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.

For Judge Balkman's Consideration

PART A

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.
FILED
MAR 14 2019
In the office of the
Court Clerk MARILYN WILLIAMS

TEVA DEFENDANTS' EMERGENCY OBJECTION TO THE SPECIAL DISCOVERY MASTER'S ORDER ON CORPORATE REPRESENTATIVE DEPOSITION TOPIC 17

Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc., Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. (collectively, the "Teva Defendants") respectfully object to the Special Discovery Master's Order ("Order") denying the Teva Defendants the ability to proceed with a corporate representative deposition of the State of Oklahoma ("State") regarding the State's criminal and administrative proceedings against healthcare providers related to prescription opioids ("Topic 17"). The Order was circulated via email on March 11, 2019, and is attached as Ex. A. For the reasons that follow, the Court should

reverse the Order and require the State to produce a corporate representative on Topic 17 before April 1, 2019.

I. INTRODUCTION

This Court has already found that the State's criminal and administrative proceedings against healthcare providers related to opioid prescribing are relevant, and ordered non-privileged documents related to this topic be produced. Subsequently, this Court ordered that the State was required to produce a corporate representative to testify as to Topic 17, on this very issue. *See* Feb. 14, 2019, Hearing Tr. at 71:1-5, attached as Exhibit B. Accordingly, the Teva Defendants duly noticed the State to provide a corporate representative to testify on several topics, including Topic 17. That topic seeks testimony regarding:

> The State's investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, "pill mills," or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State's knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.

See February 25, 2019, Deposition Notice, attached as Exhibit C.

Despite this Court's order, the State waited until the morning of Sunday, March 10th—five days before the close of fact discovery—to unilaterally assert that it need not comply with the directive, and objected to presenting a witness for multiple topics, including Topic 17. On March 11th, Judge Hetherington sustained the State's refusal to appear on Topic 17, without explanation. *See* Ex. A. This was clear error.

The issue of whether the Teva Defendants are entitled to discovery regarding the State's criminal and administrative proceedings against healthcare providers regarding prescription opioids has already been brief, argued and decided in the Teva Defendants' favor, several times over. Indeed, on December 20, 2018, this Court found that:

> The Court's well informed about what it is that the defendants are seeking from the State. You briefed it, we discussed it in depth on November 29th. The defendants made the request for these documents a significant amount of time before the court hearing.
>
> I'll just try to be more clear. I expect the State to produced [criminal, administrative and investigatory] files that have already been produced [to other parties]. If they're sealed, I expect the State to produce them. I understand that you're saying that there are statutes that you cannot violate. I understand that.
>
> But I – where you think there's a judgment call or discretion, I expect you to air [sic] on the side of liberal discovery and to produce it. And if you feel so strongly that you're not supposed to, then you can come and seek specific relief from this Court. Otherwise, I expect you to produce it.
>
> I think that's in keeping with what I decided back on November 29th in response to Mr. McCampbell's arguments. And so I'm going to order that the journal entry not include specific reference to those statutes. I think it's implied that you're going to follow the law, but at the same time, I want it to be clear that the State's going to produce the documents that may be sealed; that if they were produced to other parties before, I expect them to be produced to the defendants.

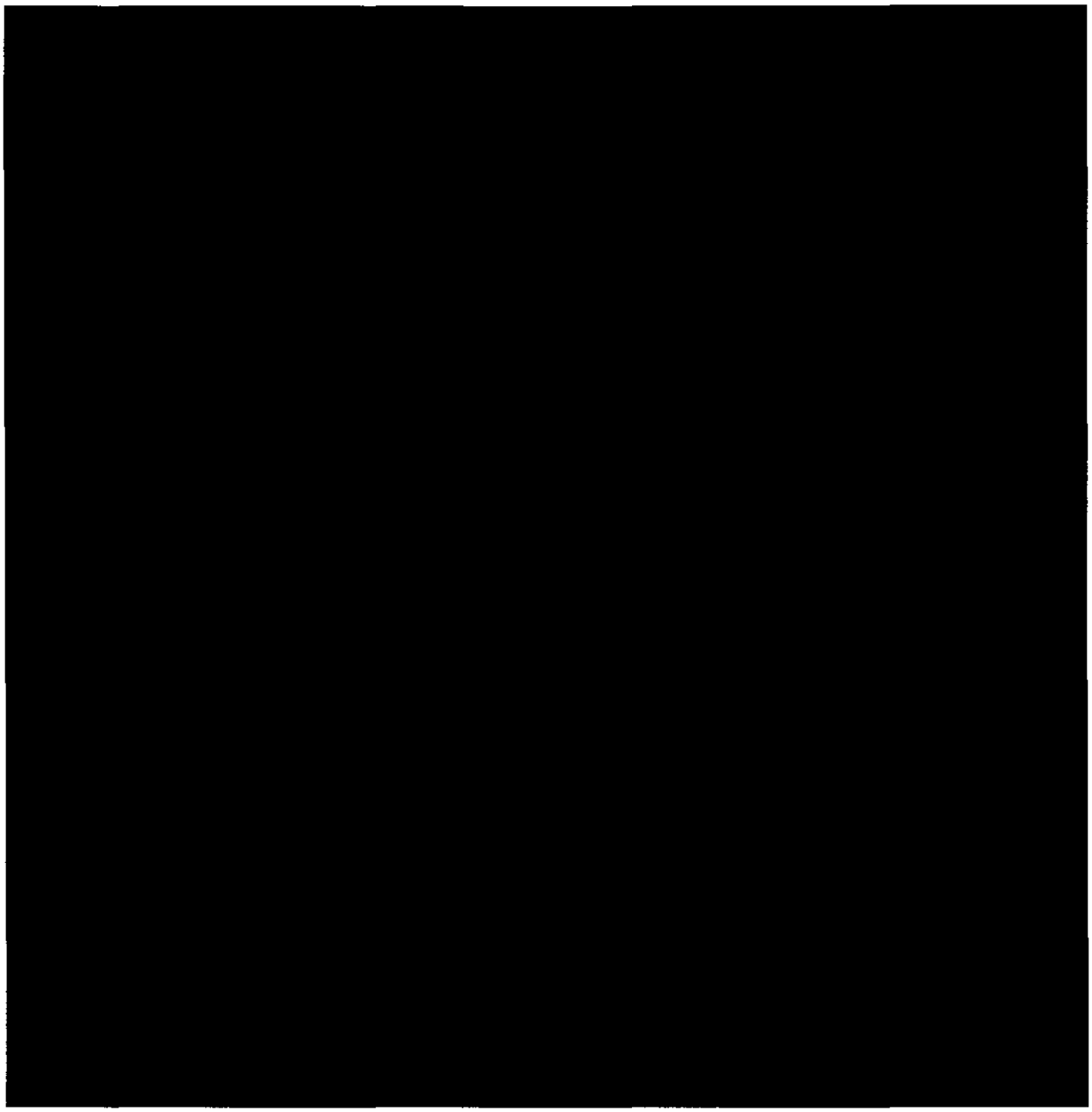
Ex. D, December 20, 2018, Hearing Tr. at 17:21 – 18:19.

Pursuant to that order, the State produced to the Teva Defendants thousands of pages of non-privileged criminal, administrative and investigatory files related to proceedings against Oklahoma physicians related to opioid prescribing practices. Those documents include a trove of information that is highly relevant, and indeed necessary, to the Teva Defendants' defenses. The State's documents show, among other things, that

- in many instances the State was aware of healthcare providers' criminal and improper opioid prescribing practices but did nothing to prevent it,
- the State has brought criminal and administrative proceedings against healthcare providers with respect to their improper use of the Teva Defendants' opioid products,
- the State has brought criminal and administrative proceedings against healthcare providers for conduct that implicates many causes for the improper use of prescription opioids that have nothing to do with sales, marketing, representations, or any other conduct attributable to manufacturers, and

- the State has admitted that intervening causes were responsible for improper opioid prescribing practices.

For example, the State's documents include the following information:



And there is much more. It is precisely these files, and others like them, that the State has already produced and that the Teva Defendants now seek testimony on through Topic 17. In light of this Court's prior rulings, there is no basis in fact or law to deny them that opportunity.

Unfortunately, given the State's refusal to abide by the Order, the Teva Defendants find themselves in the same place they were weeks before—but with only a few days before the close of discovery. To remedy this prejudice (and gamesmanship), the Teva Defendants respectfully request that the Court, once again, require the State to produce a witness on Topic 17 prior to April 1, 2019.

II. DISCUSSION

The Oklahoma Discovery Code explicitly allows for objections to a discovery master's order. 12 O.S. § 3225.1. Objections are statutorily authorized and properly before this Court.

Topic 17 seeks information that goes to one of the key issues in this case: causation. Specifically, it seeks a corporate witness to testify about

> [t]he State's investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, "pill mills," or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State's knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.

The propriety of this Topic has been litigated extensively. The Court has repeatedly held that Defendants are entitled to discovery regarding this fundamental issue. *See* Ex. B; Ex. D. Yet, once again, the Teva Defendants have been denied this discovery. For multiple reasons, as described below, the Court should reverse the Order and require the State to produce a witness on Topic 17 by April 1, 2019.

First, this Court already also held that the information covered by Topic 17 is relevant. Many months ago, the Teva Defendants briefed the issue in connection with the States refusal to produce criminal and investigatory documents. The Court held that these documents should be produced. The Court recognized the importance of this information to Defendants' defenses.

Second, and more fundamentally, the Court ***already has held that the State must produce a witness on Topic 17.*** The Teva Defendants initially served a deposition notice on this Topic in January 2019; the State moved to quash it, notwithstanding the Courts prior ruling. Judge Hetherington granted the motion to quash. The Teva Defendants appealed. *See* Defendant's Objections to Special Master's Rulings on the State's Motion to Quash, filed January 29, 2019, attached as Exhibit E. The Court sustained the objections, holding that the Teva Defendants were entitled to depositions covering criminal and investigatory activity by the State. *See* Ex. B at 71.

Indeed, during oral argument, counsel for the Teva Defendants made it clear that, for the deposition covering the criminal and investigative proceedings, the Teva Defendants would stay in line with the Court's prior rulings regarding the identity of patients and doctors. *Id.* at 52-53. After substantial exchange between the parties on this issue, the Court ruled: "I'm prepared to allow them to go forward with those notices on new topics, so long as they don't overlap, they're not duplicative. I would like to limit those to four hours, and that would be exclusive of cross-examination. And those would need to be completed by March 15th." *Id.* at 71. This ruling is conclusive.

Consistent with this ruling, the Teva Defendants served a new Rule 3230(C)(5) notice. Topic 17 is novel and has not previously been covered by any Defendant.[1] And unlike other topics, this Topic was directly discussed before the Court and cannot be further limited because it is based on the ***State's conduct*** towards doctors and other entities who engaged in improper conduct. The State must produce a witness.

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[1] As the Court recognized, the new notices were to "reflect what [Mr. Merkley] represented here in court this morning." Ex. B at 72. That is exactly what was done.

Third, the State's objection to this Topic was untimely. Under the protocol, the State was obligated to move to quash the notice within three days of its issuance on February 25, 2019. The State did nothing until Mr. Pate's email. *See* Letter Drew Pate to Nick Merkley, March 10, 2019, attached as Exhibit F. Thus, the State's baseless objections have been waived. In fact, the State failed to raise this issue until 5 business days before the close of fact discovery. After the Court found the Teva Defendants were entitled to corporate representative testimony, Defendants attempted in good faith to timely schedule deposition dates. These attempts have included working with the State to limit topics, multiple meet and confers, and a string of emails between counsel.

Despite these attempts to communicate on this issue, the State provided no notice of its objection or its intent to not comply with the Court's ruling, and instead waited to make its wholesale rejection to producing a witness on this issue on the eve of the cutoff of fact discovery. Ex. F ("We do not intend to present a witness on the remaining topics (Topic Nos. 1, 5, 17, or 27).") The State also said they would not comply because "Judge Balkman ordered that Teva could send narrowed, non-duplicative topics specific to Teva that do not violate prior rulings by the Special Discovery Master." *Id.* Teva has done just that. This Topic was briefed, argued and remains a unique and "non-duplicative" topic.

Fourth, The Teva Defendants are entitled as a matter of due process to take discovery about this issue. The Oklahoma Discovery Code entitles the Teva Defendants to "obtain discovery regarding any matter, not privileged, which is relevant to any party's claim **or defense**, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." 12 O.S. § 3226(B)(1)(a) (emphasis added). And "'relevant' mean[s] those materials either (1) admissible as evidence or (2) which might lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182 (1976).

