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 The Honorable 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, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,	§	***Submitted to***: **Judge Thad Balkman**
Defendants.	§	STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY } **FILED** **MAY 03 2019** In the office of the Court Clerk MARILYN WILLIAMS

THE STATE'S RESPONSE TO TEVA'S MOTION *IN LIMINE* #7
(To Exclude Evidence Regarding The Consequences Of These Defendants' Drugs)

INTRODUCTION

Public trial is deeply woven into the fabric of our judicial system. Fundamental to its ethos. Public trials are the backdrop to Atticus Finch's defense of Tom Robinson and Clarence Darrow's cross-examination of William Jennings Bryan. And the reason why courts across the Nation, including this one, are located in the town square. "With us, a trial is by very definition a proceeding open to the press and to the public." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 599, 100 S. Ct. 2814, 2840 (1980) (Stewart, J. concurring). Yet Defendants want to bar the Court's doors and suppress the evidence from ever seeing the light of day.

Motions *in limine* are not appropriate in bench trials. The whole point of a motion *in limine* is to make sure that potentially prejudicial evidence and statements never get to the fact finder (jury) because any damage cannot be undone. Here, the Court is the fact finder. And Defendants, not the State, have taken every single item they can think of, written it down, alerted the fact finder, told the fact finder about it, used bold headings, and will argue about it in open court. So, rather than keep any complained-of statements or evidence secret, Defendants have deliberately drawn the only fact finder's attention to it. That defeats the entire purpose of a motion *in limine*.

To be clear, Defendants' Motions in *Limine* are not about this fact finder. Quite the contrary, these Motions *in Limine* are solely about preventing an open, public trial—part of a metastasizing effort to shield their conduct from the public eye. First J&J and Teva improperly designated well over 90% of their production confidential—***over 3 million documents***—despite assurances to the Court that they would not blanket designate.[1] Then they fought tooth-and-nail to

[1] This number doesn't event take into account the 100,000+ blank documents produced by J&J that simply state, "Withheld as Not Responsive." Defendants' production is an astonishing abuse the Protective Order by any measure, but especially considering that J&J has no competitive interest in documents created before 2016 when it divested its global "pain management franchise." *See* State's Mtn. to De-Designate, Feb. 26, 2019.

prevent the public from seeing *any* of their documents by moving on two separate occasions to exclude cameras from the courtroom. And they sought to move the trial. And every time a document is shown to the Court—or a witness' testimony is played—they clear the courtroom. Now they file motions to seal masquerading as "Motions *in Limine*."

For all of Defendants' claims that the State has no case, they sure are worried about the evidence seeing the light of day. But Defendants eviscerated any argument about concealing evidence from the public based on a fear of statements impacting unknown foreign jurors when they publicly stated to all the unknown jurors that the State's case is baseless. They did not have to make those statements. But they did:

> Sabrina Strong, attorney for Johnson & Johnson and its subsidiary Janssen Pharmaceuticals, issued a statement to NPR and other media outlets saying the move by Hunter showed that most of the claims were without merit . . . . "We will continue to defend against the remaining baseless and unsubstantiated allegations."

https://www.npr.org/2019/04/04/710101827/oklahoma-drops-some-claims-to-refocus-lawsuit-against-opioid-makers. And, having done so, Defendants opened the door. As the Court saw just last Friday in Defendants' own documents: when they speak, they have a duty not to omit material information. Telling the whole world that the State's claims are baseless certainly blew that door wide open.

Beyond their title, Defendants' Motions do not even pretend to be motions *in limine*. Indeed, Defendants make no bones about the fact that these are not motions to keep information away from a jury. Quite the contrary, these Defendants' purpose is clear. "[T]he concern is not about the judge in this case but exposure of prejudicial information to millions of Americans, including countless prospective jurors in hundreds of matters pending against Janssen and J&J across the country." Janssen MIL No. 12 at 4; *see also* Jansen MIL Nos. 1, 5, 8, 9, 10, 13; Teva MIL Nos. 2, 3, 4, 5, 6, 7, 10. There is no case, none, that says the Court can consider hypothetical,

non-existent future trials in other states, that may never be conducted, under unknown laws and rules, when deciding what the State can use at this bench trial. Even if Defendants' motions were motions *in limine*, they fundamentally misunderstand the Court's duty to the public.

