



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, INC.; 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

Special Discovery Master Hetherington

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

MAR 22 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**JANSSEN’S RESPONSE TO THE STATE’S MOTION TO COMPEL
PRODUCTION OF PHYSICIAN-MESSAGING AND CORPORATE-INTEGRITY
MONITORING RECORDS**

The Court should deny the State’s Motion to Compel (the “Motion”) because it seeks to compel production of documents that Janssen¹ has already produced—including a category of

¹ “Janssen” refers to Janssen Pharmaceuticals, Inc., its predecessors, Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc., and its parent, Johnson & Johnson.

documents that the State never even requested but that Janssen nonetheless provided to avoid burdening the Court with this very dispute.² Despite knowing this, the State has refused to withdraw its motion as to Janssen.

The State's Motion seeks to compel production of documents related to physician message recall as well as monitoring reports related to a 2013 Corporate Integrity Agreement ("CIA"). On the day that the State filed its Motion, Janssen reminded the State that Janssen had already produced *hundreds of documents* related to physician message recall. Ex. A at 2-3. And Janssen confirmed that, after conducting a reasonable and diligent search, it was unaware of any other message recall materials responsive to the State's RFPs. *Id.* Similarly, Janssen informed the State that it would produce relevant monitoring documents and reports related to the 2013 CIA that it was able to locate based on a reasonable and diligent search, even though the State had never requested them. Janssen subsequently produced those documents, which comprised nearly 3,000 pages.

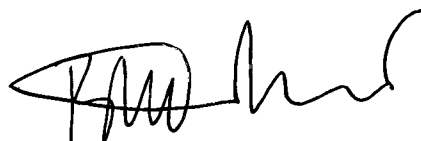
Trial courts routinely deny motions to compel when the documents at issue have been produced. *See, e.g., Anderson v. Shelter Mut. Ins. Co.*, 2:13-cv-87, 2015 WL 11090406, at *1 (E.D. Ark. Feb. 3, 2015) (denying motion to compel as moot where the documents had been produced); *Nogle v. Beech St. Corp.*, 2:10-cv-01092, 2012 WL 3687570, at *10 (D. Nev. Aug. 27, 2012) (same); *Alexander v. Archuleta Cty., Colo.*, No. 08-cv-00912, 2009 WL 1392072, at *2, *3 (D. Colo. May 15, 2009) (same); *Littleton v. Nat. City Mortg. Co.*, No. 2007-cv-127712, 2010 WL 11012678, at *1 (Ga. Super. Ct.) (Nov. 19, 2010) (same). Here, Janssen has already performed a reasonable and diligent search for the CIA and message recall materials, and it produced the

² The State's Motion also seeks to compel documents from Defendant Teva Pharmaceuticals USA, Inc. Janssen's Response does not address that portion of the State's Motion.

relevant, responsive materials that it located. It cannot be required to produce documents that do not exist or that cannot be found. Thus, the State's motion to compel is moot as to Janssen and should be denied.

The abusive nature of the State's attempt to compel documents that have already been produced is compounded by the fact that the CIA monitoring reports the State now demands are not even responsive to any of the State's RFPs. And the State does not meaningfully suggest otherwise. Indeed, beyond a conclusory statement that "[t]he State requested these documents," the State makes no attempt to explain how the CIA monitoring reports are at all responsive to any of its discovery requests. For the foregoing reasons, Janssen respectfully requests that the Court deny the State's motion to compel as it pertains to Janssen.

Respectfully submitted,



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JANSSEN PHARMACEUTICALS, INC.**

CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), and by agreement of the parties, this is to certify on March 22, 2019, a true and correct copy of the above and foregoing has been served via electronic mail, to the following:

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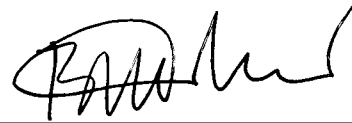
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Exhibit A

