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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

PART B

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 3

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STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY
FILED
NOV 13 2018
In the office of the
Court Clerk MARILYN WILLIAMS

PART A

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

DEFENDANT WATSON LABORATORIES, INC.'S OBJECTIONS TO THE SPECIAL DISCOVERY MASTER'S ORDER ON WATSON'S MOTION TO COMPEL DISCOVERY REGARDING CRIMINAL AND ADMINISTRATIVE PROCEEDINGS

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Defendant Watson Laboratories, Inc. ("Watson") objects to the Special Discovery Master's October 22, 2018, Order denying Watson's Motion to Compel Discovery Regarding Criminal and Administrative Proceedings (the "Motion"). The Motion sought to compel the State of Oklahoma to produce documents and information requested in Watson's May 10, 2018 Requests for Production (the "RFPs"). The RFPs sought criminal and administrative investigation, and other documents in the State's possession related to the opioid prescribing practices of eight specifically identified Oklahoma healthcare providers, other Oklahoma healthcare providers, and a specifically identified Oklahoma pain management clinic. The documents and information sought include Prescription Monitoring Reports, investigation initiating documents, investigation reports, witness statements, documentary evidence, audio and video recordings, grand jury transcripts, and material related to court proceedings. The documents and information are critical to defend against the State's claims, including that Watson (and other pharmaceutical manufacturers) are somehow responsible for causing medically inappropriate opioid prescriptions to be written in Oklahoma, as opposed to the independent decision-making of healthcare providers and the criminal conduct of others. The Special Discovery Master erred by denying the Motion and the State should be ordered to produce, within 30 days, the requested documents, for three reasons.

First, Watson's constitutional right to due process requires that it be able to obtain the requested discovery in order to defend itself.[1] The State may not take legal action against Watson and seek to impose massive retroactive liability – including punitive damages and "criminal justice costs" – while simultaneously refusing to allow Watson access to information

[1] "No person shall be deprived of life, liberty or property, without due process of law." Okl. Const., Article II, § 7. "Nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

that is critical to its defenses. Watson is entitled to present every available defense to the State's sweeping allegations that it and the other defendants are each responsible for *every* opioid prescription issued in Oklahoma since 1996. Those defenses include learned intermediary, lack of proximate cause, contributory or comparative negligence, and statute of limitations, among others. The October 22, 2018, Order denies Watson the ability to obtain documents and information that are in the State's possession and unavailable from other sources, and that are indispensable to Watson's presentation of those defenses. The requested documents will establish that others, including healthcare providers who engaged in independent criminal conduct, are responsible for the misuse of opioids and costs occasioned by the misuse and that the State has long been aware of those facts. For example, Watson estimates, based on public news reports, that the eight doctors identified in the RFPs, all of whom have been either criminally prosecuted (including for murder or for exchanging prescriptions for cocaine) or administratively disciplined for opioid prescribing (and at least one of whom apparently is ***still*** allowed to practice medicine in Oklahoma), are responsible for ***over 35 million*** opioid pills issued in the Oklahoma. And that is just ***eight*** doctors who have been identified in the news. To put that in context, the State alleges that it reimbursed only ***245*** total prescriptions over about ten years (for about 140 doses ***per year***) for Defendant Cephalon's branded pharmaceuticals, Actiq and Fentora. Only the State knows, through its Prescription Monitoring Program, exactly how many pills those rogue doctors actually prescribed. The State is likely sitting on troves of similar information (sought by the RFPs), including investigation reports, witness statements, and audio and video recordings that establish criminal and improper conduct, that will further bring the role of rogue healthcare providers in the opioid epidemic into clear focus. Due process requires that Watson be able to review and use the requested documents in the State's possession about the

opioid prescribing conduct of those healthcare providers. If due process means anything, it means that the State may not seek to hold a private party liable for an entire public health crisis while withholding information that shows that the responsibility lies with others. *Cf. Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.").

Second, and relatedly, the State waived any purported privilege or protection for the documents and information requested by Watson because it put those criminal and improper prescriptions (and the details surrounding them) at issue in this case by asserting that Watson is liable for them.[2] The Discovery Master erred by finding otherwise. Even if this Court were to consider the so-called "law enforcement privilege," the State waived it by not invoking it and by putting those prescriptions as issue through its claims here. In addition, the Court already has entered two protective orders in this case, which allow for the production of the very documents that the State now seeks to withhold on the basis of privilege. Indeed, there is no basis to prevent disclosure of information regarding prescriptions written by rogue healthcare providers that the State seeks to attribute to Watson and other Defendants when the Court's existing protective orders ensure that any such information will remain private and cannot be used outside of this litigation.

Third, the Discovery Master incorrectly agreed with the State that the confidentiality provisions contained in HIPAA, 42 CFR Part 2, the Anti-Drug Diversion Act, the Multi-County Grand Jury Act, and the Oklahoma Medicaid Program Integrity Act preclude the discovery

[2] To be clear, Watson is not seeking attorney-client privileged information or attorney work product.

requested by Watson. As a matter of law, they do not, particularly given the protective orders that have been entered already.

Lastly, in the alternative, if the Court agrees with the State and finds that the information requested by Watson need not be produced because of various Oklahoma statutes and purported privileges, the appropriate remedy is to dismiss the State's claims. Watson cannot mount a defense to the State's claims and alleged damages when it cannot get access to the very documents that will help it disprove the State's theory of causation.

* * *

In sum, Watson's ability to fully present its defenses and to refute the State's theory of causation are constitutional guarantees, and the importance of the documents sought by Watson cannot be overstated. Shielding the State from having to produce the requested documents based on a purported privilege or statutory basis, given the protective orders entered in this case, would violate Watson's due process rights to assert its defenses and would be fundamentally unjust. Indeed, the Supreme Court held exactly that in an analogous situation involving the state secrets privilege: "If . . . it had been the Government seeking return of funds that the estate claimed had been received in payment for espionage activities, ***it would have been the height of injustice to deny the defense because of the Government's invocation of state-secret protection, but to maintain jurisdiction over the Government's claim and award it judgment.***" *Gen. Dynamics Corp. v. United States*, 563 U.S. 478, 487 (2011) (Scalia, J.) (emphasis added). So too here. The Special Discovery Master therefore erred by denying Watson's motion to compel the State to produce documents in response to the RFPs. The State should be ordered to produce the requested documents within 30 days.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Watson's Requests For Documents Relate To Criminal And Disciplined Doctors Responsible For Illegally Prescribing Opioids In Oklahoma.

On February 18, 2018, the State served its responses and objections to Defendant Teva Pharmaceuticals USA, Inc.'s First Set of Interrogatories to Plaintiff. *See* Ex. A. In its response to Interrogatory No. 1, which asked the State to "Identify all [healthcare providers] whom You identified or investigated for potential suspicious Opioid prescribing or diversionary behavior relating to Opioids and the basis for having done so", the State responded by alleging that Watson's (and other Defendants') conduct made it ***impossible*** for ***any healthcare provider in the State of Oklahoma*** to discern whether ***any opioid prescription*** was medically necessary:

> Based on the unprecedented scope of the misinformation campaign at issue in this litigation and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, ***neither medical providers nor patients had the benefit of all material information regarding Defendants' drugs. As such, it was not possible for providers or patients to discern whether any prescription was medically necessary or to informatively consider the "medical necessity" criteria set forth in Oklahoma regulations and accurately certify the accuracy of such determinations***. Defendants flooded the medical community with false and misleading information – and omitted material information – as part of a scheme and conspiracy designed to make the public believe that opioids were more effective and less addictive than they actually were. Without the benefit of all material information, and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, ***it was not possible for providers or patients to discern whether any prescription was medically necessary***.

Ex. A at 13 (emphasis added).

Further, in its response to Interrogatory No. 2, which asked the State to "Identify all Patients whom You acknowledge have been appropriately prescribed an Opioid for the treatment

of chronic pain, that State responded by claiming that "the State's position is that it is more likely than not that (1) opioid prescriptions written in the State of Oklahoma since 1996, ***other than those written for end-of-life palliative care or for a three-day supply to treat acute pain***, were and are inappropriate." *See* Ex. A at 25. (emphasis added). In other words, the State's position is that (a) Watson's (and other Defendants') conduct made it impossible for physicians to know whether ***any*** prescription for opioids written in the State of Oklahoma was medically necessary, and (b) Watson (and the other Defendants) are liable for every opioid prescription written in the State of Oklahoma since 1996 that was not (i) a three-day supply, or (ii) for end-of-life palliative care – including those prescriptions for which it has criminally and administratively charged doctors.

Accordingly, on May 10, 2018, Watson served the RFPs. *See* Ex. B. They comprised twelve requests for production which sought documents and information specifically tailored to identify the documents, information and knowledge in the State's possession regarding criminal, civil, and administrative proceedings involving opioids brought by the State against healthcare providers, and one specific healthcare clinic. The RFPs are discussed, in turn, below.

1. Requests Nos. 1 through 8 Seek Documents Relate To Criminal And Disciplined Doctors Who Collectively Prescribed An Estimated 35 Million Illicit Opioids In Oklahoma.

Requests Nos. 1 through 8 seek "All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by" the State against eight specified healthcare providers. Those providers, as described below, collectively prescribed an

estimated ***35,000,000*** pills to Oklahomans from 2009 to 2018. They either have been charged with various criminal offenses, including murdering patients through overprescribing, or have been disciplined by the State.

Harvey Clarke Jenkins Jr. (Request No. 1). In a deposition in this case, the State characterized Dr. Jenkins as the ***single largest prescriber*** of opioids in Oklahoma in 2014.[3] In 2016, he was charged by the State with 14 counts of conspiracy to illegally possess/distribute controlled dangerous substances, six counts of making or causing to be made false claims under the Oklahoma Medicaid program, five counts of conspiracy to fraudulently obtain a personal identity of another, one misdemeanor count of conspiracy to practice medicine without a license and four counts of illegally practicing medicine without a license.[4] According to the State, Dr. Jenkins' office saw between eighty-five and ninety patients per day.[5] Assuming, conservatively, that each patient received a month's prescription of 90 pills, Jenkins prescribed at least 8,100 pills per day.[6] Assuming twenty working days per month, Jenkins prescribed 162,000 pills per month – or ***1,944,000*** per year. The public accusations against Jenkins span only from 2010 to

[3] *Deposition of Brian Vaughan*, 190: 11-16, attached hereto as Ex. C.

[4] *See*: https://okcfox.com/news/local/warrant-issued-for-metro-doctor-accused-of-running-pill-mill; *Accused pill mill doctor and former employees, arrested, charged with multiple felonies,* https://kfor.com/2016/03/24/accused-pill-mill-doctor-former-employees-charged-with-multiple-felonies/. In the interest of efficiency, all news reports cited herein are attached as Exhibit D, for the Court's convenience.

[5] *Accused pill mill doctor and former employees, arrested, charged with multiple felonies,* https://kfor.com/2016/03/24/accused-pill-mill-doctor-former-employees-charged-with-multiple-felonies/

[6] On average, there are approximately 90 pills in a monthly prescription for opioid based drugs. *See Center for Opioid Research and Education, Surgical Opioid Guidelines.* The Center for Opioid Research and Education suggests a maximum prescription of 30, 5 mg tablets, of Oxycodone after major surgery. *Id.* These are taken every eight hours, which equals three pills every 24 hours for ten days. For 30 days, an average prescription would therefore contain 90 pills.

2015, although he was licensed in Oklahoma for many years before that.[7] But even for that five-year period, the pace at which Dr. Jenkins was prescribing opioids would have resulted in at least ***9,720,000*** illegal opioid pills to Oklahomans.

Regan Ganoung Nichols (Request No. 2). In June 2017, Dr. Nichols was charged by the State with five counts of second-degree murder for overprescribing controlled dangerous substances, including opioids.[8] News reports state that between 2010 and 2014, Dr. Nichols improperly prescribed approximately ***3,000,000*** pills of controlled dangerous drugs.[9] Indeed, Attorney General Hunter described Dr. Nichols' conduct as "horrifying" and in "blatant disregard" for her patients' lives:

> Nichols prescribed patients, who entrusted their well-being to her, a horrifyingly excessive amount of opioid medications. Nichols' blatant disregard for the lives of her patients is unconscionable.[10]

In that same article, Attorney General Hunter was quoted as acknowledging that most doctors, unlike Nichols and the doctors about whom Watson seeks documents from the State, prescribe opioids responsibly: "The dangers associated with opioid drugs have been well

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[7] *See Charges Filed Against OKC Doctor, Employees Accused of Running 'Pill Mill'*, http://www.news9.com/story/31561104/charges-filed-against-okc-doctor-employees-accused-of-running-pill-mill

[8] *See* https://kfor.com/2018/06/27/oklahoma-doctor-charged-with-5-counts-of-second-degree-murder-bound-over-for-trial/.

[9] *See A Doctor Prescribed So Many Painkillers She's Been Charged with Murdering her Patients, Authorities Say,* https://www.washingtonpost.com/news/to-your-health/wp/2017/06/24/a-doctor-prescribed-so-many-painkillers-shes-been-charged-with-murdering-her-patients-authorities-say/?noredirect=on&utm_term=.841fc7e72f78

[10] *See Attorney General Hunter Charges Doctor with Five Counts of Second Degree Murder,* https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=33401

documented and ***most doctors follow strict guidelines when prescribing opioids to their patients.***"[11]

William Martin Valuck (Request No. 3). Dr. Valuck pleaded guilty in 2014 to eight counts of second-degree murder related to the over-prescription of opioid medications.[12] Dr. Valuck regularly prescribed individual patients between 450 and 600 pills.[13] According to investigators, "van loads" of patients would come to Valuck's pain management clinic.[14] Before moving to Oklahoma, Dr. Valuck served five years in federal prison for money laundering, wire fraud and devising a scheme to defraud investors of hundreds of thousands of dollars.[15] But the State allowed him to prescribe opioids to Oklahomans anyway. Dr. Valuck also worked at Vista Medical Center, which, as described below, is a notorious pill mill.[16] According to news reports, Vista was owned by Pat Reynolds, a non-physician, who compensated the physicians working at Vista based solely on production.[17] Doctors working at Vista are alleged to have seen up to 37 patients per day.[18]

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[11] *Id.* (emphasis added). This statement also contradicts the State's assertion in its interrogatory responses that "***it was not possible for providers or patients to discern whether any prescription was medically necessary.***" Ex. A at 13.