It is not the Court's job to shield the public—hypothetical jurors in other forums or otherwise—from information. Quite the opposite. Centuries of English-American judicial tradition charge the Court with empowering the public through access to trial and to information. *See generally Richmond_Newspapers v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814 (1980). The justifications for this obligation are manifold and recognized in Oklahoma:

> [T]here are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

In re in re the Okla. Bar Ass'n to Amend the Rules of Prof'l Conduct, 2007 OK 22, ¶ 4, 171 P.3d 780, 855. There is no more important judicial event in Oklahoma than this case. Indeed, the Court recognized this mandate when it allowed cameras in the courtroom over the very same protests regurgitated in Defendants' Motions *in Limine*: "'A trial is a public event. What transpires in the courtroom is public property . . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Aug. 22, 2018 Order at 2 (citing *Craig v. Harney,* 331 U.S. 367,67 S.Ct. 1249,91 L.Ed. 1546 (1947)).

The public's right to access does not end at the trial either. Rather, "the privilege extends, in the first instance, to materials on which a court relies in determining the litigants' substantive

rights." *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir. 1987). This right includes presumptive access to all documents used at trial. *See Shadid v. Hammond*, 2013 OK 103, ¶¶ 1-2, 315 P.3d 1008 (Taylor, J. concurring) ("Court records are public records . . . . Sealing a public record should be a very rare event that occurs in only the most compelling of circumstances."). Indeed, the Court's Protective Order envisions no restriction on the use of "Confidential" information at trial, and restriction on the use of "Highly Confidential – Attorneys' Eyes Only" information only "by a separate stipulation and/or court order." *See* Amended Protective Order, ¶ 16 (Apr. 16, 2018). Defendants' arguments that the Court must protect the public from the evidence is entirely backward.

Defendants repeatedly trumpet other false narratives in support of their argument that the Court should conceal evidence from the public. They argue that the State seeks to punish Defendants where no punitive claim exists. Likewise, they argue that the State unfairly seeks to have Defendants alone pay for the entire opioid crisis. It does not. The legislature has expressly carved out joint and several liability for cases like this one, 23 O.S.§ 15, and the State brought its case accordingly. It's not unfair, it's the law. Defendants could have joined additional parties. *See* Scheduling Order (Jan. 29, 2018). They did not. They could have produced or sought evidence of other causes. They did not. And they can try to seek contribution for a 17-billion-dollar Judgment (or whatever amount the Court decides) from all the phantom causes of the crisis that they claim exist when this case is over. They did not do this because—in all likelihood—Defendants have a joint defense agreement with every manufacturer in the national cases, and they have refused to allege or testify that any drug company had anything to do with causing this crisis. All of these actions were part of Defendants' strategy. That strategy may have been a bad one, but it doesn't mean that this case is unfair. And it doesn't mean that the Court should whitewash the record of

all the evidence Defendants don't like.

LEGAL STANDARD

Even in Defendants' inverted world where the Court functions to conceal information from the public, their Motions *in Limine* must fail. Motions *in limine* are not concerned with considerations of the general public, only the jury. *Middlebrook v. Imler, Tenny & Kugler, M.D.'s Inc.*, 1985 OK 66, ¶ 12, 713 P.2d 572, 579 ("The function of a motion in limine is to preclude introduction of prejudicial matters ***to the jury***." (emphasis added)). Of course, this is a bench trial. There is no Oklahoma jury to prejudice here. And in a bench trial, the rationale underlying pre-trial motions *in limine* does not apply. Where there is no jury, to the extent the evidence is prejudicial to the moving party, the judge has already seen it, and any benefit of shielding the evidence from the eyes of the trier of fact is absent. *See id.*

Likewise, there is no efficiency to be gained, as a party aggrieved by an order in limine must make an offer of proof of the excluded matter at trial. *Id.* For these reasons, trial courts are advised to deny motions *in limine* in non-jury cases:

> In the trial of a nonjury case, it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not. An appellate court will not reverse a judgment in a nonjury case because of the admission of incompetent evidence, unless all of the competent evidence is insufficient to support the judgment or unless it affirmatively appears that the incompetent evidence induced the court to make an essential finding which would not otherwise have been made. On the other hand, a trial judge who, in the trial of a nonjury case, attempts to make strict rulings on the admissibility of evidence, can easily get his decision reversed by excluding evidence which is objected to, but which, on review, the appellate court believes should have been admitted.

