PART A

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

For Judge Balkman's Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

DEFENDANTS TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S MOTION FOR SEVERANCE AND SEPARATE TRIALS

Defendants Teva Pharmaceuticals USA, Inc. ("Teva USA") and Cephalon, Inc. ("Cephalon") (together, the "Teva Defendants"), and Watson Laboratories, Inc. ("Watson"), Actavis LLC ("Actavis LLC"), and Actavis Pharma, Inc. ("Actavis Pharma"), f/k/a Watson Pharma, Inc. (together, the "Actavis Defendants") respectfully move for an order severing the claims against them in accordance with Okla. Stat. tit. 12, § 2021 or, in the alternative, directing that the claims against them be adjudicated in separate trials in accordance with Okla. Stat. tit. 12, § 2020(C) to prevent incurable prejudice that will necessarily arise from a joint trial.

I. INTRODUCTION

Notwithstanding that the opioid epidemic is the result of many intervening acts by many independent actors, the State of Oklahoma (the "State" or "Plaintiff") contends that the Purdue Defendants "***created this epidemic*** by engaging in a complicated, nationwide marketing campaign to convince an entire country of medical professionals they had an ethical obligation to treat pain with what it touted as non-addictive, effective drugs." (12/5/18 Response to Purdue Mot. to Quash, attached hereto as Exhibit A, at 6 (emphasis added).) Regardless of whether the State can actually prove its expansive claims, the State has left little doubt it will present its case to the jury in that way. The State has consistently asserted that the Purdue Defendants—and their owners and executives—caused the opioid epidemic in Oklahoma as a result of allegedly false marketing of OxyContin beginning in 1996—conduct that purportedly "spann[ed] more than two decades." (*Id.*). The State's focus on Purdue throughout this case has been marked by extraordinary, inflammatory rhetoric, with the State repeatedly labeling the Purdue Defendants "liars,"[1] "criminals,"[2] "above the law,"[3] and just a "bad company."[4]

But while the State has focused its case and its ire on the Purdue Defendants, it has sued nine other separate and distinct pharmaceutical companies in this single false marketing lawsuit.[5]

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[1] *See* 9/27/18 Hearing Tr., attached hereto as Exhibit B, at 46:21 ("Let's be clear about lying. Purdue pled guilty to the federal crime of lying. They are convicted liars, and it permeated the entire company.").

[2] *See* 1/22/19 Alan Must Dep. Tr., attached hereto as Exhibit C, at 199:16–200:6 ("It's a felon-right?," "Its CEO was an admitted criminal?" "The chief legal officer who directed all the legal strategies at Purdue was an admitted criminal?" "And the head of the medical department for Purdue was an admitted criminal as well right?").

[3] *See* 9/24/18 Hearing Tr., attached hereto as Exhibit D, at 18:23 ("This is truly a company that believes it is above the law. It does.")

[4] *See* 1/22/19 Alan Must Dep. Tr., Ex. C, at 199:12 ("You know Purdue is a bad company? You can say it. It's true.").

[5] Defendants consist of the Teva Defendants and the Actavis Defendants, along with: (a) Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (the "Purdue

Each company is different. Defendants manufacture and sell many different, often competing, opioid products with different release dates, different approved clinical indications, different product labels, and different promotional strategies, if any.[6] Are the various medicines short-acting or long acting? Are they branded or generic? For what conditions are they approved and appropriate to treat? When were they introduced to the market? Were they even marketed? If so, how were they marketed in Oklahoma? Was that marketing false or misleading? If so, did Oklahoma prescribers receive and rely upon that marketing to the ultimate detriment of Oklahoma? Were those medicines subject to heightened FDA requirements before prescriptions could be written? All of these questions and more will need to be answered—and some or all of the answers may vary dramatically by Defendant.

Indeed, the Teva and Actavis Defendants are uniquely situated. Unlike any other company in this lawsuit, the Actavis Defendants have always manufactured generic medicines and, consistent with federal law, have not promoted them—either in Oklahoma or anywhere else. Likewise, the Teva Defendants are uniquely situated because they have only ever manufactured and promoted two branded schedule II opioid medicines—Actiq and Fentora—that are short-acting opioids approved by the FDA for treating breakthrough pain in opioid-tolerant cancer patients. Because of their narrow indications, Actiq and Fentora are different from the other opioid medicines at issue in this case: they always have been subject to unique FDA risk-mitigation programs; they were marketed differently from the other Defendants' drugs (which are long-acting opioids); and they comprise a miniscule share (less than .01%) of all opioid prescriptions in

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Defendants"); and (b) Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the "Janssen Defendants").

[6] *See* 2/18/19 L. Webster, M.D. Dep. Tr., attached hereto as Exhibit E, at 279:13–15 (" . . . each company is different, and so they've got different products so they would be different.")

Oklahoma.[7] Critically, Cephalon only acquired and then started marketing the first of these unique medicines in 2001—five years ***after*** the State contends that the Purdue Defendants began to create the opioid epidemic.[8]

Given their unique circumstances and the focus of the State's case, the Teva and Actavis Defendants cannot be tried in the same case as the other families of Defendants. Severance is warranted for two independent reasons.

First, under Okla. Stat. tit. 12, § 2020(A)(2), the State misjoined the Defendants in this action. The claims against the Teva and Actavis Defendants (which are separately incorporated subsidiaries within the Teva corporate family) arise out of entirely separate marketing transactions, if any, from the claims against the other Defendants. Indeed, the State attempts to hold each liable for distinct alleged marketing conduct leading to distinct alleged prescriptions. As discovery has made clear, the Defendants are actually competitors which manufacture different medicines, utilize different means to market their medicines (to the extent they are marketed at all), and have sold and marketed their medicines at different times. Because the Teva and Actavis Defendants are misjoined in this lawsuit, they should be severed.

Second, even if the Court were to find joinder proper, separate trials are necessary. Under Okla. Stat. tit. 12, § 2020(C), grouping the Moving Defendants with the other Defendants will be highly prejudicial. Evidence that the State intends to use to show that the Purdue Defendants—along with their individual owners (the Sackler family)—created the opioid crisis, including testimony from patients who became addicted to Purdue's product, OxyContin, will only prejudice

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[7] In addition, active promotion of Actiq, including physician detailing, ceased in 2006 when generic alternatives were first introduced. (J. Hassler Dep., Aug. 29, 2018, at 28:12–29:2, attached as Exhibit E.) The Teva Defendants have also ceased actively promoting Fentora. (*Id.*)

[8] *See* 1/29/19 J. Hassler Dep. Tr., attached hereto as Exhibit F, at 125:7–9.

the Moving Defendants. Worse yet, evidence about twelve ***different*** companies, an array of ***different*** opioid medicines (approved at different times for different indications), and ***different*** marketing efforts will only confuse the jury—and further prejudice the Moving Defendants in violation of their constitutional due process rights. A single joint trial also will be grossly inefficient; each Defendant will have the right and obligation to put on separate evidence, and each witness will need to be asked about the conduct of each of the twelve different companies. Accordingly, severance is necessary.[9]

II. BACKGROUND

A. The State Intends To Prove That The Purdue Defendants Started The Opioid Epidemic.

The Purdue Defendants manufacture several opioid medicines, including OxyContin, MS Contin, Dilaudid/Dilaudid HP, Butrans, Hysingla ER, and Targiniq ER. (6/30/17 Original Petition ("Pet."), attached hereto as Exhibit H, at ¶ 14.) Putting aside whether it can actually do so, the State has repeatedly represented that it believes and intends to show that the Purdue Defendants are responsible for starting the opioid epidemic in Oklahoma through their marketing of OxyContin and other opioid medicines.

In the Petition, for instance, the State alleges that beginning in 1996, as soon as OxyContin was first approved and introduced, the Purdue Defendants engaged in a fraudulent marketing campaign to falsely represent and/or omit the risks of addiction and falsely inflated the benefits of OxyContin. (*Id.* ¶ 53.) Between 1996 and 2001, the Purdue Defendants allegedly intensified that campaign, which included paying speakers to "spread its misrepresentations" about OxyContin,

[9] The State agrees that this Court has the legal ability to sever claims against particular Defendants and to require separate trials. (2/15/19 State's Submission, attached hereto as Exhibit G). However, to the extent the State seeks a merely technical severance of claims against the Purdue Defendants, the Moving Defendants disagree. The Court should require separate trials.

hiring hundreds of sales representatives and paying millions of dollars in bonuses, and treating "the marketing of a Schedule II substances as if it were peddling paper products." (*Id.* ¶ 55.)

In multiple arguments before this Court, the State has made clear that it intends to show at any trial that the Purdue Defendants and the Sackler family are responsible for the overprescribing of opioids in Oklahoma:

> While we heard them admit that there was an issue with opioids, we didn't hear them admit who started it. It was ***started in 1996*** with Purdue, ***in their aggressive marketing campaigns***, which we're going to talk about today. ***But I don't think there can be any dispute that the genesis of why we're all here today started with the Sackler family and their company***, Purdue, and then everyone else conspiring with them and on their own to sell these drugs at the great deadly consequence of addiction and death here in the state of Oklahoma.

(12/5/17 Hearing Tr., attached hereto as Exhibit I, at 31:21–32:21 (Beckworth, B.) (emphasis added).) This story has been a consistent theme that the State has not strayed from over the course of this case.

In fact, the State has made clear that it intends to show that all harm caused by the opioid epidemic can be traced specifically to the approval, launch, and marketing of OxyContin in 1996:

> **1996, Purdue let the lion out of the cage**, and it has run wild and it has destroyed parts of this country state by state. And you can watch it move across the map on a timeline and see how it got here. But that's what happened.
>
> ***You can trace it to a very specific point in time, and that is when OxyContin was brought to market and promoted in an aggressive, concentrated, and targeted way to consumers and doctors, practitioners, prescribers, and pharmacists across this country. That's what happened.***

(8/30/18 Hearing Transcript, attached hereto as Exhibit J, at 57:17–58:1 (Beckworth, B.) (emphasis added).)

To try to support this theme, the State has repeatedly relied upon documents from the launch of OxyContin—years before Cephalon even acquired its first opioid medicine (Actiq). This launch was referred to as "The one to start with and the one to stay with." (6/4/97 Email chain:

OxyContin Team Meeting, Bates: PDD1706194513–PDD1706194515, attached hereto as Exhibit K (discussing proposed OxyContin marketing slogans).) By way of example, documents in support of this launch stated:

> OxyContin Tablets is [sic] the most important product launch in the company's history, and like the Blizzard of '96, will become a part of our common and individual history. In the years to come we will look back on this week as the beginning of a New Era for our business and ourselves . . . .
>
> The significance of the blizzard of '96 is that the launch of OxyContin tablets will be followed by a blizzard of prescriptions that will bury the competition. The prescription blizzard will be so deep, dense and white that you will never see their White Flag. Commerce in competitive products will come to a halt; on the advice of the Law Department, let me amend that. Commerce in competitive products will come to a virtual halt.