Further, the Teva Defendants' constitutional right to due process requires that they be able to obtain the requested discovery in order to defend themselves.[2] The State may not take legal action against the Teva Defendants and seek to impose massive retroactive liability – including punitive damages and "criminal justice costs" – while simultaneously refusing to allow them access to information that is critical to their defenses. The Teva Defendants are entitled to present every available defense to the State's sweeping allegations that it and the other defendants are each responsible for *every* opioid prescription issued in Oklahoma since 1996. Those defenses include learned intermediary, lack of proximate cause, contributory or comparative negligence, and statute of limitations, among others. The March 11, 2019, Order denies them the ability to obtain testimony and information that is in the State's possession and unavailable from other sources, and that is indispensable to the presentation of those defenses. The requested testimony will establish that others, including healthcare providers who engaged in independent criminal conduct, are responsible for the misuse of opioids and costs occasioned by the misuse and that the State has long been aware of those facts.

Topic 17 is fundamental to the Teva Defendants' defenses. This Topic seeks testimony regarding criminal and administrative investigations, which was ruled by this Court to be both discoverable and relevant, as demonstrated by the fact that the State was ordered to produce all discovery and publicly available documents that it has produced in criminal or administrative proceedings. *See* December 20, 2018 Journal Entry on Discovery of Criminal, Civil, and Administrative Proceedings, attached hereto as Ex. G. It is inconsistent and incorrect to now say that one mode of discovery (document production) is permissible but another (deposition

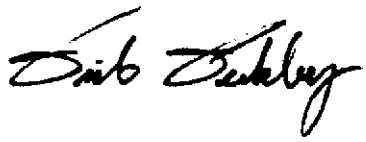
[2] "No person shall be deprived of life, liberty or property, without due process of law." Okl. Const., Article II, § 7. "Nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

testimony) is not on the same exact subject. The Teva Defendants have the due process right to depose the State on materials that it has been ordered to produce.

Fifth, this Topic is clearly not privileged in its entirety, and the Oklahoma Discovery Code expressly allows for privilege objections to be addressed during a deposition. *See* 12 O.S. § 3230(E)(1) ("Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection"). If the State has any privilege objections to particular questions during the deposition, it can raise them in response to particular questions—as Oklahoma law requires. What it cannot do, however, is refuse to comply with the Court's prior ruling on this issue and raise a belated objection just prior to the close of discovery to try to "run out of the clock" before the close of discovery.

III. CONCLUSION

The State cannot prevent the Teva Defendants from obtaining deposition testimony in this case by simply refusing to comply. The Teva Defendants have sought this information for months and this Court has already ordered that they are entitled to it. The Court's prior ruling on this issue, the Oklahoma Discovery Code, principles of due process and fundamental fairness guaranteed by the United States and Oklahoma Constitutions, the nature of the allegations, the enormous damages sought, and the rapidly approaching close of discovery all require that the Teva Defendants have access to this basic fact discovery. The Teva Defendants request that the Court reverse the Order and require the State to produce a Corporate Representative 3230(C)(5) witnesses immediately (and no later than April 1, 2019).



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 14th day of March, 2019, to the following:

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Nick Merkley

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Subject: Re: Oklahoma v. Purdue Pharma L.P. - Request by Teva Defendants for Emergency Telephonic Hearing Regarding Depositions of the State
Date: Monday, March 11, 2019 5:52:42 PM

OK - I have finally digested this one and I do not need to hear argument. Judge Balkman did allow these depositions to take place with new notices from Teva to go out. That did happen on February 25th and it does appear the three days did expire. These deposition notices are what is left to complete from J. Balkman's Order and need to be taken. From what I have read and my review of the transcript I believe Teva has complied and narrowed topics 1, 5 and 27 where appropriate. The State is **Ordered** to produce a witness(es) for Topics 1, 5, and 27 sometime this week. Consistent with previous Orders from me and J Balkman, a State witness is **not** ordered to be produced to testify regarding Topic 17.

On Mar 11, 2019, at 8:42 AM, Nicholas V. Merkley <nmerkley@gablelaw.com> wrote:

Judge,

I really appreciate Mr. Pate sending this handy chart because it makes a couple of my points.

First, it's obvious the State did not actually read the notices or make a good-faith attempt to comply with Judge Balkman's order because the chart is wrong with respect to Topic No. 1. As you can see in the attached notice, Topic No. 1 was narrowed by adding the word "their" to make it clear we are only inquiring about the Teva Defendants' prescription opioids. As Mr. Beckworth frequently notes, "words matter," and that particular word matters a lot.

Second, as you can plainly see from the highlights I have added to the chart below, with the exception of Topic 17 which cannot possibly be narrowed to the Teva Defendants, those topics are sufficiently narrowed to only the Teva Defendants. They do not need to be further narrowed to comply with Judge Balkman's order because they are already narrow. Not one word of Judge Balkman's ruling indicates those particular topics need to be further narrowed.

In any event, the State has waived its baseless arguments. If the State truly felt those topics should be further narrowed, it should have moved to quash or otherwise objected within 3 days of the notices being served. Instead, the State said nothing, Mr. Pate consistently ignored my follow up emails and the State waited until Sunday morning to advise us it will not be presenting witnesses. That is pure gamesmanship, to put it politely. It is blatantly obvious the State just does not want to present witnesses on these topics as Judge Balkman ordered.

Judge, we need to get these depositions taken. They have been ordered, noticed and calendared for a long time. Attorneys have prepared and flown in from out of state to take them. The State should be ordered to provide us the witnesses.

We do not believe a hearing should be necessary at this point for you to order, again, that these depositions proceed. However, if you want to hear argument, let us know when you are available and I will circulate the teleconference information and arrange for a court reporter.

Nick

Nick Merkley | Shareholder | GableGotwals
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Sent: Monday, March 11, 2019 8:08 AM
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Cc: Bill Hetherington <bill@hetherlaw.com>; mike.hunter@oag.ok.gov; abby.dillsaver@oag.ok.gov; ethan.shaner@oag.ok.gov; michelle.hale@oag.ok.gov; stephany.lively@oag.ok.gov; cari.kelso@oag.ok.gov; mburrage@whittenburragelaw.com; rwhitten@whittenburragelaw.com; coorman@whittenburragelaw.com; rparrish@whittenburragelaw.com; Jeff Angelovich <jangelovich@nixlaw.com>; Trey Duck <tduck@nixlaw.com>; Lisa Baldwin <lbaldwin@nixlaw.com>; Nathan Hall <nhall@nixlaw.com>; Brooke Churchman <bchurchman@nixlaw.com>; Securities Team <SecuritiesTeam@nixlaw.com>; gceffee@glenncoffee.com; cindy@glenncoffee.com; Winn Cutler <winncutler@nixlaw.com>; Ross Leonoudakis <rossl@nixlaw.com>; Sandy Coats <sandy.coats@crowedunlevy.com>; Joshua Burns <joshua.burns@crowedunlevy.com>; Suzanne Green <suzanne.green@crowedunlevy.com>; sheila.birnbaum@dechert.com; mark.cheffo@dechert.com; marina.schwarz@dechert.com; hayden.coleman@dechert.com; paul.lafata@dechert.com; jonathan.tam@dechert.com; lincsay.zanello@dechert.com; bert.wolff@dechert.com; benjamin.mcananey@cechert.com; erik.snapp@dechert.com; rhoff@wiggin.com; jvolney@lynnllp.com; Trey Cox <tcox@lynnllp.com>; epinker@lynnllp.com; Jared Eisenberg <jeisenberg@lynnllp.com>; Jervonne Newsome <jnewsome@lynnllp.com>; odomb@odomsparks.com; John Sparks <sparksj@odomsparks.com>; ridgewaym@odomsparks.com; kinneyd@odomsparks.com; kirkhama@odomsparks.com; larryottaway@oklahomacounsel.com; Jordyn Cartmell <jordyncartmell@oklahomacounsel.com>; Amy Fischer <amyfischer@oklahomacounsel.com>; clifland@omm.com; jcardelus@omm.com; tallan@omm.com; sstrong@omm.com; hehsan@omm.com; erodriguez2@omm.com; alucas@omm.com; jwaddle@omm.com; jbarker@omm.com; lrakow@omm.com; sgrocy@omm.com; droberts2@omm.com; cfranklin@omm.com; rgalin@omm.com; dtongco@omm.com; alaurendeau@omm.com; Robert McCampbell <rmccampbell@gablelaw.com>; Travis Jett <tjett@gablelaw.com>; Ashley Quinn <aquinn@gablelaw.com>; Jeffrey A. Curran <jcurran@gablelaw.com>; Pamela K. Edmonds <pedmonds@gablelaw.com>; Misty A. Waller <mwaller@gablelaw.com>; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; mark.fiore@morganlewis.com; rebecca.hillyer@morganlewis.com; jeremy.menkowitz@morganlewis.com; brian.ercole@morganlewis.com; melissa.coates@morganlewis.com; martha.leibell@morganlewis.com; william.oxley@dechert.com; Rosenberg, Rachel <rachel.rosenberg@dechert.com>; hope.freiwald@dechert.com; will.sachse@dechert.com; rgarcia@lynnllp.com; thernan@lynnllp.com; TevaOKopioids@morganlewis.com; nancy.patterson@morganlewis.com; evan.jacobs@morganlewis.com; Kelly, Meghan <meghan.kelly@dechert.com>; Elizabeth Ryan <eryan@lynnllp.com>

Subject: Re: Oklahoma v. Purdue Pharma L.P. - Request by Teva Defendants for Emergency Telephonic Hearing Regarding Depositions of the State

Judge Hetherington,

Just to be clear, of the 35 topics re-noticed by Teva following Judge Balkman's Order, the State has put up or agreed to put up witnesses on 31 topics. In fact, witnesses are testifying almost every day this week on Teva's topics, including a deposition on Monday, Tuesday, two on Thursday, and one on Friday. The State has more than complied with Judge Balkman's Order. Teva was ordered very clearly to provide new topics that were unique to Teva and did not violate prior orders from the Court. They were given two chances to do so and for these few topics, they failed to do so. I've provided a chart below so that you can see the actual topics at issue and how they do not vary from what Teva originally noticed.

Teva Notices from 1/8/19 (Before Court Order to Narrow)	Teva Notices from 2/25/19 (After Court Order to Narrow)
Topic 1: Any pre-suit investigation conducted by the State regarding any Teva Defendant or prescription Opioids.	Topic 1: Any pre-suit investigation conducted by the State **regarding any Teva Defendant or their prescription Opioids**.
Topic 5: The nature and circumstances regarding any patients in Oklahoma that were harmed by any prescription Opioid manufactured by any Teva Defendant.	Topic 5: The nature and circumstances regarding any patients in Oklahoma that were harmed by any prescription Opioid **manufactured by any Teva Defendant**.
Topic 17: The State's investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, "pill mills," or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State's knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.	Topic 17: The State's investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, "pill mills," or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State's knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.
Topic 27: : Communications between the State and any third-party insurer, payor, or pharmacy benefits manager related to Opioids, including Actiq or Fentora.	Topic 27: Communications between the State and any third-party insurer, payor, or pharmacy benefits manager related to **Actiq, Fentora, or any prescription Opioid manufactured by any Teva Defendant**.

Best regards,

Drew

Drew Pate
<image003.jpg>
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Subject: RE: Oklahoma v. Purdue Pharma L.P. - Request by Teva Defendants for Emergency Telephonic Hearing Regarding Depositions of the State

Have a beer or two for me. I'm having to work to get ready for the few depositions the State has agreed we can take (maybe). I will forward you the call information as soon as Judge Hetherington tells us when he will be available.

