necessary relevance element, a party must do more than offer mere speculation or conjecture.” *Neogenix Oncology, Inc. v. Gordon*, CV 14-4427 (JFB) (AKT), 2017 WL 1207558, at \*10 (E.D.N.Y. March 31, 2017) (citation omitted). Instead, Plaintiff must provide “evidence or concrete facts” which would justify the discovery it seeks. *Id.*

Ms. Weeks has no knowledge of facts relevant to the claims or defenses asserted in this matter. As a general ledger accountant at Cheyenne Petroleum, she has not been exposed to any information about Defendants’ respective marketing practices or the drugs they manufacture and sell. Nor does she have any knowledge about the Medicaid payments made by the State of Oklahoma to the Defendants (i.e. information related to the False Claims Act). Her duties never touch upon any of the operations of any Defendant and provide her no insight or knowledge into any of Defendant’s business dealings. And so, Plaintiffs deposition of Ms. Weeks would be tantamount to inquiring about assets owned by a nonparty partial shareholder of one of the Defendants and well beyond the scope of appropriate prejudgment discovery. *Hope For Families & Community Service, Inc. v. Warren*, No. 3:06-CV-1113-WKW, 2009 WL 174970, at \*14 (M.D. Ala. Jan. 26, 2009) (“[T]he extent of shareholders’ holdings is quite another matter. Lucky Palace has failed to show that this private information about non-party

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<sup>2</sup> Published Oklahoma decisions offer little guidance regarding the application and interpretation of Section 2004.1 of the Pleading Code. In these circumstances, Oklahoma courts may (and often do) look to the Federal Rules of Civil Procedure and comments to and cases interpreting same for guidance. *Young v. Macy*, 2001 OK 4, ¶ 13, 21 P.3d 44.

shareholders is relevant in any sense.”). Indeed, Plaintiff has already attempted, and the Court has already disallowed, this type of unfettered fishing expedition. Order at 3 (Nov. 20, 2018).

Even assuming Ms. Weeks had any relevant testimony to offer, it would be at best redundant and needlessly cumulative. Plaintiff has already deposed Mr. Ives, the President of Cheyenne (and senior CPA under the shared services arrangement), on the topics approved as relevant by the Court. And beyond those topics, there is no conceivable basis for determining Ms. Weeks is the proper deponent. Rather, employees and agents of *Defendants* should be the source of information regarding Defendants’ respective accounting and financial functions. See *Quinn v. City of Tulsa*, 1989 OK 112, 777 P.2d 1331 (holding the scope of relevance should be “firmly applied” and that it was not error to deny discovery where the information requested from a nonparty could have been obtained from a party in the case).<sup>3</sup>

Plaintiff’s deposition of Ms. Weeks would necessarily be an examination into facts irrelevant to the claims and defenses alleged in this matter, duplicative and needlessly cumulative. Accordingly, the Court should quash Plaintiff’s Subpoena.

**B. Any information Ms. Weeks possesses is subject to accountant-client privilege.**

A subpoena shall be quashed when it “requires disclosure of privileged or other protected matter and no exception or waiver applies.” 12 O.S. § 2004.1(C)(3)(a)(3). The accountant-client privilege attaches to and renders confidential communications between a client, accountant and any third parties “to whom disclosure is in furtherance of the rendition of accounting services to the client” or “reasonably necessary for the transmission of the communication.” *Id.* §§ 2502.1(A)(3)(a)-(b). Further, the privilege

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<sup>3</sup> Nonparties with no particular relationship to the case at issue are typically afforded deference and protection from courts in discovery. See *Fundamentals of Litigation Practice, Enforcing Subpoenas and Non-Party Discovery*, § 22:9 (2017 ed.); *Laxalt v. McClatchy*, 116 F.R.D. 455, 458 (D. Nev. 1986) (“The standards for nonparty discovery, as stated above, require a stronger showing of relevance than for simple party discovery.”).

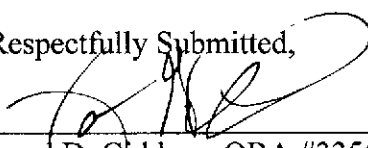
“includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.” *Id.* § 2502.1(B).

As a general ledger accountant, Ms. Weeks receives communications and other information **exclusively** because she performs duties in furtherance of the rendition of accounting services. Ms. Weeks’ duties also, from time to time, require her to transmit communications between CPAs and their clients. The disclosure of information to her is a necessary component of the provision of accounting services by her accountant superiors. And so, that information is protected by Oklahoma’s accountant-client privilege. What’s more, Ms. Weeks has been an accounting clerk or general ledger accountant throughout her entire employment by Cheyenne, rendering practically all knowledge or information which she has learned by virtue of her employment subject to the privilege. Because there has been no waiver of the accountant-client privilege, Ms. Weeks cannot be compelled to testify in a deposition about any of this information and, therefore, the Court should quash Plaintiff’s Subpoena.

### CONCLUSION

For the foregoing reasons, nonparty Kimberly Dawn Weeks prays that the Subpoena compelling her deposition be quashed.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of March 2019, a true and correct copy of the foregoing was emailed and mailed via first class mail, postage prepaid, to the following:

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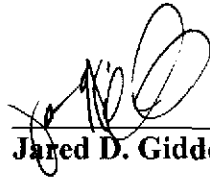
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