9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2411 (3d ed. 2008) (quoting *Builders Steel Co. v. CIR*, 179 F. 2d 377, 379 (8th Cir. 1950)).[2] As stated more pointedly

[2] *See also* Am. Jur. 2d *Trial* § 45 (2015) ("[T]he use of a motion in limine to exclude evidence in a case tried by the court without a jury has been disapproved on the grounds that it can serve no useful purpose in a nonjury case…granting of such a motion in a bench trial constitutes an error.");

by one trial court, "This is a bench trial, making any motion in limine asinine on its face." *Cramer v. Sabine Transportation Co.*, 141 F. Supp. 2d 727, 733 (S.D. Tex. 2001)).

A party seeking to exclude evidence in limine bears a heavy burden even in a jury trial. Under Oklahoma law, all relevant evidence is admissible unless otherwise prohibited, and the standard for relevance is very liberal. *See* 12 O.S. § 2402; *United States v. Leonard*, 439 F.3d 648, 651 (10th Cir. 2006). Relevant evidence is defined as, "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." 12 O.S. § 2401. "[A] fact is 'of consequence' when its existence would provide the fact-finder with a basis for making some inference, or chain of inferences, about an issue that is necessary to a verdict," but it only need to have "any tendency" to do so. *United States v. Jordan*, 485 F.3d 1214, 1218 (10th Cir. 2007). Accordingly, "court[s] are often reluctant to enter pretrial rulings which broadly exclude evidence, unless it is clear that the evidence will be inadmissible ***on all potential grounds***." *Martin v. Interstate Battery Sys. of Am., Inc.*, No. 12-CV-184-JED-FHM, 2016 WL 4401105, at *1 (N.D. Okla. Aug. 18, 2016) (emphasis added); *Middlebrook*, 1985 OK 66, ¶ 12 ("Error is committed, if at all, when in the course of the trial the court rules on the matter.").

Defendants are using motions in limine collectively to attempt to silence the State, stifle

---

United States v. Heller, 551 F.3d 1108, 1111-12 (9th Cir. 2009) (stating that the need for a motion *in limine* became moot once the defendant waived his right to a jury trial); *LaConner Assocs. Ltd. Liab. Co. v. Island Tug and Barge Co.*, No. C07-175RSL, 2008 U.S. Dist. LEXIS 109863, at *2 (W.D. Wash. May 15, 2008) (when ruling on motions *in limine*, a court is forced to determine the admissibility of evidence without the benefit of the context of trial); *Capitol Neon Signs, Inc. v. Indiana Nat'l Bank*, 501 N.E.2d 1082, 1083 (Ind. Ct. App. [4th Dist] 1986) ("The trial court erred when it granted CNSI's motion in limine. Such motion has no place in a court trial."). The more prudent course in a bench trial, therefore, is to resolve all evidentiary doubts in favor of admissibility. *See Commerce Funding Corp. v. Comprehensive Habilitation Servs., Inc.*, No. 01 Civ 3796 (PKL), 2004 U.S. Dist. LEXIS 17791, at *5 (S.D.N.Y. Sept. 3, 2004); *Balschmiter v. TD Auto Fin., LLC*, No. 13-CV-1186-JPS, 2015 U.S. Dist. LEXIS 66629, at *4-5 (E.D. Wis. May 21, 2015).

justice, and prevent the admission of any evidence whatsoever. Motions in limine should not be used as gag orders. The Court ordered a televised trial on August 22, 2018. For purposes of deciding Defendants' motions in limine in this bench trial, the Court should not consider other states' laws, unknown jurors, or other hypothetical trials in other jurisdictions that may never happen. The Motions *in Limine* should be denied.[3]

ARGUMENT

Teva laughably moves to exclude all evidence of the consequences of taking Defendants' drugs, specifically enumerating any reference to opioid addiction treatment, opioid-related crime, opioid overdose, and "indivisible harm" in Oklahoma. Mot. at 2. It is hard to imagine a category of evidence of more probative value to this case.

First, Teva argues that the State is foreclosed from speaking about the consequences of taking opioids because it failed to comply with its discovery obligations. In reality, Defendants lost these same baseless discovery arguments repeatedly in front of the Special Discovery Master, Judge Balkman, and on appeal. The Court has unequivocally held, over and over again, that the State is not required to produce individualized claims data regarding patients and doctors. *E.g.*, 2018-10-10 Order of Special Discovery Master, *aff'd* 2018-12-04 Order of Judge Balkman. Likewise, Teva's suggestion that the State failed to comply with some "cross-walking" obligation is completely false. There has never been such a finding. The State bent over backward to accommodate every dubious "cross-walking" request (ironically, all from J&J, not Teva) and has fully complied Judge Hetherington's orders. Indeed, the Court expressly found that the State has "substantially complied with discovery" in denying Defendants' attempt to move the trial date.

