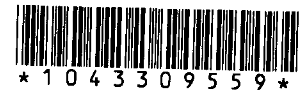

1043309559

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

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

Defendants.

For Judge Balkman's Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY
FILED
APR 26 2019
In the office of the
Court Clerk MARILYN WILLIAMS

TEVA DEFENDANTS' AND ACTAVIS DEFENDANTS' MOTION IN LIMINE #7 TO EXCLUDE EVIDENCE REGARDING THE ALLEGED CONSEQUENCES OF THESE DEFENDANTS' MEDICINES

In discovery, the State refused to identify individual patients who received opioid prescriptions in Oklahoma. Further, it has failed to produce data that would permit Defendants to determine whether a specific opioid prescription went to an individual who subsequently overdosed, received treatment for opioid abuse, or was convicted of a crime. Without this ability to connect specific prescriptions to specific events, the State cannot establish that opioids manufactured by any Defendant in this case caused any alleged harm. Because the State failed to provide the necessary information in discovery, it should be precluded from alleging or

speculating that such evidence exists. Further, in the absence of actual evidence, the Court should prohibit the State from attempting to establish causation through suggestion, statistics, and sheer speculation.

Teva Pharmaceuticals USA, Inc. ("Teva USA"), and Cephalon, Inc. ("Cephalon") and Watson Laboratories, Inc. ("Watson"), Actavis LLC ("Actavis LLC"), and Actavis Pharma, Inc. ("Actavis Pharma")[1] move this Court to preclude the State from referring to or otherwise offering at trial, information or evidence in any form (whether through direct or cross-examination, expert testimony or through exhibits of any type) and from presenting in any manner (whether in opening statements, questions to witnesses or experts, objections, closing arguments, or otherwise) the following:

- Any reference that people sought treatment for opioid addiction in Oklahoma.
- Any reference that people who committed crimes in Oklahoma used opioids.
- Any reference to Oklahomans who overdosed on opioids or died as a result of opioid use.
- Any reference to alleged "indivisible harm" relating to opioid use in Oklahoma.

It is fundamentally unfair to allow the Plaintiff in this televised trial to accuse these Defendants of causing deaths, addiction, and overdoses when (a) there is no evidence supporting that assertion and (b) Plaintiff prevented Defendants from obtaining the discovery which would have revealed the facts.

FACTUAL BACKGROUND

At the beginning of this case, Defendants sought discovery of claim files for Oklahoma patients who had received prescription opioids. The State insisted on producing data in which the patients' names were replaced with an identification number, allegedly to protect the patients'

[1] Cephalon and Teva USA are referred to as the Teva Defendants. Watson, Actavis, LLC, and Actavis Pharma are referred to as the Actavis Defendants.

privacy. The State assured Defendants and the Court that it would provide data from different state databases so the same patient would have the same identification number across the various databases, permitting the data to be "cross walked" from one database to another. *See, e.g.,* Oct. 3, 2018 Hr'g Tr. 59:3-8 (counsel for the State representing that it "reidentified each patient with a unique number. So there's an identifier. Our intention is to use those same numbers across all databases so they can track how those patients moved through the State's data."), Ex. 1.

In February, when the State had failed to provide the promised information, some of the Defendants moved to compel the cross-walked data. Judge Hetherington granted the motion, stating that "to the extent State can ***provide identification numbers or link information in any form***, State continues to be **Ordered** and compelled to provide the 'cross-walked' information." Feb. 25, 2019 Order of Special Discovery Master (first emphasis added).

The State still did not comply. Instead, it sent evasive emails saying, for instance, "the numbers are what the numbers are" and "There were two different systems over time so there are two different numbers for the different time periods. But you undoubtedly have what you need." Ex. 5 to Mar. 12, 2019 Janssen Defendants' Emergency Motion for Order to Show Cause. Their failure to comply was one of the numerous issues supporting Defendants' motion for a continuance. As a Purdue attorney explained at the continuance hearing:

> The State -- or rather *the Court also obligated the State, said, You can de-identify [data], but you have to add some identification, some unique identifier so that the defendants are able to track entries from one database to another; an overdose database to a medical examiner database, for example. A prescription database to a criminal database, for a second example.*
>
> So they were allowed -- and we don't contest at this proceeding -- they are allowed to de-identify, take the people's names out and their unique identifying information. *They were obligated to add an arbitrary or a uniquely identifying number, separate from that person, but that would allow us to what's known as crosswalk the data; find entries relating to a specific event, person, and track it from one database to the other.*