Nick

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Cc: Bill Hetherington <bill@hethlaw.com>; mike.hunter@oag.ok.gov; abby.dillsaver@oag.ok.gov; ethan.shaner@oag.ok.gov; michelle.hale@oag.ok.gov; stephany.lively@oag.ok.gov; cari.kelso@oag.ok.gov; mburrage@whittenburragelaw.com; rwhitten@whittenburragelaw.com; coorman@whittenburragelaw.com; cparrish@whittenburragelaw.com; Jeff Angelovich <jangelovich@nixlaw.com>; Trey Duck <tduck@nixlaw.com>; Drew Pate <dpate@nixlaw.com>; Lisa Baldwin <lbaldwin@nixlaw.com>; Nathan Hall <nhall@nixlaw.com>; Brooke Churchman <bchurchman@nixlaw.com>; Securities Team <SecuritiesTeam@nixlaw.com>; gcoffee@glenncoffee.com; cindy@glenncoffee.com; Winn Cutler <winncutler@nixlaw.com>; Ross Leonoudakis <rossl@nixlaw.com>; Sandy Coats <sandy.coats@crowedunlevy.com>; Joshua Burns <joshua.burns@crowedunlevy.com>; Suzanne Green <suzanne.green@crowedunlevy.com>; sheila.birnbaum@dechert.com; mark.cheffo@dechert.com; marina.schwarz@dechert.com; hayden.coleman@dechert.com; paul.lafata@dechert.com; jonathan.tam@dechert.com; lindsay.zapello@dechert.com; bert.wolff@dechert.com; benjamin.mcananey@dechert.com; erik.snapp@dechert.com; rhoff@wiggin.com; jvolney@lynnllp.com; Trey Cox <tcox@lynnllp.com>; epinker@lynnllp.com; Jared Eisenberg <jeisenberg@lynnllp.com>; Jervonne Newsome <jnewsome@lynnllp.com>; odomb@odomsparks.com; John Sparks <sparksj@odomsparks.com>; ridgewaym@odomsparks.com; kinneyd@odomsparks.com; kirkhama@odomsparks.com; larryottaway@oklahomacounsel.com; Jordyn Cartmell <jordyncartmell@oklahomacounsel.com>; Amy Fischer <amyfischer@oklahomacounsel.com>; clifland@omm.com; jcardelus@omm.com; tallan@omm.com; sstrong@omm.com; hehsan@omm.com; erodriguez2@omm.com; alucas@omm.com; jwaddle@omm.com; jbarker@omm.com; lrakow@omm.com; sbrody@omm.com; droberts2@omm.com; dfranklin@omm.com; rgalin@omm.com; dtongco@omm.com; alaurendeau@omm.com; Robert McCampbell <rmccampbell@gablelaw.com>; Travis Jett <tjett@gablelaw.com>; Ashley Quinn <aquinn@gablelaw.com>; Jeffrey A. Curran <jcurran@gablelaw.com>; Pamela K. Edmonds <pedmonds@gablelaw.com>; Misty A. Waller <mwaller@gablelaw.com>; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; mark.fiore@morganlewis.com; rebecca.hillyer@morganlewis.com; jeremy.menkowitz@morganlewis.com; brian.ercole@morganlewis.com; melissa.coates@morganlewis.com; martha.leibell@morganlewis.com; william.oxley@dechert.com; Rosenberg, Rachel <rachel.rosenberg@dechert.com>; hope.freiwald@dechert.com; will.sachse@dechert.com; rgarcia@lynnllp.com; rherman@lynnllp.com; TevaOKopioids@morganlewis.com; nancy.patterson@morganlewis.com; evan.jacobs@morganlewis.com; Kelly, Meghan <meghan.kelly@dechert.com>; Elizabeth Ryan <eryan@lynnllp.com>
Subject: Re: Oklahoma v. Purdue Pharma L.P. - Request by Teva Defendants for Emergency Telephonic Hearing Regarding Depositions of the State

It's Sunday night. I'm having a beer. Feel free to call tomorrow.

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On Mar 10, 2019, at 7:15 PM, Nicholas V. Merkley <nmerkley@gablelaw.com> wrote:

Brad,

We disagree with your assessment of the topics and what was made clear at the hearing. And, we did send proper notices. I will explain during the hearing.

Judge Hetherington has not been asked to attend any deposition tomorrow, and we cannot afford to waste any more time waiting on the State to comply. We will be prepared to argue telephonically when Judge Hetherington is available.

Nick

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Subject: Re: Oklahoma v. Purdue Pharma L.P. - Request by Teva Defendants for Emergency Telephonic Hearing Regarding Depositions of the State

Nick,
The topics are improper. This is not what the Court ordered. Trey and Judge Balkman made this clear at the hearing. Teva violated the order and didn't send proper notices.

If Judge Hetherington is going to attend these depositions, then perhaps we can have a hearing in person at the first one.

Bradley E. Beckworth
Partner

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On Mar 10, 2019, at 6:09 PM, Nicholas V. Merkley <nmerkley@gablelaw.com> wrote:

Judge Hetherington,

Unfortunately, the State is yet again refusing to produce witnesses to the Teva Defendants on the topics ordered by Judge Balkman. The topics at issue are Topics 1, 5, 17 and 27. They are each described in the attached notices served on February 25, 2019.

The State waited until this morning – the Sunday beginning the final week of fact discovery – to advise us it does not intend to produce a witness on those topics. As you may recall, Judge Balkman ordered these depositions go forward and be completed by the end of the day Friday, March 15th. Attorneys have prepared for these depositions and flown to Oklahoma City to take them. Thus, we are forced to ask you for an emergency telephonic hearing late tomorrow afternoon or evening. Please let me know when you are available and I will circulate the call information. The later you can be available the better as many of us are taking other depositions tomorrow.

We appreciate your assistance.

Nick

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<2019-02-25 Teva Notice to State for Corp Rep Depo - 3-13-19 for Issue 17, 28, 29 (S490825xAEC9B).pdf>

<2019-02-25 Teva Notice to State for Corp Rep Depo - 3-12-19 for Issue 5 16 20 (S490824xAEC9B).pdf>

<2019-02-25 Teva Notice to State for Corp Rep Depo - 3-11-19 for Issue 1, 2, 3, 4, 10, 38 (S490823xAEC9B).pdf>

<2019-02-25 Teva Notice to State for Corp Rep Depo - 3-4-19 thru 3-7-19 for Issues 6 7 9 11 12 24 25 26 27 36 37 (S490821xAEC9B).pdf>

<2019-02-25 Teva Notice to State for Corp Rep Depo - 3-11-19 for Issue 1, 2, 3, 4, 10, 38 (S490823xAEC9B).pdf>

B

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON FEBRUARY 14, 2019
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

EXHIBIT B

this motion is moot because I think the State has complied with the request from Teva.

MR. DUCK: Thank you, your Honor.

THE COURT: Okay. All right. Let's now turn to Teva's objections to the special master's ruling on the motion to quash the depositions.

Mr. Merkley, we'll recognize you.

MR. MERKLEY: Thank you, Judge. I know the Court's read the parties' submissions, so I'll get right to the point. This motion is about fundamental fairness and due process. The State often characterizes this case as the largest case in the State's history. The State elected to sue more than a dozen different opioid manufacturers on a false marketing theory and seek billions of dollars in damages in penalties.

Now, to establish its claims, the State's been afforded broad, extremely broad discovery, including 80 hours of corporate testimony, covering 43 topics for each defendant group, a total of 240 hours corporate testimony, covering 129 topics.

And just last week, we got notice they want more, and they're going to take the position that they get even more hours. And in response to the State's sweeping allegations, in an effort to fairly prepare to defend this case at trial, the Teva defendants are merely seeking nonduplicative depositions of the State only on factual, not legal or expert, bases for

the allegations and the claims the State has asserted. Fact discovery ends in four weeks, and these depositions are critical to Teva's preparation for trial.

Now, the State has opposed all but six of the depositions on five grounds, and I'll get to those separately in a second. But before I get to the arguments, I need to note for the record the broad standard of discovery applicable in this case.

Under 12 OS Section 3226(B)(1)(A), quote: Parties may obtain discovery regarding any matter not privileged which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the party's relative access to relevant information, the party's resources, and the importance of discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit.

The State doesn't dispute relevance in this instance. There can be no credible dispute that the information sought is important to the issues at stake. We're talking about the factual support for the State's specific allegations of liability.

And, your Honor, the amount in controversy certainly favors permitting discovery. The State itself calls this case the largest case in the state of Oklahoma's history. And it's

seeking billions of dollars in damages and penalties.

Now, the State's first argument, Judge, is the notice seeks to depose witnesses twice. And the State argues that the testimony overlaps with testimony provided by three other witnesses. That first witness, your Honor, is Jeff Stoneking.

Mr. Stoneking is the State's third party eDiscovery expert from Tennessee. He was presented by the State to talk about the existence and location of electronic information and how the State goes about finding it and producing it; e-mails and databases.

He testified he only learned of this lawsuit's existence five weeks before he was put in the stand to testify. His deposition had nothing to do with the factual basis for the claims asserted in this lawsuit. And I'll submit to the Court there's zero chance, if these depositions are permitted to go forward, that the State would designate him to testify about the factual basis for the claims made in this lawsuit.

And I'll tell you, your Honor, the State makes the point, Well, you didn't ask him about that stuff in the deposition; Teva was there, and they didn't ask him. I'll tell you exactly what would have happened if I would have sat down in that chair and asked that witness, Mr. Stoneking, about the factual basis for some of the allegations made in this lawsuit. Mr. Duck defended it.

He would have looked at me like I'm crazy to start with,

and then what he would have done is he would have made an objection on the record. And you can see in our opening brief, it's on page 8, Based on some theory that doesn't exist in Oklahoma law and say that I didn't cross-notice the deposition so I can't ask him about any questions, you'll see on page 8 where we cite Mr. Duck did that exact same thing with respect to Mr. LaFata's attempt to reserve his right to question the witness.

That concept doesn't exist in Oklahoma law. I haven't seen it in the statute, I haven't seen it in the cases, didn't learn it in law school. But that's what Mr. Duck would have done.

So the argument about, Well, you could have asked every one of these witnesses questions about the factual basis for what we say about Teva should fall on deaf ears. Number one, I can't. It's outside the scope of the notice. Number two, Mr. Duck wouldn't have allowed me to.

And frankly, your Honor, I'm shocked that the State argues that there could be any overlap with Mr. Stoneking's eDiscovery testimony. The second was Jessica McGuire. Ms. McGuire is the administrator for the State's prescription database.

Nice lady. She was presented by the State, testified about how that database works. Her deposition had nothing to do with the factual basis for the claims in this lawsuit.

The third one they reference is Ms. Jessica Hawkins.

Again, very nice lady. She's the Director of Prevention Services for the Oklahoma Department of Health.

She was presented by the State to testify about certain policies and procedures of the State and the actions the State has taken to date to abate the opioid epidemic. Her deposition had nothing to do with any actions Teva has taken or anything Teva allegedly did to justify the State's claims.

She did testify to some extent about the opioid epidemic, but her testimony was limited to what the State has done to fix it, not what Teva has allegedly done to cause it. Simply put, not one of these witnesses has either testified or been noticed to testify about the topics for which the Teva defendants seek testimony. Neither the testimony nor the notices are the same.

And, your Honor, it's irrelevant -- and the State makes this argument. It's irrelevant that the State may choose to present the same individual to testify on these topics if they go forward. We, Teva, have designated the same witness to testify on every topic noticed by the State thus far.

John Hassler, great guy from Kansas City, he spent several days and numerous hours answering the State's questions. I think four or three -- three or four of the lawyers that have sat down to ask him questions are in the courtroom today for the State.

But we made the decision to put him up for a deposition on numerous topics. We could have chosen someone else. State has

the same prerogative. It doesn't have to put the same witness up again. It can pick any witness to testify on any of the topics we've noticed. Its only obligation is to prepare the witness to give us the testimony. The bottom line is the topics are different and the depositions are different.

The State's second argument is that the information sought is precluded by your prior rulings. And we've seen some variation of this argument over and over and over again, including, I think four or five times now, on the criminal and investigative files.

The State argues that the information sought is somehow precluded by your rulings on the criminal and investigative proceedings, or your rulings on provider and patient records. Like the first argument, it's simply not true.

With respect to criminal and administrative proceedings, we're not going to ask about anything that you've not already told us we're entitled to ask about. With respect to doctor and patient information, you've told us we can't go get the identities. We're not going to ask about them.

And if the State suspects that I'm not telling the truth about that, they can object at the deposition and instruct the witness not to answer on those particular questions. In fact, that's the procedure that Oklahoma law has in place under the discovery code for dealing with these kind of issues.

12 OS 3230(E)(1) expressly provides, quote: A party may

instruct a deponent not to answer when necessary to preserve a privilege or work product protection, closed quote.

There's no basis to quash a deposition notice in its entirety just because the State has an unfounded suspicion that we're going to go in there and ask about stuff you've told us we can't ask about it.

We're not going to do it. But if for some reason we inadvertently do it, get in the throes of the depositions, and ask a question that they think's out of bounds, they can catch it, they can instruct the witness not to answer it.

State's third argument is that the information is expert discovery. And I want to make sure I'm clear on that, Judge. That argument is also untrue. We are not seeking expert opinions in these depositions. We are seeking the facts that underlie the State's claims.

The experts may rely on those same facts, but that doesn't preclude me from taking a deposition to determine whether those facts are indeed true. I can't be forced to sit and wait for the State's experts to tell me what the facts are.

An expert may say it and rely upon it, but that doesn't make it true. And the State's experts have and the State's experts may have and in my opinion I submit, in fact, have the facts wrong, and I'm entitled to take depositions to prove it.

The end of the day, I get to stand before you in Daubert hearings if they've got all the facts wrong and making their

opinions unreliable and argue that to you. I can't do it if I don't know what the facts are from talking to the State's witnesses.

Also, if they get past Daubert and they go to a jury trial, I've got to be able to show a jury the State's facts are wrong. I can't do it if you don't let me take the depositions.

Fourth argument, Judge, is that the depositions are contention depositions. And first I want to make the point there's nothing wrong with a contention deposition, especially at this stage of the case.

