IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	§	
Plaintiff,	§	
vs.	§	**Case No. CJ-2017-816**
	§	**Judge Thad Balkman**
(1) PURDUE PHARMA L.P.;	§	
(2) PURDUE PHARMA, INC.;	§	
(3) THE PURDUE FREDERICK COMPANY;	§	
(4) TEVA PHARMACEUTICALS USA, INC.;	§	**William C. Hetherington**
(5) CEPHALON, INC.;	§	**Special Discovery Master**
(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.	§	

STATE'S BRIEF IN SUPPORT OF PROPOSED JUDGMENT
AND RESPONSE TO DEFENDANTS' MOTION FOR NEW TRIAL

Johnson & Johnson and Janssen's (hereinafter "J&J" and/or "Defendants") Objection is an audacious exercise. J&J will do anything to avoid accepting responsibility for the devastation it wrought on Oklahoma. It denied responsibility in Court, admitting to ZERO fault. During trial, J&J continued to perpetuate the opioid crisis by hiding behind

bogus studies in an effort to evade liability for itself while, at the same time, continuing to claim that opioids are rarely addictive or harmful. And, after trial J&J ramped up its PR machine to criticize this Court:

- "Listen. I mean, as a matter of fact or law, there is no basis for this decision. You've asked me several questions about the facts, but there are also significant legal issues here. This is really a radical departure from a century of case law in Oklahoma. Nobody has ever utilized public nuisance in this way, and so this decision is fundamentally unfounded as a matter of law and fact. And there's absolutely no basis for liability."

  - *Radio Interview with NPR's David Greene*, heard August 27, 2019 (transcript available at https://www.npr.org/2019/08/27/754617673/oklahoma-judge-orders-johnson-johnson-to-pay-for-its-role-in-opioid-crisis).

- "There is simply no basis for the finding that the company is responsible for the opioid abuse crisis, which is a serious public health crisis in the State of Oklahoma and the country. But it involves diversion of prescription medications, criminal activity. It is also largely driven by illicit drugs that are coming in from outside the country, from countries like Mexico and elsewhere."

  - *Interview with CNN's Alisyn Camerotta*, broadcast August 27, 2019 (transcript available at http://transcripts.cnn.com/ TRANSCRIPTS/ 1908/27/nday.03.html).

But it gets worse. Rather than accept this Court's findings, J&J now tries to rewrite them. First, J&J claims the Court's $572 million one year Abatement Plan isn't really $572 million. Instead, J&J claims this Court made a one-hundred-million dollar typo. Following the first opioids trial in the country, during which the Court diligently focused on the evidence for eight weeks and carefully explained the findings following a month-long review of the evidence, J&J now suggests the Court inadvertently added not one, not two, but three zeros to a number. This argument is just wrong. The Court ordered J&J to pay $572 million to fund the Abatement Plan. That amount—$572 million—is the amount

this Court found to be reasonable and necessary to fund the Abatement Plan as a whole in year one.

J&J then goes on to request that the Court ignore black letter law on settlement credits. Specifically, J&J wants the benefit of settlement credits even though it and its legal team failed to submit the liability finding required for any such settlement credits. Oklahoma law is clear that liability must be found and assigned to a settling defendant ***before*** any credit is available. J&J ***never*** asked for such a finding against Purdue or Teva, and no such finding was made. Moreover, no evidence whatsoever regarding Purdue's or Teva's potential liability was ever put into the record by the State or J&J. J&J refused to put on any evidence against Purdue or Teva because J&J was working under a joint defense agreement with both defendants and their legal team not only in Oklahoma but in cases across the country. And, Purdue and Teva settled without admitting liability. Therefore, even if J&J had requested a finding against Purdue and Teva, which it most certainly did not, there is no evidence in the record to support the requisite finding against Purdue or Teva.

Put simply, settlement credits are not available to J&J. That is why the Court did not offset its funding amount by any settlement credits. Thus, the amount of the Court's funding for first year of the Abatement Plan is, was and must remain $572 million.

Finally, Defendants ignore that this Court ordered equitable abatement as the remedy for the public nuisance they caused. They attempt to limit their liability to a one-time award analogous to future damages. But the State did not seek future damages, and the Court did not order future damages.

Because this Court found that J&J caused a nuisance and the nuisance is temporary, the Court must abate it. The Court cannot stop short of fashioning a remedy that does, in fact, abate the nuisance. Oklahoma nuisance law is clear that a Court retains jurisdiction in an equitable abatement to oversee and provide complete relief (*i.e.* until the nuisance is abated). *E.g., Crushed Stone v. Moore*, 1962 OK 65, 369 P.2d 811; *Meinders v. Johnson*, 2006 OK CIV APP 35, 134 P.3d 858; *see also Murray v. Speed*, 1915 OK 934, ¶ 9, 153 P. 181 ("A court of equity which has obtained jurisdiction of the controversy on any ground or for any purpose will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject-matter, and to avoid multiplicity of suits."); *Swann v. Charlotte-Mecklenburg Bd. Of Educ.*, 402 U.S. 1, 12 (1970) ("Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."). Those cases show, particularly in the nuisance context, that Oklahoma district courts have the obligation and the power to monitor, evaluate and, if necessary, modify the abatement process until the nuisance is abated. *See Crushed Stone*, 1962 OK 65, ¶¶ 8, 16-17, 369 P.2d at 814, 817; *Meinders v. Johnson*, 2006 OK CIV APP 35, ¶ 12, n.1, 134 P.3d at 861-62, n.1.