(*OxyContin: The Most Significant Launch in Purdue History!*, Bates: PDD9316703680, attached hereto as Exhibit L.) Regardless of whether these documents actually support the State's expansive theories and claims against the Purdue Defendants, there is little doubt that the State intends to use them to argue that, in 1996, the Purdue Defendants caused a "blizzard of prescriptions" of OxyContin and other medicines through supposedly false and aggressive advertising minimizing the risks of opioids.[10]

Confirming the focus of its case, the State has even attempted to brand the executives of the Purdue Defendants as "liars" and "[c]riminal[s]" at nearly every hearing before the Court:

> Let's be clear about lying. Purdue pled guilty to the federal crime of lying. They are convicted liars, and it permeated the entire company . . . You know what happened to Mr. Udell, their general counsel? Pled guilty. Criminal lying. Chief medical officer worldwide, the guy behind this, you know what happened to him? Pled guilty to lying. CEO pled guilty to lying. Sales reps. How did they do this? Their soldiers were sales reps. What did they do? They lied. That's what they did. That's how the company was built.

[10] L. Webster Dep. Tr., Ex. E, at 101:7–12 ("And the documents we've looked at today, in particular the Richard Sackler speech, suggested that OxyContin would be aggressively promoted that a blizzard of prescriptions would follow; correct?).

(09/27/18 Hearing Tr., Ex. B, at 46:21–47:24 (Beckworth, B).) This inflammatory rhetoric has carried over into depositions, too. (*See, e.g.,* 1/22/19 Must Dep. Tr., Ex. C, at 199:12–200:11 (calling Purdue a "bad company" and "felon" and its former executives "admitted criminal[s]").)

Consistent with its trial narrative, the State alleges that—since 2007 alone—the Purdue Defendants caused to be submitted over 95,000 prescriptions for reimbursement to the Oklahoma Medicaid Program. (Pet., Ex. H, ¶ 35.) This, in turn, caused the State to pay approximately $49,965,906.05 for these medicines. (*Id.*)

B. The State's Allegations Against The Janssen Defendants.

The State alleges that the Janssen Defendants have manufactured several branded, long-acting opioids—Duragesic, Nucynta, and Nucynta ER. (Pet., Ex. H, ¶ 20.) The State alleges that they "made unsubstantiated representations that Nucynta was appropriate for broader pain conditions than indicated and downplayed its risks." (*Id.* ¶ 53.)

The State also made clear that it intends to focus on the Janssen Defendants' ownership of a company called Noramco, which the State contends supplied the active pharmaceutical ingredients necessary to make opioids:

> We've got J&J here, and we've got Noramco and Tasmanian Alkaloids . . . Noramco, which is part of Tasmanian Alkaloids, is an API. We know that that went to Purdue. Based on the types of things they're buying . . . We know that Purdue had to pay money to somebody for whatever it got from Noramco and Tasmanian Alkaloids. And what I know is whether they paid it directly to Noramco and Tasmanian Alkaloids or somewhere else, that money from Purdue eventually goes right here to Big Daddy, the parent company, J&J.

(9/27/18 Hearing Tr., Ex. B, at 25:25–26:11 (Beckworth, B).)

The State alleges that since 2007, the Janssen Defendants caused to be submitted over 2,600 prescriptions for reimbursement to the Oklahoma Medicaid Program. (Pet., Ex. H, at ¶ 38.) This, in turn, caused the State to pay more than $1,200,000 for these medicines. (*Id.*)

C. The Teva Defendants And Actavis Defendants Are Uniquely Situated.

1. Teva Defendants Have Only Sold And Promoted Two Unique Schedule II Opioid Medicines And Did So Years After OxyContin's Launch.

Cephalon manufactures and sells two branded products: Actiq and Fentora. (Pet., Ex. H, ¶ 18.) Cephalon launched Actiq in 2001, and it launched Fentora in 2006. Teva USA first became affiliated with Cephalon in 2011. (*Id.*) Before then, Teva USA sold only generic opioid medicines and did not market them. (8/29/18 J. Hassler Dep. Tr. at 15:5–17, 17:7–18:3, attached hereto as Exhibit M.)

Unlike the long-acting opioids sold and manufactured by other Defendants, Actiq and Fentora are immediate-release—or "short-acting"—opioids. They are indicated and approved by the FDA for the management of ***breakthrough cancer pain*** in patients who are tolerant to opioid therapy for their underlying persistent cancer pain. (Actiq Label, attached hereto as Exhibit N; Fentora Label, attached hereto as Exhibit O.) They do not treat long-term pain.

Because of their potency, and unlike the other medications which are the subject of this litigation, Actiq and Fentora have always been subject to FDA-mandated risk mitigation programs to ensure that doctors are aware of the risks of these medicines. From the time of their respective launches in 2001 (Actiq) and 2006 (Fentora), they were subject to risk management plans ("RMPs"). (Actiq Risk Management Program, attached hereto as Exhibit P; Fentora Risk Management Program, attached hereto as Exhibit Q.) The Actiq and Fentora RMPs were designed to address and prevent potential risk situations, including accidental ingestion, improper patient selection, diversion, and abuse. (*See* Ex. P at 1–30; Ex. Q at 3–5.)

Since early 2012, both Actiq and Fentora also have been subject to a special Risk Evaluation and Mitigation Strategy ("REMS") applicable to this class of transmucosal immediate-release fentanyl ("TIRF") prescription medicines ("TIRF REMS"). (TIRF REMS, *available at*

http://www.accessdata.fda.gov/drugsatfda_docs/rems/TIRF_SS_2015-12-21_REMS_FULL.pdf, attached hereto as Exhibit R.) The TIRF REMS program imposes additional, unique, and rigorous requirements on doctors, patients, and pharmacies to ensure that patients receive only medically appropriate prescriptions of Actiq and Fentora. *See* 21 U.S.C. § 355-1 (governing REMS programs); TIRF REMS, Ex. R.

For example, the TIRF REMS Program requires each prescriber of Actiq and Fentora to review educational materials, including the full prescribing information, and to successfully complete a knowledge assessment, ***before*** being eligible to prescribe these medicines. (*Id.* ¶ II(B)(1)(b)(i); *see also id.* at 51–53 ("Prescriber Enrollment Form;" certifying prescriber has reviewed "Full Prescribing Information" and understands "***responsible use conditions for TIRF medicines and the risks and benefits of chronic opioid therapy***" (emphases added).) In addition, both patient and physician must sign a TIRF REMS Access Patient-Prescriber Agreement Form ("Patient Form") ***before*** the patient's first prescription. (*Id.* ¶ II(B)(1)(b)(ii).) The Patient Form requires both patient and physician to agree that they each ***understand the risks, consequences, and approved uses*** of TIRF medicines." (*Id.*; *see also id.* 54–56 (Patient Form template); *see also* L. Webster Dep. Tr., Ex. E, at 350:20–360:8.)

Given their unique indications and the stringent TIRF REMS Program, it is not surprising that Actiq and Fentora make up a miniscule proportion of the opioids sold in Oklahoma. In fact, according to the Petition, between January 1, 2007 and June 21, 2016, the Oklahoma Health Care Authority ("OCHA") reimbursed a mere 245 prescriptions of Actiq and Fentora, for which the State paid less than $650,000. (Pet., Ex. H, ¶ 37 & Ex. 3.) This number contrasts sharply with the higher numbers of prescriptions allegedly submitted for reimbursement for other Defendants'

products. For example, the State alleges that it paid for over 95,000 Purdue prescriptions over the same time period, costing the State nearly $50,000,000. (*Id.* ¶ 35 & Ex. 1.)

Even more telling, the State's expert disclosures have not identified ***any*** of the 245 Actiq or Fentora prescriptions reimbursed by OHCA that was medically unnecessary. ***Zero.*** Nor can the State do so, because, unlike other branded medicines sold by other Defendants in this case, the State limited reimbursement for Actiq and Fentora to only cancer-related diagnoses for at least the past decade. (*See* Oklahoma Healthcare Authority, *Prior Authorization Guide*, 2009, https://okhca.org/providers.aspx?id=11342#34, attached hereto as Exhibit S.)

2. The Actavis Defendants Have Only Sold Generic Medicines And Do Not And Have Not Engaged In Marketing Of Those Medicines.

The Actavis Defendants manufacture and sell certain generic opioid products. They have never promoted the efficacy or safety of their generic products—and do not use third parties to do so either. (1/23/19 C. Baeder Dep. Tr. at 21:10–13, 334:3–19, attached hereto as Exhibit T.)

This business model is entirely different from the way in which brand-name manufacturers market and promote their medicines. And it is largely a result of drug substitution laws, where a generic product is substituted for the more expensive branded products by the pharmacist, provided the patient or the doctor permits that substitution. *See, e.g.*, Okla. Administrative Code § 535:10–3-1.1(2) (requiring patient or doctor to give permission for pharmacist to substitute a generic). Because there are typically multiple generic versions of a prescription medication, and a prescriber has ***no control*** over which generic manufacturer's product is substituted at the pharmacy, generic products are not marketed to prescribers:

> Generics 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 . . . In addition, because the generic [firm] promoting the product would have no way to ensure that its generic product, rather than an AB-rated generic made by one of its competitors, would be substituted for the brand by

> pharmacists, a substantial investment in marketing a generic product to physicians would not make sense as a practical matter.

See New York v. Actavis, PLC, No. 14 CIV 7473, 2014 WL 7015198, at *27 (S.D.N.Y. Dec. 11, 2014). Of course, the State cannot pursue false marketing claims against companies, such as the Actavis Defendants, that do not market generics.

D. The State Concedes That Severance Is Appropriate.

Ignoring the fundamental differences between the many Defendants, the State asserts five causes of action—each premised upon allegations that each Defendant made separate misrepresentations and omissions to different Oklahoma prescribers at different times regarding the risks and benefits of opioids, which, in turn, allegedly caused Oklahoma prescribers to write inappropriate and harmful prescriptions. (Pet., Ex. H, ¶¶ 51–53, 73–133.)

More recently, the State has argued that the claims against the Purdue Defendants should be severed from this action, assigned their own case number, and consolidated into a single trial. As described below, the Moving Defendants agree that the Purdue Defendants are separately situated and, thus, the claims against them must proceed separately. The proper way to address this fundamental issue, however, is to sever the claims against the Moving Defendants and have the claims against them adjudicated in a separate trial.

III. ARGUMENT

Oklahoma law sets forth the standard for when parties may be permissibly joined. Okla. Stat. tit. 12, § 2020(A)(2). When they have been misjoined, "[p]arties may be dropped or added" and "[a]ny claim against a party may be severed and proceeded with separately." Okla. Stat. Ann. tit. 12, § 2021. In addition, even when Defendants have been properly joined in a case, the trial court may "order separate trials or make other orders to prevent delay or prejudice." Okla. Stat. Ann. tit. 12, § 2020(C). As described below, severance is appropriate for both reasons.

A. The Teva Defendants and Actavis Defendants Are Misjoined.

The Teva Defendants and Actavis Defendants are misjoined in this action. Under Section 2020(A)(2) of the Oklahoma Pleading Code:

> 2. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative:
>
> a. any right to relief in respect of or arising out of the same transaction or occurrence, or
>
> b. if the claims arise out of a series of transactions or occurrences and any question of law or fact common to all defendants will arise in the action, or
>
> c. if the claims are connected with the subject matter of the action.

Okla. Stat. tit. 12, § 2020(A)(2). It is well-settled that "[b]ecause § 2020 parallels the language of Federal Rule 20, both state and federal jurisprudence on the subject is instructive." *A-Plus Janitorial & Carpet Cleaning v. Emp'rs' Workers' Comp. Ass'n*, 936 P.2d 916, 926 (Okla. 1997).