The State makes -- cites a North Carolina case for the proposition that contention interrogatories are disfavored. But the Oklahoma Discovery Code expressly provides the contrary. Stating, quote: An interrogatory is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to the application of law to fact. The Court may order that such interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or a later time, closed quote.

So to the extent some of the deposition topics combine facts, contentions, that's okay under Oklahoma law. Discovery ends in four weeks. It's time for the State to tell us what the facts are that they're relying upon to hold our client's liable for billions of dollars in damages and penalties.

The State's final argument, your Honor, is that the

depositions are premature. That's similar to the prior argument. I only address it separately because the State makes it with respect to more than just the contention depositions.

Judge, these depositions are not premature. We are now four weeks from the close of discovery. If the State wants to delay setting the depositions until the last two weeks, we can, but that's just going to make those last two weeks an absolute nightmare.

Nevertheless, there's no reason not to at least set them now. If they want to put them in the last two weeks, we'll agree to it. We'll sit down with a calendar, we'll put it together. But we only have four more weeks. We have to be able to take the discovery.

Unless you have any questions, that's all I have.

THE COURT: I don't have any.

MR. MERKLEY: Thank you.

THE COURT: Thank you, Mr. Merkley.

Mr. Whitten?

MR. WHITTEN: I will be brief, which should be refreshing.

There are two parts to this, and I'll be honest with you, your Honor, I'm not in the weeds on some of the specifics. So I want to address what I think are the substantive arguments, and I'm going to ask Mr. Duck to respond to the specific arguments -- you heard his name mentioned -- if that's okay

with your Honor.

THE COURT: That's fine.

MR. WHITTEN: First, the way my friend Nick has argued this is interesting. I was there when the first one was argued in front of Judge Hetherington. They lost. They put a tremendous amount of time and effort into that in the briefing and the argument. So cleverly this morning what they've done is they've tried to pivot a little bit.

I submit to you there's a reason we had a special master. It was their idea, but we've embraced it. And the special master, Judge Hetherington, put a lot of time and a lot of effort -- he's sitting here today -- but he put a lot of work into this, and he's got to have some discretion. He was in the weeds on this, certainly, more than I was.

But essentially, what they're doing is they're asking the Court to reconsider what Judge Hetherington did, and I submit that should not happen. Judge Hetherington ruled against them for four reasons.

Number one, he ruled that it was largely duplicative as to topics for which the State had already produced a witness. He was in the weeds on this, he heard all the argument, he read everything, and that was his finding.

Number two, it sought some privileged information. I don't think I heard that addressed.

Number three, it sought information on topics where it was

better suited for expert testimony. And what you didn't hear this morning was the first motion that was ever filed in this case to stop someone from getting into topics that really are better suited for experts, was the defendants' motion. And it was sustained by Judge Hetherington. We were stopped from doing that. But here, the shoe's on the other foot, and he's stopped them from doing it here.

Number four, that it constituted improper contention discovery in several respects.

And number five, it contained topics that were either irrelevant or overly broad.

Now, what was true then and what he found then is still true today. This is just a do-over. There's not -- although they've argued it and put a different twist on it, they don't cite any new law. They don't cite any new facts.

They can't tell you and did not tell you that Judge Hetherington ignored some specific fact in the record or some specific law. He had a complete record. And so I think Judge Hetherington's order should be respected. It was the right ruling.

On the first point about the discovery code, 12 OS 3225 prohibits a deposition of a person who's already been deposed from being deposed a second time. And there's no question we're going to have to produce people again, if Judge Hetherington's order was overruled.

Now, I think it's important to note this is the same group of defendants that told us, You can't even pay your teachers, much less defend this case; we're going to work you so bad, you won't be able to defend this case. That's what they said then, that's what they're doing now.

And specifically, Jessica Hawkins, who works -- he was -- my friend Nick was wrong. She works for Terri White in the Department of Mental Health and Substance Abuse, not the Health Department. But Jessica Hawkins has taken, I don't know, probably at least a hundred or more hours of her time to prepare for these.

She's testified more than once, and we're going to have to drag her up here and produce her again. We're under serving our state's citizens now with the limited budget we have. They had a chance to do this. They had a chance to ask those questions. They shouldn't be able to do it again.

Now, with that said, those are our general objections. Judge Hetherington made the right decision. I would like for Mr. Duck, if it's okay with your Honor, to briefly address some of the very specific points.

THE COURT: I'll allow that.

MR. WHITTEN: Thank you.

MR. DUCK: Thank you, Judge. Trey Duck for the State. I just want to address a couple of points that Mr. Merkley raised.

The first point he made was quoting something that I had said in a deposition. And Nick and I have gotten to know each other pretty well in this case, and so well I think he predicted what I might do if future depositions move forward.

I have objected in the past to the defendants not cross-noticing six-hour depositions. We finish up a deposition, and they say, We want to leave this deposition open. It would be nice for us to be on notice if they want to take questions, but never once have we stood on that objection.

Never once have we prevented defendants from asking questions in these depositions. And never once have we come to this Court for a ruling on those objections. In depositions, we make objections on the record so that we can preserve them.

There are instances, many instances, in 30(b)(6) depositions where multiple defendants have asked questions. In fact, this week this happened. On Tuesday, there were three depositions going on simultaneously at our office. Yesterday, there was a deposition that lasted until 7:30 at night.

Unlike the defendants, we have never stood firmly on the six-hour rule unless it is unreasonably late. We've allowed defendants to continue past that when necessary or reasonable. We have never stopped a defendant from asking questions.

In fact, when I finish asking my questions every time, I ask if each representative for each defendant wants to ask questions. Usually, they decline. But often, they ask a few

questions.

In fact, in a 30(b)(6) deposition this week, Teva was present, as Teva's present in all 30(b)(6) depositions the State has sat witnesses for, and Teva asked questions. They only asked three questions; that was their choice. But that's the way depositions work.

And Teva's been on notice for these 30(b)(6) topics. They're primarily topics noticed by Purdue months ago that we've prepared witnesses on. They're usually general topics that relate to the way the State does things or the way the State views what has happened to its agencies. And the answers are relevant for all of the defendants.

I suspect that's why the other defendants don't ask follow-up questions, because they can use the 30(b)(6) testimony that was elicited by a single defendant in the deposition.

Another thing about these contention depositions, if you look at the actual topics, they're very precisely worded. And, you know, we as lawyers like certainty, and we want to know what it is that we're dealing with.

These particular topics are an improper attempt to box the State in before we've even had a chance to review all the documents that have been produced in this case. We met and conferred on this. I was on the meet and confer with Harvey Bartle, and we asked, Hey, on a lot of these contention topics,

you know, you're asking for every single, you know, XYZ fill-in-the-blank that the State can identify or point to.

Well, Judge, we can't be in a position, number one, to identify all of those at this juncture before discovery's over; and second, to have a witness memorize them. So, for instance, name every single misrepresentation that Teva defendants have made with respect to opioids.

Judge, they're countless. There are so many of them that we could never sit a person to actually testify about every single misrepresentation that these defendants made about opioids. We encounter a new one every hour looking through documents in this case.

So what we said to the lawyers on the meet and confer is, Hey, let's have an agreement that this isn't going to box us in and that we continue to move forward, and we can use additional misrepresentations at trial. Why don't you all step back from this every single language that you've got in your topics, and they refused to do it. So that's why we can't do that.

If they could limit these topics to something that is, you know, not unreasonably overbroad, which is one of the reasons that Judge Hetherington quashed them, then we'll talk about it. And we've asked them to come back to us with topics that may work.

Now, of course, those topics, if they can narrow them, should be topics that we have not sat a witness on already.

And the fact of the matter is we have sat witnesses on numerous topics for numerous days after weeks and weeks of preparation.

Some of their preparation will have gone stale. It's the way the human mind works. And the timing of these notices is not coincidental. And Reggie just mentioned it briefly, but you weren't here for this, Judge; it was a discovery hearing with Judge Hetherington.

But we were taking, you know, three or four depositions a day. The calendar was crazy. And we had some scheduling issues with depositions that we got worked out. But Mr. Bartle for the Teva defendants said on the record, If you all think the calendar's crazy now, just wait until we start serving our deposition notices at the end of discovery.

Well, Judge, we're here. And that's exactly what they've done. They've done it on topics that we've already sat witnesses for. They've done it on unreasonably broad, impossible topics that we simply can't sit a witness for, no reasonable party would ever agree to sit a witness on. And we would ask that we be given the same relief that Judge Hetherington already gave us and that that relief stay in place.

There are still 30 days or 29 days left in discovery. Under the deposition protocol, that's enough time for the Teva defendants to work with us, to try to submit some deposition requests that actually make sense that are workable. And we'll

do our best to sit witnesses on new topics that make sense and that are reasonably worded.

Thank you, Judge.

THE COURT: Thank you.

MR. MERKLEY: Briefly, Judge. I've got a lot to respond to, but I think I can do it quick.

With all due respect to Mr. Whitten and Mr. Duck, it shouldn't go unnoticed by the Court that not one of those arguments addressed the substance that I just went through with you where we talked about the actual witnesses, including Mr. Stoneking, an eDiscovery expert from Tennessee that's going to have to be sat again for some reason to come tell Teva what it did in Oklahoma to justify fraudulent marketing allegations and billions of dollars in damages.

The whole sum and substance of their argument is, Judge, just ignore it and defer to Judge Hetherington, and let's get down the road. I addressed the duplicative argument. It's simply not true. I talked about the specific witnesses. I talked about the specific topics for which those witnesses testified. I showed you they absolutely do not overlap. Neither Mr. Whitten nor Mr. Duck stood up here and showed you how they do overlap.

They're not sitting witnesses again specifically for my depositions. If they choose to sit one for my depositions, which are on totally different topics, that's their

prerogative. We do it ourselves.

And Mr. Whitten points out or he says that the rule prohibits sitting witnesses a second time, and that's simply not true. As I told you, I've sat a witness a number of times. They all know Mr. Hassler. They've all deposed him.

And I realize Mr. Whitten isn't involved much with the depositions of his own witnesses, but his folks here are putting up witnesses more than once. Sometimes on corporate rep topics, and they turn around and they're putting them up in their individual capacity. There are a number of those. Nothing prohibits that.

Mr. Whitten said that the privilege objections were not addressed. They were. Their privilege objections aren't truly privilege objections, so I can understand why it was missed. Their privilege objections are what they want to know, you've already told them they can't have, doctor and patient identification.

Told you we won't ask that. And they can be at the deposition, and if they want to shut us down, if we happen to get into that, and ask for an identity of a patient or a doctor, and they want to shut us down on that, we can save that for a later day. But that's not the intent of what we're going in there for.

I don't know if the Court cares much to get into this, but I can explain the difference between the defendants' motion,

which prohibited deposition testimony of a corporate rep on future harm associated with the opioid epidemic. What Judge Hetherington did do was make us sit a witness on past actions we've taken and present actions we've taken.

It doesn't have anything to do with future. I'm not asking them to tell us about the future. I'm going to ask their experts to tell us what they think needs to be done in the future. What I'm asking about, which is not even the opioid epidemic, I'm asking them specifically about the allegations they make against my client and what evidence they have to support it.

With respect to the cross-notice thing, still, it's a concept that doesn't exist. It's not a situation where we're running out the time or that we've run out the six hours and then we want more questions. We all should have the opportunity to ask questions, and we shouldn't be told, even if it's not the time limit, that we can't ask questions because we didn't shuffle a piece of paper across the board that says, Me too. That's not the way it works in Oklahoma. Never has.

One party notices a deposition. The notice says everybody's invited to attend and cross-examine. The problem is and where we've run into disputes is the State wants to run out the clock on the full six hours and not give the defendants time to ask questions. That's obviously unfair.

I don't know how we're going to fix that. I guess

ultimately we're going to have to address it with Judge Hetherington, but we've got to have the opportunity to ask questions, even if it means I'm going to have to shuffle a subpoena, a second subpoena, or another notice, just burn some more trees so that everybody's clear we want to ask questions.

In open court, I'll tell them all right now, for every deposition that's noticed, we want the opportunity to ask questions.

Finally, Judge, on the contention topics, it's good to know they're willing to sit this witness for the contention topics, and all we're talking about is when. It's unfortunate that the State hasn't had the opportunity to look through the documents that we've been producing to them on a rolling basis.

If the State wants to agree and put the witnesses up on the contention topics and allow us to take the depositions after the discovery cutoff, when the discovery is concluded, and the universe -- the documents they plan on using at trial is confined so that I know exactly what I'm facing when I walk into the courtroom at trial, I'm happy to schedule that deposition at the conclusion of the discovery cutoff. We can work with them, whatever they want to do on that.