> Those databases right now are still not ones we can crosswalk . . . . But it is a critical part of the case from our perspective. It is something we have been asking for and candidly complaining about, dating back to at least December, saying, *We need this information for our experts to prepare responsive reports, we need to be able to get the data you have from these various databases about alleged citizens of the state who have suffered adverse experiences by opioids, and we need to be able to track through how you have expended resources on them and what has happened with them at various stages in the system.*

Mar. 8, 2019 Hr'g Tr. 16:1-17:5 (emphasis added), Ex. 2. Shortly after this hearing, the Janssen Defendants filed an Emergency Motion for Order to Show Cause why the State should not be precluded from pursuing allegations that specific prescriptions led to deaths. Mar. 12, 2019 Janssen Defendants' Emergency Motion for Order to Show Cause. The State responded, in short, that "these databases have nothing to do with each other." Mar. 19, 2019 State's Resp. to Janssen Defs.' Emergency Motion at 5.

Judge Hetherington rejected the State's argument, ordering once again that the State produce the cross walked data:

> State is **Ordered** to continue to provide usable information in [the form of linking databases up or identifying in some other way] to Defendants. As Janssen argues, *Defendants are entitled to the de-identified medical claims history for the approximately 123,000 missing claims histories and database information sufficient to allow for Defendants to identify how many individuals died from an overdose and from which opioid drug, if the information is available.* This would be information obtainable through the Medical Examiner records and the Fatal Unintentional Poisoning Surveillance System . . . in other words, production pursuant to statute in a form that is either ordinarily maintained or in a de-identified form which is *reasonably useable.*

Mar. 29, 2018 Order of Special Discovery Master at 3 (second and third emphases added). However, Judge Hetherington found it "***premature***" and beyond his authority as discovery master to decide "if evidentiary preclusions should be imposed on State as a sanction." Order of Special Discovery Master at 3. Despite the Court's multiple orders, the State still has not produced the cross walked data or any other information that would permit Defendants to link specific opioid prescriptions to specific adverse events. ***Now***, it is no longer premature. This

Court should rule that the State cannot assert that Defendants' medicines were responsible for an overdose, for addiction treatment, for a death, for criminal justice costs, or had other harmful effects when State systematically denied Defendants the ability to find out if there was any evidence supporting those assertions.

ARGUMENT AND AUTHORITIES

There are approximately 50 opioid manufacturers. Only nine of them are currently Defendants in this case. The State cannot trace a single opioid prescription for a drug manufactured by a Defendant to a particular addiction, prison sentence, or death. Nor can it establish that an injury allegedly caused by Defendants is "indivisible" when it refused to provide the discovery to allow an assessment of divisible harms. The Court should not permit the State to attempt to fill this void in its case with (1) evidence that was withheld in discovery or (2) statistics or general conjecture regarding opioids that are not supported by evidence of actual transactions with actual patients.

A. THE STATE SHOULD NOT BE PERMITTED TO RELY ON ALLEGED EVIDENCE IT FAILED TO PRODUCE IN DISCOVERY.

As shown above, Defendants sought information in discovery that would have permitted the parties and the Court to trace specific opioid sales to determine if they went to individuals who experienced overdoses, sought treatment for addiction, were convicted of crimes, etc. The State refused to provide the names of the individual patients. Further, the State repeatedly refused to comply with Court orders requiring it to produce cross walked data that would have provided some of this information. Judge Hetherington concluded the State had violated his order but deemed it "premature and not for [him] to determine." Mar. 12, 2019 Emergency Motion for Order to Show Cause. Discovery is now closed, and the question of how to deal with the absence of evidence is squarely presented.

Where, as here, a party fails to comply with a discovery order, Oklahoma law authorizes the trial judge to enter an order "refusing to allow the disobedient party to support or oppose designated claims or defenses [or] prohibiting the party from introducing designated matters in evidence . . . ." *Barnett v. Simmons*, 2008 OK 100, ¶ 15, 197 P.3d 12, 18. The Court clearly has the power to ensure a party cannot flout discovery orders and then use information relating to those orders to make its case at trial. Indeed, it would be fundamentally unfair to permit the State to introduce evidence at trial connecting individual opioid sales to specific harms when Defendants were denied the discovery necessary to address and refute it. The Court should prohibit the State from relying on any evidence at trial that would have been responsive to any of Defendants' discovery requests, including the cross walked data the State failed to produce in defiance of Judge Heatherington's orders.

