



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
CLEVELAND COUNTY J.S.
FILED In The
Office of the Court Clerk

PART A

MAR 14 2019

In the office of the
Court Clerk MARILYN WILLIAMS

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

Plaintiff,)

vs.)

PURDUE PHARMA L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a/ JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC.; n/k/a JANSSEN PHARMACEUTICALS, INC.; ALLEGRAN, PLC, f/k/a ACTAVIS PLC, f/k/a/ ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC.; ACTAVIS LLC; and ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,)

Defendants)

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

NON-PARTY OSAGE COUNTY, PAWNEE COUNTY, DELAWARE COUNTY, GARVIN COUNTY, MCCLAIN COUNTY, OTTAWA COUNTY, AND SEMINOLE COUNTY OBJECTION TO THE SPECIAL MASTER'S ORDER ON PURDUE'S SUBPOENAS DUCES TECUM

COMES NOW Osage County, Pawnee County, Delaware County, Garvin County, McClain County, Ottawa County, and Seminole County; (hereafter "Movants") and objects to the Order of Special Discovery Master, filed March 5, 2019 ("Order"), denying Movants Motion to Quash and for protective order, ordering compliance or limited compliance to Subpoena

requests for production Nos. 1, 7, 9, 10, 11, 12, 13, 14, 19 and 20. (Order, attached as Exhibit “1”; Motion to Quash, attached as Exhibit “2” and Reply to Motion to Quash, attached as Exhibit “3”).¹ Special Master Hetherington recognized that Purdue seeks production targeted to a cross-section of Oklahoma non-party plaintiff cities and counties all of whom with the exception of one, have been removed to and transferred to the Federal MDL case in Ohio. (Ex. 1, Order, p. 2). Special Master Heatherington also recognized that all of these federal prosecutions brought by Oklahoma cities and counties have been stayed as the local Ohio Jurisdiction plaintiff cases move to trial first. *Id.* He also recognized that the remaining plaintiff were unquestionably preparing for extensive MDL discovery. *Id.* As the local Ohio Special Master Hetherington recognized, State production from non-parties has already been voluminous. *Id.*

Special Master Heatherington required the parties to produce documents pursuant to this Order according to the “rolling production procedure” with compliance ordered by April 2, 2019 at 4 p.m. Movants assert this in not a reasonable amount of time for the non-parties to comply and additional time is required.

Special Master Heatherington ordered that non-parties are not required to duplicate production of documents already produced by the State. However, the counties do not even have access to the documents previously produced by the State. Documents from parties marked “Confidential” or “Confidential Attorneys Eyes Only” could not be shared with Movants. (Protective Order entered in the case on March 20, 2018, attached as Exhibit “4”).

Special Discovery Master Heatherington ordered that Purdue is prohibited from pursuing privileged and non-public investigative files, personnel files, or HIPPA protected documents pursuant to the amended HIPPA Protective Order of September 27, 2018. (Ex. 1, p. 2). This

¹ Purdue announced at the hearing that it was withdrawing Request Nos. 2, 3, 4, 5, 6, 15, 16, 17 and 18.

resolves Motion to Quash, Section VI., The Subpoena Requests Improperly Seek Protected Personnel Records of the Motion to Quash, at p. 21-22; and Section VII The Subpoena Requests Seek to Improperly Violate HIPAA, at p. 22-23, leaving all remaining sections of the Motion to Quash (Ex. 2) and Reply (Ex. 3) at issue.

As shown below and the prior Motion to Quash (Ex. 2) and Reply thereto (Ex. 3), the Subpoenas seek a non-party to this action to scour its records for documents largely bearing no connection with the causes asserted, defenses alleged, or damages sought in the captioned case brought by the State of Oklahoma. (Ex. 2, Motion to Quash; Ex. 3, Reply to Motion to Quash; and Sample Osage County Subpoena, attached as Exhibit "1" to the Motion to Quash). The Movants received the *Subpoenas Duces Tecum* right before the Thanksgiving holiday and were only provided (7) seven business days to produce documents.²

The Subpoenas are overbroad, not relevant, vague, ambiguous, provide a grossly insufficient time for response, and will not lead to discovery of admissible evidence on the claims or defenses asserted in the case at hand. Further, the Subpoenas are unnecessary, violate the Movants' interests in the privacy of their employees and residents, and are harassing in nature causing annoyance, oppression and undue burden on Movants. The subpoenas appear to be mere fishing expeditions to explore matters that are not presently germane to the case at hand. Also, the Subpoenas sought documents which would be in violation of court orders in other cases pending between the Defendants and Movants. Lastly, the Subpoenas seek documents that may be subject to attorney-client privilege, the work product doctrine, and/or other protections. For all these reasons, the Subpoenas should be quashed.

² Pursuant to Okla. Stat. tit. 25 § 82.1, each Saturday, Sunday, Thanksgiving Day, and the day after Thanksgiving Day shall be designated as a holiday.

The requests remaining at issue, objections thereto, and Special Discovery Master Heatherington's rulings in regards thereto, are summarized below. The specifics of the objections for each request are detailed in the Motion to Quash and Reply thereto. (Exs. 2-3).

Request No. 1 – This request seeks documents to identify departments responsible for measuring, analyzing, addressing, abating or mitigating the opioid crisis. Special Discovery Master Hetherington ordered compliance without limitation. It seems impossible that the Movants' organization of its departments would have any bearing onto the issues of this case. It is simply not clear what type of documents the Defendants are seeking. This request is also precluded by stays in the federal actions. The request does not mention the State of Oklahoma and is not relevant. The request information protected as criminal investigatory files and by the Open Records Act. The request is also overly broad, and unduly burdensome as the requests are not limited in time and scope and cover 1996 to the present. The request is also vague and ambiguous.

Request No. 7 – This request seeks records and communications relating to disciplinary matters, investigations, etc. into prescription opioid misuse, abuse, or diversion. It would invade the attorney-client privilege and work-product protection. Special Discovery Master Heatherington limited this request to the number of disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion. He indicated that individualized and personal identifying information remains confidential as previously Ordered in this case. This request does not mention the State of Oklahoma, and therefore is not relevant. Furthermore, this request has been disallowed by other Courts (Exs. 6-8). It also seeks damage documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. (Ex. 5, Order of Special Discovery Master, dated

October 10, 2018 (allowing statistical modeling for evidentiary proof of the State's damages). Further, it is overly broad, and unduly burdensome as the request is not limited in time and scope and covers 1996 to the present. It is also vague and ambiguous. Lastly, it uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 10 – This request seeks the county's policies, procedures, manuals, formal or informal guidance, and/or training provided to your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids. Special Discovery Master Heatherington ordered compliance without limitation. This request is precluded by stays in the federal actions. This request does not mention the State of Oklahoma and is not relevant. It seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. (Ex. 5, Order of Special Discovery Master, dated October. 10, 2018) (allowing statistical modeling for evidentiary proof of state's damages)). Additionally, the request is overly broad, and unduly burdensome as the request is not limited in time and scope and covers 1996 to present. It is also vague and ambiguous. It uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 12 – This request seeks all records relating to the investigation and/or arrest for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids. Special Discovery Master Heatherington limited this request to the number of referral for investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids. He indicated that as previously Ordered in this case, records relating to investigatory files and/or individualized arrest information remains confidential. This request is precluded by stays in the

federal actions. Also, this request does not mention the State of Oklahoma and is not relevant. Similar requests have previously been disallowed by the Court. *See* Motion to Quash, Exs. 6-8. Further, it seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. (Ex. 5, Order of Special Discovery Master dated October 10, 2018 (allowing statistical modeling for evidentiary proof of state's damages)). It also seeks information protected by the Open Records Act. Additionally, it is overly broad and unduly burdensome as the request is not limited in time and scope and covers 1996 to the present. It is also vague and ambiguous. Finally, it uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 13 – This request seeks, all records of emergency or first responder interactions with users of opioids, including overdoses or deaths related to opioids. Special Discovery Master Hetherington placed no limitations on this request. This request is precluded by stays in the federal actions. Further, it does not mention the State of Oklahoma and is not relevant. Similar requests to the State of Oklahoma have previously been disallowed by the Court *See* Motion to Quash, Exs. 6-8. Also, it seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. (Ex. 5, Order of Special Discovery Master, dated October 10, 2018 (allowing statistical modeling for evidentiary proof of the state's damages)). The request is overly broad and unduly burdensome as the request is not limited in time and scope and covers 1996 to the present. It is also vague and ambiguous. Finally, it uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 14 – This request seeks, to the extent the County believes, claims, or determined that any opioid prescriptions that were written by health care providers in the County

or written to patients who lived in Osage County were medically unnecessary, inappropriate, or excessive. It also requests all records relating to such prescriptions and the basis for the belief, claim, or determination. It seeks information regarding prescriptions that Movants believed were medically unnecessary, inappropriate, or excessive. It seeks information that is subjective to the Movants. Special Discovery Master Heatherington, limited this request to the number of opioid prescriptions where there is a record which determined any opioid prescription written was medically unnecessary, inappropriate, or excessive, and any record of the basis for the belief, claim or determination. He indicated that individualized personal identifying information remains confidential as previously Ordered in this case. The information requested is not relevant to this case brought by the State of Oklahoma. The request is precluded by stays in the federal actions. Further, it does not mention the State of Oklahoma and is not relevant. Also, it seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. *See e.g.*, Ex. 5, Order of Special Discovery Master Case No. CJ-2017-816 (Oct. 10, 2018) (allowing statistical modeling for evidentiary proof of state's damages). It seeks information protected by the Open Records Act. Further, it is overly broad and unduly burdensome as the request is not limited in time and scope and covers 1996 to the present. It is also vague and ambiguous. Similar requests have previously been disallowed by the Court *See* Motion to Quash, Exs. 6-8. Finally, it uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 19 – Seeks Movants to provide communications with any person or entity including any employee or agent of the State of Oklahoma regarding any opioid ligation. It would invade the attorney-client privilege and work-product protection. This request would ostensibly require the Movants to interview all of its employees or agents regardless of their

position and see if any discussions occurred about any opioid litigation (not just these suits). This could include two low-level employees that in no way had any actual effect on the issues in this case. This request is precluded by stays in the federal actions. This request mentions the State of Oklahoma and should be obtained from the State. Additionally, similar requests have previously been disallowed by the Court. *See* Motions to Quash, Exs. 6-8. The request seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. (Order of Special Discovery Master Case No. CJ-2017-816, dated October 10, 2018) (allowing statistical modeling for evidentiary proof of state's damages), attached as Exhibit "5". This request seeks information protected by the Open Records Act. Also, the request is overly broad and unduly burdensome as the request is not limited in time and scope but covers 1996 to present. It is also vague and ambiguous. Finally, it uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Request No. 20 – Seeks all communications with any manufacturers or distributors of prescription opioids which would include the Defendants requesting this production. Special Discovery Master Heatherington limited this request to documents not already produced by the State, and limited to communications to or regarding Purdue Pharma, L.P., Purdue Pharma, Inc., the Purdue Frederick Company, Inc., or any agency of the State of Oklahoma or United States Government related to addressing the misuse, abuse of prescription opioids or illicit non-prescription opioid addiction issues. The discovery sought regarding the counties in particular is properly sought in the MDL where the counties' claims will be heard. Further, Defendants should already have their communications with the Movants. Additionally, this request is precluded by stays in the federal actions. This request does not Mention the State of Oklahoma

and is not irrelevant. This request seeks damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. *See e.g.*, Order of Special Discovery Master Case No. CJ-2017-816 (October 10, 2018) (allowing statistical modeling for evidentiary proof of state's damages), attached as Exhibit "4"). This request is similar to discovery requested that was previously disallowed by the Court. *See* Motion to Quash, Exs. 6-8. It seeks information protected as criminal investigatory files and by the Open Records Act. Overly broad, and unduly burdensome as the requests are not limited in time and scope cover 1996 to present. It is also vague and ambiguous. It uses the objectionable terms: pertaining to; concerning; or regarding and is thus vague, ambiguous, overly broad, and unduly burdensome.

Additionally, on March 13, 2019, Movants' contacted Defendant's Counsel to confirm Defendants' never served a subpoena on Seminole County. It appears that Seminole County, Oklahoma actually did not receive a subpoena. Seminole county should not be compelled to respond to a subpoena it was never served.

CONCLUSION

The Defendants, through the third-party subpoenas, seeks an end-run around the stay orders of the Western District of Oklahoma and the Eastern District of Oklahoma. Additionally, the Defendants, through the third-party subpoenas, seek to avoid the MDL's limitations on Discovery to be obtained from the counties. Defendants consented to discovery stays and moved the case from state to federal court and then to the federal MDL claiming the need for efficiency. Defendants now seek to retain that efficiency for themselves while denying that efficiency to the Counties.

The Subpoenas seek information irrelevant to this case brought by the state. The subpoena largely seeks information regarding the counties' damages. However, this case involves the state's damages. The vast majority of the subpoena Requests make no reference to the State. Tellingly, Defendants have largely sent subpoenas to counties and other entities that have sued the Defendants in other forums. If the information were truly relevant and proper, the requests would not be so limited.

The Subpoenas seek documents disallowed by this court or other courts. Subpoena requests 6-9, 11-16, and 19-20 have been disallowed by this Court or the MDL.

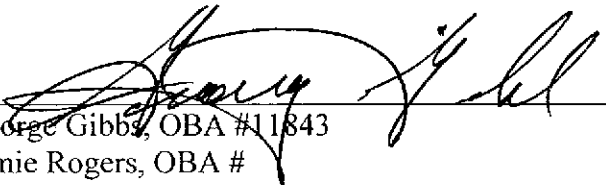
Many of the subpoena requests are overly broad, unduly burdensome, vague, ambiguous, and not properly limited in time and scope. Only five out of the twenty subpoena requests mention the State of Oklahoma. The information for those five requests, assuming the State was involved such to make them relevant, should be obtained from the State.

Finally, the subpoenas seek the production of documents that would violate the attorney client privilege, the work product protection, and statutory protections provided to juvenile records.

WHEREFORE, Movants object to the Special Discovery Master Heatherington's rulings and requests that the Court quash Defendants' *Subpoenas Duces Tecum*. To the extent Movants are ordered to produce any documents, Movants request additional time for compliance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 13th day of March 2019, a true and correct copy of the above and foregoing instrument was:

- X mailed with postage prepaid thereon;
mailed by certified mail, Return Receipt No. _____;
transmitted via facsimile; or
hand-delivered;

to counsel of record:

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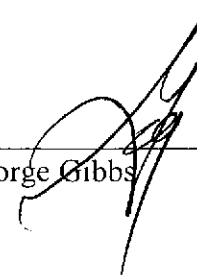
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George Gibbs



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

Judge Thad Balkman

- (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.)