What I don't want is to take that deposition on X date and then have them come in after the discovery cutoff and have hundreds of more documents that they want to use at trial and that their witness didn't say they were going to rely upon and

just surprise me with it because I took the deposition before the discovery cutoff.

There's a reason we waited on contention depositions until the end of discovery. It wasn't to overload them. It was because we knew we would face the objection, if you want to take a contention deposition in the middle of the discovery period, we're not ready. So we save it to the end. We're at the end. We have four weeks, and we need to take these depositions.

Thank you, your Honor.

THE COURT: We're going to take just a ten-minute break. We're going to give everybody a chance to stand up, stretch, go to the bathroom, get a drink. Let's start back here right after 10:40. Okay?

MR. MERKLEY: Thank you, Judge.

(A recess was taken, after which the following transpired in open court, all parties present:)

THE COURT: Invite you all to get back, settled down. I think Mr. Merkley was about to get up, is that right, or I can't remember who was before we broke.

MR. DUCK: I think he had just sat down.

THE COURT: It's all a blur.

MR. MERKLEY: I'll get back up and go some more if you want, Judge.

THE COURT: No, I don't think you need to.

Mr. Duck, you're recognized.

MR. DUCK: Thank you, Judge. Couple of quick points. Nick said we hadn't addressed his arguments. I think I can do that fairly easy. We raised this Jeff Stoneking discovery deposition, which I'm sure you could not find to be more boring. But they've asked for a topic on the discovery process.

One, we received a list of, you know, 40-something topics, and one of them we thought -- maybe they can correct me if I'm wrong -- related to the discovery process. We sat a witness on that earlier in the case. It was the first deposition in the case, in fact, and there's no need for us to sit a witness on it again. So the process is the process.

For Jessica Hawkins, up to ten of the topics on Teva's list related to abatement, what the State has done to address this crisis. She has sat for, I don't know, three days. And, in fact, I believe Judge Hetherington ordered her back for one of those days.

And so she's sat in giving all the testimony she's got on what the State has done to address the crisis, and Teva's topics overlapped with that. There's just no reason for us to sit her again. The testimony's there.

And then, you know, Nick mentioned Mr. Hassler, who has sat for, I don't know, ten days for Teva, all on different topics. In fact, I think we're close to being done with Teva's

topics. That's not what we're talking about.

We'll certainly bring back the same witness to testify about different topics that haven't been covered yet. In fact, I'm sure we will. You know, we haven't finished all the topics, and for all I know, Jessica Hawkins may come back for new topics she hasn't testified on before. That's different.

But I think the overall point, Judge, is this. Judge Hetherington has a year's worth of institutional knowledge on all of the details about how we got here today with respect to 30(b)(6) depositions.

He's heard it all. He's seen it all. He knows the State's witnesses, who we've sat, what kind of questions have been asked, who wants what. He's presided over hearings in the middle of depositions where all of the parties are present.

And we think that based on all of his experience and knowledge with respect to this process and what's happened, the order he entered quashing this 30(b)(6) notice should stand.

Thank you, Judge.

THE COURT: Thank you, Mr. Duck.

Mr. Merkley, I'll give you the final word since it's your motion.

MR. MERKLEY: I think maybe a lot of our problem is the State's misunderstanding of what we're looking for. With respect to the Jessica Hawkins and the abatement example, I want to make clear I'm not looking to determine again what the

State has done to address the opioid epidemic.

What I'm looking for is what the State says Teva has done to cause the opioid epidemic. Two totally separate things. Teva's entitled to know, as a matter of fundamental fairness and due process, what is the State saying we did outside of conclusory allegations in a petition. We're entitled to take discovery on that. We have to take discovery on it.

THE COURT: Thank you.

A lot's been said about the fact that, you know, this is an appeal, basically, of an order by the discovery master. And you know, certainly, we can all agree that Judge Hetherington has a lot more time invested in these matters.

I do have the benefit of reviewing those transcripts. I won't say I've read them all word for word, but I've reviewed a lot of them and certainly you all cite them in your briefs and I have the benefit of discussing those matters with you and with Judge Hetherington.

My recollection is that the discovery master has said that if there are specific topics that arise as discovery unfolds, then the decision on limiting these depositions would be reconsidered, and that's what we're here on today.

It's my understanding in these matters that I think it's consistent with previous rulings, previous orders from Judge Hetherington in the scope of discovery that Teva be allowed limited depositions.

I'm prepared to allow them to go forward with those notices on new topics, so long as they don't overlap, they're not duplicative. I would like to limit those to four hours, and that would be exclusive of cross-examination. And those would need to be completed by March 15th.

MR. MERKLEY: Thank you, Judge.

THE COURT: Okay.

MR. DUCK: Just for clarity, Judge, we'll receive a new notice, new topics from Teva, so we can look at what they want to do?

THE COURT: Yes.

MR. DUCK: Thank you.

MR. MERKLEY: But just to be clear, if it's going to be the topics that we've already -- we'll renotice them for dates and stuff --

THE COURT: Just renotice them.

MR. MERKLEY: It's going to be the same topics we've addressed. I don't want to start the meet and confer and have another hearing process over again so that we don't get to do this by March 15th.

THE COURT: Yes.

MR. MERKLEY: Thank you.

THE COURT: Okay.

MR. DUCK: Well, I'm still confused. I'm sorry. I mean, you said new topics which don't overlap that are limited.

My understanding is the current notice has been found to be overlapping and unlimited. So do we get a new notice that has more limited topics than the ones they've already -- I mean, I just don't want to get the same notice again.

THE COURT: Sure.

Mr. Merkley, what I heard you say here this morning in the courtroom is that you're not going to simply ask for depositions on topics that have already been covered; that you're seeking information specific to Teva. Is that correct?

MR. MERKLEY: That's correct.

THE COURT: Okay. So I would expect that those deposition notices would reflect what you've represented here in court this morning.

MR. MERKLEY: That's correct, and I'm happy to do that. What I just want to make clear is when I do do that, we're going to set the depositions and go forward; we're not going to start a three-day meet and confer process, another week hearing with Judge Hetherington, and start that process all over again, because we only have four weeks.

And I think I'm hearing the State saying we don't have to do that and they will agree to sit this witness once I revise and send out individual notices, but I want to make that clear on the record so that we're not back here doing this again on March 14th, one day before the 15th.

THE COURT: Well, I would hope that you all can meet

and confer on that, but I don't think it's proper to automatically extinguish any side's right to complain or to bring up something if they think they do need to bring it to the discovery master. I'm not inviting that or encouraging that, but I don't think I can just say, no, the State has to just take whatever they get.

If they have a good faith reason to believe that it violates a previous ruling, then I suspect that they would be able to bring that to the discovery master.

MR. MERKLEY: Fair enough, Judge. I'll do my very best to make sure there's no violation.

THE COURT: Thank you, Mr. Merkley.

MR. DUCK: Thank you, Judge.

THE COURT: Mr. McCampbell?

MR. MCCAMPBELL: Yes, your Honor. We have -- if the Court's done with the motions that are set, we have a couple of logistics things we would like to talk about in the course of getting this ready?

THE COURT: Sure.

MR. MCCAMPBELL: One of the things would be hearing dates with your Honor and with Judge Hetherington. The last time we were here, Judge Hetherington brought up the idea there could be additional hearing dates scheduled. I remember March 4 was one of the dates he said. I don't know if that date is still available.

C

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

NOTICE TO TAKE SECTION 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE REPRESNTATIVE(S) OF THE STATE

To: State of Oklahoma

Via Electronic Mail

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EXHIBIT
C

Please take notice that, pursuant to 12 O.S. § 3230(C), Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. (collectively, "Teva Defendants") will take the deposition upon oral examination of one or more corporate representative(s) of Plaintiff the State of Oklahoma (the "State") on the matters described in **Exhibit A** on **March 13, 2019, starting at 9:00 AM**, at the offices of Whitten Burrage, 512 North Broadway Avenue, Suite 300, Oklahoma City, Oklahoma 73102.

This deposition is to be used as evidence in the trial of the above action, and the deposition will be taken before an officer authorized by law to administer oaths. It will be recorded by stenographic means and will be videotaped. It will continue from day to day until completed.

Pursuant to 12 O.S. § 3230(C)(5), the State is hereby notified of its obligation to designate one or more officers, directors, managing agents, or other persons who consent to testify on the State's behalf about all matters described in **Exhibit A**. Please take further notice that each such officer, director, managing agent, or other person produced by the State to testify under 12 O.S. § 3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the State, and spoken to all potential witnesses known or reasonably available to the State, in order to provide informed and binding answers at the deposition(s).

DATED: February 25, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 25th day of February, 2019, to the following:

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Nick Merkley

EXHIBIT A

TOPIC #	TOPIC DESCRIPTION
17	The State's investigation into, civil or criminal prosecution of, and/or discipline of doctors, pharmacists, pharmacies, clinics, "pill mills," or hospitals in Oklahoma for the improper prescribing or diversion of Opioids during the Relevant Time Period, including the State's knowledge of any complaints regarding improper opioid prescribing practices of any Healthcare Professional in Oklahoma.
28	**DELETED**
29	The State's knowledge of and monitoring of the quantities of prescription Opioids prescribed, dispensed, sold, distributed, and used in Oklahoma, including its knowledge of the setting of quotas by the DEA for prescription Opioids.

D

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON DECEMBER 20, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

EXHIBIT D

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

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

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

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

THE COURT: All right. Thanks, gentlemen.

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

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

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

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

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

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

MR. MCCAMPBELL: Thank you, your Honor.

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

E

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
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

For Judge Balkman's Consideration

DEFENDANTS TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S OBJECTIONS TO SPECIAL MASTER'S RULINGS ON STATE'S MOTION TO QUASH NOTICES TO TAKE 3230 (C)(5) VIDEOTAPED DEPOSITIONS OF CORPORATE REPRESENTATIVES OF THE STATE

Pursuant to the Court's Order Appointing Discovery Master, entered January 29, 2019, Defendants Teva Pharmaceuticals USA, Inc. and Cephalon, Inc., (collectively, "Teva Defendants"), and Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a

EXHIBIT
E

Watson Pharma, Inc., (collectively, the "Generic Actavis Defendants") by and through their undersigned counsel, object to Special Master Hetherington's January 20, 2019 Order (Ex. A) ("Order") with respect to certain rulings on the State of Oklahoma's (the "State") Motion to Quash Notices to Take 3230(C)(5) Videotaped Depositions of Corporate Representatives of the State (Ex. B) (the "Motion"). The Court reviews the Order *de novo*. For the reasons that follow, the State's objections should be overruled and the Teva Defendants and Generic Actavis Defendants should be permitted to proceed with depositions of the State's representatives as soon as practicable.

I. INTRODUCTION

The State chose to sue more than a dozen pharmaceutical manufacturers on a false marketing theory to recover tens of billions of dollars in damages and penalties. But each manufacturer is different. Each manufacturer sold different opioid medicines, and used different methods of marketing its products, if any,[1] and had different communications, if any, with Oklahoma physicians. Thus, each Defendant's alleged conduct and impact on the State is different. Each Defendant is therefore entitled to defend against the separate allegations and claims against it. In order to do so, the Teva Defendants and Generic Actavis Defendants seek basic and fundamental deposition testimony to which they are entitled under Oklahoma Discovery Code, and the Oklahoma and United States Constitutions.

On December 19, 2018, pursuant to the deposition procedures established by the Court on August 31, 2018, the Teva Defendants and Generic Actavis Defendants sent a letter to the State identifying the Topics ("Topics") and dates on which they sought testimony from the State's

[1] Generic manufacturers, such as Watson, Actavis LLC, and Actavis Pharma, do not market their products to physicians. *New York ex rel. Schneiderman v. Actavis, PLC*, 2014 WL 7015198, at *27 (S.D.N.Y. 2014), *aff'd*, 787 F.3d 638 (2d Cir. 2015) (recognizing that generic manufacturers "compete on price ***and avoid marketing to physicians*** because the costs of such marketing severely impact their ability to offer the significantly lower prices upon which they compete").

corporate representatives. On December 28, 2019, the State requested to meet and confer on the deposition Topics, and on January 3, 2019, the parties held a telephonic conference to discuss the State's objections. On January 8, 2019, the Teva Defendants and Generic Actavis Defendants properly noticed depositions of the State's representatives on 38 discrete Topics tailored to elicit testimony specific to the Teva Defendants and Generic Actavis Defendants. *See* Ex. C (the "Notice"). On January 11, 2019, the State moved to quash 32 of the 38 noticed deposition Topics.[2] *Id.* The State argued that the Notice is improper because: (a) it seeks to depose witnesses "twice;" (b) it seeks information that is precluded by prior rulings and/or privilege; (c) it seeks expert testimony; (d) it seeks "contention" depositions; and (e) it seeks information that is "irrelevant" and "overbroad."