Further, the Court should exclude the assertions in the interest of a fair trial and following the Evidence Code. The State has the information. The State easily could have produced an analysis using the 2,883 prescriptions from Teva and Johnson and Johnson identified in the Petition and tracked those (using a unique code number to identify each patient) to see if the same person ended up in other databases reflecting overdoses, incarceration, addiction treatment, etc. However, the State adamantly refused to do so. On that record, the Court should not allow the State to assert—based on speculation and innuendo—that any harms were caused by these particular Defendants. The State should not be allowed to assume that the harms (a) were caused by prescription opioids and (b) were caused by one of the nine manufacturers who happen to be a Defendant here.

B. THE STATE SHOULD NOT BE PERMITTED TO SUGGEST OR IMPLY A LINK BETWEEN ADVERSE EVENTS AND DEFENDANTS' PRODUCTS.

In the absence of evidence linking opioid prescriptions to adverse events, the State seems prepared to rely solely on the facts that (1) Defendants sold opioids in Oklahoma and (2) harmful things happened as the result of opioid use in Oklahoma. But evidence that opioids caused people to fatally overdose, enter addiction centers, or commit crimes is irrelevant unless it can be linked to Defendants' products. *See* 12 O.S. § 2402; *cf. Moore v. Texaco*, 244 F.3d 1229, 1231 (10th Cir. 2001) (applying Oklahoma law and holding that plaintiff landowner could not prevail on its claim for public nuisance against Texaco because the plaintiff "failed to show that Texaco caused pollution or damage to the property"). In *Moore*, the mere fact that pollution was found on the land and that Texaco operated tank farms on the land prior to discovery of the pollution was insufficient to prove that Texaco caused the pollution and thus had created a public nuisance. *Id.* at 1232. The same analysis applies here—*i.e.,* these Defendants are not responsible for any adverse effects of opioids merely because they manufacture opioids. The adverse effects are not relevant in this case unless the State can show a connection to these Defendants.

Further, any possible relevance is substantially outweighed by the danger of unfair prejudice by permitting the assertion in this very public forum that Defendants' products caused these tragedies without any actual evidence connecting them. *See* 12 O.S. § 2403. The Court should not permit the State to spend weeks of a televised trial blaming these Defendants for all the harmful effects of opioids in the State of Oklahoma when it has not produced one scintilla of evidence from its files connecting any of them to a single adverse event in the State. This unfounded attack on Defendants' character in a trial that will be watched and reported upon widely is precisely the type of "unfair prejudice" section 2403 is intended to prevent.

C. THE STATE SHOULD NOT BE PERMITTED TO RELY ON ITS ALLEGED STATISTICAL CASE TO SHOW THE ALLEGED CONSEQUENCES OF DEFENDANTS' MEDICATIONS.

The State argues that based on overall statistics, it is probable that one of the Defendants' opioids caused some harmful effect. This is woefully insufficient. Even if there were such a probability, courts routinely reject the argument that statistical probability can be used in lieu of actual evidence. The issue frequently arises in the context of false claims cases, and courts are clear that a plaintiff cannot solely use aggregate statistics—it must have evidence of an actual false claim. Those same courts are clear that using statistics to allege "there must have been" a false claim is insufficient. The same principles apply here. The State should not be allowed to assert that a Defendant's opioid medicine caused an overdose, for example, if it cannot identify a single instance in which an opioid manufactured by that Defendant caused an overdose. Similarly, the State's alleged statistics that (a) opioids were prescribed in and Oklahoma and (b) overdoses occurred in Oklahoma, cannot be used to establish that any Defendant's product caused an overdose.

Courts ***routinely*** find cases are insufficient as a matter of law where the plaintiff cannot produce actual evidence. *See, e.g., U.S. ex rel. Booker v. Pfizer*, 847 F.3d 52, 57 (1st Cir. 2017) (affirming summary judgment for drug manufacturer in false claims case where the plaintiff could not show an "actual false claim" resulted from allegedly improper promotion of a pharmaceutical); *U.S. ex rel. Carrel v. Aids Healthcare Found., Inc*, 898 F.3d 1267, 1277 (11th Cir. 2018) (affirming summary judgment for the defendant because "the relators failed to offer sufficient indicia of reliability ... to support the allegation [that] *actual false claim[s]* for payment [were] made to the [g]overnment.") (citation omitted); *U.S. ex rel. Greenfield v. Medco Health*, 880 F.3d 89, 99 (3d Cir. 2018) (affirming summary judgment for the defendant in a false claims case where the plaintiff had failed to "provide evidence of at least one false claim"); *U.S.*