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED
MAR 05 2019

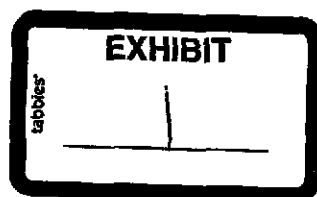
In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 4th day of March, 2019, the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on March 1, 2019.

Argument was heard regarding non-party City and County motions to quash and for protective orders regarding Purdue Subpoenas Duces Tecum. The following findings and Orders are entered:

1. Motions to Quash Purdue's Subpoenas DT filed by City of Oklahoma City, City of Broken Arrow, and Comanche County.



2. Motions to Quash Purdue's Subpoenas DT filed by Osage, Pawnee, Delaware, Garvin, McClain, Ottawa and Seminole Counties.

Purdue originally filed Subpoenas Duces Tecum requesting production of documents from the above-named non-parties requesting production of 20 groups of communications, policies and procedures, and other records as described in Purdue's Exhibit 1 to its opposition brief. The above non-parties have filed their objections thereto with requests to quash the subpoenas and for protective orders.

The record reflects and argument was heard with Purdue announcing that its requests for production numbered 2, 3, 4, 5, 6, 15, 16, 17 and 18 have been withdrawn. Purdue seeks compliance with requests for production pursuant to subpoenas numbered 1,7, 8, 9, 10, 11, 12, 13, 14, 19 and 20.

Purdue seeks production targeted to a cross-section of Oklahoma non-party plaintiff cities and counties all of whom with the exception of one, have been removed to and transferred to the Federal MDL case in Ohio. All of these Federal prosecutions brought by Oklahoma cities and counties have been stayed as the local Ohio jurisdiction MDL plaintiff cases move to trial first. Therefore, MDL discovery is underway only in the few cases scheduled for trial with the remaining plaintiffs unquestionably preparing for extensive MDL discovery.

As argued by Purdue, the information sought is relevant to several of Purdue's defenses to claims made in State's Petition and as argued in Purdue's brief in opposition. The undersigned has ruled previously that details of medical necessity and reimbursable claims under the Oklahoma Medicaid system, State's claims review and reimbursement process and other State entity records demonstrating efforts to prevent opioid abuse and diversion are all relevant or potentially relevant areas of inquiry. State production of documents from non-parties has been voluminous, however, Purdue is entitled to an Order ordering production limited to the scope described in this Order from these non-parties. The scope of this Order includes a finding that the parties must produce documents pursuant to this Order according to the "rolling production procedure" with compliance Ordered by April 2, 2019 at 4pm. These non-parties are not required to duplicate production of documents already produced by State. Purdue is also prohibited from pursuing privileged and non-public investigative files, personnel files or HIPPA protected documents pursuant to the amended HIPPA Protective Order of September 27, 2018. The relevant time period for document production remains 1996 to present.

The following RFPs are Ordered complied with consistent with this Order and Movants' requests to quash and for protective orders are **Denied**:

RFP No. 1

RFP No. 7 limited to the number of disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion. Individualized and personal identifying information remains confidential as previously Ordered in this case.

RFP No. 9 limited to the number of reports or drug abuse from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.

Individualized and personal identifying information remains confidential as previously Ordered in this case.

RFP No. 10

RFP No. 11 Individualized and personal identifying information remains confidential as previously Ordered in this case.

RFP No. 12 limited to the number of referrals for investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids. As previously Ordered in this case, records relating to investigatory files and/or individualized arrest information remains confidential.

RFP No. 13

RFP No. 14 limited to the number of opioid prescriptions where there is a record which determined any opioid prescription written was medically unnecessary, inappropriate, or excessive, and any record of the basis for the belief, claim for determination. Individualized personal identifying information remains confidential as previously Ordered in this case.

RFPs No. 19 & 20 to the extent not already produced by State, and limited to communications to or regarding Purdue Pharma L.P., Purdue Pharma Inc., or the Purdue Frederick Company Inc., or any agency of the State of Oklahoma or United States Government related to addressing the misuse, abuse, of prescription opioids or illicit non-prescription opioid addiction issues.

Moving Parties' Motions to Quash and for Protective Orders are Sustained as to the following RFPs:

RFP No. 8

It is so **Ordered** this 4th day of March, 2019.



William C. Hetherington, Jr.

Special Discovery Master



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

PURDUE PHARMA L.P.; PURDUE)
PHARMA, INC.; THE PURDUE)
FREDERICK COMPANY; TEVA)
PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.; JOHNSON &)
JOHNSON; JANSSEN)
PHARMACEUTICALS, INC.; ORTHO-)
MCNEIL-JANSSEN)
PHARMACEUTICALS, INC., n/k/a/)
JANSSEN PHARMACEUTICALS, INC.;)
JANSSEN PHARMACEUTICA, INC.;)
n/k/a JANSSEN PHARMACEUTICALS,)
INC.; ALLEGRAN, PLC, f/k/a ACTAVIS)
PLC, f/k/a/ ACTAVIS, INC., f/k/a)
WATSON PHARMACEUTICALS, INC.,)
WATSON LABORATORIES, INC.;)
ACTAVIS LLC; and ACTAVIS PHARMA,)
INC., f/k/a WATSON PHARMA, INC.,)

Defendants)

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JAN 07 2019

In the office of the
Court Clerk MARILYN WILLIAMS

MOTION TO QUASH

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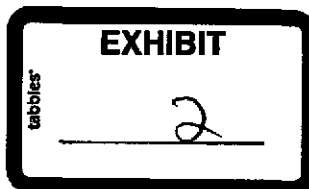


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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

PURDUE PHARMA L.P.; PURDUE)
PHARMA, INC.; THE PURDUE)
FREDERICK COMPANY; TEVA)
PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.; JOHNSON &)
JOHNSON; JANSSEN)
PHARMACEUTICALS, INC.; ORTHO-)
MCNEIL-JANSSEN)
PHARMACEUTICALS, INC., n/k/a/)
JANSSEN PHARMACEUTICALS, INC.;)
JANSSEN PHARMACEUTICA, INC.;)
n/k/a JANSSEN PHARMACEUTICALS,)
INC.; ALLEGRAN, PLC, f/k/a ACTAVIS)
PLC, f/k/a/ ACTAVIS, INC., f/k/a)
WATSON PHARMACEUTICALS, INC.,)
WATSON LABORATORIES, INC.;)
ACTAVIS LLC; and ACTAVIS PHARMA,)
INC., f/k/a WATSON PHARMA, INC.,)

Defendants)

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

MOTION TO QUASH

COMES NOW Osage County, Pawnee County, Delaware County, Garvin County, McClain County, Ottawa County, and Seminole County; (hereafter "Movants") and moves to Quash Defendants', Purdue Pharma L.P., Purdue Pharma, Inc., and The Purdue Pharma Frederick Company (hereafter "Defendants"); *Subpoenas Duces Tecum*.

As shown below, the Subpoenas seek a non-party to this action to scour its records for documents largely bearing no connection with the causes asserted, defenses alleged, or damages

sought in the captioned case brought by the State of Oklahoma. See Sample Osage County Subpoena, attached as Exhibit "1". The Movants received the *Subpoenas Duces Tecum* right before the Thanksgiving holiday and were only provided (7) seven business days to produce documents.¹ The Court has set the opposed Motion for Extension to file a Response for hearing on January 17, 2019 at 9 a.m. before Judge Balkman.

The Subpoenas are overbroad, not relevant, vague, ambiguous, provide a grossly insufficient time for response, and will not lead to discovery of admissible evidence on the claims or defenses asserted in the case at hand. Further, the Subpoenas are unnecessary, violate the Movants' interests in the privacy of their employees and residents, and are harassing in nature causing annoyance, oppression and undue burden on Movants. The subpoenas appear to be mere fishing expeditions to explore matters that are not presently germane to the case at hand. Also, the Subpoenas sought documents which would be in violation of court orders in other cases pending between the Defendants and Movants. Lastly, the Subpoenas seek documents that may be subject to attorney-client privilege, the work product doctrine, and/or other protections. For all these reasons, the Subpoenas should be quashed.

FACTUAL BACKGROUND

1. The Defendants and Movants were involved in active litigation in cases before the United States District Court for the Northern, Eastern, and Western Districts of Oklahoma. See *Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-461-GKF-JFJ (N.D. Okla.); *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00459-GKF-FHM (N.D. Okla.); *Board of County Comm'rs of Delaware County, State of Oklahoma v. Purdue Pharma*

¹ Pursuant to Okla. Stat. tit. 25 § 82.1, each Saturday, Sunday, Thanksgiving Day, and the day after Thanksgiving Day shall be designated as a holiday.

L.P., et al. Case No, 18-CV-00460-CVE-JFJ (N.D. Okla.); *Board of County Comm'rs of Garvin County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-820-HE (W.D. Okla.); *Board of County Comm'rs of McClain County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-857-HE (W.D. Okla.); *Board of County Comm'rs of Ottawa County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-466-TCK-JFJ (N.D. Okla.); *Board of County Comm'rs of Seminole County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-372-SPS (E.D. Okla.).

2. These cases involve issues arising from Movants' incurred financial burden by providing various services due to an opioid epidemic including: health care costs, criminal justice and victimization costs, social costs, and lost productivity costs. Movants alleged that the opioid epidemic was caused by the wrong actions of several named defendants, including Defendants in this present Cleveland County case.

3. The actions were filed in state court and later removed to federal court.

4. Prior to the filing of Movants' actions, the Judicial Panel on Multidistrict Litigation ("JPML") formed a Multidistrict Litigation ("MDL") in the Northern District of Ohio, *In Re National Prescription Opiate Litigation*, MDL No. 2804. This MDL was formed to coordinate the resolution of numerous opioid-related actions pending in federal court.

5. After Movants cases were removed to federal court, Movants filed Motions to Remand. However, the JPML issued a conditional transfer to the MDL pending the JPML's conclusion as to whether or not the questions of fact are common to the actions previously transferred before ruling on Movant's motion. Conditional transfer Order (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (JPML Sept. 19, 2018), ECF 2529.

6. These requests are overly broad and unduly burdensome. Additionally, on November 14, 2019 the the Northern District of Oklahoma entered a stay in the Osage and Pawnee Counties' suits. See Opinion and Order [Dkt. No. 87], *Board of County Comm'rs of Osage County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-461-GKF-JFJ (N.D. Okla.) attached hereto as "Exhibit 2;" Opinion and Order [Dkt. No. 80] *Board of County Comm'rs of Pawnee County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00459-GKF-FHM (N.D. Okla.) attached hereto as "Exhibit 3;" The Western District of Oklahoma entered a similar stay on October 26, 2018 for the Delaware County suit. The stays were sought at the request of other Defendants, to which these Defendants did not object. See Opinion and Order [Dkt. No, 80] *Board of County Comm'rs of Delaware County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-00460-CVE-JFJ (N.D. Okla.), attached as "Exhibit "4". A similar stay was requested in the Seminole County case on January 2, 2019 with responses due on January 16, 2019. See *Board of County Comm'rs of Seminole County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-372-SPS (E.D. Okla.), Dkt. No. 32. Similar requests for stays were filed in the McClain County case on September 28, 2018 and in the Ottawa County Case on September 28, 2018. See *Board of County Comm'rs of McClain County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-857-HE (W.D. Okla.), Dkt. No. 56; *Board of County Comm'rs of Ottawa County, State of Oklahoma v. Purdue Pharma L.P., et al.* Case No, 18-CV-466-TCK-JFJ (N.D. Okla.), Dkt. No. 64. Defendants should not be allowed to get around the discovery stays to which they did not object through this litigation when Osage, Pawnee, and Delaware Counties had no ability to participate in discovery, and a practical matter neither did any of Movants. The Court transferred the Osage County, Pawnee County, Garvin County, McClain County, Delaware County, and Ottawa

County actions to the Multi District Litigation on December 6, 2018. (Transfer Order, attached as Exhibit "5"). Discovery as to Defendants and Movants (except Seminole County which still has not been transferred) will now proceed under the orders, timelines, and guidelines set forth in the MDL.

7. With the Northern and Western Districts of Oklahoma's orders in place, Movants and named defendants in those action could not conduct discovery until the final transfer decision by the JPML was received.

8. The present case here in Cleveland County, was filed by the State of Oklahoma against Defendants alleging that the Defendants had created a devastating opioid epidemic in Oklahoma which caused the State to incur a financial burden in Oklahoma's businesses, consumers, communities, and citizens. The State of Oklahoma also specifically brought a claim alleging that the Defendants defrauded the Medicaid Program.

9. Although these different cases (Cleveland County and MDL cases) will have different damages and information relevant to their claims, there is some overlap. Not only do Movants have legitimate objections to assert when responding to such discovery, but the Defendants were ordered by the Northern and Western District Courts of Oklahoma to not conduct discovery prior to the Oklahoma federal cases being transferred to the MDL. The Defendants did not file an objection prior to that ruling. Instead, they are seeking the Court to aid them in using this litigation to proceed with conducting discovery, when two federal courts barred them from doing so, by sending third-party subpoenas to Movants. Defendants appear to have targeted counties and entities that brought their own suits in their impermissible efforts to avoid the MDL discovery guidelines, orders, and timetables. Defendants appear to have cherry picked fewer than fifteen cities and counties whom they issued subpoenas to in Oklahoma.

Such, at best, calls into question the true relevancy or necessity of the subpoenas as anything other than attempts to avoid the discovery limitations of the MDL. In short, Defendants moved to have these actions consolidated in the MDL for efficiency purposes, and now, through these subpoenas, seek to deny Movants the benefits of those efficiencies. Defendants seek to use the third-party subpoenas in the action to which Movants' are not a party to deny Movants' the efficiencies of the MDL while Movants have no option but to comply with the MDL discovery requirements. In short, Defendants seek to benefit from the discovery efficiencies of the MDL while denying those efficiency benefits to Movants. The Movants respectfully request the Court quash the subpoenas and allow the discovery to proceed in the MDL.

10. Furthermore, the MDL already provided production protocol which were agreed to by Defendants. *See In re National Prescription Opiate Litigation*, MDL 2804, Case Management Order 3 Regarding Document and Electronically Stored Information Production Protocol; Discovery Ruling No. 5; and Government Plaintiff Fact Sheet, attached hereto as Exhibits "6", "7", and "8". The production protocols in other pending opioid litigations (which are typically in this type of litigation) are the result of months of discussion and conferring to reach an agreement on discovery with various protections and limitations in place. Defendants are now seeking to avoid these protections and limitations through third-party subpoenas to Movants in this action while Plaintiffs have no option but the MDL discovery.

