

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

In the office of the
 Court Clerk **MARILYN WILLIAMS**

| | | |
|--------------------------------|---|----------------------|
| STATE OF OKLAHOMA ex rel. MIKE |) | |
| HUNTER, ATTORNEY GENERAL OF |) | |
| OKLAHOMA, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Case No. CJ-2017-816 |
| |) | |
| PURDUE PHARMA, L.P.; et al. |) | |
| |) | |
| Defendants. |) | |

PURDUE’S OPPOSITION TO COMANCHE COUNTY’S MOTION TO INTERVENE

Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (collectively “Purdue”) respectfully submit this Opposition to Comanche County’s Motion to Intervene (“Motion”).

I. INTRODUCTION

Comanche County asserts an interest in this action on two bases: (i) the Consent Judgment entered in this action on March 26, 2019 (the “Consent Judgment”) purports to affect Comanche County’s right to pursue an independent action against Purdue; and (ii) the State of Oklahoma (the “State”) is claiming damages that overlap with those of Comanche County. As set forth in Purdue’s opposition to a prior motion to intervene, these hypothetical interests do not justify intervention because Comanche County does not have a direct, legal interest in this action, as it only alleges a hypothetical concern that other courts *could* potentially interpret the Consent Judgment to bar their claims against Purdue, and seeks an impermissible advisory opinion on a non-justiciable issue.

In fact, the Court has already resolved this issue in its prior ruling rejecting intervention by similarly situated political subdivisions. While Purdue agrees with the Court’s ultimate

holding—*i.e.*, that political subdivisions like Comanche County have no grounds to intervene—Purdue respectfully disagrees with how the Court reached that decision. In particular, though the underlying merits of the intervenors’ request to interpret the Consent Judgment was not before it, the Court *sua sponte* reached the merits anyway in holding that an “Oklahoma political subdivision...is not a party to, bound by, or otherwise subject to the terms of the...Consent Judgment unless it elects, for itself, to opt-in to the...Consent Judgment[.]” Purdue never had an opportunity to brief or argue that issue and will accordingly seek appellate relief. Nevertheless, the Court’s prior ruling resolves Comanche County’s Motion. Comanche County has no interest in this action, and the Court should not permit Comanche County to intervene.

II. FACTUAL BACKGROUND

On June 30, 2017, the State filed the above-captioned action against certain pharmaceutical manufacturers, including Purdue. After more than a year of arm’s-length negotiations, Purdue and the State reached a settlement. On March 26, 2019, this Court approved the settlement by entering the Consent Judgment as to the Purdue Defendants. A true and correct copy of the Consent Judgment is attached hereto as **Exhibit A**.

The Consent Judgment includes release language, stating, in pertinent part, that “Releasors release Releasees from the Released Claims.” (Ex. A at 12, § 5.1.) The Consent Judgment defines “Releasees” to include, amongst others, Purdue. (*Id.* at 5-6, § 1.1(r).) The Consent Judgment defines “Releasors” as “the State and the Attorney General and/or *any political subdivision of the State* on whose behalf the Attorney General possesses, or obtains, the authority to bind.” (*Id.* at 6, § 1.1(t) (emphasis added).) Further, as a result of entry of the Consent Judgment, Purdue was dismissed from this action with prejudice. (*Id.* at 15, § 9.1

(providing that “[a]ll claims asserted by the State against Purdue in the Oklahoma Action are DISMISSED WITH PREJUDICE as to Purdue[.]”).)

On April 1, 2019, certain Oklahoma cities (the “Cities”) filed a Joint Motion to Intervene (the “Cities’ Motion”) in this action. The Cities allegedly sought to intervene in an attempt to “seek[] clarification” on the release language from the Consent Judgment. The State filed an opposition to the Cities’ Motion on April 17, 2019.

On April 18, 2019, Purdue filed its Opposition to the Cities’ Motion. A true and correct copy of this Opposition is attached hereto as **Exhibit B**. In its Opposition, Purdue argued that the Cities should not be permitted to intervene in this action because, *inter alia*, (i) the Cities do not have a direct, legal interest in this action, as they only alleged hypothetical concerns that other courts *could* potentially interpret the Consent Judgment to bar their claims against Purdue (Ex. B at 5); (ii) if the Court was to address the Cities’ hypothetical interests, such a ruling would constitute a prohibited advisory opinion (*id.* at 6-9); (iii) the Cities lack standing for declaratory relief because their alleged interests were not direct, immediate, and substantial (*id.* at 9); and (iv) the Cities’ request to intervene to protect hypothetical interests constitutes a non-justiciable political question (*id.* at 9-10).

No one—not the Cities, not Purdue, and not the State—requested that the Court construe the terms of the Consent Judgment before resolving the issue of whether the Cities should be permitted to intervene. The only matter that was before the Court on the Cities’ Motion was whether the Cities asserted sufficient, tangible interests to justify a procedurally proper intervention as of right.

Despite the narrow relief requested in the Cities’ Motion, the Court’s order effectively granted the Cities the underlying relief that the Cities *would have* requested *if* the Court had

allowed them to intervene. Specifically, on April 25, 2019, this Court entered an order that “denied as moot” the Cities’ Motion. (Order on the Cities’ Motion (attached hereto as **Exhibit C**) at 2.) The Court based this conclusion on the finding that any “Oklahoma political subdivision”—including, but not necessarily limited to, the Cities—“is not a party to, bound by, or otherwise subject to the terms of the...Consent Judgment unless it elects, for itself, to opt-in to the...Consent Judgment[.]” (*Id.*) The Court entered this order without giving notice to the parties that it intended to take up the Cities’ underlying claims and without permitting briefing on the issue or conducting a hearing on the resolution of these claims.

Comanche County filed the present Motion on April 15, 2019. In part, Comanche County seeks the same relief that the Cities sought in their motion, *i.e.*, it seeks to clarify or modify the Consent Judgment as it pertains to Comanche County. (Mot. at 4.) Comanche County also seeks to intervene for the additional reason that the State is attempting to collect damages that Comanche County allegedly incurred. (*Id.* at 2-3.)

III. ARGUMENT

Comanche County seeks to intervene (i) to clarify or modify the Consent Judgment; and (ii) because the State purports to collect damages that were actually incurred by Comanche County. Neither argument provides a sufficient basis for intervention.

A. Comanche County Should Not Be Permitted To Intervene To Clarify or Modify the Consent Judgment.

Comanche County’s argument that it should be permitted to intervene to clarify or modify the Consent Judgment is substantially identical to the argument made by the Cities in their motion to intervene. Purdue opposes the Motion for the same reasons that it opposed the Cities’ Motion, namely that (i) Comanche County does not have a direct, legal interest in this action, as it only alleges a hypothetical concern that other courts *could* potentially interpret the

Consent Judgment to bar its claims against Purdue (Ex. B at 5); (ii) if the Court was to address Comanche County's hypothetical interests, such a ruling would constitute a prohibited advisory opinion (*id.* at 6-9); (iii) Comanche County lacks standing for declaratory relief because its alleged interests are not direct, immediate, and substantial (*id.* at 9); and (iv) Comanche County's request to intervene to protect hypothetical interests constitutes a non-justiciable political question (*id.* at 9-10). Purdue incorporates its Opposition to the Cities' Motion as if it were fully set forth herein.

The Court has already resolved this issue in its order on the Cities' Motion. To be clear, Purdue does not agree with how the Court reached that ruling because the Court decided issues that were not before it—*i.e.*, the substance of the underlying dispute on which the Cities sought to intervene—without giving Purdue notice or an opportunity to be heard on those issues. Respectfully, this was a *per se* violation of Purdue's procedural due process rights. *See Guy H. James Constr. Co. v. State ex rel. Okla. Dep't of Transp.*, 655 P.2d 553, 555 (Okla. 1982).

