IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

PART H

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

Plaintiff,

vs.

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

Defendants.

For Judge Balkman's Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
MAY 24 2019
In the office of the
Court Clerk MARILYN WILLIAMS

MOTION PURSUANT TO 12 O.S. § 2509(C) TO DISMISS THE STATE'S PUBLIC NUISANCE CLAIM OR, IN THE ALTERNATIVE, EXCLUDE EVIDENCE THAT THE TEVA AND ACTAVIS GENERIC DEFENDANTS' MARKETING INFLUENCED ANY INDIVIDUAL OKLAHOMA HEALTHCARE PROVIDER

EXHIBIT 6

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DEC 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

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.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

JOURNAL ENTRY ON DISCOVERY OF CRIMINAL, CIVIL AND ADMINISTRATIVE PROCEEDINGS

On the 29th day of November, defendant Watson Laboratories, Inc.'s ("Watson") Objection to the Special Discovery Master's Order on Watson's Motion to Compel Discovery Regarding Criminal and Administrative Proceedings (filed November 13, 2018) came on for hearing. Present for the parties were:

Plaintiff: Trey Duck, Abby Dillsaver, Drew Pate, Reggie Whitten, Brad Beckworth, Ethan Shaner, Dawn Cash, Ross Leonoudakis, Lisa Baldwin and Brooke Churchman
Watson: Robert McCampbell and Harvey Bartle
Purdue: Paul LaFata and Trey Cox
Janssen: Larry Ottaway, Amy Fischer, John Sparks and Steve Brody

Having reviewed the briefs of the parties and received argument of counsel, this Court finds that the motion is granted in part as specified below:

1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, motions, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. For purposes of this Order "Health Care Professional" includes doctors licensed by the Oklahoma Board of Medical Licensure and Supervision, doctors licensed by the Oklahoma Board of Osteopathic Examiners, and dentists licensed by the Oklahoma Board of Dentistry.

2. The plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. However, if such documents are sealed or are grand jury transcripts, such documents need not be produced or will be produced consistent with the Protective Orders currently in place, as appropriate. In items 1 and 2 above, if a document is withheld because it is sealed, a copy of the sealing order will be provided to counsel for the defendant.

3. The plaintiff shall also produce to Judge William Hetherington *in camera* a list identifying all Health Care Professionals previously investigated by the State relating to the prescription of opioids where the investigation did not result in a civil, criminal or administrative

proceeding with the reasons why not. Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants. The list shall be produced to Judge Hetherington by January 2, 2019 and shall remain *in camera* and not be part of any production to defendants.

4. The plaintiff shall produce the documents required in items 1 and 2 to the defendants by January 4, 2019.

IT IS SO ORDERED this 20th day of December, 2018.

S/Thad Balkman

THAD BALKMAN, DISTRICT JUDGE

EXHIBIT 7

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
(THIS ORDER FILED UNDER SEAL)

NOW, on this 20th day of January, 2019, the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on January 17, 2019.

Argument was heard and considered and the undersigned **finds** as follows:

Watson Laboratories, Inc.'s Motion for Order Regarding In-Camera Submissions

This motion comes about by reason of Judge Balkman's order of December 20, 2018 where he heard argument regarding production of or protection of lists identifying all health care professionals investigated by the State relating to the prescription of opioids where the

investigation did not result in a civil, criminal or administrative proceeding with the reasons why not. The undersigned was ordered to "make a ruling on whether or not materials from any of those investigation should be shared with the defendants.", after an in-camera review of the submitted lists.

The undersigned received the ordered submissions in compliance with Judge Balkman's order and in-camera review followed.

