IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., *et al.*, Defendants.	Case No. CJ-2017-816 Judge Thad Balkman William C. Hetherington Special Discovery Master

DEFENDANTS JANSSEN PHARMACEUTICALS, INC. AND JOHNSON & JOHNSON'S MOTION *IN LIMINE* NO. 8 TO PRECLUDE EVIDENCE ABOUT INDIVIDUAL EXPERIENCES WITH OPIOIDS

REDACTED VERSION

THIS DOCUMENT WAS FILED IN ITS ENTIRETY APRIL 26, 2019,
UNDER SEAL
PER COURT ORDER DATED APRIL 16, 2018

Defendants Janssen Pharmaceuticals, Inc. ("Janssen")[1] and Johnson & Johnson ("J&J") move this Court for an order prohibiting the State from offering any evidence of, reference to, or argument concerning any individual's personal experience with addiction, overdose, withdrawals, harm, death, or loss associated with licit or illicit opioids.

BRIEF IN SUPPORT

In support of this Motion, the Defendants show the following:

I. INTRODUCTION

Since discovery began in this action, Defendants have been foreclosed from conducting affirmative discovery into specific, named individuals' medical records or experiences with opioids—or specific physician's prescribing practices or exposure to Defendants' marketing—beyond that which *the State* decided was worthwhile. The Court enforced these limitations because the State represented that it intends to prove its case through aggregated evidence, not evidence pertaining to any particular physician and his or her individual patients. But despite its representations, the State, time and again, has used hearings before the Court as an opportunity to tell personal stories of addiction and loss. The same cannot occur at trial. The State previously represented to the Court that it would not rely on individualized evidence, and the Court relied on that representation in limiting the scope of discovery available to Defendants. Oklahoma's judicial estoppel doctrine therefore bars the State from offering that evidence now.

Even absent that doctrine, many of the individual stories brought to light in the limited discovery Defendants were allowed to conduct should be excluded for the additional reason that they concern individuals who have never taken an opioid manufactured by Janssen or the other

[1] "Janssen" also refers to Janssen Pharmaceuticals, Inc.'s predecessors, Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc.

remaining Defendants—their stories are therefore legally irrelevant. And irrelevance notwithstanding, the Court should exclude as unfairly prejudicial all evidence and argument relating to any individual's experience with addiction, overdose, withdrawal, harm, death, or loss associated with opioids—not because they will prejudice the factfinder in this case, but because they may taint hundreds of other cases pending across the country. This Court's decision to televise the case will expose the public, including hundreds of thousands of potential jurors in *other* matters, to the evidence presented here. As such, this Court must take responsibility for that outcome by excluding any evidence that, in the context of a jury trial, it would find too prejudicial and of too limited probative value to admit.

II. ARGUMENT

The State has made a habit of attempting to sway the Court not just through legal arguments but also with personal stories and anecdotes of individuals affected by opioids. For example:

- At an August 24, 2018 hearing before Judge Balkman, the State told the Court that "[t]here are people like [redacted] and many of the other victims of this crisis who have lost children and who have lost family members that don't get to go on vacations anymore." Ex. A, Aug. 24, 2018 Hr. Tr. at 18:12-15.

- At a September 27, 2018 hearing before Judge Hetherington, the State closed by describing what happened to two individuals addicted to Oxycontin: [redacted] Ex. B, Sept. 27, 2018 Hr. Tr. at 33:6–34:2.

- At a November 29, 2018 hearing before Judge Balkman and Judge Hetherington, the State reminded the Court again about [redacted] Ex. C, Nov. 29, 2018 Hr. Tr. at 52:23-25.

The State has every intention of continuing in this vein at trial. One of the State's trial witnesses, [redacted], confirmed at his deposition that [redacted]

The Court should order the State judicially estopped from presenting or even referencing stories about any individual's experience with opioids, the unfairly prejudicial nature of which likewise warrants exclusion.

