



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

MAY 03 2019

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.

In the office of the  
Court Clerk MARILYN WILLIAMS

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. 12 TO EXCLUDE**  
**EVIDENCE ABOUT CONDUCT AND HARMS OUTSIDE OKLAHOMA**

**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”)<sup>1</sup> and Johnson & Johnson (“J&J”) move this Court for an order excluding from trial all evidence and argument involving alleged opioids harm or misconduct outside of Oklahoma that bears no relation to harm or misconduct in Oklahoma, including allegations in other litigation, claims, or investigations. *See* 12 O.S. §§ 2401-03, 2404, 2801-03. Janssen and J&J respectfully request that their Motion *in Limine* be granted, and for such other relief as the Court deems just and proper.

### **BRIEF IN SUPPORT**

In support of this Motion *in Limine*, Janssen and J&J show the following:

#### **I. INTRODUCTION**

The State asserts that Janssen and J&J created a public nuisance in Oklahoma. Yet to prove that claim, it seeks to present evidence and arguments about matters, conduct, and harm that have nothing to do with Oklahoma. The Court should insist that the evidence in this case pertain only to allegations of harm or misconduct in Oklahoma. Allegations of harm or misconduct in other states or even other countries—including other litigation, claims, or investigations involving opioids—lack relevance here, would prejudice Janssen and J&J, and would waste the Court’s time. Much of this evidence is also inadmissible propensity evidence and hearsay. This Court should grant this Motion *in Limine* and exclude this evidence at trial.

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<sup>1</sup> “Janssen” also refers to Janssen Pharmaceuticals, Inc.’s predecessors, Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc.

## II. ARGUMENT

The State has repeatedly referred to and argued about alleged harms and conduct outside of Oklahoma or that do not concern Oklahoma specifically:

- “So, now, Oklahoma is fighting back. Oklahoma is not alone in this fight. *The entire Nation is fighting back.*” Ex. A, The State’s Omnibus Response to Defendants’ Motions to Dismiss for Failure to State a Claim (Oct. 30, 2017) at 10 (emphasis in original).
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Testifying about how he could conclude that doctors were getting visited more often by pharmaceutical representatives, the State’s expert, Dr. Daniel Clauw, testified that “[representatives] would come and try to see -- when I was at Georgetown, they could still come and see us. When I moved back to [the University of] Michigan, pharmaceutical reps were not allowed to actually come into the clinics, and so I didn’t see them anymore.” Ex. E, Mar. 26, 2019 Deposition Tr. of Daniel Clauw (“Clauw Dep.”) at 170:21-171:9.
- Dr. Clauw noted two studies to support his statement that opioids “cause more harm than good,” neither of which concerned Oklahoma specifically—“one done in the U.S. [and] one done in the Netherlands showing this increase in all-cause mortality.” *Id.* at 106:24-107:14.

The Court should exclude these types of references and arguments from the trial.

*Evidence of other matters is not relevant.* Evidence is relevant and admissible only if it “tend[s] to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” 12 O.S. §§ 2401-02. The

mere existence of pending litigation and allegations of wrongdoing in *other* geographies does not and cannot prove anything about whether there is a public nuisance in *Oklahoma*. See *Bd. of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, 860 F. Supp. 2d 251, 254 (S.D.N.Y. 2012) (noting that “courts generally exclude evidence of other related lawsuits” given lack of probative value); *Foster v. Berwind Corp.*, 1991 WL 83090, at \*1 (E.D. Pa. May 14, 1999) (precluding evidence of other lawsuits because allegations “are just that: allegations” and are “dispositive of nothing”). Nor has the State presented any evidence that any of the out-of-state conduct referenced above had any effect in Oklahoma—the subject matter of this litigation. The Court must exclude any evidence of such outside litigation, allegations, or harms because it is not relevant to the alleged harms here.

*Evidence of other matters is unduly prejudicial.* Evidence of litigation, claims, investigations, or harms outside of Oklahoma adds nothing substantial to the State’s case, yet would cause undue prejudice to Janssen and J&J. Courts regularly exclude this type of evidence “because the probative value of the existence of other lawsuits typically is substantially outweighed by the danger of unfair prejudice.” *Puglisi v. Town of Hempstead Sanitary Dist. No. 2*, No. 11-CV-445 (PKC), 2014 WL 12843521, at \*2 (E.D.N.Y. Jan. 27, 2014); *Figueroa v. Boston Sci. Corp.*, No. 00 Civ. 7922(DC), 2003 WL 21488012, at \*4 (S.D.N.Y. Jun. 27, 2003) (“Probative value of the fact that approximately 720 plaintiffs have brought suit is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and considerations of undue delay and waste of time.”); see also 12 O.S. § 2403. The Court should do so here as well.

Though this case will proceed as a bench trial, this evidence will still have a prejudicial effect—not necessarily here, but in the hundreds of other pending matters—and the Court should still exclude it. See *New Jersey 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.” (citation omitted)). This Court’s decision to allow cameras in the courtroom means that millions of Americans, including countless prospective jurors in hundreds of matters pending against Janssen across the country, will see evidence presented here. 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 exposure of prejudicial information to millions of Americans, including countless prospective jurors in hundreds of matters pending against Janssen and J&J across the country.