There are "two requisites for joinder of parties: (1) a right to relief must be asserted by or against each plaintiff or defendant relating to or ***arising out of the same transaction or occurrence***; and (2) some question of law or fact common to all the parties will arise in the action." *A-Plus Janitorial & Carpet Cleaning v. Emp'rs' Workers' Comp. Ass'n*, 936 P.2d 916, 926 (Okla. 1997) (emphasis added). Parties are misjoined if they fail to satisfy either prong of this test. *Id.* at 927 (analyzing Federal Rule 20(a)'s two-part test). Neither prong is satisfied here.

1. The Claims Do Not Arise Out of the Same Transaction or Occurrence.

In order to be properly joined, the claims against the Defendants must "arise out of a series of transactions or occurrences." Okla. Stat. tit. 12, § 2020(A)(2). This series of transactions or occurrences must involve the same parties and the same conduct; they cannot simply be an aggregation of "individual occurrence[s]." *Watson v. Batton*, 958 P.2d 812, 814 (Okla. Civ. App. 1998). As a result, "[t]he allegation that the defendants merely committed the same type of

violation in the same way is insufficient to justify joinder." *Colonial Funding Network, Inc. v. McNider Marine, LLC*, 17 Civ. 2644 (LGS), 2017 WL 5633160, at *4 (S.D.N.Y. Nov. 21, 2017) (citation omitted) (granting severance under Federal Rule 20).

In *Watson,* the plaintiff claimed injuries as the result of two automobile accidents that occurred six months apart. *Watson*, 958 P.2d at 813. The plaintiff sued the two other drivers involved in the two accidents, arguing both were liable for her injuries because of the combined effect of the two accidents, which she argued could not be separated. *Id.* The Court of Civil Appeals rejected the argument, finding that:

> [T]he accidents were separate. Each accident was an individual occurrence. While there may be similarities between the accidents, the same could be said of any automobile accident, even if different plaintiffs and defendants were involved. [The Plaintiff's] contention that she suffered an "indivisible injury" is rejected. She purportedly received injuries from each automobile accident. ***The injuries from the first accident . . . may have been exacerbated by the second accident . . . but remain separate and distinct.*** **The fact that the injuries may be difficult to separate does not, in itself, permit joinder of these completely different causes of action.**

Id. at 814 (emphasis added) (the court held that the trial court did not err in finding misjoinder but determined severance, rather than dismissal, was the appropriate remedy for the misjoinder).

The same reasoning applies here. Like the two car accidents in *Watson*, the alleged marketing actions of twelve different companies were all separate, "individual occurrence[s]" that, if true, would give rise to "separate and distinct" injuries. 958 P.2d at 814; *see also White v. Taylor*, 728 P.2d 525, 526 (Okla. Civ. App. 1986) (finding joinder improper where plaintiff did not suffer a "single injury" as a result of two accidents that occurred over a month apart). Even the State argues that it "can trace" the harm associated with opioid abuse and addiction to particular marketing by the Purdue Defendants. (8/30/18 Hearing Tr., Ex. J, at 57:17–58:1.)

As in *Watson*, the Defendants are simply not linked by virtue of a series of transactions or occurrences—especially not the Teva Defendants and the Actavis Defendants. The Defendants

manufactured ***different drugs that were released and approved at different times and indicated for different conditions.*** Actiq and Fentora are unlike the other drugs at issue here because they are short-acting opioids indicated for the management of ***breakthrough*** cancer pain in opioid tolerant patients. Given these narrow indications, they—unlike OxyContin and the other medicines at issue—were not marketed for the treatment of long-term pain. They also have always been subject to unique FDA-mandated risk management requirements, including the TIRF REMS Program, to ensure that both doctor and patient are aware of the risks and indications of the medicines. **No other drugs at issue in this case were subject to these requirements.**

In fact, the Teva and Actavis Defendants could not have been involved in the transactions or occurrences that, according to the State, started the opioid epidemic: the Purdue Defendants' introduction of OxyContin to the market in 1996 and their marketing of that medicine. (Pet., Ex. H, ¶ 53.) The Teva Defendants never promoted any opioid medicines until Cephalon launched Actiq in 2001, and Fentora did not even come onto the market until more than a decade ***after*** the launch of OxyContin. And the Actavis Defendants did not market their generic opioid medicines at all, making it impossible to link them to a series of marketing-related transactions involving others. Cleary, the conduct giving rise to what the State describes as the "Blizzard of '96"—and the start of the opioid epidemic—had nothing to do with the Teva Defendants or the Actavis Defendants. (*OxyContin: The Most Significant Launch in Purdue History!*, Bates: PDD9316703680, Ex. L).)

Courts throughout the country have held joinder improper under similar circumstances. *See, e.g., Waterfall Homeowners Ass'n v. Viega, Inc.*, 283 F.R.D. 571, 586 (D. Nev. 2012) ("The only concrete similarity among the Viega and Uponor Defendants is that they manufactured and sold components containing yellow brass, and Plaintiffs allegedly suffered injuries. . . . This is insufficient to justify joinder of these Defendants."); *Ramos v. Playtex Prod., Inc.*, No. 08 CV

2703, 2008 WL 4066250, at *3 (N.D. Ill. Aug. 27, 2008) ("[N]one [of] the allegations indicate that there was any logical relationship between each defendant's production, marketing, or sales of the cooler carriers; rather, plaintiffs' allegations suggest merely that each defendant manufactured, marketed, and sold similar products and engaged in similar, as opposed to related, conduct." (footnote omitted)); *Pergo, Inc. v. Alloc, Inc.*, 262 F. Supp. 2d 122, 128 (S.D.N.Y. 2003) ("[T]he fact that two parties may manufacture or sell similar products, and that these sales or production may have infringed the identical patent owned by the plaintiffs is not sufficient to join unrelated parties as defendants in the same lawsuit pursuant to Rule 20(a).").

In *Graziose v. American Home Products Corp.*, 202 F.R.D. 638 (D. Nev. 2001), for instance, plaintiffs sued different manufacturers and sellers of various medicines which contained an allegedly harmful common ingredient. *Id.* at 639. The court granted the defendants' motion to sever, finding that the alleged injuries did not arise from the same transaction or series of transactions. *Id.* at 640. There, "[t]hey occurred at different times. The medicines were different. The retailers were different. The manufacturers are different." *Id.* **The fact that the defendants' medicines shared a key ingredient was "insufficient to justify joinder," particularly in light of the legal system's "dedication to individual justice, to ensure that the individual plaintiff's and defendant's causes and rights are not lost in the 'shadow of a towering mass litigation.'"** *Id.* at 640–41 (quoting *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993) (emphasis added)).

In short, even though all Defendants sell opioids, the claims against the Teva Defendants and the Actavis Entities arise out of entirely separate, alleged marketing conduct from those against the other Defendants. *Lektron, Inc. v. GE Lighting, Inc.*, No. 11-cv-413-TCK-PJC, 2012 WL 1085486, at *2 (N.D. Okla. Mar. 30, 2012). The Moving Defendants were misjoined in this action.

And the risk of prejudice—based upon the State's theory of the case against Purdue, the extremely inflammatory rhetoric against Purdue and its owners, and the significant risk of jury confusion when all claims against so many defendants are joined and tried in a single trial—is real and significant. The claims against them should be severed, and a separate trial should be held.

2. Questions of Fact or Law Do Not Support Joinder.

The first prong of the test for joinder is not satisfied and the Court needs not address whether questions of law or fact common to all the parties will arise. *A-Plus Janitorial & Carpet Cleaning v. Emp'rs' Workers' Comp. Ass'n*, 936 P.2d at 926. However, it bears noting that because the claims arise out of separate transactions, the Court will need to address separate facts and legal issues ***as to each Defendant***. There will not be a sufficient number of common questions of law or fact to justify joinder.

B. The Moving Defendants Are Entitled To A Separate Trial Due To The Risk Of Prejudice, Confusion To The Jury, And In The Interest Of Efficiency.

Even if the claims against the Moving Defendants are not severed, the Court should order separate trials. Section 2020(C) permits the Court to "order separate trials or make other orders to prevent delay or prejudice." Okla. Stat. tit. 12, § 2020(C). The Court considers whether "in the interest of justice such action provides a fair and convenient forum for all parties." *Id.* The interests of justice require a separate trial for the Moving Defendants for three independent reasons—the risk of prejudice, jury confusion, and gross inefficiency.

1. A Joint Trial Will Severely Prejudice The Teva And Actavis Defendants.

The State has made clear that it intends to prove that the Purdue Defendants "created this [opioid] epidemic" with the 1996 introduction of OxyContin and its aggressive and novel marketing campaign. (Response to Purdue Mot. to Quash, Ex. A, at 6.) It even intends to argue and present evidence to the jury attempting to establish that the Purdue Defendants employed

"convicted liars, and it permeated the entire company." (9/27/2018 Hearing Tr., Ex. B, at 46:21.) The State also has indicated that, with respect to the Janssen Defendants, it intends to focus on their ownership of Noramco and its purported role of selling the active pharmaceutical ingredient of several opioids, including Oxycodone, to the Purdue Defendants. (*Id.* at 25:25–26:11.) These core legal theories about the other Defendants predate the Teva Defendants' ownership and promotion of its brand medicines by at least ***five years***—and, as discussed above, the Actavis Defendants never promoted their generic medicines. Lumping in the Teva Defendants and Actavis Defendants would create a grossly prejudicial spillover effect.

The State will need weeks to put on its false marketing case against all of the Defendants. There is little doubt that the State will spend the majority of that time focused on the Purdue Defendants' alleged bad acts, and then try to impose "liability by association" against the Moving Defendants. During nearly every deposition, the State has introduced documents regarding Purdue's history, the Sackler family, and their purported role in revolutionizing the marketing of medicines with the 1996 introduction of OxyContin. Statements equating the release of OxyContin with the "Blizzard of 1996," accompanied by a "blizzard of prescriptions that will bury the competition" (*OxyContin: The Most Significant Launch in Purdue History!*, Bates: PDD9316703680, Ex. L) have no bearing on the Teva Defendants or the Actavis Defendants. Those statements and other evidence and arguments directed to Purdue cannot be attributed to any other party—but will undoubtedly inflame the jury against all Defendants before them at trial. In short, the volume and content of the evidence the State has indicated it intends to use against the Purdue Defendants—and the vitriol with which the State intends to present that evidence—would be grossly prejudicial to the Teva and Actavis Defendants.

Similarly, a "parade of witnesses" recounting harm the State may try to attribute to other Defendants' products and conduct will cause significant prejudice to the Moving Defendants. *Wynn v. Nat'l Broad. Co.*, 234 F. Supp. 2d 1067, 1089 (C.D. Cal. 2002) (quoting *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000)). For instance, the State indicates that it intends to utilize testimony from individuals who became addicted to prescriptions of OxyContin, such as testimony from Lauren Cambra, who allegedly became addicted to OxyContin and suffered hardship after doing a promotional video that touted its benefits. (11/15/18 L. Cambra Dep. Tr., at 16:20–18:16, 22:3–23:7, attached hereto as Exhibit U.) This testimony, of course, has nothing to do with the Teva or Actavis Defendants. It will only serve to confuse the jury and unfairly prejudice it against all opioid manufacturers, including the Moving Defendants. This, in turn, would violate basic constitutional due process principles. *See, e.g.*, *Janssen Pharmaceutica, Inc. v. Armond*, 866 So. 2d 1092, 1094 (Miss. 2004) (holding trial court abused its discretion in denying defendants' motion for severance where joinder requirements were not satisfied and joinder of plaintiffs would deprive defendants of constitutional due process).