A. The Doctrine of Judicial Estoppel Precludes the Introduction or Discussion of Individual-Specific Evidence

The Court, based on the State's representations, limited Defendants' ability to seek meaningful individual-specific evidence in discovery, so it must likewise bar the State from presenting individual-specific evidence at trial. Any attempt by the State to offer evidence or argument regarding any individual's personal experience with addiction, overdose, withdrawals, harm, death, or loss associated with opioids would constitute the exact sort of shifting position that Oklahoma's doctrine of judicial estoppel is designed to prohibit. That doctrine "provides that a party who has knowingly assumed a particular position dealing with matters of fact is estopped from assuming an inconsistent position to the detriment of the adverse party." *Bank of Wichitas v. Ledford*, 2006

OK 73 ¶23, 151 P.3d 103, 112. "The doctrine's purpose is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* (quotation and citation omitted). Accordingly, the "doctrine applies only to prevent a party from advancing a position inconsistent with a court's determination of a matter of fact made by the court on the basis of that party's assertions." *Id.*

Here, the State has repeatedly attempted to limit Defendants' ability to obtain discovery into specific patients' experience with opioids by arguing that the State would prove its case through aggregated proof rather than individual-specific proof. [redacted]

The Court took the State at its word and largely denied Defendants' requested discovery, ruling, as one example, that the "State is only compelled to admit or deny the requests made *without identifying any doctors or patient personal information.*" Ex. H, Feb. 18, 2019 Order at 2 (emphasis added). The Court went on to adopt the State's representations in justifying its ruling: "[T]he allegations pled and proof model elected by [the] State raise allegations that all Defendants misled all physicians in a joint marketing and promotion effort. [The] State has elected not to prove through individualized proof and adopts a statistical proof model." *Id.* at 3. In other words, the Court relied on the State's factual assertions about its method of proof and issued a ruling limiting Defendants' ability to conduct discovery on that basis. The State should not be permitted to introduce cherry picked individualized evidence about persons allegedly harmed by opioid medications

when it has simultaneously sought and obtained a ruling that barred Defendants from obtaining individualized evidence about the countless chronic pain patients in Oklahoma who have benefitted from opioid pain medications. "[T]o protect the integrity of the judicial process," the Court should bar the State from "deliberately changing positions" and offering individual-specific evidence and argument at trial. *Bank of Wichitas*, 2006 OK 73 ¶23, 151 P.3d at 112.

B. Stories Concerning Individuals Who Have Not Been Prescribed Opioids Manufactured by the Remaining Defendants Are Legally Irrelevant

Had the State chosen to prove its case using individualized rather than aggregated evidence, individualized evidence could only be admitted at trial if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." 12 O.S. § 2401. Now that Purdue Pharma has been dismissed from the action, the only "fact[s] that [are] of consequence to the determination of the action" are those that relate to Janssen or the other remaining Defendants. Yet, discovery has conclusively shown that many of the individual stories in the State's arsenal have no relation to Janssen, the remaining Defendants, or any of the opioid medications they produced. [redacted]

[redacted] They should be excluded, as should any individual-specific evidence that does not specifically relate to products manufactured by, or the marketing efforts of, Janssen or the other Defendants remaining in this case.

C. Individual-Specific Evidence Would Unfairly Prejudice Defendants

Even assuming *arguendo* that these individual stories were relevant, they would be substantially outweighed by the unfair prejudice inherent in personal anecdotes of addiction, overdose, and death. 12 O.S. § 2403. If this were a jury trial, there would be little question about such evidence's inadmissibility. The same factors that would counsel exclusion there apply here. The bench trial to be overseen by this Court will not occur in a vacuum—it will be televised for hundreds of thousands of prospective jurors in hundreds of cases across the country.[2] The prejudice accompanying the State's evidence and argument about the effects of opioid addiction and overdoses on individual people—daughters, fathers, spouses and friends—will not stop at the courthouse steps; it will infect each and every opioid-related trial that proceeds after this one. The Court should therefore bar any such evidence. *See State v. Miller*, 165 A.2d 829, 831 (N.J. App. Div. 1960) ("Even in a trial without jury, a defendant should not be required to contend with inadmissible evidence, where it appears that it may have a prejudicial effect.")

