



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

vs.

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

Defendants.

For Judge Balkman's
Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED
APR 23 2019

In the office of the
Court Clerk MARILYN WILLIAMS

MOTION OF DEFENDANTS FOR JUDICIAL NOTICE PURSUANT TO 12 O.S. § 2201
THAT ANY RELIANCE BY THE STATE ON DEFENDANTS' OUT-OF-STATE
MARKETING CONDUCT TO PROVE VIOLATIONS OF OKLAHOMA LAW IS
UNCONSTITUTIONAL

I. INTRODUCTION

Plaintiff the State of Oklahoma's (the "State") attempt to rely on evidence of Defendants'¹ *out-of-state* conduct as the basis for satisfying elements of *Oklahoma state* claims amounts to an impermissible regulation of out of state conduct in violation of the Due Process and Commerce Clauses of the United States Constitution. Decades of Supreme Court precedent have made the following clear:

First, pursuant to the Commerce Clause, the State cannot project its regulatory regime into another State—even if the State can point to some downstream effect it wants to prevent. *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). But this is precisely what the State seeks to do here. By trying to rely on Defendant's out-of-state marketing-related conduct to satisfy the elements of Oklahoma state claims, the State is projecting and seeking to find a violation of Oklahoma law with regards to conduct occurring in other states. Under well-established Commerce Clause principles, this is simply not constitutional. *See, e.g., Ass'n for Accessible Medicines v. Frosh*, 887 F.3d 664, 672 (4th Cir. 2018) (holding unconstitutional the State of Maryland's attempt to regulate "upstream" generic pharmaceutical pricing decisions because State "effectively seeks to compel manufacturers and wholesalers to act in accordance with Maryland law outside of Maryland."). The Court should hold the same here.

Second, the Supreme Court has made clear that the application of State law to out-of-state conduct violates the Due Process Clause unless the out-of-state conduct has significant contacts with the State and implicates significant state interests. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985). Here, the State cannot meet its burden to establish that that Defendants'

¹ The term "Defendants" is defined to include: Defendants Watson Laboratories, Inc., Actavis LLC, Actavis Pharma, Inc., Cephalon, Inc. and Teva Pharmaceuticals USA, Inc.

marketing conduct outside of Oklahoma has *any* pertinent contact with the State or implicates *any* Oklahoma state interest, much less a significant one. The Supreme Court has held that subsequent downstream effects in the State are not enough to justify the application of state law to out-of-state conduct, *Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930), and that, even where a defendant does the same thing in the forum State and other states, “a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572-73 (1996).

Accordingly, pursuant to 12 O.S. § 2201, Defendants move this Court to take judicial notice that any attempt by the State to rely on evidence of Defendants’ out-of-state conduct to prove any unlawful conduct under Oklahoma state law would violate the Commerce and Due Process Clauses of the United States Constitution, and the State should be precluded from relying on such evidence at trial.

II. ARGUMENT

It is well-settled that “[t]he statutory command of 12 O.S. § 2201 obligates this Court to take judicial notice of the common law, constitutions and public statutes.” *Petition of Univ. Hosps. Auth.*, 1997 OK 162, ¶ 3, 953 P.2d 314, 324 (Kauger, C.J. concurring) (footnotes omitted) (emphasis original); *see also Keota Mills & Elevator v. Gamble*, 2010 OK 12, ¶ 9, 243 P.3d 1156, 1158 b (“we cannot ignore applicable, controlling law”). Here, the State has indicated that it intends to rely upon Defendants’ out-of-state marketing conduct—without showing any nexus to Oklahoma—to prove its Oklahoma-state-law public nuisance claim. (B. Beckworth, Mar. 29, 2018 Hr’g Tr., attached as **Exhibit 1**, at 36:8–10; 40:23–41:1; 46:11–15; 109:3–8.) The State seeks to rely on “national statistics” by improperly assuming that “Oklahoma would be a part of those statistics,” without any confirmation that the national statistics are based on Oklahoma data.

(Adriane Fugh-Berman Dep. Tr., attached as **Exhibit 2**, at 97:15–98:4; 118:5–16; 129:21–130:3.)

So long as “national statistics” support point A, the State seeks to find a violation of Oklahoma state law based on point A even where Oklahoma data would negate point A, a truth the State seeks to conveniently avoid by having failed to research or analyze *any* Oklahoma data. (*id.*, 98:10–19; 99:3–16; 129:11–20.) Simply put, the State effectively seeks to find violations of Oklahoma state law based on out-of-state conduct without any link or nexus to Oklahoma. For the reasons stated below, it would violate the Commerce and Due Process Clauses of the United States Constitution to allow the State to do so. At a minimum, the Court should read the relevant Oklahoma law not to cover the Teva Defendants’ out-of-state conduct and so avoid these constitutional issues.

A. The State’s Reliance On Evidence Of Defendants’ Out-Of-State Conduct To Prove Violations Of Oklahoma State Law Would Violate The Commerce Clause Of the United States Constitution.

Pursuant to the Commerce Clause, the State cannot project its regulatory regime into another State—even if the State can point to some downstream effect it wants to prevent. *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). This means that the State cannot rely upon Defendant’s out-of-state conduct to satisfy the elements of Oklahoma state-law claims: Oklahoma law cannot constitutionally be applied to that conduct.

The Commerce Clause reflects the “Constitution’s special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on interstate commerce and with the autonomy of the individual States within their respective spheres.” *Healy*, 491 U.S. at 335 (1989) (citations omitted). Using this principle in guiding its assessments, the Supreme Court has held that the “Commerce Clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, *whether or not the commerce*

has effects within the State.” Id. (citations omitted) (emphasis added.) In doing so, the “Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State.” *Id.* (citing *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 88–89 (1987)).

Under these constitutional principles, the State cannot rely on evidence of Defendants’ out of state conduct to prove violations of Oklahoma state law—Oklahoma cannot regulate their out-of-state conduct. The State’s attempt to penalize Defendants pursuant to the law and statutes of Oklahoma, based on conduct occurring outside of Oklahoma, is precisely what decades of Supreme Court precedent has established as unconstitutional under the Commerce Clause. *See Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935) (holding that “New York ha[d] no power to project its legislation into Vermont . . .”); *Edgar v. MITE Corp.*, 457 U.S. 624, 641 (1982) (plurality opinion) (holding that Illinois law violated the Commerce Clause by “directly regulat[ing] transactions which take place across state lines, even if wholly outside the State of Illinois”); *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986) (striking as unconstitutional New York law that “effectively force[d] [the distiller] to abandon its promotional allowance program in States in which that program is legal . . .”); *Healy*, 491 U.S. at 335 (1989) (striking as unconstitutional Connecticut law due to its “undeniable effect of controlling commercial activity occurring wholly outside the boundary of the State.”)