11. In addition to seeking to deny the Movants' the efficiency benefits of the MDL while retaining such efficiency benefits for themselves, the Defendants are seeking discovery from the third-party Movants through subpoena that is broader than the discovery allowed by this Court for the Plaintiff, State of Oklahoma. The Special Discovery Master in this Court previously issued an order denying Defendants the ability to seek documents from the State of

Oklahoma that Defendants now seek to obtain via Subpoena from the Movants. *See, e.g.* Order of Special Discovery Master, Case NO. CJ-2017-816 (Oct. 10, 2018) (the Special Master disallowed discovery from the “complex chain of accusations flowing through marketing providers to . . . physician prescribers . . . [and] ultimately issuing prescriptions to individualized patients.”). The Special Discovery Master recognized his “obligation to weigh privacy rights against the Defendant’s desire to individually personalize their discovery . . . [and] proportionality would prohibit individualized discovery.” *Id.* at 2. In adhering to this obligation, Defendants’ argument for full disclosure of all claims data information, as is being sought from Movants, is “insufficient to warrant discovery of personal and doctor/prescriber information in [the] scope sought to be compelled by Defendants.” *Id.* p. 3.

12. Additionally, the Special Discovery Master allowed for statistical modeling approach method and access to various state databases for purposes of producing relevant information. *Id.* at 1-3. However, Defendants seek more from Movants. *See* Ex. 1.

13. The relevancy of any items requested in the *subpoena deuces tecum* is questionable. The issues of this case involve the State’s incurred financial burden and claims of action under Medicaid False Claims Act, Public Nuisance, Fraud and Deceit, and Unjust Enrichment. Defendants provide no support that these requests will prove or disprove any of the State’s claims.

14. The Defendants also failed to provide a reasonable request by producing an overly broad, unduly burdensome subpoena without providing any reasonable amount of time for compliance. The subpoenas seek to require the production of documents that span over twenty-two (22) years. Many, if not all, the subpoena topics lack any specificity as to the types of documents they are even requesting. As such, the requests are vague and ambiguous. Overall,

Defendants seek to impose a voluminous document review on the Movants for documents irrelevant to this case brought by the State of Oklahoma.

15. For these reasons set forth above and as follows, the *Subpoena Duces Tecum* should be quashed.

ARGUMENTS AND AUTHORITIES

I. THE SUBPOENA SEEKS AND END-RUN AROUND THE STAYS ORDERED BY THE WESTERN AND EASTERN DISTRICTS' OF OKLAHOMA AND THE MDL'S LIMITATIONS ON DISCOVERY TO BE OBTAINED FROM THE COUNTIES.

Movants seek to quash the *Subpoena Duces Tecum* issued on behalf of Defendants in this case on the grounds that it seeks an impermissible end-run around the stay or requested stay set forth in the previously pending action in the Northern, Western, and Eastern Districts of Oklahoma where Defendants and Movants are named parties and the discovery restrictions, guidelines, and timespans set forth in the MDL. Second, Defendants' subpoenas seek document requests that are wholly irrelevant, overly broad, unduly burdensome, or unduly prejudicial. Third, the subpoena requests are not properly limited in the subjective, temporal, or geographic scope and failed to provide any reasonable amount of time for compliance. Fourth, the subpoena requests are vague and ambiguous. Fifth, they seek documents which violate Defendants' own production protocols. Lastly, they seek information that may be subject to attorney-client, work product doctrine and/or other protections.

Title 12 OKLA. STAT. § 3226(C) permits a party to invoke the supervisory powers of the Court to prevent abuses of the discovery procedures. 12 OKLA. STAT. § 2004.1 set out a number of protections for persons or entities who are subjected to subpoenas. Under 12 O.S. § 2004.1(C)(1), a duty is placed upon the party or attorney issuing a subpoena to "take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." The

duty on Defendants “is higher when the subpoena is directed to a non-party.” *Young v. May*, 2001 OK 4, ¶ 3, 21 P.3d 44.

Under 12 OKLA. STAT. § 2004.1, this Court possesses the ultimate authority to shape and restrict discovery. That authority held by the Court provides a “broad discretion” to control the discovery process to ensure it proceeds justly and efficiently. *See State ex rel. Protective Health Serv. v. Billings Fairchild Ctr., Inc.*, 2007 OK CIV APP 21, ¶ 8, 158 P.3d 484, 488. A district court “should not neglect their power to restrict discovery where justice requires protection for a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Quinn v. City of Tulsa*, 1989 OK 112, 777 P.2d 1331, 1342 (internal citations omitted); 12 O.S. § 2004.1(C)(3); *see also, Evans v. Allstate*, 216 F.R.D (N.D. Okla. 2003).

First, the Defendants sent the subpoenas during the pendency of the stays in of the Northern and Western Districts of Oklahoma. *See Exhibits 2 through 4.* In the Northern District of Oklahoma’s order, it concluded that any prejudice in delay of adjudication was outweighed by the gain in judicial efficiency and consistency pending the JPML’s ruling. *Id.* The efficiency and consistency of the MDL should be preserved by quashing the subpoenas in this action and allowing discovery as to the counties to proceed in the MDL.

Movants respectfully request the Court to allow the MDL to determine the production of the counties’ information now that Defendants’ have successfully had the counties’ action transferred to the MDL. To the extent the state was involved with the documents the counties might have, the Defendants should be able to obtain such documents from the state. Defendants both demand for themselves and seek to deny for county Movants the efficiencies of the MDL discovery process.

II. THE SUBPOENAS SEEK INFORMATION IRRELEVANT TO THIS CASE BROUGHT BY THE STATE.

Second, a number of the subpoena requests seek information which is irrelevant to the case at bar. The Oklahoma Supreme Court has previously held in *Carman v. Fishel* that a movant is not entitled to disclosure of documents as a matter of right upon filing a motion but must show good cause for the contested production. 418 P2d 963, 965 (OK. 1966); *see also Jones Packing Co. v. Caldwell*, 1973 OK 53, ¶ 3, 510 P.2D 683 (A request for documents should be denied where a party does not demonstrate good cause that the extremely broad information sought is relevant). In further support of the authority set forth under *Carman*, the Oklahoma Supreme Court stated “Under the *Carman* case, what constitutes good cause depends on the circumstances in each case. Also, under *Carman*, the subject matter of the discovery order must be ‘relevant’ to the issue of the case.” 510 P2d 683, 685 (OK. 1973).

For example, Request No. 1 seeks documents to identify departments responsible for measuring, analyzing, addressing, abating or mitigating the opioid crisis. It seems impossible that the Movants’ organization of its departments would have any bearing onto the issues of this case. This request is also vague and ambiguous since it requests documents sufficient to identify the departments, units, etc. It is simply not clear what type of documents the Defendants are seeking. Equally unclear and irrelevant, Request No. 5 seeks documentation regarding education efforts or community outreach provided to the public regarding prescribing opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs and Request No. 11 requests documents showing action taken by the Movants in response to the CDC declaring there was an opioid epidemic.

Some of these requests will merely provide information showing the efforts and costs expended by the Movants which the State may have never assisted in, funded, or in any other

way been connected. Meaning, some of the Requests seek irrelevant information. For instance, Request No. 14, regarding prescriptions that Movants believed were medically unnecessary, inappropriate, or excessive; seeks information that is subjective to the Movants. Request No. 14 seeks discovery from Movants and is not relevant to this case brought by the State of Oklahoma. Similarly, Requests Nos. 8 and 9 seeking records, analysis, or reports of drug abuse relating to methamphetamine, cocaine, or other illicit drugs in each of the counties, will not prove or disprove any claim of the State in this action. Similarly, irrelevant as to seeking information for the County as opposed to the State, Defendants' Request No. 11, seeks documentation showing actions taken by the Movants in response to the CDC's proposed guidelines relating to prescription opioid prescribing and Request No. 16 seeks all communications between the county and any local, state or federal agency or task force relating to use, misuses, abuse, prescribing, sale, distribution, addiction to, or diversion of illicit drugs (which includes non-opioids). If the State or Defendants were not even privy to these communications, then it could not even remotely be considered relevant. In fact, the irrelevancy is demonstrated on the face of the subpoena requests as only five out of the twenty subject areas mention the State of Oklahoma. See Exhibit No. 1.

Under the Oklahoma Discovery Code, Defendants do not have unencumbered rights to discovery. The Defendants cannot rummage unnecessarily and unchecked through the matters of anyone or any entity the party chooses. *Cook v. Yellow Freight System, Inc.* 132 F.R.D. 548, 551 (E.D. Cal. 1990)(overruled on other grounds by *Jackson v. County of Sacramento*, 175 F.R.D. 653 (E.D. Cal. 1997) and later quoted in *good year Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 P.23d 976 (6th Cir. 2003)); see also *Hesselbine v. Von Wendel*, 44 F.R.D. 431, 434

(W.D. Okla. 1968) (court should confine itself to matters involved in the pleadings).² Discovery statutes do not allow a party to “roam in the shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.” (internal citation omitted.) *In re Fontained*, 402 F. Supp. 1219, 1221 (E.D.N.Y. 1975).

Indeed, Federal courts have denied discovery requests where the information sought was, as in this case, too tangentially connected to the incidents at issue to be relevant for purposes of discovery. *See. E.g., Rubin v. Islamic Republic of Iran*, 349 F.Supp.2d 1108, 1111 (N.D. Ill. 2004) (“It is also true; however, that open-ended fishing expeditions will not be tolerated. Discovery has limits and these limits grow more formidable as the showing of need decreases.”); *Superhype Pub, Inc. v. Parrot Development Corp.*, 163 F.R.D. 5, 7-8 (W.D. Mich. 1995) (finding records related to other establishments not relevant to specific establishment involved in litigation); *Detweiler Bros. Ins. V. John Graham & Co.*, 412 F. Supp. 416, 422 (D.C. Wash. 1976)(limiting document production to only those matters related to specific incident at issue).

In summary, the Discovery Code does not allow a party to seek discovery related to events too disconnected from the incident that is the subject of the lawsuit. As shown above and as shown by the Defendants’ *subpoena duces tecum*, the information sought is not relevant. Movants’ litigation involves the financial burden incurred by county Movants due to defendant pharmaceutical companies’ misleading marketing to push opioid sales. The State’s action is about the financial burden incurred on the State from actions of the Defendants that they named. A tangential connection between the suits does not equal relevancy in this case.

² Oklahoma’s statutory provisions regarding discovery were modeled after their federal counterparts, thus for this reason, federal jurisprudence can be instructive in the interpretation of the state statutes. *Barnett v. Simmons*, 2008 OK 100, ¶ 16, 197 P.3d 12, 18; *Payne v. Dewitt*, 1999 OK 93, ¶¶ 8-9, 995 P.2d 1088, 1092-93.

III. THE SUBPOENAS SEEK DOCUMENTS DISALLOWED BY THIS COURT OR OTHER COURTS.

In addition to not being relevant to the State's action, \ many of the documents sought by Defendants (*see* requests 6-9, 11-16, and 19-20) have been disallowed by this Court and various other courts presiding over opioid litigation. *See, e.g.* Ex. 6 (a detailed and agreed upon protocol governing the production of hard-copy and electronically stored information recognizing the documents are subject to confidentiality, privilege, and/or protected health information previously agreed to by the parties or entered by the court); Ex. 7, part 1 (disallowing and significantly limiting the request of all prescriptions and every person to avoid imposing an excessive burden on plaintiffs); Ex. 8 (Government Fact Sheet agreed upon by all parties and limiting document production to a time span of 10 years). Additionally, all of the discovery sought was precluded in by the stays sought by defendants in the federal actions in the Northern, Western, and Eastern Districts of Oklahoma.

In fact, most of these requests (Nos. 2-20) seek damages documents from the counties far more all-encompassing than even the State of Oklahoma has been ordered to produce. *See e.g.*, Order of Special Discovery Master Case No. CJ-2017-816 (Oct. 10, 2018) (allowing statistical modeling for evidentiary proof of state's damages). The documents requested seek to inquire into privileged information as well as information that may be protected for varying reasons. The crux of the matter is that the requests are simply unduly burdensome for a non-party, violates Movants' privacy interests, and are harassing in nature. 12 Okla. Stat. 12 § 2004.1(C)(3)(a)(4); § 3226(C)(1).

On October 22, 2018, Special Discovery Master William C. Herrington, Jr., issued an order in which he, among other things, denied Defendant Watson Lab's Motion to Compel Investigatory Files. Special Master Herrington stated, on page 7: "Any production of criminal

investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving discovery proceedings.” The Oklahoma Court of Criminal Appeals has ruled that unsworn statements made by witnesses to police officers are not discoverable. *Nauni v. State*, 670 P.2d 126 (Okla. Cr. 1983); *Ray v. State*, 510 P.2d 1395 (Okla. Cr. 1973); *State ex rel. Fallis v. Truesdell*, 493 P.2d 1134 (Okla. Cr. 1972). The Oklahoma Court of Criminal Appeals also concluded that a police officer’s notes are work-product. *Wilwhite v. State*, 701 P.2d 774 (Okla. Civ. App. 1985).

The Special Master has precluded the discovery of State criminal investigatory files. For the reasons stated by the Special Master above, the Court should extend the same protections to the Movants and preclude the discovery, through the Subpoena, of criminal investigatory files in the possession and control of the City, including, but not limited to, the Movants’ Police Department and the Movants’ Fire Department.

The Open Records Act also protects certain law enforcement agency records from disclosure. *Id.* at § 24A.12. The documents and information requested by Defendants in requests 1-4,6-9,11-12,14-17, and 19-20 are especially protected from public disclosure by provisions of the Open Records Act, thus prohibiting their production. These same requests are improper to the extent they seek juvenile records.³

³ As Defendants’ subpoena Requests improperly seek this information as well, juvenile records are protected by disclosure. Title 10A, Okla. Stat. § 1-6-102. A. prohibits the dissemination of confidential juvenile records and provides in pertinent part:

IV. MANY OF THE SUBPOENA REQUESTS ARE OVERLY BROAD, UNDULY BURDENSOME, VAGUE, AMBIGUOUS, AND NOT PROPERLY LIMITED IN TIME AND SCOPE.

Title 12, Okla. Stat. § 2004.1(C)(1) provides that an attorney issuing a subpoena “shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty...”

Except as provided by this section, and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney’s records;
4. Court Appointed Special Advocate records pertaining to a child welfare case;
5. Law enforcement records;
6. Non-directory education records; and
7. Social records.

Title 10A, Okla. Stat., § 1-6-102 addresses the ability of a District Court Judge to order the release of certain confidential juvenile records. It provides in pertinent part:

C. Except as authorized by Section 620.6 of Title 10 of the Oklahoma Statutes and this chapter and except as otherwise specifically provided by state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to order of the court. A subpoena or *subpoena duces tecum* purporting to compel testimony or disclosure of such information or record shall be invalid.