Indeed, equity even allows the Court to go beyond the specific relief requested in order to accomplish the relief necessary under the circumstances. *E.g., Crushed Stone*, 1962 OK 65, ¶ 15, 369 P.2d at 816 ("Defendants also say that the trial court's judgment goes beyond the issue to be determined, and that it grants relief plaintiffs did not seek. This apparently has reference to the fact that the judgment required removal of stockpiles, as

well as cessation of the quarry's operation. . . . We think that, ***in view of the court's broad equitable powers***, it was not error for it to order removal of these stockpiles." (emphasis added)).

As one Oklahoma Court has explained:

> The power of equity is said to be coextensive with the right to relief; it is as broad as equity and justice require. In the administration of remedies, an equity court is not bound by the strict or rigid rules of the common law; on the contrary, the court adapts its relief and molds its decrees to satisfy the requirements of the case and to protect and conserve the equities of the parties litigant. The court has such plenary power, since its purpose is the accomplishment of justice amid all of the vicissitudes and intricacies of life. It is said that equity has always preserved the elements of flexibility and expansiveness so that new remedies may be invented or old ones modified in order to meet the requirements of every case and to satisfy the needs of a progressive social condition. In other words, the plastic remedies of equity are molded to the needs of justice and are employed to protect the equities of all parties, and the flexibility of equitable jurisdiction permits innovations in remedies to meet all varieties of circumstances which may arise in any case. Moreover, the fact that there is no precedent for the precise relief sought is of no consequence.

Ellis v. Potter, 1969 OK CIV APP 4, ¶ 16, 455 P.2d 92 *citing* 27 Am. Jur. 2d "Equity" § 103. Accordingly, the law of equity ***requires*** the Court to retain jurisdiction and ensure the abatement process is completed.

This means that the $572 million funding for one year of the Abatement Plan cannot be all that J&J is required to pay. This is especially true given that all the State's evidence in the case demonstrates it will take decades to sufficiently abate the nuisance and J&J failed to put on an abatement plan of its own:

- "It will take 30 years to abate. And if we do not abate it, more Oklahomans will die, more Oklahomans will develop opioid use disorder, more children will be born with neonatal abstinence syndrome, more children will be sitting in classrooms misusing prescription medications

and turning on the addiction circuitry in their brain. More parents will end up incarcerated, who have struggled with opioid use disorder, those children will end up in foster care and start this cycle over. We will continue to see an increase in the number of youth who are attempting suicide as a result of their parents' opioid use and a host of other negative consequences."

- *Commissioner Terri White*, Trial Tr. (6/25/19 a.m.) at 101:19-102:4.

- "In my opinion, the services contained within the abatement plan and the abatement plan overall, must be in place for 30 years. I have reviewed nothing that has called for a predicted end to this crisis in our state. In fact, I have seen only the opposite. Recently, there have even been reports that have predicted a worsening of this problem over the next ten years, and calls for cautious optimism for any sort of gains that have been made in the opioid crisis, as it really is very too early – it's too early to tell."

  "Oklahoma has certainly experienced recently some positive outcomes that are encouraging, but in terms of looking at a public health crisis, understanding the amount of time that it takes to develop to the point of an epidemic that we've experienced these last few years, we don't yet know if those improvements are permanent, we don't yet know if those will continue. And, in fact, I – you know, without this abatement plan, without additional resources, and being able to scale some of the services that have thus far shown some promise, I don't believe that there will be marked improvement soon."

  "In addition to that, looking at other public health crises, for example, in the tobacco field or in the tobacco control world, we are at least 20 years into active tobacco control in the United States and in the state of Oklahoma. And there have been improvements, there's no doubt. But that crisis has not yet abated"

  "This is an overwhelming and in some ways, new experience. It is a significant crisis, arguably that we have not seen before. It has taken at least 20 years to develop to this point. It will take at least that amount of time to begin to abate the problem. In my opinion, it will take much longer and in this case, at least 30 years."

  - *Jessica Hawkins*, Trial Tr. (6/21/19 p.m.) at 48:2-49:8.

- "I find that this has taken at least 20 years for – to reach where we are today and then it will take at least 20 years to abate this crisis and to train personnel in order to address opioid use disorder in our communities. It

> would be better if we spent more time doing this to reach additional individuals that may not be part of the workforce today. So a longer time period than 20 years would help accomplish that."
>
> - *Dr. Julie Croff*, Trial Tr. (6/20/19 a.m.) at 77:17-24.

And that's just the start. *See* Part III below.

In spite of this evidence—which the State believes is conclusive that full abatement of the opioid crisis will be measured in decades, not months—the Court chose to award $572 million for year one of the abatement plan. It is critical to note, however, that the Court did ***not*** make a specific finding as to the number of total years it will take to abate the nuisance. In such a circumstance, the cases cited above make clear that the Court can review the Abatement Plan periodically—even hold evidentiary hearings if necessary—to assess the progress of abatement, determine whether more funding is necessary to fully abate the nuisance, and fulfill the duty of equity to provide complete relief. This is plainly ***required*** by the Oklahoma Supreme Court, is within this Court's powers, has been done before in Oklahoma, and must be done here to comply with the Court's order to abate the nuisance.

Accordingly, the only proper Journal Entry is one that requires the parties to appear before the Court periodically in order to determine whether the nuisance has been abated and, if not, then equity requires the Court to hear additional evidence regarding what funds and measures must be expended to abate it. Such a periodic review and issuance of further orders in equity is routine in equity cases where a Court has continuing jurisdiction, whether the case involves a nuisance, environmental cleanup, prison systems or school desegregation.