***Evidence of other matters would waste time.*** This evidence would likely prove distracting and require the Court to waste time on lengthy and ultimately meaningless mini-trials on non-Oklahoma matters, especially allegations regarding conduct that did not cause harm to Oklahoma. *See, e.g., Nachtsheim v. Beech Aircraft Corp.*, 847 F.2d 1261, 1269 (7th Cir. 1988) (finding admission of evidence of other incident “would have unnecessarily prolonged the trial and created a risk of confusion of the issues . . . [by creating] a trial within a trial” (citation omitted)); *Elston v. UPMC-Presbyterian Shadyside*, No. 2:06-CV-329, 2008 WL 682494, at \*3 (W.D. Pa. Mar. 7, 2008) (finding a “mini-trial” regarding prior alleged discrimination would distract from the issue of the case).

***Evidence of other matters is inadmissible propensity evidence.*** To the extent the State attempts to use evidence of other matters or harms to imply that J&J and Janssen created a public nuisance in Oklahoma, the evidence should be excluded as propensity evidence. Evidence of “other crimes, wrongs, or acts is not admissible . . . to show action in conformity therewith.” 12 O.S. § 2404(B). In other words, evidence of “other acts” cannot show a defendant’s propensity to commit an alleged wrong. *See id.; Walters v. Monarch Life Ins. Co.*, 57 F.3d 899, 903 (10th Cir.

1995) (affirming exclusion of evidence of allegedly similar acts and respective litigation). Here, allegations in unrelated investigations or litigation have nothing to do with the motives or intentions behind J&J's or Janssen's promotion of opioid products in *Oklahoma*. See *Hopkins AG Supply LLC v. Brunswick Cos.*, No. 17-6251, 2019 WL 386860, at \*3 (10th Cir. Jan. 30, 2019) (Rule 404 exceptions do not apply because evidence of unrelated fraudulent acts alleged in "past litigation" is irrelevant to whether the defendant had an "intent" to commit the alleged fraudulent conduct at issue). And no exception applies. 12 O.S. § 2404(B) ("other wrongs" evidence is "not admissible" unless it is offered as "proof of motive," "intent," or the like). Accordingly, the Court should exclude this evidence.

*Evidence of other matters is inadmissible hearsay.* Courts generally exclude evidence of other lawsuits as inadmissible hearsay, and here the Court has no reason to grant the State an exception. 12 O.S. § 2801(A)(3); see *In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, No. 2:12-CV-4301, 2014 WL 505234, at \*6 (S.D.W. Va. Feb. 5, 2014) ("But even though evidence of similar accidents may be admissible [for design defect claims], evidence of lawsuits is generally considered inadmissible hearsay."); *Johnson v. Ford Motor Co.*, 988 F.2d 573, 579-81 (5th Cir. 1993) (claims alleged in other lawsuits are "evidence" of nothing and merely hearsay).

### 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 introducing any evidence and argument involving alleged opioids harm or misconduct outside of Oklahoma that bears no relation to harm or misconduct in Oklahoma—including allegations in other litigation, claims, or investigations.

Dated: April 26, 2019

Respectfully submitted,

By: 

Benjamin H. Odom, OBA No. 10917  
John H. Sparks, OBA No. 15661  
Michael W. Ridgeway, OBA No. 15657  
David L. Kinney, OBA No. 10875  
ODOM, SPARKS & JONES, PLLC  
Suite 140  
HiPoint Office Building  
2500 McGee Drive  
Norman, OK 73072  
Telephone: (405) 701-1863  
Facsimile: (405) 310-5394  
Email: odomb@odomsparks.com  
Email: sparksj@odomsparks.com  
Email: ridgewaym@odomsparks.com  
Email: kinneyd@odomsparks.com

Larry D. Ottaway, OBA No. 6816  
Amy Sherry Fischer, OBA No. 16651  
Andrew Bowman, OBA No. 22071  
Jordyn L. Cartmell, OBA No. 31043  
Kaitlyn Dunn, OBA No. 32770  
FOLIART, HUFF, OTTAWAY & BOTTOM  
12<sup>th</sup> Floor  
201 Robert S. Kerr Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 232-4633  
Facsimile: (405) 232-3462  
Email: larryottaway@oklahomacounsel.com  
Email: amyfischer@oklahomacounsel.com  
Email: andrewbowman@oklahomacounsel.com  
Email: jordyncartmell@oklahomacounsel.com  
Email: kaitlyndunn@oklahomacounsel.com

Of Counsel:

Charles C. Lifland  
Wallace Moore Allan  
Sabrina H. Strong  
O'MELVENY & MYERS, LLP  
400 S. Hope Street  
Los Angeles, CA 90071  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407  
Email: [clifland@omm.com](mailto:clifland@omm.com)  
Email: [tallan@omm.com](mailto:tallan@omm.com)  
Email: [sstrong@omm.com](mailto:sstrong@omm.com)

Stephen D. Brody  
David Roberts  
O'MELVENY & MYERS, LLP  
1625 Eye Street NW  
Washington, DC 20006  
Telephone: (202) 383-5300  
Facsimile: (202) 383-5414  
Email: [sbrody@omm.com](mailto:sbrody@omm.com)  
Email: [droberts2@omm.com](mailto:droberts2@omm.com)