[12] *See* https://newsok.com/article/5192381/former-oklahoma-city-doctor-pleads-guilty-to-eight-counts-of-murder; *See Dismissal of pharmacies from opioids abuse lawsuit upheld,* https://newsok.com/article/5587302/dismissal-of-pharmacies-from-opioids-abuse-lawsuit-upheld

[13] *See Ex-doctor pleads guilty in overdose deaths,* https://www.usatoday.com/story/news/nation/2014/08/13/ex-doctor-guilty-deaths/14022735/

[14] *Id.*

[15] *See*: https://newsok.com/article/3760383/oklahoma-physician-assistant-accused-of-improperly-prescribing-painkillers-medications

[16] *See*: https://newsok.com/special/article/5373925/addicted-oklahoma-profiting-from-pain

[17] *Id.*

[18] *See*: https://newsok.com/article/3760383/oklahoma-physician-assistant-accused-of-improperly-prescribing-painkillers-medications

Roger Kinney (Request No. 4). Dr. Kinney was sent to jail in 1984 for writing prescriptions in exchange for cocaine.[19] Notwithstanding that, in 1989 the State of Oklahoma ***reinstated*** his medical license and permitted him to write opioid prescriptions.[20] Dr. Kinney was thereafter disciplined by the Oklahoma Medical Licensure Board in September 2017 after two patient deaths resulted from a combination of opioid and benzodiazepine prescriptions. Dr. Kinney was found by the State to have excessively prescribed controlled substances, including opioids, to his patients and had treated patients with multiple medications, without having records of what specific medications they were taking.[21] The State called Dr. Kinney's prescribing practices, "[a]t best slipshod, at worst reckless."[22]

Tamerlane Rozsa (Request No. 5). Dr. Rozsa's license was suspended by the State for allegedly overprescribing opioid medications.[23] Dr. Rozsa was so notorious for prescribing promethazine that she was known as the "Queen of Lean" (referencing a mixture of prescription strength cough syrup and soda).[24] During her licensure proceedings, the State argued that not only was Rozsa's medical office "filthy," but she prescribed high quantities of painkillers without much discretion about whether patients needed them. Jason Seay, an Assistant Attorney

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[19] *See Sapulpa doctor with history of excessive prescriptions drug trafficking allowed to keep his license,* https://sapulpatimes.com/sapulpa-doctor-with-history-of-excessive-prescriptions-drug-trafficking-allowed-to-keep-his-license/

[20] *Id.*

[21] *See: Sapulpa doctor with history of excessive prescriptions drug trafficking allowed to keep his license,* https://sapulpatimes.com/sapulpa-doctor-with-history-of-excessive-prescriptions-drug-trafficking-allowed-to-keep-his-license/

[22] *See:* https://newsok.com/article/5564304/sapulpa-doctor-disciplined-after-two-overdose-deaths.

[23] *See Tulsa physician was known as queen of lean for purple drank prescriptions board says,* https://newsok.com/article/5419244/tulsa-physician-was-known-as-queen-of-lean-for-purple-drank-prescriptions-board-sa

[24] *See:* https://newsok.com/article/5419244/tulsa-physician-was-known-as-queen-of-lean-for-purple-drank-prescriptions-board-says.

General, said Rozsa's case was not about "old paint and ugly carpet," but rather how much and how often Rozsa prescribed powerful painkillers.[25]

Joshua Livingston (Request No. 6). Dr. Livingston's license was suspended by the State after prescribing nearly 25,000 prescriptions for narcotic medications in a three-month period in 2012 – or approximately ***2,300,000*** doses per year. A total of four of his patients died of overdoses.[26] The State allowed him to dispense narcotics until he was placed on probation in 2013.[27] For the two-year period before his suspension, Livingston was on a pace to have prescribed at least ***4,600,000*** opioid pills to Oklahomans. Although the State found Livingston guilty of record-keeping violations, he was only placed on probation for five years.[28] As of 2014, he was working at the Restorative Pain to Wellness Center in Broken Arrow, Oklahoma, and apparently the State continues to allow him to practice medicine.[29]

Joseph Knight (Request No. 7). In 2013, Dr. Knight lost his license to practice medicine in Oklahoma after at least three of his patients died of suspected opioid overdoses.[30] Knight was reported to the State by a pharmacist for prescribing his patients ***270*** pills of oxycodone per month in 2009.[31] But it took the State about three years, until 2012, to bring its first complaint

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[25] *Id.*

[26] *See Addicted Oklahoma: Problem Prescribers Help Fuel Deadly Epidemic, Probation continues for prolific prescriber linked to deaths,* https://newsok.com/special/article/3949859/addicted-oklahoma-probation-continues-for-prolific-prescriber-linked-to-deaths.

[27] *Id.*

[28] *Id.*

[29] *See Addicted Oklahoma: Problem Prescribers Help Fuel Deadly Epidemic, Probation continues for prolific prescriber linked to deaths,* https://newsok.com/special/article/3949859/addicted-oklahoma-probation-continues-for-prolific-prescriber-linked-to-deaths.

[30] *See:* https://newsok.com/special/article/3949866/addicted-oklahoma-tulsa-physician-has-most-patient-overdose-deaths.

[31] *Id.*

against him.[32] Over a six-year period, Knight saw at least six-hundred patients for pain-related medical issues, and prescribed roughly ***1,944,000*** illicit pills to Oklahomans.[33]

Christopher Moses (Request No. 8). Moses was responsible for the deaths of eight patients from 2011 to 2018, and the DEA alleges that he wrote 25,400 prescriptions between 2016 and 2017,[34] or approximately ***2,286,0000*** pills per year. Over just a seven-year period, Moses prescribed approximately ***16,002,000*** pills to Oklahomans.[35]

The State seeks to hold Watson liable for ***all*** of the prescriptions written by these doctors and many others. That is why Watson appropriately requested criminal and investigative files from the State related to them. And surely there are other criminal and rogue healthcare providers about whom the State has documents and information, but who have not been the subject of press reports.[36] That is why the RFPs included Request No. 9, discussed below.

2. Request No. 9 Seeks Documents From The State Regarding Other Healthcare Providers Who Were Charged Or Disciplined By The State Related To Opioid Prescribing.

Request No. 9 seeks the same documents as Requests Nos. 1 through 8, but for any other healthcare provider "not previously requested related to the prescription of Opioids." That would include, for example, documents and information about several nursing home employees

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[32] *See Addicted Oklahoma: Problem Prescribers Help Fuel Deadly Epidemic, Tulsa physician has most patient overdose deaths*, https://newsok.com/special/article/3949866/addicted-oklahoma-tulsa-physician-has-most-patient-overdose-deaths.

[33] *Id.*

[34] *See Eight overdose deaths spur DEA investigation of south Tulsa doctor,* https://www.tulsaworld.com/news/crimewatch/eight-overdose-deaths-spur-dea-investigation-of-south-tulsa-doctor/article_64a1bfab-3fba-5e8e-91d2-f7052d68beaf.html

[35] *Id.*

[36] *See Addicted Oklahoma: Problem Prescribers Help Fuel Deadly Epidemic,* https://newsok.com/special/article/3947507/addicted-oklahoma-problem-prescribers-help-fuel-deadly-epidemic.

who were charged by the Attorney General in 2012 with fraudulently obtaining and diverting over 8,400 units of hydrocodone by calling in fake prescriptions for their own financial gain.[37] It also would include a physician's assistant who was arrested by the State in 2008 for trading pain killer prescriptions for sex and pornography.[38] And, it would certainly include documents in the State's possession about doctors like Melvin Lee Robison and Moheb Hallaba, who allegedly signed hundreds of prescription forms without reviewing patient files or seeing the patients.[39] They were charged in June 2018 (after Watson issued its RFPs) with 54 counts of distributing controlled substances, including Schedule II opioids such as Oxycodone, OxyContin, and fentanyl; conspiracy; and Medicare fraud after a joint investigation by the Attorney General and other Oklahoma law enforcement, and federal authorities.[40] Five patients allegedly died as a result of their conduct.[41]

Because the State seeks to hold Watson liable for those prescriptions, and any other issued by criminal or rogue healthcare providers, Request No. 9 is appropriate as well.

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[37] *Oklahoma Bureau of Narcotics and Dangerous Drugs Control*, July 5, 2012, State and Local Authorities Uncover and Halt Prescription Drug Scheme Inside Sulphur Nursing Home. (last retrieved from https://www.ok.gov/obndd/Newsroom/index.html, November 13, 2018).

[38] *Oklahoma Bureau of Narcotics and Dangerous Drugs Control*, December 12, 2008, Eastern Oklahoma Physician Assistant Arrested on Drug Charges. (last retrieved from https://www.ok.gov/obndd/Newsroom/index.html, November 13, 2018).

[39] https://www.justice.gov/usao-wdok/pr/three-doctors-pharmacist-and-business-owner-charged-opioid-indictments.

[40] *Id.* To be clear, the RFPs encompass any documents in the State's possession from other law enforcement authorities, including, but not limited to, the U.S. Attorney's Office, the Drug Enforcement Administration, the Internal Revenue Service, the Food & Drug Administration, and the Federal Bureau of Investigation.

[41] *Id.*

3. Request No. 10 Seeks Documents And Information About Complaints That Have Not Resulted In Formal Criminal or Administrative Proceedings.

In order to capture all of the potentially improper conduct by Oklahoma healthcare providers, including conduct that did not result, for whatever reason, in formal criminal or administrative charges, Request No. 10 seeks "All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding." Documents and information about those healthcare providers, such as pending investigation materials which are not public and not reported in the news, are solely in the possession of the State. There is no other way for Watson to obtain that information.

4. Requests Nos. 11 and 12 Seek Documents and Information Related To Visa Medical Center, A "Pill Mill".

Finally, Request Nos. 11 and 12 seek "All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center, 3700 S. Western Avenue, Oklahoma City, Oklahoma" and "All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center," respectively. Vista is one of many Oklahoma pain clinics whose owners hold no medical license.[42]

Public officials and experts in the field say allowing non-physician ownership of clinics makes them more difficult to regulate and helps explain why Oklahoma has among the highest prescription drug abuse and overdose death rates in the country.[43] According to Sandra LaVenue, the former Deputy General Counsel of the Oklahoma Bureau of Narcotics and

[42] *See*: https://newsok.com/special/article/5373925/addicted-oklahoma-profiting-from-pain

[43] *Id.*

Dangerous Drugs Control, "one of the most important things is who gets to own these clinics. The clinics that end up in trouble tend to have ownership that is separated from the primary physician. ... Essentially, what they're trying to do is separate the money from the prescribing."[44] At least five medical professionals who worked at Vista have been disciplined for overprescribing in Oklahoma or other states. ***Three of those five have been linked to the deaths of at least 20 patients from prescription drug overdoses.***[45]

B. The State Refuses To Produce Relevant Documents.

On September 7, 2018, the State responded to the RFPs and, despite conceding the relevance of this information, the State – which is the only party with access to such important information – objected to producing it. *See* Ex. E. The State based its objection on public policy, the Health Insurance Portability and Accountability Act ("HIPAA") and various state statutes, including the Oklahoma Anti-Drug Diversion Act, the Multi-County Grand Jury Act (Okla. Stat. tit. 22, § 355), and the Oklahoma Medicaid Program Integrity Act (Okla. Stat. tit. 56, § 1004(d)).[46]

The parties held a meet and confer on September 27, 2018. During the meet and confer, the State clarified its position with respect to the RFPs, indicating that it is only willing to produce documents that are subject to disclosure under the Oklahoma Open Public Records Act ("OPRA"), and nothing more. But the OPRA does not provide for the release of the documents

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[44] *Id.*

[45] *Id.*

[46] While the State has also objected generally on proportionality grounds, it fails to articulate how or why the requests are not proportional to the needs of the case. Nor can it: the State's general objection to proportionality is clearly unfounded in light of the magnitude of this case and the important public policy concerns at issue. These documents are critical to Watson's defenses.

sought by Watson related to the State's investigation of healthcare providers' wrongful opioid prescribing, including for example, investigating initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, and orders. Instead, OPRA only allows for the release of summaries of arrest and conviction information. Okla. Stat. Ann. tit. 51, § 24A.8. That information is only a sliver of what the State has in its possession, and would certainly not encompass documents sought by the RFPs. The State's offer is therefore insufficient to allow Watson to obtain evidence to fully present its defenses to the jury, including that rogue doctors are responsible for conduct and damages for which the State seeks to hold Watson and the other Defendants liable.

C. The Discovery Master Issues His Order That Prevents Watson From Fully Defending This Case.

On October 4, 2018, Watson filed its Motion to Compel Discovery regarding production of criminal and administrative files set forth in the RFPs. *See* Ex. F. The State responded, *see* Ex. G, and the Discovery Master heard oral argument on October 18, 2018, *see* Ex. H, Transcript of Oct. 18, 2018 Proceedings. The Discovery Master issued his Order denying Watson's motion on October 22, 2018. *See* Ex. I.

II. ARGUMENT

Watson is entitled under the Oklahoma Discovery Code to "obtain discovery regarding any matter, not privileged, ***which is relevant to any party's claim or defense***, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case." Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a) (emphasis added). As demonstrated below,

Watson's due process right to fully defend itself against the State's sweeping allegations requires that the State produce the documents and information requested in the RFPs, and no privilege precludes disclosure.