Likewise, there is the "risk that a decision by one company might taint the jury's view of another decision made by a different company." *Wynn v. Nat'l Broad. Co.*, 234 F. Supp. 2d at 1089. Separate trials are necessary to guard against these possible sources of prejudice—even if doing so duplicates efforts. *See, e.g.*, *Baker v. Waterman S.S. Corp.*, 11 F.R.D. 440, 441 (S.D.N.Y. 1951) ("A paramount consideration at all times in the administration of justice is a fair and impartial trial to all litigants. Considerations of economy of time, money and convenience of witnesses must yield thereto."); *Philips Elecs. N. Am. Corp. v. Contec Corp.*, 220 F.R.D. 415, 418 (D. Del. 2004) (ordering separate trials based on "a substantial risk of prejudice to [one defendant] were the jury to believe that [it] is somehow linked to [its co-defendant]"). Because conducting a

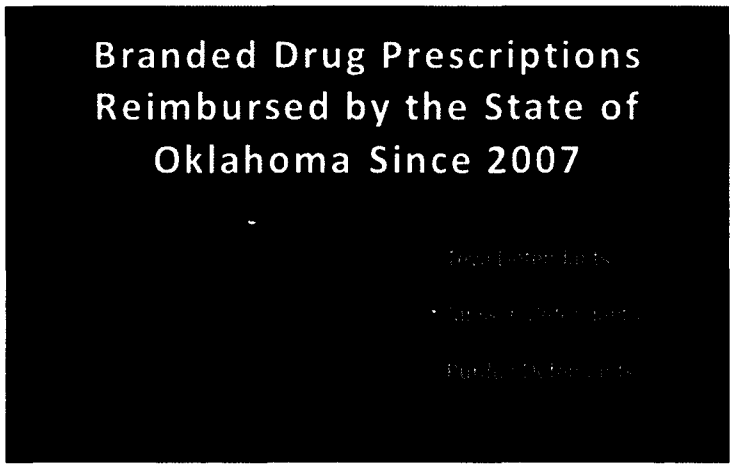
single trial would threaten the Moving Defendants with "guilt by association," *Wynn*, 234 F. Supp. 2d at 1089, the motion to sever should be granted.

2. A Joint Trial Would Confuse The Jury Given The Complexity Of The Claims And Differences Between The Defendants.

This is not a simple case. Over one hundred depositions have been conducted thus far—with many more yet to be scheduled and completed. Millions of pages of documents have been produced. In order to render a supportable verdict, a jury will need to keep track of nuanced opioid- and company-specific information. This can only be done through separate trials.

As noted above, there are twelve different companies that manufactured and sold dozens of different opioid medicines, utilizing different means of marketing, if any, at different times. A joint trial would mean that members of the jury would need to know critical facts about ***all*** of the medicines for ***all*** of the various Defendants, including their chemical formulations, when they were approved, for what indications, their labeling requirements, and their applicable FDA regulations. The jury will need to know, for instance, the difference between branded and generic medicines, long-acting and short-acting opioids, and the TIRF REMS Program and other requirements. Perhaps most importantly, the jury will need to keep track of exactly which Defendant engaged in which conduct, at which time, and attempt to distinguish and differentiate the evidence (or lack thereof) against each Defendant from all other Defendants. Because there is too much information about too many companies and too many products, a joint trial encompassing all Defendants would be unfair and deprive the Moving Defendants of their due process right to a fair trial under the Oklahoma and U.S. Constitutions. *See Janssen Pharmaceutica, Inc.* 866 So. 2d at 1098 (Miss. 2004) (numerous different factual inquiries would "unavoidably confuse the jury and irretrievably prejudice the defendants").

A joint trial is also likely to lead to confusion as to what each Defendant supposedly did. The State's allegations and expert disclosures show that the overwhelming majority of Medicaid prescriptions for opioids that were actually promoted have nothing to do with either the Teva or Actavis Defendants. The State, for instance, contends that it reimbursed 95,000 prescriptions of the Purdue Defendants' medicines since 2007 (97.070% of total) and spent nearly $50,000,000 doing so. (Pet., Ex. H, ¶ 35 & Ex. 1.) The State contends it reimbursed 2,638 prescriptions of the Janssen Defendants' medicines (2.681% of total) and spent over $1.2 million doing so. In stark contrast, State contends it reimbursed a mere 245 prescriptions for Actiq or Fentora (0.249% of total), amounting to less than $650,000 spent for those products. (Pet. ¶ 37 & Ex. 3.) The disparity is clear:



The State also has made clear that it seeks to prove the Purdue Defendants started Oklahoma's opioid epidemic years before any Teva or Actavis Defendant even sold an opioid medicine. (12/05/17 Hearing Tr., Ex. I, at 31:21–32:21 (Beckworth, B.)) Allowing such evidence to be presented at a single trial involving all twelve Defendants would be both illogical and highly prejudicial. Simply put, it would deprive the Teva and Actavis Defendants of their right to a fair trial.

3. A Joint Trial Would Be Inefficient And A Waste Of Judicial Resources.

At any trial, the jury's determination of liability will rely upon the specific marketing statements, if any, of each individual Defendant in light of the specific characteristics of its own product(s)—including each product's medical characteristics and scope of FDA approval. The trial will require the jury to undertake a fact-intensive inquiry involving complex medical concepts. Because of the "significant differences" in the nature, launch, and marketing of these products, separate trials are needed "to avoid the difficulties and complications that would inevitably arise in an omnibus trial in which several counsel representing numerous parties would attempt to define and preserve the distinctions between evidence and issues relating to some defendant[s] and not to others." *Cohen v. D.C. Nat'l Bank*, 59 F.R.D. 84, 88 (D.D.C. 1972).

Each Defendant also has a constitutional due process right to cross-examine the State's witnesses, put on its own fact witnesses, and utilize its own experts. Trying all Defendants in each case will create a series of impracticalities. If the Moving Defendants are not severed, for instance, each witness from the State will need to be examined about what he or she knows about twelve separate companies, by at least three separate groups of lawyers. This will need to be repeated for all fact and expert witnesses. This will not only be extremely time-consuming and inefficient; it will inevitably confuse the jury.

By contrast, separate trials will allow the jury to focus on the specific conduct alleged against the Moving Defendants—and, for that matter, each family of Defendants. Under these circumstances, "[j]udicial economy demands that these claims be handled individually in a manageable manner, rather than in a combined lawsuit which would only require an unmanageable

trial be conducted in such a way as to create confusion and chaos for the jury." *Graziose*, 202 F.R.D. at 641. Severance should be granted.[11]

IV. CONCLUSION

For all these reasons, the claims against the Teva Defendants and Actavis Defendants should be severed and should proceed through a separate trial, apart from any trial or trials involving the Purdue and Janssen Defendants.

Dated: February 26, 2019.

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[11] It is not Moving Defendants' position that the Court must hold separate trials for each of the 12 Defendants. The most efficient approach, consistent with the parties' due process rights, might be to hold separate trials for each of the three corporate families – Purdue, Janssen and the Teva Defendants.

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I hereby certify that a true and correct copy of the foregoing was emailed this 26th day of February, 2019, to the following:

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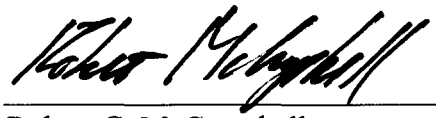

Robert G. McCampbell

S490901

EXHIBIT A

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
DEC 05 2018
In the office of the
Court Clerk MARILYN WILLIAMS

THE STATE'S RESPONSE TO PURDUE'S MOTION TO QUASH DEPOSITION NOTICE OF PURDUE VIA JONATHAN SACKLER AND MORTIMER D.A. SACKLER

The fact that Purdue does not want to present members of its founding family for depositions to testify on behalf of the company they own comes as no surprise. But, the grounds upon which Purdue is basing its *Motion to Quash and Motion for Protective Order for Deposition Notice of Purdue Via Jonathan Sackler and Mortimer D.A. Sackler* ("Motion")—burden, harassment, and duplication—is ridiculous. It is undisputed that for decades, the Sackler family

has derived its unimaginable wealth from the sale of OxyContin. Purdue's release and marketing of OxyContin played a key role in creating the current opioid epidemic. It is also undisputed that Jonathan Sackler and Mortimer D.A. Sackler are the sons of the co-founders of Purdue and serve on the Board of Directors for Defendant Purdue Pharma, Inc. They have attended board meetings and been actively involved in the decision-making process of this multi-billion dollar company—a company which has reaped staggering profits from the addiction and death of thousands of Oklahomans. *See, e.g., Ex. 1, Purdue Board Minutes (05/03/07); Ex. 2, Rhodes Board Minutes (10/19/05); Exs. 3-4, Quarterly Reports (01/15/08; 10/15/08).* Their ability to provide binding testimony for Purdue Pharma, Inc. cannot legitimately be disputed.

Purdue's arguments in favor of quashing the State's 12 O.S. § 3230(C)(5) deposition notices to Jonathan and Mortimer D.A. Sackler are three-fold: (1) Jonathan Sackler and Mortimer D.A. Sackler do not hold any position for Purdue Pharma, L.P. or The Purdue Frederick Co.; (2) their testimony will be duplicative; and (3) the notices are unduly burdensome and sent for harassment. None of these arguments provide "good cause" for quashing the Notices, and Purdue's *Motion* should be denied.

ARGUMENT AND AUTHORITIES

A. Legal Standard.

Under Oklahoma law, discovery rules and statues are to be liberally construed. *Boswell v. Schultz*, 2007 OK 94, ¶ 14, 175 P.3d 390, 395; 12 O.S. § 3225 ("The Discovery Code shall be liberally construed to provide the just, speedy and inexpensive determination of every action."). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." 12 O.S. § 3226(B)(1). Relevant discovery

is simply that which "**might** lead to the disclosure of admissible evidence." *Stone v. Coleman*, 1976 OK 182, ¶ 4, 557 P.2d 904, 906 (emphasis added). "The [United States Supreme] Court has more than once declared that the deposition-discovery rules are to be accorded a broad and liberal treatment to effect their purpose of adequately informing litigants in civil trials." *Herbert v. Lando*, 441 U.S. 153, 176 (1979).

The burden of showing good cause is statutorily placed on the party objecting to discovery and is part of that party's motion for protective order. 12 O.S. § 3226(C)(1); *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 15, 944 P.2d 304 (the Oklahoma Discovery Code "*shifts the burden* of showing 'good cause' to the party who *opposes* discovery") (emphasis in original). A showing of "good cause" to support the issuance of a protective order indicates the burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from blanket stereotyped and conclusory statements. *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, 174 P.3d 996, 1004; *Pepsi-Cola Bottling Co. of Pittsburgh, Inc. v. Pepsico, Inc.*, 2002 WL 922082, at *1 (D. Kan. May 2, 2002) ("To establish good cause, that party must make a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.").[1] "As a general rule, courts will not grant protective orders that prohibit the taking of deposition testimony." *U.S. E.E.O.C. v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 432 (D. Nev. 2006). Whether to enter a protective order lies within the Court's discretion. *Thomas v. Int'l Bus. Machs.*, 48 F.3d 478, 482 (10th Cir. 1995).