In a case involving claims materially similar to those raised here, the Fourth Circuit recently struck down as unconstitutional the State of Maryland’s attempt to regulate “upstream” generic pharmaceutical pricing decisions based on the “downstream” cost to consumers and other payors in the State of Maryland. *Ass’n for Accessible Medicines v. Frosh*, 887 F.3d 664, 672 (4th Cir. 2018), *cert. denied*, No. 18-546 (U.S. Feb. 19, 2019). The Fourth Circuit invalidated the

Maryland Act because it “effectively s[ought] to compel manufacturers and wholesalers to act in accordance with Maryland law outside of Maryland.” The State’s expected reliance on Defendants’ alleged out-of-state marketing conduct (with no nexus to Oklahoma) to try to prove its lone remaining *Oklahoma state law claim* raises the same constitutional problem. Accordingly, this Court should find any attempt to do so here to be unconstitutional.

B. The State’s Reliance On Evidence Of Defendants’ Out-Of-State Conduct To Prove Violations Of Oklahoma State Law Violates The Due Process Clause Of the United States Constitution.

The Supreme Court has made clear that the application of State law to out-of-state conduct violates the Due Process Clause unless the out-of-state conduct has significant contacts with the State and implicates significant state interests. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985). Here, the State cannot meet its burden to establish that that Defendants’ marketing conduct outside of Oklahoma has *any* pertinent contact with the State or implicates *any* Oklahoma state interest, much less a significant one. Any potential interest the State may allege to justify its attempt to regulate Defendants’ out-of-state conduct has been held as insufficient by controlling Supreme Court precedent.

“The Commerce Clause and the Due Process Clause impose distinct but parallel limitations on a State’s power” to regulate “out-of-state activities.” *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dep’t of Revenue*, 553 U.S. 16, 24 (2008) (citations omitted). Specifically, the Due Process Clause, among other things, prohibits the application of State law to out-of-state conduct absent the implication of significant state interests in the out-of-state conduct. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985).

In *Phillips Petroleum Co. v. Shutts*, the Supreme Court reviewed the Kansas Supreme Court’s application of Kansas state law to out-of-state transactions to determine whether it

complied with the constitutional requirements of due process. 472 U.S. at 797. The Supreme Court overturned the Kansas Supreme Court and held that a State “may not take a transaction with little or no relationship to the [State] and apply the law of the [State]” to the transaction in order to satisfy State law claims. *Id.* at 821-22. It further held that a State must have a “significant” “state interest” in the transaction “in order to ensure that the choice of [State] law is not arbitrary or unfair.” *Id.*

Examining other applications of state law to out-of-state conduct, the Supreme Court has held that subsequent downstream effects in the State are not enough to justify the application of state law to out-of-state conduct, even when one party resides in the State, *Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930), and that, even where a defendant does the same thing in the forum State as it does in other states, “a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572-73 (1996). The State has never suggested that the Teva Defendants’ out-of-state conduct was illegal under the laws of the states with constitutional authority to regulate it.

As noted above, the State intends use the Teva Defendants’ out-of-state marketing to prove its Oklahoma state claims, such as, for instance, marketing in “Arkansas, Louisiana, California, or anywhere else in the country.” (B. Beckworth, Mar. 29, 2018 Hr’g Tr. 46:11–15). The State presumably will argue that the downstream effects of such marketing carried over into Oklahoma. (Petition ¶ 64.) But the Supreme Court has made clear that such subsequent downstream effects are insufficient to justify the application of state law to out-of-state conduct. *See Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930). Even where a defendant has committed the same act in the forum State and another State, the forum state cannot regulate the out-of-state acts consistent with

due process. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572-73 (1996). It would violate the Due Process Clause of the Constitution for the State to rely on Defendants' out-of-state conduct to satisfy its state law claims.

CONCLUSION

Pursuant to 12 O.S. § 2201, this Court should take judicial notice that any attempt by the State to rely on out-of-state marketing conduct (with no nexus to Oklahoma) to satisfy the remaining public nuisance claim against Defendants violates the Due Process and Commerce Clauses of the United States Constitution, and the State should be precluded from relying on it at trial.

Dated: April 23, 2019



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 23 day of
April 2019, to the following:

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EXHIBIT 1

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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.)

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK)
- COMPANY;)
- (4) TEVA PHARMACEUTICALS)
- USA, INC;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS,)
- INC.;)
- (8) ORTHO-McNEIL-JANSSEN)
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- 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.)

TRANSCRIPT OF PROCEEDINGS
HAD ON MARCH 29, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

1 trial date.

2 And you can see that very clearly in the Purdue
3 defendants' responses in particular or their response brief,
4 your Honor, where the vast majority of the categories of
5 information, they simply say, Well, we want a meet and confer
6 further on that, we want to have another meet and confer, let's
7 meet and confer again, and then we'll talk about this later.

8 And we don't think that's good enough, and we think those
9 decisions are ripe for resolution, that they haven't identified
10 what they're withholding, and so we're in a position where we
11 have to move to compel.

12 As far as the arguments themselves in their response
13 brief, I just want to frame the issue a little bit. All of the
14 defendants' arguments that you see related to their objections
15 for things like the geographic scope of our request or the time
16 period that we've requested, all of their arguments ignore what
17 dictates the actual -- all of their arguments -- can you still
18 see the screen, your Honor? I know we're not using it yet. I
19 think we brought a large enough one.

20 THE COURT: No, that's fine.

21 MR. PATE: All of the defendants' arguments ignore
22 what dictates the scope of discovery, and that's what are the
23 claims and the defenses at issue. There are a lot of big
24 numbers that the defendants throw out in their opposition
25 briefs where they say we're asking for discovery from a more

1 than 20-year time period, 20 years is a really long time, we've
2 produced 800,000 pages of documents, that's a lot of documents.

3 All of those numbers in a vacuum sound big and they sound
4 convincing. Twenty years does sound like a long time. But
5 what matters is 20 years by itself is irrelevant to determining
6 what the scope of discovery is, because it depends on what the
7 claims and defenses are.

8 And our claim is that they have engaged in a nationwide
9 fraudulent marketing scheme for the last 20 years, more than 20
10 years. And so that's why we defined that relevant time period.
11 It's defined according to the claims and defenses that are at
12 issue in the case.