**ATTORNEYS FOR DEFENDANTS  
JANSSEN PHARMACEUTICALS, INC.,  
JOHNSON & JOHNSON, JANSSEN PHAR-  
MACEUTICA, INC. N/K/A JANSSEN  
PHARMACEUTICALS, INC., AND OR-  
THO-MCNEIL-JANSSEN PHARMACEU-  
TICALS, INC. N/K/A/ JANSSEN PHARMA-  
CEUTICALS, INC.**



**CERTIFICATE OF MAILING**

Pursuant to Okla. Stat. tit. 12, § 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:

Mike Hunter  
Attorney General for  
The State of Oklahoma  
Abby Dillsaver  
Ethan Shaner  
General Counsel to  
The Attorney General  
313 NE 21<sup>st</sup>  
Oklahoma City, OK 73105  
Telephone: (405)521-3921  
Facsimile: (405) 521-6246  
Email: mike.hunter@oag.ok.gov  
Email: abby.dillsaver@oag.ok.gov  
Email: ethan.shaner@oag.ok.gov

Michael Burrage  
Reggie Whitten  
J. Revell Parrish  
WHITTEN BURRAGE  
Suite 300  
512 North Broadway Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Email: mburrage@whittenburrage.com  
Email: rwhitten@whittenburrage.com  
Email: rparrish@whittenburrage.com

Bradley Beckworth  
Jeffrey Angelovich  
Lloyd Nolan Duck, III  
Andrew Pate  
Lisa Baldwin  
Brooke A. Churchman  
Nathan Hall  
NIX, PATTERSON, LLP  
Suite 200  
512 North Broadway Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Email: bbeckworth@nixlaw.com  
Email: jangelovich@nixlaw.com  
Email: tduck@nixlaw.com  
Email: dpate@nixlaw.com  
Email: lbaldwin@nixlaw.com  
Email: bchurchman@nixlaw.com  
Email: nhall@nixlaw.com

Robert Winn Cutler  
Ross Leonoudakis  
Cody Hill  
NIX, PATTERSON, LLP  
Suite B350  
3600 North Capital of Texas Highway  
Austin, TX 78746  
Telephone: (512) 328-5333  
Facsimile: (512) 328-5335  
Email: winncutler@nixlaw.com  
Email: rosssl@nixlaw.com  
Email: codyhill@nixlaw.com

Glenn Coffee  
GLENN COFFEE & ASSOCIATES, PLLC  
915 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 601-1616  
Email: gcoffee@glenncoffee.com

**ATTORNEYS FOR PLAINTIFF**

Sanford C. Coats  
Joshua D. Burns  
CROWE & DUNLEVY, PC  
Suite 100  
Braniff Building  
324 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 235-7700  
Facsimile: (405) 272-5269  
Email: sandy.coats@crowedunlevy.com  
Email: joshua.burns@crowedunlevy.com

Of Counsel:

Sheila Birnbaum  
Mark S. Cheffo  
Hayden A. Coleman  
Paul A. LaFata  
Lindsay N. Zanello  
Bert L. Wolff  
Mara C. Cusker Gonzalez  
Jenna C. Newmark  
DECHERT, LLP  
Three Bryant Park  
1095 Avenue of Americas  
New York, NY 10036-6797  
Telephone: (212) 698-3500  
Facsimile: (212) 698-3599  
Email: sheila.birnbaum@dechert.com  
Email: mark.cheffo@dechert.com  
Email: hayden.coleman@dechert.com  
Email: paul.lafata@dechert.com  
Email: lindsay.zanello@dechert.com  
Email: bert.wolff@dechert.com  
Email: maracusker.gonzalez@dechert.com  
Email: jenna.newmark@dechert.com

Benjamin F. McAnaney  
Hope S. Freiwald  
Will W. Sachse  
Chelsea M. Nichols  
Cory A. Ward  
Meghan R. Kelly  
Nicolas A. Novy  
DECHERT, LLP  
2929 Arch Street  
Philadelphia, PA 19104  
Telephone: (215) 994-4000  
Facsimile: (215) 655-2043

Email: benjamin.mcananey@dechert.com  
Email: hope.freiwald@dechert.com  
Email: will.sachse@dechert.com  
Email: chelsea.nichols@dechert.com  
Email: cory.ward@dechert.com  
Email: megan.kelly@dechert.com  
Email: nicolas.novy@dechert.com

Erik W. Snapp  
DECHERT, LLP  
Suite 3400  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (212)849-7000  
Facsimile: (212) 849-7100  
Email: erik.snapp@dechert.com

Jonathan S. Tam  
Jae Hong Lee  
DECHERT, LLP  
16<sup>th</sup> Floor  
One Bush Street  
San Francisco, CA 94104  
Telephone: (415) 262-4500  
Facsimile: (415) 262-4555  
Email: jonathan.tam@dechert.com  
Email: jae.lee@dechert.com

William W. Oxley  
DECHERT, LLP  
Suite 4900  
US Bank Tower  
633 West 5<sup>th</sup> Street  
Los Angeles, CA 90071  
Telephone: (213) 808-5760  
Facsimile: (213) 808-5760  
Email: william.oxley@dechert.com

Lindsey B. Cohan  
DECHERT, LLP  
Suite 2010  
300 West 6<sup>th</sup> Street  
Austin, TX 78701-2961  
Telephone: (212) 394-3000  
Facsimile: (512) 394-3001  
Email: lindsey.cohan@dechert.com