From: "Allan, Tad" <tallan@omm.com>
Date: March 21, 2019 at 4:14:47 PM EDT
To: Trey Duck <tduck@nixlaw.com>
Cc: "odomb@odomsparks.com" <odomb@odomsparks.com>, "Lifland, Charles" <clifland@omm.com>, "Brody, Steve" <sbrody@omm.com>, "Cardelús, Jen" <jcardelus@omm.com>, "sparksj@odomsparks.com" <sparksj@odomsparks.com>, "Roberts, David K. (DC)" <droboters2@omm.com>, "Franklin, Daniel J." <dfranklin@omm.com>, "Strong, Sabrina H." <sstrong@omm.com>, "ridgewaym@odomsparks.com" <ridgewaym@odomsparks.com>, "jonesk@odomsparks.com" <jonesk@odomsparks.com>, "kinneyd@odomsparks.com" <kinneyd@odomsparks.com>, "Ehsan, Houman" <hehsan@omm.com>, "Galín, Ross B." <rgalin@omm.com>, "Rodríguez, Esteban" <erodriguez2@omm.com>, "Lucas, Amy R." <alucas@omm.com>, "larryottaway@oklahomacounsel.com" <larryottaway@oklahomacounsel.com>, Andrew Bowman <andrewbowman@oklahomacounsel.com>, "amyfischer@oklahomacounsel.com" <amyfischer@oklahomacounsel.com>, "Barker, Jeffrey A." <jbarker@omm.com>, "Tongco, Desirae Krislie C." <dtongco@omm.com>, "Waddle, Jessica L." <jwaddle@omm.com>, "jordyncartmell@oklahomacounsel.com" <jordyncartmell@oklahomacounsel.com>, "Cowan, Matt" <mcowan@omm.com>, Opioids Team <OpioidsTeam@nixlaw.com>
Subject: RE: J&J Documents

Trey,

Yes, the CIA materials were produced as JAN-OKPROD011 (March 15 production letter attached). Because the CIA and message recall documents have been produced, the State's motion to compel is moot as to these materials. Please confirm that the State is withdrawing its motion as to J&J and Janssen.

Tad

From: Trey Duck <tduck@nixlaw.com>
Sent: Wednesday, March 20, 2019 10:52 AM
To: Allan, Tad <tallan@omm.com>
Cc: odomb@odomsparks.com; Lifland, Charles <clifland@omm.com>; Brody, Steve <sbrody@omm.com>; Cardelús, Jen <jcardelus@omm.com>; sparksj@odomsparks.com; Roberts, David K. (DC) <droboters2@omm.com>; Franklin, Daniel J. <dfranklin@omm.com>; Strong, Sabrina H. <sstrong@omm.com>; ridgewaym@odomsparks.com; jonesk@odomsparks.com; kinneyd@odomsparks.com; Ehsan, Houman <hehsan@omm.com>; Galín, Ross B. <rgalin@omm.com>; Rodríguez, Esteban <erodriguez2@omm.com>; Lucas, Amy R. <alucas@omm.com>; larryottaway@oklahomacounsel.com; Andrew Bowman <andrewbowman@oklahomacounsel.com>; amyfischer@oklahomacounsel.com; Barker, Jeffrey A. <jbarker@omm.com>; Tongco, Desirae Krislie C. <dtongco@omm.com>; Waddle, Jessica L. <jwaddle@omm.com>; jordyncartmell@oklahomacounsel.com; Cowan, Matt <mcowan@omm.com>; Opioids Team <OpioidsTeam@nixlaw.com>
Subject: Re: J&J Documents

Thanks Tad. Has Janssen already produced the CIA documents?

Trey Duck

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Sent from my iPhone

On Mar 20, 2019, at 1:46 PM, Allan, Tad <tallan@omm.com> wrote:

Trey,

Following up on my earlier email, please confirm that the State is withdrawing its motion to compel (filed last Friday) as to J&J and Janssen. As I explained in my earlier email, we have produced message recall documents responsive to the State's requests as well as the CIA documents that we were able to locate based on a reasonable and diligent search, so the State's motion is now moot as to these materials. Thanks.

Tad

From: Allan, Tad
Sent: Friday, March 15, 2019 5:56 PM
To: 'Trey Duck' <tduck@nixlaw.com>; odomb@odomsparks.com; Lifland, Charles <clifland@omm.com>; Brody, Steve <sbrody@omm.com>; Cardelús, Jen <jcardelus@omm.com>; sparksj@odomsparks.com; Roberts, David K. (DC) <droberts2@omm.com>; Franklin, Daniel J. <dfranklin@omm.com>; Strong, Sabrina H. <sstrong@omm.com>; ridgewaym@odomsparks.com; jonesk@odomsparks.com; kinneyd@odomsparks.com; Ehsan, Houman <hehsan@omm.com>; Galin, Ross B. <rgalin@omm.com>; Rodriguez, Esteban <erodriguez2@omm.com>; Lucas, Amy R. <alucas@omm.com>; larryottaway@oklahomacounsel.com; Andrew Bowman <andrewbowman@oklahomacounsel.com>; amyfischer@oklahomacounsel.com; Barker, Jeffrey A. <jbarker@omm.com>; Tongco, Desirae Krislie C. <dtongco@omm.com>; Waddle, Jessica L. <jwaddle@omm.com>; jordyncartmell@oklahomacounsel.com; Cowan, Matt <mcowan@omm.com>
Cc: Opioids Team <OpioidsTeam@nixlaw.com>
Subject: RE: J&J Documents

Trey,

We have already produced hundreds of documents related to message recall (e.g., JAN-MS-01126852). Based on a reasonable and diligent search, we are unaware of any other message recall materials responsive to the State's requests.