13 We've had cases where we've gotten documents going back to
14 the 1890s. We had a case in federal court here in Oklahoma
15 that involved the federal government's management and trust
16 obligations to the tribe's timberlands. And it related to
17 allegations dating back all the way to the 1800s.

18 So we got documents from the 1800s, and we looked at
19 documents from the 1890s. And a hundred years is a long time,
20 over a hundred years is a long time to be asking for documents
21 for. But that's what we got because that's what was at issue
22 in the case. And that's what we're asking for here.

23 And none of the cases that the defendants cite and none of
24 their arguments acknowledge that the allegations in this case
25 are about a 20-year marketing campaign related to opioids

1 generally as a category of drugs. It wasn't just a marketing
2 campaign for OxyContin or a marketing campaign for Actiq or
3 Nucynta or any of the other drugs the defendants make.

4 They made a choice to market opioids generally as a class
5 of drug to try to change prescribers' understanding of how that
6 entire class of drugs should be prescribed. And so that's why
7 we're entitled to discovery for the last 20 years about that
8 marketing campaign.

9 So with that, your Honor, I would like to move into a
10 little bit more about the marketing campaign itself and the
11 facts that we've alleged in this case. Again -- and we've
12 pared this down from the motion to dismiss hearing a little
13 bit, your Honor, but I do think it's important to give you some
14 of the high points.

15 MR. ODOM: Your Honor, at this point I object to --
16 anything they have that's a direct aid to the Court for their
17 brief that they filed here is perhaps fine to show on a screen,
18 but if this is going to be the same thing or even cut down from
19 what we've all seen earlier, it wasn't particularly relevant to
20 the legal issues that were before the Court when we saw it last
21 time.

22 We have not seen what's in this presentation here this
23 morning in terms of preparation for this hearing. We don't
24 know what all's in it, whether it's just these things. It's
25 making us respond on the fly again to something that may be in

1 here that's not part of the briefed arguments before the Court
2 this morning.

3 MR. PATE: Your Honor, there's nothing in our
4 presentation that wasn't part of the briefed arguments.
5 There's nothing in here that they haven't -- with the exception
6 of two slides that relate directly to their opposition and
7 their discovery responses, there's nothing in here that they
8 haven't seen already. And so I think it's helpful to the
9 Court. I don't understand the objection, frankly.

10 THE COURT: Well, here's the thing. I've read the
11 petition. I know the claims. I certainly understand the
12 State's position on what the claims are and more particularly
13 what you're demonstrating here as to what they're based upon;
14 the behavior that you allege.

15 MR. PATE: Certainly.

16 THE COURT: I don't need that. I know what the deal
17 is. And to the extent that that's, well, relevant to decisions
18 I have to make on the motion to compel, I'm not so sure it is.
19 I mean, you know, go ahead if you want to, but let's run
20 through it real fast.

21 MR. PATE: Yes, your Honor. And I do think it's
22 relevant to the issues that we're deciding here today because
23 they've objected to the time period that we're asking for
24 documents. They've objected to the geographic scope of the
25 documents that we've asked for.

1 But all of that is determined and whether or not our
2 claims -- or excuse me -- our requests are appropriate is
3 determined by what our allegations are and what our claims are.
4 So it's absolutely relevant to what we're deciding today and
5 what your Honor's deciding today to know what our claims are
6 and what the facts we've alleged are. And so I can skip
7 through -- I know you said you're familiar with the
8 allegations, your Honor, so I can --

9 THE COURT: Yeah. I mean, the details, obviously I
10 haven't seen these demonstrative aids before, but I mean, go
11 ahead.

12 MR. PATE: Yes, your Honor. I understand. I think
13 it's important. Here's what I think is important to point out,
14 which is highly relevant for what we've asked for today. The
15 difference between unbranded and branded marketing.

16 You can see on the screen the allegation of how the
17 defendants conspired and acted in concert to change the
18 historical perception of opioids, and we talked about that
19 already, by minimizing the risk of addiction and touting
20 unsubstantiated benefits.

21 And they did that in two primary ways: Unbranded
22 marketing and branded marketing. Unbranded marketing is all of
23 the stuff that we talked about or that we're going to get into
24 today relating to KOLs, key opinion leaders, these doctors who
25 are paid by the defendants to go tout industry friendly lines

1 and opinions about how opioids should be used, front groups who
2 appear to be impartial.

3 THE COURT: Yeah, here's an example. That's all in
4 the written pleadings.

5 MR. PATE: Yes, your Honor.

6 THE COURT: I've seen it. I understand it.

7 MR. PATE: I understand that, your Honor, but they've
8 objected to producing a lot of it.

9 THE COURT: I clearly know that.

10 MR. PATE: Here's an example of one of the key
11 opinion leaders here today -- or not here today, but who we've
12 alleged that the defendants have all paid, your Honor. And
13 part of their objections relate to communications.

14 Certain defendants, and particularly the Purdue
15 defendants, have objected to producing communications with
16 various key opinion leaders. And so we provided the slide just
17 to demonstrate why we need this information, because the
18 different defendants have all paid, for example, Dr. Portenoy.

19 He's involved with, you can see up here -- and we're just
20 starting to scratch the surface on this, your Honor. We're
21 obviously early in discovery. But he's also involved in all
22 these additional front groups.

23 That's why this information matters; that's why the
24 information we're asking for on a nationwide scope.
25 Dr. Portenoy's not from Oklahoma, but he's influenced Oklahoma

1 through the defendants' scheme. That's why we're entitled to
2 this information. And Dr. Portenoy himself --

3 And Trey, if you'll go to the next slide. Just go ahead
4 and skip ahead, Trey, to his video.

5 This is important I think for your Honor to hear, because
6 it shows exactly why we need this information.

7 (The video was played at this time.)

8 MR. PATE: That's important, your Honor, education to
9 destigmatize, because we're talking about an entire class of
10 drugs. We're talking about opioids generally. And that's
11 important for all of the issues that we're going to talk about
12 today.

13 I'll just briefly point out, we talked about this report,
14 your Honor, at the last hearing, and I know you have a copy of
15 it. This is the homeland security and governmental affairs
16 most recent report on the connections between these different
17 front groups that Dr. Portenoy participates in and that are
18 funded by the defendants and the connection between those front
19 groups, the financial connection, and the defendants and the
20 influence that that has on the message that they distribute,
21 your Honor, which again is key for the scope of what we're
22 asking for.

23 Not all these front groups are in Oklahoma, but we believe
24 we're entitled to the information about them, and as well as
25 certain specific requests that we will get into, again, mainly

1 as it pertains to the Purdue defendants, for information that
2 we've asked for about these front groups.