Britta E. Stanton  
John D. Volney  
John T. Cox, III  
Eric W. Pinker  
Jared D. Eisenberg  
Jervonne D. Newsome  
Elizabeth Yvonne Ryan  
Andrea MeShonn Evans Brown  
Ruben A. Garcia  
Russell G. Herman  
Samuel B. Hardy, IV  
David S. Coale  
Alan Dabdoub  
LYNN PINKER COX & HURST, LLP  
Suite 2700  
2100 Ross Avenue  
Dallas, TX 75201  
Telephone: (214) 981-3800  
Facsimile: (214) 981-3839  
Email: bstanton@lynnllp.com  
Email: jvolney@lynnllp.com  
email: tcox@lynnllp.com  
Email: epinker@lynnllp.com  
Email: jeisenberg@lynnllp.com  
Email: jnewsome@lynnllp.com  
Email: eryan@lynnllp.com  
Email: sbrown@lynnllp.com  
Email: rgarcia@lynnllp.com  
Email: rherman@lynnllp.com  
Email: shardy@lynnllp.com  
Email: dcoale@lynnllp.com  
Email: adabdoub@lynnllp.com

Robert S. Hoff  
WIGGIN & DANA, LLP  
265 Church Street  
New Haven, CT 06510  
Telephone: (203) 498-4400  
Facsimile: (203) 363-7676  
Email: rhoff@wiggin.com

Michael T. Cole  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Suite 600  
151 Meeting Street  
Charleston, SC 29401  
Telephone: (843) 853-5200  
Facsimile: (843) 722-8700  
Email: mike.cole@nelsonmullins.com

**ATTORNEYS FOR DEFENDANTS PURDUE  
PHARMA, LP,  
PURDUE PHARMA, INC., AND THE PURDUE  
FREDERICK  
COMPANY, INC.**

Robert G. McCampbell  
Travis V. Jett  
Ashley E. Quinn  
Nicholas V. Merkle  
Leasa M. Stewart  
GableGotwals  
15<sup>th</sup> Floor  
One Leadership Square  
211 North Robinson  
Oklahoma City, OK 73102-7255  
Telephone: (405) 235-5567  
Email: rmccampbell@gablelaw.com  
Email: tjett@gablelaw.com  
Email: aquinn@gablelaw.com  
Email: nmerkle@gablelaw.com  
Email: lstewart@gablelaw.com

Of Counsel:

Steven A. Reed  
Rebecca J. Hillyer  
Evan J. Jacobs  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2321  
Telephone: (215) 963-5000  
Email: steven.reed@morganlewis.com  
Email: rebecca.hillyer@morganlewis.com  
Email: evan.jacobs@morganlewis.com

Harvey Bartle, IV  
Mark A. Fiore  
Morgan, Lewis & Bockius, LLP  
502 Carnegie Center  
Princeton, NJ 08540-6241  
Telephone: (609) 919-6600  
Email: harvey.bartle@morganlewis.com  
Email: mark.fiore@morganlewis.com

Brian M. Ercole  
Melissa M. Coates  
Martha A. Leibell  
Morgan, Lewis & Bockius, LLP  
Suite 5300  
200 South Biscayne Boulevard  
Miami, FL 33131  
Email: brian.ercole@morganlewis.com  
Email: melissa.coates@morganlewis.com  
Email: martha.leibell@morganlewis.com

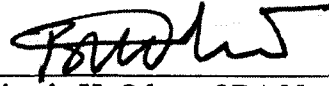
Steven A. Luxton  
Morgan, Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 739-3000  
Facsimile: (202)-739-3000  
Email: steven.luxton@morganlewis.com

Tinos Diamantatos  
Morgan, Lewis & Bockius, LLP  
77 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 324-1000  
Facsimile: (312) 324-1001  
Email: tinos.diamantatos@morganlewis.com

Collie F. James, IV  
Morgan, Lewis & Bockius, LLP  
Suite 1800  
600 Anton Boulevard  
Costa Mesa, CA 92626  
Telephone: (714) 830-0600  
Facsimile: (714) 830-0700  
Email: collie.james@morganlewis.com

**ATTORNEYS FOR DEFENDANTS CEPHALON,  
INC., TEVA  
PHARMACEUTICALS USA, INC., WATSON LA-  
BORATORIES, INC.,  
ACTAVIS, LLC, AND ACTAVIS PHARMA, INC.  
F/K/A WATSON  
PHARMA, INC.**





Benjamin H. Odom, OBA No. 10917  
John H. Sparks, OBA No. 15661  
Michael W. Ridgeway, OBA No. 15657  
David L. Kinney, OBA No. 10875  
ODOM, SPARKS & JONES, PLLC  
Suite 140  
HiPoint Office Building  
2500 McGee Drive  
Norman, OK 73072  
Telephone: (405) 701-1863  
Facsimile: (405) 310-5394  
Email: odomb@odomsparks.com  
Email: sparksj@odomsparks.com  
Email: ridgewaym@odomsparks.com  
Email: kinneyd@odomsparks.com

**ATTORNEYS FOR DEFENDANTS  
JANSSEN PHARMACEUTICALS, INC.,  
JOHNSON & JOHNSON, JANSSEN  
PHARMACEUTICA, INC. N/K/A  
JANSSEN PHARMACEUTICALS, INC.,  
AND ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC. N/K/A/  
JANSSEN PHARMACEUTICALS, INC.**

# EXHIBIT A

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, 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.