Based on this standard, Purdue has failed to establish a protective order is warranted for

[1] The Court may look to discovery procedures in federal rules when construing similar language in the Oklahoma Discovery Code. *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238; *Crest Infiniti*, 174 P.3d at 999 (language in 12 O.§ 3230(C) is similar to its federal counterpart, FRCP 30(b)(6)).

the depositions of Jonathan and Mortimer D.A. Sackler.

B. Jonathan And Mortimer D.A. Sackler Should Appear On Behalf Of Purdue Pharma, Inc.

Purdue argues the Notices should be quashed because Jonathan and Mortimer D.A. Sackler do not hold any positions for Defendants Purdue Pharma, L.P. and/or The Purdue Frederick, Co. However, Purdue concedes they do serve on the Board of Directors for Purdue Pharma, Inc. As such, they are certainly capable of providing testimony binding as to Purdue Pharma, Inc. This argument does not provide sufficient grounds to quash the Notices in their entirety.

C. Purdue Cannot Establish Good Cause For Quashing The Notices.

Purdue argues the Notices should be quashed because the testimony of Jonathan and Mortimer D.A. Sackler would only be duplicative of testimony by other more day-to-day employees of Purdue Pharma, Inc. and would already be reflected in documents produced by Purdue. They also argue that such testimony can be obtained from individuals who would find it "less burdensome." There are several problems with these arguments.

First, Purdue's argument implies that it has and will allow the State to conduct depositions of other more "day-to-day" corporate representatives. This is a misrepresentation of how discovery is progressing in this case. Defendants, including Purdue, have joined together to obstruct the discovery process at every turn. The parties have engaged in dozens of discovery battles, and Defendants have fought tooth and nail to prevent the State from moving forward with any depositions. In fact, the State has only been able to proceed with a small fraction of the depositions it is seeking. It is hard to fathom how the testimony of Jonathan and Mortimer D.A. Sackler can be "duplicative" of other depositions when Defendants are systematically refusing to voluntarily put up witnesses in response to the State's deposition notices. In *Thomas*, a case relied upon heavily by Purdue in its *Motion*, in granting the request for protective order, the court

considered whether the plaintiff had attempted to take other depositions, whether the plaintiff had provided adequate notice for the deposition, and whether the plaintiff waited until the eleventh hour to make his request. 48 F.2d at 483-84. **None of those factors are present here.** To the contrary, the State has been fighting for many, many months to conduct corporate representative depositions, and Defendants have engaged in continuous obstructionist tactics to prevent that from happening.

Second, Purdue argues Jonathan and Mortimer D.A. Sackler have no unique knowledge of the facts at issue, **but it provides zero evidence whatsoever in support of this fact.** The State cannot and should not have to take Purdue's word for it. *See Crest*, 174P.3d at 1004-1005 (defendants must show more than blanket statements that "these witness[es] lack any information relevant to the issues in this case."). These men have grown up with Purdue. Their fathers founded it. It is in their family and in their blood. They have served on the Board of Directors for Purdue Pharma, Inc. for years, and they very likely know things about the company that no one else does. They, more than anyone, are in a position to provide answers on behalf of Purdue Pharma, Inc. They are part of the decision-making team for Purdue, and Purdue's position they are mere figure heads with no independent knowledge about the company is disingenuous, at best. In fact, Johnathan Sacker's name appears in **more than two thousand (2,000) documents produced by Purdue.** Regardless, Purdue has provided the Court with no particular or specific facts establishing the propriety of a protective order.

Third, Purdue argues that any information can be gleaned from documents, rendering deposition testimony from these men unnecessary. Purdue does not get to decide how the State engages in discovery. The Oklahoma Discovery Code allows the party seeking discovery to decide the methods it wants to use to obtain information, and here the State seeks depositions.

Fourth, Purdue argues the Notices should be quashed because the State already took two corporate representative depositions and twenty (20) fact witness depositions. The sheer magnitude of this lawsuit highlights the absurdity of this argument. The State's claims against Purdue relate to conduct spanning more than two decades. The State alleges Purdue created this epidemic by engaging in a complicated, nationwide marketing campaign to convince an entire country of medical professionals they had an ethical obligation to treat pain with what it touted as non-addictive, effective drugs. The complexity and breadth of Purdue's deception is difficult to comprehend, yet Purdue wants this Court to believe the State can get everything it needs in just a couple of depositions. This is simply not possible.

Fifth, Purdue argues there are other people for whom a deposition would be "less burdensome" than Jonathan and Mortimer D.A. Sackler. Setting aside the implication that individuals who have profited wildly for years from getting Oklahomans addicted to opioids cannot be bothered to sit for a deposition, courts routinely permit the depositions of high-level executives "when conduct and knowledge at the highest corporate levels of the defendant are relevant in the case." *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 205 F.R.D. 535, 536 (S.D. Ind. 2002) (citing *Six W. Retail Acquisition v. Sony Theatre Mgmt.*, 203 F.R.D. 98 (S.D.N.Y. 2001)). As members of the Board of Directors, Jonathan and Mortimer D.A. Sackler are leaders of Purdue. While it may be inconvenient for them to answer the State's questions, Purdue's overall management decisions relating to the production and marketing of opioids are central to the State's claims. *See Gaither v. The Hous. Auth. Of The City Of New Haven*, No. CIV. NO. 3 07CV0667, 2008 WL 2782728, at *1 (D. Conn. July 7, 2008) ("Highly placed executives are not immune from discovery, and the fact that an executive has a busy schedule cannot shield that witness from being deposed."). The State should be allowed to obtain testimony from these

man that binds Purdue Pharma, Inc., and Purdue's *Motion* should be denied.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Purdue's *Motion* and order Jonathan and Mortimer D.A. Sackler to appear for 12 O.S. § 3230(C)(5) depositions on behalf of Purdue Pharma, Inc., and for such further relief the Court deems proper.

Respectfully submitted,

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I certify that a true and correct copy of the above and foregoing was emailed on December 5, 2018 to:

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EXHIBIT

1

CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018

EXHIBIT

2

CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018

EXHIBIT

3

CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018

EXHIBIT

4

CONFIDENTIAL
FILED UNDER SEAL
PURSUANT TO PROTECTIVE ORDER
DATED APRIL 16, 2018

EXHIBIT B

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
(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.	)	

PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL UNDER PROTECTIVE ORDER AND UNDER SEAL

TRANSCRIPT OF PROCEEDINGS
HAD ON SEPTEMBER 27, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

going to put Rhodes T here. All right. So what happens between Rhodes and Rhodes Tech. It's pretty interesting. I'm not sure how the money flows. Somehow between Purdue and Rhodes Tech, there are pills -- I'm sorry Rhodes Pharmaceuticals -- there are pills and there are dollars. Rhodes Tech, we believe -- don't have the documents that we know of -- Rhodes Tech is like a Tasmanian Alkaloids and Noramco. They make API.

That's really important, because now we have Purdue getting the base API for their drugs. So where does Rhodes Tech send it. Put a question mark here because I don't really know. Probably looks something like this (indicating), but it may go up here (indicating), and it may go up here (indicating), I don't really know. So I'll be fair and I'll put a question mark there.

Now, this gets pretty convoluted. Why do I care about all this stuff. Well, for example, when I deposed this lady from Purdue, one of the things I asked her -- and you were here when we played this in front of Judge Balkman.

I asked her about the crisis. And she testified when I asked her, Have we seen the worst yet -- paraphrasing -- she said, I don't know, it could get worse. And I asked her if there was a solution, and she said, I don't know, it's going to take everybody, it's complicated, there may not be a solution.

And I said, Well, there was one thing you could have done.

She said, What's that -- she said, I think, Is that a question, is what she said. I said, There's one thing you could have done. You could have stopped selling Oxy.

Now, let's put that into context. This was a woman who for almost 17 years, while Purdue is increasing its promotion in sales, was working inside Purdue to deal with the consequences that those sales cost; addiction and drug abuse.

And what she said was, and she had pulled out a chart from earlier in the depo about opioid overdose deaths in Oklahoma where it listed deaths by base drug. She said, No, that wouldn't have helped. She said, If you look here, there's only X percent of these drugs that are caused by Oxycodone, means deaths that are caused by Oxycodone, but if you look, there's a lot of other causes here. Hydromorphone, morphine, you name it, some of those things that I listed earlier that were on this document. Right?

So had we known that Rhodes Pharmaceuticals was selling generics for Purdue, and had we known that those pharmaceuticals were much -- I mean generics were much broader than OxyContin, imagine how that line of questioning might have gone. If she will come to trial when we try to subpoena her, I'm going to ask her about that. It'll be interesting to see how that goes for her.

So if we -- just before we move on with this document, I'm going to draw it up here. We've got J & J here, and we've got

Noramco and Tasmanian Alkaloids. So what do we now know from this document. Noramco, which is part of Tasmanian Alkaloids, is an API. We know that that went to Purdue. Based on the types of things they're buying, I have a substantial question that it also went to Rhodes Pharmaceutical.

What else do we know? We know that Purdue had to pay money to somebody for whatever it got from Noramco and Tasmanian Alkaloids. And what I know is whether they paid it directly to Noramco and Tasmanian Alkaloids or somewhere else, that money from Purdue eventually goes right here to Big Daddy, the parent company, J & J.

Now, the next document that I'll hand you, if I may, is a document dated December 2014, if I may approach. This one gets a little more complicated, and it shows -- kind of ties this all in a bow about what's at issue here. I'm not even going to ask you to read this document right now, your Honor, because it'll take a while, but I'm going to give you a fair summary of it. And if Mr. LaFata or anyone else needs to correct me because I've left something out, I invite that.

Teva produced this document; not Purdue. This is what I believe it is. If you recall, I said that there was a patent litigation and some type of settlement back in 2008. And I can hold on if you need to catch up.

THE COURT: No. I'm okay. Thanks.

MR. BECKWORTH: Okay. Purdue continued to try to

extend its patents over time, and there was other patent litigation -- I'm not privy to all of it -- it was in that at this point. But at some point, that litigation settled, and pursuant to that settlement agreement, there was a distribution agreement between Teva and Purdue. Okay.

And this is a summary of what's in this document. This document controlled the sell and distribution of something defined as a product. The product at issue is Oxycodone Controlled Release that is made under Purdue's patent for OxyContin. And this is for all different types of dosages and amounts.

All right. So what happens is Purdue makes OxyContin that's branded literally as OxyContin, and then it makes OxyContin that's unbranded that others can sell.

Under this agreement, Purdue agreed to provide Teva -- and this is a rough math -- but about 17 million OxyContin generic pills in this year alone, and then they had a ramp-up by percentage over time.

Pursuant to that, Teva had to pay for the drugs. But they didn't just pay for the base drugs they bought, which had a set price; they also had to pay a royalty of 1 percent on net aggregate sales that flow back to Purdue. Purdue and Teva, pursuant to this agreement, were required to collaborate on package and labeling.

So let's look at this for a second. We've got the 25

But that's all beside the point, your Honor. The issue before the Court is moot. The Kentucky documents have been produced, and the 24 million pages of documents that's come out of here, this is not really a -- this is a one-way street so far in discovery, it really feels to me.

We've really not been getting very much from the State, and the State of Oklahoma has a huge number of documents; they're just standing on it. If this is such a big crisis and a big issue, there would be lots of documents on it, and there are. And they're just not producing them.