III. CONCLUSION

For all these reasons, the Court should grant Janssen and J&J's Motion *in Limine* and issue an order barring the State from offering any evidence of, reference to, or argument concerning any

[2] Though some courts hold that prejudice exclusions are unnecessary in bench trials, *see, e.g.*, *United States v. Kienlen*, 349 F. App'x 349, 351 (10th Cir. 2009), those decisions have little application here where the concern is not about the judge in this case but about exposing prejudicial information to millions of Americans through a televised court proceeding.

individual's personal experience with addiction, overdose, withdrawals, harm, death, or loss associated with opioids.

Dated: April 26, 2019

Respectfully submitted,

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CERTIFICATE OF MAILING

Pursuant to 12 O.S. § 2005(D), and by agreement of the parties, this is to certify on April 26, 2019, a true and correct copy of the above and foregoing has been served via electronic mail, to the following:

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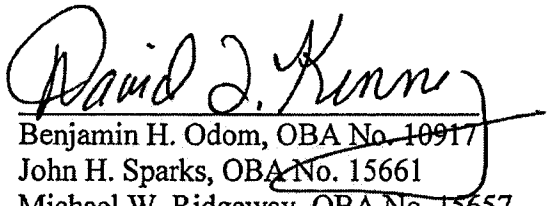

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EXHIBIT A

[FILED UNDER SEAL]

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

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

REPORTED BY: ANGELA THAGARD, CSR, RPR

called for anywhere.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT B

[FILED UNDER SEAL]

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

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

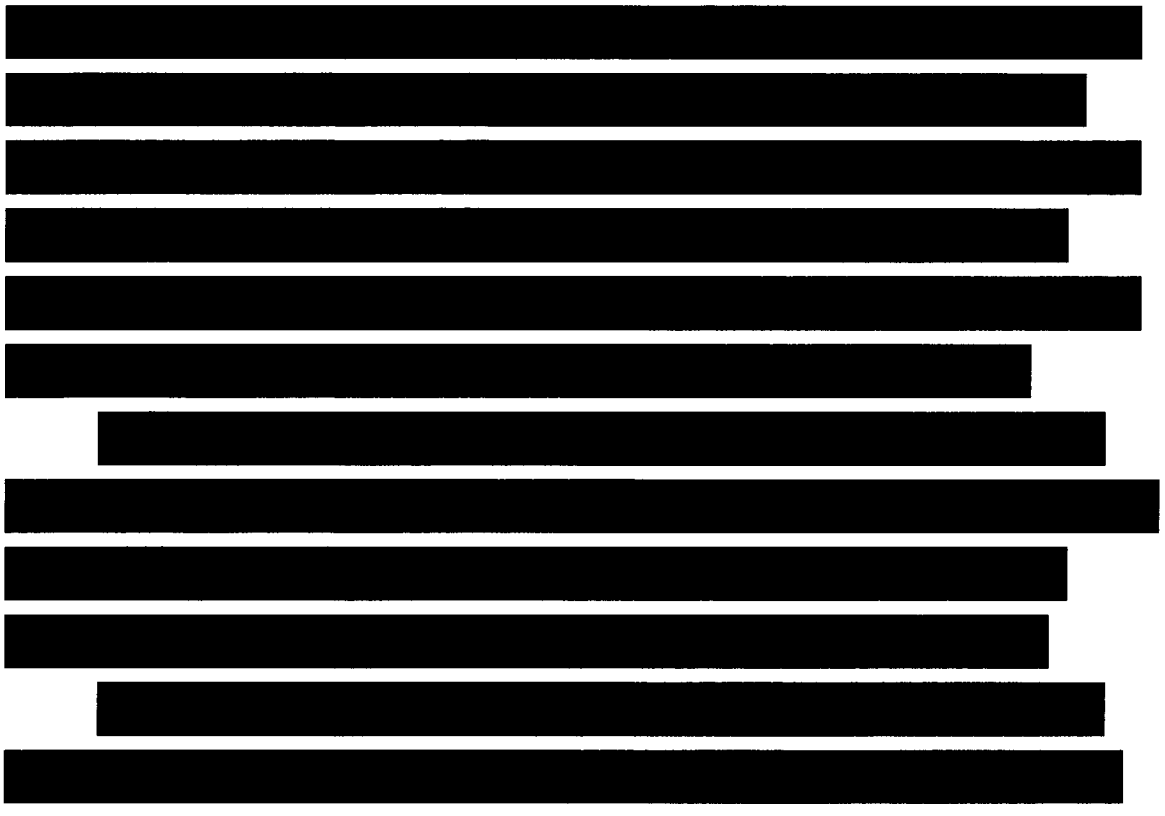
TRANSCRIPT OF PROCEEDINGS
HAD ON SEPTEMBER 27, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

don't prescribe opioids because we've had crises dating back to heroin being prescribed for two things.