Watson then filed its request both through e-mail and formal pleading with State responding in kind, and the following **findings** and **Orders** are entered:

1. The undersigned has reviewed State submissions to include a cover letter and the ordered lists from the office of the Attorney General; the Oklahoma Bureau of Narcotics and Dangerous Drugs; The Oklahoma Board of Medical Licensure and Supervision, and; the Oklahoma State Board of Osteopathic Examiners. Watson's Request to File and Preserve the Submissions **under Seal** with the Cleveland County Court Clerk Is **Sustained;**
2. The undersigned and Judge Balkman have previously Ordered State to produce non-privileged or protected documents under the terms of the Protective Order where appropriate, and the same Order is entered herein with regard to non-privileged or otherwise protected materials from these files. As a practical matter, what Watson's motion would require is a task that would be virtually impossible. It is clear these investigative files contain, as found before, highly sensitive information involving ongoing investigations, some investigations where civil and/or criminal referrals were declined but subject to further investigation and later review, and some where criminal referral was made. In some cases, civil and/or criminal referrals were not made due to a finding of insufficient evidence, death or resignation of the healthcare professional or some other more limited administrative action was taken. In any event, it is clear the content and substance of these files, regardless of the reason action was not taken, remains highly sensitive and Watson's requests must be **Denied** as to those materials. State has been, and is again **Ordered** to produce materials from those files that are of public record or are not privileged or confidential.

State's Motion To Reconsider December 26, 2018 Order Sustaining Purdue's Motion To Quash Deposition Notices

State argues it is essential to depose both Jonathan and Mortimer Sackler as "no one controls or can tell the Purdue story like they can". State argues these depositions seek answers to broad questions about Purdue's business practices and conduct for the relevant period. State submitted evidence that Board level decision-making testimony is unique to the Sackler's regarding Purdue's opioid business strategies for the relevant period. State alleges the Sackler's are the only individuals who can offer comprehensive testimony for the entire relevant period as many, if not most of the corporate representatives being deposed have not been with the company for the entire relevant period and testify to a lack of knowledge. The areas of inquiry sought are: 1. The introduction and initial marketing of OxyContin in the market; 2. The

expanded use of opioids to treat non-cancer pain; 3. Purdue's guilty plea to federal criminal charges regarding mis-branding of OxyContin; 4. The establishment of Rhodes Pharmaceutical and other related/affiliated entities and their relationship to pharmaceutical production, marketing and sales.

Following argument, review of the authority and extensive exhibits presented by both parties regarding this issue, to include deposition testimony of Mr. Ives, I **find** the record supports State's proposition that shielding these individuals from deposition access and inquiry now would be improper. The bulk of this evidence and authority presented at this hearing is new. Much of this evidence was not known or revealed until the Ives deposition and it is now clear that both Jonathan and Mortimer Sackler were noticed-in and routinely making key decisions regarding ongoing management of and design of marketing strategies, regulatory and budget management and other promotional efforts such as through the "Joint Commission" and "Speakers Bureau" seminars, virtually throughout the entire relevant period. These are promotion and marketing strategies and funding that are relevant to the over-prescribing opioid crisis claims made in this case. The evidence shows there is current active participation in the management and potential funding of this litigation to some degree.

There is other evidence now presented that, at least in the early 2000s, all Sackler family members were at least noticed-in or involved to some degree. Review of other witness testimony routinely demonstrates lack of knowledge regarding marketing and strategy questions, affiliated or associated entities and activities relevant or potentially relevant to the claims made in this case with routine referral to higher-ups in the company for that sort of information, implicating significant decision making conduct from upper-level management and the Board of Directors, evidence sufficient to establish direct control by the Sacklers for at least a significant period of time throughout the relevant period.

Purdue is family-owned or through affiliates. This is a unique circumstance unlike the typical "Apex" level management deposition issue.

Purdue argues that Jonathan Sackler is no longer a board member of Purdue Pharmaceutical, Inc., and neither were a Board member of any other Purdue entity other than Purdue Pharmaceutical, Inc. The facts show Jonathan Sackler did not resign from the Board until after the deposition notice was issued with argument that his decision to resign was made before the notice was issued.