Further, Purdue believes that the language of the Consent Judgment is clear and unambiguous. The State released the claims of "***any political subdivision of the State*** on whose behalf the Attorney General possesses, or obtains, the authority to bind." (Ex. A at 6, § 1.1(t) (emphasis added).) That includes the Cities and Comanche County. If Purdue had been given the chance to address the merits of this issue, it could have established that the Cities' claims had been released pursuant to this plain language. *See Devine v. Ladd Petroleum Corp.*, 743 F.2d 745, 748 (10th Cir. 1984). This Court's order, however, is final as to Purdue. Thus, Purdue intends to pursue its appellate remedies.

Nevertheless, for present purposes, this Court has already resolved the issues raised in Comanche County's Motion. The Court has determined that any "Oklahoma political

subdivision”—apparently including Comanche County—“is not a party to, bound by, or otherwise subject to the terms of the...Consent Judgment unless it elects, for itself, to opt-in to the...Consent Judgment[.]” (Ex. C at 2.) As it stands, this ruling resolves Comanche County’s standing to intervene and establishes that it has no justiciable interest in this case.

B. Comanche County Should Not Be Permitted To Intervene For Purposes of Seeking Allegedly Overlapping Damages.

Recognizing that its principal ground for intervention has already been rejected, Comanche County proposes as a fallback argument that it must intervene in the upcoming trial because the State is seeking alleged damages that overlap with those that could be claimed by Comanche County. This argument is frivolous as to Purdue. *First*, and most fundamentally, Purdue has been *dismissed* from this action *with prejudice*. (Ex. A at 15, § 9.1.) There are simply no damages to be awarded at trial against Purdue, overlapping or otherwise.

Second, Comanche County’s overlapping damages argument suffers from the same defects that doom its main argument, because Comanche County’s claim to potential damages is hypothetical and again seeks an impermissible advisory opinion on a non-justiciable issue.

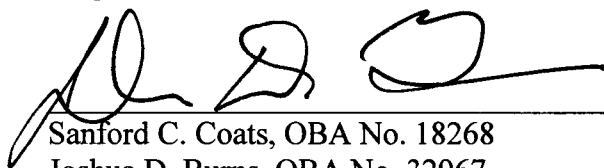
Third, the Court’s order on the Cities’ Motion has already resolved this issue. As it stands, Comanche County may pursue its own claims in a separate action against opioid manufacturers. While Purdue maintains that the Comanche County’s claims have been settled and released in their entireties, there can be no serious debate that any double recovery against Purdue is prohibited. Comanche County does not need to be a party to this action to protect its remote and hypothetical interest in any theoretical recovery seeking separate damages.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court deny Comanche County’s Motion to Intervene.

Dated: May 16, 2019

Respectfully submitted,



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CERTIFICATE OF MAILING

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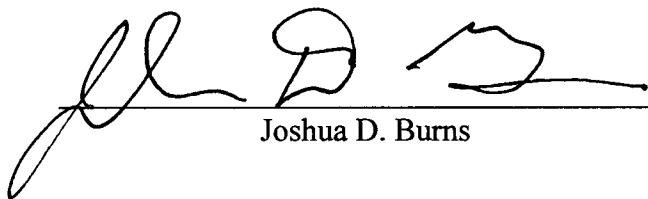
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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case No. CJ-2017-816
Judge Thad Balkman

STATE OF OKLAHOMA
CLEVELAND COUNTY } S.S.
FILED
MAR 26 2019

In the office of the
Court Clerk MARILYN WILLIAMS

CONSENT JUDGMENT AS TO THE PURDUE DEFENDANTS

COMES NOW, the Plaintiff, the State of Oklahoma *ex rel.* Attorney General Mike Hunter, (the "State of Oklahoma" or "State") having brought the above-captioned action against Defendants Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company Inc. (collectively, "Purdue"), among others, alleging that Purdue took affirmative steps to overstate the efficacy of their opioid pain medications for a wide range of medical conditions, while at the same

time falsely downplaying the risk of addiction to those medications. The State and Purdue (collectively, the “Parties”), by their counsel, have agreed to the entry of this Consent Judgment by the Court without trial or adjudication of any issue of fact or law with respect to Purdue and without admission of any wrongdoing or violations of applicable law on the part of Purdue, as alleged by the State. The Parties agree to the entry of this Consent Judgment and to be bound by its terms.

WHEREAS, the State filed its Original Petition in this Action on June 30, 2017, (i) alleging that Purdue, among others, violated Oklahoma law by deceptively marketing its opioid pain medications—as well as opioid products generally—so as to overstate their efficacy and falsely downplay the associated risk of addiction, which resulted in an opioid crisis and public nuisance in the State of Oklahoma; (ii) asserting claims for damages, equitable abatement, civil penalties and other equitable relief; and (iii) claiming violations of the Oklahoma Medicaid False Claims Act, 63 Okla. Stat. §§5053.1-7; the Oklahoma Medicaid Program Integrity Act, 56 Okla. Stat. §§1001-1008; the Oklahoma Consumer Protection Act, 15 Okla. Stat. §§751-65; Public Nuisance, 50 Okla. Stat. §2; Fraud (Actual and Constructive) and Deceit; and Unjust Enrichment (the “Oklahoma Action”);

WHEREAS, Purdue: (i) denies each and all of the claims and allegations of wrongdoing made by the State in the Oklahoma Action and maintains that it has meritorious defenses; (ii) denies all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Oklahoma Action, and contends that the factual allegations made in the Oklahoma Action relating to it are false and materially inaccurate; (iii) denies that the State was harmed by any conduct of Purdue alleged in the

Oklahoma Action or otherwise, including by Releasees; and (iv) denies liability, expressly denies any wrongdoing, denies it violated any federal or state statute or common law;

WHEREAS, the Parties have investigated the facts, analyzed the relevant legal issues regarding the claims and defenses asserted in the Oklahoma Action, have engaged in substantial and material fact discovery, served expert disclosures and are set for trial on May 28, 2019;

WHEREAS, the Parties have each considered the costs and delays associated with the continued prosecution and defense of the Oklahoma Action, and have reached an agreement to resolve the Oklahoma Action;

WHEREAS, the Parties believe the Settlement set forth herein (i) avoids the uncertainties of litigation and assures that the benefits reflected herein are obtained and (ii) is fair, reasonable and adequate and in the best interest of the people of the State of Oklahoma;

WHEREAS, the State and Purdue agree that neither this Consent Judgment, the related Settlement Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be a concession as to any claim, an admission, evidence of any violation of any statute or law, evidence of any liability or wrongdoing by Purdue, or evidence of the truth of any of the claims or allegations made by the Parties in the Oklahoma Action; and

WHEREAS, arm's-length settlement negotiations have taken place over the course of several months between Purdue and the State under the auspices and supervision of the court-appointed Settlement Master, Judge Layn Phillips, who was appointed by Order dated March 29, 2018, pursuant to 12 Okla. Stat., Ch. 2, Appx., Rule 5 and the Court's inherent authority.