Finally, J&J outlines the numerous legal, evidentiary, and factual errors it accuses this Court of making. All have already been briefed by the State and fully rejected by this Court in one form or another, and none are error. In short, J&J's Objection continues to show its disregard for this Court and ignores Oklahoma law. The State requests the Court enter its proposed judgment as submitted.

I. The Court's Calculations are Sound and Reflect Exactly What It Deemed Necessary to Abate the Nuisance

The Court found the State's Abatement Plan "reasonable and necessary to abate the public nuisance." Court's Judgment After Non-Jury Trial at p. 30, ¶25 (August 26, 2019) (hereinafter the August 26 Order). The Court adopted that plan and defined the State's plan as "the Abatement Plan." *Id.* The Court then found "that the sum necessary to carry out the Abatement Plan in year one is the sum of $572,102,028." August 26 Order at p. 41, ¶59. That is the Court's Order: J&J must pay $572,102,028 for year one.

The total number ordered is the total number. That total number is the amount the Court found to be reasonable and necessary. That total number is fully supported by the evidence in the record. That is the end of the story.

For example, at trial, the State submitted into evidence an Abatement Plan that included first-year costs to abate the public nuisance of $870,586,556. As such, the Court's remedy of $572,102,028, including the $107,683,000 of NAS related funds J&J challenges as a typographical error, is nearly $300 million less than the first year-costs in the State's Abatement Plan. Moreover, for the categories of the State's Abatement Plan that the Court found were reasonable and necessary to abate the public nuisance in year one, the Court

reduced the first-year costs for certain of these categories in the State's Abatement Plan by over $100 million. While the Court reduced the funds for certain categories, it also increased the funds for other categories, ultimately arriving at an amount the Court found was reasonable and necessary to abate the public nuisance in year one. In other words, the Court, sitting in equity, exercised its judgment and fashioned a remedy it deemed reasonable and just. The Court's Order is conservative and supported by the evidence in the trial record.

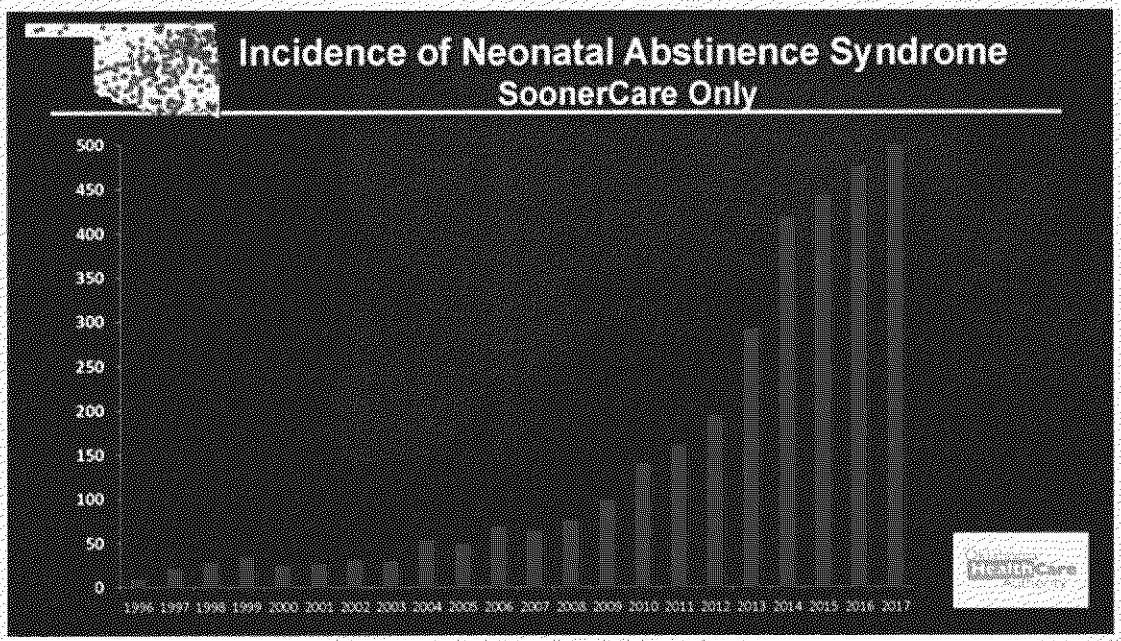
J&J would now have this Court pull this funding from the very babies (born and unborn) it believed needed to be helped and also to pull all such funding from the State's institutions to implement that help. J&J now accuses the Court of making a $107,683,000 typographical error in calculating the first year's abatement costs. This Court has spent more than 2 years diligently shepherding this case through discovery, trial, and now the post-trial stages. The Court spent almost a month preparing the findings and conclusions contained in the findings announced August 26th. And, the Court fashioned the abatement remedy it deemed reasonable and necessary. The amounts this Court found reasonable and necessary to abate the public nuisance in year one—including the amounts to address and remedy the crisis of Neonatal Abstinence Syndrome (NAS) in the State of Oklahoma—were deliberate, well-reasoned, and supported by both the law and the facts.

The evidence proved, and Court found, that NAS is a significant part of the public nuisance. Thus, it logically follows that NAS is a major part of the Court's abatement remedy. Specifically, the Court found: "In 2017, 4.2% of babies born covered by SoonerCare were born with Neonatal Abstinence Syndrome (also called NAS), a group of

conditions caused when a baby withdraws from certain drugs it's exposed to in the womb before birth." August 26 Order at p. 2, ¶3. The Court also found the oversupply and rapid increase in the sale of prescription opioids caused negative consequences associated with opioid use including, but not limited to, "the rise in NAS, and children entering the child welfare system." August 26 Order at p. 20, ¶55.