It is well-settled that the purpose of discovery is to "provide[] for the parties to obtain ***the fullest possible knowledge*** of the issues and facts before trial." *State ex rel. Protective Health Servs. v. Billings Fairchild Ctr., Inc.*, 158 P.3d 484, 489 (Okla. Ct. Civ. App. 2006) (internal citations and quotations omitted) (emphasis added). "A lawsuit is not a contest in concealment, and the discovery process was established so that '***either party may compel the other to disgorge whatever facts he has in his possession***.'" *Cowen v. Hughes*, 1973 OK 11, 509 P.2d 461, 463 (quoting *S. Ry. Co. v. Lanham*, 403 F.2d 119 (5th Cir. 1968), quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) (emphasis added)). "'Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.'" *Metzger v. Am. Fidelity Assur. Co.*, 245 F.R.D. 727, 728 (W.D. Okla. 2007) (quoting *Hickman*, 329 U.S. at 507). "The aim of these liberal discovery rules is to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 683 (1958).

Here, evidence of the State's criminal, civil, and administrative proceedings involving opioids against healthcare providers is relevant and, indeed, critical to the claims and defenses in this case. This discovery is important, *inter alia*, to: (1) demonstrate that allegedly unnecessary or excessive prescriptions were caused by intervening conduct by non-parties unrelated to the allegations against Watson and the other Defendants; (2) show that the State was well-aware of healthcare providers' criminal and improper prescribing practices yet ***took years*** to stop them (if it stopped them at all); (3) understand whether the State made statements, admissions, and

uncovered evidence in the course of its investigations that further shows that Watson and the other Defendants are not liable for the opioid prescriptions at issue; and (4) examine the basis and veracity of the State's claim for law enforcement-related and other damages.

The State should be ordered to produce this fundamental information which is critical to Watson's defenses.

A. Evidence of Criminal And Administrative Proceedings Is Relevant To The Claims and Defenses In This Case And Due Process Requires That They Be Produced.

Evidence of criminal, civil, and disciplinary proceedings brought by the State against healthcare providers regarding opioids speaks directly to both the State's claims and Watson's defenses. The State alleges, among other things, that Defendants "knowingly caused to be presented false or fraudulent claims," that they "knowingly made or used, or caused to be made or used, false statements material to a false or fraudulent claim," and that their "misrepresentations and omissions regarding opioids...created an opioid epidemic in Oklahoma that constitutes a public nuisance...that affects entire communities, neighborhoods, and considerable numbers of persons." Pet. ¶¶ 75, 83, 118. The State also seeks to recover from Watson and the other Defendants opioid-related "criminal justice costs." Pet., Prayer.

But the State does not allege – nor could it – that Watson, or any other Defendant, prescribed any opioid at issue or directly submitted claims to the State. To succeed on its claims, then, the State must prove that the alleged (unidentified) misrepresentations either (1) caused a prescriber to issue a medically inappropriate prescription that caused downstream harm to the State; or (2) caused a provider to submit each alleged false claim, or to make a false statement material to each alleged false claim, regarding opioid prescriptions for which the State reimbursed. *See Gianfillippo v. Northland Cas. Co.*, 1993 OK 125, 861 P.2d 308, 310-11

(1993); *see also Dani v. Miller*, 2016 OK 35, ¶ 25, 374 P.3d 779, 791 (2016) ("[A]llegations of fraud must be stated with sufficient particularity . . . . This standard requires specification of the time, place, and content of an alleged false representation.") (internal citation omitted).

Under any one of those theories, a break in the causal chain, such as criminal or improper prescribing conduct, or diversion by healthcare providers, patients, or others, would defeat the State's claims. For example, the Oklahoma Supreme Court has expressly recognized that the learned intermediary defense shields manufacturers of prescription drugs from liability if the manufacturer adequately warns the prescribing physician of the dangers of a drug. *Edwards v. Basel Pharm.*, 1997 OK 22, 933 P.2d 298, 299 (1997). That defense fully applies where, as here, a party seeks to impose liability on a pharmaceutical manufacturer based on alleged misrepresentations about a drug's safety or efficacy. *Ironworkers Local Union No. 68 v. AstraZeneca Pharmaceuticals LP*, 585 F. Supp. 2d 1339, 1341, 1344 (M.D. Fla. 2008) (dismissing RICO and state-law tort claims against the maker of an antipsychotic drug because the "independent medical judgment" of prescribing physicians was a "key independent factor" separating the alleged misconduct from the injury); *Yasmin & Yaz (Drospirenone) Mktg., Sales Practices & Prods. Liab. Litig. v. Bayer Healthcare Pharm. Inc.*, No. 3:09-md-02100-DRH-PMF, MDL No. 2100, No. 3:09-cv-20071-DRH-PMF, 2010 U.S. Dist. LEXIS 80758, at *7 (S.D. Ill. Aug. 5, 2010) (same).

Watson is therefore entitled to obtain evidence concerning the chain of causation between any allegedly wrongful conduct by any party or non-party, on the one hand, and any injury or damages suffered by the State, on the other, to demonstrate that its and the other Defendants' conduct did not cause the harm the State claims. Illegal acts like diversion, willful ignorance of

prescribing guidelines by doctors, and pill mills, break the causal chain that is crucial to the State's case.

Watson's RFPs seek this fundamental information. By preventing Watson from obtaining information that is crucial to its defenses against the State, the Discovery Master's Order violates § 3226(B)(1)(a) and deprives Watson of its constitutional right to due process. Before the State may punish Watson or obtain its property via litigation, Watson has a right to marshal and present the relevant evidence so the jury may consider and weigh Watson's legal defenses, including the learned intermediary defense and any challenge to the State's theory of causation. The right to due process of law entails the right "to fully and fairly litigate each issue," *duPont v. Southern Nat'l Bank of Houston, Tex.*, 771 F.2d 874, 880 (5th Cir. 1985), including every available defense, *Lindsey v. Normet*, 405 U.S. 56, 66 (1972). Due process requires that "[f]indings based on the evidence must embrace the basic facts which are needed to sustain the [judgment]." *Morgan v. United States*, 298 U.S. 468 (1936). "It is claims ***and*** defenses together that establish the justification, or lack of justification, for judicial relief; and when public policy precludes judicial intervention for the one it should preclude judicial intervention for the other as well." *Gen. Dynamics Corp. v. United States,* 563 U.S. 478, 487 (2011). This principle has long been recognized by courts throughout the United States. *E.g., Generally Yu Yun Yang v. Holder*, 368 F. App'x 214, 215 (2d Cir. 2010) (stating that due process analysis examines whether the procedures at issue denied a party "a full opportunity to present her claims, deprived her of fundamental fairness"); *Wander v. United Ben. Life Ins. Co.*, 905 F.2d 1541 (9th Cir. 1990) (stating that due process examines whether a party had "a full and fair opportunity to develop and present facts and legal arguments in support of its position") (citation omitted); *Crussel v. Kirk,* 1995 OK 41 (1995) (Due process of law includes several procedural

guarantees, among which is the opportunity to present evidence to the trial tribunal); *In the Matter of Shatz*, 560 P.2d 183, 185 (1977) ("It hardly seems necessary to state due process is the cornerstone of angloamerican law[.]").

Foreclosing Watson from obtaining discovery in its opponent's possession, when that discovery would allow appropriate consideration of Watson's learned intermediary defense and other challenges to the State's theory of causation, violates Watson's right to due process. *See Shakespeare Co. v. Silstar Corp. of America*, 906 F. Supp. 997, 1006 (D.S.C. 1995) (Finding that denying a party judicial consideration of defenses and counterclaims, without allowing a determination on them, would likely violate due process).

B. No Purported Privilege Shields The Requested Information Regarding The Illegal And Improper Conduct Of Healthcare Providers And Others That The State Has Put At Issue Through Its Broad Claims.

The Discovery Master appeared to invoke the common-law "law enforcement investigatory privilege" when he found that the material requested by Watson was "protected" from disclosure. Ex. I at 7. That finding was error for several reasons: (1) the State waived any privilege by putting the material "at issue"; (2) the State never invoked that privilege; and (3) even if the privilege were available to the State, because the material is relevant to the claims and defenses at issue, the only permissible remedies would be (a) production pursuant to a protective order or (b), as discussed in Section II.D. *infra*, if the Court agrees with the State that it need not produce this material because its privileged or otherwise protected from disclosure, dismissal.

1. The State Waived Any Privilege Through Its Allegations.

To begin, the Discovery Master erred in concluding that the material was "protected" because the State waived any purported privilege related to its law enforcement files by seeking

to hold Watson liable for opioid prescriptions issued by criminal and rogue healthcare providers. *Id.* "At issue" waiver requires:

> (1) the assertion of the privilege or protection was the result of some affirmative act, such as filing suit, by the asserting party;
>
> (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; *and*
>
> (3) application of the privilege would have denied the opposing party access to information vital to its defense.

Seneca Ins. Co. v. W. Claims, Inc., 774 F.3d 1272, 1275-76 (10th Cir. 2014) (applying Oklahoma law). All of those factors are clearly satisfied here. The State asserted the protections as a result of filing its Petition. Second, the State put the allegedly protected information at issue by making it relevant, *i.e.*, seeking to hold Watson, and the other Defendants, liable for the prescribing conduct of doctors it prosecuted, disciplined, or investigated. *See, e.g.*, Ex. A at 13; Pet. at 75, 83, 118. Third, application of the privileges or confidentialities claimed by the State denies Watson access to information vital to its defenses, as demonstrated above.

2. The State Never Invoked The Law Enforcement Investigatory Privilege.

The Discovery Master's reliance on the purported "law enforcement privilege" also was incorrect because the State never invoked it. To sustain a claim for that privilege, there must be a formal claim of privilege by the head of the department – *e.g.*, the Attorney General, the Director of the Oklahoma Bureau of Narcotics, and the heads of Oklahoma's medical licensing boards, to name a few – having control over the requested information and based on personal consideration that specifically identifies the information for which the privilege is claimed and explains why that is so. *In re Sealed Case*, 856 F.2d 268, 270 (D.C. Cir. 1988); *United States v.*

Winner, 641 F.2d 825, 827 (10th Cir. 1981). But the State has never done that.[47] The State waived any privilege for that reason as well.

3. At A Minimum, The Protective Orders Entered In This Case Appropriately Protect Any Privileged Information.

And even if the State had not waived any purported privilege by putting the documents at issue and failing to properly invoke it, disclosure of the law enforcement investigatory materials pursuant to a confidentiality order is the appropriate remedy where the materials are relevant to the claims and defenses and State seeks to invoke a governmental privilege. *Everitt v. Brezzel*, 750 F. Supp. 1063, 1064 (D. Colo. 1990). In *Everitt*, for instance, the plaintiff brought suit against police officers for civil rights violations. *Id.* at 1064. The plaintiff brought a motion to compel production of the officers' activity reports, document relating to prior discipline and complaints, as well as performance evaluations. In response, the government asserted the official information privilege. *Id.* at 1065. The court found that the privilege required a balancing of public interest in the confidentiality of governmental information against the need of the litigant to obtain data with which to prove her case. *Id.* at 1066-1067. After determining that the information was necessary to the plaintiff's claims, the court ordered that the documents be disclosed pursuant to a confidentiality order. *Id.* at 1070.

The same approach is warranted here. As discussed *infra*, there are already HIPAA and standard protective orders in place, which permit "Highly Confidential" or "Attorney's Eyes Only" designation, for information that the State seeks to withhold from the broader public.

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[47] Nor did the Discovery Master acknowledge that the privilege is qualified or consider the a non-exhaustive list of factors in balancing the public interest against the State's.[47] *In re Sealed Case*, 856 F.2d at 272.

Consistent with *Everitt*, this Court should order the information disclosed pursuant to the confidentiality order in place.

C. The State's Other Grounds For Refusing To Produce The Requested Documents Also Lack Merit.

The Discovery Master also erred when he found that the documents requested by Watson are immune from disclosure under HIPAA, Part 2, the Anti-Drug Diversion Act, the Multi-County Grand Jury Act, and the Oklahoma Medicaid Program Integrity Act.

1. The Protective Order In This Case Addresses The State's HIPAA Concerns.

HIPAA does not foreclose Watson's discovery. The Amended Protective Order, entered by this Court on September 27, 2018 (the "Protective Order"), applies to all documents produced in this case and prohibits any party or witness from disclosing protected health information subject to HIPAA and 42 CFR Part 2. The Protective Order ensures that patients' privacy rights are safeguarded, and the State's objections are therefore unfounded. "The [HIPAA] requirement that documents not be produced without a court order presumes that the court, in drafting any production order, will balance the patients' privacy and confidentiality interests with the documents' relevance and a party's need for the documents, before determining whether the documents should be produced and, if so, with what constraints." *Hussein v. Duncan Reg'l Hosp., Inc.*, Case No. CIV-07-0439-F, 2009 WL 10672479, at *1 (W.D. Okla. Apr. 28, 2009) (ordering production of private patient information where "no other discoverable sources . . . could provide the information needed.").

Consistent with the Protective Order, the Court already has determined that relevant HIPAA-protected and other confidential information cannot be withheld. The Protective Order

provides the appropriate measure to protect patient privacy. Indeed, the need for such information is the very reason the Protective Order was entered.

2. The Anti-Drug Diversion Act Creates No Privilege And Expressly Authorizes The State To Release Information In The Central Repository.

The Anti-Drug Diversion Act, Okla. Stat. tit. 63, § 2-309, *et seq.*, also does not provide a basis to preclude Watson's RFPs. That statute contains no privilege provision. On the contrary, it expressly authorizes the State to release documents and information that, like the those requested by the RFPs, is contained in the State's central repository.

The Anti-Drug Diversion Act requires dispensers of Schedule II, III, IV or V controlled dangerous substances (including opioid medications) dispensed pursuant to a valid prescription to transmit certain proscribed information to a central repository designated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. *See id.* § 309C. The information required to be submitted to the database for each dispensation includes: the recipient's and recipient's agent's name, address, date of birth, and identification number; the National Drug Code number of the substance dispensed; date of dispensation; the quantity of the substance dispensed; the prescriber's United States Drug Enforcement Agency registration number; the dispenser's registration number; and other information as required by rule. *Id.*

The statute also provides that information in the repository may be disclosed for law enforcement and other purposes as determined by the Director of Bureau of Narcotics and Dangerous Drugs Control, including disclosure to the Attorney General of Oklahoma. *Id.* § 309D. This defeats the State's assertion of privilege. In other words, the State possesses this information, has used it to identify and prosecute high-prescribers and other wrong-doers with

respect to opioid medication, and now seeks to withhold this very same information because it undercuts the State's theory of causation and damages. This is fundamentally unjust.