3 Moving to the specific RFPs that we've alleged. We've got
4 some more slides, your Honor, but I think that it will be best
5 to hold off on those until we get to the specific section of
6 our argument rather than moving through all of them.

7 But Request for Production No. 1 and 2, we talked about
8 those at the last hearing. Those are the requests for
9 documents that have been produced by the defendants in other
10 opioid cases.

11 And as I said at the beginning, we thought we dealt with
12 this at the last hearing. We thought your order was clear. We
13 thought you said produce it or specifically identify -- produce
14 it, or if there's something specific that you don't think you
15 need to produce, then identify it for us and for you so that we
16 can have a conversation about it.

17 The Janssen defendants did that for us. They identified
18 three categories of documents that they have currently
19 identified that they are not producing in response to those
20 requests. We can agree on two of them with some slight
21 exceptions, and we don't agree on the third. So we can address
22 that today.

23 The Teva defendants sort of complied with that, identified
24 two categories of information I believe that they're not
25 producing. But then they said, We're not responding to Request

1 No. 2, even though we believe you ordered them to do so or
2 specifically identify what you're not going to produce. We
3 didn't think, We're giving you nothing, we're reasserting our
4 objection, was an option following the last hearing. But
5 that's the argument that they're reraising at this point with
6 respect to the second request.

7 And the basis for that argument, they say in their
8 opposition, is undue burden. Teva says we only sold about --
9 or the State only reimbursed about 250 prescriptions for our
10 drugs Actiq and Fentora -- Teva says this -- and so it's unduly
11 burdensome for us to have to produce all this.

12 This is why I felt like we needed to go over the facts a
13 little bit, your Honor, because that misses the point. And
14 that misses the claims in this case and that misses our
15 allegations that the Teva defendants, just like all of these
16 defendants, did not just market their own drugs. They did not
17 just market Actiq. They did not just market Fentora. They
18 chose to engage in a sweeping fraudulent campaign to market
19 opioids. That word. That class of drugs. Opioids, generally.

20 And so they drove up the sales and impacted the
21 prescribing behavior of office of doctors for opioids
22 generally. That was a targeted decision they made. And so it
23 doesn't matter that they only were -- that the State of
24 Oklahoma only reimbursed approximately 250 prescriptions of
25 Actiq and Fentora because they're liable for their

1 misrepresentations. They're liable for driving up the sales of
2 all opioids. And in Oklahoma, they're joint and severally
3 liable.

4 And so it is no defense or no response to our request to
5 claim that they don't have to produce this information because
6 they only -- the State only reimbursed -- happened to only
7 reimburse 250 prescriptions of our drugs.

8 So we would ask that the Court overrule that objection and
9 order them to do what we believe you already ordered them to do
10 and respond to RFP No. 2.

11 The Purdue defendants, I saved them for last, because
12 while they have identified the same two categories that J & J
13 identified as far as call notes, out of state call notes, and
14 prescription claims data -- which we're not going to argue with
15 them at this point. We believe if we learn we need that
16 information for a specific issue later in the case, we'll ask
17 for it.

18 We're not waiving our right to do that. But at this time,
19 we don't need things like -- we don't need call notes outside
20 of the state of Oklahoma, with one caveat, your Honor. If the
21 call notes discuss what they refer to as Region Zero, then we
22 don't think that those should be excluded.

23 THE COURT: Let me ask a question about call notes.
24 I think I've already ordered in the protective order -- and you
25 may object to that. But I think the call notes -- let's end

1 that now. I think the call notes are protected. I don't -- I
2 think that's what I did, and I did that based upon the fact
3 that by what I read, you had stipulated that they --

4 MR. PATE: I'm not arguing about the call notes, your
5 Honor. We put the -- I don't know if it's set out in the
6 protective order. I'm trying to lay out what we agree and
7 don't agree with, and call notes they've identified, and in our
8 motion, we said, We're okay with that for now. We're okay with
9 them not producing the call notes.

10 THE COURT: All right. Okay.

11 MR. PATE: With the exception that I gave as far as
12 call notes talking about what they refer to as Region Zero.

13 THE COURT: That they refer to as what?

14 MR. PATE: There's a term they use -- there's a term
15 at least the Purdue defendants use called Region Zero, and that
16 refers to doctors who they believe may be running pill mills or
17 overprescribing opioids. So they would put them in a box
18 labeled, Region Zero. And that had significant implications
19 for this scheme.

20 First of all, it disincentivized their sales reps to even
21 report pill mills, because it would take a high paying doctor
22 who they were getting a large commission of out of their
23 commission pool. And so we believe that there's a lot of
24 relevant information that relates to this Region Zero concept.

25 And so we think -- that's why if that's being discussed in

1 these call notes -- I don't know if it is, but if it is, we
2 believe that stuff should be produced and not excluded. And I
3 just wanted to make that clear.

4 THE COURT: Okay.

5 MR. PATE: The third -- I talked about J & J
6 identifying three categories. The third category, the one that
7 we don't agree with, however, your Honor, is documents related
8 to their speaker programs and key opinion leaders and payments
9 to those people and other healthcare professionals outside the
10 state of Oklahoma.

11 As I already said, and your Honor said you're already
12 familiar with our allegations, we're alleging a nationwide
13 conspiracy. They have not identified any reason or any
14 difference in their tactics in Arkansas, Louisiana, California,
15 or anywhere else in the country that differed from Oklahoma.

16 We're entitled to all of this information. We need to
17 know who they paid and how much they paid them and what that
18 was for. So we don't think it's fair and we don't think that
19 that information should be excluded just because a certain
20 doctor or certain key opinion leader wasn't necessarily in
21 Oklahoma.

22 So we think that with respect to Request for Production
23 Nos. 1 and 2, they should not be allowed to exclude that
24 material from their production.

25 THE COURT: Before you go on, give me just a second

1 on that particular topic, the scope of that.

2 MR. PATE: Yes, your Honor.

3 THE COURT: I forget, have they objected to the
4 geographic limitations narrowed to the request to Oklahoma?

5 MR. PATE: Yes, your Honor. All defendants have made
6 a geographic scope objection, and they have all applied that
7 objection I think slightly differently. These are kind of
8 related on what they're -- as far as Request Nos. 1 and 2 touch
9 on those geographic limitations, but then there's a broader
10 geographic scope objection that covers multiple requests.

11 THE COURT: As it relates to RFP No. 16 related to
12 compensation plans for Oklahoma sales representatives, and 19,
13 research related to Oklahoma prescriber behavior, they've
14 objected to all of that?