E. When confidential records may be relevant in a criminal, civil, or administrative proceeding, an order of the court, authorizing the inspection, release, disclosure, correction, or expungement of confidential records shall be entered by the court only after a judicial review of the records and a determination of necessity pursuant to the following procedure ...

The statute further details the process of petitioning the court to obtain confidential juvenile records. Title 10A, Okla. Stat., § 1-6-1002, H. provides, in the pertinent part, that no provision of the statute shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;
2. Authorizing the disclosure of papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the provisions of the Oklahoma Adoption Code; or
3. Abrogating any privilege, including the attorney-client privilege, or affecting any litigation on such privilege found in any other statutes.

It is the Movants’ position that the Subpoena does not meet the criteria set out in this statute. In addition, due to the complexities of the state and federal laws applicable to the release of confidential juvenile information, the Movants object to any requirements that it release any juvenile information prior to its receipt for a complying court order.

Furthermore, § 2004.1(C)(3) provides that the Court has authority to quash or modify the subpoena if it “subjects a person to undue burden.” Movants request that the Court quash Defendants’ *Subpoenas Duces Tecum* as overly broad and unduly burdensome.

Defendants’ *subpoena duces tecum* Requests are also overly broad, and unduly burdensome as the requests are not limited in time and scope. They are also vague and ambiguous, which places the burden upon Movants to decipher what the Defendants are requesting. Defendants identify two (2) single spaced pages or document requests that cover twenty (20) itemized subjects. See Exhibit No. 1. The *duces tecum* seeks to compel Movants to produce documentation in a vast array of subject areas, including training, measuring, reporting, planning, administration, maintenance, communication, and investigations to name a few. See Exhibit No. 1. Furthermore, most of these requests seek over twenty-two (22) years’ worth of documents. A subpoena that is facially overbroad constitutes an undue burden. See *Williams v City of Dallas*, 178 F.R.D. 103, 2019 (N.D. Tex. 1998); *Linder v, Calero-Portocarrero*, 180 F.R.D. 168, 174 (D.D.C. 1998) (“a request for relevant information may be denied if the request is unreasonable or oppressive and [u]ndue burden can be found when a subpoena is facially overbroad.”). While courts promote broad discovery, it is not unlimited. *Quinn*, 1989 OK 112, ¶ 63, 777 P.2d 1331.

For instance, request No. 19 seeks Movants to provide communication with any person or entity including any employee or agent of the State of Oklahoma regarding any opioid litigation. This request would ostensibly require the Movants to interview all of its employees or agents regardless of their position and see if any discussions occurred about any opioid litigation (not just these suits). This could include two low-level employees that in no way had any actual effect on the issues in this case. Another example as to how Defendants’ requests are overly

broad and unduly burdensome are Requests Nos. 8 and 9. These requests seek information that would include a number of criminal cases where every record of that matter would in no way be relevant to this lawsuit. For example, seeking all records regarding an arrest that occurred 10 years ago would not necessarily support or negate claims of the Defendants' misleading marketing. There would be information relating to the specific incident and person's arrest that would not provide relevant information to the claims or defenses in this case.

Certain of the information sought by Defendants conceivably may be discoverable in Movants' federal actions. Thus, enforcing Defendants' overbroad search in this case by the State would not only cause undue burden to Movants but would result largely in the production of information which is "unreasonably cumulative or duplicative" of information that could properly be sought, with proper limitations in the MDL. *See* 12 Okla. Stat. 3226(B)(2)(c)(1). The time and expense required for Movants to respond to Defendants' broad search would require an exorbitant amount of effort hence hampering Movants' ability to conduct other tasks essential to support the needs of its citizens, county officials and law enforcement. It is unreasonable to expect non-parties to produce such a wide variety of informant without any showing by Defendants that the requests are directly relevant.

Further, the requests are vague and ambiguous. Defendants' requests are filled with omnibus terms. A request is unduly burdensome on its face if it uses the omnibus term "pertaining to" with respect to a general category or group of documents. *Mackey v. IBP, Inc.* 167 F.R.D 186, 197-198 (D. Kan. 1996) (holding that an interrogatory is unduly burdensome on its face when it asks for "the identity of all documents 'pertaining to' comparison or ranking of the plants of [defendant] for any reason"). Defendants' requests Nos. 3, 4, 5, 6, & 20 all use objectionable terms: pertaining to; concerning; or regarding. This type of broad language makes

“arduous the task of deciding which of numerous documents may conceivably fall within their scope.” See, E.g. *Western Resources v. Union Pacific R.R.*, 2001 WL 1718368 at *3 (D. Kan. Dec. 5, 2001) (unreported) (quoting *Audiotext Communications v. U.S. Telecom, Inc.*, 1995 WL 18759, at *6 (D. Kan. Jan. 17, 1995)). The use of omnibus terms also requires the answering party to “engage in mental gymnastics to determine what information may or may not be remotely responsive.” *Mackey*, 167 F.R.D. at 197-98; see also, *Pulsecard, Inc. v. Discover Card Services, Inc.*, 1996 WL 397567 at *10 (unreported) (noting that a request requiring a party to produce documents “concerning” a broad range of items “requires the respondent either to guess or move through mental gymnastics which are unreasonably time-consuming and burdensome to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within scope of the request.”).

The requests here do not place Movants on “reasonable notice of what is called for and what is not” because the language is overly-broad and extremely vague. As a result, the language used requires Movants to ponder and to speculate in order to decide what is and what is not responsive. Consequently, Defendants have failed to phrase these requests with reasonable particularity. Here, Movants cannot attempt to answer these requests without engaging in mental gymnastics. As such this Court should quash these topics.

These requests also seek duplicative information which is readily available to Defendants from other public sources, including requests regarding correspondence between Defendants and Movants. Defendants’ Request No. 20 seeks all communications with any manufacturers or distributors of prescription opioids which would include the Defendants requesting this production. Defendants appear to be seeking documents for all Defendants without all Defendants issuing a subpoena. Defendants do such as the discovery sought regarding the

counties in particular is properly sought in the MDL where the counties' claims will be heard. Again, only five out of the twenty subpoena requests mention the State of Oklahoma. See Exhibit No. 1. The information for those five requests, assuming the State was involved such to make them relevant, should be obtained from the State.

Similarly, these requests seek information that would have been available to the State and, if proper, should have been produced in discovery by the state without imposing additional burden and expense on the counties. Request No. 4 seeks communication with the State of Oklahoma concerning prescription opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis. If this information is properly discoverable then those documents can and should be obtained from the State, a named party in this lawsuit. Similarly, Requests Nos. 16, 17, & 18 if relevant, should be handled by the State. Again, the MDL, as asserted by Defendants, is the proper place for Defendants to seek the county specific discovery from the counties that Defendants improperly seek in this action out of an apparent attempt to improperly and excessively unilaterally increase the burden on the counties.

V. MANY OF THE SUBPOENA REQUESTS SEEK INFORMATION PROTECTED BY THE ATTORNEY CLIENT PRIVILEGE OR WORK PRODUCT PROTECTION.

Fourth, Movants have legitimate objections to the requests whether in response to a subpoena or as discovery in federal court. For example, Request No. 6, seeks all records of investigation, including interview, inquiries, reports or reviews conducted internally or by a third party on Movants' behalf. This will include attorney-client privilege and work-product. Similarly, Request No. 7 seeks records and communications relating to disciplinary matters, investigations, etc. into prescription opioid misuse, abuse, or diversion. It would invade the attorney-client privilege and work-product protection. Request No. 19 seeks all communication

with any person or entity regarding any opioid litigation. It would also invade the attorney-client privilege and work-product protection. Additionally, these requests, like the others, are overly-broad, vague, and ambiguous.

A Court must quash a subpoena if it “requires disclosure of privileged or other protected matter and no expectation or waiver applies.” 12 O.S. § 2204.1(C)(3)(a)(3). Documents requested Defendants’ requests for production numbered 1-4, 6-9, 11-12, 14-17, and 19-20 above are protected as attorney-client privileged communication or attorney work product.

The attorney-client privilege is “designed to shield the client’s confidential disclosures and the attorney’s advice.” *Chandler v. Denton*, 1987 OK 38, 741 P.2d 855, 865; *see Upjohn Co. v. U.S.*, 449 U.S. 383, 388 (U.S. 1981) (the purpose of the attorney-client privilege “is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administrative justice.”). The privilege belongs to the client, and not the lawyer and is firm unless an exception or waiver theory applies. *Id.* The Subpoena seeks documents and communications between Movants’ in-house attorneys, outside counsel, various personnel, and city or county officials regarding potential claims, transaction, and other protected matters. Additionally, counsel generated and transmitted work product containing their thoughts, impressions, and opinions regarding these various matters. Defendants requests for “all records,” “all communications,” “all analysis,” and “all documents” sweep too broadly affording it the protective measures allowed under the statute and barring production. Movants have neither consented nor waived the attorney-client privilege thus the production of the requested documents is strictly prohibited.

The documents requested are protected by attorney work product doctrine. “[D]iscovery of ordinary work product should be granted only upon a convincing showing that the substantial

equivalent of the materials sought cannot be obtained without undue hardship, if at all.” *Ellison v. Gray*, 1985 OK 35, 702 P2d. 360, 366-67; *see* 12 Okla. Stat. § 3226(B)(3)(a)(2) (“a party may not discover documents and tangible things that are prepared in anticipation of litigation . . . [unless] the party shows that it has substantial need for the material to prepare its case and cannot without undue hardship, obtain their substantial equivalent by other means.”).

Section 3226(B)(3) provides that “a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” To the extent the Subpoena requires the release of work product generated by or on behalf of the Movants in anticipation of any litigation, be it civil or criminal, the Movants should be protected from the Defendants’ request for documents.

Defendants will not be subjected to undue hardship if the requested documents are not produced. Therefore, to the extent the Subpoena seeks to require Movants to provide documents or information that are protected by attorney-client privilege or the attorney work product doctrine it must be quashed.

VI. THE SUBPOENA REQUESTS IMPROPERLY SEEK PROTECTED PERSONNEL RECORDS.

Additionally, the requested information is protected from disclosure under the Open Records Act. 51 Okla. Stat. §§ 24A.1 – 24A.30. The Act prohibits the release of information or documents “protected by a state evidentiary privilege such as the attorney-client privilege or the work product immunity from discovery,” or the disclosure or confidential personnel information. *Id.* at §§ 24A.5(1)(a), 24A.5(2) 24A.7.

Section 24 A.7(a)(1) and (2) provide that a public body may keep personnel records confidential:

1. Which relate to internal personnel investigations, including examination and selection material for employment, hiring, appointment, promotion demotion, discipline or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evolution, payroll deductions, employment applications submitted to persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and curriculum of the transcripts of certified public school and employees.

Request No. 6 & 7 of the Subpoena require the release of personnel records. Several other document requests included in the Subpoena are so broad as to encompass personnel records. To the extent the Subpoena requires the release of personnel records protected by the Oklahoma Open Records Act, it requires the disclosure of privileged or other protected matter and should be quashed.

VII. THE SUBPOENA REQUESTS SEEK TO IMPROPERLY VIOLATE HIPAA.

The Defendants also request information that is subject to Health Insurance Portability and Accountability Act ("HIPAA") protections regarding Request No. 13 seeking all records of emergency or first responder interactions with users of opioids. Again, this request is overly-broad, unduly burdensome, vague, and ambiguous. If Defendants are requesting all records of this nature, more likely than not it is going to encompass medical records. It also seems irrelevant as to the claims in this present case, and ambiguous as to what type of records they are seeking.

Pursuant to HIPAA 42 U.S.C.A. § 1320d-6(a)(3), a person or entity covered by that statute who knowingly discloses individually identifiable health information to another person may be fined up to \$50,000 and imprisoned for up to one year. The Movants' County Fire Department is a "covered entity" as defined by 45 C.F.R. § 160.103.

Pursuant to 45 C.F.R. § 164.512(e)(1)(ii), a covered entity may, in response to a subpoena, disclose protected health information of an individual without a court order and without prior

written authorization of the individual or the opportunity for the individual to agree or disagree to disclosure if:

- (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
- (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

The Counties have received no assurance from the Defendants that they have made any effort to notify individuals treated by the Movants' County Fire Department of their request for the individual's health information. In addition, no protective order has been sought by the Defendants.

If the Movants provide the requested information absent proper notice to the individuals treated by the Fire Department or a protective order, the Counties will be in violation of HIPAA requirements and subject to severe penalties. Because the requested information is protected material, it is imperative that the subpoena be quashed and/or modified.

CONCLUSION

The Defendants, through the third-party subpoenas, seeks an end-run around the stay orders of the Western District of Oklahoma and the Eastern District of Oklahoma. Additionally, the Defendants, through the third-party subpoenas, seek to avoid the MDL's limitations on Discovery to be obtained from the counties. Defendants consented to discovery stays and moved the case from state to federal court and then to the federal MDL claiming the need for efficiency. Defendants now seek to retain that efficiency for themselves while denying that efficiency to the Counties.

The Subpoenas seek information irrelevant to this case brought by the state. The subpoena largely seeks information regarding the counties' damages. However, this case involves the state's damages. The vast majority of the subpoena Requests make no reference to the State. Tellingly, Defendants have largely sent subpoenas to counties and other entities that have sued the Defendants in other forums. If the information were truly relevant and proper, the requests would not be so limited.

The Subpoenas seek documents disallowed by this court or other courts. Subpoena requests 6-9, 11-16, and 19-20 have been disallowed by this Court or the MDL.

Many of the subpoena requests are overly broad, unduly burdensome, vague, ambiguous, and not properly limited in time and scope. Only five out of the twenty subpoena requests mention the State of Oklahoma. The information for those five requests, assuming the State was involved such to make them relevant, should be obtained from the State.

Finally, the subpoenas seek the production of documents that would violate the attorney client privilege, the work product protection, the confidentiality of the personnel records, HIPAA, and statutory protections provided to juvenile records.

WHEREFORE, Movants requests that the Court quash Defendants' *Subpoenas Duces Tecum*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 4th day of January 2018, a true and correct copy of the above and foregoing instrument was:

mailed with postage prepaid thereon;
 mailed by certified mail, Return Receipt No. _____;
 transmitted via facsimile; or
 hand-delivered;

to counsel of record:

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Jamie Rogers

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, et al., MIKE
HUNTER, ATTORNEY GENERAL OF
OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA LP.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY; TEVA
PHARMACEUTICALS USA, INC.;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.; ORTHO-
MCNEIL-JANSSEN
PHARMACEUTICALS, INC., d/b/a
JANSSEN PHARMACEUTICALS, INC.;
JANSSEN PHARMACEUTICA, INC.,
d/b/a JANSSEN PHARMACEUTICALS,
INC.; ALLERGAN, PLC, d/b/a ACTAVIS
PLC, d/b/a ACTAVIS, INC., d/b/a
WATSON PHARMACEUTICALS, INC.;
WATSON LABORATORIES, INC.;
ACTAVIS LLC; and ACTAVIS PHARMA,
INC., d/b/a WATSON PHARMA, INC.,

Defendants.