Worse still, the State is the only party with access to the information contained in the database, and has apparently used this information to question defense witnesses at depositions without first providing the information to the defendants. For example, the following exchange, which is representative of nearly every sales representative deposition to occur in this case thus far, occurred during the recent deposition of a sales representative for Defendant Teva Pharmaceuticals USA, Inc.:

> Q· (BY MR. PATE): You're aware that Dr. Harvey Jenkins has been charged with 29 felonies and a misdemeanor for running a pill mill?
>
> A: I wasn't aware of the number, but I did see in the media where he was -- he was charged.
>
> * * *
>
> Q: ***You're aware that he was the largest prescriber of prescription opioids in 2014; correct?***
>
> MR. FIORE: Object to form.
>
> THE WITNESS:· I was not aware of that.
>
> Q· ·(BY MR. PATE)· Are you aware that at least three of his former patients have died?
>
> MR. FIORE: Same objection.
>
> THE WITNESS:· I don't have any knowledge of that.

Ex. C, 190: 11-16; 191:7-16; 211:13-21 (emphasis added).

The witness did not know the answers to these questions because the witness does not have access to the same information as the State. Nor do Watson or the other Defendants. The State cannot be permitted to continue to use this law as both shield and sword. Nothing in the

Anti-Drug Diversion Act indicates that information in the central repository is privileged and, to the extent that the information is confidential, the Protective Order in this case sufficiently safeguards the information.

3. The Confidentiality Provision Of The Multi-County Grand Jury Act Does Not Apply When the State Puts the Information Directly at Issue.

The Discovery Master's reliance on the Multi-County Grand Jury Act, 22 O.S. § 350, also was error. That act provides, in pertinent part,

> Disclosure of matters occurring before the multicounty grand jury other than its deliberations and the vote of any juror may be used by the Attorney General in the performance of his duties. The Attorney General may disclose so much of the multicounty grand jury proceedings to law enforcement agencies as he considers essential to the public interest and effective law enforcement.

Okla. Stat. tit. 22, § 355. The Attorney General may use this information in the "performance of his duties." As part of his "duties," the Attorney General has brought this lawsuit. The State certainly may – and for the reasons already discussed, ***must*** – disclose this information.

Indeed, the State has put this information directly at issue by seeking to hold the Watson responsible for every "unnecessary or excessive prescription" for opioid medication written in the State of Oklahoma for the past twenty years, including those for which the State has brought criminal proceedings against prescribing physicians through the Multi-County Grand Jury, such as Harvey Jenkins. Oklahoma Courts have required disclosure of this information in an analogous situation, holding that an accused was entitled to sworn statements and transcripts of grand jury proceedings once a legal proceeding was commenced against him. *See Rush v. Blasdel*, 1991 OK CR 2, 804 P.2d 1140. Here, the State has instituted legal proceedings against Watson and the other Defendants to hold them liable for the criminal conduct of others. The

State's refusal to produce information pertaining to this independent criminal conduct violates due process.

4. The State Has Brought Claims Under the Oklahoma Medicaid Program Integrity Act While Simultaneously Attempting To Claim Its Privilege Protections.

The Medicaid Program Integrity act, 56 O.S. § 1001, does not help the State either. As an initial matter, the State has ***expressly brought claims under the Oklahoma Medicaid Program Integrity Act.*** It therefore would be the "height of injustice" to allow those claims to proceed without allowing Watson and the other defendants access to information the State collected under its auspices. Furthermore, the plain language of the Act provides that the Attorney General may authorize the release of confidential information for use "***in relation to legal, administrative, or judicial proceedings***." Okla. Stat. tit. 56, § 1004(d) (emphasis added). The Attorney General has the power to authorize the disclosure of this information "in relation" to this case, but he has refused to do so even though he has sued Watson and the other Defendants under this Act. The Discovery Master erred in finding otherwise.

D. If The Court Determines That The Requested Information Should Not Be Disclosed, This Action Should Be Dismissed.

Alternatively, if the Court determines that public policy in maintaining the secrecy of the requested criminal and investigative documents related to Oklahoma healthcare providers' opioid prescribing practices or Oklahoma's statutory provisions outweigh disclosure to Watson under any conditions, then the Court should dismiss this action, as other courts have done in similar contexts. Not even the strongest interests in secrecy justify forcing a defendant to litigate with the State with a hand tied behind its back. Thus, for instance, it has long been established that the successful assertion of the state secrets privilege requires dismissal of a case. If the

government successfully invokes this privilege to withhold information whose disclosure would threaten national security, and "the privilege deprives the defendant of information that would otherwise give the defendant a valid defense to the claim, then the court may grant summary judgment to the defendant." *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1083 (9th Cir. 2010) (collecting cases). "The Supreme Court has long recognized that in exceptional circumstances courts must act in the interest of the country's national security to prevent disclosure of state secrets, even to the point of dismissing a case entirely." *Id.*at 1077; *see also Totten v. United States*, 92 U.S. 105, 107 (1875); *Tenenbaum v. Simonini*, 372 F.3d 776, 777 (6th Cir. 2004) ("Because the state secrets doctrine thus deprives Defendants of a valid defense to the Tenenbaums' claims, we find that the district court properly dismissed the claims.").

The Supreme Court's decision in *General Dynamics*, *supra*, is instructive. In that case, government contractor plaintiffs were working on a contract to develop stealth aircraft for the Navy. The plaintiffs brought an action against the federal government after it terminated the contract for default, and the government raised a counterclaim of contractual breach. *Gen. Dynamics Corp.*, 563 U.S. at 480-1. In response to the government's counterclaim, the plaintiffs asserted a "superior knowledge" affirmative defense, arguing that the government failed to share its knowledge about how to design and manufacture the aircraft. *Id.* After discovery began on the superior knowledge defense, the Acting Secretary of the Air Force intervened and warned that further discovery on the issue would risk disclosing classified information and state secrets, and the Court of Federal Claims found the issue non-justiciable on that basis. *Id.* at 482-3. On appeal, the Federal Circuit found that the state secrets privilege prevented adjudicating plaintiffs' superior knowledge defense, and remanded for further proceedings. *Id.* at 483. On remand, the trial court again found that plaintiffs had defaulted, the superior knowledge defense could not be

litigated, and entered judgment against the plaintiffs for default. *Id.* The Supreme Court of the United States granted certiorari and held that when, to protect state secrets, a court dismisses a valid affirmative defense to the government's claims, the case could not continue, and the parties should be put into the same position as they were on the date of the filing. *Id.* at 487. In discussing the implications of the invocation of the state secrets privilege, the Court wrote that if the shoe were on the other foot – that is, if it had been the government, like the State here, seeking to recover while invoking the state secrets privilege in a way that prevented the defendant to present a defense – it would be the "height of injustice" to allow the government's case to proceed:

> It seems to us unrealistic to separate . . . the claim from the defense, and to allow the former to proceed while the latter is barred. It is claims and defenses *together* that establish the justification, or lack of justification, for judicial relief; and ***when public policy precludes judicial intervention for the one it should preclude judicial intervention for the other as well.*** If, in *Totten* [*v. United States*, 92 U.S. 105 (1875)], it had been the Government seeking return of funds that the estate claimed had been received in payment for espionage activities, ***it would have been the height of injustice to deny the defense because of the Government's invocation of state-secret protection, but to maintain jurisdiction over the Government's claim and award it judgment.***

Id. (emphasis added). That is the exact situation here. The State of Oklahoma is seeking to recover untold amounts from Watson for the entirety of Oklahoma's opioid crisis, yet it refuses on public policy and statutory grounds to disclose relevant material in its possession that is critical to Watson's valid defenses. This Court should not allow such an injustice.

III. CONCLUSION

The State advances sweeping allegations against Watson seeking to hold it and the other Defendants liable for every conceivable social cost arising from use of both prescription and

illicit opioids in Oklahoma over the past twenty-two years. Watson's ability to fully present its defenses and to refute the State's theory of causation are constitutional guarantees, and the importance of the documents sought by Watson's RFPs cannot be overstated. Shielding the State from having to produce the requested documents based on a purported privilege or statutory basis, given the protective orders entered in this case, would violate Watson's due process rights to assert its defenses and would be fundamentally unjust. This Court should reconsider the order of the Discovery Master and compel the production of complete, non-attorney-client privileged files from all of its relevant databases so that Watson may fairly defend this case.

Dated: November 13, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 13th day of November, 2018, to the following:

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Nicholas ("Nick") V. Merkley

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.,	§	Case No. CJ-2017-816 The Honorable Thad Balkman JURY TRIAL DEMANDED
Defendants.	§	

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT TEVA PHARMACEUTICALS USA, INC.'S FIRST SET OF INTERROGATORIES

Pursuant to 12 OKLA. STAT. §3233, Plaintiff, the State of Oklahoma (the "State" or "Plaintiff"), hereby submits its Responses and Objections to Defendant Teva Pharmaceuticals USA, Inc.'s ("Defendant") First Set of Interrogatories to Plaintiff. The State specifically reserves the right to supplement, amend and/or revise these Responses and Objections in accordance with 12 OKLA. STAT. §3226.

GENERAL OBJECTIONS

1. By responding to Defendant's interrogatories, the State concedes neither the relevance nor admissibility of any information provided or documents or other materials produced in response to such requests. The production of information or documents or other materials in response to any specific interrogatory does not constitute an admission that such information is probative of any particular issue in this case. Such production or response means only that, subject to all conditions and objections set forth herein and following a reasonably diligent investigation of reasonably accessible and non-privileged information, the State believes the information provided is responsive to the request.

2. The State objects that much of the requests sought are premature and, as such, provides the responses set forth herein solely based upon information presently known to and within the possession, custody or control of the State. Discovery has only just begun in this action. Subsequent discovery, information produced by Defendant or the other named Defendants in this litigation, investigation, expert discovery, third-party discovery, depositions and further analysis may result in additions to, changes or modifications in, and/or variations from the responses and objections set forth herein. Accordingly, the State specifically and expressly reserves the right to supplement, amend and/or revise the responses and objections set forth herein in due course and in accordance with 12 OKLA. STAT. §3226.

3. The State objects to the inappropriate manner by which Defendants attempt or may attempt in the future to increase the number of interrogatories to which the State must respond, as Defendants have purported to serve separate interrogatories from subsidiaries and affiliates of related entities. The Oklahoma Code of Civil Procedure states, "[t]he number of interrogatories to a party shall not exceed thirty in number." 12 OKLA. STAT. §3233(A). As such, absent an order

to the contrary modifying these limitations, each party to this litigation, including the State, is only required to respond to a sum total of 30 interrogatories, regardless of the number of parties purporting to serve such interrogatories. This is especially true, where here, the Defendants are defending this litigation and conducting discovery pursuant to a joint defense agreement and, as such, the State believes the Defendants coordinated to submit their discovery requests in a targeted manner to get around these discovery limitations when, because they are working in concert, the State should not be required to respond to more than a total of 30 separate Interrogatories. The State further objects to the compound nature of Defendant's Interrogatories and will appropriately construe any compound Interrogatories as consisting of separate Interrogatories that count towards the total of 30 interrogatories to which the State must respond. However, any response to a compound Interrogatory herein shall not constitute a waiver of the State's objection to the Interrogatories' compound nature or the State's right to refuse to respond to any Interrogatories that exceed the number of interrogatories to which the State must respond under Section 3233(A).

OBJECTIONS TO INSTRUCTIONS

1. The State objects to Defendant's Instruction Number 1 as vague, ambiguous, overly broad, disproportionate to the needs of the case, seeking to impose a burden on the State that exceeds what is permissible under Oklahoma law, seeking information protected from disclosure by privilege and/or the work product doctrine, and calling for information that is not in the possession, custody or control of and is not reasonably accessible to the State. To the extent the State can and does provide a response to any interrogatory, the State's response is based on the information known to and within the possession, custody and control of the State following a reasonably diligent investigation. The State further objects to Defendant's Instruction Number 1 to the extent that it attempts to require the State to describe or identify sources of information

outside the State's possession, custody or control. The State will object and/or respond to each interrogatory in accordance with 12 OKLA. STAT. §3233.

2. The State objects to Defendant's Instruction Number 2, which states that Defendant's requests are "continuing," as seeking to impose a burden upon the State that is beyond what is permissible under Oklahoma law. The State will respond to Defendant's interrogatories based on a reasonably diligent investigation of the information currently known to and within the possession, custody and control of the State, and the State will amend or supplement its responses, if necessary, in accordance with 12 OKLA. STAT. §3226.

3. The State objects to Defendant's Instruction Number 3 as ambiguous, vague, unreasonable, overbroad, unduly burdensome and an impermissible attempt to impose a burden upon the State beyond what is allowable under Oklahoma law. To the extent the State withholds otherwise discoverable information on the basis of any claim of privilege or work-product trial preparation material, the State will supply Defendant with the information required under Oklahoma law related to such information at the appropriate time and/or in accordance with the orders of the Court. *See* 12 OKLA. STAT. §3226(B)(5)(a). To the extent the State withholds any information for any other reasons, the State will comply with its obligations under Oklahoma law.

4. The State objects to Defendant's Instruction Number 5 because it seeks to impose a burden on the State beyond those permitted or contemplated under Oklahoma law. The State will respond to Defendant's requests according to how they are written. To the extent Defendant chose to use vague or indecipherable terms, the State will reasonably construe such term based upon their plain and ordinary meaning.

5. The State objects to Defendant's Instruction Number 6 because it seeks to impose a burden on the State beyond what is permitted under Oklahoma law. If the State answers an

interrogatory by reference to its business records, the State will do so in the manner permitted under 12 OKLA. STAT. §3233(C) and provide the information called for by that statute.