NOW THEREFORE, upon the consent of the Parties hereto, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. DEFINITIONS

1.1 As used in this Consent Judgment the following capitalized terms have the meanings specified below.

- (a) "Agreement" or "Settlement Agreement" means the Settlement Agreement and this Consent Judgment, together with any exhibits attached hereto, which are incorporated herein by reference.
- (b) "Bankruptcy Code" means 11 U.S.C. §§ 101, *et seq.*
- (c) "Covered Conduct" means any and all acts, conduct, omissions, events or transactions, whether known or unknown and whether discovered or undiscovered, including, but not limited to, acts, conduct, omissions, events or transactions alleged in the Oklahoma Action, from the beginning of time up to and including the Effective Date arising from or related in any way to the marketing and sale of Purdue Opioids or any other Opioid in or affecting the State of Oklahoma.
- (d) "Court" means the District Court of Cleveland County, Oklahoma.
- (e) "Donation Payments" means the payments set forth in Section 4.1(d) of this Consent Judgment.
- (f) "Effective Date" means the date upon which the Court approves the Settlement Agreement and enters the Consent Judgment.
- (g) "Effective Date of the Release" means the date upon which all of the following have occurred or been waived by the Attorney General: (i) the Court has approved the Settlement Agreement and entered the Consent Judgment; (ii) the Purdue Payments Letter(s) of Credit (defined in Section 4.1(b)) and the Donation Payments Letter(s) of Credit (defined in Section 4.1(e)) have been delivered to the Attorney General, or, to the extent either of the foregoing is waived, the Purdue Payments have been paid or the Donation Payments have been placed into escrow, as applicable, in each case, in accordance with the terms of the Settlement Agreement; and (iii) the executed PRA Guaranty (defined in Section (B)(4)) has been delivered to the Attorney General in accordance with the terms of this Agreement.
- (h) "Execution Date" means the date on which the Settlement Agreement is executed by the last party to do so.

- (i) "Good Faith Settlement Bar Order" or "Bar Order" shall have the meaning assigned to it in Section 6.1 of this Consent Judgment.
- (j) "Health Care Provider" shall mean any physician, osteopath, surgeon, nurse practitioner, physician assistant, physiatrist, psychiatrist, dentist, pharmacist, podiatrist, nurse, nurse's assistant or other person engaged in the business of providing health care services and/or prescribing an Opioid in Oklahoma and any medical facility, practice, hospital, clinic or pharmacy in Oklahoma.
- (k) "Non-Settling Defendants" means Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, 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.
- (k) "Opioid" shall mean those chemical compounds naturally found in the opium poppy plant, including synthetic analogues that interact with opioid receptors on nerve cells in the body and brain, and reduce the intensity of pain signals and feelings of pain. Opioid shall not mean buprenorphine/naloxone and other substances when used to treat opioid or other substance use disorders, abuse, addiction or overdose;
- (l) "Outside Counsel" shall mean Whitten Burrage, Nix Patterson, LLP and Glenn Coffee & Associates, PLLC.
- (m) "Parties" and "Settling Parties" means Purdue and the State.
- (n) "Promote," "Promoting," and "Promotion" shall mean the publication or dissemination of branded or Unbranded information by Purdue to a Third Party that is intended to directly or indirectly increase the use or sales of a Purdue Opioid or Opioids.
- (o) "Purdue" means Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc.
- (p) "Purdue Opioid(s)" means OxyContin®, MS Contin®, Butrans®, and Hysingla®.
- (q) "Purdue Payments" means the payments set forth in Section 4.1(a)(i) of this Consent Judgment.
- (r) "Releasees" means (i) Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company Inc., Purdue Products L.P., Purdue Pharma L.P. d/b/a Purdue Pharma (Delaware) Limited Partnership, Purdue Pharmaceutical Products, LP, Purdue Pharma Manufacturing Inc., The P.F. Laboratories

Inc., Purdue Pharma Manufacturing L.P., Purdue Pharma of North Carolina L.P., Purdue Pharma Technologies Inc., Purdue Pharma Manufacturing (New York) Inc., Purdue Pharma L.P., a foreign limited partnership, Rhodes Pharmaceuticals Inc., Rhodes Pharmaceuticals L.P., Rhodes Technologies, Rhodes Technologies Inc., and Pharmaceutical Research Associates L.P.; (ii) all affiliated United States and foreign companies owned by any of the Releasees; (iii) Abbott Laboratories (including Abbott subsidiaries and related companies), to the extent its activities are related to Purdue Opioids or are otherwise entitled to indemnification by Purdue; and (iv) for each of the foregoing in (i), (ii) and (iii), each of their respective past, present, and future officers, board members, directors, principals, agents, servants, employees, independent contractors, co-promoters, third party sales representatives, medical liaisons, predecessors, successors, assigns, affiliates, advisors, agents, consultants, insurers, trusts (including trusts established for the benefit of any Releasee), trustees, protectors, beneficiaries, officers, managers, members, direct or indirect owners and/or shareholders, beneficiaries of direct or indirect owners and/or shareholders, partners (general or limited), representatives, parents, subsidiaries, and transferees, attorneys and legal representatives, as well as the predecessors, successors, heirs, executors, administrators, legatees and assigns of each of the foregoing. For the sake of clarity, Releasees does not include any third-party manufacturer or distributor or marketer or seller of opioid products not related to the conduct of the Releasees. (The intent of this provision is to ensure that no entity not related to the Releasees listed above is released for conduct unrelated to those entities.) Nor does this release in any way prevent Purdue from seeking indemnification against its insurers. As used in this paragraph, "affiliates" means entities directly or indirectly controlling, controlled by or under common control or ownership with a Releasee.

- (s) "Released Claims" means any and all claims of any nature, including the State's state and federal statutory and common law claims, that were brought or could have been brought by any Releasor related to or arising out of in any way the Covered Conduct, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, that any Releasor, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or may hereafter have including all past, present, and future civil, criminal, derivative, regulatory, administrative, or any other claims any Releasor may have under any applicable state, regulatory, or administrative law or statute relating in any way to any Covered Conduct (regardless of where in the world any such Covered Conduct or any result, loss, injury, or damage resulting therefrom occurred) from the beginning of time up to and including the Effective Date.
- (t) "Releasors" means the State and the Attorney General and/or any political subdivision of the State on whose behalf the Attorney General possesses, or obtains, the authority to bind.

- (u) "Third Party" shall mean any person or entity other than Purdue or a government entity.
- (v) "Unbranded" shall mean any information regarding Opioids that does not identify a specific product or products.

II. FINDINGS & CONCLUSIONS

2.1 This Court has jurisdiction over the Parties and the subject matter of this case and has the authority to grant the relief provided herein.

2.2 The terms of this Consent Judgment shall be governed by the laws of the State of Oklahoma.

2.3 Entry of this Consent Judgment is in the public interest and reflects a negotiated agreement among the Parties.

2.4 The terms of the Settlement between the State and Purdue and of this Consent Judgment are fair, reasonable and were entered into between the State and Purdue in good faith and without collusion.

2.5 The payment of attorneys' fees and costs set forth in Section 4.1(a)(i)(x) are consistent with and expressly authorized by the agreement between the State and its Outside Counsel governing the Oklahoma Action. The attorneys' fees to Outside Counsel are fair, reasonable and appropriate under Oklahoma law. The costs incurred by Outside Counsel in prosecuting the Oklahoma Action are reasonable, necessary and appropriate under Oklahoma law.

2.6 The Parties have agreed to resolve the issues resulting from the Covered Conduct by entering into a Settlement Agreement and this Consent Judgment.

2.7 Purdue is willing to enter into this Consent Judgment regarding the Covered Conduct in order to resolve the State's claims as alleged in the Original Petition under Oklahoma law as to the matters addressed in this Consent Judgment and thereby avoid significant expense, inconvenience, and uncertainty.

2.8 Purdue is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Purdue expressly denies. No part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Purdue.

2.9 This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Purdue in any action, or of Purdue's right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Consent Judgment.

2.10 No part of this Consent Judgment shall create a private cause of action or confer any right to any Third Party for violation of any federal or state statute except that the State or Purdue may file an action to enforce the terms of this Consent Judgment.