The Court's findings are supported by the abundance of evidence the State presented at trial demonstrating NAS is a critical and tragic part of the public nuisance that must be abated including but not limited to:

- The number of babies born with NAS in Oklahoma has increased dramatically since 1996, with upwards of 500 babies born suffering from NAS in 2017 alone—and that number only accounts for the part of Oklahoma's population enrolled in SoonerCare. Trial Tr. (6/25/19 a.m., Commissioner White) at 71:16-23; Trial Tr. (6/19/19 p.m., Ratcliff) at 24:23-25; 46:1-15; Trial Tr. (6/11/19 p.m., Kolodny) at 119:01-25; Ct. Ex. 56 (illustrating increase in NAS births over time based on data in S-4054).



- According to data from NHA, there was a five-fold increase in NAS births between 2004 and 2014. *See* S-2440; *See* Trial Tr. (6/11/19 p.m., Kolodny) at 114:05-115:12.

- As a whole, since the late 1990s, the U.S. has experienced: (i) "record high levels of overdose deaths"; (ii) "record high levels of [NAS]"; and (iii) a "soaring increase in children entering the foster care system because of their parents' addiction." *See, e.g.*, Trial Tr. (6/11/19 a.m., Kolodny) at 73:02-74:07. Moreover, there has been "a very sharp increase in the prevalence of opioid addiction, nationally from 1996 to 2011, a 900 percent increase in people seeking treatment for addiction to prescription opioids." Trial Tr. (6/11/19 a.m., Kolodny) at 73:02-74:07. The trend of increasing prevalence of NAS has followed the trend of increasing OUD prevalence in the country.

- In 1996, there were 9 NAS births to SoonerCare members, whereas in 2017, SoonerCare members had 498 NAS births. Tr. (6/24/19 p.m., Hawkins) at 92:4-10.

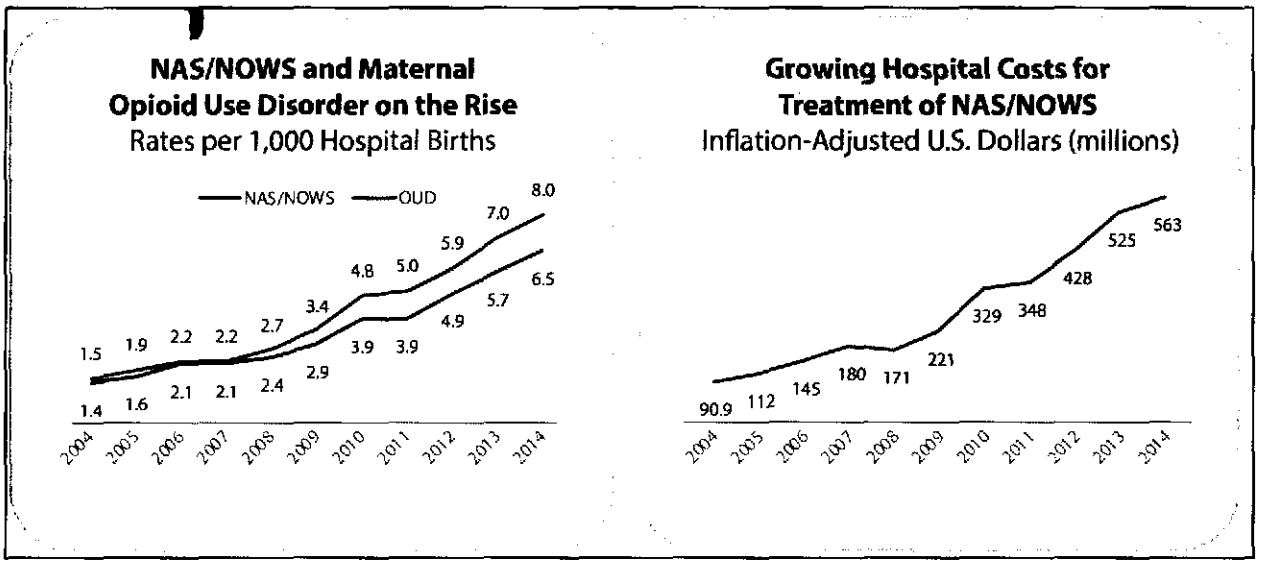
- NAS has been described as "hell on earth"—the shaking and screaming that a baby endures from withdrawal unbearable for the infants and their caretakers. Trial Tr. (6/19/19 p.m., Ratcliff) at 35:7-36:8, 41:12-43:20; 45:5-25; *see also, e.g.*, Ct. Ex. 88 (video played to demonstrate withdrawals in a baby born with NAS).

- Babies born with NAS suffer "tremendous distress" as infants. *See* Trial Tr. (6/11/19 p.m., Kolodny) at 111:18-112:15.

- The impact of NAS is long-lasting on the future development of those infants born with this condition and their families. Trial Tr. (6/21/19 p.m., Hawkins) at 50:5-12; Trial Tr. (6/19/19 p.m., Ratcliff) at 36:3-37:3, 46:24-49:6.

- Babies born with NAS tend to need both short-term medical treatment for withdrawal *and* long-term treatment for medical issues and developmental delays as they grow older. See, e.g., Trial Tr. (6/19/19 p.m., Ratcliff) at 41:8-42:19, 47:4-49:6.