ex rel. Quinn v. Omnicare, 382 F.3d 432, 440 (3d Cir. 2004) ("Without proof of an actual [false] claim, there is no issue of material fact to be decided by a jury . . . [Relator's] theory that claims, 'must have been' submitted" was insufficient.); *U.S. ex rel. Wilkins v. United Health Gr.*, 659 F.3d 295, 308 (3d Cir. 2011) ("'It is true that to recover under the [False Claims Act] we have recognized that ultimately a plaintiff must come forward with at least a 'single false [or fraudulent] claim' that the defendants submitted to the Government for payment.'") (quoting *Quinn*, 382 F.3d at 440), *abrogated in part on other grounds as recognized in U.S. ex rel. Freedom Unlimited, Inc. v. City of Pittsburgh*, 728 F. App'x 101, 106 (3d Cir. 2018).

Here, the State has failed to produce evidence that any of these Defendants' products caused any of the harmful effects about the State wants to complain. The State argues that because of the numbers involved, these Defendants' products probably had some adverse effects. That speculation cannot substitute for actual evidence. Courts ***routinely*** hold that a plaintiff's argument that "there must have been" some effect is insufficient to substitute for actual evidence. *See Booker*, 847 F.3d at 58 (rejecting the relator's claim that it could establish false claims by introducing evidence of the aggregate amount spent by the government on the drug); *Carrel,* 898 F.3d at 1277 (holding that relators could not "rely on mathematical probability to conclude that the Foundation surely must have submitted a false claim at some point"; "Speculation that false claims 'must have been submitted' is insufficient."); *Greenfield*, 880 F.3d at 98 (holding it was insufficient to show it was statistically probable that a false claim existed); *Quinn*, 382 F.3d at 440 (rejecting the relator's theory that given the volume of the defendant's sales to the government, "false claims must have been submitted"). This Court should similarly reject any argument by the State that Defendants' medicines "must have" caused adverse effects in Oklahoma.

The Court should also reject the State's theory that the rate of alleged unnecessary prescriptions found for other opioids can apply to Actiq and Fentora is obviously flawed. Actiq and Fentora are different from other opioids. As has been discussed with the Court on many occasions, those two drugs were specially formulated, had specialized compliance requirements approved by the FDA, and had a Prescriber Patient Agreement approved by the FDA to ensure the patient and the prescriber were aware of the risks. The fact that Actiq and Fentora are so notably different is demonstrated by the fact that of the 99,711 claims specified by the State in its Petition, only 245 (less than one-quarter of 1%) were for Actiq or Fentora. The State's assumption that a statistical pattern for other opioids can be assumed to exist in the same fashion for Actiq and Fentora is simply not grounded in evidence.

Even if it were permissible for the State to use only statistics as proof, it could not succeed. Because there were only a few prescriptions for Cephalon products in Oklahoma, the statistical possibility that any particular overdose was caused by a Cephalon product is extremely remote, even putting aside that the State has not produced any evidence that a single Actiq or Fentora prescription caused a single overdose. Moreover, there are approximately 50 opioid manufacturers. The State has done no analysis of how overdoses, deaths, etc. were affected by products from the approximately 40 manufacturers who are not even in this trial. It should not be permitted to rely on statistical analysis in the absence of any evidence connecting Defendants' products to an adverse effect in Oklahoma.

D. THE COURT SHOULD EXCLUDE ALLEGATIONS OF INDIVISIBLE HARM.

Since the State cannot establish causation between opioid prescriptions and adverse events, it also cannot establish that any harm from those adverse events is indivisible. In fact, the evidence sought by Defendants (and withheld by the State) would have provided a mechanism for dividing responsibility for those events. If produced by the State, the data could have been

utilized by the parties to link the opioids of specific manufacturers to specific adverse events. For example, if the data showed that Patient A only used opioids manufactured by Manufacturer X and died by overdosing on those opioids, then there is no basis for determining that any manufacturer other than Manufacturer X could be responsible for that overdose. Similarly, the State's computers contain information showing which of the patients who were prescribed these Defendants' opioids later required addiction treatment, overdose treatment, etc. The injury is divisible; the State could determine how many of each Defendants' patients suffered each of the injuries the State alleges. There are two possible explanations for its failure to provide that information: (1) it did not go to the trouble of looking for it; or (2) it has conducted the analysis and does not want the results of that analysis used at trial. Either way, the State cannot argue the harm is indivisible simply because it does not want to provide the information necessary to divide it.