15 MR. PATE: We believe we're entitled to all of that.
16 We believe we're entitled to all of that, and I think 16 and
17 19 -- well, 16, we requested that for everyone, including
18 Oklahoma, and 19 I believe is limited to Oklahoma already.

19 Yes, your Honor, 19, as you point out, is our request for
20 research related to -- specific to Oklahoma healthcare
21 professionals' prescribing habits. So that's a slightly
22 different issue than what we're getting into with RFP Nos. 1
23 and 2, and it's different than the speaker programs I was
24 referring to and the payments to those doctors and to the key
25 opinion leaders.

1 also in charge of the marketing program, Richard Sackler. We
2 need that deposition and we need those documents.

3 And it is disingenuous I think to come in here and say you
4 don't even know what that case is about after we've asked for
5 it three times now and we've identified it in our list of cases
6 that we put in our discovery responses.

7 And I also want to address two other points raised by
8 counsel. First, they've said that we have received day one
9 documents related to OxyContin. That's true for documents that
10 they provided to the FDA. Up until this week, the only
11 documents we have been produced from Purdue are the new drug
12 application files that they provided to the FDA. There's a lot
13 more at issue than just what Purdue told the FDA and what they
14 provided to the FDA.

15 And so those are the -- just to be clear, and I think that
16 their objection is clear on this also -- that they haven't and
17 aren't agreeing to produce everything prior to 2006. They've
18 produced what they told the FDA back in 1996 for OxyContin, but
19 so far, we haven't received anything else.

20 And I want to address the Tyson case just because it's
21 been raised multiple times. I think it's clear from reading
22 that case that that case is completely distinguishable. That
23 case dealt with separate water -- that was a poultry
24 contamination case that I'm sure your Honor's familiar with,
25 and it related to cases that related to two separate

1 watersheds, two separate poultry farms completely different --
2 similar conduct, but different circumstances.

3 This is a nationwide same conduct that we have alleged
4 between these different cases and that all these cases we're
5 asking for documents on are based on. They're based on the
6 same conduct. Not similar conduct. Not related conduct. The
7 same conduct that Purdue engaged and blanketed the entire
8 country with.

9 THE COURT: All right. Thank you.

10 MR. PATE: Your Honor, I want to make one more point
11 that hasn't come up today, because I think it's important again
12 for this 1996 issue and as far as what Purdue has agreed to
13 provide us that far back and what they haven't.

14 We mentioned this in our motion. But prior to 2006 and
15 back in 1996, Purdue subcontracted a lot of its sales efforts
16 to another company named Abbott. Basically recruited and
17 subcontracted over a thousand, we understand, sales reps over
18 to their company to help them promote OxyContin and basically
19 adopted their sales force to drive it up.

20 They carpeted the entire country with their
21 misrepresentations about opioids using not only their own sales
22 reps, but contracting with other companies' sales reps. We
23 need to know how they trained those people. We need to know
24 what they gave those people. We need to know this information
25 as far back as 1996; not just what they told the FDA about

1 their drugs in 1996.

2 THE COURT: All right. Thank you. Anything else
3 from defense table?

4 MR. LAFATA: No, your Honor. Thank you.

5 THE COURT: Anything else from plaintiff's side of
6 things? Mr. Burrage?

7 MR. BURRAGE: Your Honor, with regard to
8 proportionality, this epidemic started in 1996. They started
9 addicting people in Oklahoma, started killing people in
10 Oklahoma, started putting the tax burden on the State of
11 Oklahoma, and that started in 1996. And that's why we need the
12 documents. We need the genesis of this and how it came
13 forward.

14 THE COURT: Thank you.

15 All right. Thank you. What I intend to do is, is get out
16 -- I'll draft an order as best I can ruling on each of the
17 objections and the State's motion to compel as soon as I can.

18 I'll work on this e-mail first as it relates to narrowing
19 down the protective order issues that I would like to hear
20 about. I'll get that out first, so you can expect that pretty
21 quickly I hope. And that I think is it.

22 Anything else?

23 MR. BURRAGE: Thank you, your Honor.

24 MR. DUCK: I'm sorry, your Honor. I hate to be the
25 straggler. I know it's been a really long morning, but we do

2

EXHIBIT 2

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY
2 STATE OF OKLAHOMA
3 STATE OF OKLAHOMA, ex rel.,)
4 MIKE HUNTER, ATTORNEY GENERAL)
5 OF OKLAHOMA,)
6)
7 Plaintiff,)
8)
9 -vs-) No. CJ-2017-816
10)
11 PURDUE PHARMA, L.P., et al.,)
12)
13 Defendants.)

9
10
11
12 VIDEO DEPOSITION OF ADRIANE FUGH-BERMAN
13
14 TAKEN ON BEHALF OF THE DEFENDANTS
15
16 IN OKLAHOMA CITY, OKLAHOMA
17
18 ON MARCH 6, 2019
19
20 COMMENCING AT 9:05 A.M.

21
22 INSTASCRIP, LLC
23 101 PARK AVENUE, SUITE 910
24 OKLAHOMA CITY, OKLAHOMA 73102
25 (405) 605-6880
 www.instascript.net
26 REPORTED BY: KIM GLOVER, CSR, RPR, RMR, CLR

1 MR. BECKWORTH: Objection. For
2 clarification, do you mean specific to this case or
3 lifelong, because --

4 Q (By Ms. Patterson) Specific to this
5 case

6 MR. BECKWORTH: -- that was a
7 double question?

8 THE WITNESS: So I'm not sure
9 exactly the number of hours that I spent preparing
10 specifically for this case between the time that I
11 finished this expert disclosure and when I arrived in
12 Oklahoma.

13 Guessing, I would say that it was
14 about ten hours.

15 Q (By Ms. Patterson) Okay. So what were
16 you doing during those ten hours?

17 A I was reviewing some of the background
18 material for my report and some other materials from
19 the medical literature and from other sources.

20 Q So did you review any new materials or
21 literature that you had not previously reviewed prior
22 to completing Exhibit 8?

23 A I don't believe so, but I don't
24 remember exactly. There may have been an article or
25 two that I have not viewed previously. I don't

1 remember.

2 Q In connection with preparing the
3 Exhibit No. 8, have you reviewed any articles or
4 research related to prescribing practices -- well,
5 prescribing practices as it relates to opioids in the
6 State of Oklahoma?

7 A I have reviewed the -- there were some
8 materials there were provided to me since I have done
9 this expert disclosure, including call notes and
10 depositions that I have previously mentioned, that
11 refer to practices and call notes in the State of
12 Oklahoma.