Case No. CY-2017-816

Honorable Thai Bašman

Special Discovery Master:
William C. Hetherington, Jr.

FILED
STATE OF OKLAHOMA
2018 NOV 20 PM 1:18
OSAGE COUNTY CLERK
SHELLA BELLAMY
BY _____ DEP.

SUBPOENA DUCES TECUM

TO: Shella Bellamy
Osage County Clerk
600 Grandview Ave.
Pawhuska, OK 74456

(X) YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on Exhibit "A" attached.

PLACE: Law Office of Crowe & Dunlevy, P.C., Britiff Building, 324 North Robinson Avenue, Suite 100, Oklahoma City, OK 73102, where the copying/inspecting will take place

George Gibbs
Janis Rogers - 918-587-3939



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11/27/2018 14:55 9182872060

OSAGE COUNTY CLERK
OSAGE COUNTY CLERK

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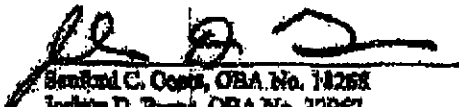
DATE AND TIME: December 7, 2018 at 9:00 A.M., December 7, 2018

It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling of any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objections to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.

YOU ARE ORIGINALLY NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RELEVANT TO THIS SUBPOENA.

Dated this 19th day of November, 2018.


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OSAGE COUNTY CLERK

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EXHIBIT "A"

Osage County is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

Definitions

The following definitions apply to this Subpoena:

1. "Osage County," "You," and/or "Your" refer to Osage County in the State of Oklahoma, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. The "State of Oklahoma" collectively refers to the State of Oklahoma and any of its agencies, entities, or employees.
3. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
5. "All" or "any" shall mean "any and all."
6. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."
7. "Prescription Opioids" means FDA-approved pain-reducing medications that consist of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in the brain or body to produce an analgesic effect, including, but not limited to, prescription medications containing hydrocodone, oxycodone, fentanyl, and hydromorphone, that may be legally obtained by patients in Oklahoma only through prescriptions filled by dispensers duly licensed and regulated.

Instructions

The following instructions apply to this Subpoena:

1. You are required to comply with this subpoena. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and

(b) why full compliance is not possible. If you object to any request or subpart of a request, state with specificity the grounds for each such objection.

3. Unless otherwise noted, the date range for these requests is from 1996 to the present.

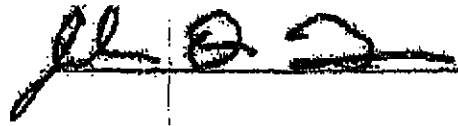
Documents to be Produced

1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crisis.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing or sale of Prescription Opioids.
3. All of Your communications with the State of Oklahoma concerning Prescription Opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis.
4. All of Your Communications with the State of Oklahoma concerning efforts by You, the State of Oklahoma, manufacturers, or distributors of Prescription Opioids to report suspiciously large or frequent orders of Prescription Opioids to law enforcement agencies.
5. Your educational efforts or community outreach efforts, including publications, studies, reports, or other information that You sponsored, disseminated, produced, supported, or participated or engaged in pertaining to Prescription Opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs, including, but not limited to, the legal or illegal use, misuse or abuse of, or addiction to, such drugs.
6. All records of investigations, including, but not limited to, interviews, inquiries, reports, or reviews conducted internally or by a third party on your behalf (including but not limited to any auditor, consultant, law enforcement agency, or regulator), concerning your response to issues concerning opioid misuse, abuse, or the opioid crisis.
7. All your records and communications relating to disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion.
8. All records, analyses, or reports of drug abuse in Osage County prior to 1996, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
9. All records, analyses or reports of drug abuse in Osage County from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
10. Your policies, procedures, manuals, formal or informal guidance, and/or training provided to Your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids.
11. All documents showing actions taken by You in response to the CDC's declaration of an "opioid epidemic" in 2011 and to implement the CDC's proposed guidelines relating to Prescription Opioid prescribing, including, but not limited to, efforts to treat, reduce, or prevent Prescription Opioid abuse, reduce the amount of Prescription Opioids prescribed by physicians or other health care providers, reduce improper Prescription Opioid

- prescribing, and reduce the use of heroin, illicitly manufactured fentanyl and fentanyl-type drugs, and substances containing those drugs.
12. All records relating to the investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids.
 13. All records of emergency or first responder interactions with users of opioids, including overdoses or deaths related to opioids.
 14. To the extent that You believe, claim, or determined that any opioid prescriptions that were written by health care providers in Osage County or written to patients who lived in Osage County were medically unnecessary, inappropriate, or excessive, all records relating to such prescriptions and your basis for your belief, claim, or determination.
 15. All records of Your requests for information or material received from the Oklahoma Prescription Monitoring Program (PMP), actions You took or considered taking based on information You received from PMP, Your policies and procedures relating to PMP, the use of PMP data, and any requirements or guidelines concerning health care providers' use and reporting obligations concerning PMP.
 16. All of Your communications with any local, state or federal agency or task force, including, but not limited to, the U.S. Drug Enforcement Agency, any United States Attorney, the State of Oklahoma Bureau of Narcotics and Dangerous Drugs, and the Oklahoma Commission on Opioid Abuse, relating to the use, misuse, abuse, prescribing, sale, distribution, addiction to, or diversion of Prescription Opioids or illicit, non-prescription opioids.
 17. All of Your annual operating budgets and the annual costs or expenses incurred by You to address misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, non-prescription opioids, and all funding requests made by You to the State of Oklahoma, including any funding requests related to the misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, non-prescription opioids.
 18. All documents or information You provided to or obtained from the National Association of State Controlled Substances Authorities ("NASCSA") or the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") relating to Prescription Opioids.
 19. All of Your communications with any person or entity including, but not limited to, any employee, attorney, or agent of the State of Oklahoma or the United States government, regarding any opioid litigation.
 20. All of Your communications with any person or entity regarding Purdue Pharma L.P., Purdue Pharma Inc., or The Purdue Frederick Company Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "J. E. S.", is written over a horizontal line.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THE BOARD OF COUNTY
COMMISSIONERS OF OSAGE COUNTY,
STATE OF OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

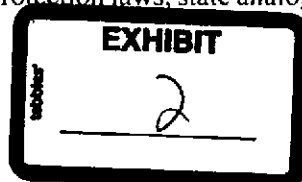
Case No. 18-CV-461-GKF-JFJ

OPINION AND ORDER

Before the court is the motion to stay [Doc. 62] of defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation. The movants seek a stay of proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation (“JPML”) as to the transfer of this action to a multidistrict litigation pending in the Northern District of Ohio, *In re National Prescription Opiate Litigation*, MDL No. 2804. For the reasons set forth below, the motion is granted.

I. BACKGROUND

On December 5, 2017, the JPML formed MDL 2804 in the Northern District of Ohio to coordinate the resolution of numerous opioid-related actions then pending in federal court. *See In re Nat’l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1378 (JPML 2017). The plaintiffs in the actions alleged that “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed . . . these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* Those plaintiffs brought “claims for violation of RICO statutes, consumer protection laws, state analogues to the Controlled Substances Act, as well



as common law claims such as public nuisance, negligence, negligent misrepresentation, fraud and unjust enrichment.” *Id.* The JPML concluded that centralization would “substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions.” *Id.*

On March 26, 2018, the plaintiff filed a petition in the District Court of Osage County, State of Oklahoma. [Doc. 2, pp. 36–323]. The plaintiff later filed an amended petition and, on June 13, 2018, filed a second amended petition. [Doc. 2, pp. 630–920]. The second amended petition asserts causes of action for violation of Oklahoma consumer protection and RICO statutes, public nuisance, fraud, unjust enrichment, negligence, and negligent marketing in connection with the distribution of prescription opioids. [*Id.*].

On September 6, 2018, defendant McKesson Corporation removed this action on the basis of federal question jurisdiction, asserting that the plaintiff’s claims arise under the federal Controlled Substances Act, 21 U.S.C. § § 801, *et seq.* (“CSA”) and related regulations. [Doc. 2, p. 5]. That same day, defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. filed a supplemental notice in support of removal arguing that the action was also removable based on diversity jurisdiction because the plaintiff had fraudulently misjoined the non-diverse dealer physicians. [Doc. 7, p. 2].

On September 19, 2018, the plaintiff moved to remand this action back to state court. [Doc. 43]. That same day, the JPML issued a conditional transfer order to the MDL on the ground that the action appears to “involve questions of fact that are common to the actions previously transferred.” Conditional Transfer Order (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (JPML Sept. 19, 2018), ECF 2529. Thereafter, the plaintiff filed an opposition to

transfer with the JPML. Notice of Opposition (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (Sept. 26, 2018), ECF 2621.

On September 24, 2018, the moving defendants filed this motion to stay proceedings pending a final transfer decision by the JPML. [Doc. 62]. On October 23, 2018, the plaintiff filed a response in opposition to the motion to stay.¹ [Doc. 80]. On November 6, 2018, the moving defendants filed a reply. [Doc. 86].

II. LEGAL STANDARD

This court's power to stay proceedings is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "When a motion to transfer has been filed with MDL, a district court should consider three factors in determining if a case should be stayed pending a ruling on the motion to transfer: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicate litigation if the cases are in fact consolidated." *Bd. of Cty. Commissioners of Delaware Cty., Oklahoma v. Purdue Pharma L.P.*, No. 18-CV-0460-CVE-JFJ, 2018 WL 5307623, at *1 (N.D. Okla. Oct. 26, 2018) (quoting *Oklahoma ex rel. Pruitt v. U.S. E.P.A.*, No. 15-CV-0381-CVE-FHM, 2015 WL 4607903, at *2 (N.D. Okla. July 31, 2015)).

"As a general rule, courts frequently grant stays pending a decision by the MDL panel regarding whether to transfer a case." *Oklahoma ex rel. Pruitt*, 2015 WL 4607903, at *2 (quoting *Cheney v. Eli Lilly & Co.*, No. 14-CV-02249-KMT, 2014 WL 7010656, at *1 (D. Colo. Dec. 9, 2014)). As explained in the Manual for Complex Litigation, a "stay pending the Panel's decision

¹ As noted by the moving defendants, the plaintiff's response was untimely pursuant to LCvR7.2(e). Nevertheless, the court elected to consider the arguments contained therein.

can increase efficiency and consistency, particularly when the transferor court believes that a transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.” MCL 4th § 22.35.

III. ANALYSIS

In opposition to the stay, the plaintiff suggests that stays are categorically improper when jurisdictional issues are pending. Such a rule is inconsistent with the weight of authority, as “courts have repeatedly noted that the ‘general rule is for federal courts to defer ruling on pending motions to remand in MDL litigation until after the [JPML] has transferred the case.’” *Little v. Pfizer, Inc.*, No. C-14-1177 EMC, 2014 WL 1569425, at *3 (N.D. Cal. Apr. 18, 2014) (quoting *Robinson v. DePuy Orthopaedics, Inc.*, No. 3:12-cv-00003, 2012 WL 831650 (W.D. Va. Mar. 6, 2012)). Indeed, courts have granted stays despite pending remand motions in similar opioid-related cases. *See, e.g., Bd. of Cty. Commissioners of Delaware Cty*, 2018 WL 5307623, at *1 (“[A]lthough plaintiff will endure some delay in adjudication of its remand motion if the case is stayed, any prejudice resulting from that delay is outweighed by the benefits of centralized consideration of the jurisdictional issues and conservation of judicial resources.”); Opinion & Order, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. McKesson Corp.*, No. 18-cv-286-jdp (W.D. Wis. May 25, 2018), ECF 26, available at [Doc. 66-2] (“Staying the proceedings so that one court can issue one ruling on a difficult issue appears to be the best option for all involved.”).

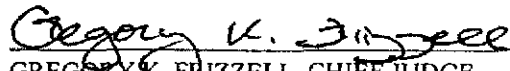
The plaintiff argues that it will be prejudiced by the delay in the hearing of its motion to remand. If the JPML does not transfer this action to the MDL, the only prejudice to the plaintiff resulting from a stay will be the minimal delay until the JPML’s final transfer decision, as this court would then decide the motion to remand. The court is mindful that, if the JPML does transfer this action, the plaintiff will likely endure some delay in the adjudication of its remand motion.

The plaintiff argues that it will be “irreparably harmed” by a transfer to the MDL because “Judge Polster of the MDL has held that he will not act on any motions to remand and placed a moratorium on filing such motions.” [Doc. 80 at 5]. However, at a hearing on December 13, 2017, Judge Polster expressed his preference for a “framework” that would allow consistent resolution of remand motions. Transcript of Teleconference Proceedings, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 10, pp. 14–15. On April 11, 2018, Judge Polster entered a case management order providing in relevant part that “the Court will adopt a procedure, based on input from the parties, to efficiently address the filing and briefing of motions for remand at an appropriate time in the MDL proceedings.” Case Management Order One, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 232, p. 19.

A preliminary assessment of the jurisdictional issues in this case suggests that they are not straightforward. Moreover, similar issues have already arisen in cases that have been transferred to the MDL. See, e.g., *City of Paterson v. Purdue Pharma L.P.*, No. 2:17-cv-13433 (D.N.J.); *N. Mississippi Med. Ctr., Inc. v. McKesson Corp.*, No. 1:18-cv-0078 (N.D. Miss.); *Cty. of Hudson v. Purdue Pharma L.P.*, No. 2:18-cv-9029 (D.N.J.). A stay will allow for centralized consideration of the jurisdictional issues and conservation of judicial resources. The court finds that, under the circumstances, the gains in judicial efficiency and consistency allowed by a stay outweigh the potential prejudice to the plaintiff resulting from delay in the adjudication of its motion to remand.

WHEREFORE, the moving defendants’ joint motion to stay proceedings pending a final transfer decision by the JPML [Doc. 62] is granted and this matter is stayed.

IT IS SO ORDERED this 14th day of November, 2018.


GREGORY K. ERIZZELL, CHIEF JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THE BOARD OF COUNTY
COMMISSIONERS OF PAWNEE
COUNTY, STATE OF OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

Case No. 18-CV-459-GKF-FHM

OPINION AND ORDER

Before the court is the motion to stay [Doc. 66] of defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation. The movants seek a stay of proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation (“JPML”) as to the transfer of this action to a multidistrict litigation pending in the Northern District of Ohio, *In re National Prescription Opiate Litigation*, MDL No. 2804. For the reasons set forth below, the motion is granted.