And every time some drug company starts promoting that stuff, people get hurt and sick and that they stop it, right? That's where we stood in '96. But when Purdue started marketing this stuff, they knew it. This is proof, as good as it gets.

Doctors don't want to prescribe this because it stones people, right? So what are they saying. Nothing could be



to remember the side effects of opioids are, in a way, very safe. There are only three common ones. Sedation, nausea, and constipation.

Man, I wish that were true. I can take all the Oxy I want

and I just get constipated? That's awesome. I bet all my dead friends -- I've got two of them -- wish that was true, but it's not. We didn't get this document, Judge. We've been asking for it. You ordered it. We argued it in December. We didn't get it.

Let me just close with this about this document. If you turn to the first page labeled 321 and 322, it has these great quotes from people.

[redacted]

So you get the gist. I did this with this team in the last 12 hours or 20 hours, however long it's been since we went to bed. Got that September 13th. That isn't okay. It's not.

Now, I would submit to you that Mr. LaFata is going to get up here and do what they always do, which is say, Well, the State's only produced us X thousand pages of documents, we've produced 15 million and it's a rolling production and we don't have their stuff. Let me caution you, don't buy that. Don't buy it.

We served them with discovery in August. They had a five month head start. They chose not to play the discovery game but to play the delay game. That's what they do. They didn't serve us with discovery until long, long, long after. They had a six month head start on us.

But let me say this too. We didn't ask for this. We're the victim, not the wrongdoer here. And we're not going to have the same number of documents. It's not tit-for-tat. And we're going to have a lot of numbers just because it's a big state and we got a lot of agencies.

But we didn't make this stuff. We didn't profit from this stuff. We didn't promote this stuff. We didn't engage in a 20-year long conspiracy on this stuff, and we sure didn't take over $30 billion out of a company while people died and put it

in the pockets of people that are running around putting their names on museums, talking about how great they are.

So yeah, they're going to have a lot more documents than us. That's true. And we're going to produce what we're producing, as you ordered us to do, and we're doing the best we can. But that's not what this is about. But that's exactly what Mr. LaFata's going to talk about is how, tit-for-tat, we haven't produced a lot of stuff. There is no comparison. It's not the same. The rules of burden and proportionality don't work that way.

But most importantly, circling back so I can be done, you ordered this. You ordered it and Judge Balkman confirmed it. And it's the heart of this case. We didn't get it. They knew we needed it. They knew stuff was being asked about. They didn't say anything about it.

And why, your Honor, why have you sat here through hearing after hearing after hearing and heard them talk about name drugs and generics, but Teva and Purdue never told you about this. Why have you never heard -- out of any of the Purdue lawyers, why have you never heard come out of their mouths, Rhodes?

Our questions asked for everything associated with Purdue and its affiliates. Why have we never heard about Rhodes? Why? They know the relevance. They know the probative value. And they know when they talk to you and they leave that out,

EXHIBIT C

[FILED UNDER SEAL]

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS

HAD ON NOVEMBER 29, 2018

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE

AND WILLIAM C. HETHERINGTON, JR.,

RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

makes sense in this case and how to present it. And that's what we're going to do.

Judge, how they target doctors, they used what we've referred to throughout the day as IMS data. IMS is a private company that collects data from pharmacies about prescriptions. Purdue is owned by the Sackler family. The Sackler family helped start IMS. They still are partners in IMS, and they benefit from the profits that IMS makes. That's what we've read.

So Judge, this is a massive conspiracy. They take this data. They then target prescribers. They go after the ones who are already high prescribers, and they ask them to prescribe their drugs. Now, these prescribers prescribe a wide variety of different drugs. Some for the reasons they're indicated for, some for the reasons they're not indicated for. And there is a mixture, a cocktail, of all these opioids that all of these defendants have saddled the State with, and they all did it together. And we can show that.