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**THE STATE'S OMNIBUS RESPONSE TO (i) DEFENDANTS' JOINT MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM; (ii) MOTION OF DEFENDANTS CEPHALON, INC., TEVA PHARMACEUTICALS USA, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, AND ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA INC. TO DISMISS PLAINTIFF'S PETITION FOR FAILURE TO STATE A CLAIM, OR, ALTERNATIVELY, FOR A MORE DEFINITE STATEMENT REQUIRING THE STATE TO PLEAD THE DETAILS OF ANY ALLEGED FRAUD; (iii) DEFENDANTS JANSSEN PHARMACEUTICALS, INC. AND JOHNSON AND JOHNSON'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM; AND (iv) DEFENDANTS PURDUE PHARMA L.P., PURDUE PHARMA INC., AND THE PURDUE FREDERICK COMPANY INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

the US. Senate Finance Committee in 2016 that had he “fully appreciate[d] the severity of the opioid epidemic and the long lasting effects of Purdue’s OxyContin promotion” he “would have advocated for a settlement which would have required more extensive remedial action...to correct the inappropriate prescribing patterns for opioids that Purdue’s marketing helped create.”<sup>21</sup>

The conduct continued. More people have become addicted. More children have died. More babies are born addicted. More morgues are over capacity.

So, now, Oklahoma is fighting back. Oklahoma is not alone in this fight. **The entire Nation is fighting back.**

Eight other states—New Mexico, Mississippi, New Hampshire, Ohio, Washington, South Carolina, Louisiana and Missouri have filed lawsuits against some or all of the Defendants concerning their unlawful marketing of their opioids. A 41-state coalition of Attorneys General has issued subpoenas to opioid manufacturers, including entities affiliated with each Defendant named herein, as part of an ongoing opioid-marketing investigation. Dozens of lawsuits asserting similar claims have been filed by counties and cities in state and federal courts across the country. And, just last week, the President of the United States officially declared the opioid crisis a national public health emergency.<sup>22</sup>

In light of this national effort to hold Defendants accountable for creating the most severe public health nuisance in history, the cavalier tone of their Motions to Dismiss is alarming. Even more alarming is the fact that Defendants had the audacity to file a motion to stay discovery—that is to delay discovery of the truth—claiming that there was little to no way the State could even

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<sup>21</sup> Department of Justice, Testimony of David Hart to the United States Senate Committee on Finance, at 2, available at <https://www.finance.senate.gov/imo/media/doc/23feb2016Hart.pdf>.

<sup>22</sup> President Donald J. Trump is Taking Action on Drug Addiction and the Opioid Crisis (Oct. 26, 2017), <https://www.whitehouse.gov/the-press-office/2017/10/26/president-donald-j-trump-taking-action-drug-addiction-and-opioid-crisis>.

ignore that they do not just face liability for damages, but also steep statutory penalties up to \$11,000 per violation under the OMFCA and up to \$10,000 per violation under the OCPA before even determining damages. See 63 O.S. §5053.1 (2016); 15 O.S. §761.1(C). Now is not the time to attempt to exclude damage categories from any of the Petition's allegations. The Petition undoubtedly alleges severe injuries, which is sufficient at this stage.

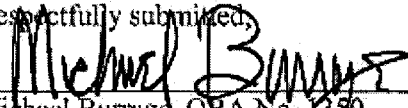
Defendants' arguments regarding causation fail and raise fact questions for the jury following discovery.

## VI. CONCLUSION

Defendants should not be permitted to delay this case any further. Dismissal is inappropriate. This case should proceed to discovery and trial before twelve jurors.

Dated: October 30, 2017

Respectfully submitted,

  
Michael Burrage, OBA No. 7350

Reggie Whitten, OBA No. 9576

WHITTEN BURRAGE

512 N. Broadway Avenue, Suite 300

Oklahoma City, OK 73102

Telephone: (405) 516-7800

Facsimile: (405) 516-7859

Emails: mburrage@whittenburrage.com  
rwhitten@whittenburrage.com

Mike Hunter, OBA No. 4503

ATTORNEY GENERAL FOR

THE STATE OF OKLAHOMA

Abby Dillsaver, OBA No. 20675

GENERAL COUNSEL TO

THE ATTORNEY GENERAL

Ethan A. Shaner, OBA No. 30916

DEPUTY GENERAL COUNSEL

313 N.E. 21<sup>st</sup> Street

Oklahoma City, OK 73105

Telephone: (405) 521-3921

Facsimile: (405) 521-6246

Emails: abby.dillsaver@oag.ok.gov  
ethan.shaner@oag.ok.gov

Bradley H. Beckworth, OBA No. 19982  
Jeffrey J. Angelovich, OBA No. 19981  
NIX, PATTERSON & ROACH, LLP  
512 N. Broadway Avenue, Suite 200  
Oklahoma City, OK 73102  
Telephone: (405) 516-7800  
Facsimile: (405) 516-7859  
Emails: [bbeckworth@nixlaw.com](mailto:bbeckworth@nixlaw.com)  
[jangelovich@nixlaw.com](mailto:jangelovich@nixlaw.com)