2.11 This Consent Judgment has been negotiated by the Parties at arms' length and in good faith. This Consent Judgment reflects the exchange of reasonably equivalent value between the Parties.

III. INJUNCTIVE TERMS

3.1 Purdue shall not from the Effective Date until December 31, 2026 engage in Promotion of Purdue Opioids or Opioids in the State of Oklahoma by:

- (a) Employing or contracting with sales representatives or other persons to Promote Purdue Opioids or Opioids to Health Care Providers or patients;
- (b) Using speakers, key opinion leaders, thought leaders, lecturers, and/or speaking events for Promotion of Purdue Opioids or Opioids; and
- (c) Creating, sponsoring, distributing, or otherwise providing direct or indirect financial support for branded or Unbranded information Promoting Purdue

Opioids or Opioids, including brochures, newsletters, pamphlets, journals, books, and guides.

3.2 Upon request, Purdue shall promptly provide reasonable assistance to law enforcement investigations of potential diversion and/or suspicious circumstances involving Purdue Opioids in the State of Oklahoma, subject to and without waiving, any applicable privilege objections.

3.3 Purdue shall not use, assist, or employ any Third Party to engage in any activity in Oklahoma that Purdue itself would be prohibited from engaging in pursuant to this Consent Judgment.

3.4 Notwithstanding the above, in the State of Oklahoma, Purdue may:

- (a) Provide information or support the provision of information as expressly required by law or any state or federal government agency with jurisdiction in Oklahoma;
- (b) Provide scientific and/or medical information in response to an unsolicited request by a Health Care Provider or patient; and
- (c) Provide information to a payor, formulary committee, or other similar entity.

3.5 For the avoidance of doubt, nothing in this Consent Judgment shall be construed or used to prohibit Purdue in any way whatsoever from taking legal or factual positions in litigation or other legal or administrative proceedings, or from providing extrajudicial statements made in the context of such litigation or other legal or administrative proceedings.

3.6 Should Purdue enter into an agreement with one or more state attorneys general, or in multi-state litigation with other state attorneys general, that contains broader injunctive relief than set forth above, Purdue agrees: (i) to notify the Attorney General of Oklahoma at the time such injunctive relief goes into effect; and (ii) to abide by that injunctive relief in the State of Oklahoma. Purdue agrees that all such additional or more restrictive relief shall apply to Purdue's

conduct within or directed at the State of Oklahoma and any violation of those terms shall be deemed a violation of this Consent Judgment and will be subject to the dispute resolution procedures set forth herein.

3.7 If the Attorney General believes that Purdue has violated any Injunctive Relief term, as set forth above, the Attorney General shall: (i) provide Purdue with a notice that sets forth the Attorney General's basis for believing that Purdue violated an Injunctive Relief term and (ii) provide Purdue at least thirty (30) days to cure the alleged violation.

IV. PAYMENT

4.1 In full and complete satisfaction of the release granted in Section V herein, and in addition to the Injunctive Terms contained in Section III, Purdue shall cause the following actions to be taken:

(a) **Funding from Purdue:** (i) Beginning on the date of issuance of the Purdue Payment Letter of Credit (defined in Section 4.1(b)), (w) the Foundation shall be entitled to draw on the Purdue Payments Letter of Credit in accordance with the terms thereof for \$102,500,000 to fund the Foundation; (x) Outside Counsel shall be entitled to draw on the Purdue Payments Letter of Credit in accordance with the terms thereof for \$59,500,000 to be paid to Outside Counsel for payment of attorneys' fees and costs associated with the Oklahoma Action as set forth in the agreement between the State and its Outside Counsel; (y) the Attorney General shall be entitled to draw on the Purdue Payments Letter of Credit in accordance with the terms thereof for \$500,000 for costs associated with prosecution of the Oklahoma Action; and (z) an entity timely identified in writing by the State shall be entitled to draw on the Purdue Payment Letter of Credit in accordance with the terms thereof for \$12,500,000 to be placed into an escrow or similar account created and maintained to receive and manage the funding for distribution to political subdivisions in furtherance of the objectives of the Settlement Agreement ((w), (x), (y) and (z) collectively, the "Purdue Payments"); (ii) after the Effective Date, Purdue and the National Center shall coordinate to ensure the supply of medically assisted treatment drugs, such as buprenorphine/naloxone, or an equivalent product manufactured by Purdue, over a period of five (5) years with a total retail market value of \$20,000,000; and (iii) funds that are not distributed and are remaining under subsection 4.1(a)(i)(z) will revert to the Foundation.

(b) **Purdue Payments Letter of Credit:** Within five (5) business days of the Execution Date, Purdue shall present to the Attorney General an Irrevocable Letter(s) of Credit issued by BOKF, NA dba Bank of Oklahoma in the amount of the Purdue Payments drawable for three (3) business days from the date of issuance (the "Purdue Payments Letter of Credit"). At any time prior to drawing on the Purdue Payments Letter of

Credit, the Attorney General, in his sole discretion, shall have the right to waive the requirement of the posting of the Purdue Payments Letter of Credit, in which case the Purdue Payments shall be due and payable directly by Purdue to the payees identified in Section 4.1(a) above within one (1) business day after receipt of the Attorney General's written waiver.

(c) **Purdue Payments Guaranty:** Within one (1) business day of the Execution Date, Purdue will provide the Attorney General with an executed guaranty from Pharmaceutical Research Associates, L.P. ("PRA") in the form previously provided to the Attorney General (the "PRA Guaranty"), with respect to the Purdue Payments. The PRA Guaranty will irrevocably expire and be of no further force and effect on the ninety-first day after the date of issuance of the Purdue Payments Letter of Credit (the "Initial Guaranty Expiration Date"); provided, however, that if prior to the Initial Guaranty Expiration Date (i) Purdue files a voluntary petition for relief under the Bankruptcy Code or (ii) an involuntary petition for relief under the Bankruptcy Code is filed against Purdue and such involuntary petition has not been dismissed as of the Initial Guaranty Expiration Date, the PRA Guaranty shall instead expire on the date that is thirty days after the date of filing of such petition for relief, during which thirty-day period, the State may exercise its rights under the PRA Guaranty, in accordance with the terms thereof. PRA's payment obligations under the PRA Guaranty shall be contingent on the State's repayment to Purdue in cash in full the entirety of the Purdue Payments (totaling \$175,000,000).

(d) **Donation:** Within five (5) business days after the Effective Date, Purdue will provide the Attorney General with a letter confirming that a voluntary and irrevocable contribution to the Foundation will be made by the Dr. Mortimer and Dr. Raymond Sackler families (directly or through their business entities (other than Purdue)) in the amount of \$75,000,000 ("Donation Payments") to begin with a \$15,000,000 payment starting January 10, 2020, with four additional equal payments of \$15,000,000 each succeeding January for four (4) years.

(e) **Donation Payments Letter(s) of Credit:** Within five (5) business days after the Effective Date, the Attorney General shall be presented with one or more Irrevocable Letter(s) of Credit issued by BOKF, NA dba Bank of Oklahoma in the amount of the Donation Payments (the "Donation Payments Letter(s) of Credit"), pursuant to which, upon the Effective Date, the Foundation shall be entitled to draw on \$15,000,000 between January 10th - 15th in each of the years 2020-2024 in accordance with the terms thereof. At any time prior to drawing on the Donation Payments Letter(s) of Credit, the Attorney General, in his sole discretion, shall have the right to waive the requirement of the posting of the Donation Payments Letter of Credit, in which case the Donation Payments shall be placed into escrow pursuant to an escrow agreement and an escrow agent, in each case, acceptable to the Attorney General.