13 Q Okay. And my question probably wasn't
14 clear. I appreciate that answer.

15 Let me ask it differently. Have you
16 reviewed at any time, in connection with your work as
17 an expert in this case, any peer-reviewed articles or
18 research relating to prescribing practices in the
19 State of Oklahoma for opioids?

20 A I do not believe that I have seen an
21 article that only focused on prescribing practices in
22 Oklahoma. Some of the articles that I reviewed may
23 have included national statistics, of which Oklahoma
24 would be a part.

25 Q Well, in the articles that you're

1 thinking out -- that you're thinking of, was Oklahoma
2 broken out -- or were the statistics, as it relates to
3 Oklahoma, broken out in those articles?

4 A Not that I recall.

5 Q Are those articles that you're
6 referring to or thinking of -- are they cited in your
7 disclosure?

8 A I believe that some of them are and
9 some of them aren't.

10 Q Okay. Well, apart from articles that
11 may have national statistics or data on prescribing
12 practices for opioids, my question is more specific as
13 to the State of Oklahoma.

14 Have you ever reviewed any articles or
15 research regarding opioid-prescribing practices in the
16 State of Oklahoma?

17 A I have not seen any published articles
18 in the medical literature that have focused on opioid
19 prescribing in Oklahoma.

20 Q Have you --

21 A However, I have reviewed call notes,
22 which --

23 Q Right.

24 A -- give a lot of information.

25 Q Sure. Call notes are notes -- I know

1 what call notes are, but I'm asking you about
2 literature or research.

3 Let me ask you this. Have you
4 personally, at any time, before or after your
5 retention in this case, conducted any research
6 regarding opioid-prescribing practices in the State of
7 Oklahoma?

8 A I have not done specific research on
9 the opioid-prescribing practices of prescribers in
10 Oklahoma.

11 Q Do you know if anyone has done any
12 specific research on prescribing practices as it
13 relates to opioids in the State of Oklahoma?

14 A I'm not aware of material that's been
15 published in the medical or scientific literature on
16 that subject specifically.

17 Q Okay. Let's move back to your CV real
18 quickly and then we'll come back to Exhibit 8 in a
19 minute. Your CV was marked as Exhibit No. 7, and I
20 just have a few questions, hopefully, on this.

21 Again, this is a fairly complete CV as
22 I understand your earlier testimony, other than it may
23 not reflect a deposition that you gave recently;
24 correct?

25 A Yes. I believe I also had a

1 correction --

2 Q Okay.

3 A -- under the "Cases, Legal Testimony."

4 Q Can you point to me where the
5 correction is that you're referring to?

6 A Okay. It's not even numbered. One,
7 two, three -- on Page 4, where it says "Legal
8 Testimony, Recent."

9 Q Okay. I'm with you.

10 A I believe that there is an error -- I'm
11 hoping I get this right, but in the -- where it says
12 "United States District Court for the Eastern District
13 of Pennsylvania, Civil Action" --

14 Q Uh-huh.

15 A -- I believe that's another case that I
16 wasn't involved in. So I'm not sure whether it's a
17 typo, in terms of the number of the case, but it
18 doesn't seem to be the Elidel case. It was, I think,
19 Tricor, which was not something that I was involved
20 in.

21 So I'm not -- I'm not -- I'm not sure
22 -- it's not something separate. That number does not
23 refer to Elidel.

24 Q It just could be in error?

25 A Yes.

1 you see that?

2 A Yes.

3 Q And I see the reference -- or that
4 term, "complementary medicine," used a number of other
5 places in your CV. Very briefly, what is
6 complementary medicine?

7 A So there have been various terms that
8 have been used to describe therapies or practices that
9 are not routinely taught in medical schools or
10 routinely practiced by medical doctors.

11 So, over time, those terms have
12 included complementary medicine, alternative medicine,
13 integrative medicine, et cetera.

14 So complementary medicine is -- is one
15 of those terms, but they are really all the same.

16 Q Okay. All right. Moving on up the
17 list there on the first page, there is a reference to
18 your work as a consultant for the George Washington
19 University School of Public Health and Health
20 Services.

21 And I note in there it says, "Analyze
22 prescription drug marketing data in the District of
23 Columbia." Do you see that?

24 A Yes.

25 Q And I noticed that some other places in

1 your CV there are references to work you have done
2 specific to the District of Columbia, which is where
3 you live; correct?

4 A Yes.

5 Q All right. Have you analyzed
6 prescription drug marketing data in the State of
7 Oklahoma?

8 A I have not.

9 Q Okay. Are you aware of any studies,
10 research, or articles that have analyzed prescription
11 drug marketing data in the State of Oklahoma?

12 A There are -- there are many research
13 articles that have looked at pharmaceutical marketing
14 practices nationally, and there is no reason to think
15 that those practices would be any different in the
16 State of Oklahoma.

17 Q But, to answer my question, are you
18 aware of any studies, research, or articles that have
19 specifically analyzed prescription drug marketing data
20 in the State of Oklahoma?

21 A Well, I'm not aware of any published
22 studies that have -- that have examined general
23 pharmaceutical marketing in the State of Oklahoma. I
24 don't think that those studies are actually necessary
25 for looking at the effect of pharmaceutical marketing

1 of opioids in the State of Oklahoma.

2 We have the companies, we have -- we
3 have documents -- I have documents and sales calls and
4 plans for marketing from several companies to specific
5 Oklahoma physicians.

6 Q Okay. Are you finished with your
7 answer?

8 A Yes.

9 MS. PATTERSON: Objection,
10 nonresponsive.

11 Q (By Ms. Patterson) My question is:
12 Are you aware of any studies, research, or articles
13 that have specifically analyzed prescription drug
14 marketing data in the State of Oklahoma?

15 MR. BECKWORTH: Objection. She
16 has answered it several times.

17 THE WITNESS: There -- I have not
18 seen published studies in the medical literature on
19 pharmaceutical marketing practices specifically in the
20 State of Oklahoma.

21 Q (By Ms. Patterson) Okay. As I
22 understand one of your prior answers, I think what
23 you're telling us is that you believe you can rely,
24 for purposes of your opinions in this case, on studies
25 and research that have been done on a national level

1 regarding prescription drug marketing practices?

2 A That would be part of what I would rely
3 on.

4 Q What else do you rely on?

5 A On the companies' -- on companies' own
6 documents, including call notes and including plans
7 for pharmaceutical marketing and there are -- and the
8 numbers of call visits, for example, that occurred in
9 the State of Oklahoma.