Glenn Coffee, OBA No. 14563  
GLENN COFFEE & ASSOCIATES, PLLC  
915 N. Robinson Ave.  
Oklahoma City, OK 73102  
Telephone: (405) 601-1616  
Email: [gcoffee@glenncoffee.com](mailto:gcoffee@glenncoffee.com)

Tracy Schumacher, OBA No. 15950  
Schumacher & Stanley, P.L.L.C.  
114 E. Main Street  
Norman, OK 73072  
Telephone: (405) 701-1882  
Email: [tracy@schumacherstanley.com](mailto:tracy@schumacherstanley.com)

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 30<sup>th</sup> day of October 2017 to:

Robert G. McCampbell  
Travis V. Jett  
GableGotwals  
One Leadership Square, 15<sup>th</sup> Floor  
211 North Robinson  
Oklahoma City, OK 73102

John H. Sparks  
Benjamin H. Odom  
Odom, Sparks & Jones, PLLC  
HiPoint Office Building  
2500 McGee Drive, Ste. 140  
Norman, OK 73072

Sanford C. Coats  
Cullen D. Sweeney  
CROWE & DUNLEVY, P.C.  
Braniff Building  
324 N. Robinson Ave., Ste. 100  
Oklahoma City, OK 73102

Sheila Birnbaum  
Mark S. Cheffo  
Hayden A. Coleman  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010

Patrick J. Fitzgerald  
R. Ryan Stoll  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive, Ste. 2700  
Chicago, Illinois 60606

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

Brian M. Hrcole  
MORGAN, LEWIS & BOCKIUS LLP  
200 S. Biscayne Blvd., Suite 5300  
Miami, FL 33131

Charles C. Lifland  
O'MELVENY & MEYERS LLP  
400 S. Hope Street  
Los Angeles, CA 90071

  
Michael Burrage



# **EXHIBIT B**

**[FILED UNDER SEAL]**

# **EXHIBIT C**

**[FILED UNDER SEAL]**

# **EXHIBIT D**

**[FILED UNDER SEAL]**

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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 )  
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 TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER  
TRANSCRIPT OF PROCEEDINGS  
HAD ON OCTOBER 18, 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 that has historically been sacrosanct is the whole point here.  
2 It's the whole policy behind why we don't let these documents  
3 out.

4 Judge, put yourself in the shoes of an investigator for  
5 the State. Would you want to diligently pursue every single  
6 angle, pulling at every single thread, making notes, sending  
7 e-mails to prosecutors, coming up with ideas to try to bring  
8 down the State's criminals, all the while knowing that a Judge  
9 in a civil case could just willy-nilly order all those  
10 documents be turned over. Sure, there are protective orders.

11 No, Judge. It would have a chilling effect on the  
12 investigation and prosecution of criminals in the state, and it  
13 doesn't just apply to criminals. There are investigators for a  
14 number of different agencies. Administrative actions also have  
15 investigators. The licensing boards at issue have  
16 investigators.

17 They need to be able to do their jobs the right way  
18 without fear that a Judge, who has no understanding or idea of  
19 the particular cases that they're working on, could just turn  
20 over all of their privileged information. That's why these  
21 privileges exist, and it's why we're asking you to uphold them  
22 today.

23 I bring up Mr. McCampbell not to pick on him, but to show  
24 your Honor where this argument that Watson has raised, where it  
25 logically leads. I hope the defendants won't be upset with me

1 because they did this earlier. I have a document. I didn't  
2 anticipate using it. I only have one copy of it.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

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9 [REDACTED]

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# EXHIBIT E



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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,  
Case Number  
CJ-2017-816

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., f/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
(9) JANSSEN PHARMACEUTICA, INC.,  
f/k/a JANSSEN PHARMACEUTICALS, INC.;  
(10) ALLERGAN, PLC, 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.

VIDEO DEPOSITION OF DANIEL J. CLAUW, M.D.  
STATE OF OKLAHOMA 3230(C)(5) WITNESS  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON MARCH 26, 2019, BEGINNING AT 7:57 A.M.  
IN OKLAHOMA CITY, OKLAHOMA  
Reported by: Cheryl D. Rylant, CSR, RPR  
Video Technician: Gabe Pack

PAGES 1 - 327

1 you gave me time to do a PubMed search and pull the 10:10  
2 articles, I could pull the articles. Main -- these 10:10  
3 studies in the last three or four years have mainly 10:10  
4 been out of the VA population and have looked at -- 10:10  
5 really closely at death records and suicide. There's 10:10  
6 an epidemic of suicides amongst our veterans. 10:10

7 Q. (By Ms. Laurendeau) And have they determined 10:10  
8 causation in terms of the opioids? Do those studies 10:10  
9 purport to determine causation, or are they reporting 10:10  
10 on association or correlation or something else? 10:10

11 A. There's no way that you can say that an 10:10  
12 opioid caused someone to commit a suicide, so you're 10:10  
13 -- you're looking at association. But there's a 10:10  
14 strong association between opioid use and suicide. 10:10