4.2 If the State does not elect to enforce the PRA Guaranty in accordance with the terms thereof and is required by final order of a court of competent jurisdiction to return the Purdue Payments to Purdue and does return such Purdue Payments to Purdue, the State shall return any

Donation Payments it has received and shall not be entitled to any further Donation Payments, and upon return of all such foregoing payments, (x) the Settlement Agreement, including the releases set forth herein, shall be void ab initio, and (y) all rights and remedies of the Settling Parties as they existed immediately prior to the execution of this Agreement shall be reinstated in full.

V. RELEASE

5.1 By entry of this Consent Judgment and execution of the Settlement Agreement, on the Effective Date of the Release, Releasors release Releasees from the Released Claims. The Court finds that Releasors have fully, finally, forever and permanently released, remised, acquitted, held harmless, relinquished and discharged with prejudice all Released Claims, have covenanted not to sue any Releasee with respect to any such claim, and are permanently barred and enjoined from instituting, reinstating, maintaining, commencing, or prosecuting any such Released Claim against the Releasees, and the releases as set forth herein shall be given full *res judicata* effect. Releasors are deemed to have released all claims against the Releasees that are or could have been brought by Releasors, including the State's state and federal statutory and common law claims, and by any other person acting or purporting to act in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer or any other capacity on behalf of any Releasor.

5.2 On the Effective Date of the Release, Releasors shall further be deemed to have released all claims, including all claims of any political subdivisions on whose behalf the Attorney General possesses the authority, or obtains the authority, to bind, against the Releasees regardless of whether any such Releasor ever seeks or obtains, any distribution under the Agreement. Any political subdivision that receives any payment from the State with funds obtained under the Agreement shall execute an Additional Release in the form set out in Exhibit B to the Agreement as a condition to receiving any such payment.

VI. GOOD FAITH SETTLEMENT BAR ORDER

- 6.1 The Court hereby finds and orders as follows:
- (a) The State has brought suit against Purdue and the Non-Settling Defendants alleging an indivisible injury for which Purdue and the Non-Settling Defendants are jointly and severally liable;
 - (b) Through the Settlement Agreement and this Consent Judgment Releasors have released Purdue and the Releasees from all Released Claims;
 - (c) The Court finds the settlement between the State and Purdue is fair, reasonable and was entered into between the State and Purdue in good faith and without collusion;
 - (d) The Court finds that, by agreeing to settle the claims of the State asserted against Purdue in this Action, Purdue does not admit and specifically denies any and all liability to the State and any actual or alleged joint tortfeasor;
 - (e) The settlement between the State and Purdue does not prejudice any substantive defenses or rights of any Non-Settling Defendants;
 - (f) The Court orders that, pursuant to OKLA. STAT. tit. 12, § 832(H), Purdue and the Releasees are discharged from all liability for contribution to all actual or alleged joint tortfeasors, including the Non-Settling Defendants;
 - (g) The Court further orders that, pursuant to OKLA. STAT. tit. 12, § 832(H), neither the Non-Settling Defendants nor any actual or alleged joint tortfeasor are discharged from liability to the State; and
 - (h) The Court further orders that nothing contained herein shall preclude the State or any Non-Settling Defendants from presenting evidence of Purdue's conduct pre-trial, at trial or on any appeal, subject to orders and rulings of the Court.

VII. DISPUTE RESOLUTION

7.1 The Parties by stipulation may agree to a modification of this Consent Judgment, which agreement shall be presented to this Court for consideration. Such modification must be made by written instrument signed by or on behalf of both Purdue and the Attorney General.

7.2 Should the Attorney General have reason to believe Purdue has violated the terms of this Consent Judgment, the Attorney General shall: (i) provide Purdue with a notice that sets

forth the Attorney General's basis for believing that Purdue violated a term and (ii) provide Purdue at least thirty (30) days to cure the alleged violation.

7.3 Any disputes between or among Purdue and the State (or their counsel) concerning matters regarding the creation, funding, or operation of the Foundation and the National Center shall, if they cannot be resolved by negotiation and agreement in the first instance, be referred to the Settlement Master, Judge Layn Phillips, for resolution. Decisions by Judge Phillips will be final and non-appealable.

7.4 The Court shall retain jurisdiction over all other disputes, including the implementation of the Injunctive Relief. Any dispute regarding issues arising from such Injunctive Relief that cannot be resolved by the Parties shall be submitted in the first instance to Judge Phillips for mediation. If the Parties are unable to reach a mediated settlement within 30 days of submission for mediation, the dispute shall be submitted to the Court.

XIII. THE NATIONAL CENTER

8.1 As consideration for entering into the Settlement Agreement, Purdue has agreed to fund, pursuant to Section V, a National Center for Addiction Studies and Treatment (the "National Center") adjunct to Oklahoma State University's Center for Health Sciences in Tulsa, Oklahoma ("OSU-HS"). The State shall create a foundation to receive and manage the funding provided by Purdue that is directed to the National Center (the "Foundation"). At OSU-HS, the National Center will be part of the OSU Center for Wellness & Recovery. The National Center will be dedicated to addiction studies, treatment and education, including education to eliminate the stigma associated with addiction and treatment, and will receive funds from the Foundation. The National Center shall operate on the following general principles:

(a) Mission: The National Center's mission will be to improve the lives of individuals in Oklahoma and across the nation that are affected by pain and substance use

disorders through exceptional programs focused on research, education, prevention, treatment, elimination of the stigma associated with addiction, and public policy initiatives.

(b) Vision: The National Center's vision will be to become the premier addiction research center in the nation that promotes collaborative and interdisciplinary approaches to the study, prevention, treatment, and public understanding of addiction, and education to eliminate the stigma associated with addiction and substance use disorder.

(c) Strategic Objectives: Among its initiatives and goals, the National Center will be committed to establishing research-driven and evidence-based practices for (i) treating and preventing addiction, and other behavioral health challenges; (ii) fostering and cultivating innovative national-in-scope research that contributes to the improvement of treatment and prevention of substance use disorders and understanding the underlying causes of addiction; (iii) creating a preeminent environment where researchers and academics from across the country and the world can collaborate together to study and learn about substance use disorder and addiction; and (iv) serving as a national leader in educating and training undergraduate and graduate students, trainees, professionals, and the public on multidisciplinary issues relating to addiction and substance use disorder.

(d) Advisory Board: The National Center shall be supported by a National Scientific Advisory Board that shall work closely with the National Center's staff in advising the National Center's research, agenda, training, and support processes, in addition to guiding the efforts of the National Center's patient and professional education initiatives. The Advisory Board will comprise leading members from other state, national and/or international academic, research, medical, law enforcement, mental health, addiction, substance use disorder, and/or other related fields, institutions, entities, and organizations. Members of the Advisory Board will be selected by the National Center.

IX. DISMISSAL WITH PREJUDICE

9.1 All claims asserted by the State against Purdue in the Oklahoma Action are DISMISSED WITH PREJUDICE as to Purdue, and, except as provided under the Settlement Agreement, without costs.

X. MISCELLANEOUS

10.1 This Consent Judgment shall be construed and interpreted in accordance with the substantive law of the State of Oklahoma.

10.2 This Consent Judgment and the Settlement Agreement contain the entire agreement of the Parties with respect to its subject matter. No Party has made any oral or written

representation other than those set forth herein, and no Party has relied upon, or is agreeing to, this Consent Judgment in reliance upon any representation other than those set forth herein.

10.3 Each of the signatories of this Consent Judgment represents and warrants that it, he, or she is authorized by it, his or her respective clients or principal to execute this Consent Judgment and to bind the corresponding Party hereto. With respect to the Plaintiff, the relevant signatories affirm that they have authority to execute this Consent Judgment on behalf of the State of Oklahoma.