Judge, they can contact these doctors if they want to. They're already doing it right now. Purdue stopped in 2018, but they contact doctors right now. They've got information that we don't have about doctors. We don't have IMS data. It's expensive. They've got it.

So what can they do if they've got doctors' names. They've already got them. They can call doctors, and they can

say, Doctor, did you know that the State of Oklahoma has filed a lawsuit against us; they're wanting to cut down on opioid prescriptions, they think you've been overprescribing, would you be willing to help us. And by the way, Doctor, do you have some patients, some good pain patients, that you think could be advocates for us that would waive their HIPAA protections and come in and testify about how good these drugs are. Could you do that for us, Doctor?

The defendants are free to do that. They can subpoena doctors. They can call doctors. They can get their hands on this information.

How do we know that? Judge, a couple weeks ago, I took a deposition of a woman named Lauren Cambra. She lives in Raleigh, North Carolina. In 1997, Purdue contacted her doctor, her pain doctor, and said, Dr. Spanos, we would like for you to be in a promotional video, and can you identify five or six of your patients that are doing well on OxyContin that would be willing to be on that video as well.

And he found five or six. [redacted] Now, it's

defendants' choice if they want to go do that exact same model and find patients who are willing to sit in that chair and say, These drugs have benefitted me. They can do that. What they've been doing for decades is convincing doctors to prescribe these drugs by using exemplar patients. They can do it. And that's why they want this data.

And so they handed you an order just now. We hadn't seen it. It's two pages. I just read it. Judge, in our view, we've discussed it here, that order is deceptive. It says on its face that you can, you know, be the gatekeeper on whether or not they will ultimately contact any of these patients. But make no mistake, that's what they want to do. They want to get their foot in the door with an order like that.

But you'll notice in the last paragraph it says, Without leave of Court. And if that order is signed, the way it's written right now, next week, or whenever they get the data and they run it, you will have a request in front of you and probably every week after that, asking your permission for these defendants to go contact patients in the state of Oklahoma based on data that the State safeguards.

Now, if your Honor does not intend to grant those requests, then we can take out any of that language about without leave of Court. There's no need for it. If the defendants truly don't want to contact any of these patients, then they will agree that we can take out that language,

EXHIBIT D

[FILED UNDER SEAL]

EXHIBIT E

[FILED UNDER SEAL]

EXHIBIT F

[FILED UNDER SEAL]

EXHIBIT G

[FILED UNDER SEAL]

EXHIBIT H

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 18th day of February, 2019 the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on February 14, 2019.

Argument was heard and Orders are entered as to the following motions:

State's Motion to De-Designate Confidential Documents

Counsel announced an agreement to strike confidential designations that were the subject of this motion, however, argument was heard regarding State's concern that "this is a systemic problem with blanket designations." Blanket and inappropriate confidential designations can rise

to the level of an abuse of discovery process and subject to sanctions. In the context of this motion, there was no affirmative sanction relief requested and this motion is found to be moot.

Defendants' Motions to Compel Regarding Requests for Admissions and Interrogatories

Janssen Group

RFAs 1, 2 and 3 requests to compel are **Sustained** with a finding that State is only compelled to admit or deny the requests made without identifying any doctors or patient personal information, or ongoing, past or present investigatory information or confidential investigative file content.

Interrogatories 20, 21 and 22 requests to compel are **Overruled.**

Teva, Cephalon Requests for Admissions

RFA No. 4 - **Sustained** with State compelled only to admit or deny.

RFA No. 9 - **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

FRA No. 11 - **Sustained** with State compelled only to admit or deny.

Watson & Actavis Requests for Admissions

RFA No. 3 – **Sustained** with State compelled only to admit or deny.

RFA No. 8 – **Sustained** with State compelled only to admit or deny.

RFA No. 9 – **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

Purdue

Purdue's motion asks the undersigned to review State responses to produce request for admissions number 1, 3, 6, 7, 8, 9, 16, 17, 18, 19 & 20, make findings that they are insufficient, deem the requests admitted and awarded attorney fees.