Counsel for Purdue also argues State cannot use a corporate representative deposition to obtain individual personal assets and financial testimony. Their proposition makes the broad statement that State cannot use a corporate representative notice to seek information about Sackler family assets. State is not entitled, as previously Ordered, to unfettered exploration of the Sackler family assets. Again, this is a privately held company. Any inquiry in this area is limited to Sackler family financial testimony that relates directly to issues in this case listed above in this Order and to include Sackler family financing arrangements supporting manufacture of, training, marketing, and promotional efforts involving the production and sale of Purdue Pharmaceutical Inc. opioid products. Jonathan and Mortimer Sackler are not subject to deposition notices on

behalf of Purdue Pharma L.P. or The Purdue Frederick Company, only noticed and non-duplicative topics related to Purdue Pharmaceutical Inc., consistent with the findings now made in this Order.

Therefore, State's request to reconsider is **Sustained** in part consistent with this Order, and Defendant's Motion to Quash is **Overruled** in part, consistent with this Order.

State's Motion To Quash Teva's Notice For §3230(C)(5) Depositions

First, the practice and procedure that must be followed for Defendant Group deposition testimony of State witnesses is that all Defendant groups participate in each deposition and be prepared to propound questions that are not duplicative, but particular to that Defendant group's facts, circumstances and defense of this case. Here, Teva appears to seek to depose witnesses, many of whom have already been deposed where Teva was noticed, present and did participate or had the opportunity to participate. State classifies these topics into objectionable groups based upon 1. Topics that have already been covered and are duplicative; 2. Topics argued to be privileged; 3. Topics that are the subject of expert testimony disclosure only; 4. "Contention" depositions and/or otherwise improper or premature, and; 5. Topics that are irrelevant and/or overbroad. Due to sheer volume and scheduling conflicts, it appears some depositions have not allowed for sufficient inquiry by Teva Group on some topics. I must balance fair opportunity for inquiry and the apparent reality some topics or a portion thereof have not been explored, against potentially unreasonable, burdensome and time-consuming re-deposing certain witnesses, understanding time is short. The following orders are entered (Note that some topics may be included in different or more than one category):

Duplicative or Cumulative Topics

Motion To Quash is **Sustained** as to Topics: 10, 15, 18, 23, 25, 28, 29, 30, 34, 35 & 36, 37.

Motion To Quash is **Overruled** as to Topics: 26, 22(Limited to tax or fee revenues dedicated to address Opioid crisis and any specific revenues from any source dedicated to Teva Group products.).

Privileged Topics

Motion To Quash is **Sustained** in part as to Topics: 1(Subject to prior Orders that State must produce any non-privileged pre-suit investigation information specific to Teva Group), 5, 17(Subject to prior Orders to produce information such as closed file information), 20, 24, 25 & 36.

Expert Testimony

Motion To Quash is **Sustained** at this time, as to Topics: 6, 7, 9, 21, 26, 36, 37, 38.

Contention Testimony, Improper or Premature

Motion To Quash is **Sustained** as to Topics: 14, 16, 24, 34, 37 & 38.

Motion To Quash is **Sustained** in part & **Overruled in part** as to Topics: 2, 3 & 4 specific to Teva Group only and, these topic depositions are premature until all Teva Group production and depositions have been completed.

Irrelevant or Overbroad

Motion To Quash is **Sustained** as to Topics: 8, 19, 21, 24(Subject to prior Orders to produce non-privileged communications, if any, specific to Teva Defendants), 25 & 27.