10 Q So the only information you have on
11 call notes, with regard to calls made on doctors in
12 the State of Oklahoma, is based on the information
13 that was provided to you by the lawyers for the State;
14 correct?

15 A They provided me with some call notes.
16 There are many others, and at some point, I actively
17 prevented them from providing me with additional call
18 notes, because there were so many of them.

19 Q You actively prevented counsel for the
20 State from providing you with additional call notes.
21 Is that what I understood you to say?

22 A I have examples of -- I have some
23 examples of call notes.

24 Q Right. I understand. But your
25 understanding is that you have been provided --

1 another prescriber, and the note summarizes the visit.

2 Q Okay. So let's put aside call notes
3 for a minute, because we're going to talk about those
4 a little bit later.

5 I want to focus on all other types of
6 marketing materials, okay, that -- again, using your
7 definition of that term, are you aware of any
8 marketing materials that have been produced at any
9 time by any of the defendants in this case that are
10 specific to marketing opioids in the State of
11 Oklahoma?

12 A The marketing materials in general
13 refer to national marketing plans that would, of
14 course, include Oklahoma. There is at least one item
15 that I have reviewed that breaks out the states based
16 on their pain policies --

17 Q What's that document?

18 A -- and whether they are -- essentially,
19 it's a grade given to states based on whether the
20 policies that they have in terms of restrictions on
21 opioids prescribing and use and whether that --
22 whether that state's policies or laws or practices are
23 friendly to opioid manufacturers or not, and that does
24 break out Oklahoma.

25 Q Okay. Do you have that document with

1 you here today?

2 A I'm not sure.

3 Q Do you think you might have it upstairs
4 in the materials you were reviewing to refresh your
5 memory for this case?

6 A Yes.

7 Q Okay. I'll ask you to take a look for
8 that at the lunch break.

9 A Sure.

10 Q I would like to take a look at what
11 you're talking about.

12 Do you remember who developed or
13 created that particular document that you just
14 described?

15 A It was either a coalition or one of the
16 companies, but I don't remember which one.

17 Q Again, we would like to --

18 A I can get that.

19 Q -- I would like to know who that is and
20 what that document is.

21 Okay. Other than that document that
22 you've just described, are you aware of any marketing
23 material developed or created by any of the defendants
24 in this case that is specific to the marketing of
25 opioids in the State of Oklahoma?

1 **A** Marketing materials in general by
2 companies are done on a national, as opposed to a
3 state, level.

4 **Q** That's what I thought. That's what I
5 was trying to get at. Thank you.

6 Looking at -- we're going to talk about
7 PharmedOut in a minute, which, as I understand, is an
8 organization you were involved in putting together.

9 But before I get to that, have you --

10 **A** I just want to go back a second and say
11 that the -- that state-specific marketing, really,
12 generally, has to do with the targeting of specific
13 physicians, whether it is in drug rep visits or in the
14 recruitment of physicians or their prescribers to be
15 speakers or to participate in educational programs,
16 and I have reviewed materials that name or discuss
17 specific physicians, not only as targets of drug reps,
18 but also as targets for speaker programs and other --
19 and other events that were arranged by pharmaceutical
20 companies.

21 **Q** Have you reviewed any documents that
22 discuss doctors or prescribers being targeted in the
23 State of Oklahoma?

24 **A** That's -- that's what I'm talking
25 about --

1 Q Okay.

2 A -- that these are -- that there are
3 doctors in Oklahoma who were asked to participate in
4 speaker programs, for example.

5 Q Who? How many?

6 A Well, since I have not reviewed every
7 single one of the documents, I can't possibly tell you
8 how many -- how many.

9 Q I'm not asking how many. I'm asking if
10 you can tell me -- can you tell me any particular
11 prescriber that has been targeted, to use your word,
12 to act as a speaker by any of the defendants in this
13 case?

14 A Yes.

15 Q Who?

16 A Amar Bhandary.

17 Q Okay.

18 THE REPORTER: Say that one more
19 time.

20 THE WITNESS: A-m-a-r
21 B-h-a-n-d-a-r-y.

22 Q (By Ms. Patterson) Can you tell me any
23 other physicians in the State of Oklahoma who, based
24 on your review of the documents today, has been
25 targeted by any one of the defendants in this case to

1 act as a speaker?

2 MR. BECKWORTH: Objection, form.

3 THE WITNESS: I may have -- I
4 believe that I have seen some others, but I can't name
5 someone else sitting here right now.

6 Q (By Ms. Patterson) And who targeted --
7 which defendant targeted Mr. -- targeted Dr. Bhandary?

8 A Purdue.

9 Q Have you -- let me ask it this way.
10 Let's look at Exhibit 8, which is your disclosure, and
11 I'll ask you to look at the first page and Section A,
12 which has bullet points that we talked about earlier.

13 A I'm sorry. Did you say 8?

14 Q Yeah. Exhibit 8, which is your
15 disclosure.

16 A I'm sorry. What page?

17 Q And the first page. Exhibit -- I'm
18 sorry, Section A of Exhibit 8, which is the section
19 that has the bullets points.

20 Are you with me?

21 A Yes.

22 Q Okay. The first two bullets are "sales
23 and marketing tactics employed by the pharmaceutical
24 industry" and "sales and marketing tactics employed by
25 defendants."

1 Those are two of the subject matters
2 you are going to be offering an expert opinion in this
3 case; correct?

4 **A** Yes.

5 **Q** All right. And then, below that, the
6 next bullet says, "The influence of defendants' sales
7 and marketing tactics on the prescribing of opioids on
8 prescribers and consumers' perceptions of opioids."

9 You're going to be offering an expert
10 opinion on that, as well; correct?

11 **A** Yes.

12 **Q** All right. Now, you spent a great deal
13 of time in Subsection B, Roman Numeral I, starting on
14 Page 1, talking about pharmaceutical marketing tactics
15 in general; correct?

16 **A** Yes.

17 **Q** All right. The -- the pharmaceutical
18 marketing tactics that you're talking about in Section
19 B, Roman Numeral I, are not specific to the marketing
20 of opioids, are they?

21 **A** That's correct.

22 **Q** These are pharmaceutical marketing
23 tactics that you have observed and researched during
24 your career across a whole host of different
25 medications and medical devices; correct?

1 A Yes. Some of them apply more or less
2 to medical devices.

3 Q Okay.

4 A So some of the marketing techniques are
5 different.

6 Q Now, with regard to Section B, both B-1
7 and B-2, of your disclosure, can you point me to any
8 discussion in there where you discuss any particular
9 marketing tactic that was used with any prescriber or
10 group of prescribers in the State of Oklahoma?