OBJECTIONS TO DEFINITIONS

1. The State objects to Defendant's Definition Number 1 of the term "claim" as vague, overbroad, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, irrelevant and unworkable. "[A]ny request for payment or reimbursement" encompasses an unlimited amount of information that has no bearing whatsoever on the parties to this action or the claims or defenses asserted in this action. Based on the claims and defenses at issue in this case, the State will reasonably interpret the term "claim" to mean a request for payment or reimbursement submitted to the Oklahoma Health Care Authority pursuant to Oklahoma's Medicaid Program as related to the claims and defenses at issue in this litigation.

2. The State objects to Defendant's Definition Number 3 of the term "communication(s)" as vague, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, unworkable and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. Specifically, the State objects to the terms "conduct" and "omissions" in Defendant's purported Definition Number 3. The State will reasonably interpret the term "communication(s)" to mean the transmittal of information between two or more persons, whether spoken or written.

3. The State objects to Defendant's Definition Number 7—Defendant's second purported definition of the term "document(s)"—as overly broad, unduly burdensome, disproportionate to the needs of the case, irrelevant and attempting to impose a burden on the State beyond what is permissible under Oklahoma law. The State will not create "instructions" or "other materials" that do not otherwise exist. Nor will the State produce: (i) "file-folder[s], labeled-

box[es], or notebook[s]"; and (ii) "ind[ices], table[s] of contents, list[s], or summaries that serve to organize, identify, or reference" a document simply because a responsive document is related to or contained within such information. Pursuant to 12 OKLA. STAT. §§3233-3234, following a reasonably diligent investigation, the State will permit inspection of the reasonably accessible, responsive, non-privileged documents, as that term is defined in 12 OKLA. STAT. §3234(A)(1), within the State's possession, custody or control that the State is reasonably able to locate at a time and place mutually agreeable to the parties. To the extent a folder, label, container, index, table of contents, list or summary is otherwise responsive to a request and satisfies these conditions, it will be made available for inspection or produced.

4. The State objects to Defendant's Definition Number 9 of "Electronically Stored Information" as overly broad, unduly burdensome, disproportionate to the needs of the case, irrelevant to the claims and defenses at issue, and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. The State will not produce ESI from sources that are not reasonably accessible or over which the State does not have sufficient custody and/or control. The State will produce or permit the inspection of ESI in the manner set forth in the State's Responses and Objections to Defendant's First Set of Requests for Production of Documents to Plaintiff.

5. The State objects to Defendant's Definition Number 10 of the term "employee" as overly broad, unduly burdensome, disproportionate to the needs of the case, irrelevant to the claims and defenses at issue, calling for information beyond what is within the State's possession, custody and control, and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. The State will reasonably construe the term "employee" to mean an individual employed by the State during the inquired-about time period over whom the State maintains

sufficient custody and control to enable the State to possess or access responsive records or information pertaining to the individual.

6. The State objects to Defendant's Definition Number 11 of the terms "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)." Defendant's proposed definition is overly broad, irrelevant to the claims and defenses at issue, unduly burdensome and disproportionate to the needs of the case in that the definition is not limited in any way to the State of Oklahoma or any particular time period. The State will reasonably construe the use of these terms to mean healthcare professionals or providers who provided medical or health care services in the State of Oklahoma to citizens—not "animals"—in the State of Oklahoma from January 1, 2007 to the date Defendant's requests were served. The State further incorporates each of its objections to Definition Numbers 13 (the term "Medical Assisted Treatment") and 21 (the term "Relevant Medication") as if fully set forth in this objection to Definition Number 11.

7. The State objects to Defendant's Definition Number 13 of the term "Medication Assisted Treatment." Defendant's purported definition is overly broad, unduly burdensome, irrelevant to the claims and defenses in this action, and disproportionate to the needs of this case, because it attempts to encompass treatment related to any "substance abuse disorder[]" and any effort to "prevent Opioid overdose." The State incorporates its objections to Defendant's Definition Number 16 of the term "Opioid(s)" as if fully set forth in this objection to Definition Number 13. The State will reasonably construe the term "Medication Assisted Treatment" to mean substance abuse treatment related to the claims and defenses at issue in this litigation.

8. The State objects to Defendant's Definition Number 15 of the terms "Oklahoma Agency" or "Oklahoma Agencies" as overly broad, unduly burdensome, irrelevant to the claims and defenses in this action, disproportionate to the needs of the case, and improperly calling for

information that is not in the possession, custody or control of the State. The State will reasonably construe the terms "Oklahoma Agency" or "Oklahoma Agencies" to mean agencies of the State of Oklahoma reasonably calculated to have information or materials relevant to the claims or defenses asserted in this litigation.

9. The State objects to Defendant's Definition Number 16 of the term "Opioid(s)" as misleading because of its use of the terms "FDA-approved" and "pain-reducing" and because it is defined without regard to any of the pharmaceutical products or drugs at issue in this case. The State will reasonably construe the terms "Opioid(s)" to mean the opioid medications or drugs related to the claims and defenses at issue in this litigation.

10. The State objects to Defendant's Definition Number 17 of the term "Patient(s)." This definition—"any human being to whom an Opioid is prescribed or dispensed"—is overly broad, unduly burdensome, irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of the case on its face because it lacks any geographical or temporal limitation that has any bearing on this case, and could be construed to seek information outside the State's possession, custody, or control. The State will reasonably construe the term "patient" to mean an individual who was prescribed an Opioid in the State of Oklahoma from January 1, 2007 through the date these requests were served.

11. The State objects to Defendant's Definition Number 19 of the term "Program" and incorporates its objections to Definition Numbers 15 ("Oklahoma Agency") and 16 ("Opioids") as if fully set forth herein. Defendant's purported definition of "Program" is similarly overly broad, irrelevant to the claims and defenses at issue in this action, unduly burdensome and disproportionate to the needs of the case, because it includes no temporal limitations and is entirely untethered to the issues involved in this litigation. The State will reasonably construe the term

"Program" to mean a program administered by the State of Oklahoma that reviews, authorizes, and/or determines the conditions for payment or reimbursement for the opioid medications or drugs and related treatment relevant to the claims and defenses at issue in this litigation and over which the State possesses control.

12. The State objects to Defendant's Definition Number 21 of the term "Relevant Medication(s)" as misleading to the extent it suggests each listed drug is relevant to the claims or defenses at issue in this action. Therefore, the State will reasonably construe the term "Relevant Medication(s)" to mean opioid medications or drugs related to the claims and defenses at issue in this litigation.

13. The State objects to Defendant's Definition Number 23 of the term "Vendor" as overly broad, unduly burdensome, disproportionate to the needs of the case, seeking to impose a burden upon the State that exceeds what is permitted under Oklahoma law, and calling for information that is not within the State's possession, custody or control. The State further incorporates its objections to and reasonable constructions of the terms defined in Definition Numbers 11 ("HCP") and 19 ("Program") as if fully set forth herein.

14. The State objects to Defendant's Definition Number 24 of the terms "You," "Your," "State," "Oklahoma," and "Plaintiff" as overly broad, unduly burdensome, disproportionate to the needs of the case, seeking to impose a burden upon the State that exceeds what is permitted under Oklahoma law, and calling for information that is not within the State's possession, custody or control. The State will respond on behalf of the Office of the Attorney General and those State agencies reasonably calculated to have information or materials relevant to the claims or defenses asserted in this litigation.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1: Identify all HCPs whom You identified or investigated for potential suspicious Opioid prescribing or diversionary behavior relating to Opioids and the basis for having done so.

RESPONSE TO INTERROGATORY NO. 1:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definitions of the terms "HCP," "You" and "Opioid(s)," as if fully set forth herein in this objection to Interrogatory Number 1.

The State further objects to this Interrogatory on the bases that it is vague, ambiguous, overbroad and unduly burdensome, and it improperly seeks information that is irrelevant to the claims and defenses at issue in this litigation and disproportionate to the needs of the case. Specifically, the Interrogatory is vague and ambiguous because it fails to define or describe with any reasonable degree of particularity what is meant by the terms: (i) "identified or investigated"; and (ii) "potential suspicious Opioid prescribing or diversionary behavior relating to Opioids[.]" The Interrogatory is overbroad and unduly burdensome because it is not tethered to health care providers in Oklahoma or the prescription of opioids in Oklahoma. Therefore, the Interrogatory seeks information related to "all" healthcare providers without regard to the claims and defenses at issue in this action, which is irrelevant to the claims and defenses at issue in this case or, to the extent such information has any marginal or limited relevance whatsoever, it is substantially outweighed by the time and expense burden the State would have to endure to provide such information. Thus, the Interrogatory seeks information that is disproportionate to the needs of this case.

The State further objects to this Interrogatory because it is a premature contention interrogatory that attempts to force the State to marshal all of its evidence, including expert evidence, before any meaningful discovery has taken place in this action. *See* 12 OKLA. STAT. §3233(B). To the extent the State can respond to this Interrogatory at this preliminary stage, the State will do so based on the information currently known to and within the possession, custody and control of the State following a reasonably diligent investigation and will supplement and/or amend its response in due course according to 12 OKLA. STAT. §3226. To the extent this Interrogatory calls for the information that is the subject of expert testimony, the State will disclose such information in accordance with the Court's scheduling order as it pertains to expert witnesses.

The State further objects to this Interrogatory because it calls for the identification of information protected from disclosure by the attorney-client privilege, the work-product doctrine for trial preparation materials, and other federal and State privileges and immunities. The State further objects to this Interrogatory because it calls for information related to the "investigat[ion]" of individuals and/or entities that potentially are the subject(s) of ongoing criminal, civil and/or enforcement investigations and proceedings. The State will not compromise the confidentiality of any such proceedings.

The State further objects to this Interrogatory as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"). The State has provided Defendants with an acceptable version of a protective order covering HIPAA-protected documents and information. Defendants have not executed a proposed protective order regarding HIPAA-protected documents and information. The State will not produce or otherwise disclose any protected health information until that protective order, or a substantially similar protective order, is agreed to by Defendants and/or entered by the Court.

The State further objects to this interrogatory as impermissibly compound because it indiscriminately groups numerous separate topics, subjects, questions and tasks under the guise of a single interrogatory. In reality, this Interrogatory is actually at least four (4) separate interrogatories improperly disguised as one. *See* 12 OKLA. STAT. §3233(A). However, the State will reasonably and conservatively construe the Interrogatory, as it relates to the claims and defenses at issue, as requesting the State to: (i) identify the healthcare providers the State has "identified or investigated for potential suspicious Opioid prescribing"; (ii) identify the State's basis for identifying the healthcare providers the State has "identified or investigated for potential suspicious Opioid prescribing"; (iii) identify the healthcare providers the State has "identified or investigated for . . . diversionary behavior relating to Opioids"; and (iv) identify the State's basis for identifying the healthcare providers the State has "identified or investigated for . . . diversionary behavior relating to Opioids[.]"

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

The State's principal processes, practices and procedures for ensuring that claims for reimbursement are reimbursable and relate to medically necessary treatment are primarily based on the relationship between State-imposed safeguards, implemented through regulations, and the State's trust in and reliance upon certifying parties to be fully and accurately informed and capable of accurately assessing that claims submitted for reimbursement are for medically necessary services, treatments and prescriptions. This trust is predicated on the State's reasonable reliance on the presumption that any pharmaceutical marketing activity that takes place in the State, or otherwise reaches certifying parties and patients in the State, is lawful and truthfully characterizes the risks and efficacy of the marketed pharmaceuticals in a manner that does not unduly or

improperly influence or hinder the appropriate analysis of the medical necessity of prescribing any marketed pharmaceuticals.

Based on the unprecedented scope of the misinformation campaign at issue in this litigation and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, neither medical providers nor patients had the benefit of all material information regarding Defendants' drugs. As such, it was not possible for providers or patients to discern whether any prescription was medically necessary or to informatively consider the "medical necessity" criteria set forth in Oklahoma regulations and accurately certify the accuracy of such determinations. Defendants flooded the medical community with false and misleading information—and omitted material information—as part of a scheme and conspiracy designed to make the public believe that opioids were more effective and less addictive than they actually were. Without the benefit of all material information, and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, it was not possible for providers or patients to discern whether any prescription was medically necessary.

The Medical Assistance Program ("Medicaid") is a cooperative program of the state and federal governments that provides medical assistance for the poor. *See* Title XIX of the Social Security Act of 1935, 42 U.S.C. §1396 *et seq*. While a state is not obligated to participate in a Medicaid program, if it chooses to participate, the state administers its Medicaid program, but it must operate its program in compliance with the federal Medicaid statues and regulations. *See id.* at §1396a. The State participates in Medicaid, and the Oklahoma Health Care Authority ("OHCA") administers the Oklahoma Medicaid Program ("SoonerCare"). The State further

provides prescription drug coverage under its SoonerCare program. *See* OKLA. ADMIN. CODE §317:30-5-72. Accordingly, under the federal Medicaid Act, the State is required to provide coverage for all drugs approved by the U.S. Food and Drug Administration ("FDA") that are offered by any manufacturer that enters into a basic rebate agreement in order to participate in Medicaid under the Medicaid rebate program. *See, e.g.*, 42 U.S.C. §1396r-8.

By regulation, the State cannot legally reimburse claims for reimbursement for treatment that is not medically necessary. *See, e.g.*, OKLA. ADMIN. CODE §317:30-3-1(d). However, for the Medicaid system to work and for Medicaid beneficiaries to receive the benefit of timely and efficient medical treatment and coverage, the State cannot review in real time each individual claim submitted for reimbursement to ensure the claim relates to treatment that was medically necessary. Medical providers seeking reimbursement from SoonerCare for medical services or prescriptions submit their claims for reimbursement to the OHCA in the form of Current Procedural Terminology ("CPT") codes—accepted numeric codes which indicate the treatment, medical decision-making, and services for which the provider seeks reimbursement.