Defendants' Emergency Motion To Compel and for Extension of Time for Defendants' Expert Disclosures

Defendants argue it is not possible to produce Defendant expert disclosures by January 21st alleging the State has not produced all materials reviewed by its experts; 2. State's expert disclosures are deficient; 3. State still has not produced responses to initial fact discovery; and, 4. The claims data production that allows for de-identified patient information to be tracked across the state system has not been produced despite previous orders. Defendants argue State has disclosed 23 experts to support the damage claims and penalties and among them are expenses for payments on Medicaid prescriptions authorized by State agencies, expenses to treat opioid dependent infants whose mothers have used illicit opioids that were not Defendant medications and, State seeks to recover for future addiction treatment. Defendants argue State represented expert data would accompany expert disclosures to include: MMIS, TEDS, OOMAS and State reporting data for Class II drugs, and only part as been produced. Further, Defendants argue they must have the Health Choice data, fatal overdose information and "lock in data", again, part of which has been produced but not all. The scheduling order has been extended once by seven weeks to allow State to produce the statistical sampling opinions and the basis for them but, Defendants argue this has not been done. State indicates to Defendants that it will be necessary to delay depositions for several of its experts until the end of or even beyond the discovery deadline in mid-March. Argument and the record shows State experts have been preparing for expert disclosures since as early as late September to early October 2018. State has argued and made assurances to the undersigned and to Judge Balkman State would use the "same numbers across all databases so Defendants can track how those patients moved through the State's data", and assured Defendants they would produce in the "cross-walked format" to allow for tracking. Defendant Purdue further argues this is also a motion to compel as to fact discovery as described in footnotes 15 and 16 of the motion, necessary for Defendants' expert analysis.

State in response, argues there is no emergency and State has either produced or is in the process of producing all data upon which State experts base their opinions and, any argument which indicates State is intentionally withholding relied upon information is "patently false". Regarding "cross-walked" Medicaid claims data, State argues Defendants are conflating this with expert disclosure obligations which State has complied with pursuant to 12 O.S. § 3226(B) or is complying with, agreeing with Defendants that all production has not been completed yet, counsel have been closely communicating and while an argument can be made that the January 21st Defendant expert disclosure deadline should be complied with, State first offered a two-

week and then a 30 day extension. State lists on pages 11 and 12 of its Response, the databases produced or being produced to the exclusion of the PDMP database.

12 O.S. § 3226(B)(4) (Discovery Scope and Limits) (Trial Preparation Experts) provides:

a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:
   (1) a party may, through interrogatories, require any other party to identify each person who met other party expects to call as an expert witness at trial and to give the address at which that expert witness may be located,
   (2) after disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsection A and C of Section 3230 of this title, and
   (3) in addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert witnesses to state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.
   b. The protection provided by paragraph 3 of this subsection extends to communications between the party's attorney and any expert witness retained or specially employed to provide expert testimony in the case or whose duties as the party's employee regularly involved giving expert testimony, **except** to the extent that communications:
   (1) related to compensation for the expert's study or testimony;
   (2) **identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed,** or;
   (3) identify assumptions that the party's attorney provided and that the expert relied upon in forming the opinions to be expressed. (Emphasis Added)

At hearing, the undersigned was provided a three-ring binder entitled "The State's Expert Witness Disclosures" and having heard argument, I am satisfied an emergency does not exist in that good faith counsel communications have been taking place. It is also clear, Defendants filed

the motion as an emergency motion in that production of Defendants' expert disclosures could not be accomplished under the circumstances, by January 21, 2019.

Under the statute, State is required to produce identifying facts and data provided to the experts by counsel and that was considered by an expert in forming the basis of their opinions. This is ongoing and must be produced in a trackable form data relied upon from State databases argued by Defendants as cited above, with the exception of the PDMP database.

Defendants' further argue as to the motion to compel that State has not complied fully with fact discovery specifically described in footnotes on pages 15 and 16 of its motion and brief arguing therefore, Defendant experts cannot prepare their disclosures. As argued by State, there is a difference between Federal Court and State Court expert witness discovery statutes. Defendants' motion argues lack of production of various previously ordered RFPs that are not compelled under § 3226(B). Review of these footnote references shows that each has been considered and ruled upon previously, some RFPs being ordered complied with, some production denied and some ordered complied with in part. Therefore, the motion to compel is **Overruled** in the context of expert witness preparation but orders to compel previously entered remain unchanged and State must comply accordingly.