11 MR. BECKWORTH: I'm -- are you
12 asking her to point on the paper or are you asking her
13 to expand beyond that?

14 MS. PATTERSON: I'm asking her to
15 point it out on the paper and then we'll talk about
16 it.

17 MR. BECKWORTH: Okay.

18 THE WITNESS: So there's a -- I
19 refer to a deposition of the Oklahoma sales manager
20 for Purdue, Eric Wayman, and his comments, for
21 example, "Despite our initial uncertainty, we have
22 been successful beyond our expectations in the
23 nonmalignant pain market. Doctors use the drug in
24 nonmalignant pain because it's effective and the
25 personality of Oxycontin is less threatening to them

1 and their patients than that of other morphine
2 alternatives" --

3 Q (By Ms. Patterson) You don't need to
4 read it to me. If you can just point me --

5 A Okay.

6 Q -- tell me what page it's on.

7 A Sorry. It's on Page 10.

8 Q Page 10, okay.

9 A So this is Oklahoma's --

10 Q Okay.

11 A -- sales manager.

12 Q Okay.

13 A The --

14 Q Is there any other --

15 A -- information in that --

16 Q I'm sorry. I didn't mean to cut you
17 off.

18 MR. BECKWORTH: Well, it keeps
19 happening. Why don't you -- you can complete an
20 answer, despite the interruptions.

21 Q (By Ms. Patterson) Yeah. I'm not
22 trying to -- you talk slowly and you do kind of stop
23 at times, and so sometimes I think you're finished
24 with your answer. And I'm not trying to cut you off.

25 MR. BECKWORTH: Well, good. Then

1 you won't mind her continuing.

2 THE WITNESS: And the -- I'm
3 pausing because I just want to make sure that I'm
4 really thorough in my answer.

5 I feel like there was another
6 point in here where I also mentioned Eric Wayman. So
7 Wayman also states, in a different point in the
8 deposition, that the total prescription level is
9 highly correlated to call activity.

10 And, again, he -- he is the -- he
11 is the Oklahoma sales manager, so --

12 Q (By Ms. Patterson) Have you ever
13 spoken to or interviewed Mr. Wayman?

14 A I have not.

15 Q Everything you know about what
16 Mr. Wayman believes went on in Oklahoma is based on
17 your review of his deposition. Is that fair?

18 A That's fair.

19 Q Okay. Other than the references to
20 Mr. Wayman's deposition that appear in a couple of
21 different places in Exhibit No. 8, can you point to me
22 -- point me to any other discussion in Section B of
23 your expert disclosure where you discuss any
24 particular marketing tactic that was used by any of
25 the defendants with any prescriber in the State of

1 Oklahoma?

2 **A** Again, information -- national
3 information would not exclude Oklahoma and is relevant
4 to Oklahoma.

5 I have not -- I -- to the best of my
6 recollection, I have not included other information
7 specific to marketing of opioids in Oklahoma
8 specifically in this report.

9 **Q** Okay. Have you -- have you done any
10 research to determine whether there is any particular
11 marketing tactic or sales tactic that any of the
12 defendants have employed in order to market opioids
13 specific to the State of Oklahoma?

14 **A** Such research is unnecessary, given the
15 information from the call notes of the drug reps --

16 **Q** So the answer is no, you haven't done
17 it.

18 MR. BECKWORTH: Let --

19 THE WITNESS: -- for the --

20 MR. BECKWORTH: Hold on a second.

21 THE WITNESS: -- defendants.

22 MR. BECKWORTH: Excuse me.

23 **Q** (By Ms. Patterson) Have you done it?

24 MR. BECKWORTH: No. Objection.

25 You're not going to keep interrupting her.

1 MS. PATTERSON: It's a yes-or-no
2 question.

3 MR. BECKWORTH: It's not. She can
4 answer it however she chooses. Your question was --
5 and you cut her off. You said, "Such research is
6 necessary given the information from the call notes of
7 the drug reps" --

8 MS. PATTERSON: I think she
9 actually said it's unnecessary.

10 MR. BECKWORTH: I'm reading it,
11 unnecessary.

12 You can finish your answers
13 whenever you need to. Okay?

14 THE WITNESS: Call notes can be
15 very important, because they reflect marketing
16 messages that a company has given to the drug reps to
17 convey to physicians.

18 We know there is an opioid use and
19 overdose problem in Oklahoma. We know that there were
20 many drug rep visits from -- from companies
21 represented here to physicians in Oklahoma.

22 We have call notes from two of
23 those companies that reflect marketing messages that
24 were used nationally, and Oklahoma is not an exception
25 to marketing tactics that would be used nationally.

1 Q (By Ms. Patterson) Thank you.

2 Is there anything that you saw in the
3 call notes that you reviewed that indicates any
4 particular marketing tactic or strategy used by any of
5 the defendants in this case that was different than
6 the tactics they were using on a national basis?

7 A So tactics used by sales forces, the --
8 I believe that I have reviewed call notes in Oklahoma
9 on opioids, and I believe I have not reviewed call
10 notes in other states from these manufacturers on
11 opioids.

12 The marketing messages that are within
13 the call notes reflect marketing messages that were
14 used in other venues, besides sales reps, besides drug
15 reps, nationally and can be assumed to have also
16 occurred in Oklahoma.

17 Some of those tactics would include
18 promotional -- promotional talks, continuing medical
19 education talks, speaker invitations, and other
20 tactics that are used to market opioids.

21 Q Okay.

22 MS. PATTERSON: Objection,
23 nonresponsive.

24 Q (By Ms. Patterson) Let me ask my
25 question again.

1 Is there anything that you saw in the
2 call notes that you've reviewed in connection with
3 that case that indicates any particular marketing
4 tactic or strategy was used by any of the defendants
5 that was different than the tactics they were using on
6 a national basis to market opioids?

7 **A** In terms of the call notes, I have only
8 reviewed call notes within Oklahoma, but the marketing
9 messages appear to be similar to marketing messages
10 that were used nationally.

11 **Q** Okay. Thank you.

12 What, if anything -- well strike that.

13 Going back to Exhibit 8, your
14 disclosure, and, again, I'm looking at the bullet
15 points in Section A. You say you're going to talk
16 about, as an expert, the influence of these sales and
17 marketing practices on prescribers and prescribing
18 practices.

19 Do you see that, Bullet Point No. 3 --
20 or Bullet Point 3?

21 **A** Yes.

22 **Q** What, if anything, have you done to
23 determine the influence of sales and marketing tactics
24 of the defendants named in this case on prescribers in
25 the State of Oklahoma?