The State's argument that it would be difficult to determine divisibility cannot succeed. First, as a matter of law, the fact that it is difficult to determine divisibility does not mean the harm is indivisible. In *Watson v. Batton,* 1998 OK CIV APP 50, ¶ 5, 958 P.2d 812, 814, the court noted, "The fact that the injuries may be difficult to separate does not, in itself, permit joinder of these completely different causes of action." The same principle applies here. The fact that the State alleges it would difficult to separate the injuries does not mean they were indivisible.

Second, it would not have been difficult at all ***for the State***. Defendants would have done the work. All the State had to do was (a) comply with Judge Hetherington's Orders and (b) provide the cross walked data as the State said it would. The State should not be permitted to claim an "indivisible" injury when it is the State's own discovery decisions that have deprived

the Court and Defendants of the ability to divide the alleged injury among the 50+ opioid manufacturers.

CONCLUSION

The State consistently has thwarted Defendants' efforts to obtain discovery regarding connections between prescriptions for Defendants' products and later adverse events in Oklahoma. The natural and logical consequence of the State's discovery position is for the Court to exclude evidence or argument regarding issues that discovery would have addressed. The Court should preclude any reference at trial to the alleged impacts of opioid use in Oklahoma, including evidence that opioids caused addiction, deaths, and criminal conduct. The Court should also prohibit the State from suggesting that the harm allegedly caused by opioids in Oklahoma was "indivisible" among opioid manufacturers.

For the foregoing reasons, the Teva Defendants and Actavis Defendants ask that the Court grant this Motion in Limine and instruct the State and all counsel not to mention, refer to, interrogate about, or attempt to convey in any manner, either directly or indirectly, any of these matters, and further instruct the State and all counsel to warn and caution each of their witnesses to follow the same instructions.

Dated April 26, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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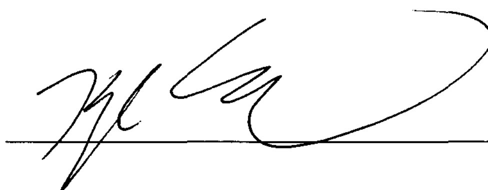

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EXHIBIT 1

1
IN THE DISTRICT COURT OF CLEVELAND COUNTY
2
STATE OF OKLAHOMA
3

4 STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER)
5 ATTORNEY GENERAL OF OKLAHOMA,)
)
6 Plaintiff,)
)
7 vs.) Case No. CJ-2017-816
)
8 (1) PURDUE PHARMA L.P.;)
(2) PURDUE PHARMA, INC.;)
9 (3) THE PURDUE FREDERICK)
COMPANY;)
10 (4) TEVA PHARMACEUTICALS)
USA, INC;)
11 (5) CEPHALON, INC.;)
(6) JOHNSON & JOHNSON;)
12 (7) JANSSEN PHARMACEUTICALS,)
INC.;)
13 (8) ORTHO-McNEIL-JANSSEN)
PHARMACEUTICALS, INC.,)
14 n/k/a JANSSEN PHARMACEUTICALS;)
(9) JANSSEN PHARMACEUTICA, INC.)
15 n/k/a JANSSEN PHARMACEUTICALS,)
INC.;)
16 (10) ALLERGAN, PLC, f/k/a)
ACTAVIS PLC, f/k/a ACTAVIS,)
17 INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
18 (11) WATSON LABORATORIES, INC.;)
(12) ACTAVIS LLC; AND)
19 (13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)
20)
Defendants.)
21 **PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER**
TRANSCRIPT OF PROCEEDINGS
22 **HAD ON OCTOBER 3, 2018**
AT THE CLEVELAND COUNTY COURTHOUSE
23 **BEFORE THE HONORABLE THAD BALKMAN**
DISTRICT JUDGE
24 **AND WILLIAM C. HETHERINGTON, JR.,**
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER
25
REPORTED BY: ANGELA THAGARD, CSR, RPR

1 claims. That is every claim for an opioid that was paid by
2 State Medicaid. It's been redacted. But honestly, redacted is
3 not the right word, Judge, because we reidentified each patient
4 with a unique number.
5 So there's an identifier. Our intention is to use those
6 same numbers across all databases so they can track how those
7 patients moved through the State's data. But that doesn't
8 identify who these patients are.
9 We've also produced what Mr. Brody refers to as the
10 OOnQues data. I believe it's actually pronounced "OOnQues."
11 But we've produced that. It's also De-identified. Our
12 intention is to produce additional information.
13 And this is really important. The next thing in the
14 hopper, Judge, for us to produce is the HealthChoice
15 information. It's already De-identified. We're working out
16 the logistics on how to get it to them.
17 Our suspicion is -- we don't know, we haven't looked, we
18 won't look, we don't have any interest in looking at who's in
19 these databases. Our suspicion, Judge, is that potentially
20 your information, any other state employee's information is in
21 this HealthChoice database. And we have not gone to everyone
22 and asked them to waive their HIPAA rights, and we don't intend
23 to do it.
24 HealthChoice is on deck. We're going to produce it soon.
25 Your Honor, this is so much information that we've produced, we