The record is sufficient to **Sustain** Defendants' request for the undersigned to recommend to Judge Balkman an Order Extending Scheduling Order Deadlines to Order State to complete the required discovery and production on or before February 5, 2019, extend the Defendant expert disclosure deadline to March 1, 2019 and completion of expert witness depositions by April 1, 2019.

Defendants' Emergency Motion to Compel Prescription Drug Monitoring Program Data

This motion deals with the Prescription Drug Monitoring Program Data (PDMP). Defendants argue the undersigned or a Court can order the data produced protected under a protective order in a de-identified and privileged way. State argues this information is strictly confidential and has been ordered protected by the undersigned before. State further argues outside experts have not had access to this information upon which to form an opinion where some agency experts have being legally authorized by virtue of their agency employment.

This issue requires interpretation of Title 63 O.S. § 2-309D(A)-(G). This information is information collected at the "central repository" pursuant to the Anti-Drug Diversion Act and is confidential and not open to the public. The statute is very specific as to access to include criminal penalties if the statute is violated. There is nothing in the statute to indicate other than a clear intent to strictly preserve broad protection of central repository information and not compromise consumer confidentiality. The statute does allow for disclosure at the discretion of the Director in very specific ways and in only one provision, the sharing of statistical information to the general public limited to types and quantities of controlled substances dispensed and the county were dispensed. § 2-309D(C). I am not persuaded by Defendant argument that any and all central repository information can be ordered produced in de-identified form.

Therefore, in the context of expert witness testimony, Defendant experts are entitled to receive only statistical information as described in § 2-309(C) that may have been relied upon by any State expert that formed the basis of an opinion, again, not to include any other central repository investigatory or personal identifying information.

Therefore, Defendants' Motion to Compel Prescription Drug Monitoring Program Data is **Sustained** in part and **Overruled** in part.

It is so **Ordered** this 20th day of January, 2019.

William C. Hetherington, Jr.

Special Discovery Master

EXHIBIT 8

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 Honorable Thad Balkman William C. Hetherington Special Discovery Master

AMENDED NOTICE TO TAKE SECTION 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE(S) OF THE STATE

To: State of Oklahoma

Via Electronic Mail

Bradley Beckworth
Jeffrey Angelovich
Lloyd Nolan Duck, III
Brooke A. Churchman
Andrew G. Pate
Lisa Baldwin
Nathan B. Hall
NIX PATTERSON, LLP
512 N. Broadway Ave., Ste. 200
Oklahoma City, OK 73102

Robert Winn Cutler
Ross E Leonoudakis
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy, Ste. B350
Austin, TX 78746

Michael Burrage
Reggie Whitten
J. Revell Parrish
WHITTEN BURRAGE
512 N. Broadway Ave., Ste. 300
Oklahoma City, OK 73102

Mike Hunter
Abby Dillsaver
Ethan Shaner
ATTORNEY GENERAL'S OFFICE
313 N.E. 21st Street
Oklahoma City, OK 73102

Glenn Coffee
Glenn Coffee & Associates, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102

Please take notice that, pursuant to 12 O.S. § 3230(C), Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. (collectively, "Teva Defendants") will take the deposition upon oral examination of one or more corporate representative(s) of Plaintiff the State of Oklahoma (the "State") on the matters described in **Exhibit A** on **May 21, 2019, starting at 9:00 AM**, at the offices of Whitten Burrage, 512 North Broadway Avenue, Suite 300, Oklahoma City, Oklahoma 73102.

This deposition is to be used as evidence in the trial of the above action, and the deposition will be taken before an officer authorized by law to administer oaths. It will be recorded by stenographic means and will be videotaped. It will continue from day to day until completed.

Pursuant to 12 O.S. § 3230(C)(5), the State is hereby notified of its obligation to designate one or more officers, directors, managing agents, or other persons who consent to testify on the State's behalf about all matters described in **Exhibit A**. Please take further notice that each such officer, director, managing agent, or other person produced by the State to testify under 12 O.S. § 3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the State, and spoken to all potential witnesses known or reasonably available to the State, in order to provide informed and binding answers at the deposition(s).