On January 20, 2019, following oral argument, Special Master Hetherington entered the Order, sustaining nearly every single objection raised by the State.[3] Special Master Hetherington essentially adopted and affirmed the State's categories of objections, thereby preventing the Teva Defendants from getting basic deposition testimony regarding fundamental issues applicable to the Teva Defendants and Generic Actavis Defendants—notwithstanding that the State was allotted 80 hours of corporate testimony from the Teva Defendants and Generic Actavis Defendants and now seeks billions in damages. Further, in the few instances where the State's objections were overruled in part, Special Master Hetherington deemed them "expert" or "contention" topics and found them "premature." The State's objections should be overruled for the reasons that follow.

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[2] The State did not move to quash Topics 11, 12, 13, 31, 32 and 33, therefore the Teva Defendants are proceeding with those depositions accordingly.

[3] The Order also addressed other motions which are not the subject of the present Objections.

First, time is of the essence. The discovery period ends in a mere six weeks. The Teva Defendants and Generic Actavis Defendants have offered to schedule certain depositions identified by Special Master Hetherington as "contention" or "premature" towards the end of the discovery period to accommodate the State and alleviate any concerns about prematurity. There is no legal basis to say that a deposition on a valid topic cannot be scheduled at this time. The result of such a ruling—that a topic is permissible but premature—would present significant logistical challenges given the present scheduling, particularly where all depositions of the parties' experts remain to be scheduled (including depositions of the State's twenty-three experts). It also likely will result in the need for additional judicial involvement. The Topics are valid, and the depositions should be scheduled now.

Second, the plaintiff's objections completely ignore the broad discovery guaranteed to parties by the Oklahoma Discovery Code and both the Oklahoma and United States Constitutions. The Topics are neither "irrelevant" or "overbroad." The Teva Defendants and Generic Actavis Defendants are distinct from the other Defendants. Consistent with the Court's prior rulings, they should be entitled to their own 80 hours of deposition testimony from the State on properly noticed topics. The fact that *other* Defendants noticed depositions of the State on *different* topics is irrelevant. The Teva Defendants and Generic Actavis Defendants seek testimony as it relates to them, the claims alleged against them, and the defenses they intend to raise at trial. Construing the deposition Topics as duplicative, cumulative, irrelevant, or overly broad ignores that each topic is meant to elicit testimony as it relates to the Teva Defendants and Generic Actavis Defendants—and the Teva Defendants and Generic Actavis Defendants have clarified that they do not plan to ask repetitive or redundant questions to the extent the State designates previously-deposed

individuals on particular topics. The Teva Defendants and Generic Actavis Defendants are entitled to this discovery. Anything less is a deprivation of due process.

Third, with respect to Special Master Hetherington's "privilege" determinations, none of the Court's prior rulings preclude the Teva Defendants and Generic Actavis Defendants from seeking testimony regarding criminal and administrative proceedings, or patient and provider information. Indeed, the Court has ordered the State to produce materials related to those proceedings. *See* October 22, 2018 Order at 5–6. As to the latter, the Teva Defendants and Generic Actavis Defendants do not seek to obtain the identity of any prescribers or patients in those depositions.[4] The deposition on these Topics should be permitted to proceed and, to the extent any questions are objectionable, the State may make those objections on the record during the course of the deposition.

Fourth, Special Master Hetherington's determination that certain Topics are "expert witness topics," is incorrect and not a proper reason to deny a fact deposition. As is evident from the State's own expert disclosures, experts consider and rely on facts in forming their opinions and preparing their disclosures. *See Nelson v. Enid Med. Assocs., Inc.*, 376 P.3d 212, 217 (Okla. 2016) ("An expert's opinion must be 'based on what is known,' i.e. facts and data, that are then used as part of a reliable method in forming an opinion."). If the State intends to offer fact witnesses or evidence at trial on any subject about which an expert will also testify, the Teva Defendants and Generic Actavis Defendants are entitled to depose a *fact* witness on those subjects. The Teva

[4] By agreeing not to ask questions during these depositions about the specific identities of those prescribers and patients, the Teva Defendants and Generic Actavis Defendants do not waive their objections to this Court's rulings that the defendants are not entitled to that information and that it is not relevant to the case.

Defendants and Generic Actavis Defendants are entitled to depositions from the State related to those *facts*.

The State's objections should not have been sustained, and that result denies the Teva Defendants and Generic Actavis Defendants their fundamental right to this discovery which is proper, proportional, and tailored to obtain information from the State as it pertains to the Teva Defendants and Generic Actavis Defendants. The State chose to file suit against all of these pharmaceutical manufacturers. The State chose to pursue billions of dollars in damages. The Teva Defendants and Generic Actavis Defendants are entitled to their own depositions of the State on key issues as they relate to them. Accordingly, the Teva Defendants and Generic Actavis Defendants respectfully request that the Court reverse Special Master Hetherington's Order on the State's Motion as to the State's objections that were sustained, in whole or in part,[5] and permit the parties to proceed with corporate depositions of the State as noticed.

II. STANDARD OF REVIEW

"A lawsuit is not a contest in concealment, and the discovery process was established so that 'either party may compel the other to disgorge whatever facts he has in his possession.'" *Cowen v. Hughes*, 1973 OK 11, 509 P.2d 461, 463 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). "'***Mutual knowledge*** of all the relevant facts gathered by both parties is essential to proper litigation.'" *Metzger v. Am. Fid. Assurance Co.*, 245 FR.D. 727, 728 (W.D. Okla. 2007)

[5] The Teva Defendants and Generic Actavis Defendants do not object to Special Master Hetherington's overruling in part of objections with respect to deposition Topics: 2–4, 22, and 26. However, to the extent objections were sustained in part as to these Topics, the Teva Defendants and Generic Actavis Defendants disagree with the Special Master's ruling and argue that they should have been overruled in their entirety. The Teva Defendants and Generic Actavis Defendants also seek clarification of these potentially inconsistent rulings.

(quoting *Hickman*, 329 U.S. at 507) (emphasis added). The Oklahoma Discovery Code, consistent with these principles, provides in relevant:

> Parties may obtain discovery regarding any matter, not privileged, which is ***relevant*** to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and ***proportional*** to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Okla. Stat. tit. 12, § 3226(B)(1)(a) (emphasis added).

III. DISCUSSION

A. The Oklahoma Discovery Code Permits Depositions On These Topics.

The Oklahoma Discovery Code permits each party to conduct its own discovery. *See generally* Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a). It entitles each Defendant to "obtain discovery regarding any matter, not privileged, *which is relevant to any party's claim or defense*, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a) (emphasis added). The State's position that it need only produce a single witness, for a single day, on key issues in this case—despite having sued thirteen separate defendants for billions of dollars—is fundamentally inconsistent with Oklahoma law. The fact that the State has produced witnesses in response to *other* defendants' notices to answer questions about those defendants is irrelevant. Special Master Hetherington's ruling deprives the Teva Defendants and Generic Actavis Defendants of the right to conduct their own discovery.

The right to obtain discovery relevant to their defenses is not limited by the fact that the Teva Defendants and Generic Actavis Defendants received notice of and attended depositions of the State on similar topics. Motion at 3. This argument is contrary to the Oklahoma Discovery

Code. It is also in direct conflict with the State's position at prior depositions of its representatives during which if an attending party (as opposed to a noticing party) attempted to question the witness or preserve the right to question the witness at a later date, the State objected. There is certainly no Order in place precluding the Teva Defendants and Generic Actavis Defendants from noticing topics to ask their own questions of the State on fundamental issues, much less any Order requiring the Teva Defendants and Generic Actavis Defendants to ask questions specific to them at any deposition noticed by any other Defendant. The State cannot impose a requirement that simply does not exist under Oklahoma law.

For instance, at the May 16, 2018, deposition of the State's witness Jeffrey Stoneking, noticed by the Janssen Defendants, Purdue sought to preserve its right to question the witness at a later date. The State responded "Purdue . . . has not filed a notice, a cross notice for this deposition, so you guys don't have the right to keep this deposition open. We didn't receive them . . . That's our response to that." May 16, 2018 Stoneking Dep. Tr. 289: 9–15 (Ex. D). The State took the same position regarding cross-noticing at the deposition of Nate Brown. Dec. 18, 2018 Brown Dep. Tr. 49: 10–16; 54: 14–19 (Ex. E) (objecting to questioning based upon failure of Janssen, the Teva Defendants and the Generic Actavis Defendants to cross-notice). Accordingly, the Court should find that the Teva Defendants and Generic Actavis Defendants are entitled to proceed with Topics 15, 18, 22, 23, 25, 26, 28, 29, 30 and 35 because they are neither duplicative, nor unreasonably so, and overrule the State's objections.

B. <u>Discovery Closes In Six Weeks—None of the Topics Are Premature.</u>

The Special Master deemed certain Topics "contention" depositions and therefore improper or premature. This ruling was flawed for multiple reasons. First, labeling Topics 14, 16, 24, 34, 37, and 38 as "improper or premature" requires clarification from the Court. Unlike

interrogatories, there is no rule that allows for the Court to label a deposition topic about a key issue in the case a "contention" one, much less permits the Court to delay the scheduling of such depositions—or worse, to quash a deposition notice on this basis. A deposition on a proper topic that is merely deemed "premature" must be scheduled. Moreover, a deposition on fundamental issues in this case, such as the factual basis for the State's false marketing claims and alleged injuries as to the Teva Defendants and Generic Actavis Defendants, cannot possibly be premature given this late stage of discovery, with trial scheduled for May 2019. *See, e.g.,* Topic 14 (seeking "[t]he nature of and factual basis for the relief requested by the State in the Petition against each of the Teva Defendants"); Topic 24 (seeking "Communications between the State and any Teva Defendant regarding prescription Opioids."). Indeed, the State filed its Petition nearly two years ago. It must now provide a corporate representative to testify about the factual bases, if any, for its claims against each Teva Defendant and Generic Actavis Defendant. As the Teva Defendants and Generic Actavis Defendants previously represented to the Court, they are more than willing to work with the State to schedule these particular depositions towards the end of the discovery period, but these depositions must be scheduled now.

Second, the Topics identified as "contention testimony" are not in fact so. Rather, they seek information that the State should currently have in its possession, and information that the State certainly should have ascertained ***before*** filing a lawsuit seeking billions of dollars against each Teva Defendant.

For example, Topics 14 and 16 seek the factual basis for the harm alleged by the State in its Petition, including non-monetary and injunctive relief, as well as the factual nexus between harm alleged by the State and any of the Teva Defendants and Generic Actavis Defendants' products, actions, or omissions. To the extent that the State intends to proffer expert testimony on

these Topics, it is still required to provide a factual basis for its experts' opinions, as set forth *supra*. The State otherwise provides no reasonable basis to object to these Topics.

Likewise, Topics 34, 37 and 38 go to the core of the State's allegations, including the State's understanding of the causes of the opioid epidemic, its factual basis for its allegation that the Teva Defendants and Generic Actavis Defendants caused fraudulent payments to be made by Soonercare or any other state-funded medical reimbursement program, and its factual basis for its allegation that the Teva Defendants and Generic Actavis Defendants agreed with other defendants—their market competitors—to engage in a false marketing campaign. To the extent the State did not previously possess an understanding of the basis for those claims at the time of its filing, it has had well over a year to do so. The Teva Defendants and Generic Actavis Defendants have the due process right to depose a representative of the State on these—subjects which are directly related to the State's allegations against them.

C. The Topics Are Proportional and Narrowly Tailored Given the Scope of the State's Allegations and Damages Sought—They Are Neither Overbroad Nor Irrelevant.

As noted above, the Oklahoma Discovery Code entitles the Teva Defendants and Generic Actavis Defendants to "obtain discovery regarding any matter, not privileged, *which is relevant to any party's claim or defense*, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a) (emphasis added). And "'relevant' mean[s] those materials either (1) admissible as evidence or (2) which might lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182 (1976).

Topic 19 seeks testimony regarding the use and abuse in Oklahoma of controlled substances other than prescription opioids. Indeed, the State is seeking relief for the abuse of non-prescription opioids in Oklahoma which it alleges the Teva Defendants and Generic Actavis

Defendants caused by making alleged misrepresentations that led to the prescribing of medically inappropriate and unnecessary opioid medicines which in turn led to illicit drug use. Pet. ¶ 29 ("As the State passed stricter legislation to combat opioid over-prescription, Oklahomans addicted to prescription opioids are turning to illicit opioids such as heroin as a cheaper and more accessible alternative."). This topic is specifically designed to lead to the disclosure of evidence regarding the State's regulatory, administrative, abatement, and enforcement efforts related to controlled substances other than opioids. Despite the State's arguments to the contrary, this information is relevant because of the State's allegation that the Teva Defendants and Generic Actavis Defendants contributed to the use and abuse of controlled substances other than prescription opioids.