I. BACKGROUND

On December 5, 2017, the JPML formed MDL 2804 in the Northern District of Ohio to coordinate the resolution of numerous opioid-related actions then pending in federal court. *See In re Nat’l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1378 (JPML 2017). The plaintiffs in the actions alleged that “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed . . . these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* Those plaintiffs brought “claims for violation of RICO statutes, consumer protection laws, state analogues to the Controlled Substances Act, as well



as common law claims such as public nuisance, negligence, negligent misrepresentation, fraud and unjust enrichment.” *Id.* The JPML concluded that centralization would “substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions.” *Id.*

On June 13, 2018, the plaintiff filed a petition in the District Court of Pawnee County, State of Oklahoma. [Doc. 1, pp. 35–324]. The petition asserts causes of action for violation of Oklahoma consumer protection and RICO statutes, public nuisance, fraud, unjust enrichment, negligence, and negligent marketing in connection with the distribution of prescription opioids. [*Id.*].

On September 5, 2018, defendant McKesson Corporation removed this action on the basis of federal question jurisdiction, asserting that the plaintiff’s claims arise under the federal Controlled Substances Act, 21 U.S.C. § § 801, *et seq.* (“CSA”) and related regulations. [Doc. 1, p. 5]. The following day, defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. filed a supplemental notice in support of removal arguing that the action was also removable based on diversity jurisdiction because the plaintiff had fraudulently misjoined the non-diverse dealer physicians. [Doc. 13, p. 2].

On September 19, 2018, the plaintiff moved to remand this action back to state court. [Doc. 43]. That same day, the JPML issued a conditional transfer order to the MDL on the ground that the action appears to “involve questions of fact that are common to the actions previously transferred.” Conditional Transfer Order (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (JPML Sept. 19, 2018), ECF 2529. Thereafter, the plaintiff filed an opposition to transfer with the JPML. Notice of Opposition (CTO-56), *In re National Prescription Opiate Litigation*, MDL No. 2804 (Sept. 26, 2018), ECF 2621.

On September 28, 2018, the moving defendants filed this motion to stay proceedings pending a final transfer decision by the JPML. [Doc. 66]. On October 23, 2018, the plaintiff filed a response in opposition to the motion to stay.¹ [Doc. 73]. On November 6, 2018, the moving defendants filed a reply. [Doc. 79].

II. LEGAL STANDARD

This court's power to stay proceedings is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "When a motion to transfer has been filed with MDL, a district court should consider three factors in determining if a case should be stayed pending a ruling on the motion to transfer: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicate litigation if the cases are in fact consolidated." *Bd. of Cty. Commissioners of Delaware Cty., Oklahoma v. Purdue Pharma L.P.*, No. 18-CV-0460-CVE-JFJ, 2018 WL 5307623, at *1 (N.D. Okla. Oct. 26, 2018) (quoting *Oklahoma ex rel. Pruitt v. U.S. E.P.A.*, No. 15-CV-0381-CVE-FHM, 2015 WL 4607903, at *2 (N.D. Okla. July 31, 2015)).

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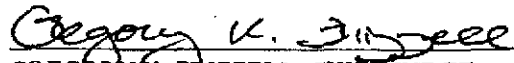
The plaintiff argues that it will be prejudiced by the delay in the hearing of its motion to remand. If the JPML does not transfer this action to the MDL, the only prejudice to the plaintiff resulting from a stay will be the minimal delay until the JPML’s final transfer decision, as this court would then decide the motion to remand. The court is mindful that, if the JPML does transfer this action, the plaintiff will likely endure some delay in the adjudication of its remand motion.

The plaintiff argues that it will be “irreparably harmed” by a transfer to the MDL because “Judge Polster of the MDL has held that he will not act on any motions to remand and placed a moratorium on filing such motions.” [Doc. 73 at 4]. However, at a hearing on December 13, 2017, Judge Polster expressed his preference for a “framework” that would allow consistent resolution of remand motions. Transcript of Teleconference Proceedings, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 10, pp. 14–15. On April 11, 2018, Judge Polster entered a case management order providing in relevant part that “the Court will adopt a procedure, based on input from the parties, to efficiently address the filing and briefing of motions for remand at an appropriate time in the MDL proceedings.” Case Management Order One, *In re National Prescription Opiate Litigation*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF 232, p. 19.

A preliminary assessment of the jurisdictional issues in this case suggests that they are not straightforward. Moreover, similar issues have already arisen in cases that have been transferred to the MDL. *See, e.g., City of Paterson v. Purdue Pharma L.P.*, No. 2:17-cv-13433 (D.N.J.); *N. Mississippi Med. Ctr., Inc. v. McKesson Corp.*, No. 1:18-cv-0078 (N.D. Miss.); *Cty. of Hudson v. Purdue Pharma L.P.*, No. 2:18-cv-9029 (D.N.J.). A stay will allow for centralized consideration of the jurisdictional issues and conservation of judicial resources. The court finds that, under the circumstances, the gains in judicial efficiency and consistency allowed by a stay outweigh the potential prejudice to the plaintiff resulting from delay in the adjudication of its motion to remand.

WHEREFORE, the moving defendants’ joint motion to stay proceedings pending a final transfer decision by the JPML [Doc. 66] is granted and this matter is stayed.

IT IS SO ORDERED this 14th day of November, 2018.


GREGORY K. FRIZZELL, CHIEF JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF COUNTY)
COMMISSIONERS OF DELAWARE)
COUNTY, STATE OF OKLAHOMA,)
)
Plaintiff,)
)
v.)
)
PURDUE PHARMA L.P., et al.,)
)
Defendants.)

Case No. 18-CV-0460-CVE-JFJ

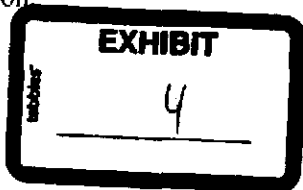
OPINION AND ORDER

Now before the Court is moving defendants'¹ joint motion to stay proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation ("JPML") as to the transfer of this action to a multidistrict litigation pending in the Northern District of Ohio, In re National Prescription Opiate Litigation, MDL No. 2804 ("MDL"), before Judge Dan Polster (Dkt. # 71).

I.

Plaintiff filed an amended petition in the District Court of Delaware County, State of Oklahoma on June 13, 2018. Dkt. # 2, at 327-626. On September 5, 2018, defendant McKesson Corporation removed this action on the basis of federal question jurisdiction, asserting that plaintiff's claims arise under the federal Controlled Substances Act, 21 U.S.C. §§ 801, et seq. ("CSA") and related regulations. Dkt. # 2, at 4. On September 19, 2018, plaintiff filed a motion to remand this action back to state court. Dkt. # 49.

¹ The moving defendants are McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation.



Also on September 19, 2018, the JPML issued a conditional transfer order, indicating that this case should be transferred to the MDL on the ground that it appears to “involve questions of fact that are common to the actions previously transferred to the Northern District of Ohio and assigned to Judge Polster.” JPML Dkt. # 2529. On September 26, 2018, plaintiff filed an opposition to the motion to transfer (JPML Dkt. # 2621), automatically staying the conditional transfer order. See JPML Dkt. # 2529. On September 28, 2018, moving defendants filed this motion to stay proceedings pending a final transfer decision by the JPML. Dkt. # 71. On October 23, 2018, plaintiff filed a response in opposition to the motion to stay proceedings. Dkt. # 77.

II.

The Court’s “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” Landis v. North American Co., 299 U.S. 248, 254 (1936). “When a motion to transfer has been filed with MDL, a district court should consider three factors in determining if a case should be stayed pending a ruling on the motion to transfer: ‘(1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicate litigation if the cases are in fact consolidated.’” Oklahoma ex rel. Pruitt v. U.S. E.P.A., Nos. 15-CV-0381-CVE-FHM & 15-CV-0386-CVE-PJC, 2015 WL 4607903, at *2 (N.D. Okla. July 31, 2015) (quoting Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

First, the Court acknowledges that plaintiff will likely endure some delay in adjudication of its remand motion if the case is stayed: plaintiff must wait until late November, at the earliest, for the JPML’s final transfer decision, and if the JPML transfers this case to the MDL, plaintiff must

wait even longer for a ruling from Judge Polster on its motion to remand.² But were this Court to deny the motion to stay and the motion to remand, the result would be the same; the only difference would be that defendants would have been exposed to unnecessary proceedings in this Court. Pruitt, 2015 WL 4607903, at *4 (“[I]t would undoubtedly be a waste of judicial resources for plaintiffs’ cases to proceed if it is ultimately determined that jurisdiction is appropriate only in a [MDL].”). Moreover, the jurisdictional issue present in this case has already arisen in cases that have transferred to the MDL. See, e.g., City of Paterson v. Purdue Pharma L.P., No. 2:17-cv-13433 (D.N.J.); N. Mississippi Med. Ctr., Inc. v. McKesson Corp., No. 1:18-cv-0078 (N.D. Miss.); Cty. of Hudson v. Purdue Pharma L.P., No. 2:18-cv-9029 (D.N.J.). Unlike the jurisdictional issues present in the cases from the District Court of South Carolina cited by plaintiff, the jurisdictional issues here are not straightforward. See County of Spartanburg v. Rite Aid of South Carolina, Inc., et al., No. 7:18-CV-1799-BHH, at *6 (D.S.C. July 25, 2018) (“[T]he Court finds that the jurisdictional questions at issue are relatively straightforward in this case.”). Therefore, if this Court were to decide the motion to remand, the possibility of inconsistent rulings on identical jurisdictional issues would be great. The Court finds that, although plaintiff will endure some delay in adjudication of its remand motion if the case is stayed, any prejudice resulting from that delay is

² Plaintiff asserts that “Judge Polster of the MDL has held that he will not act on any motions to remand and placed a moratorium on filing such motions.” Dkt. # 77, at 4. However, plaintiff fails to cite to any order from the MDL in support for this assertion. Moreover, while plaintiff cites two cases from the District Court of South Carolina as support for this assertion, those cases do not cite to any order from the MDL. Therefore, this Court is unable to assess the validity of plaintiff’s allegation that the assigned MDL judge will not act on any motions to remand. In any case, the Court doubts that Judge Polster intends to ignore all motions to remand altogether, as opposed to simply delaying ruling on such motions in the interest of uniformity of outcomes.

outweighed by the benefits of centralized consideration of the jurisdictional issues and conservation of judicial resources. Accordingly, the motion to stay proceedings should be granted.

IT IS THEREFORE ORDERED that moving defendants' joint motion to stay proceedings pending a final transfer decision by the JPML (Dkt. # 71) is **granted**, and this matter is **stayed**.

DATED this 26th day of October, 2018.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

I hereby certify that this instrument is a true and correct copy of the original on file in my office. Attest: Sandy Opacich, Clerk
U.S. District Court
Northern District of Ohio
By: /s/Robert Pitts
Deputy Clerk



UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION**

MDL No. 2804
18-cv-00461-GKF-JFJ

TRANSFER ORDER

Before the Panel:* Plaintiffs in 22 actions and certain physician defendants¹ in three District of Maine actions move under Panel Rule 7.1 to vacate the orders conditionally transferring the actions listed on Schedule A to MDL No. 2804. Non-governmental agency *amici*² support the motion brought by plaintiffs in the Southern District of West Virginia *Doyle* action. The Maine physician defendants request that we separate and remand the claims against them. *Amici* The American Hospital Association supports defendants' motion. Various responding manufacturer and distributor defendants³ oppose the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2804, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of Ohio was an appropriate Section 1407 forum for actions sharing factual questions regarding the allegedly improper marketing and/or distribution of various prescription opiate medications into cities, states and towns across the

* Judges Ellen Segal Huvelle and Nathaniel Gorton did not participate in the decision of this matter.

¹ Mark E. Cieniawski, M.D. and Michael B. Bruehl, M.D.

² West Virginia Citizen's Action Group, Rise Up West Virginia, Catholic Committee of Appalachia, Appalachian Catholic Worker and Network Lobby for Catholic Social Justice.

³ Amerisourcebergen Corp., Amerisourcebergen Drug Corp.; Cardinal Health, Inc., McKesson Corp. (distributor defendants); Allergan PLC, Actavis LLC, Actavis Pharma, Inc.; Allergan Finance, LLC; Cephalon, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Janssen Pharmaceutica Inc. n/k/a/ Janssen Pharmaceuticals Inc., Johnson & Johnson and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc; Mallinkrodt plc, Mallinckrodt LLC; Normaco, Inc.; Purdue Pharma L.P., Purdue Pharma, Inc., Purdue Products, L.P. and The Purdue Frederick Company, Inc.; Rhodes Pharmaceuticals L.P. Teva Pharmaceuticals USA, Inc.; Watson Laboratories, Inc., and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (manufacturing defendants); and Walgreen Co., Walgreens Mail Service, LLC, Walgreens Specialty Pharmacy, LLC, and Walgreens.com, Inc.



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country. See *In re: National Prescription Opiate Litig.*, 290 F. Supp.3d 1375 (J.P.M.L. 2017). Plaintiffs in the initial motion for centralization were cities, counties and a state that alleged: “(1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.” *Id.* at 1378. We held that “[a]ll actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants’ knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers’ alleged improper marketing of such drugs.” *Id.*

Despite some variances among the actions before us, all contain a factual core common to the MDL actions: the manufacturing and distributor defendants’ alleged knowledge of and conduct regarding the diversion of these prescription opiates, as well as the manufacturers’ allegedly improper marketing of such drugs. The actions therefore fall within the MDL’s ambit.

The parties opposing transfer in nineteen actions argue principally that federal jurisdiction is lacking over their cases. But opposition to transfer challenging the propriety of federal jurisdiction is insufficient to warrant vacating conditional transfer orders covering otherwise factually-related cases.⁴ Several parties argue that including their actions in this large MDL will cause them inconvenience. Given the undisputed factual overlap with the MDL proceedings, transfer is justified in order to facilitate the efficient conduct of the litigation as a whole. See *In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

Local health care provider defendants in the District Maine actions request that we exclude the claims against them from the MDL. This request invites us to make substantive judgments about the merits of these claims, which we decline to do, since dealing with the merits of claims is beyond our statutory mission.⁵

Plaintiffs in three actions argue that the identity of the plaintiffs, infants born opioid-dependent, and their unique damages – which include the alleged need for a medical monitoring trust that funds prolonged, multidisciplinary care – differentiate these cases from those brought by the cities, counties and states that comprise the bulk of MDL No. 2804. While we agree that plaintiffs will have different damages and potential remedies, the differences among these claims are

⁴ See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

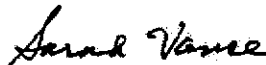
⁵ See *In re: Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[T]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations.”) (citation and quotes omitted).