DATED: May 17, 2019.

Robert G. McCampbell, OBA No. 10390
Nicholas ("Nick") V. Merkley, OBA No. 20284
Leasa M. Stewart, OBA No. 18515
Jeffrey A. Curran, OBA No. 12255
Kyle D. Evans, OBA No. 22135
Ashley E. Quinn, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
T: +1.405.235.3314
E-mail: RMcCampbell@Gablelaw.com
E-mail: NMerkley@Gablelaw.com
E-mail: LStewart@gablelaw.com
E-mail: JCurran@Gablelaw.com
E-mail: KEvans@gablelaw.com
E-mail: AQuinn@Gablelaw.com

OF COUNSEL:

Steven A. Reed
Harvey Bartle IV
Mark A. Fiore
Rebecca Hillyer
Evan K. Jacobs
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
T: +1.215.963.5000
E-mail: steven.reed@morganlewis.com
E-mail: harvey.bartle@morganlewis.com
E-mail: mark.fiore@morganlewis.com
E-mail: rebecca.hillyer@morganlewis.com
E-mail : evan.jacobs@morganlewis.com

Nancy L. Patterson
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002-5006
T: +1.713.890.5195
E-mail: nancy.patterson@morganlewis.com

Brian M. Ercole
Melissa M. Coates
Martha A. Leibell
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
T: +1.305.415.3000
E-mail: brian.ercole@morganlewis.com
E-mail: melissa.coates@morganlewis.com
E-mail: martha.leibell@morganlewis.com

Collie T. James, IV
MORGAN, LEWIS & BOCKIUS LLP
600 Anton, Blvd., Suite 1800

Costa Mesa, CA 92626
T: +1.714.830.0600
E-mail: collie.james@morganlewis.com

Tinos Diamantatos
MORGAN, LEWIS & BOCKIUS LLP
77 W. Wacker Dr.
Chicago, IL 60601
T: +1.312.324.1000
E-mail: tinos.diamantatos@morganlewis.com

Steven A. Luxton
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
T: +1.202.739.3000
E-mail: steven.luxton@morganlewis.com

Attorneys for Defendants Cephalon, Inc., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC,* and *Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 17th day of May, 2019, to the following:

Attorneys for Plaintiff	Mike Hunter, Attorney General Abby Dillsaver, General Counsel Ethan Shaner, Dep. Gen. Counsel **ATTORNEY GENERAL'S OFFICE** 313 N.E. 21st Street Oklahoma City, OK 73105	Michael Burrage Reggie Whitten J. Revell Parrish **WHITTEN BURRAGE** 512 N. Broadway Ave., Ste. 300 Oklahoma City, OK 73102
	Bradley Beckworth Jeffrey Angelovich Lloyd Nolan Duck, III Andrew G. Pate Lisa Baldwin Brooke A. Churchman Nathan B. Hall **NIX, PATTERSON & ROACH** 512 N. Broadway Ave., Ste. 200 Oklahoma City, OK 73102	Robert Winn Cutler Ross E Leonoudakis **NIX PATTERSON & ROACH** 3600 N. Capital of Texas Hwy. Suite B350 Austin, TX 78746
	Glenn Coffee **GLENN COFFEE & ASSOCIATES, PLLC** 915 N. Robinson Ave. Oklahoma City, OK 73102	