We've brought that before the Court in the last hearing. We really haven't seen a change of conduct by the State. We'll have to, I guess, come back and maybe if the S word has to keep being added, then maybe we'll be adding the S word.

I mean, if the State wants -- and the State should be living by the standards that it seeks to impose. This shouldn't be the case, but perhaps if the State is sanctioned, maybe it would be producing the documents it has been ordered to produce.

So with that, your Honor, that's really it. If there are any questions, I'm happy to address them.

THE COURT: No. Thank you, Mr. LaFata.

MR. BECKWORTH: May I just quickly respond to that, your Honor?

When there's nothing you can say, there's nothing you can

say. I told you what they were going to do, come in here and say that we had somehow not produced a lot of documents. There's not a motion on us.

And let me be clear. I didn't say we're woefully behind. I didn't say our production is inadequate. I said nothing of the sort. What I said was it's not a tit-for-tat. They could have served us back in August like we served them. They chose not to. They played the delay game. That was their choice. Delay is on their side. That's what they want to do.

We're producing documents. We produced a lot of documents. We may not produce as many as them. We're not going to produce 20 million documents I don't think. We didn't cause this. We didn't kill anybody. It's not tit-for-tat.

Now, just to address a couple of these things. Unprofessional to say they lied. And that's the second time they've invoked the office of the attorney general into making a comment like that. I find that surprising that folks like Sandy Coats and Mr. McCampbell would sit in here and tolerate that kind of stuff, but Sandy said it during one of the hearings.

Let's be clear about lying. Purdue pled guilty to the federal crime of lying. They are convicted liars, and it permeated the entire company. Your Honor, one of these days we're going to have to go through some of these documents.

The general counselor, Mr. Udell -- Purdue was very much

like Tobacco. They fought very vigorously in litigation, and they don't lose very much. They convince judges everywhere in personal injury cases that they shouldn't let plaintiffs have their day in court.

And every time it happened, Mr. Udell would issue a press release, worked on with their strategist, that went out and took quotes from judges and judges' orders and used those -- I can show you a lot of the examples -- used them to say, Well, this is an endorsement that OxyContin is good and safe and we've never done anything wrong.

And in every instance, they turn on the plaintiff's lawyers. They said over and over again, We're not going to pay plaintiffs because that money goes to their lawyers. It's been Purdue's game a long time.

I promise you Purdue's behind legislation all over the country to make sure that people like us can't bring these cases. That's what they do.

You know what happened to Mr. Udell, their general counsel? Pled guilty. Criminal lying. Chief medical officer worldwide, the guy behind this, you know what happened to him? Pled guilty to lying. CEO pled guilty to lying.

Sales reps. How did they do this? Their soldiers were the sales reps. What did they do? They lied. That's what they did. That's how the company was built.

All right. So, yeah, they lie. Sorry. I don't know a

better word. I could call a murderer a life stopper, but murderer fits. This idea that, you know, we're bad because somebody stopped a vacation, you know, I don't know what to say about that. We've got to go forward in this case.

This idea that we only asked for Kentucky documents, that's not true at all. You've read the motion. It deals with all the things that you've ordered them to produce. That's what the motion says. And it specifically goes in RFP 1 and RFP 2.

Now, the communications aren't specifically listed in here. RFP 14, you've compelled them to produce that. When we go through and find these documents like we did last night, I mean, this is what we have to do. We go into our database, we go, Is this document in there, we pull it, now we see that there's something in there, and we know that there's got to be communications back and forth with these companies. All right. We've got to have that stuff.

THE COURT: You know, could I sort of -- Mr. Beckworth, I appreciate the argument. I've got several questions I want to ask and sort of figure out how I'm going to deal with this. Of course, I pulled out my order from back in April in getting ready for this and taking a look at it.

It appears that, of course, I've already entered orders with regard to RFP 1, 2, and 14. So help me a little bit with how do we ever get to the point of you and then arguing and me

EXHIBIT C

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

Plaintiff,

vs. Case No. CJ-2017-816

(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.

VIDEOTAPED DEPOSITION OF PURDUE 3230(c)(5) WITNESS

ALAN MUST

TAKEN ON BEHALF OF THE PLAINTIFF

ON JANUARY 22, 2019, BEGINNING AT 9:04 A.M.

IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: Gabe Pack

REPORTED BY: D. Luke Epps, CSR, RPR

it's exactly the same.

Q (BY MR. BECKWORTH) And nowhere could a reader who might be influenced by that article ever be able to tell that Purdue had anything to do with it; correct?

MR. SNAPP: Object to the form.

THE WITNESS: Probably not.

Q (BY MR. BECKWORTH) And that's exactly what y'all wanted; correct?

MR. SNAPP: Object to the form.

THE WITNESS: I'm not sure that's the case, but we did provide information for the reporter.

Q (BY MR. BECKWORTH) Well, if you wanted the public to know your fingerprints were on it, you would have just said so; right?

MR. SNAPP: Object to the form.

THE WITNESS: I suppose.

Q (BY MR. BECKWORTH) Now, who is worse, an attorney general that hires a lawyer to represent the citizens of the state or a drug company that causes death, despair and destruction and doesn't spend a red penny helping his state?

MR. SNAPP: Object to the form.

Q (BY MR. BECKWORTH) Who is worse?

MR. SNAPP: Object to the form.

THE WITNESS: I don't see one worse than the other.

Q (BY MR. BECKWORTH) Well, you sure seem to think attorney generals who hire outside counsel are bad, so is Purdue bad, too?

MR. SNAPP: Object to the form.

THE WITNESS: As we mentioned before --

MR. SNAPP: Scope.

THE WITNESS: -- I wasn't involved with that.

Q (BY MR. BECKWORTH) You know Purdue is a bad company? You can say it. It's true.

MR. SNAPP: Object to the form. Scope.

THE WITNESS: I don't think so.

Q (BY MR. BECKWORTH) It's a felon?

MR. SNAPP: Object to the form.

Q (BY MR. BECKWORTH) It's a felon --

MR. SNAPP: Object to the form.

Q (BY MR. BECKWORTH) -- right?

A There was a felony that was committed years ago.

Q Its CEO was an admitted criminal?

MR. SNAPP: Object to the form.

THE WITNESS: The CEO was convicted of

crimes, yes.

Q (BY MR. BECKWORTH) He admitted to them?

A Correct.

Q The chief legal officer who directed all the legal strategies at Purdue was an admitted criminal?

MR. SNAPP: Object to the form.

Q (BY MR. BECKWORTH) Right?

A He did commit those crimes.

Q And the head of the medical department for Purdue was an admitted criminal as well; right?

MR. SNAPP: Object to the form.

THE WITNESS: He did admit to those crimes.

Q (BY MR. BECKWORTH) Would we have abuse and addiction in the state of Oklahoma as a result of OxyContin if Purdue hadn't made OxyContin?

MR. SNAPP: Object to the form.

THE WITNESS: I don't think the --

MR. SNAPP: Scope.

THE WITNESS: -- abuse and diversion in Oklahoma is only because of OxyContin.

Q (BY MR. BECKWORTH) You agree it is at least partially because of OxyContin?

A I think --

MR. SNAPP: Object to the form. Scope.

THE WITNESS: I believe that people have abused OxyContin, yes.

Q (BY MR. BECKWORTH) Do you believe -- do you believe people have become addicted to OxyContin?

A For sure people who have abused OxyContin have become addicted.

Q Do you believe there's been overprescribing of OxyContin?

MR. SNAPP: Object to the form. Found -- scope.

THE WITNESS: I believe there's been overprescribing. I don't know if it's only OxyContin or if it's OxyContin.

Q (BY MR. BECKWORTH) But you know it's related to OxyContin, at least in part?

MR. SNAPP: Objection. Beyond the scope.

THE WITNESS: Again, I know that there's abuse and diversion.

Q (BY MR. BECKWORTH) Would any of that have occurred but for the aggressive sales and advocacy techniques used by Purdue?

MR. SNAPP: Objection. Beyond the scope.

THE WITNESS: I think very possibly it

CERTIFICATE

I, D. Luke Epps, Certified Shorthand Reporter, do hereby certify that the above-named Alan Must was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid; that the above and foregoing deposition was by me taken in shorthand and thereafter transcribed; 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 24th day of January, 2019.

D. Luke Epps, CSR, RPR

EXHIBIT 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

TRANSCRIPT OF PROCEEDINGS
HAD ON AUGUST 24, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE

REPORTED BY: ANGELA THAGARD, CSR, RPR

called for anywhere.

And I can promise you that if we go down that path, it's going to be horrible. We predicted that the whole special master deal would cause a lot of delay. Judge Hetherington, I think, has been very patient with all of us, and it's helpful. But the appeals and all the motions that come from it take a lot of time.

We go down that deposition protocol, that's going to be a rabbit hole that nobody is going to enjoy, I can assure you. But that's for another day. But we've got to be able to take these depositions. Four months is a long time to try to get a couple of depositions taken. It is.

What's going to happen is if they're not ordered to stand for these depositions and J & J isn't ordered to do the same thing, we're going to lose another month. What's going to happen. We're going to get so backed up, the trial date's just going to be almost unworkable.

I want your Honor to know, and I'll tell these gentlemen the same thing, we'll take that deposition on the 29th, we'll take it on the 30th, we'll take it on the 31st. I'll fly back up here and come take it tomorrow. I don't care. But it's got to happen.

We're literally sleeping in the office when we're here. We're working 18-, 20-hour days. I think the attorney general's office will verify that. We never aren't on call for

them. It's a sacrifice for all of us. We would like to see our families. I would like to be at my daughter's stuff today that I'm missing. But that's the job.

One of the things they brought up in this motion is that they have a witness who's going on a vacation. You know what? They've known about this deposition since April 4th. They've had plenty of time to schedule around it.

And everybody on their side bought themselves a 10- to 12-week vacation with their removal. They didn't have to be here doing things. I'm sorry if somebody has to miss a vacation. I don't want that.

But you know what? There are people like Craig Box and many of the other victims of this crisis who have lost children and have lost family members that don't get to go on vacations anymore. And we are dealing with a company that pled guilty to criminal misbranding.

It wasn't just the company. It was their general counsel. It was their head medical officer. It was their CEO, all three of them. While they pled in 2007 to those federal crimes, they did not stop doing it.

Now, they're entitled to a fair trial too. But past conduct often repeats itself, and it is repeating itself here. This is truly a company that believes it is above the law. It does. Shouldn't be a loss to anyone that they're represented by former U.S. attorneys here and other places.

This is a company that thinks it's above the law. It is going to try to evade your jurisdiction everywhere it can, and it is going to use others to try to help them do that. That is a fact.

So all I can say, your Honor, is we're pleading for your help. And they said that this witness needs to be in New York or somewhere on the 31st to go on a vacation, so we'll take that deposition on the 30th if you'll let us; we'll take it on the 29th if you'll let us. We're going to be here anyway. We've got a lot of other work to go.

The other deposition that just came up last night is one about Purdue's financial condition. And that deposition was ordered to take place by Judge Hetherington. We re-noticed it. They have brought up that our notice was a little bit broader.

I think we may have repeated the first notice. It's a little broader than what Judge Hetherington ordered us to do. So of course we will comply with Judge Hetherington's order on the scope of that deposition.