- Along with the "record high levels" of NAS across the country, hospital costs for treating NAS have skyrocketed, and NAS has become a pressing burden on hospital systems and healthcare providers. Trial Tr. (6/21/19 p.m., Hawkins) at 8:4-9; Trial Tr. (6/11/19 a.m., Kolodny) at 73:02-74:07; S-2440.



- Hospitals need standards in place to help them recognize, document, and provide necessary services for NAS-affected children and families. Trial Tr. (6/21/19 p.m., Hawkins) at 8:4-9.

An important component of the State's Abatement Plan related to NAS, including detecting it, documenting it and providing services to infants and their families. Trial Tr. (6/20/19 p.m., Hawkins) at 115:20-22.

Moreover, the evidence showed that the costs associated with the NAS services in the State's Abatement Plan were, if anything, conservative. As Ms. Hawkins testified:

> [The costs in the Abatement Plan] are reasonable and necessary. And in many cases I've tried to note throughout, particular areas where I think they're conservative. We've talked about some of those areas. For example, the NAS medical treatment cost component of the plan. . . . There are many areas where, you know, candidly, it should probably be increased in some cases . . . So, yes, they are reasonable and, in fact, probably are leaning more on the side of conservative.

Trial Tr. (6/21/19 p.m., Hawkins) at 51:20-52:5; *accord* Trial Tr. (6/21/19 p.m., Hawkins) at 14:8-21; Trial Tr. (6/24/19 a.m., Hawkins) at 17:3-7; Trial Tr. (6/24/19 p.m., Hawkins) at 107:1-6; *see also* Trial Tr. (6/24/19 p.m., Hawkins) at 120:3-5 (noting the NAS treatment costs were based on a conservative estimate of only 300 annual NAS births); Trial Tr.

(6/21/19 p.m., Hawkins) at 14:11-18 and Trial Tr. (6/24/19 a.m., Hawkins) at 17:3-9 (noting the costs for NAS treatment do not include medication costs, treatment for the mother, or ongoing medical expenses and other services required for NAS-impacted children as they grow).

Based on the Court's liability findings and the evidence presented at trial, the Court deemed $107,683,000 a reasonable and necessary amount for NAS services. These services are broad and envision a complete overhaul of Oklahoma's assessment and evaluation of NAS in healthcare facilities throughout the State of Oklahoma. The purpose of this component of the plan is to develop a program that will not only teach standards and clinical practices for recognizing and treating NAS, but also that will help embed those standards and practices into the healthcare system. Trial Tr. (6/24/19 a.m., Hawkins) at 31:7-16. This program will develop new standards for NAS practice, provide intensive training for those utilizing those standards, and assist hospitals, practitioners, and clinicians in actually operationalizing those standards in their practices. Trial Tr. (6/21/19 p.m., Hawkins) at 8:10-16; Trial Tr. (6/24/19 a.m., Hawkins) at 31:7-16, 32:14-21. These services include, but are not limited to, developing and disseminating NAS treatment evaluation standards, continuing medical education courses throughout the State, intensive training and support to all Oklahoma birthing hospitals, implementation of the Vermont Oxford Network Quality Improvement program, and staffing to oversee these services. August 26 Order at p.35, ¶¶25-26. All of these services must be negotiated, purchased, initiated and implemented. The evidence demonstrates it will take at least 7 to 11 years to put treatment evaluation standards in place. Trial Tr. (6/24/19 a.m., Hawkins) at 32:14-21.

As such, NAS assessment and evaluation services is a broad category and the abatement remedy awarded by the Court will provide the State funds to begin abating this critical part of the public nuisance.

The law of equity also supports the Court's decision to order more funding for this category than originally requested. In the case of *Crushed Stone v. Moore*, discussed in detail in part III below, the Oklahoma Supreme Court held that, as part of the district court's ongoing duty to provide complete relief in matters of equity, the court can order remediation in ways beyond those requested by the plaintiff. 1962 OK 65, ¶ 16, 369 P.2d 811, 816. In that case, the district court found that, in order to truly abate the nuisance, certain stockpiles of limestone dust needed to be removed and ordered it done despite the fact that plaintiffs did not specifically request it. In affirming that decision, the Supreme Court held:

> While, as defendants point out, plaintiffs' petition did not pray specifically for removal of stockpiles, it did pray "for such relief as in equity plaintiffs may be entitled." The evidence tended to show that the fine "agricultural limestone" dust blows off of these stockpiles toward plaintiffs' premises and, at least partially, accounts for one of the evils of [defendants'] operations, as far as concerned plaintiffs. We think that, ***in view of the court's broad equitable powers***, it was not error for it to order removal of these stockpiles.

Id. at ¶ 15, 369 P.2d at 816 (emphasis added). In short, the Court's job here—as in *Crushed Stone*—was to fashion an abatement remedy that was designed to abate the crisis; and if this Court determined more was necessary to address NAS than was requested, the evidence and the law certainly support that decision. *See also Foster v. Hoff*, 1913 OK 216, ¶ 15, 131 P. 531, 534 ("A court of equity looking beyond the mere form of things to

their substance, has power to decree such relief to the parties as appears just and right, and as best calculated to protect their rights under the situation presented by the record.").

II. J&J Is Not Entitled to Settlement Credits

Oklahoma law unequivocally predicates settlement credits on a finding of liability as to the settling defendants. Defendants never asked for such a finding, and this Court never made one. In fact, even now Defendants are unwilling to ask this Court to enter the required finding against one of their fellow manufacturer-defendants. Absent such a finding against Purdue or Teva, J&J cannot credit those settlements against this judgment.