The CIA materials are not responsive to the RFPs you identified (or any of the State's RFPs, for that matter), and it is improper for the State to attempt to expand the scope of its prior requests in the last days of discovery. Nonetheless, to avoid burdening the Court with yet another discovery dispute, Janssen will produce relevant monitoring documents and reports related to the 2013 CIA, if any, to the extent such documents exist and can be located based on a reasonable and diligent search, while reserving all rights related to those documents, including the right to contest their admissibility and relevance.

We believe this moots the State's motion to compel (filed today) as to J&J and Janssen. Please confirm that the State will withdraw that portion of its motion.

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From: Trey Duck <tduck@nixlaw.com>
Sent: Saturday, March 9, 2019 2:03 PM
To: Allan, Tad <tallan@omm.com>; odomb@odomsparks.com; Lifland, Charles <clifland@omm.com>; Brody, Steve <sbrody@omm.com>; Cardelús, Jen <jcardelus@omm.com>; sparksj@odomsparks.com; Roberts, David K. (DC) <droberts2@omm.com>; Franklin, Daniel J. <dfranklin@omm.com>; Strong, Sabrina H. <sstrong@omm.com>; ridgewaym@odomsparks.com; jonesk@odomsparks.com; kinneyd@odomsparks.com; Ehsan, Houman <hehsan@omm.com>; Galin, Ross B. <rgalin@omm.com>; Rodriguez, Esteban <erodriguez2@omm.com>; Lucas, Amy R. <alucas@omm.com>; larryottaway@oklahomacounsel.com; Andrew Bowman <andrewbowman@oklahomacounsel.com>; amyfischer@oklahomacounsel.com; Barker, Jeffrey A. <jbarker@omm.com>; Tongco, Desirae Krislie C. <dtongco@omm.com>; Waddle, Jessica L. <jwaddle@omm.com>; jordyncartmell@oklahomacounsel.com; Cowan, Matt <mcowan@omm.com>
Cc: Opioids Team <OpioidsTeam@nixlaw.com>
Subject: Re: J&J Documents

RFPs 2, 5, 9, 19, 24, and 27 among others.

Thanks,

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<image005.jpg>
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Subject: RE: J&J Documents

Trey,

I'll be handling this issue for us. I'm looking into your requests, but at the outset it would be helpful to know which of your RFPs you are relying on for your belief that we are obligated to produce these documents.

Tad

From: Trey Duck <tduck@nixlaw.com>
Sent: Saturday, March 2, 2019 8:11 PM
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Cc: Opioids Team <OpioidsTeam@nixlaw.com>
Subject: J&J Documents

Johnson & Johnson, Steve, and DKR,

Please confirm before Monday that J&J has not produced the following:

- (1) All monitoring documents and reports related to all of J&J's corporate integrity agreements during the relevant time period, including the 2013 CIA resulting from J&J's Risperdal/Invega/Natrecor settlement (which CIA can be found online but not in your production). That CIA covered all "Government Reimbursed Products," which is defined as "all human pharmaceutical products of any J&J Pharmaceutical Affiliate that are marketed or sold by any J&J Pharmaceutical Affiliate in the United States or pursuant to contracts with the United States that are reimbursed by Federal health care programs." This CIA included a number of monitoring and reporting requirements, including promotion monitoring and an internal toll-free compliance telephone line (or hotline) which resulted in reports. These monitoring and reporting requirements applied to Duragesic, Nucynta, and your other opioids. There appear to be other CIAs with separate reporting and monitoring requirements, including a requirement that Janssen disclose payments made to physicians.
- (2) All physician messaging recall documents, including message monitoring reports and audio recordings of sales calls, related to Janssen opioids analgesics. As you can see in the attached pdf document, J&J was monitoring physician messaging and payer messaging. Messaging recall and monitoring services are provided by companies like IMS and MMI, both of which J&J hired and paid (see attached excel file at tab 3).

These documents are 100% relevant and should have been produced a year ago. If you have produced these, please point us to the bates ranges. If you have not, please produce these document by close of business Monday, March 4.

Thanks,

Trey Duck

<image006.jpg>

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