[3] Because the Court ordered the Parties to address each *limine* topic individually, and the State does not know which response the Court will read first, the State has included this Introduction and Legal Standard section into each of its responses.

2019-03-08 Hearing Tr. at 72:13-14. And the Supreme Court summarily denied Defendants' writ. Defendants' allegations of discovery failures were false when they made them in an attempt to move the trial and they are false now.

Second, Teva argues that the State cannot talk about the consequences of taking opioids because it cannot link Defendants' products to those consequences. As an initial matter, an argument that the plaintiff hasn't proved causation is a closing argument (or perhaps a summary judgment argument), but not grounds for a motion *in limine*. And Defendants' theory of causation appears to read requirements into the State's claims that do not exist—public nuisance does not require reliance. 50 O.S. §§ 1-2.

In any event, Teva's Motion *in Limine* 6 and J&J's Motion *in Limine* 8, which argue that individual impact witnesses are irrelevant in a public nuisance case, concede that individualized injury and causation is not required in a public nuisance case. And the State can very clearly show that Teva's (and all other Defendants') drugs caused what they sterilize as "adverse events." Indeed, Teva made the same arguments it makes here in its failed attempt to exclude the testimony of Drs. Kolodny and Clauw. 2019-04-26 Hearing Tr. at 35:10-16 ("The Government and Dr. Kolodny have no evidence, whatsoever, that any of Teva's marketing materials caused any harm . . . . Thus, Dr. Kolodny has no reliable basis, none whatsoever, to come to this Court and conclude that improper marketing of Teva caused any problem in Oklahoma."). As a result, the State walked the Court (and Teva) through the many ways it will prove causation and Teva's arguments were denied. Teva's objections to how the State elects to prove causation go to weight of the evidence, not its admissibility. The State is plainly entitled to explain the consequences of taking the very narcotics that form the basis of this lawsuit.

Third, Teva makes a similar argument that the State cannot talk about the consequences of opioid use because it cannot use "statistics" as proof. Again, this is an argument that plainly goes to the weight, not admissibility, of the evidence. There is no rule preventing the use of statistics as evidence supporting causation. Indeed, Defendants argued in *Daubert* motions that various experts' opinions on causation were unreliable because they *didn't* do a statistical analysis. The State is entitled to put on this evidence. And to the extent Teva's motion is specifically directed to Dr. Gibson's statistical model, the statistical proof is indeed reliable. *See* State's Omnibus Resp. to JJ's Mtns. to Exclude, Apr. 30, 2019, at § C.1.

Moreover, Teva's arguments that statistical proof is unreliable due to other parties or other factors, Mot. at 10, falls flat on its face. Defendants' chose not to bring in any of the other "approximately 50 opioid manufacturers" into the case or produce any evidence of any other cause or conduct.

Finally, Teva's allegation that there were "only a few" prescriptions of its products in Oklahoma is simply a lie. Teva is the largest generic opioid manufacturer in the world. And, as the State explained to the Court when it had to correct this misrepresentation the first time, the Oklahoma Health Care Authority ("OHCA"), on behalf of the Oklahoma Medicaid system, has reimbursed at least 3,406,619 prescriptions for generic formulations of opioids since 1996. Exhibit 1, 2018-03-30 - Ltr. to Judge Hetherington. Statistics can be evidence, and the State's statistical evidence is reliable. And, while the reliability of the State's statistical evidence and the State's right to put on evidence of the consequences of Defendants' drugs is only related in Teva's motion to avoid bad facts, the State is entitled to talk about the consequences of opioid use.

Fourth, and finally, Defendants argue that because the State cannot prove causation (arguments two and three) the State cannot allege that harm from adverse events is indivisible. For

the reasons stated above, and as clearly demonstrated during the hearings on Drs. Clauw and Kolodny (which the Court overheard), arguments two and three fail. Accordingly, this one does too.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Teva's Motion *in Limine* #7 in its entirety, and for such further relief the Court deems proper.