Attorneys for Johnson & Johnson, Janssen Pharmaceutica, Inc., N/K/A Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc. N/K/A Janssen Pharmaceuticals, Inc.	John H. Sparks Benjamin H. Odom Michael W. Ridgeway David L. Kinney **ODOM SPARKS & JONES** 2500 McGee Drive, Suite 140 Norman, OK 73072	Charles C. Lifland Jennifer D. Cardelus Wallace M. Allan Sabrina H. Strong Houman Ehsan Esteban Rodriguez Justine M. Daniels **O'MELVENY & MEYERS** 400 S. Hope Street, 18th Floor Los Angeles, CA 90071
	Stephen D. Brody David Roberts Emilie K. Winckel **O'MELVENY & MEYERS** 1625 Eye Street NW Washington, DC 20006	Daniel J. Franklin Ross B Galin Desirae Krislie Cubero Tongco Vincent S. Weisband **O'MELVENY & MEYERS** 7 Times Square New York, NY 10036
	Amy R. Lucas **O'MELVENY & MEYERS** 1999 Ave. of the Stars, 8th Fl. Los Angeles, CA 90067	Jeffrey A. Barker Amy J. Laurendeau Michael Yoder **O'MELVENY & MEYERS** 610 Newport Center Drive Newport Beach, CA 92660
	Larry D. Ottaway Amy Sherry Fischer Andrew Bowman Steven J. Johnson Kaitlyn Dunn Jordyn L. Cartmell **FOLIART, HUFF, OTTAWAY & BOTTOM** 201 Robert S. Kerr Ave., 12th Fl. Oklahoma City, OK 73102	

Attorneys for Purdue Pharma, LP, Purdue Pharma, Inc. and The Purdue Frederick Company	Sheila L. Birnbaum Mark S. Cheffo Hayden Adam Coleman Paul LaFata Jonathan S. Tam Lindsay N. Zanello Bert L. Wolff Mara C. Cusker Gonzalez **DECHERT, LLP** Three Bryant Park 1095 Avenue of the Americas New York, NY 10036	Erik W. Snapp **DECHERT, LLP** 35 W. Wacker Drive, Ste. 3400 Chicago, IL 60601 Meghan R. Kelly Benjamin F. McAnaney Hope S. Freiwald Will W. Sachse **DECHERT, LLP** 2929 Arch Street Philadelphia, PA 19104
	William W. Oxley **DECHERT LLP** U.S. Bank Tower 633 West 5th Street, Suite 4900 Los Angeles, CA 90071	Jonathan S. Tam Jae Hong Lee **DECHERT, LLP** One Bush Street, 16th Floor San Francisco, CA 94104
	Britta E. Stanton John D. Volney John T. Cox, III Eric W. Pinker Jared D. Eisenberg Jervonne D. Newsome Ruben A. Garcia Russell Guy Herman Samuel Butler Hardy, IV Alan Dabdoub David S. Coale **LYNN PINKER COX & HURST** 2100 Ross Avenue, Suite 2700 Dallas, TX 75201	Robert S. Hoff **WIGGIN & DANA, LLP** 265 Church Street New Haven, CT 06510 Sanford C. Coats Joshua Burns **CROWE & DUNLEVY** 324 N. Robinson Ave., Ste. 100 Oklahoma City, OK 73102

Nicholas ("Nick") V. Merkley

EXHIBIT 9

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**
	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 10th day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on Defendants' Motion To Compel Discovery Regarding Claims Data and State's Response thereto on October 3, 2018.

The undersigned finds as follows:

State argues it proceeds under the Okla. Medicaid False Claims Act (FCA) and will utilize statistical modeling to prove causal connection between Defendant's promotion and marketing conduct and damage to State. As argued, State's proof approach does not require proof of individualized doctor and patient interaction as a global population of individualized

proof of each physician's reliance on false and/or misleading promotion and marketing resulting in individual excessive or unnecessary prescriptions. State argues that under this statistical modeling manner of proof, it does not have to establish an individualized and complex chain of causation flowing through thousands of marketing "providers" to thousands of physician "prescribers" ultimately issuing prescriptions to individual patients, many of whom became State Medicaid claims recipients. State chooses to limit this inquiry arguing a proof method that seeks to provide the quantity and quality of proof necessary for the State to carry its burden of proof. While the question of legal sufficiency of State's proof method shall be left for another day, 12 O.S. § 3226(B)(1)(a) requires the undersigned to structure a discovery process based upon reality and in the context of this unique case "... reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action,...". I also have an obligation to weigh privacy rights against the Defendant's desire to individually personalize their discovery. In the context of this case, proportionality would prohibit individualized discovery as it would not be feasible to allow discovery into approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers contained in the State data bases.