15 Q. Is depression common in chronic pain 10:11  
16 patients? 10:11

17 A. Yes. 10:11

18 Q. Is suicide common in patients who suffer from 10:11  
19 depression? 10:11

20 A. Yes. But all the studies that I've just 10:11  
21 cited to you control for chronic pain. So all of 10:11  
22 these studies have, as a control group, people with 10:11  
23 chronic pain that didn't get an opioid. So there is 10:11  
24 an increase risk of death from just having chronic 10:11  
25 pain, and that is attributable both to some of the 10:11

1 same things. Chronic pain patients are more likely 10:11  
2 to commit suicide. But the -- the 30 percent value 10:11  
3 that I was citing is -- is in excess of what you see 10:11  
4 in a group of people with chronic pain. This is 10:11  
5 attributable to the opioid use, not the chronic pain. 10:11

6 Q. And is that a 30 percent risk -- or a 10:12  
7 30 percent increase in deaths from suicide or a 10:12  
8 30 percent increase in mortality from all causes? 10:12

9 A. All-cause mortality. And that's far more 10:12  
10 concerning. Because a 30 percent increase in 10:12  
11 suicides would probably only be like a 1 percent 10:12  
12 increase in all-cause mortality, because suicides are 10:12  
13 an uncommon cause of death in general. A 30 percent 10:12  
14 increase in all-cause mortality means next year you 10:12  
15 are 30 percent more likely to die of anything than 10:12  
16 the control group. And that's what's scary about 10:12  
17 the -- the data in opioids, is it's -- it's all-cause 10:12  
18 mortality. 10:12

19 Q. And are you intending to opine at trial on 10:12  
20 this 30 percent increase in all-cause mortality from 10:12  
21 opioid use? 10:12

22 MR. LEONOUKAKIS: Objection, form, outside 10:12  
23 the scope. 10:12

24 THE WITNESS: I don't -- if -- if I'm 10:12  
25 asked, especially if I'm asked to defend the fact 10:12

1 that these drugs cause more harm than good, that 10:12  
2 would certainly be under the category of harm that 10:13  
3 people -- 10:13  
4 Q. (By Ms. Laurendeau) You're definitely going 10:13  
5 to be asked to defend that, because that's one of 10:13  
6 your opinions. 10:13  
7 A. Okay. Well then -- then, yes, I will be 10:13  
8 citing -- then -- then there's two studies that I -- 10:13  
9 in particular that I can get you, one done in the 10:13  
10 U.S., one done in the Netherlands showing this 10:13  
11 increase in all-cause mortality. But if -- if you're 10:13  
12 going to be asking me for specific data to support 10:13  
13 that opinion, then these will be two of the studies 10:13  
14 that I would like to talk about. 10:13  
15 Q. If you're going to offer the opinion, then I 10:13  
16 definitely want to see the studies -- 10:13  
17 A. Okay. 10:13  
18 Q. -- so if you could get me those, I would 10:13  
19 appreciate it. And then, depending on those, I may 10:13  
20 have to ask the judge for an opportunity to ask you 10:13  
21 additional questions, because, again, this is my 10:13  
22 chance to ask you what opinions you're going to 10:13  
23 offer. This wasn't specifically in the disclosure, 10:13  
24 and the studies weren't cited, and you don't have 10:13  
25 them with you here today, so if you could get those 10:13

1 to me, I'd appreciate that. Is that okay? 10:13

2 A. That's fine. Just re -- 10:14

3 MR. LEONOUidakis: Objection, form. 10:14

4 THE WITNESS: Someone needs to remind me 10:14

5 after this all the different things that I need to 10:14

6 get you. I won't spontaneously remember to send you 10:14

7 those articles. 10:14

8 Q. (By Ms. Laurendeau) Okay. We will follow 10:14

9 up. 10:14

10 Okay. Did you bring any materials with you here 10:14

11 today? 10:14

12 A. No. Well, I mean, I have my backpack and my 10:14

13 suitcase, but I don't -- nothing that I was intending 10:14

14 to look at or refer to. 10:14

15 Q. Okay. Let me show you the deposition Notice 10:14

16 that we'll mark as Exhibit 4. 10:14

17 (Whereupon, Clauw Exhibit No. 4 was marked 10:14

18 for identification and made part of the record.) 10:14

19 Q. (By Ms. Laurendeau) Have you seen this 10:14

20 document before, Dr. Clauw? 10:14

21 A. I'm not sure. 10:14

22 Q. Okay. I'm going to actually turn you to the 10:15

23 last page marked as Exhibit [sic] 15, Documents To Be 10:15

24 Produced. 10:15

25 MR. LEONOUidakis: It's page 15, not 10:15

1 at any meeting? 11:31

2 A. Yeah. I've railed against opioid 11:31

3 manufacturers for a long time. I've been anti-opioid 11:31

4 and anti this practice for an awful long time. You 11:31

5 can look back. There's videotapes of lectures I was 11:31

6 giving 15 years ago, I was talking about this 11:31

7 problem. So, yes, did it influence what I said at a 11:31

8 meeting? Absolutely. And it -- it made me say, you 11:31

9 know, what are we doing here? What's -- why are you 11:32

10 prescribing opioids? 11:32

11 Q. The fact that manufacturers were present and 11:32

12 were sponsoring certainly didn't prompt you to be 11:32

13 pro-opioid or to encourage additional opioid 11:32

14 prescriptions from your fellow physicians, did it? 11:32

15 A. Say again. I'm sorry, the question? 11:32

16 Q. The presence of pharmaceutical manufacturers 11:32

17 certainly didn't influence you to be pro-opioid or to 11:32

18 encourage additional opioid prescriptions of your 11:32

19 fellow physicians, did it? 11:32

20 A. No, quite the contrary. My typical thing is 11:32

21 to go to a scientific meeting and -- and call out 11:32

22 people that are prescribing opioids and ask them, you

23 know, where's the evidence and data for doing this, 11:32

24 and why are you still doing this, and what -- 11:32

25 you know, and present a lot of the data that led me 11:32

1 to conclude that opioids did more harm than good in 11:32  
2 the setting of chronic pain. 11:32