10.4 Paragraph headings contained in this Consent Judgment are inserted solely as reference aids for the ease and convenience of the reader. They shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Consent Judgment.

10.5 All Notices under this Consent Judgment shall be provided to the following via email and Overnight Mail:

Oklahoma Attorney General
Attn: Abby Dillsaver, General Counsel to the Attorney General
Ethan Shaner, Deputy General Counsel
313 N.E. 21st St.
Oklahoma City, OK 73105
Abby.Dillsaver@oag.ok.gov
Ethan.Shaner@oag.ok.gov
Sheila Birnbaum
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Sanford C. Coats, OBA No. 18268
Joshua D. Burns, OBA No. 32967
CROWE & DUNLEVY, P.C.
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Oklahoma City, OK 73102
Tel: (405) 235-7700
Fax: (405) 272-5269
sandy.coats@crowedunlevy.com
joshua.burns@crowedunlevy.com

10.6 This Consent Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

10.7 This Consent Judgment shall be non-appealable and shall constitute a final judgment upon filing in the District Court of Cleveland County, State of Oklahoma.

10.8 The District Court for Cleveland County, State of Oklahoma, shall retain continuing jurisdiction over the Parties regarding compliance with the terms of this Consent Judgment.

10.9 All payments and consideration delivered in connection with this settlement (other than amounts paid for attorney's fees and costs) constitute restitution payments for United States Federal income tax purposes.

10.10 The Court's Amended Protective Order (dated April 16, 2018) and First Amended Agreed Qualified Protective Order for Protected Health Information (dated September 27, 2018) (the "Protective Orders") remain in effect after the Effective Date and the Settling Parties shall comply with their terms.


IT IS SO ORDERED.

DATED this 26th day of March, 2019.


DISTRICT JUDGE

APPROVED AS TO FORM:


FOR THE STATE OF OKLAHOMA
ex rel. Mike Hunter, Attorney General


Mike Hunter, OBA No. 4503,
Abby Dillsaver, OBA No. 20675
Ethan A. Shaner, OBA No. 30916
OKLAHOMA OFFICE OF THE
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Dated: 3/26/19


Michael Burrage, OBA No. 1350
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Dated: 3-26-19


Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Lisa P. Baldwin, OBA No. 32947
Trey Duck, OBA No. 33347
Drew Pate, *pro hac vice*

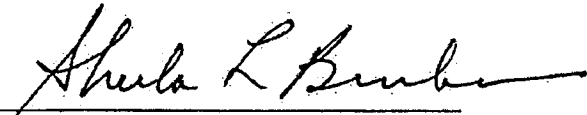
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Dated: March 26, 2019

STATE OF OKLAHOMA } S.S.
 CLEVELAND COUNTY }
FILED In The
 Office of the Court Clerk
 APR 18 2019

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.)
)

In the office of the
 Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

**DEFENDANTS PURDUE PHARMA L.P., PURDUE PHARMA INC., AND
 THE PURDUE FREDERICK COMPANY INC.'S OPPOSITION TO THE
 CITY OF OKLAHOMA CITY, THE CITY OF LAWTON, THE CITY OF ENID,
 AND THE CITY OF MIDWEST CITY'S JOINT MOTION TO INTERVENE**

Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (collectively "Purdue") respectfully submit this opposition to the joint motion to intervene by the City of Oklahoma City, the City of Lawton, the City of Enid, and the City of Midwest City (collectively "the Cities") for the ostensible purpose of clarifying/modifying the Consent Judgment entered by this Court on March 26, 2019, between the State of Oklahoma ("the State") and Purdue.

I. INTRODUCTION

On March 26, 2019, this Court approved and entered an historic settlement valued at \$270 million (the "Settlement"), which provides, among other things, for the creation of a National Center for Addiction Studies and Treatment (the "Center") in Tulsa, Oklahoma. The Settlement "has received national praise for its size, vision and resourcefulness" and is

considered “visionary” and “pioneering.”¹ The mission of the Center is to bring meaningful change to those in Oklahoma and around the country suffering from substance use disorders and to eliminate the stigma associated with addiction. The Settlement also created a \$12.5 million fund earmarked for municipalities and counties within Oklahoma.

Nevertheless, the Cities seek to intervene in this case in order to ostensibly clarify and/or modify the terms of that Settlement and corresponding Consent Judgment. Their motion should be denied for a host of reasons. *First*, the Cities fail to meet the requisite standard for intervention as of right. They do not and cannot identify a direct, substantial, and legally protectable interest as required under Oklahoma law. Rather, the Cities raise speculative concerns that the Settlement *might* impact their separate lawsuits pending in Oklahoma federal court.

Second, the Cities’ motion constitutes an impermissible request for an advisory opinion. An adjudication of the *potential* impact of the Settlement on the Cities’ individual cases would run afoul of well-established Oklahoma precedent requiring a definite and concrete case or controversy.

Third, the Cities lack standing for declaratory relief because they fail to present claims of sufficient immediacy as required under Oklahoma jurisprudence.

Fourth, the Cities ask this Court to address a nonjusticiable political question because their claims are hypothetical, rather than definite and concrete. Moreover, in asking this Court to substitute their own policy judgments in the place of the Attorney General’s, the Cities fail to provide a manageable judicial standard and would instead have this Court make an initial policy determination of a kind clearly reserved for nonjudicial determination.

¹ Renzi Stone, *Opioid Deal A Win For Oklahoma*, The Oklahoman (Apr. 7, 2019, 1:06 AM), <https://newsok.com/article/5627926/point-of-view-opioid-deal-a-win-for-oklahoma>.

II. FACTUAL BACKGROUND

This action was brought by the State through the Attorney General against several pharmaceutical companies, including Purdue. After more than a year of arms-length negotiations under the direction of the court-appointed mediator, Special Settlement Master Layn Phillips, the State and Purdue reached the Settlement, which was approved by this Court on March 26, 2019. Pursuant to the Settlement, Purdue and certain of its owners agreed to pay \$270 million, \$12.5 million of which will be set aside to establish a fund for cities and counties in Oklahoma that claim they were effected in one way or another by the opioid crisis. The Cities may participate in this fund if they choose to do so.

Separate from the Attorney General's action, the Cities individually sued Purdue in actions currently pending in Oklahoma federal courts. The suits by Midwest City and City of Enid were brought on March 22, 2019, and March 18, 2019—mere weeks before the Settlement was announced—and Purdue was not served in these cases until April 1, 2019, and March 21, 2019, respectively. Purdue has yet to file an answer or motion to dismiss in any of the Cities' pending suits. As a result, the courts in which the Cities' lawsuits are pending have had no opportunity to address whether and/or how the Settlement affects the Cities' claims.

The Cities filed their joint motion to intervene on April 1, 2019, seeking to clarify and/or modify the Consent Judgment because they are "*concerned* the Consent Judgment *may* be misinterpreted by *another court* to release Intervenor's claims against Purdue[.]" Mot. to Intervene, Ex. 1 ¶ 14 (emphasis added).

III. LEGAL STANDARDS

Oklahoma law provides that "[u]pon timely application anyone shall be permitted to intervene in an action...[w]hen the applicant claims an interest relating to the property or

transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest[.]” 12 Okla. St. § 2024(A)(2). Because the Oklahoma statute is substantially similar to Rule 24 of the Federal Rules of Civil Procedure, Oklahoma courts may look to federal case law when interpreting this provision. *Brown v. Patel*, 2007 OK 16, ¶ 17, 157 P.3d 117, 124. Based on federal precedent, Oklahoma courts have interpreted intervention as of right to require the following: “(1) the motion to intervene must be timely; (2) the intervenor must claim a *significant protectable interest relating to the property or transaction that is the subject of the action*; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant’s interest.” *Id.* (internal citation omitted) (emphasis added); *accord Seminole Nat. of Okla. v. Salazar*, No. CIV-06-556-SPS, 2013 WL 230151, at *3 (E.D. Okla. Jan. 22, 2013).