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outweighed by the substantial factual allegations shared with the MDL actions.⁶ Counsel for these plaintiffs are dissatisfied, *inter alia*, that the transferee court denied their request for leave to seek to establish an neonatal abstinence syndrome (NAS) track in MDL No. 2804 in June 2018. Their renewed motion, filed in late-August 2018, remains under submission. We historically have declined to become entangled in parties' disagreements with the transferee court,⁷ and we decline plaintiffs' invitation to do so here. We further deny the NAS plaintiffs' motions to vacate for the reasons stated in our order denying centralization in MDL No. 2872 – *In re: Infants Born Opioid-Dependent Products Liability Litigation*.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Lewis A. Kaplan
Catherine D. Perry

R. David Proctor
Karen K. Caldwell

⁶ “Section 1407 does not require a complete identity or even majority of common factual and legal issues.” *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) (“Regardless of any differences among the actions, all actions arise from the same factual milieu...”).

⁷ *See, e.g., In re: Glenn W. Turner Enterp. Litig.*, 368 F. Supp. 805, 806 (J.P.M.L. 1973) (noting that “the Panel is not vested with authority to review decisions of district courts, whether they are transferor or transferee courts.”) (citations omitted).

**IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION**

MDL No. 2804

SCHEDULE A

Northern District of California

COUNTY OF SAN MATEO v. MCKESSON CORPORATION, ET AL.,
C.A. No. 3:18-04535

Northern District of Georgia

THE CITY OF ATLANTA v. PURDUE PHARMA, LP, ET AL., C.A. No. 1:18-03508
HENRY COUNTY, GEORGIA v. PURDUE PHARMA, LP, ET AL.,
C.A. No. 1:18-03899

Northern District of Illinois

VILLAGE OF MELROSE PARK, ET AL. v. MCKESSON CORPORATION, ET AL.,
C.A. No. 1:18-05288
CITY OF HARVEY, ET AL. v. PURDUE PHARMA L.P., ET AL.,
C.A. No. 1:18-05756

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ET AL. v. WALGREENS BOOTS ALLIANCE,
INC., ET AL., C.A. No. 2:18-00126

District of Maine

CITY OF BANGOR v. PURDUE PHARMA LP, ET AL., C.A. No. 1:18-00298
CITY OF PORTLAND v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00282
CITY OF LEWISTON v. PURDUE PHARMA LP, ET AL., C.A. No. 2:18-00310

District of New Jersey

CAMDEN COUNTY, NEW JERSEY v. PURDUE PHARMA L.P., ET AL.,
C.A. No. 1:18-11983

District of New Mexico

ROOSEVELT COUNTY v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:18-00795

- A2 -

Southern District of Ohio

DOYLE v. ACTAVIS LLC, ET AL., C.A. No. 2:18-00719
MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL. v.
CARDINAL HEALTH, INC., ET AL., C.A. No. 3:18-00295

Eastern District of Oklahoma

CHEROKEE NATION v. PURDUE PHARMA, LP, ET AL., C.A. No. 6:18-00236

Northern District of Oklahoma

BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, STATE OF
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00459
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00460
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, STATE OF
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00461
BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, STATE OF
OKLAHOMA, THE v. PURDUE PHARMA L.P., ET AL., C.A. No. 4:18-00466

Western District of Oklahoma

THE BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, STATE OF
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00820
BOARD OF COUNTY COMMISSIONERS OF MCCLAIN COUNTY, STATE OF
OKLAHOMA v. PURDUE PHARMA LP, ET AL., C.A. No. 5:18-00857

Eastern District of Pennsylvania

DOE v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-03637

Southern District of West Virginia

MOORE, ET AL. v. PURDUE PHARMA L.P., ET AL., C.A. No. 2:18-01231



Transfer Order MDL 2804

SFmdl_Clerk, InterdistrictTransfer_GAND,
OHNDdb_MDL to: InterdistrictTransfer_ILND,
InterdistrictTransfer_KYED,
Sent by: Robert T Pitts

12/10/2018 08:02 AM

From: OHNDdb_MDL/OHND/06/USCOURTS
To: SFmdl_Clerk@cand.uscourts.gov, InterdistrictTransfer_GAND@gand.uscourts.gov,
InterdistrictTransfer_ILND@ilnd.uscourts.gov, InterdistrictTransfer_KYED@kyed.uscourts.gov,
InterdistrictTransfer_MED@med.uscourts.gov, MDLClerk@njd.uscourts.gov,
Sent by: Robert T Pitts

— Forwarded by Robert T Pitts on 12/10/2018 09:01 AM —

From: OHNDdb_MDL/OHND/06/USCOURTS
To: SFmdl_Clerk@cand.uscourts.gov, InterdistrictTransfer_GAND@gand.uscourts.gov,
InterdistrictTransfer_ILND@ilnd.uscourts.gov, InterdistrictTransfer_KYED@kyed.uscourts.gov,
InterdistrictTransfer_MED@med.uscourts.gov, MDLClerk@njd.uscourts.gov,
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WVSDml_MDL@wvsd.uscourts.gov,
Date: 12/10/2018 09:01 AM
Subject:
Sent by: Robert T Pitts

Greetings

Attached is a certified copy of the Transfer Order from the Judicial Panel on Multidistrict Litigation directing the transfer of actions listed to the Northern District of Ohio.

When the case has been closed in your district please:

1. Initiate the civil case transfer functionality in CM/ECF.
2. Choose court Ohio Northern.

After completion of this process the NEF screen will display the following message:

Sending email to InterdistrictTransfer OHND@ohnd.uscourts.gov

If this is not displayed, we have not received notice.

We will initiate the procedure to retrieve the transferred case upon receipt of the email.

If your court does not utilize the CM/ECF transfer functionality, please contact me at mdl@ohnd.uscourts.gov and the documents will be retrieved using PACER.



2804 Certified Transfer Order 12-6-18.pdf

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

All Cases

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

CASE MANAGEMENT ORDER NO 3
REGARDING DOCUMENT AND ELECTRONICALLY STORED INFORMATION
PRODUCTION PROTOCOL

1. PURPOSE

This Order will govern production of Documents and ESI (as defined below) by Plaintiffs and Defendants (the "Parties") as described in Federal Rules of Civil Procedure 26, 33, and 34. This Order shall apply to the production of hard-copy and electronic documents by the Parties in this litigation.

The production of documents and ESI by the Parties also shall be subject to the provisions of orders concerning confidentiality, privilege, and/or protected health information as agreed to among the Parties and/or entered by the Court.

The Parties reserve all objections under the Federal Rules of Civil Procedure and applicable decision authority other than concerning matters that are addressed in this Order.

Nothing in this Order shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections to the discoverability, admissibility, or confidentiality of documents

EXHIBIT

6

or ESI. Nothing in this Order shall be interpreted to supersede the provisions of orders governing confidentiality, privilege, and/or protected health information entered by the Court in this litigation, unless expressly provided for in such an order.

2. DEFINITIONS

a. **"Confidentiality Designation"** means the legend affixed to Documents or ESI for confidential or highly confidential information as defined by, and subject to, the terms of the order concerning confidentiality agreed to an/or entered by the Court in this litigation.

b. **"Document"** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rules 26 and 34 of the Federal Rules of Civil Procedure. The term "document" shall include hard-copy documents, electronic documents, and ESI as defined herein.

c. **"Electronic Document or Data"** means documents or data existing in electronic form at the time of collection, including but not limited to: e-mail or other means of electronic communications, word processing files (e.g., Microsoft Word), computer slide presentations (e.g., PowerPoint or Keynote slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

d. **"Electronically stored information" or "ESI,"** as used herein, has the same meaning as in Rules 26 and 34 of the Federal Rules of Civil Procedure and includes Electronic Documents or Data, and computer-generated information or data, stored in or on any storage media located on computers, file servers, disks, tape, USB drives, or other real or virtualized devices or media.

e. **"Extracted Full Text"** means the full text that is extracted electronically from native electronic files, and includes all header, footer, and document body

information.

f. **“Hard-Copy Document”** means documents existing in paper form at the time of collection.

g. **“Hash Value”** is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA, will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion.

h. **“Load files”** means an electronic file containing information identifying a set of paper-scanned images, processed ESI, or native format files, as well as the corresponding Extracted Full Text or OCR text files, and containing agreed-upon extracted or user-created metadata, as well as information indicating unitization (i.e., document breaks and document relationships such as those between an email and its attachments) used to load that production set into the document review platform of the Party receiving a production (“Receiving Party”), and correlate its data within that platform. A load file is used to import all image, native, and text files and their corresponding production information into a document database. The Producing Party shall produce a load file for all produced documents with each particular production in accordance with specifications provided herein.

i. **“Media”** means an object or device, real or virtual, including but not limited to a disc, tape, computer, or other device on which data is or was stored.

j. **“Metadata”** means: (i) information embedded in or associated with a native file that describes the characteristics, origins, usage, and/or validity of the electronic file; (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system, (iii) information, such as Bates numbers, redaction status, privilege status, or confidentiality status created during the course of processing documents or ESI for production, and (iv) information collected during the course of collecting documents or ESI, such as the name of the media device on which it was stored, or the custodian or non-custodial data source from which it was collected. Nothing in this order shall require any party to manually populate the value for any metadata field.

k. **“Native Format” or “native file”** means the format of ESI in which it was generated and/or used by the Party Producing ESI or documents (the “Producing Party”) in the usual course of its business and in its regularly conducted activities. For example, the native format of an Excel workbook is an .xls or .xlsx file.

l. **“Optical Character Recognition” or “OCR”** means the optical character recognition technology used to read the text within electronic images of paper Documents and create a file containing a visible, searchable text format of such Documents.

m. **“Searchable Text”** means the native text extracted from an electronic document and any Optical Character Recognition text (“OCR text”) generated from the electronic image of a paper Document.

3. E-DISCOVERY LIAISON

The Parties will identify to each other liaisons who are and will be knowledgeable about and responsible for discussing their respective ESI ("E-discovery Liaisons"). Each Party's designated E-discovery Liaison(s) will be, or will have access to those who are, familiar with their Party's respective electronic systems and capabilities and knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

4. IDENTIFICATION OF DOCUMENTS AND ESI

a. The Parties agree to meet and confer to discuss (i) the identification of the custodial and noncustodial data sources containing potentially relevant ESI for potential collection, review, and production; (ii) additional parameters for scoping the review and production efforts (e.g., application of date ranges, de-NIST'ing, etc.); (iii) potential use and identification of search terms, tools, or techniques; (iv) the identification and production of documents and ESI from custodial and non-custodial sources that do not require the use of search terms, tools, or techniques; (v) the method each Party proposes to use to identify and de-duplicate duplicate documents, and any exceptions to such de-duplication the Party proposes to implement; and (vi) the treatment of non-responsive documents within parent-child families. The meet and confer between Plaintiffs and each Defendant will take place by the later of seven (7) calendar days following entry of this Order, or ten (10) days after the particular Defendant is served with a first document request herein.

b. The Parties further agree to meet and confer to the extent that this Order imposes any undue burden or expense on any Plaintiff or Defendant with respect to its response to any particular discovery request.

c. Nothing in this order shall be deemed to be a waiver of any Party's right to reasonably seek agreement from the other Parties, or a Court ruling, to modify proposed or previously agreed-to search terms, techniques, or tools (including any proposed as supplements).

5. DEDUPLICATION

a. To the extent exact duplicate documents reside within a Party's ESI data set, the Party shall produce only a single, deduplicated copy of a responsive document. "Exact duplicate" shall mean bit-for-bit identity of the document content with exact hash value matches; so-called "near duplicates" will not be included within this definition.

b. To the extent a party de-duplicates its documents, it shall de-duplicate stand-alone documents or entire document families in their ESI sources by the use of MD5, SHA-1, or SHA256 hash values. Where any such documents have attachments, hash values must be identical for both the document plus-attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone.

c. A Producing Party shall de-duplicate documents across custodians and populate a field of data that identifies each custodian who had a copy of the produced document (the "Duplicate Custodian" field) in addition to a separate field of data identifying the custodian whose document is produced; such de-duplicated documents shall be deemed produced from the custodial files of each such identified custodian for all purposes in this litigation, including for use at deposition and trial. A Producing Party

shall use a uniform description of a particular custodian across productions. Multiple custodians in the "Duplicate Custodian" field shall be separated by a semicolon. Entity/departmental custodians should be identified with a description of the entity or department to the extent applicable.

d. No Party shall identify and/or eliminate duplicates by manual review or some method other than by use of the technical comparison using MD5 or SHA-1 hash values outlined above.

e. Hard-Copy Documents shall not be eliminated as duplicates of ESI.

f. If the Producing Party makes supplemental productions following an initial production, that Party also shall provide with each supplemental production an overlay file to allow the Receiving Party to update the "Duplicate Custodian" field. The overlay file shall include all custodians listed in the "Duplicate Custodian" field in prior productions and any custodians newly identified in the current supplemental production.