Claims for reimbursement for covered prescriptions are submitted separately by the dispensing pharmacy, such that SoonerCare typically receives two claims for reimbursement related to a single patient visit: one from the medical provider for his or her services (which are identified by CPT codes and based on the medical providers' decision-making and analysis, including any relevant diagnoses identified by ICD-9/10 codes) and one from the pharmacy for any resulting prescription (which is not accompanied by the medical provider's records or any ICD-9/10 codes). As a result, OHCA maintains separate claims databases for (1) claims and reimbursement for medical providers' services and (2) claims and reimbursement for prescriptions.

The State's ability to audit medical providers' documentation and other information that forms the basis for any claim for reimbursement is limited to the retrospective ability to determine whether a claim submitted should have been reimbursed on the back-end of the Medicaid process. On the front-end, when a claim for reimbursement is submitted, the State must and does rely upon the certification of medical necessity, which certifies that the services, treatment, products or prescriptions for which reimbursement is sought were medically necessary with each claim for reimbursement. This in turn is based, at least in part, on the State's trust and reliance upon the reasonable presumption that the totality of information available to the certifying party is not deceptive, incomplete, false and/or misleading and is not the product of fraudulent marketing activity that obscured or mischaracterized the risks and efficacy of any marketed pharmaceuticals.

Therefore, in order to allow the Medicaid system to work correctly and enable Medicaid beneficiaries to receive timely and effective medical treatment, the State has defined the standards that must be considered in determining whether medical treatment is medically necessary and requires certification that each claim submitted for reimbursement is for medically necessary treatment. The State requires entry of a standard form Provider Agreement in order to be eligible for reimbursement from SoonerCare. *See* OKLA. ADMIN. CODE §317:30-3-2. Under this Provider Agreement, it is expressly certified with each claim for payment that, amongst other things, the services or products for which payment is billed by or on behalf of the provider were medically necessary, as the State, through OHCA, has defined that term. Essential to the proper functioning of SoonerCare is the reasonable presumption that any pharmaceutical marketing that may influence the certifying party's decision-making is proper and lawful and that such medical-decision making was not unduly influenced or hindered by predatory, false, misleading, coercive, negligent or fraudulent marketing tactics, such as those at issue here.

The State has defined "[m]edical necessity" as an assessment and consideration of the following standards and conditions:

> (1) Services must be medical in nature and must be consistent with accepted health care practice standards and guidelines for the prevention, diagnosis or treatment of symptoms of illness, disease or disability;
> (2) Documentation submitted in order to request services or substantiate previously provided services must demonstrate through adequate objective medical records, evidence sufficient to justify the client's need for the service;
> (3) Treatment of the client's condition, disease or injury must be based on reasonable and predictable health outcomes;
> (4) Services must be necessary to alleviate a medical condition and must be required for reasons other than convenience for the client, family, or medical provider;
> (5) Services must be delivered in the most cost-effective manner and most appropriate setting; and
> (6) Services must be appropriate for the client's age and health status and developed for the client to achieve, maintain or promote functional capacity.

OKLA. ADMIN. CODE §317:30-3-1(f). However, when parties engage in and conspire to engage in a widespread misinformation campaign, such as Defendants did here, such conduct corrupts the informed consideration of these criteria and, thus, the certification of these determinations.

The State notes that Defendants have pled the learned intermediary doctrine in an attempt to blame physicians for the fallout of the opioid epidemic. The State disagrees that such a defense is legally or factually applicable to this case. In Oklahoma, the learned intermediary defense is only available in products liability cases. *See McKee v. Moore*, 1982 OK 71, ¶¶6–8, 648 P.2d 21; *Brown v. Am. Home Prods. Corp.*, No. 1203, 2009 U.S. Dist. LEXIS 30298, at *24 (E.D. Pa. Apr. 2, 2009). This case is not a products liability case. Therefore, the learned intermediary doctrine is not applicable. Moreover, even if it were applicable, the doctrine only shields manufacturers of prescription drugs from liability "if the manufacturer adequately warns the prescribing physicians of the dangers of the drug." Edwards, 1997 OK 22, ¶8. "To invoke a defense to liability under the learned intermediary doctrine, a manufacturer seeking its protection must provide sufficient information to the learned intermediary of the risk subsequently shown to be the proximate cause

of a plaintiff's injury." *Tortorelli v. Mercy Health Ctr., Inc.*, 2010 OK CIV APP 105, ¶27, 242 P.3d 549. Here, Defendants intentionally *misrepresented* the risks of opioid addiction—often contradicting their own labeling—in a sprawling and coordinated marketing campaign targeting doctors and others throughout Oklahoma and the country. Defendants initiated a scheme to change the way physicians think about opioids. Defendants cannot falsely market their drugs to physicians and, at the same time, claim physicians should have known better. As such, even if the learned intermediary doctrine were applicable here (which it is not), Defendants cannot take advantage of the doctrine because they failed to adequately warn of the true risks of opioids, which risks caused the opioid epidemic in Oklahoma.

Had Defendants not engaged in the conspiratorial and wide-spread unlawful and fraudulent marketing of opioids, which reached every corner of the State, and had medical providers instead been equipped with the full and un-tainted truth as to the efficacy and addictiveness of the opioids at issue, such medical providers may never have prescribed opioids at all or would have prescribed exponentially fewer, as was the case prior to 1996, when Defendants' conspiratorial and fraudulent marketing campaign first began.

A further description of the basis for the State's position is set forth in the State's Original Petition, filed on June 30, 2017, the State's Omnibus Response to Defendants' Motions to Dismiss, filed on October 30, 2017, as well as the State's Responses to Defendant Cephalon, Inc.'s First Set of Interrogatories to Plaintiff, and incorporated herein by reference.

Further, the State intends to produce (but cannot guarantee production of) de-identified claims data related to both medical provider services and pharmacy claims, from which Defendants can identify those claims related to opioids which are relevant to this lawsuit. Each year, the Oklahoma Bureau of Narcotics investigates and brings both enforcement and administrative

actions against a number of Oklahoma prescribers/dispensers. Any disciplinary actions of OBN registrants are reported to the National Practitioner Data Bank, which can be accessed at npdb.hrsa.gov. The State is currently compiling a list of and documents related to relevant, non-privileged completed investigations, enforcement actions, and/or disciplinary actions related to opioid prescribing, and will supplement this Interrogatory with that information when it is available.

The State will supplement its Response to this Interrogatory No. 1 as additional information related to the identification of healthcare providers who have engaged in potentially suspicious opioid prescribing or diversionary behavior relating to opioids is gathered, reviewed and produced as a part of the State's ongoing investigation and reasonably diligent search for information responsive to Defendants' Interrogatories and Requests for Production of Documents.

INTERROGATORY NO. 2: Identify all Patients whom You acknowledge have been appropriately prescribed an Opioid for the treatment of chronic pain.

RESPONSE TO INTERROGATORY NO. 2:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definitions of the terms "Patients," "You" and "Opioid" as if fully set forth herein in this objection.

The State further objects to this Interrogatory because it is a premature contention interrogatory that attempts to force the State to marshal all of its evidence, including expert evidence, before any meaningful discovery has taken place in this action. *See* 12 OKLA. STAT. §3233(B). To the extent the State can respond to this Interrogatory at this preliminary stage, the State will do so based on the information currently known to and within the possession, custody and control of the State following a reasonably diligent investigation and will supplement and/or

amend its response in due course according to 12 OKLA. STAT. §3226. To the extent this Interrogatory calls for the information that is the subject of expert testimony, the State will disclose such information in accordance with the Court's scheduling order as it pertains to expert witnesses.

The State further objects to this Interrogatory as overbroad, unduly burdensome, vague, ambiguous, disproportionate to the needs of the case, calling for information that is not within the State's possession, custody or control, and seeking information that is irrelevant to the claims and defenses at issue in this case. Coupled with Defendant's overbroad definition of the term "Patients," the request to identify "all Patients" is inherently overbroad on its face and seeks information that is disproportionate to the needs of the case, not within the State's possession, custody or control, and irrelevant to the claims and defenses at issue in this action. The Interrogatory is vague and ambiguous due to its use of the undefined and amorphous terms "appropriately prescribed" and "treatment of chronic pain." The State will reasonably construe this Interrogatory as seeking the identity of Oklahoma Medicaid beneficiaries who received a prescription for opioids from an Oklahoma health care provider to treat chronic pain symptoms for which the healthcare provider submitted a claim for reimbursement to the State that the State contends was medically necessary and, thus, reimbursable under the State's Medicaid Program.

The State further objects to this Interrogatory because it improperly attempts to force the State to prove a negative and carry an evidentiary burden that is foreign to the State's claims in this litigation. That is, the State contends that Defendants caused unnecessary, excessive and medically unnecessary opioid prescriptions to be written in Oklahoma. It is not the State's burden to identify and describe any prescriptions that were "appropriate[.]"

The State further objects to this Interrogatory because it calls for the identification of information protected from disclosure by the attorney-client privilege, the work-product doctrine for trial preparation materials, and other federal and State privileges and immunities.

The State further objects to this Interrogatory as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"). The State has provided Defendants with an acceptable version of a protective order covering HIPAA-protected documents and information. Defendants have not executed a proposed protective order regarding HIPAA-protected documents and information. The State will not produce or otherwise disclose any protected health information until that protective order, or a substantially similar protective order, is agreed to by Defendants and/or entered by the Court.

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

The State's principal processes, practices and procedures for ensuring that claims for reimbursement are reimbursable and relate to medically necessary treatment are primarily based on the relationship between State-imposed safeguards, implemented through regulations, and the State's trust in and reliance upon certifying parties to be fully and accurately informed and capable of accurately assessing that claims submitted for reimbursement are for medically necessary services, treatments and prescriptions. This trust is predicated on the State's reasonable reliance on the presumption that any pharmaceutical marketing activity that takes place in the State, or otherwise reaches certifying parties and patients in the State, is lawful and truthfully characterizes the risks and efficacy of the marketed pharmaceuticals in a manner that does not unduly or improperly influence or hinder the appropriate analysis of the medical necessity of prescribing any marketed pharmaceuticals.

Based on the unprecedented scope of the misinformation campaign at issue in this litigation and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, neither medical providers nor patients had the benefit of all material information regarding Defendants' drugs. As such, it was not possible for providers or patients to discern whether any prescription was medically necessary or to informatively consider the "medical necessity" criteria set forth in Oklahoma regulations and accurately certify the accuracy of such determinations. Defendants flooded the medical community with false and misleading information—and omitted material information—as part of a scheme and conspiracy designed to make the public believe that opioids were more effective and less addictive than they actually were. Without the benefit of all material information, and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, it was not possible for providers or patients to discern whether any prescription was medically necessary.

As such, at this time and based on the information reviewed to date, the State is unable to identify any patient whom the State "acknowledge[s] ha[s] been appropriately prescribed an Opioid for the treatment of chronic pain." A further description of the basis for the State's current inability to identify any such patient is set forth in the State's Original Petition, filed on June 30, 2017, the State's Omnibus Response to Defendants' Motions to Dismiss, filed on October 30, 2017, as well as the State's Responses to Defendant Cephalon, Inc.'s First Set of Interrogatories to Plaintiff and the State's Response to Interrogatory Number 1 above, and incorporated herein by reference.

Under the federal Medicaid Act, the State is required to provide coverage for all drugs approved by the FDA that are offered by any manufacturer that enters into a basic rebate agreement in order to participate in Medicaid under the Medicaid rebate program. *See, e.g.*, 42 U.S.C. §1396r-8. However, by regulation, the State cannot legally reimburse claims for reimbursement for treatment that is not medically necessary. *See, e.g.*, OKLA. ADMIN. CODE §317:30-3-1(d). For the Medicaid system to work correctly and enable Medicaid beneficiaries to receive the benefit of timely and efficient medical treatment and coverage, the State cannot review in real time each individual claim submitted for reimbursement to ensure the claim relates to treatment that was medically necessary. Medical providers seeking reimbursement from SoonerCare for medical services or prescriptions submit their claims for reimbursement to the OHCA in the form of CPT codes—accepted numeric codes which indicate the treatment, medical decision-making, and services for which the provider seeks reimbursement.

Claims for reimbursement for covered prescriptions are submitted separately by the dispensing pharmacy, such that SoonerCare typically receives two claims for reimbursement related to a single patient visit: one from the medical provider for his or her services (which are identified by CPT codes and based on the medical providers' decision-making and analysis, including any relevant diagnoses identified by ICD-9/10 codes) and one from the pharmacy for any resulting prescription (which is not accompanied by the medical provider's records or any ICD-9/10 codes). As a result, OHCA maintains separate claims databases for (1) claims and reimbursement for medical providers' services and (2) claims and reimbursement for prescriptions.

The State's ability to audit medical providers' documentation and other information that forms the basis for any claim for reimbursement is limited to the retrospective ability to determine whether a claim submitted should have been reimbursed on the back-end of the Medicaid process.

On the front-end, when a claim for reimbursement is submitted, the State must and does rely upon the certification of medical necessity, which certifies that the services, treatment, products or prescriptions for which reimbursement is sought were medically necessary with each claim for reimbursement. This in turn is based, at least in part, on the State's trust and reliance upon the reasonable presumption that the totality of information available to the certifying party is not deceptive, incomplete, false and/or misleading and is not the product of fraudulent marketing activity that obscured or mischaracterized the risks and efficacy of any marketed pharmaceuticals.

Therefore, in order to allow the Medicaid system to work correctly and enable Medicaid beneficiaries to receive timely and effective medical treatment, the State has defined the standards that must be considered in determining whether medical treatment is medically necessary and requires certification that each claim submitted for reimbursement is for medically necessary treatment. The State requires entry of a standard form Provider Agreement in order to be eligible for reimbursement from SoonerCare. *See* OKLA. ADMIN. CODE §317:30-3-2. Under this Provider Agreement, it is expressly certified with each claim for payment that, amongst other things, the services or products for which payment is billed by or on behalf of the provider were medically necessary, as the State, through OHCA, has defined that term. Essential to the proper functioning of SoonerCare is the reasonable presumption that any pharmaceutical marketing that may influence the certifying party's decision-making is proper and lawful and that such medical-decision making was not unduly influenced or hindered by predatory, false, misleading, coercive, negligent or fraudulent marketing tactics, such as those at issue here.