As the Cities concede, to be a “significant protectable interest,” the interest must be “direct, substantial, [and] legally protectable[.]” Mot. to Intervene at 6 (quoting *Brown v. Patel*, 2007 OK 16, ¶ 19, 157 P.3d at 125). “[A]n interest that is remote from the subject matter of the proceeding, or that is contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy the rule for intervention as of right.” *Brown v. Patel*, 2007 OK 16, ¶ 19, 157 P.3d at 125 (internal citation omitted). In other words, “the right to intervene based on a ‘legally enforceable interest’ cannot be maintained where ‘the alleged harm is at best conjectural.’” *Com. v. Philip Morris Inc.*, 40 Pa. D. & C. 4th 225, 262, 1999 WL 633485, at *21 (Pa. Com. Pl. 1999) (quoting *In re Pa. Crime Comm’n Subpoena*, 453 Pa. 513, 522, 309 A.2d 401, 407 (1973)).

IV. ARGUMENT

A. The Cities' Motion For Intervention Must Be Denied Because They Do Not Have A Direct Legal Interest

Because the Cities raise merely hypothetical concerns that other courts could *potentially* interpret the Settlement to bar their claims against Purdue, their asserted legal interest does not satisfy the requirements for intervention as of right. Specifically, a party seeking intervention as of right bears the burden of establishing a sufficient legal interest that is “significantly protectable or direct, substantial, [and] legally protectable.” *Brown v. Patel*, 2007 OK 16, ¶ 19, 157 P.3d at 125 (internal quotation marks and citation omitted). If the would-be intervenors’ interest is instead “contingent upon the occurrence of a sequence of events before it becomes colorable” or otherwise “remote from the subject matter of the proceeding,” the party’s motion to intervene must be denied. *Id.* (internal citation omitted).

In *Brown v. Patel*, the Oklahoma Supreme Court held that “a *potential* subrogation interest against an insured’s alleged tortfeasor, by itself, [was] too remote to justify an insurer’s right to intervene as a matter of right.” 2007 OK 16, ¶ 21, 157 P.3d at 125 (emphasis added). As in *Brown v. Patel*, the present motion alleges a theoretical harm to the Cities’ interests that cannot occur as a direct result of proceedings in this Court, but rather, would require multiple actions by Purdue and the courts in which the Cities’ claims are currently pending. The Cities do not—and cannot—claim any harm flowing as a direct result of this Settlement. As such, the Cities’ claimed legal interest in the *potential* impact of the Settlement on their claims pending in other courts does not qualify as a legally enforceable interest and they may not intervene as of right under Oklahoma law.

B. Addressing The Cities' Hypothetical Legal Interests Would Constitute A Prohibited Advisory Opinion

The Cities' motion should be denied for a second but equally dispositive reason: it seeks an advisory opinion. Oklahoma strongly prohibits advisory opinions, which arise where, as here, "a party presents for adjudication antagonistic demands that are merely speculative," *Tulsa Indus. Auth. v. City of Tulsa*, 2011 OK 57, ¶ 13, 270 P.3d 113, 120, or asks a court to "answer hypothetical questions...that may never be subject to review." *Ball v. Wilshire Ins. Co.*, 2007 OK 80, ¶ 1, 184 P.3d 463, 464, 466-67 (internal citations omitted). See also *Scott v. Peterson*, 2005 OK 84, ¶ 27, 126 P.3d 1232, 1240 (Oklahoma courts do not render opinions on "hypothetical and abstract issue[s]").

The Cities do not identify any concrete harm to support their proposed intervention. Instead, the Cities reference the speculative, but as yet undetermined, effect the Settlement might have on their cases. Granting intervention to address these theoretical concerns would therefore constitute a prohibited advisory opinion. The hypothetical nature of the Cities' legal interests is established by their own statements that the Settlement "may" or "could" impact their legal rights. For example, the Cities argue that they "should be given leave to intervene...in light of their substantial interest in preventing the *potential impairment* of their rights to continue litigation and seek damages against Purdue." Mot. to Intervene at 5 (emphasis added). They likewise argue that the Consent Judgment "*could be wrongfully construed by a different court to release cities' and counties' claims*" and that the cities and counties' interest "*may suffer serious impairment if intervention is denied.*" *Id.* at 7 (emphasis added).

Courts have rejected intervention in analogous circumstances. In *Commonwealth v. Philip Morris Inc.*, multiple non-profit hospitals sought to intervene following settlement of the State's suit against defendant tobacco companies. 40 Pa. D. & C. 4th 225, 1999 WL 633485 (Pa.

Com. Pl. 1999). There, as here, the would-be intervenors claimed they were permitted to “intervene in the remaining phases (*i.e.*, settlement)” because they had “legally enforceable interests at stake insofar as the [settlement] *may* affect their ability to assert, and obtain recovery for, claims they have and/or may have against the settling defendants.” 40 Pa. D. & C. 4th at 226, 236, 1999 WL 633485, at *1, *6 (emphasis in original). More specifically, like the Cities, the hospitals argued that several provisions of the settlement, including its broad definitions of “released claims” and “releasing parties,” “‘could’ operate to bar their claims” against the settling defendants. 40 Pa. D. & C. 4th at 237-39, 1999 WL 633485, at *7-8 (internal citation omitted). Based on these concerns, the hospitals requested an “additional contemporaneous order with an additional finding by the court that we are not covered by the language.” 40 Pa. D. & C. 4th at 231, n.12, 1999 WL 633485, at *3, n.12. In denying the hospitals’ motion to intervene, the court in *Philip Morris* noted the hypothetical nature of their claims that the settlement “could” or “may” impact their ability to sue the settling defendants. The court explained that the hospitals’ “concern that the release provisions will render them vulnerable to dismissal...in pursuing a cause of action that already exists or might exist in the future *fails to present an actual case or controversy ripe for disposition.*” 40 Pa. D. & C. 4th at 264-65, 1999 WL 633485, at *22 (internal quotation marks and citation omitted) (emphasis added). There, as here, the “critical factor is that the ‘legally enforceable interest’ raised...is based on events yet to occur.” 40 Pa. D. & C. 4th at 275-76, 1999 WL 633485, at *28.