But they've now told us they don't want to produce a witness until late September on that. That doesn't work. And the fact that this is about their finances, it's the first deposition we need to take to explore their ability to pay and how they're structured. And in light of the very public things that we now know are going on with Purdue and our suspicion, it is well founded that they're going to try to evade this Court

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

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and Official Court Reporter for Cleveland County, do hereby certify that the foregoing transcript in the above-styled case is a true, correct, and complete transcript of my shorthand notes of

the proceedings in said cause.

I further certify that I am neither related to nor attorney for any interested party nor otherwise interested in the event of said action.

Dated this 24th day of August, 2018.

_____

ANGELA THAGARD, CSR, RPR

EXHIBIT E

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiffs

vs. Case No. 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., 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.

VIDEOTAPED DEPOSITION OF LYNN WEBSTER, M.D.

TAKEN ON BEHALF OF THE PLAINTIFF

ON FEBRUARY 18, 2019, BEGINNING AT 9:11 A.M.

IN SALT LAKE CITY, UTAH

REPORTED BY: VICKIE LARSEN, CSR/RMR

abuse. Moreover, the significant increase in OxyContin's availability in the marketplace may have increased opportunities to obtain the drug illicitly in some states. Finally, the history of abuse and diversion of prescription drugs, including opioids in some states, may have predisposed certain areas to problems with oxycodone. However, GAO cannot assess the relationship between the increased availability of OxyContin and locations of abuse and diversion because the data on abuse and diversion are not reliable, comprehensive or timely."

Did I read that right?

A. Yes.

Q. You're aware that around this time what have been referred to as "hot spots" of OxyContin abuse were cropping up?

MR. HOFFMAN: Objection to form.

THE WITNESS: I -- you know, I -- that sounds vaguely familiar, but I'm -- I'm not keenly tuned in to that.

Q. BY MR. DUCK: And were you

aware that Purdue aggressively promoted OxyContin following its launch?

MR. HOFFMAN: Object to form. Foundation.

THE WITNESS: I'm not aware of Purdue's marketing plan.

Q. BY MR. DUCK: And the documents we've looked at today, in particular the Richard Sackler speech, suggested that OxyContin would be aggressively promoted such that a blizzard of prescriptions would follow; correct?

MR. HOFFMAN: Object to form. Foundation.

THE WITNESS: I think that's what it implies for sure.

Q. BY MR. DUCK: If you'll turn to Page 6. The very last paragraph of this Page 6 says, "We received comments on a draft of this report from FDA, DEA, and Purdue."

You see that?

A. Yes.

Q. The last sentence of this -- well, let me just keep reading. It goes on, "Purdue agreed with our recommendation that

risk management plans for Schedule II controlled substances contain a strategy for monitoring" -- "monitoring and identifying potential abuse and diversion problems. DEA reiterated its statement that Purdue's aggressive marketing of OxyContin exacerbated the abuse and diversion problems and noted that its -- it is essential that risk management plans be put in place prior to the introduction of controlled substances into the marketplace. Purdue said that the report appeared to be fair and balanced, but that we should add that the media is one of the factors contributing to abuse and diversion problems with OxyContin. We incorporated their technical comments where appropriate."

Were you aware that Purdue had stated that this GAO report was fair and balanced?

A. I don't remember being aware of that.

MR. HOFFMAN: Sorry. Object to the form. Foundation.

Q. BY MR. DUCK: And you have no reason to disagree with the DEA's statement

farther -- what do you mean by that?

A. Well, you -- it's something you place in your mouth, and you place it on the mucosa, which is the inner lining of your mouth. And that then goes across into the blood stream and is picked up. So that's transmucosal. So the mucous, mucosa, mucosa, so it's transmucosa.

Q. And you mentioned "intrathecal," what do you mean by that?

A. That's giving it into the spinal canal.

Q. Is it fair to say that with respect to opioid manufacturers, different opioid manufacturers may engage in different types of promotional activities based upon the -- the medicine that they manufacture?

MR. DUCK: Objection. Form.

THE WITNESS: Yes.

Q. BY MR. ERCOLE: And some manufacturers -- like some generic manufacturers may not even promote their medicines to doctors at all; is that fair to say?

MR. DUCK: Objection to form.

THE WITNESS: There are -- yes, a lot of generics don't spend any money on marketing or reaching out to doctors.

Q. BY MR. ERCOLE: And is it fair to say that you can't just lump all opioid manufacturers together just like you can't lump all physicians together?

MR. DUCK: Objection to form.

THE WITNESS: Well, I think -- it depends upon what level you're talking about. I mean, I think there is -- each company is different, and so they've got different products so they would be different.

Q. BY MR. ERCOLE: Have you ever heard of the company Actavis Pharma, Inc.?

A. Yes.

Q. Do you recall any communications that you've had with Actavis Pharma, Inc.?

A. No, I don't recall it. It's possible, but I don't recall.

Q. Do you recall, sitting here today, any funding that you would have

received from Actavis Pharma, Inc.?

A. I -- I can't recall ever receiving funding.

Q. Are you aware of any promotional or marketing statements about opioids that were ever made by Actavis Pharma, Inc.?

A. I cannot recall.

Q. Assuming -- sitting here today, you're unaware of any false or misleading statements that would have been made by Actavis Pharma, Inc.?

A. I don't --

MR. DUCK: Objection to form.

THE WITNESS: I don't recall.

Q. BY MR. ERCOLE: Have you ever had any communications with Watson Laboratories, Inc.?

A. I know one of my former employees moved to Watson, and so what do you mean "communication"? I'm not sure I talked to him about anything they were doing, so it kind of depends on what your question is.

Q. Fair enough.

Do you recall receiving any

programs, to the best of your recollection, would have conveyed the FDA approved indications for those medicines; correct?

MR. DUCK: Objection to form.

THE WITNESS: Yes.

Q. BY MR. ERCOLE: Were you -- we mentioned -- we discussed the TIRF REMS --

A. Yes.

Q. -- program.

And -- and is the TIRF REMS program the program -- FDA approved REMS program applicable to the class of medicines known as TIRF medicines?

MR. DUCK: Objection to form.

THE WITNESS: The -- was the FDA REMS program?

Q. BY MR. ERCOLE: I'm asking about the TIRF REMS program.

A. Yes.

Q. What is -- what is the -- what is the TIRF REMS program?

MR. DUCK: Objection to form.

THE WITNESS: Well, those are -- that's a different REMS program that is -- that applies to the

trans- -- transmucosal fentanyl products.

Q. BY MR. ERCOLE: And Actiq and Fentora are examples of TIRF medicines; correct?

A. Correct.

Q. Cephalon manufactures Actiq and Fentora?

MR. DUCK: Objection to form.

THE WITNESS: Correct.

Q. BY MR. ERCOLE: Do you know in connection with the TIRF REMS program -- strike that.

Have you ever been enrolled in the TIRF REMS program?

A. Yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: And what are the -- do you know what requirements are -- must be satisfied before a prescription of Actiq or Fentora can be written?

A. Yeah --

MR. DUCK: Objection to form.

THE WITNESS: Yes, you -- you have -- you have to pass, basically an

exam, submit some content. The bar is not high.

Q. BY MR. ERCOLE: The examination that you're referencing -- strike that.

When you say "pass an examination," are you referring to sort of passing a knowledge test?

A. Yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: Just trying to minimize the number of documents, sir, that I've been using because I know you have a lot of paper.

A. You might not see me if they keep growing.

MR. ERCOLE: Can we mark this as -- what exhibit are we on?

THE REPORTER: 19.

(Exhibit 19 was marked for identification.)

Q. BY MR. ERCOLE: Dr. Webster, this is the -- it's a TIRF REMS program documentation that we've been talking about.

Do you see that?

A. Yes.

Q. Okay. And if you look on the

first page, it says "Initial REMS Approval."

Do you see that?

A. Yes.

Q. And if you turn to the first page, if you look at -- at sort of the Goals, Number 1.

Do you see that?

A. Yes.

Q. And it says, prescribing -- "The goals of the TIRF REMS Access program are to mitigate the risk of misuse, abuse, addiction, overdose and serious complications due to medication errors by:" And then it says, "Prescribing and dispensing TIRF medicines only to appropriate patients, which includes use only in opioid-tolerant patients."

Do you see that?

A. Yes.

Q. And then there are sort of elements to assure safe use, number B -- letter B.

Do you see that?

A. Yes.

Q. Okay. And it talks about

"Healthcare providers who prescribe TIRF medicines for outpatient use are" specifically certified -- "specially certified."

Did I read that right?

A. Yes.

Q. And then if you look to B(1)(b), it says, "To become certified to prescribe TIRF medicines, prescribers will be required to enroll in the TIRF REMS Access program. Prescribers must complete the following requirements to be enrolled:"

Do you see that?

A. I do.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: And when you talk about sort of the -- sort of -- you mentioned before that before prescribing you have to go through some type of knowledge enrollment process; correct?

A. Correct.

Q. And that's what this section is describing; correct?

MR. DUCK: Objection to form.

THE WITNESS: That's correct.

Q. BY MR. ERCOLE: And one of the things that prescribers have to do is complete a prescriber enrollment form; is that fair to say?

A. Yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: And each prescriber is required to acknowledge the following, and then there's a whole list of -- of things that a prescriber must acknowledge; correct?

MR. DUCK: Objection to form.

THE WITNESS: Yes.

Q. BY MR. ERCOLE: Okay. And one of those things is that -- if you look to small letter B. Do you see that on Page 2?

A. Yes.

Q. "I understand that TIRF medicines can be abused and this risk should be considered when prescribing or dispensing TIRF medicines in situations where I am concerned about an increased risk of misuse, abuse, or overdose, whether accidental or intentional."

Is that correct?

MR. DUCK: Objection to form.

THE WITNESS: That's what it says.

Q. BY MR. ERCOLE: Okay. So is it fair to say that before a prescriber, at least since -- since beginning of 2012 before a prescriber can write a prescription of Actiq or Fentora, that prescriber has to acknowledge that the medicine can be -- can be abused and that this risk needs to be considered in writing such a prescription?

MR. DUCK: Objection to form.

THE WITNESS: That's what this says.

Q. BY MR. ERCOLE: And if you look to -- on the next page, Page 3, it talks about --

A. Yes.

Q. -- in letter C, "I understand that TIRF medicines are indicated only for the management of breakthrough pain in patients with cancer who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent pain."

Is that correct?

A. Yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: And is that -- is that something else that prescribers need to acknowledge before they can write a prescription of Actiq or Fentora under the TIRF REMS program?

A. Well, that -- I mean, they have to sign some document that says they agree that they understand all of this. Not that they necessarily agreed, but they understand it.

Q. Sure. Right. That they understand what the medicines are --

A. What the rules are, yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: That doesn't -- that doesn't necessarily mean that the medicines can't be effective for uses outside of the cancer context; correct?

MR. DUCK: Objection to form.

THE WITNESS: Correct.

Q. BY MR. ERCOLE: But at a minimum, it indicates that before a

prescription can be written, doctors have to be aware of what the -- what the indication -- FDA approved indications of those medicines are?

A. As long as --

MR. DUCK: Objection to form.

MR. ERCOLE: -- it's in this context, yes.

Q. BY MR. ERCOLE: And if you look down to little I on that page, the prescriber also has to acknowledge that he or she will complete and sign TIRF REMS Access Patient-Prescriber Agreement Form with each new patient.

Do you see that?

A. Yes.

Q. What is that? Do you know what that is?

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: The "Patient-Prescriber Agreement"?