RFAs Numbered 1, 3, 6, 7, 8 & 9 are announced agreed-to by the parties.

RFA No. 16 – Purdue's Motion is **Overruled.**

RFA No. 17 - **Sustained** with State compelled only to admit or deny.

RFA No. 18 – Purdue's Motion is **Overruled.**

RFA No. 19 – **Sustained** with State compelled only to admit or deny.

RFA No. 20 - **Sustained** with State compelled only to admit or deny.

As indicated in previous Orders, the allegations pled and proof model elected by State raise allegations that all Defendants misled all physicians in a joint marketing and promotion effort. State has elected not to prove through individualized proof and adopts a statistical proof model. As previously Ordered, State is required to continue to produce all public, non-privileged requests. State has timely submitted written answers or objections and under Title 12 O.S. §3236(A), Purdue's request to deem admitted and for attorney fees is **Denied**.

State's Motion for Order Permitting Service of Requests for Admission to Authenticate Documents Produced in Discovery

The parties, with argument from Purdue and Teva Group, announced an agreement to permit service of requests for admissions in order to authenticate as many documents that have been produced by the parties as possible. The agreement indicates it does not cover documents produced by third parties, not a party to the litigation. Purdue argued that authentication is premature and that we should not consider authenticating documents until after parties have completed and exchanged exhibit lists. A record was made that similar to designating portions of depositions and getting rulings for admission at trial, a document authentication process for the tremendous volume of documents to be admitted in this case is critical. A process for obtaining deposition designation rulings and rulings on authentication of documents must be addressed as soon as possible and to the extent necessary, deposition designation objections and objected-to document authentication would be presented to the undersigned for consideration and ruling. With this reality in mind, the undersigned entered an Order that allowed the State to proceed with RFA requests to authenticate documents and exceed the thirty limit to do so, with the understanding that we should be dealing with documents that will be trial exhibits anyway and do so in an effort to get the process started and continue after exhibit lists are completed.

Janssen's Emergency Motion To Compel

Argument was heard regarding Janssen's emergency motion to compel and State agreed the undersigned could rule without the benefit of a State response.

Janssen moves the undersigned to compel (1) State to complete its claims data production in fully "cross-walked form" within seven days; (2) immediately certify that State has produced data dictionaries, field definition tables and user manuals that identify all fields and codes in its claims databases or produce all such materials within seven days accompanied by a certification of completion that identifies by Bates number.

Argument indicated the databases that can be linked up or cross-referenced have been produced by State, and again, 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. Certain diagnosis codes, procedural codes and detail status codes can be publicly accessed by Defendants, if not, State is **Ordered** to produce. Argument is that some databases such as the Medical Examiner's database and Health Choice database (which as argued, is relevant to State's fraud and public nuisance claims) cannot be so identified.

Defendants make reference in their brief to the "MDL" Special Discovery Master and Judge's Orders regarding these issues. State argues that part of the basis for the MDL's decision was the fact that, based on what the Plaintiffs had already provided, Defendants were unable to match patients across databases. State argues the Defendants in this case have already been provided with a set of unique identifiers which will facilitate the cross reference across State databases. The plaintiffs in the MDL did not use a de-identified numbering scheme as is being attempted in this case. Pharmacies and distributors are not defendants in this case however, patient-level claims data and description codes, are relevant and argument indicates necessary for Defendants to complete their expert analysis in defense, and there arguably remains an inability to link to some relevant databases.

Therefore, as to the identified databases Defendants cannot access by any "cross-walked" link method or by unique identifiers and, data code dictionaries and field definition tables, State continues to be **Ordered** to produce and Janssen's emergency motion is **Sustained** to the extent State is Ordered to complete database and code production pursuant to statute in a form that is either ordinarily maintained or in a de-identified form which is reasonably usable with Defendants able to obtain the relevant information. If Defendants continue to be denied access to necessary databases, while delay may be the result, the undersigned will revisit and consider further Defendant requests to compel and a different database identifying scheme.

State is **Ordered** to complete this identification process on or before March 1, 2019 at 4pm.

It is so **Ordered** this 18th day of February, 2019.

William C. Hetherington, Jr.

Special Discovery Master