The State of Oklahoma is the plaintiff, not individual patients. As such, it is not an individualized proof process which State argues to be unnecessary and in fact would likely result in an unreasonably lengthy and highly burdensome discovery process as Defendants have stated intentions to depose all patients with claims.

State argues it has produced approximately 9,000,000 pages of prescriber, prescription and patient information with personal information redacted. State in its response to Purdue's First Set of Interrogatories – No. 3(May 8, 2018 Oklahoma Medicaid Claims Data for all opioid prescriptions for 1996-2017), describes these data base information sources and data parameters for what constitutes "unnecessary or excessive" prescriptions to be supplemented subject to ongoing discovery requiring State to produce additional documents, information, reports studies and research gathered as a part of State's ongoing investigation. The record also indicates Defendants do have the doctor/prescriber names but do not have patient names. The data bases do provide individual identifying numbers to allow for tracking of State Medicaid claims through the system while protecting the patient's personal information.

I am satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery through a combination of access to data information already in their possession and by way of access to numerous State databases such as the Oklahoma Medicaid Management Information System (MMIS) and Enhanced Code System, Online Query System (ODMHSAS or OOmQues) and the Oklahoma Fatal Unintentional Poisoning Surveillance System which reviews Medical Examiner's Reports. To the extent Defendants do not have access to these data bases, State has been and again is **Ordered** to produce the data base information according to our rolling production process.

It appears most likely true that through this database information, Defendants' have a fair and proportional way to defend this case and can bring in their own experts, doctors/providers and patients as they choose to defend and test the State's theory. Also, I am not satisfied patient

private information protection is fully waived in this case under the terms of the HIPPA Protective Order.

Defendants argue patient and prescriber identities and personal information are required in order to compare to marketing and promotional activities, to research utilization of services such as treatment facilities, overdose records, law enforcement contact emergency service contacts and State Medical Examiner records. Pursuant to the above findings and scheduling order deadlines, Defendants now have and will receive more specific patient and prescriber information in this manner and as a part of the proposed expert statistical modeling sample, and will be entitled to appropriate discovery.

Regarding Cephalon, State argues evidence of a history of joint promotion efforts and agreements to promote and market drugs generally and specifically even though it appears this Defendant may have a total of 245 prescriptions for either Actiq or Fentora issued in Oklahoma. Regardless, Cephalon is entitled, and it is not unreasonable in scope, to full production of all information relevant to details pled and as referenced in Ex. 3 to State's Petition as to these 245 prescriptions. Again, as found above, Cephalon has in its possession or has the same access to data base information that protects patient private personal information. That personal information protection remains protected here, but State **shall** produce any and all other information that has not yet been produced and consistent with this Order as to these 245 claims (prescriptions).

At this time, I do not agree with Defendants' argument that to deny them full disclosure of all claims data information as requested precludes them from meaningful discovery. An aggregation approach to this case I find to be reasonable and can fairly fit the needs of all parties. Personal individualized discovery is not the only way Defendants can fairly defend this case. A broad view of the factors of this unique case must be taken into consideration and equally weighed in determining the scope and propriety of discovery. Defendants argument that this claims data is "relevant" and discoverable I find to be insufficient to warrant discovery of personal patient and doctor/prescriber information in the scope sought to be compelled by Defendants.

Therefore, Defendant's Motion To Compel Discovery Regarding Claims Data as requested is **Denied** consistent with findings made in this Order.

It is so **Ordered** this 10th day of October, 2018.

William C. Hetherington, Jr.
Special Discovery Master