3 Q. So you don't have any way of saying whether 11:32  
4 physicians who attended these meetings you're 11:32  
5 referring to were influenced by your anti-opioid 11:32  
6 sentiments or by what you refer to as the aggressive 11:33  
7 marketing tactics of pharmaceutical manufacturers, do 11:33  
8 you? 11:33

9 MR. LEONOUDAKIS: Objection, form. 11:33

10 THE WITNESS: Oh, no. I actually do know 11:33  
11 that, obviously, I was ineffective. Because I can't 11:33  
12 be -- I don't have the -- the -- the marketing 11:33  
13 prowess of the pharmaceutical industry, and so those 11:33  
14 -- those talks that I'm giving, I would talk to two 11:33  
15 or 300 physicians that might have been attending 11:33  
16 those talks, but these were people that were 11:33  
17 otherwise just getting inundated with information 11:33  
18 that was contrary to what I was presenting. So I 11:33  
19 actually think I do know that what I did didn't work 11:33  
20 very well. 11:33

21 Q. (By Ms. Laurendeau) How do you know they 11:33  
22 were getting inundated with information outside of 11:33  
23 what you saw at the meetings, which you've described  
24 as aggressive marketing tactics? 11:33

25 A. Because there was other things besides at the 11:33

1 meetings. People were getting visited more often by 11:33  
2 pharmaceutical reps from the opioid manufacturers, 11:33  
3 they were -- 11:33  
4 Q. How do you know that? 11:34  
5 A. Because they would come and try to see -- 11:34  
6 when I was at Georgetown, they could still come and 11:34  
7 see us. When I moved back to Michigan, 11:34  
8 pharmaceutical reps were not allowed to actually come 11:34  
9 into the clinics, and so I didn't see them anymore. 11:34  
10 But when I was at Georgetown, they would come by and 11:34  
11 try -- try to talk me into prescribing opioids, until 11:34  
12 it became clear that wasn't going anywhere. And 11:34  
13 then, all the sudden, they'd see, you know, my 11:34  
14 position when I gave a talk or something like that 11:34  
15 being very anti-opioid. So they don't -- they don't 11:34  
16 keep visiting the people that -- where they're not 11:34  
17 getting any traction and where they're not -- 11:34  
18 you know, they're -- they're doing the opposite, 11:34  
19 they're looking for the people that are 11:34  
20 high-prescribers and -- and that's where they put 11:34  
21 a lot of their efforts. 11:34  
22 Q. How do you know this? 11:34  
23 A. I know this because -- I don't know where I 11:34  
24 know this from. Some of the marketing documents that 11:34  
25 I saw in conjunction with this litigation looked at 11:34



1 the -- the deciles of prescribing, and that they 11:35  
2 were -- that they were targeting people that were 11:35  
3 the -- in the highest decile with highest two deciles 11:35  
4 with respect to opioid prescribing. So -- and I know 11:35  
5 that is a specific tactic that was used, including in 11:35  
6 the state of Oklahoma. 11:35

7 Q. And you know that based on the materials that 11:35  
8 counsel provided you that you don't have with you 11:35  
9 here today, correct? 11:35

10 A. Correct. 11:35

11 Q. The -- the meetings that you refer to at 11:35  
12 which pharmaceutical manufacturers -- you described 11:35  
13 pharmaceutical manufacturers as flooding the 11:35  
14 meetings. Can you name any specific meeting you 11:35  
15 attended that was flooded by pharmaceutical 11:35  
16 manufacturers? 11:35

17 A. Yes. So of the professional organizations, I 11:35  
18 would say that the American Pain Society has been the 11:35  
19 least influenced. It -- it was -- in the mid 1990s 11:36  
20 did come out with some documents that could have been 11:36  
21 looked at as being sort of pro-opioid, but certainly 11:36  
22 for the last 10 or 15 years, they've been more -- 11:36  
23 very cautious and more anti-opioid. But other annual 11:36  
24 professional meetings, like PAINWeek or -- 11:36

25 Q. PAINWeek? 11:36

CERTIFICATE

I, Cheryl D. Rylant, Certified Shorthand Reporter, certify that the above-named witness was sworn, that the deposition was taken in shorthand and thereafter transcribed; that it is true and correct; and that it was taken on March 26, 2019, in Oklahoma City, county of Oklahoma, state of Oklahoma, pursuant to Notice and under the stipulations set out, and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 28th day of March, 2019.

<%824,Signature%>

CHERYL D. RYLANT, CSR, RPR

Certificate No. 1448