Topic 27 seeks testimony related to the State's communications with third-party insurers, payors, or pharmacy benefit managers regarding prescription opioids, including Actiq and Fentora—the two unique branded medicines sold by Cephalon. The State seeks reimbursement of billions of dollars in allegedly false claims for prescription opioids it reimbursed. The State's communications with third-party insurers, payors, and pharmacy benefit managers regarding prescription opioids, including Actiq and Fentora, will demonstrate whether the State has previously taken positions on opioid reimbursement and coverage decisions inconsistent with its litigation position. This topic also will provide information as to what steps, if any, the State took to limit reimbursement for prescriptions of Actiq, Fentora, and other opioids medications over time and whether the State paid for such prescriptions with knowledge of their risks and approved indications. Topics 19 and 27 are both relevant, as that term is defined by *Stone*.

Topics 8, 19, 21, 22, 24, 25, and 27 are neither overly broad nor unduly burdensome. In light of the allegations against the Teva Defendants and Generic Actavis Defendants and the relief

sought from them, these deposition Topics are eminently reasonable. These Topics seek testimony regarding the State's communications with the Oklahoma public regarding opioid abuse, and the State's communications with Healthcare Providers, third-party insurers, payors and pharmacy benefit managers regarding opioids manufactured by the Teva Defendants and Generic Actavis Defendants. Those communications go to the heart of the false marketing theory against the Teva Defendants and Generic Actavis Defendants—what, if anything, did the State tell or learn from Oklahoma providers, insurers, or Oklahoma citizens generally regarding the Teva Defendants' and Generic Actavis Defendants' opioid prescriptions. If the State has never had any conversation with any Oklahoma provider or insurer about whether they were influenced by any marketing from the Teva Defendants and Generic Actavis Defendants, or even whether they received any supposedly false marketing from the Teva Defendants and Generic Actavis Defendants, the State must say so. Put simply, these Topics are undoubtedly relevant and tailored to the State's claims in this case against the Teva Defendants and Generic Actavis Defendants—which relate to alleged misrepresentations regarding all prescription opioids prescribed in Oklahoma for the past 25 years.

D. The Teva Defendants and Generic Actavis Defendants Do Not Seek Privileged Information.

The Special Master incorrectly ruled that Topics 1, 5, 17, 20, 24, 25, and 36 are privileged. This ruling, too, is flawed for several reasons. As an initial matter, these Topics are clearly not privileged in their entirety, and the Oklahoma Discovery Code expressly allows for privilege objections to be addressed during the course of a deposition. *See* Okla. Stat. Ann. tit. 12, § 3230(E)(1) ("Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection). Accordingly, the State's

recourse if it has privilege objections to particular questions is to object during the deposition, not quash the Notice entirely. The Special Master erred as a matter of law by doing so.

Moreover, the State's fundamental premise is flawed: none of these Topics is or has been deemed to be privileged. Topic 1 seeks information regarding the State's pre-suit investigation in support of its claims for billions of dollars in this case. Based upon the State's legal positions and expert disclosures in this case, which try to lump all Defendants together without differentiation, the Teva Defendants and Generic Actavis Defendants are entitled to know the facts behind whatever non-privileged investigation the State did before filing its Petition. For instance, whether non-lawyers for the State interviewed any doctors or patients about the Teva Defendants and Generic Actavis Defendants, their medicines, or their alleged marketing conduct (or merely cut and passed allegations from another company in another jurisdiction). Such facts are clearly not privileged.

Likewise, Topic 17, which seeks testimony regarding criminal and administrative investigations, was ruled by this Court to be both discoverable and relevant, as demonstrated by the fact that the State was ordered to produce to the defendants all discovery and publicly available documents that it has produced in criminal or administrative proceedings. *See* December 20, 2018 Journal Entry on Discovery of Criminal, Civil, and Administrative Proceedings, attached hereto as Ex. F. It is inconsistent and incorrect to now say that one mode of discovery (document production) is permissible but another (depositions) is not on the same exact subject. The Teva Defendants and Generic Actavis Defendants have the right to depose the State on materials that it has been ordered to produce. Once again, privilege can be dealt with on a question by question basis as in any other deposition.

Topics 5 and 20 seek testimony regarding the nature and circumstances regarding any Oklahoma patient harmed by a product manufactured by a Teva Defendant or Generic Actavis Defendant, and the State's knowledge of individuals who overdosed on, or became addicted to, an opioid product manufactured by these Defendants. Neither of these Topics requires the disclosure of specific patient identities. These Topics seek information about the State's knowledge of alleged harm to Oklahoma residents as a result of the Teva Defendants' and Generic Actavis Defendants' products. This is not privileged information. And given that the State is seeking billions of dollars in damages from the Teva Defendants and Generic Actavis Defendants to address an array of opioid-related problems purportedly caused by their marketing conduct, such as addiction treatment, overdose deaths, and incarceration of opioid users, it is inarguably relevant. *See* State's Expert Disclosures, Ex. S-1, Report of Dr. Christopher J. Ruhm (attached hereto as Ex. G) at 3 ("As the Defendants in this case have recognized, this crisis is expansive. The crisis affects a great number of Oklahomans. The crisis will be expensive to fix.")

Topic 36 expressly seeks the State's ***factual*** basis and knowledge regarding the 245 prescriptions of Actiq and Fentora, which the State identified in its own Petition, were medically unnecessary. If the State has no factual basis to support those assertions, it should say so under oath.[6] Further, the basic information sought by this notice is nowhere to be found in the State's

[6] As suggested to the parties by Special Master Hetherington, the Teva Defendants also propounded requests for admission aimed at obtaining similar information but the State has refused to provide an answer. *See* State's Responses to Cephalon's First Set of RFAs (Ex. H) at 9 (RFA No. 5). The State refused to respond, and Teva will pursue responses. In the event that the State responds to the Teva Defendants' and Generic Actavis Defendants' RFAs that it is not able to identify a single medically unnecessary prescription written for Actiq or Fentora in the State of Oklahoma, a deposition on this topic will be unnecessary. The State is evading issues critical to the Teva Defendants' and Generic Actavis Defendants' ability to prepare its defenses and avoiding its discovery obligations under the Oklahoma Discovery Code.

"statistical sample" from its expert disclosures, and the Teva Defendants and Generic Actavis Defendants are entitled to it.

E. The Topics Do Not Seek Expert Testimony from the State's Corporate Witnesses.

Special Master Hetherington improperly sustained the State's objections to Topics 6, 7, 9, 21, 26, 36, 37, and 38 on the basis that they are more appropriate for an expert witness. Order at 4. The Notice, however, seeks only factual testimony as to the State's damages claim as it relates to the Teva Defendants' and Generic Actavis Defendants' products, its decision to reimburse any claims made to Soonercare or any other state-funded medical reimbursement plan for the Teva Defendants' and Generic Actavis Defendants' products, and the identification of any false or fraudulent claims for the Teva Defendants' and Generic Actavis Defendants' products made to these plans.[7] Although the State's experts may testify and provide opinions on these Topics, as the disclosures make clear, these experts necessarily will rely on *facts* provided to them by the State in forming their opinions. It is irrelevant that the State's experts may be asked about the facts, data and information that the State provided to them, because the experts are not fact witnesses and have no independent duty to verify the sources, bases, and genesis of this information.[8]

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[7] In addition to Soonercare, Oklahoma has a self-funded insurance plan called "HealthChoice." The State has represented that references under the HealthChoice plan are included in the database for reimbursed prescriptions forming the bases for the State's claims.

[8] For example, if the Teva Defendants and Generic Actavis Defendants seek information about the source of the data which Dr. Gibson relied upon in his disclosures and question Dr. Gibson accordingly, Dr. Gibson will not be able to testify on the collection efforts, etc. Further, even if Dr. Gibson did testify as to his knowledge on the subject, it would not carry the same weight as if a corporate designee testified. And furthermore, the State would likely object to such a line of questioning as beyond the scope of Dr. Gibson's deposition. Thus, if relegated to asking questions about the State's experts about these Topics, the Teva Defendants and Generic Actavis Defendants will be deprived of meaningful responses or any responses altogether.

For example, the State repeatedly alleges that the Teva Defendants' and Generic Actavis Defendants' medications were "unnecessary." *See e.g.* Petition ¶ 6. The Teva Defendants and Generic Actavis Defendants are entitled to understand the metric the State used in making these reimbursement decisions and how these decisions were impacted by any alleged misrepresentation made by the Teva Defendants and Generic Actavis Defendants. The Oklahoma Administrative Code sets forth the standards, policies, practices and procedures by which the State determines whether a claim is reimbursable. *See* Okla. Admin. Code 317:30-3-1(f) (defining medical necessity under Oklahoma's Medicaid Program). The Notice seeks testimony related to the factual basis for this coverage decision, any alleged harm that resulted from that decision, and the State's basis for determining whether any claims made for Teva's products were false or fraudulent. This is *fact* testimony. If the State has no factual basis for its assertions against the Teva Defendants and Generic Actavis Defendants, it must say so. Accordingly, the State's objections that these Topics seek expert testimony is incorrect, and the State's objections should be overruled.

F. <u>The Topics Are Neither Duplicative Nor Cumulative.</u>

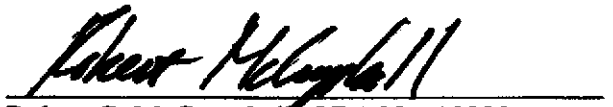
This Court may only quash a duly noticed deposition if it finds that a topic is *unreasonably* duplicative or cumulative. Okla. Stat. Ann. tit. 12, § 3226(B)(2)(c). Given the breadth and scope of this case, and the damages and relief sought by the State, the Teva Defendants' and Generic Actavis Defendants' deposition Notice is more than reasonable. The State's witnesses have not previously testified as to these Topics with respect to the Teva Defendants and Generic Actavis Defendants, and the information is not available from any other source or witness. Indeed, the Teva Defendants and Generic Actavis Defendants have repeatedly made clear that they will not seek duplicative testimony (assuming the State choses to designate previously-deposed witnesses), and will focus on the claims and allegations against them, their products, and their defenses.

Even if certain Topics were deemed to be duplicative of previously noticed topics by different and separate parties in this action, they are not unreasonably so, given the amount in controversy, the proportional needs of the parties to mount their own defenses, and the stakes involved. Further, the Topics are not duplicative because the Teva Defendants and Generic Actavis Defendants have not noticed and previously deposed any representative of the State on any topic. As such, the Teva Defendants and Generic Actavis Defendants object to Special Master Hetherington's determination that Topics 10, 15, 18, 23, 25, 28, 29, 30, 34, 35, 36, and 37 are duplicative or cumulative.

Lastly, to the extent the Court agrees with the Special Master's finding that certain Topics are duplicative or cumulative, the proper course is not to quash the deposition notice. Instead, it is to permit the Teva Defendants and Generic Actavis Defendants to narrow them further to make abundantly clear that information is sought only as it relates to the claims alleged against them and their defenses thereto. The Teva Defendants and Generic Actavis Defendants will not seek to elicit duplicative testimony.

III. CONCLUSION

The State cannot prevent the Teva Defendants and Generic Actavis Defendants from obtaining their own deposition testimony in this case, particularly as it relates to the Teva Defendants' and Generic Actavis Defendants' products, alleged conduct, and defenses. The Oklahoma Discovery Code, principles of due process and fundamental fairness, the nature of the allegations, the enormous damages sought, and the rapidly approaching close of discovery all require that the State's objections to the Teva Defendants' and Generic Actavis Defendants' Notice be overruled and that the Teva Defendants and Generic Actavis Defendants be permitted to proceed with the depositions of the State's Rule 3230(C)(5) witnesses immediately.



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Robert G. McCampbell

A

EXHIBIT A

FILED UNDER SEAL
PURSUANT TO
AMENDED PROTECTIVE ORDER
DATED 04/16/18

B

EXHIBIT B

FILED UNDER SEAL
PURSUANT TO
AMENDED PROTECTIVE ORDER
DATED 04/16/18

C

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P.; 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.; ALLERGAN, 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.

NOTICE TO TAKE VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE PURSUANT TO SECTION 3230(C)(5) OF THE DISCOVERY CODE

To: **Corporate Representative**
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Please take notice that, pursuant to OKLA. STAT. TIT. 12 § 3230(C), Purdue Pharma L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, "Purdue") will by agreement take the deposition upon oral examination of one or more corporate representative(s) of Plaintiff the State of Oklahoma (the "State") on the matters described on **Exhibit A** on **September 27, 2018, starting at 9:00 AM,** at the offices of Whitten Burrage, 512 North Broadway Avenue, Suite 300, Oklahoma City, OK 73102. The parties have agreed that where there is a reasonable and good faith basis to request additional time at the close of one day of deposition testimony, the deposition can continue on another date that is agreeable to the parties.