Respectfully submitted,

Michael Burrage, OBA No. 1350
Reggie Whitten, OBA No. 9576
WHITTEN BURRAGE
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburragelaw.com
rwhitten@whittenburragelaw.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR
THE STATE OF OKLAHOMA
Abby Dillsaver, OBA No. 20675
GENERAL COUNSEL TO
THE ATTORNEY GENERAL
Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246

Emails: abby.dillsaver@oag.ok.gov

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on May 3, 2019 to:

Johnson & Johnson, Janssen Pharmaceuticals Inc, Ortho McNeil Janssen Pharmaceuticals Inc., Janssen Pharmaceuticals Inc., Janssen Pharmaceutica Inc.:

Benjamin H. Odom
John H. Sparks
Michael W. Ridgeway
David L. Kinney
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072

Larry D. Ottaway
Amy Sherry Fischer
FOLIART, HUFF, OTTAWAY & BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102

Stephen D. Brody
David K. Roberts
Emilie Winckel
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
Wallace M. Allan
Sabrina H. Strong
Esteban Rodriguez
Houman Ehsan
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Michael Yoder
Jeffrey Barker
Amy J. Laurendau
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660

Daniel J. Franklin
Ross Galin
Desirae Krislie Cubero Tongco
Vinvent Weisbnad
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036

Amy Riley Lucas
Jessica Waddle
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 9006

Allergan Plc, Actavis Plc, Actavis Inc., Watson Laboratories Inc., Watson Pharmaceuticals Inc., Actavis Llc, Actavis Pharma Inc., Watson Pharma Inc.:

Robert G. McCampbell
Travis J. Jett
Nicholas V. Merkley
Ashley E. Quinn
Jeffrey A. Curran
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255

Brian M. Ercole
Martha Leibell
Melissa Coates
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131

Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
Evan K. Jacobs
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
502 Carnegie Center
Princeton, NJ 08540

Steven Andrew Luxton
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Michael Burrage

Michael Burrage

Exhibit 1

WHITTEN BURRAGE

NIX PATTERSON & ROACH LLP

March 30, 2018

VIA ELECTRONIC MAIL

Judge Bill C. Hetherington
Hetherington Legal Services, PLLC
231 S. Peters #A
Norman, Oklahoma 73072
405-321-8272 (O)
405-413-2250 (C)
hethlaw@cox.net

Re: *Plaintiff's First Motion to Compel Discovery*

Judge Hetherington,

During Thursday's hearing, the Teva/Cephalon Defendants made an argument that the discovery Plaintiff seeks is unduly burdensome and disproportionate because the State only reimbursed 245 prescriptions for their branded opioids. Teva/Cephalon also said that the State had not paid a claim based on those branded opioids since 2008. We believed these numbers were misleading but we did not directly respond to these statements during the hearing because we wanted to verify their accuracy and the Court was working against a time limit.

Teva/Cephalon's statements were grossly misleading. As a threshold matter, the State's Petition makes clear that the 245 prescription number "**do[es] not include** amounts the Oklahoma Medicaid program paid for any ***generic opioids*** prescriptions that were manufactured, promoted, marketed and sold in Oklahoma by any Defendants." (emphasis added). Petition ¶39 (emphasis added). Teva describes itself as "the world's leading provider of generic pharmaceuticals."[1] From 1996 to present, the Oklahoma Health Care Authority ("OHCA"), on behalf of the Oklahoma Medicaid system, has reimbursed at least 3,406,619 prescriptions for generic formulations of opioids. The OHCA has paid approximately $61,820,842 for these drugs.

The State believes Teva may be the largest supplier of generic opioids reimbursed by the State of Oklahoma during this time period. The State alleges the Teva/Cephalon Defendants were part of the causal chain that created the largest public nuisance the State of Oklahoma has ever suffered, a nuisance which the White House estimates had an annual economic cost of more than $500 billion in 2015.[2] That causal chain started in 1996 and each Defendant added to it when they

[1] http://www.tevapharm.com/our_products/generic_products/

[2] https://www.whitehouse.gov/sites/whitehouse.gov/files/images/The%20Underestimated%20Cost%20of%20the%20Opioid%20Crisis.pdf

marketed their drugs and brought them to market. Any question of proportionality must be viewed in light of these facts.

Further, contrary to Teva/Cephalon's implications, this case is not only about the number of prescriptions paid for by the State. Far from it. A major part of this case is the alleged harm caused by the nuisance each Defendant created with their marketing campaigns. That harm includes any treatment costs, public nuisance or other damages incurred by the State of Oklahoma as a result of Oklahomans who may have obtained their drugs with private insurance paying for Teva/Cephalon's brand name or generic drugs. Those prescriptions would never be included in the number given by Teva/Cephalon at the hearing.

Any argument related to proportionality must take these facts into consideration.

WHITTEN BARRAGE

e-signature: *Michael Burrage*

NIX, PATTERSON, & ROACH, LLP

e-signature: *Bradley E. Beckworth*

cc: All defense counsel of record