The State has defined "[m]edical necessity" as an assessment and consideration of the following standards and conditions:

> (1) Services must be medical in nature and must be consistent with accepted health care practice standards and guidelines for the prevention, diagnosis or treatment of symptoms of illness, disease or disability;
> (2) Documentation submitted in order to request services or substantiate previously provided services must demonstrate through adequate objective medical records, evidence sufficient to justify the client's need for the service;
> (3) Treatment of the client's condition, disease or injury must be based on reasonable and predictable health outcomes;
> (4) Services must be necessary to alleviate a medical condition and must be required for reasons other than convenience for the client, family, or medical provider;
> (5) Services must be delivered in the most cost-effective manner and most appropriate setting; and
> (6) Services must be appropriate for the client's age and health status and developed for the client to achieve, maintain or promote functional capacity.

OKLA. ADMIN. CODE §317:30-3-1(f). However, when parties engage in and conspire to engage in a widespread misinformation campaign, such as Defendants did here, such conduct corrupts the informed consideration of these criteria and, thus, the certification of these determinations.

The State notes that Defendants have pled the learned intermediary doctrine in an attempt to blame physicians for the fallout of the opioid epidemic. The State disagrees that such a defense is legally or factually applicable to this case. In Oklahoma, the learned intermediary defense is only available in products liability cases. *See McKee v. Moore*, 1982 OK 71, ¶¶6–8, 648 P.2d 21; *Brown v. Am. Home Prods. Corp.*, No. 1203, 2009 U.S. Dist. LEXIS 30298, at *24 (E.D. Pa. Apr. 2, 2009). This case is not a products liability case. Therefore, the learned intermediary doctrine is not applicable. Moreover, even if it were applicable, the doctrine only shields manufacturers of prescription drugs from liability "if the manufacturer adequately warns the prescribing physicians of the dangers of the drug." Edwards, 1997 OK 22, ¶8. "To invoke a defense to liability under the learned intermediary doctrine, a manufacturer seeking its protection must provide sufficient information to the learned intermediary of the risk subsequently shown to be the proximate cause of a plaintiff's injury." *Tortorelli v. Mercy Health Ctr., Inc.*, 2010 OK CIV APP 105, ¶27, 242 P.3d 549. Here, Defendants intentionally *misrepresented* the risks of opioid addiction—often

contradicting their own labeling—in a sprawling and coordinated marketing campaign targeting doctors and others throughout Oklahoma and the country. Defendants initiated a scheme to change the way physicians think about opioids. Defendants cannot falsely market their drugs to physicians and, at the same time, claim physicians should have known better. As such, even if the learned intermediary doctrine were applicable here (which it is not), Defendants cannot take advantage of the doctrine because they failed to adequately warn of the true risks of opioids, which risks caused the opioid epidemic in Oklahoma.

Had Defendants not engaged in the conspiratorial and widespread, unlawful and fraudulent marketing of opioids, which reached every corner of the State, and had medical providers instead been equipped with the full and un-tainted truth regarding the efficacy and addictiveness of the opioids at issue, such medical providers may never have prescribed opioids at all or would have prescribed exponentially fewer, as was the case prior to 1996, when Defendants' conspiratorial and fraudulent marketing campaign first began. Accordingly, at this time and based on the information reviewed to date, and subject to ongoing discovery and expert disclosures, the State's position is that it is more likely than not that (1) opioid prescriptions written in the State of Oklahoma since 1996, other than those written for end-of-life palliative care or for a three-day supply to treat acute pain, were and are inappropriate, and (2) opioids prescriptions written in the State of Oklahoma since 1996 for end-of-life palliative care or for a three-day supply to treat acute pain were and are appropriate. The State will continue to supplement this response as expert review continues for these claims.

A further description of the basis for the State's current belief and contention is set forth in the State's Original Petition, filed on June 30, 2017, the State's Omnibus Response to Defendants' Motions to Dismiss, filed on October 30, 2017, as well as the State's Responses to Defendant

Cephalon, Inc.'s First Set of Interrogatories to Plaintiff and the State's Responses to Interrogatory Numbers 1 and 2 above, and incorporated herein by reference.

The State will supplement its Response to this Interrogatory No. 2 as additional information related to patients prescribed opioids for the treatment of chronic pain is gathered, reviewed and produced as a part of the State's ongoing investigation and reasonably diligent search for information responsive to Defendants' Interrogatories and Requests for Production of Documents. Specifically, the State is in the process of generating reports that will provide de-identified claims data related to each such prescription and intends to produce (but cannot at this time guarantee the production of) such reports and data at a reasonable time pursuant to the parties' arrangements and/or any orders from the Court. The State anticipates that these reports and data will provide information responsive to this Interrogatory No. 2.

INTERROGATORY NO. 3: Identify every Person who allegedly became addicted to any substance or was otherwise harmed as a result of any prescription for one of Defendants' Opioids that you allege was unnecessary, excessive, not a Medical Necessity, or otherwise improper. For each such individual, identify: (i) the particular type of alleged harm that the individual experienced, (ii) the particular Opioids that he or she took and/or was prescribed, (iii) when the allegedly unnecessary or improper prescription was written, (iv) whether You reimbursed for any prescription, hospitalization, and/or treatment costs, and the total amount of such cost.

RESPONSE TO INTERROGATORY NO. 3:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definitions of the terms "Person," "Opioids" and "You," as if fully set forth herein in this objection.

The State further objects to this Interrogatory because it is a premature contention interrogatory that attempts to force the State to marshal all of its evidence, including expert evidence, before any meaningful discovery has taken place in this action. *See* 12 OKLA. STAT. §3233(B). To the extent the State can respond to this Interrogatory at this preliminary stage, the State will do so based on the information currently known to and within the possession, custody and control of the State following a reasonably diligent investigation and will supplement and/or amend its response in due course according to 12 OKLA. STAT. §3226. To the extent this Interrogatory calls for the information that is the subject of expert testimony, the State will disclose such information in accordance with the Court's scheduling order as it pertains to expert witnesses.

The State further objects to this Interrogatory to the extent it attempts to imply that the State must prove or submit evidence regarding personal-injury-type damages related to each Oklahoman who received a prescription for Defendants' drugs by requiring the State to describe "the particular type of alleged harm that the individual experienced[.]" The State does not assert in this litigation any claims for damages related to personal injury, which claims belong to those individuals who were or will be harmed by their or another's consumption of or addiction to opioids.

The State further objects to this interrogatory as overbroad, unduly burdensome, vague, ambiguous, disproportionate to the needs of the case, and seeking information that is irrelevant to the claims and defenses at issue in this case. The Interrogatory is overbroad and unreasonable on its face because it seeks the identity of "every" person who became addicted to "any substance or was otherwise harmed" for a period of over two decades due to prescriptions for Defendants' drugs. Such an expansive request is not tethered to the particular claims and defenses at issue in this litigation and, thus, necessarily includes information that is irrelevant or, to the extent such

information has any marginal or limited relevance whatsoever, it is substantially outweighed by the incredible time and expense burden the State would have to endure to provide such information. Thus, the Interrogatory seeks information that is disproportionate to the needs of this case.

The State further objects to this Interrogatory because it calls for the identification of information protected from disclosure by the attorney-client privilege, the work-product doctrine for trial preparation materials, and other federal and State privileges and immunities.

The State further objects to this Interrogatory as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"). The State has provided Defendants with an acceptable version of a protective order covering HIPAA-protected documents and information. Defendants have not executed a proposed protective order regarding HIPAA-protected documents and information. The State will not produce or otherwise disclose any protected health information until that protective order, or a substantially similar protective order, is agreed to by Defendants and/or entered by the Court.

The State further objects to this interrogatory as impermissibly compound because it indiscriminately groups numerous separate topics, subjects, questions and tasks under the guise of a single interrogatory. In reality, this interrogatory is actually at least ten (10) separate interrogatories improperly disguised as one. *See* 12 OKLA. STAT. §3233(A). The State will reasonably and conservatively construe the Interrogatory as requesting the State to: (i) "Identify every Person who allegedly became addicted to any substance . . . as a result of any prescription for one of Defendants' Opioids" that the State alleges "was unnecessary, excessive, not a Medical Necessity, or otherwise improper"; (ii) "Identify every Person who allegedly . . . was otherwise harmed as a result of any prescription for one of Defendants' Opioids" that the State alleges "was unnecessary, excessive, not a Medical Necessity, or otherwise improper"; (iii) identify "the

particular type of alleged harm" that the individuals identified in response to (i) above "experienced"; (iv) identify "the particular type of alleged harm" that the individuals identified in response to (ii) above "experienced"; (v) identify "the particular Opioids" that any individual identified in response to (i) above "took and/or was prescribed"; (vi) identify "the particular Opioids" that any individual identified in response to (ii) above "took and/or was prescribed"; (vii) identify "when the allegedly unnecessary or improper prescription was written" for any individual identified in response to (i) above; (viii) identify "when the allegedly unnecessary or improper prescription was written" for any individual identified in response to (ii) above; (ix) identify whether the State "reimbursed for any prescription, hospitalization, and/or treatment costs, and the total amount of such cost" for each individual identified in response to (i) above; and (x) identify whether the State "reimbursed for any prescription, hospitalization, and/or treatment costs, and the total amount of such cost" for each individual identified in response to (ii) above.

Subject to and without waiving the foregoing objections (including those incorporated into this response), the State responds as follows:

The State's principal processes, practices and procedures for ensuring that claims for reimbursement are reimbursable and relate to medically necessary treatment are primarily based on the relationship between State-imposed safeguards, implemented through regulations, and the State's trust in and reliance upon certifying parties to be fully and accurately informed and capable of accurately assessing that claims submitted for reimbursement are for medically necessary services, treatments and prescriptions. This trust is predicated on the State's reasonable reliance on the presumption that any pharmaceutical marketing activity that takes place in the State, or otherwise reaches certifying parties and patients in the State, is lawful and truthfully characterizes the risks and efficacy of the marketed pharmaceuticals in a manner that does not unduly or

improperly influence or hinder the appropriate analysis of the medical necessity of prescribing any marketed pharmaceuticals.

Based on the unprecedented scope of the misinformation campaign at issue in this litigation and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, neither medical providers nor patients had the benefit of all material information regarding Defendants' drugs. As such, it was not possible for providers or patients to discern whether any prescription was medically necessary or to informatively consider the "medical necessity" criteria set forth in Oklahoma regulations and accurately certify the accuracy of such determinations. Defendants flooded the medical community with false and misleading information—and omitted material information—as part of a scheme and conspiracy designed to make the public believe that opioids were more effective and less addictive than they actually were. Without the benefit of all material information, and given the fact that the totality of information that was available was conflated with the misleading, false, and deceptive information disseminated by Defendants and their co-conspirators, it was not possible for providers or patients to discern whether any prescription was medically necessary.

Under the federal Medicaid Act, the State is required to provide coverage for all drugs approved by the FDA that are offered by any manufacturer that enters into a basic rebate agreement in order to participate in Medicaid under the Medicaid rebate program. *See, e.g.*, 42 U.S.C. §1396r-8. However, by regulation, the State cannot legally reimburse claims for reimbursement for treatment that is not medically necessary. *See, e.g.*, OKLA. ADMIN. CODE §317:30-3-1(d). For the Medicaid system to work correctly and enable Medicaid beneficiaries to receive the benefit of timely and efficient medical treatment and coverage, the State cannot review in real time each

individual claim submitted for reimbursement to ensure the claim relates to treatment that was medically necessary. Medical providers seeking reimbursement from SoonerCare for medical services or prescriptions submit their claims for reimbursement to the OHCA in the form of CPT codes—accepted numeric codes which indicate the treatment, medical decision-making, and services or prescriptions for which the provider seeks reimbursement.

Claims for reimbursement for covered prescriptions are submitted separately by the dispensing pharmacy, such that SoonerCare typically receives two claims for reimbursement related to a single patient visit: one from the medical provider for his or her services (which are identified by CPT codes and based on the medical providers' decision-making and analysis, including any relevant diagnoses identified by ICD-9/10 codes) and one from the pharmacy for any resulting prescription (which is not accompanied by the medical provider's records or any ICD-9/10 codes). As a result, OHCA maintains separate claims databases for (1) claims and reimbursement for medical providers' services and (2) claims and reimbursement for prescriptions.

The State's ability to audit medical providers' documentation and other information that forms the basis for any claim for reimbursement is limited to the retrospective ability to determine whether a claim submitted should have been reimbursed on the back-end of the Medicaid process. On the front-end, when a claim for reimbursement is submitted, the State must and does rely upon the certification of medical necessity, which certifies that the services, treatment, products or prescriptions for which reimbursement is sought were medically necessary with each claim for reimbursement. This in turn is based, at least in part, on the State's trust and reliance upon the reasonable presumption that the totality of information available to the certifying party is not deceptive, incomplete, false and/or misleading and is not the product of fraudulent marketing activity that obscured or mischaracterized the risks and efficacy of any marketed pharmaceuticals.

Therefore, in order to allow the Medicaid system to work correctly and enable Medicaid beneficiaries to receive timely and effective medical treatment, the State has defined the standards that must be considered in determining whether medical treatment is medically necessary and requires certification that each claim submitted for reimbursement is for medically necessary treatment. The State requires entry of a standard form Provider Agreement in order to be eligible for reimbursement from SoonerCare. *See* OKLA. ADMIN. CODE §317:30-3-2. Under this Provider Agreement, it is expressly certified with each claim for payment that, amongst other things, the services or products for which payment is billed by or on behalf of the provider were medically necessary, as the State, through OHCA, has defined that term. Essential to the proper functioning of SoonerCare is the reasonable presumption that any pharmaceutical marketing that may influence the certifying party's decision-making is proper and lawful and that such medical-decision making was not unduly influenced or hindered by predatory, false, misleading, coercive, negligent or fraudulent marketing tactics, such as those at issue here.The State has defined "[m]edical necessity" as an assessment and consideration of the following standards and conditions:

> (1) Services must be medical in nature and must be consistent with accepted health care practice standards and guidelines for the prevention, diagnosis or treatment of symptoms of illness, disease or disability;
> (2) Documentation submitted in order to request services or substantiate previously provided services must demonstrate through adequate objective medical records, evidence sufficient to justify the client's need for the service;
> (3) Treatment of the client's condition, disease or injury must be based on reasonable and predictable health outcomes;
> (4) Services must be necessary to alleviate a medical condition and must be required for reasons other than convenience for the client, family, or medical provider;
> (5) Services must be delivered in the most cost-effective manner and most appropriate setting; and
> (6) Services must be appropriate for the client's age and health status and developed for the client to achieve, maintain or promote functional capacity.