As in *Philip Morris*, the hypothetical and speculative nature of the Cities’ alleged interest is further confirmed by the fact that the “alleged harm...will not flow as a direct consequence of the proceedings before us, but rather if it does in fact occur it would be in connection with *other proceedings that may at some future time be instituted.*” 40 Pa. D. & C. 4th 225, 263-64, 1999

WL 633485, at *22 (emphasis added) (internal citation omitted). Indeed, like the hospitals in *Philip Morris*, the Cities are seeking “determination of an issue that is not actual: whether a contractual defense *might* be raised against them in a different proceeding.” 40 Pa. D. & C.4th at 247, 1999 WL 633485, at *13 (emphasis in original). Purdue has yet to even file an answer, let alone move to dismiss any of the Cities’ suits based on the Settlement, so “it could be sometime before this defense is asserted—if ever—in an answer.” *Id.* Because the alleged harm in the instant case—like that in *Philip Morris*—is therefore plainly contingent on several variables that may or may not occur, “interpretation of the release provisions of the [Settlement] in a vacuum before it has been raised against them—is not yet ripe [and]... would result merely in an advisory opinion without legal effect.” 40 Pa. D. & C. 4th 225, 253, 1999 WL 633485, at *16. As such, any ruling on the Cities’ claims would be “appropriately decided by the presiding judge in that litigation if, and when, the [Settlement] release provisions are raised.” 40 Pa. D. & C. 4th at 228, 1999 WL 633485, at *2. *See also Mishewal Wappo Tribe of Alexander Valley v. Salazar*, No. 5:09-CV-02502 EJD, 2012 WL 4717814, at *4 (N.D. Cal. Sept. 28, 2012), *aff’d*, 534 Fed. App’x 665 (9th Cir. 2013) (revoking intervention by neighboring counties in action by Indian tribe to claim federally held lands, since counties’ contention that the tribe’s potential development of a Las Vegas-style casino would have a “significant impact on the [counties’] land...assume[d] too much about future events”); *Restor-A-Dent Dental Labs., Inc. v. Certified Alloy Prods., Inc.*, 725 F.2d 871, 875 (2d Cir. 1984) (intervention denied where would-be intervenor insurer’s interest depended on jury verdict for the plaintiff and a finding in a separate action regarding the portion of damages for which the insurer was responsible).

This Court should therefore deny the Cities' unripe motion and permit the courts presiding over the Cities' actions to determine the impact of the Settlement if and when the issue is ever raised.

C. The Cities Lack Standing For Declaratory Relief Because Their Legal Interest Is Not Sufficiently Direct, Immediate, And Substantial

That the Cities appear to seek declaratory relief in asking this Court to enter an order modifying *or clarifying* the Settlement does not change the analysis, since Oklahoma's rule against issuing advisory opinions "does not change when a declaratory judgment is involved." *Knight ex rel. Ellis v. Miller*, 2008 OK 81, ¶ 8, 195 P.3d 372, 374. To invoke jurisdiction under Oklahoma's "declaratory judgment act, there must be an actual, existing controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a possible, potential or contingent dispute." *Id.* (internal citation omitted). Thus, because the Cities' asserted legal interests do "not present circumstances imbued with the immediacy and reality required under Oklahoma's extant jurisprudence to grant a declaratory judgment," *Dank v. Benson*, 2000 OK 40, ¶ 12, 5 P.3d 1088, 1092, declaratory relief is not available to them, and their request that this Court clarify the terms of the Settlement should be denied. *See Mot. to Intervene* at 10.

D. The Cities Present A Nonjusticiable Political Question

In asking this Court to address their hypothetical legal interests, the Cities also present a nonjusticiable political question. *Dank v. Benson*, 2000 OK 40, ¶ 9, 5 P.3d at 1091. To be justiciable—and therefore appropriate for judicial inquiry—a controversy must be definite, concrete, and capable of a decision granting or denying specific relief of a conclusive nature. 2000 OK 40, ¶ 8, 5 P.3d at 1091. As such, the Oklahoma Supreme Court declined to address a State legislator's claim that the House of Representatives would *likely* engage in procedural

conduct in violation of a particular state constitutional requirement, since it presented a hypothetical—rather than definite and concrete—situation and was therefore not a justiciable controversy ripe for judicial review. 2000 OK 40, ¶ 9, 5 P.3d at 1091. The same conclusion applies with equal force here—and weighs against intervention—since the Cities, like the State legislator in *Dank*, base their claim on “a hypothetical situation which may or may not arise” rather than “actual, reported...acts[.]” 2000 OK 40, ¶ 7, 5 P.3d at 1091.

Moreover, because the Cities base their intervention argument “on policy considerations concerning [the Settlement’s] potential effects” and do not “invoke a statute or constitutional basis for review of an actual harm suffered”, they “fail to provide this court with judicially manageable standards...[and instead] seek[] an initial policy determination of a kind clearly for nonjudicial discretion.” *Philip Morris*, 40 Pa. D. & C. 4th at 273-74, 1999 WL 633485, at *27 (internal quotation marks and citation omitted); *see also Baker v. Carr*, 369 U.S. 186, 217 (1962) (“Prominent on the surface of any case held to involve a political question is found...a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion”). Thus, in asking this Court to amend the Consent Judgment, the Cities “in essence, are asking this court to make a political, policy decision—or to adopt theirs—in substitution of the attorney general’s judgment in entering into a settlement agreement.” 40 Pa. D. & C. 4th at 272, 1999 WL 633485, at *26.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court deny the Cities' motion to intervene.

Dated: April 18, 2019

Respectfully submitted,



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Exhibit B

CERTIFICATE OF MAILING

This is to certify that on April 18, 2019, a true and correct copy of the above and foregoing has been served via e-mail to the following:

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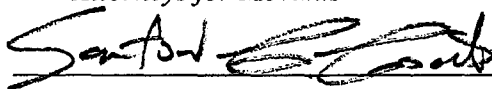
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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case No.: CJ-2017-816
Judge Thad Balkman

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

APR 25 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**ORDER REGARDING
CONSENT JUDGMENT AS TO THE PURDUE DEFENDANTS
AND DENYING
CITY OF OKLAHOMA CITY'S, CITY OF LAWTON'S, CITY OF ENID'S,
CITY OF MIDWEST CITY'S AND CITY OF BROKEN ARROW'S
AMENDED JOINT MOTION TO INTERVENE AS MOOT**

This matter comes before the Court upon the "City of Oklahoma City's, City of Lawton's, City of Enid's, City of Midwest City's and City of Broken Arrow's Amended Joint Motion to Intervene" filed April 2, 2019¹ ("Oklahoma City Motion to Intervene"). Upon

¹ The cities of Enid, Lawton, Midwest City and Oklahoma City filed an initial "Joint Motion to Intervene" on April 1, 2019.

review of the Oklahoma City Motion to Intervene and the responses in opposition filed by (a) Plaintiff, State of Oklahoma, ex rel., Mike Hunter, Attorney General of Oklahoma, on April 17, 2019 (“Plaintiff State Response”), and (b) the Defendants, Purdue Pharma, L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc., on April 18, 2019 (“Purdue Defendants Response”), and pursuant to Rule 4(h) of the Rules for the District Courts of Oklahoma, the Court finds and holds as follows:²

1. The cities of Broken Arrow, Enid, Lawton, Midwest City and Oklahoma City, whether individually or collectively (the “Putative Intervenor”), are not parties to, bound by, or otherwise subject to the terms of the “Consent Judgment as to the Purdue Defendants” entered by this Court on March 26, 2019.

2. A Putative Intervenor – or any other Oklahoma political subdivision – is not a party to, bound by, or otherwise subject to the terms of the March 26, 2019, Consent Judgment unless it elects, for itself, to opt-in to the March 26, 2019, Consent Judgment pursuant to the terms prescribed by the March 26, 2019, Consent Judgment.³ The Oklahoma City Motion to Intervene is denied as moot.

² The Court would note that no other named Defendants filed a response to the Oklahoma City Motion to Intervene.

³ The Court would note that neither the Plaintiff State Response nor the Purdue Defendants Response advocates for a contrary reading of the March 26, 2019, Consent Judgment.

IT IS SO ORDERED this 25th day of April, 2019


THAD BALKMAN, District Judge

CERTIFICATE OF SERVICE

This is to certify that on the 25th day of April, 2019, a true and correct copy of the above and foregoing instrument was emailed to the following:

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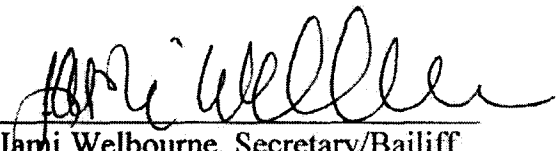
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