Oklahoma law is clear that a defendant seeking settlement credit must push for and get a liability finding as to the settled defendants. The Oklahoma statute giving rise to settlement credit applies when a settlement "is given in good faith to one of two or more persons ***liable*** in tort for the same injury or the same wrongful death . . . ." 12 O.S. § 832(H) (emphasis added). The Oklahoma Supreme Court has made clear that Section 832(H) ***requires an actual finding of liability*** as to the settled defendant:

> A jury's allocation of fault to [settled defendant] was critical to [defendant's] demand for a settlement proceeds' credit. Absent any liability ascription to [settled defendant] as a non-party co-actor, [defendant] stands relegated to the language of the settlement agreement.

Nichols v. Mid-Continent Pipe Line Co., 1996 OK 118, ¶¶ 20–21, 933 P.2d 272, 280; *accord Pain v. Sims*, 2012 OK CIV APP 76, ¶ 13, 283 P.3d 343, 346 ("[Settling defendant's] liability was never presented to the jury, which the Oklahoma Supreme Court has required for a § 832(H) offset. Therefore, the trial court correctly refused to apply the settlement as a credit to the actual damages awarded by the jury.").

Moreover, the burden to request and obtain a liability finding rests on the party seeking the settlement credit. *Nichols*, 1996 OK 118, ¶ 19, 933 P.2d at 280 ("[I]f it wished to pursue the now-claimed § 832H credit, [defendant] was required to press for a jury assessment of [settled defendant's] 'ghost-tortfeasor' liability in both negligence and nuisance."). And the time to seek such a finding is *before* the factfinder renders its decision. *See id.* at ¶ 20, 933 P.2d at 280 (noting defendants' failure to request the necessary finding before the case was submitted to the factfinder, or after the case was submitted but before the factfinder rendered its decision); *Pain*, 2012 OK CIV APP 76, ¶¶ 2, 12–13, 283 P.3d at 344, 346 (same; affirming trial court's decision to deny settlement credit where defendant failed to request the required finding before the factfinder rendered its decision).

J&J, however, neither sought nor secured a liability finding against any settled defendant. J&J put on no evidence regarding Purdue or Teva's liability for Oklahoma's opioid crisis and entirely omitted such a finding in its Proposed Findings of Fact and Conclusions of Law—*i.e.*, they failed to make the necessary request *before* the factfinder rendered its decision. *See generally* Defendants Johnson & Johnson and Johnson & Johnson Pharmaceuticals, Inc.'s Proposed Findings of Fact and Conclusions of Law (July 31, 2019). Indeed, J&J did not mention settlement credits at all. This is not surprising. At all times during the pendency of this litigation, J&J worked in concert with Teva and Purdue under a joint defense agreement. They joined each other's motions, coordinated taking depositions, and strategized for hearings—never once pointing the finger at the other as a cause of the opioid crisis. J&J even stated before trial that, "because Purdue settled its

claims with the State on March 26, 2019, evidence and argument regarding its conduct is no longer relevant to establishing Purdue's liability."[1] Defendants Johnson & Johnson Pharmaceuticals, Inc. and Johnson & Johnson's Motion *In Limine* No. 7 to Exclude Purdue Evidence for Purposes of Johnson & Johnson or J&J's Liability, at 2 (Apr. 26, 2019).

Consistent with J&J's position that Purdue's (and Teva's) conduct was not on trial, the Court specifically limited its liability finding to the J&J defendants. Indeed, even the portion of the Court's findings that J&J cites does not mention Purdue or Teva. *See* Objection at 5 n.1 (explaining in a footnote that testimony cited in the Court's findings—not the findings themselves—discusses Purdue). J&J's motivation for not requesting liability findings against Purdue and Teva is clear, and its refusal to seek and obtain such findings is fatal to its request for settlement credits.

J&J now argues that it "demanded a settlement credit" in its Pretrial Conference Order and Trial Brief and should therefore get one. Objection at 4. But demanding a settlement credit no more entitles J&J to a settlement credit than "demanding a remedy" would entitle a plaintiff to a judgment in its favor. Oklahoma law requires that J&J ***put on evidence of liability*** regarding Purdue and Teva, ask for a finding of liability as to those settled Defendants ***before*** the factfinder renders its decision, and secure such a finding from the factfinder. *See Nichols*, 1996 OK 118, ¶¶ 19–21, 933 P.2d at 280. J&J failed to do any of that. *See* Pretrial Conference Order, at 52 (May 23, 2019); Trial Brief of Defendants Johnson & Johnson and Johnson & Johnson Pharmaceuticals Inc., at 104 (May 24, 2019).

[1] Teva had not settled at the time Johnson & Johnson filed its motion *in limine* to exclude Purdue evidence.

Indeed, J&J *still* will not state—much less ask for an express finding—that another opioid manufacturer was liable for the opioid crisis. Instead, in its Objection here, J&J simply "reiterates that it is entitled to a credit" without asking for or proving any of the findings that predicate the settlement credit it wants. Objection at 5. As stated above, J&J's strategic decision to maintain a united front with its fellow opioid manufacturers forecloses any right to credits from those settlements.

Finally, J&J's argument that the State's submissions with its Proposed Findings of Fact and Conclusions of Law entitles Defendants to settlement credit is wrong for at least three reasons. First, the State submitted those filings assuming that J&J would seek the liability findings as to Purdue and Teva required to entitle J&J to a settlement credit. At no point in its Proposed Final Judgment or Findings of Fact and Conclusions of Law did the State seek a liability finding as to anyone other than J&J nor was any evidence of such liability put on at trial. *See generally* Notice of the State's Proposed (1) Final Judgment & (2) Findings of Fact and Conclusions of Law (July 31, 2019). Second, the party that actually had the burden of requesting such a finding—J&J—said nothing about third-party liability in its proposed findings (or anywhere else). Third, the Court didn't adopt the State's Proposed Final Judgment. If it had, J&J would be paying $17,172,761,537.00 into a state account designated by the Court.