This deposition is to be used as evidence in the trial of the above action, and the deposition will be taken before an officer authorized by law to administer oaths. It will be recorded by stenographic means and will be videotaped, and it will continue from day to day until completed.

Pursuant to OKLA. STAT. TIT. 12, § 3230(C)(5), the State is hereby notified of its obligation to designate one or more officers, directors, managing agents, or other persons who consent to testify on the State's behalf about all matters embraced in the "Description of Matters on Which Examination is Requested" that is attached as **Exhibit A** pursuant to the parties' agreements during the meet-and-confer process.

PLEASE TAKE FURTHER NOTICE that each such officer, director, managing agent, or other person produced by the State to testify under OKLA. STAT. TIT. 12, § 3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the State, along with speaking to all potential witnesses known or reasonably available to the State, in order to provide informed and binding answers at the deposition.

DATED: September 24, 2018.

Respectfully submitted,

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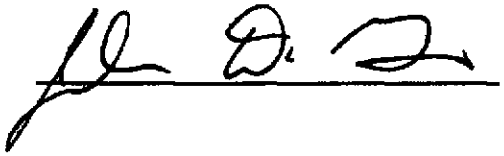
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2018, I caused a true and correct copy of the following:

> **NOTICE TO TAKE VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE PURSUANT TO SECTION 3230(C)(5) OF THE DISCOVERY CODE**

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



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Attorneys for Defendants Cephalon, Inc., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a/ Watson Pharma, Inc.

EXHIBIT A

DESCRIPTION OF MATTERS ON WHICH THE STATE WILL DESIGNATE ITS WITNESS

1. Abatement: All actions You[1] have taken, as well as all actions that You considered but did not take, during the relevant time period to address, counter, abate, and/or reverse what You allege in Your Complaint to be the opioid epidemic, including the staffing and resources that You spent doing so, any steps You have taken to educate physicians and other healthcare providers and facilities about opioid medications, any treatment programs for opioid addiction, and any regulatory and law enforcement steps to detect and prevent the misuse of opioid medications (both legal and illicit opioids, including heroin and fentanyl).

2. Topic 6: Communications between You and members of Your community regarding opioid abuse.

3. Topic 11: The consideration, development, and formation of the Oklahoma Commission on Opioid Abuse and all comments, notes, submissions, testimony, draft papers, actions taken, and actions considered but not taken—including any proposed legislation and drafts of proposed legislation—during the Relevant Time Period, by the Oklahoma Commission on Opioid Abuse to address the abuse of prescription or illegal opioids.

    a. The State designates this witness on this topic at a "high level" and will designate one or more witnesses on the remainder of the topic.

4. Topic 12: Federal or private grants applied for and/or received on a state or local level by Oklahoma entities during the Relevant Time Period, including but not limited to law enforcement and rehabilitation facilities, related in any way to securing funds to address the abuse of prescription or illegal opioids.

5. Topic 15: Steps You have taken to identify each individual alleged to have developed an addiction to or to have abused Prescription Opioids during the Relevant Time Period.

6. September 19 topic: The standards, practices, and procedures during the Relevant Time Period for the use of opioid medications and opioid alternative medications for persons in the care and custody of State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities, university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.

    a. The State designates this witness on this topic with respect to psychiatric facilities and will designate one or more witnesses on the remainder of the topic.

7. September 20 topic: The standards, practices, and procedures during the Relevant Time Period of the diagnosis and treatment of pain that have been taught and applied in State healthcare facilities, including hospitals, teaching hospitals, psychiatric facilities,

[1] Unless otherwise defined herein, capitalized terms shall have the meanings assigned to them in Purdue's January 12, 2018 discovery requests to the State.

university hospitals, medical schools, nursing schools, pharmacy schools, clinics, and emergency rooms.

a. The State designates this witness on this topic with respect to psychiatric facilities and will designate one or more witnesses on the remainder of the topic.

D

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

VS. Case Number
CJ-2017-816

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

VIDEO DEPOSITION OF JEFFREY EDWARD STONEKING
TAKEN ON BEHALF OF THE DEFENDANTS
ON MAY 16, 2018, BEGINNING AT 10:37 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Reported by:
Cheryl D. Rylant, CSR, RPR
Job No. 2913004
Pages 1 - 291

EXHIBIT
D

process easier. There -- basic example, but there 05:22
are times where I -- I -- I may disagree with the 05:22
direction they want to move, but ultimately it's not 05:22
my call. I may make an argument and offer advice or 05:23
a recommendation, but it's counsel's choice to take 05:23
that advice or recommendation. 05:23
Q. (By Mr. Brody) And have there been instances 05:23
where you've disagreed with the direction of counsel 05:23
in this case? 05:23
MR. DUCK: Objection to the form. 05:23
THE WITNESS: No. We haven't had a -- had 05:23
a disagreement on to the direction that we're moving. 05:23
Q. (By Mr. Brody) You were asked whether you 05:23
thought it would be right for the taxpayers of 05:23
Oklahoma to have to bear the cost of DSi's efforts to 05:23
respond to Defendants' discovery requests by taking 05:23
action to identify and collect potentially relevant 05:23
materials before document requests were served. 05:23
Do you recall that question? 05:23
A. I do. 05:23
Q. Do you know whether the taxpayers of Oklahoma 05:23
are ultimately going to bear the cost of DSi's 05:23
services in this case? 05:23
MR. DUCK: Objection to form. 05:23
THE WITNESS: They may not be physically 05:23

paying our invoices, so to speak, in this particular 05:23
matter, but cost comes in other forms outside of 05:23
dollars. Time. I've always been told by our CFOs, 05:23
time and money, and you can't have both. And I know 05:23
that we're working with a high number of individuals 05:24
who operate in state roles and taxpayer dollars who
are being pulled away from other priorities and 05:24
initiatives to help us deal with the broad discovery 05:24
requests that we're facing right now. So, you know, 05:24
are they going to physically pay DSi's bills? I 05:24
don't believe so. But is there a cost that the 05:24
taxpayers are incurring by me having to be involved 05:24
and communicating with them among dozens of other 05:24
individuals from outside counsel and DSi? 05:24
Absolutely. 05:24
Q. (By Mr. Brody) Do you believe that it's 05:24
right for the taxpayers of -- well, do you believe 05:24
it's right for the State of Oklahoma to have to pay 05:24
up to 25 percent of any recovery in this case to 05:24
outside contingency counsel? 05:24
MR. DUCK: Objection to form. 05:24
THE WITNESS: Again, I don't know enough 05:24
from the landscape of this to have an opinion 05:24
at least as to the damages or whatever it may be or 05:24
how things work out. All I know is, through my 05:24

experiences, working with groups like the state of 05:24
Tennessee -- you know, I'm a taxpayer in Tennessee, 05:24
and it's frustrating when I see Open Records requests 05:24
or unnecessary discovery requests that are so broad 05:24
and so out of left field that we have to even take 05:25
the time to respond to it. 05:25
So my comment about burdening them with time 05:25
is just come -- it's just coming from my personal 05:25
experience in dealing with these same issues in the 05:25
state of Tennessee. 05:25
Q. (By Mr. Brody) So I think you answered the 05:25
question, that you do not have an opinion as to 05:25
whether the State of Oklahoma should have to pay up 05:25
to 25 percent of any recovery in this case to outside 05:25
contingency counsel? 05:25
MR. DUCK: No. Objection to form. 05:25
THE WITNESS: I don't have an opinion on 05:25
that. 05:25
MR. DUCK: Outside the scope. To the 05:25
extent you're really asking him this question, Steve, 05:25
which is -- 05:25
MR. BRODY: That's my -- 05:25
MR. DUCK: -- frankly --
MR. BRODY: -- last question. I have no -- 05:25
MR. DUCK: -- unprofessional. 05:25

MR. BRODY: -- further questions.
MR. DUCK: You're asking him as a -- a 05:25
person at DSi. You understand that, right, Steve? 05:25
MR. BRODY: I have no further questions. 05:25
MR. DUCK: I'll take that as a yes. 05:25
All right. We're done.
MR. LAFATA: Purdue reserves its --
VIDEO TECHNICIAN: We are off the record.
MR. DUCK: Purdue has -- has not -- has not
filed a notice, a cross notice for this deposition,
so you guys don't have a right to keep this
deposition open. We didn't receive them, you guys
were welcome to attend. I know you all have got some
kind of joint defense agreement, but noted. That's
our response to that.
(Record concluded, 5:26 p.m.)

JURAT PAGE

STATE OF OKLAHOMA VS. PURDUE PHARMA, ET AL.

I, Jeffrey Edward Stoneking, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony so given at said time and place, except for the corrections noted.

_____

Jeffrey Edward Stoneking

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, by said witness _____, on this _____ day of _____, 2018.

_____

Notary Public

My Commission Expires: _____

CERTIFICATE

I, Cheryl D. Rylant, Certified Shorthand Reporter, certify that the above-named witness was sworn, that the deposition was taken in shorthand and thereafter transcribed; that it is true and correct; and that it was taken on May 16, 2018, in Oklahoma City, county of Oklahoma, state of Oklahoma, pursuant to Notice and the Oklahoma Rules of Civil Procedure and under the stipulations set out, and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 18th day of May, 2018.

_____

CHERYL D. RYLANT, CSR, RPR

Certificate No. 1448

E

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case Number
CJ-2017-816

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., f/k/a
JANSSEN PHARMACEUTICALS, INC.;
JANSSEN PHARMACEUTICA, INC.,
f/k/a JANSSEN PHARMACEUTICALS, INC.;
ALLERGAN, PLC, f/k/a WATSON
PHARMACEUTICALS, INC.;
WATSON LABORATORIES, INC.;
ACTAVIS, LLC; and
ACTAVIS PHARMA, INC.,
f/k/a WATSON PHARMA, INC.,

Defendants.
_____/

VIDEOTEPED DEPOSITION OF NATHAN DANIEL BROWN
TAKEN ON BEHALF OF THE DEFENDANTS
ON DECEMBER 18, 2018, BEGINNING AT 9:08 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Reported by: Cheryl D. Rylant, CSR, RPR
Video Technician: Greg Brown

EXHIBIT
E

MR. CUTLER: Sounds good.

VIDEO TECHNICIAN: We're off the record at 9:52 a.m.

(Break was taken.)

VIDEO TECHNICIAN: We are back on the record at 10:03 a.m.

MR. VOLNEY: So, Mr. Brown, I appreciate your time. I'm going to pass you as a witness to Harvey here.

MR. CUTLER: Harvey, before you go, did you all cross-notice this deposition?

MR. BARTLE: We did not. But I'm happy to call him back if you'd like me to.

MR. CUTLER: No. We'll object to the questioning, but we're not going to -- I'm not going to not let you do it.

MR. BARTLE: Okay.

CROSS EXAMINATION

By Mr. Bartle:

Q. Mr. Brown, I just want to ask you a couple of questions about some of the things you've said today.

First, one of the things you mentioned earlier was when -- when an inmate was discharged, he or she could be discharged to supervision under the DOC --

A. Uh-huh.

programming include any substance abuse treatment?

A. No.

Q. Does substance -- does the DOC's substance abuse treatment programming include cognitive programming?

A. It can, yes, but it's not necessarily required for all substance abuse treatment.

MR. BARTLE: I don't have any further questions.

CROSS EXAMINATION

By Mr. Bowman:

Q. Mr. Brown, my name is Andy Bowman. I represent Janssen.

MR. CUTLER: And, Andy, before you get into it, you all didn't cross-notice this deposition either?

MR. BOWMAN: That's correct.

MR. CUTLER: Then we'll just object to the testimony and the questioning.

MR. BOWMAN: Okay.

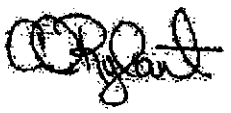
Q. (By Mr. Bowman) Mr. Brown, I just have a couple of quick follow-up questions for you. And you may have done this towards the beginning, but I didn't catch all of them.

Can you give me, as best you can, a list of the

CERTIFICATE

I, Cheryl D. Rylant, Certified Shorthand Reporter, certify that the above-named witness was sworn, that the deposition was taken in shorthand and thereafter transcribed; that it is true and correct; and that it was taken on December 18, 2018, in Oklahoma City, county of Oklahoma, state of Oklahoma, pursuant to Notice and under the stipulations set out, and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 20th day of December, 2018.



CHERYL D. RYLANT, CSR, RPR

Certificate No. 1448

F

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DEC 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

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

v.

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

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

JOURNAL ENTRY ON DISCOVERY OF CRIMINAL, CIVIL AND ADMINISTRATIVE PROCEEDINGS

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

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

EXHIBIT
F

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

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

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

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

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

4. The plaintiff shall produce the documents required in items 1 and 2 to the defendants by January 21, 2019.

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

S/Thad Balkman

THAD BALKMAN, DISTRICT JUDGE