MR. DUCK: Objection to form.

THE WITNESS: Well, it's basically that the patient agrees to -- or is -- is aware that it can

cause harm too.

Q. BY MR. ERCOLE: And it's a -- an agreement that both doctor and patient have to sign before a prescription of Actiq or Fentora is written; correct?

MR. DUCK: Objection to form.

THE WITNESS: Yes.

Q. BY MR. ERCOLE: And if you -- if you look at letter K.

A. Yes.

Q. Talks about that "all follow-up visits, I agree to assess the patient for appropriateness of the dose of the TIRF medicine, and for signs of misuse and abuse"?

A. Yes.

Q. And so is that your understanding that under the TIRF REMS program before a prescription can even be written, doctors have to agree to assess the patient for appropriateness of the TIRF medicine and for signs of misuse and abuse?

A. Yes.

MR. DUCK: Objection to form.

Q. BY MR. ERCOLE: And do you know what the -- if you turn to the next page,

Page 4, there's a reference on the bottom again to the "Patient-Prescriber Agreement Form."

Do you see that?

A. Yes.

Q. And it says, "I will ensure that the patient and/or caregiver understand that, in signing the Patient-Prescriber Agreement Form, they document the following:

"My prescriber has given me a copy of the Medication Guide for the TIRF medicine I have been prescribed, and has reviewed it with me."

Do you see that?

A. I see that.

Q. Sure. And at least under the TIRF REMS program, is it fair to say that before a Actiq or Fentora prescription can be written, the prescriber to -- for a patient, the prescriber has to review a copy of the medication guide for that particular patient?

MR. DUCK: Objection to form.

THE WITNESS: That's what this says.

Q. BY MR. ERCOLE: Do you know

what the medication guide is referring to there?

A. Yes. It really is describing the risk of the drug and how to use it.

Q. And part of that medication guide would include the -- the potential risk of abuse and addiction; correct?

A. Yes.

MR. DUCK: Objection to form.

MR. ERCOLE: Can we take a five-minute break now, Doctor? Is that all right?

THE WITNESS: Yeah.

THE VIDEOGRAPHER: Off the record. The time is 3:39.

(There was a break taken.)

(Mr. Duck left the proceedings.)

THE VIDEOGRAPHER: Returning on the record. The time is 3:53.

MR. ROBINSON: This is John Robinson on behalf of Dr. Webster. Over the last week or two there have been extensive discussions both by way of phone calls and emails back and forth between me and counsel for the

defendants in this matter.

There was the subpoena for testimony that was served on Dr. Webster by the plaintiffs, and under Utah rules that would allow for a four-hour deposition.

We have had ongoing negotiations, which were never really completed in the email, so I'm going to attempt to do that right now.

For the deposition to continue beyond that four-hour limit, because there was no other validly served subpoena on Dr. Webster, we came to terms within the exchanges of emails as it related to providing the defendants with an additional amount of time up to six hours to examine the witness, with certain limitations, which are all delineated in the emails, as it relates to whether they would seek any future additional deposition of Dr. Webster.

The same will apply as it relates to Drs. Fishman and Fine, but

Reporter's Certificate

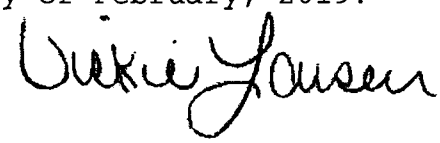
State of Utah)
County of Salt Lake)

I, Vickie Larsen, Certified Shorthand Reporter and Registered Merit Reporter, in the State of Utah, do hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

THAT the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have subscribed my name this 20th day of February, 2019.



Vickie Larsen, CSR/RMR

EXHIBIT F

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex reo.,
MIKE HUNTER, ATTORNEY GENERAL
OF OKLAHOMA,

Plaintiff,

vs. No. 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., a/k/a
JANSSEN PHARMACEUTICALS, INC.;
(9) JANSSEN PHARMACEUTICALS,
INC., a/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.

VIDEOTAPE TEVA 3230 (c)(5) DEPOSITION OF JOHN HASSLER
TAKEN ON BEHALF OF THE PLAINTIFF
ON JANUARY 29, 2019 AT 9:13 AM
IN OKLAHOMA CITY, OKLAHOMA

(Appearances continued on the following page.)

VIDEOTAPED BY: Gabriel Pack

REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

MR. FIORE: Object to the form. Assumes facts not in evidence.

THE WITNESS: I don't know that they started in 2006 or if that's as far back as they were able to find.

Q (BY MS. BALDWIN) Well, for Actiq they weren't able to find anything prior to 2013; correct?

A Correct.

Q But 2006 is listed here as the start year. Did they look for information responsive to this topic going back to 1999?

MR. FIORE: Object to the form.

THE WITNESS: I don't know. I'm unclear on the specific parameters. I had asked for all of the information that we had on sales and marketing expenses for these brands going back in time. I didn't give them a start date, and this is the information that I have.

Q (BY MS. BALDWIN) Do you know what the relevant time period in this case is?

MR. FIORE: Object to the form. Calls for legal conclusion.

THE WITNESS: I believe that it's 1999, but I'm not sure. That's what I remember hearing.

Q (BY MS. BALDWIN) Did you tell anyone what the relevant time period in the litigation was when you asked for information related to topic 43?

A No. I had asked for all of the information and didn't give them a start date.

Q When did Cephalon start -- when did Cephalon launch Actiq?

A I believe that they acquired the product in 2000.

Q Okay. So did someone look for information responsive to topic 43 from 2000 to 2005?

A Yes. I asked, and they said that they did look.

Q And they did not find it?

A Yes.

Q Is 2016 the last year Teva marketed -- or that Teva was engaging in any promotional activities with respect to Actiq or Fentora?

MR. FIORE: Object to the form.

THE WITNESS: I don't believe there were any promotional activities -- I don't believe that there's any sales force activities on Fentora. I know there weren't beyond the end of 2015. That was the last time that we had a sales force promote the brand.

There would have been some ongoing access

and educational support initiatives beyond that in support of the TIRF REMS programs that would be captured within these expenses. I believe that there was also some voucher or copay card support that would also be included for Fentora that would be included in these expenses.

Q (BY MS. BALDWIN) So from 2006 to 2012 Teva cannot find information regarding the amount spent annually on promotional efforts related to topic number 43; correct?

A That's the information that I've been given.

Q In 2013 Teva spent $73,937 on promotional efforts related to Actiq; is that correct?

A Yes.

MR. FIORE: Objection to form. Just for point of clarification, this Exhibit 12 addresses both topics 17 and 43 which I believe was broader --

THE REPORTER: I'm sorry. What?

MR. FIORE: Which is broader than just promotional efforts.

Q (BY MS. BALDWIN) Does $73,937 not represent the amount of money that Teva spent in 2013 on promotional efforts related to Oklahoma and/or nationwide?

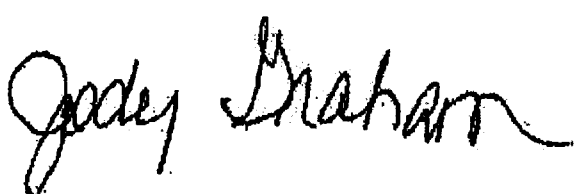
A Nationwide promotional efforts is outlined

CERTIFICATE

I, Jody Graham, CSR, RPR, RMR, CRR, do hereby certify that on JANUARY 29, 2019, at the offices of Gable Gotwals, Oklahoma City, Oklahoma, there came before me JOHN HASSLER, who was duly sworn to testify the truth, the whole truth, and nothing but the truth; and that the foregoing pages constitute a full, true, and correct transcript of the deposition of said witness on the date as indicated.

I do further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this 31st day of January, 2019.



Jody Graham CSR, RPR, RMR, CRR

CSR No. 203.

EXHIBIT G

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, 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 ***Submitted to***: **The Honorable Thad Balkman** STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY } FILED FEB 15 2019 In the office of the Court Clerk MARILYN WILLIAMS

THE STATE'S RESPONSE TO THE COURT'S ORDER TO PROVIDE BRIEFING ON THE LEGAL AUTHORITY TO SEVER CLAIMS AND CONSOLIDATE ACTIONS

On February 14, 2019, the Court orally ordered the parties to provide briefing on the Court's authority to sever claims and consolidate actions. The Court further specifically requested briefing on the potential of prejudice to Defendants arising from severance and consolidation. In accordance with that order, the State of Oklahoma ("the State") respectfully submits that the Court

possesses the inherent and statutory power to (1) sever claims into separate actions and (2) consolidate those actions for purposes of discovery and trial.

Authority

There can be no reasonable dispute that the Court possesses the inherent power and statutory authority to sever claims and consolidate actions for trial, and to manage its docket in this manner. *See, e.g., Winters v. City of Okla. City*, 1987 OK 63, ¶8, 740 P.2d 724, 726 ("Inherent powers [are] those which are necessary to the exercise of all others. These are the court's inherent powers to manage its own affairs so as to achieve the orderly and timely disposition of cases. These powers are implicit in the existence of a judicial system, and are a necessary incident to the exercise of a court's jurisdiction.") (internal quotation omitted); *Hambright v. City of Cleveland*, 1960 OK 184, ¶16, 360 P.2d 493, 496 ("Every court has inherent power, exercisable in its sound discretion, consistent within the Constitution and statutes, to control disposition of causes on its docket with economy of time and effort." (quoting 14 Am. Jur., Courts § 171)).

The Court's statutory power to sever comes from 12 O.S. § 2021, which states "[a]ny claim against a party may be severed and proceeded with separately." The Court's statutory power to consolidate comes from 12 O.S. § 2018(C), which states "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Severance and consolidation are perfectly allowable and common-sense tools the Court may use to control its docket and preserve a trial date. To be clear, such severance and consolidation does not change the prosecution and defense of the litigation. Pleadings will not

change. Existing petition and answers remain in effect. Motions will not change. All prior orders remain in full force and effect. Discovery master and settlement master processes do not change.

Severance and consolidation are purely docketing-control processes allowing a court to sever a case into separate cause numbers (for example, CJ-2017-816-1 and CJ-2017-816-2), and then consolidate those causes for discovery and trial. The State respectfully submits that severance and consolidation can occur through a single, simple order.

Lack of Prejudice

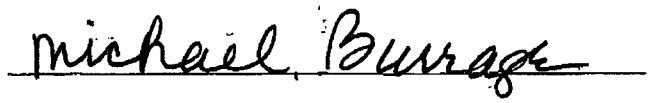
If severance and consolidation occur as described above, everything about this matter would remain the same. The Original Petition and all pleadings filed as of the date of the severance/consolidation order would remain the same. All orders issued to date remain the same. The Special Master and Settlement Master appointments remain the same. The Scheduling Order remains the same. The trial date remains the same. And the trial would remain the same. The only thing that would change is that some of the State's claims would bear a new cause number.

Because severance and consolidation are purely *procedural* mechanisms which allow a court to efficiently and economically control its docket—they do not affect the *substance* of the case—there necessarily can be no prejudice to Defendants.

CONCLUSION

Pursuant to 12 O.S. §§ 2021 and 2018(C) and the Court's inherent authority to efficiently manage the matters on the Court's docket, the Court undoubtedly possesses the power to sever and consolidate claims before it. Further, such severance and consolidation will not cause any prejudice to Defendants.

Respectfully submitted,



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