Ultimately, the Court's findings are what matter. The Court made no liability finding regarding Purdue or Teva in its Judgment After Non-Jury Trial. And the time to seek such a finding has now passed. Therefore, without such a finding, black-letter Oklahoma law forecloses J&J from settlement credit.

III. The Court Retains Jurisdiction to Ensure an Effective and Complete Abatement Remedy

The Court found that Defendants created a nuisance, and then appropriately determined the nuisance Defendants caused is temporary and abatable. *See* August 26 Order at 22-30. Accordingly—having found a temporary and abatable nuisance—"it becomes the Court's duty, under its equitable powers, to order it removed, prescribing the method, timing, and procedure." *Haenchen v. Sand Prods. Co.*, 1981 OK CIV APP 6, ¶ 29, 626 P.2d 332, 336-37. *See also* 50 O.S. § 8; *Simons v. Fahnestock*, 1938 OK 264, 78 P.2d 388; *Meinders v. Johnson*, 2006 OK CIV APP 35, ¶ 29, 134 P.3d 858, 867 ("There can be little doubt that a district court possesses jurisdiction and authority to direct abatement of a public nuisance."). But the Court's duty in equity does not stop there; the Court retains jurisdiction over that equitable abatement remedy until complete relief is administered—that is, until the nuisance is abated. *See Murray v. Speed*, 1915 OK 934, ¶ 9, 153 P. 181. ("A court of equity which has obtained jurisdiction of the controversy on any ground or for any purpose will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject-matter, and to avoid multiplicity of suits."). This is the nature of equitable abatement and always has been.

In other words, the Court cannot stop short of fully abating the temporary nuisance. Because the Court found a temporary nuisance exists, the Court—not anyone else—is ultimately responsible for fashioning a remedy that fully abates the nuisance. As equity requires, the Court not only has the power and flexibility to abate the nuisance in a way it deems most effective, but it is required to do so once it declares that an abatable nuisance

exists. *See Swann v. Charlotte-Mecklenburg Bd. Of Educ.*, 402 U.S. 1, 12 (1970) ("Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."); *see also Ellis v. Potter*, 1969 OK CIV APP 4, ¶ 16, 455 P.2d 92 (block quoted above, *citing* 27 Am. Jur. 2d "Equity" § 103).

Thus, consistent with the flexibility of equity and its mandate to provide complete relief, Oklahoma courts crafting abatement orders in nuisance cases have done so in ways that allow for both lengthy abatement processes *and* subsequent review and modification of those processes as needed. In *Crushed Stone v. Moore,* for example, the district court held a full trial, found the defendants had created a nuisance, and then gave defendants a little over one year (May, 1960 – July, 1960) to abate it. 1962 OK 65, ¶ 8 369 P.2d 811, 814. The court and the parties then reconvened and new evidence was introduced regarding the abatement efforts and its effects—the court even went to view for itself some of the efforts defendants had taken. *Id.* Ultimately—though defendants took steps to reduce the problems created by their business—the court determined that sufficient abatement of the nuisance had not been accomplished, and thus ordered defendants to cease operations and remove accumulated stockpiles of product. *Id.* The Supreme Court then unanimously affirmed the decision on appeal. *Id.* at ¶¶16-17, 369 P.2d at 817.

Crushed Stone provides at least three helpful analogies to this case. First, it shows that a court's involvement cannot stop once abatement is ordered; courts must retain jurisdiction to review that abatement and assess its progress. Second, it shows that, as part of such review, courts have the power to modify their remediation orders as time passes to

ensure the plaintiff receives full relief. If, for example, one part of the abatement plan was no longer necessary, equity allows the court to stop mandating or funding that action. And, finally, *Crushed Stone* demonstrates that, as part of the court's ongoing duty to provide complete relief in matters of equity, the court can order remediation by methods beyond those requested by the plaintiff.

In that case, the plaintiff did not ask for the stockpiles of limestone to be removed, but the court ordered it done, nonetheless. On appeal, in affirming the trial court's decision, the Supreme Court stated:

> Defendants also say that the trial court's judgment goes beyond the issue to be determined, and that it grants relief plaintiffs did not seek. This apparently has reference to the fact that the judgment required removal of stockpiles, as well as cessation of the quarry's operation. While, as defendants point out, plaintiffs' petition did not pray specifically for removal of stockpiles, it did pray "for such relief as in equity plaintiffs may be entitled." The evidence tended to show that the fine "agricultural limestone" dust blows off of these stockpiles toward plaintiff's premises and, at least partially, accounts for one of the evils of [defendants'] operations, as far as concerned plaintiffs. We think that, ***in view of the court's broad equitable powers***, it was not error for it to order removal of these stockpiles.

Id. at ¶ 16, 369 P.2d at 816 (emphasis added).