EXHIBIT 2

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

3	STATE OF OKLAHOMA, ex rel.,	)
	MIKE HUNTER	)
4	ATTORNEY GENERAL OF OKLAHOMA,	)
		)
5	Plaintiff,	)
		)
6	vs.	) Case No. CJ-2017-816
		)
7	(1) PURDUE PHARMA L.P.;	)
	(2) PURDUE PHARMA, INC.;	)
8	(3) THE PURDUE FREDERICK COMPANY;	)
9	(4) TEVA PHARMACEUTICALS USA, INC;	)
10	(5) CEPHALON, INC.;	)
	(6) JOHNSON & JOHNSON;	)
11	(7) JANSSEN PHARMACEUTICALS, INC.;	)
12	(8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC.,	)
13	n/k/a JANSSEN PHARMACEUTICALS;	)
	(9) JANSSEN PHARMACEUTICA, INC.	)
14	n/k/a JANSSEN PHARMACEUTICALS, INC.;	)
15	(10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS,	)
16	INC., f/k/a WATSON PHARMACEUTICALS, INC.;	)
17	(11) WATSON LABORATORIES, INC.;	)
	(12) ACTAVIS LLC; AND	)
18	(13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,	)
19		)
	Defendants.	)

20

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

21 **TRANSCRIPT OF PROCEEDINGS**

HAD ON MARCH 8, 2019

22 **AT THE CLEVELAND COUNTY COURTHOUSE**

BEFORE THE HONORABLE THAD BALKMAN

23 **DISTRICT JUDGE**

24

25 REPORTED BY: ANGELA THAGARD, CSR, RPR

1 The State -- or rather the Court also obligated the State,
2 said, You can de-identify it, but you have to add some
3 identification, some unique identifier so that the defendants
4 are able to track entries from one database to another; an
5 overdose database to a medical examiner database, for example.
6 A prescription database to a criminal database, for a second
7 example.
8 So they were allowed -- and we don't contest at this
9 proceeding -- they are allowed to de-identify, take the
10 people's names out and their unique identifying information.
11 They were obligated to add an arbitrary or a uniquely
12 identifying number, separate from that person, but that would
13 allow us to what's known as crosswalk the data; find entries
14 relating to a specific event, person, and track it from one
15 database to the other.
16 Those databases right now are still not ones we can
17 crosswalk through. That is explained much more clearly, your
18 Honor, in the attachment that we submitted as an exhibit to the
19 reply brief, and I believe co-counsel will be able to address
20 that in further detail.
21 But it is a critical part of the case from our
22 perspective. It is something we have been asking for and
23 candidly complaining about, dating back to at least December,
24 saying, We need this information for our experts to prepare
25 responsive reports, we need to be able to get the data you have

1 from these various databases about alleged citizens of the
2 state who have suffered adverse experiences by opioids, and we
3 need to be able to track through how you have expended
4 resources on them and what has happened with them at various
5 stages in the system.
6 We still can't do that, and that is now the subject of
7 Court orders from, again, Exhibit 3, as well as a number of, we
8 believe, basic discovery requests.
9 The final point I would like to address, your Honor, is
10 the scheduling order. The scheduling order obviously was
11 entered by the Court months ago. It has been modified on
12 occasion. Dates have been pushed as discovery has not gotten
13 done in time. Most notably, expert deadlines have gotten
14 pushed, as we are still accepting and dealing with huge numbers
15 of documents that are being -- getting produced by the State.
16 That pushing of deadlines has put us in a position where
17 there is an extraordinary amount of work left to be done.
18 There are matters that will need to be presented to the Court,
19 and the Court will need to be given an opportunity to rule on
20 those matters prior to impaneling the jury.
21 We think those factors taken as a whole lead to the
22 inevitable conclusion that this case is not at a posture where
23 it can fairly and fully go to trial in May of this year.
24 I am here asking for a continuance and also offering what
25 I believe to be an appropriate solution, Judge. I am offering