OKLA. ADMIN. CODE §317:30-3-1(f). However, when parties engage in and conspire to engage in a widespread misinformation campaign, such as Defendants did here, such conduct corrupts the informed consideration of these criteria and, thus, the certification of these determinations.

The State notes that Defendants have pled the learned intermediary doctrine in an attempt to blame physicians for the fallout of the opioid epidemic. The State disagrees that such a defense is legally or factually applicable to this case. In Oklahoma, the learned intermediary defense is only available in products liability cases. *See McKee v. Moore*, 1982 OK 71, ¶¶6–8, 648 P.2d 21; *Brown v. Am. Home Prods. Corp.*, No. 1203, 2009 U.S. Dist. LEXIS 30298, at *24 (E.D. Pa. Apr. 2, 2009). This case is not a products liability case. Therefore, the learned intermediary doctrine is not applicable. Moreover, even if it were applicable, the doctrine only shields manufacturers of prescription drugs from liability "if the manufacturer adequately warns the prescribing physicians of the dangers of the drug." Edwards, 1997 OK 22, ¶8. "To invoke a defense to liability under the learned intermediary doctrine, a manufacturer seeking its protection must provide sufficient information to the learned intermediary of the risk subsequently shown to be the proximate cause of a plaintiff's injury." *Tortorelli v. Mercy Health Ctr., Inc.*, 2010 OK CIV APP 105, ¶27, 242 P.3d 549. Here, Defendants intentionally *misrepresented* the risks of opioid addiction—often contradicting their own labeling—in a sprawling and coordinated marketing campaign targeting doctors and others throughout Oklahoma and the country. Defendants initiated a scheme to change the way physicians think about opioids. Defendants cannot falsely market their drugs to physicians and, at the same time, claim physicians should have known better. As such, even if the learned intermediary doctrine were applicable here (which it is not), Defendants cannot take advantage of the doctrine because they failed to adequately warn of the true risks of opioids, which risks caused the opioid epidemic in Oklahoma.

Had Defendants not successfully engaged in and carried out the conspiratorial and widespread, unlawful and fraudulent marketing of opioids, which reached every corner of the State, and had medical providers instead been equipped with the full and un-tainted truth regarding the efficacy and addictiveness of the opioids at issue, such medical providers may never have prescribed opioids at all or would have prescribed exponentially fewer, as was the case prior to 1996, when Defendants' conspiratorial and fraudulent marketing campaign first began. Accordingly, at this time and based on the information reviewed to date, and subject to ongoing discovery and expert disclosures, the State's position is that it is more likely than not that (1) opioid prescriptions written in the State of Oklahoma since 1996, other than those written for end-of-life palliative care or for a three-day supply to treat acute pain, were and are "unnecessary, excessive, not a Medical Necessity, or otherwise improper," and (2) opioids prescriptions written in the State of Oklahoma since 1996 for end-of-life palliative care or for a three-day supply to treat acute pain were and are appropriate. The State will continue to supplement this response as expert review continues for these claims.

A further description of the basis for the State's current belief and contention is set forth in the State's Original Petition, filed on June 30, 2017, the State's Omnibus Response to Defendants' Motions to Dismiss, filed on October 30, 2017, as well as the State's Responses to Defendant Cephalon, Inc.'s First Set of Interrogatories to Plaintiff and the State's Responses to Interrogatory Numbers 1 and 2 above, and incorporated herein by reference.

Further, the State cannot, using information currently in the State's possession and, especially, at this early stage, before the completion of fact and expert discovery, identify each and every opioid-addicted individual in Oklahoma and each and every individual in Oklahoma that was otherwise harmed by opioids, as the State does not possess, maintain, or have access to

medical records and personal information for each and every such Oklahoman, in particular those Oklahomans who are insured by private insurance companies or uninsured.

The State will supplement its Response to this Interrogatory No. 3 as additional information related to patients who were prescribed opioids and/or who received State-funded opioid-addiction treatment is gathered, reviewed and produced as a part of the State's ongoing investigation and reasonably diligent search for information responsive to Defendants' Interrogatories and Requests for Production of Documents. Specifically, the State is in the process of generating reports and data that will provide de-identified claims data related to each such prescription and opioid-addiction treatment and intends to produce (but cannot, at this time, guarantee the full production of) such reports and data at a reasonable time pursuant to the parties' arrangements and/or any orders from the Court. The State anticipates that these reports and data will provide information that is responsive to each of the subparts identified as (i) through (iv) in the text of this Interrogatory Number 3.

INTERROGATORY NO. 4: Identify every time that a Program or Oklahoma Agency, including the Oklahoma Department of Corrections, administered, offered, or refused a request for recommendation for Medication Assisted Treatment, including naloxone, or any other substance abuse disorder treatment to each person identified in response to Interrogatory No. 4, including before, during, and after the Relevant Time Period.

RESPONSE TO INTERROGATORY NO. 4:

The State incorporates its general objections and objections to Defendant's instructions and definitions above, including the State's objections to Defendant's definitions of the terms "Oklahoma Agency," "Program" and "Medication Assisted Treatment," as if fully set forth herein in this objection to Interrogatory Number 4.

The State further objects to this Interrogatory because, as it is written, the Interrogatory is so unclear, convoluted, contradictory, vague and ambiguous that the Interrogatory is impossible to answer. Specifically, it is entirely unclear as to which "person[s]" the Interrogatory is inquiring about. The State is willing to meet and confer with Defendant to attempt to discern what the Interrogatory is requesting. However, the State will neither guess nor speculate as to what the Interrogatory means or to whom the Interrogatory pertains.

The State reserves any further objections to this Interrogatory—including, but not limited to, objections that the Interrogatory is overbroad, impermissibly compound, a premature contention interrogatory, and/or seeks information that is irrelevant to the claims and defenses at issue in this litigation, disproportionate to the needs of the case, protected from disclosure by privileges and immunities, and outside the State's possession, custody and control—until such time as Defendant clarifies the Interrogatory in such a manner that enables the State to reasonably respond to it. The State cannot sufficiently object to this Interrogatory as presently written because it is incomprehensible and nonsensical.

DATED: February 14, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, on February 14, 2018 to:

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EXHIBIT B

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

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

Defendants.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

DEFENDANT WATSON LABORATORIES, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

Pursuant to 12 O.S. § 3234, Defendant Watson Laboratories, Inc. ("Watson") requests that the Plaintiff State of Oklahoma ("the State") respond to Watson within 30 days to this request to produce the below-described documents which are in the State's possession, custody, or control.

INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.

2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.

3. You should produce electronically stored information ("ESI") and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g., Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and Watson requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

a. The date of the document;

b. The author of the document;

c. The recipient of the document;

d. All Persons to whom copies of the document have been furnished;

e. The subject matter of the document;

f. The file in which the document is kept in the normal course of business;

g. The current custodian of the document; and

h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Watson in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

1. "Claim" is any request for payment or reimbursement.

2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Petition, e.g., ¶¶ 3, 22, 51, 67, 122.

3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.

4. "Petition" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.

5. "Defendants" are the individual Defendants named in the Petition.

6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.

7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other Electronically Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.

8. "Drug Utilization Review Board" is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.

9. "Educational Activity" refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.

10. "Electronically Stored Information" is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term "employee" includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)" is any Person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any Person or animal.

13. "Interrogatories" refers to Watson's First Set of Interrogatories served on you contemporaneously herewith.

14. "Key Opinion Leader(s)" or "KOL(s)" is used herein consistent with its meaning in the Petition, ¶ 58.

15. "Medication Assisted Treatment" is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

16. "Medical Necessity" has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

17. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma

State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

18. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a Patient's brain or body to produce an analgesic effect.

19. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

20. "Person(s)" is any natural or legal person.

21. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, Person or Persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

22. "Prescription Monitoring Program" is used herein consistent with its meaning in the Petition, ¶ 47.

23. "Prior Authorization" is any program that implements scope, utilization, or product based controls for drugs or medications.

24. "Program(s)" is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

25. "Relevant Time Period" means January 1, 1999 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side's discovery requests in this action.

26. "Relevant Medication(s)" includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to Opioid receptors in a Patient's brain or body to produce an analgesic effect, whether or not listed in the Petition, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

27. "Third-Party Group(s)" is used herein consistent with its meaning in the Petition, including any "seemingly unaffiliated and impartial organizations to promote opioid use." Petition, ¶¶58, 63, 72.

28. "Vendor" means any third-party claims administrator, pharmacy benefit manager, HCP, or Person involved in overseeing, administering, or monitoring any Program.

29. "You," "Your," "State," "Oklahoma," and "Plaintiff" refer to the sovereign State of Oklahoma and all its departments, agencies, and instrumentalities, including current and former employees, any Vendor, and other Persons or entities acting on the State's behalf.

30. The words "and" and "or" shall be construed conjunctively as well as disjunctively, whichever makes the request more inclusive.

31. "Any" includes "all" and vice versa.

32. "Each" includes "every" and vice versa.

33. The term "including" shall be construed to mean "including but not limited to."

34. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Harvey Clarke Jenkins Jr., including the matter of the *State of Oklahoma v. Harvey Clarke Jenkins Jr.*, No. CF-2016-2325 (Oklahoma County).

2. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Regan Ganoung Nichols, including the matter of the *State of Oklahoma v. Regan Ganoung Nichols*, No. CF-2017-3953 (Oklahoma County).

3. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against William Martin Valuck,

including the matter of the *State of Oklahoma v. William Martin Valuck*, No. CF-2014-185 (Oklahoma County).

4. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Roger Kinney, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

5. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Tamerlane Rozsa, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

6. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joshua Livingston, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

7. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joseph Knight, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

8. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Christopher Moses, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

9. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against any other HCP not previously requested related to the prescription of Opioids, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

10. All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding.

11. All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center, 3700 S. Western Avenue, Oklahoma City, Oklahoma.

12. All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center.

Dated: May 10, 2018

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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 MAILING

I certify that a true and correct copy of the foregoing was emailed this 10th day of May, 2018, to:

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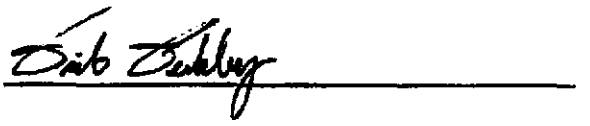

EXHIBIT C

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, 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.

VIDEOTAPED DEPOSITION OF BRIAN VAUGHN

TAKEN ON BEHALF OF THE PLAINTIFF

ON SEPTEMBER 19, 2018, BEGINNING AT 1:03 P.M.

IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: C. J. Shelton
REPORTED BY: D. Luke Epps, CSR, RPR

THE WITNESS: If prescriptions go up, we are compensated on prescriptions.

Q (BY MR. PATE) Right. And you wouldn't have gone to see Dr. Jenkins if Teva hadn't put him on your target list; right?

MR. FIORE: Objection. Assumes facts not in evidence.

THE WITNESS: No. It would require me to speculate. I would only see somebody that was on the list provided to me by the company.

Q (BY MR. PATE) You're aware that Dr. Harvey Jenkins has been charged with 29 felonies and a misdemeanor for running a pill mill?

A I wasn't aware of the number, but I did see in the media where he was -- he was charged.

Q When did you see that?

A I can't recall.

Q When you saw that, did you recall having visited him during your time as a sales representative?

A He was familiar. I recognized his face from seeing him on TV.

Q You saw him on TV recently?

A No, not recently. Took me a while.

story was, and I don't recall when that was.

Q Whenever the news story broke about him running a pill mill, you saw it and recalled him?

A When the news story about his, I guess, indictment or legal action was, yes.

Q You're aware that he was the largest prescriber of prescription opioids in 2014; correct?

MR. FIORE: Object to form.

THE WITNESS: I was not aware of that.

Q (BY MR. PATE) Are you aware that at least three of his former patients have died?

MR. FIORE: Same objection.

THE WITNESS: I don't have any knowledge of that.

Q (BY MR. PATE) It wasn't right for Teva to send you to this doctor, was it?

MR. FIORE: Objection to the form of the question.

THE WITNESS: I can't answer that.

Q (BY MR. PATE) It wasn't right for Teva to send you to this doctor with an opioid to sell to us, was it?

MR. FIORE: Same objection.

speculation.

THE WITNESS: Well, again, I can only speak to my experience, and, again, any family practitioner that I would have seen would have had some affiliation with a hospice or saw patients that experienced breakthrough cancer pain, again, those appropriate and consistent with what's in the label.

Q (BY MR. PATE) Otherwise, you wouldn't have gone to see him; correct?

A I don't believe I would have had any -- any reason to.

Q **Are you aware that Dr. Pope has been accused of writing 19 prescriptions over less than a 12-month period for a 27-year-old patient who complained of back pain and was also on Xanax at the same time?**

MR. FIORE: Objection to the form of the question.

THE WITNESS: I don't have -- I was not aware of that. I don't have that knowledge.

Q (BY MR. PATE) That's not something you heard about in the media?

A Not that I recall, no, sir.

Q You weren't aware that they found his

JURAT

STATE OF OKLAHOMA, EX REL.,

VS.

PURDUE PHARMA, ET AL.

I, Brian Vaughn, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

_____

BRIAN VAUGHN

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of _____, by said witness, on this, the _____day of _____, 2018.

_____

NOTARY PUBLIC

My Commission Expires: _____

Job No. 132744