6. PRODUCTION FORMAT AND PROCESSING SPECIFICATIONS

a. Standard Format. Unless otherwise specified in Section 6(b) or pursuant to Section 6(j) below, the Parties shall produce documents in tagged image file format ("TIFF"). TIFFs of ESI shall convey the same information and image as the original document, including all commenting, versioning, and formatting that is visible in any view of the document in its native application. All hidden text will be expanded, extracted, and rendered in the TIFF file and, to the extent possible, the Producing Party will instruct its vendor to force off Auto Date. Any TIFFs produced shall be single-page, 300 DPI, Group IV TIFF files. After initial production in image file format is complete, a party must demonstrate particularized need for production of ESI in its native format.

b. Native Format. Except as provided by Section 6(j) below, the Parties shall produce all spreadsheets, computer slide presentations, audio files, video files, and other file types that cannot be accurately represented in TIFF format in native format, provided, however, that the Parties will meet and confer regarding appropriate format of production for databases and structured data (e.g., Microsoft Access, Oracle, or other proprietary databases). For each document produced in native format, a responding Party shall also produce a corresponding cover page in TIFF image format, specifying that the document has been "produced in native format" and endorsed with the Bates Number and Confidentiality Designation, if applicable, which will be inserted into the image population in place of the native file. When the native file is produced, the Producing Party shall preserve the integrity of the electronic document's contents, i.e., its original formatting and metadata.

c. Color. Documents containing color need not be produced in color, except that (i) word processing documents that contain hidden text, and (ii) certain redacted documents, as further provided in Section 6(j), shall be produced in color in TIFF format. The Producing Party will honor reasonable requests for a color image of a document, if production in color is necessary to understand the meaning or content of the document.

d. Embedded Objects. If documents contain embedded objects, the Parties shall extract the embedded objects as separate documents and treat them like attachments to the document to the extent reasonably possible. To the extent reasonably possible, images embedded in emails shall not be extracted and produced separately.

e. Load Files. Each production of ESI and Documents shall be accompanied by Concordance or comma delimited load files (.dat and .opt) containing a field with the full path and filename to files produced in native format and also containing metadata fields identified in Appendix A, to the extent the information is available in the original ESI file and can be extracted without unreasonable burden using standard litigation support processing platforms (except for vendor-generated fields related to the litigation production, such as "BEGDOC", "ENDDOC", bases for redaction, and Confidentiality Designations).

f. .Txt Files. For all documents containing extracted full text or OCR text, the Producing Party shall provide searchable document level .txt files (named using the Bates start/"BEGDOC"), which shall reside in the same file directory as the images for such documents.

g. Bates Numbering and Other Unique Identifiers. Every item or file of ESI that is produced shall be identified by a unique page identifier ("Bates Number") and a Production Volume Number for any storage device (e.g., CD, USB, hard drive) containing such files. All Bates numbers will consist of an Alpha Prefix, followed by a numeric page index. There must be no spaces in any Bates number. Any numbers with less than 8 digits will be front padded with zeros to reach the required 8 digits. All ESI produced in TIFF format shall contain a unique Bates Number on each page of the document, electronically "burned" onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. If a member of a document family that has otherwise been determined to be responsive cannot be technically processed (e.g., unsupported file format, file corruption, inaccessible

password-protected document), those technical problems shall be identified and disclosed to the Receiving Party by production of a Bates-labeled slip sheet that states "Technical issue—file cannot be processed," along with a log identifying each such file; the associated metadata for the file with the technical problem shall be produced if technically possible. A Receiving Party thereafter may raise with the Producing Party any questions or concerns, and the Parties shall meet and confer to attempt to resolve any issues.

h. Hard-Copy Documents. Except as otherwise set forth in this paragraph, the Parties agree that responsive paper documents shall be converted to single-page TIFF files, and produced following the same protocols set forth in Section 6(a) above, including the production of OCR text that is generated to make such documents searchable. Generally, all paper documents will be scanned and produced electronically, unless a Party establishes good cause for making such documents available via paper and reasonable access is provided to the opposing Party to review the documents directly. In scanning all Hard-Copy Documents, Hard-Copy Documents should be logically unitized. Accordingly, distinct documents should not be merged into a single record, and single documents should not be split into multiple records. In the case of an organized compilation of separate documents (for example, a binder containing several separate documents behind numbered tabs), each of the Hard-Copy Documents should be separately scanned, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and ending documents and attachment fields. The Parties will make their best efforts to unitize the documents correctly. Producing Hard-Copy Documents as provided herein does not

change their character from Hard-Copy Documents into ESI. For Hard-Copy Documents, the Parties need only populate the following metadata fields: "BEGDOC," "ENDDOC," "PROD VOLUME," "CUSTODIAN," "SOURCE," "CONFIDENTIAL," "REDACTION," and "COMPANY" fields, as well as "BEGATTACH" and "ENDATTACH" fields where applicable.

i. Confidentiality Designation. To the extent any Document or ESI (or portion thereof) produced as a TIFF image in accordance with this Order is designated as confidential or highly confidential under the order concerning confidentiality agreed and/or entered in this litigation, the Producing Party will brand the required Confidentiality Designation in a corner of any TIFF images representing the produced item and in a consistent font type and size that does not obscure any part of the underlying image or Bates number, to the extent possible.

j. Redactions. A Party may use redactions to protect attorney-client or work product privileges consistent with the order concerning privilege agreed and/or entered in this litigation. Other than as permitted by this Order or the order concerning confidentiality agreed and/or entered in this litigation, no redactions for relevance may be made within a produced document or ESI item. Any redactions shall be clearly indicated on the face of the document, with each redacted portion of the document stating that it has been redacted and the basis for the redaction, and a metadata field shall indicate that the document contains redactions and the basis for redaction (e.g. "A/C Privilege"). Where a responsive document contains both redacted and non-redacted content, the Producing Party shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions.

Email header information (e.g., date, subject line, etc.) should not be redacted unless it is independently privileged. The production of a document in a redacted form does not affect the Producing Party's obligation to timely assert and substantiate the assertion of privilege over the content in a privilege log. Redacted versions of spreadsheets, computer slide presentations, and word processing files containing hidden text (e.g., track changes, hidden columns, comments, notes, markups, etc.) shall be produced in color in TIFF format. The Parties shall honor reasonable requests for the production of particular redacted documents in other formats where the TIFF image is not reasonably usable.

k. Parent-Child Relationships. The Parties acknowledge and agree that parent-child relationships within a document family (the association between an attachment and its parent document or between embedded documents and their parent) shall be preserved. Responsive non-privileged electronic documents attached to an e-mail or embedded within other electronic documents and hard-copy documents attached or appended to hard-copy documents must be mapped to their parent by the beginning Bates number and immediately follow that parent file in the sequence of the production. Email attachments and embedded files or links "BEGATTACH" and "ENDATTACH" fields listing the unique beginning Bates number of the parent documents and ending number of the last attachment must be populated for each child and parent document.

l. OCR. OCR software shall be set to the highest quality setting during processing.

m. Deviation from Production Specifications. If a particular document or category of documents warrant a different format, the Parties will cooperate in good faith to arrange for a mutually acceptable production format.

n. Productions From Other Proceedings Pursuant to CMO 1. The production of documents made by Defendants in other civil investigations, litigations, and/or administrative actions by federal (including Congressional), state, or local government entities pursuant to CMO 1 shall be made in the format in which they were previously produced, including any previously produced metadata, load files, and accompanying text files.

o. Password Protection. In the event any Document or ESI (or portion thereof) produced is password protected, the Producing Party shall make all reasonable efforts to provide the password needed to access the document or ESI.

p. Use at Deposition. Any document produced in native that a party identifies and/or marks as an exhibit at a deposition must include as part of that identification or exhibit the produced corresponding cover page in TIFF image format, endorsed with document's Bates Number and Confidentiality Designation, as described in Section 6(a), above.

7. PRODUCTION MEDIA

The Producing Party shall produce documents on readily accessible, computer or electronic media, including CD-ROM, DVD, external hard drive (with standard PC compatible interface), via secure FTP site, or such other readily accessible computer or electronic media as the Parties may agree (the "Production Media"). Each piece of Production Media shall be encrypted and assigned a production number or other unique

identifying label ("Production Volume Number") corresponding to the date of the production of documents on the Production Media as well as the sequence of the material in that production, and shall include (a) the name of the litigation and the case number; (b) the identity of the Producing Party; (c) the production date; (d) the Bates Number range of the materials contained on such Production Media item; and (e) the Production Volume Number of the Production Media. The Producing Party shall accompany all document productions with a transmittal cover letter identifying by Bates number the documents produced. If the Producing Party produces documents via secure FTP site, the Producing Party shall specify the date through which the materials will remain available via the secure FTP site and the Producing Party shall, within a reasonable time, accommodate requests from another Party or Parties that documents be reposted to the FTP site.

8. COST SHIFTING

The costs of production pursuant to this Order shall be borne by the Producing Party. However, in agreeing to this Order, no Party waives or relinquishes any right or interest it may have under the Federal Rules of Civil Procedure to seek cost shifting or apportionment for the costs of electronic discovery.

9. THIRD-PARTY ESI

a. A Party that issues a non-Party subpoena (the "Issuing Party") shall include a copy of this Order and the order concerning confidentiality agreed and/or entered in this litigation with the subpoena and state that the Parties in the litigation have requested that third-Parties produce documents in accordance with the specifications set forth herein.

b. The Issuing Party shall produce a copy to all other Parties of any

documents and ESI (including any metadata) obtained under subpoena to a non-Party.

c. If the non-Party production is not Bates-stamped, the Issuing Party will endorse the non-Party production with unique Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

10. BEST EFFORTS COMPLIANCE AND DISPUTES

The Parties agree to use their best efforts to comply with and resolve any differences concerning compliance with any provision/s of this Order. If a Producing Party cannot comply in a particular circumstance with this Order, such Party shall promptly inform the Receiving Party in writing why compliance with the Order is not reasonable or feasible. No Party may seek relief from the Court concerning compliance or non-compliance with the Order until it has met and conferred with the other Party in a good faith effort to resolve or narrow the area of disagreement.

11. MODIFICATION

This Order may be modified by a Stipulated Order of the Parties or by the Court for good cause shown.

IT IS SO ORDERED.

Date: 5/15/18

/s/Dan Aaron Polster
Hon. Dan Aaron Polster
United States District Judge

Appendix A: ESI Metadata and Coding Fields

| | | | |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------|
| BegDoc | Bates number of the first page of the document. | All | Prefix-0000000001 |
| EndDoc | Bates number of the last page of the document. | All | Prefix-0000000002 |
| BegAttach | Bates number of the first page of the first document of the document family. | All | Prefix-0000000001 |
| EndAttach | Bates number of the last page of the last document of the document family. | All | Prefix-0000000004 |
| PageCount | Number of printed pages in the document. | All | 2 |
| Confidential | Confidentiality designation, if any, of the document | All | Confidential Highly Confidential |
| Custodian | <p>Names of all custodians who possessed the document, including deduplicated values, in format: Lastname, Firstname.</p> <p>Where multiple individuals share first and last name, individuals should be distinguished by an initial which is kept constant between productions. For instance: Smith, John A. and Smith, John B.</p> <p>For documents from centralized repositories where custodian name(s) are unavailable, identifying source information should be provided.</p> | All | Doe, John; Smith, John; Smith, Jane |
| Duplicate Custodian | Names of all other custodians who possessed the document. | ESI | |
| Duplicate Custodian File Name | The names of unproduced duplicate copies of files. | ESI | |
| Duplicate Custodians | The file path/directory path correlating to the unproduced | ESI | |

| | | | |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------|
| Directory Path | duplicate copies of files. | | |
| Source | Source shall be used in connection with document obtained from third-Parties and identify the third-Party having provided the particular material. If the third-Party's production of documents included individual custodian information, such information shall also be included in the "CUSTODIAN" field. | | |
| Subject/E-Subject | Subject line of an e-mail. | E-mails | Text of the subject line |
| To | All recipients that were included on the "To" line of the e-mail. | E-mails | John.Doe@e-mail.com |
| From | The name and e-mail address of the sender of the e-mail. | E-mails | Jane.Doe@e-mail.com |
| CC | All recipients that were included on the "CC" line of the e-mail. | E-mails | Bill.Black@email.com |
| BCC | All recipients that were included on the "BCC" line of the e-mail. | E-mails | ceo-gs@email.com |
| DateSent | Date an e-mail was sent. | E-mails | 01/01/2015 |
| TimeSent | Time an e-mail was sent. | E-mails | 12:30:00 |
| DateModified | Date the document was last modified. | E-attachments; Electronic documents | 01/01/2015 |
| TimeModified | Time the document was last modified. | E-attachments; Electronic documents | 12:30:00 |
| DateCreated | Date the document was created. | E-attachments; Electronic documents | 01/01/2015 |

| | | | |
|--------------------|-------------------------------------------------------------|----------------------------------------|-------------------|
| TimeCreated | Time the document was created. | E-attachments; Electronic documents | 12:30:00 |
| Family Date | Date last modified or, for e-mails, sent date of the parent | Electronic documents; E-attachments | 01/01/2015 |
| Family Time | Time last modified or, for e-mails, sent time of the parent | Electronic documents; E-attachments | 12:30:00 |
| DateReceived | Date email was received. | E-mails | 01/01/2015 |
| TimeReceived | Time email was received. | E-mails | 12:30:00 |
| DateAccessed | Date document last accessed | Electronic documents; E-attachments | 01/01/2015 |
| Date Last Printed | Date the document was last printed. | E-attachments; Electronic documents | 01/01/2015 |
| Time Last Printed | Time the document was last printed. | E-attachments; Electronic documents | 12:30:00 |
| Date Last Saved | Date the document was last saved. | E-attachments; Electronic documents | 01/01/2015 |
| Importance | Level assigned by creator | E-mails | High |
| Conversation | E-mail conversation designation | E-mail | Re: Smith Summary |
| Conversation Index | | E-mail | |
| Title/E-Title | Title of document | E-attachments; Electronic documents | Smith Summary |

| | | | |
|----------------|-----------------------------------------------------------------|----------------------------------------------------|------------------------------|
| Redaction | Basis for redactions in document. | E-attachments; Electronic documents | |
| FileName | File name of original document | Electronic documents; E-attachments | Microsoft Word 2007/2010 |
| File Type | Application type | Electronic documents; E-attachments | Word |
| File Size | Size of file | All | 40 gb |
| File Extension | The file extension of the document. | E-attachments; Electronic documents | .doc |
| NativeLink | Relative file path to each native file on the production media. | All documents produced in native format | \\Natives\Document_12345.doc |
| Author | Document author/creator | E-attachments; Electronic documents | John Doe |
| Company | Party making the production | All | Company X |
| Title | Document Title | E-attachments; Electronic documents | Text of the title line |
| HASH | MD5 or SHA-1 Hash value | Electronic documents; E-attachments; E-mails | |
| Prod Volume | Production Volume | All | Defendant X Volume 1 |

| | | | |
|-----------------------------|--|----------------------------------------------------|--|
| File Path | | | |
| AttachDocID | | Electronic documents; E-attachments; E-mails | |
| ATTACHNAME | | | |
| ATTACHRANGE | | | |
| FOREIGN LANGUAGE | | | |
| TIME ZONE PROCESSED | | | |
| E-LAST MODIFIED BY | | | |
| MESSAGE TYPE | | | |
| CALENDAR MEETING STOP/START | | | |
| RECORD TYPE | | | |
| HAS HIDDEN DATA | | | |
| HIDDEN COLUMNS | | | |
| HIDDEN NOTES | | | |
| HIDDEN ROWS | | | |
| HIDDEN SHEETS | | | |
| HIDDEN SHEETS COUNT | | | |
| HIDDEN SLIDES | | | |
| HIDDEN TEXT | | | |
| HIDDEN TRACK CHANGES | | | |

| | | | |
|---------------------------------|----------------------------------------------------------------------------------|-----|---------------------------|
| HIDDEN VERY HIDDEN SHEETS | | | |
| HIDDEN VERY HIDDEN SHEETS COUNT | | | |
| HIDDEN WHITE TEXT | | | |
| HIDDEN WORKBOOK | | | |
| HIDDEN WORKBOOK WRITE PROTECTED | | | |
| MESSAGE ID | | | |
| NUMBER OF ATTACHMENTS | | | |
| ORIGINAL FOLDER PATH | | | |
| IS EMBEDDED | | | |
| TextPath | Relative file path to each extracted text/OCR text file on the production media. | All | \\Text\Document_12345.txt |