The Oklahoma Court of Civil Appeals, in *Meinders v. Johnson*, also provides a helpful example of the court's broad discretion in crafting abatement orders in public nuisance cases. 2006 OK CIV APP 35, 134 P.3d 858. There, like in *Crushed Stone*, the trial court first found defendants liable for creating the nuisance and then ordered defendants to abate the nuisance in phases. *Id.* at ¶ 12, 134 P.3d at 861-62. The trial court's order read as follows:

> This is a matter of equitable cognizance, and the Court shall exercise its equitable powers to require restoration of the surface of the Plaintiff's property and the groundwater of the State of Oklahoma in and under Plaintiff's property so far as practicable, and in light of the risks attendant to an ongoing pollution, and/or migration thereof.
>
> . . .
>
> The Court shall retain continuing jurisdiction to supervise cleanup activities as hereinafter ordered.
>
> The cleanup shall be conducted in phases, and the Court shall determine what additional cleanup should be ordered, if any, upon completion of each phase, and/or during such phase, and after hearing.
>
> . . .
>
> All parties shall be required to make monthly reports due on the 1st day of such month, to the Court of the progress of Phase I abatement ordered hereby. Defendants shall implement Phase I hereof in such a manner as to comply therewith within 18 months of the date hereof.

Id. at ¶ 12, n.1, 134 P.3d at 861, n.1.[2] Just as in *Crushed Stone*, the appellate court unanimously affirmed the trial court's decision. *Id.* at ¶ 42, 134 P.3d at 870. The Supreme Court then denied certiorari on April 4, 2006, by a vote of 8 (Watt, Winchester, Lavender, Hargrave, Kauger, Edmondson, Taylor, Colbert) to 1 (Opala). And a review of the district court's docket sheet in *Meinders* shows that the district court continued to receive monthly abatement reports for a total of 12 years (November, 2003 – November, 2015).

This sort of broad equitable power is also common in federal cases seeking to correct widespread constitutional violations, like in the cases of prison reform and school

[2] The trial court in *Meinders* also reserved the issue of whether defendants were entitled to settlement credits and/or whether plaintiff would be required to apply those settlements to the remediation efforts, and the Court of Appeals likewise did not address it. *See id.* at ¶¶ 12, 36 & n.1, 134 P.3d at 861-62, 869. Neither court discussed 12 O.S. § 832(H) or the controlling precedent in *Nichols v. Mid-Continent Pipe Line Co.*, 1996 OK 118, 933 P.2d 272, discussed above.

desegregation. *See Swann*, 402 U.S. at 15-16 ("As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system."); *see also id.* at 15-16 (noting that school desegregation cases "do[] not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right"). In those contexts too, courts recognize that once a violation has been found, "courts have broad equitable powers to formulate appropriate relief"—including relief beyond what even the Constitution itself would naturally require, "if such relief is necessary to remedy a constitutional violation." *Madrid v. Gomez*, 889 F. Supp. 1146, 1280 (N.D. Cal. 1995) (citing *Stone v. San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992); *Hoptowit v. Ray*, 682 F. 2d 1237, 1245 (9th Cir. 1982); *Toussaint v. McCarthy (Toussaint IV)*, 801 F.2d 1080, 1087 (9th Cir. 1986); *Gluth v. Kangas*, 951 F.2d 1054, 1510 n.4 (9th Cir. 1991); *see also Swann*, 402 U.S. at 15-16 ("Once a right and a violation have been shown the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

Accordingly, courts in those cases often find themselves tasked with crafting large-scale remediation plans, not unlike the State's Abatement Plan here. *See Milliken v. Bradley (Milliken II)*, 433 U.S. 267, 283-286 (discussing the development of remedial desegregation plans by federal courts following the Court's decisions in *Brown I* and *II*); *Madrid*, 889 F. Supp. at 1280 ("To facilitate a remedy that both cures the constitutional deficiencies and minimizes intrusion into prison management, most district courts require

the development and implementation of a remedial plan that is narrowly tailored to correct the specific constitutional violations at issue.") (citing as examples *Casey v. Lewis*, 834 F. Supp. 1477, 1552-53 (D. Ariz. 1993); *Lightfoot v. Walker*, 486 F. Supp. 504, 527-28 (S.D. Ill. 1980). And those plans can take decades to come to fruition; a case out of Texas famously resulted in federal court oversight of the Texas prison system for almost 30 years. *See Ruiz v. Johnson*, 154 F. Supp. 2d 975, 980-84, 1000-01 (S.D. Tex. 2001) (detailing the history of the landmark *Ruiz v. Estelle* litigation).

Importantly, these cases also demonstrate that, in the event the court in equity is not satisfied with the parties' remediation plans, the court must take it upon itself to mold the plan so that it achieves the necessary relief. *See Swann*, 402 U.S. at 16 ("In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system."); *see Madrid*, 889 F. Supp. at 1282 ("[I]t is also the duty and responsibility of this Court to ensure that constitutional rights are fully vindicated."). Indeed, in the *Madrid* case, the district court enlisted the help of the parties *and* appointed a special master to assist it in developing the appropriate remediation plan. 889 F. Supp. at 1282-83.[3] But, even there, the Court was

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[3] The court in *Madrid* explained its choice to appoint a special master as follows:

> In this case, the assistance of a Special Master is clearly appropriate. developing a comprehensive remedy in this case will be a complex undertaking involving issues of a technical and highly charged nature. The Court strongly believes that the participation of a well-qualified impartial Special Master will greatly assist the Court in developing an appropriate remedy. The assistance of a Special Master will also be necessary to properly monitor the implementation of any remedy that this Court may order.

889 F. Supp. at 1282.

clear: "This Court shall retain jurisdiction over this action until such time as the Court is satisfied that all constitutional violations found herein have been fully and effectively remedied." *Id.* at 1283.

The import of these cases is clear: ordering a defendant to start, but not complete, abating a nuisance it caused is not abatement. To the contrary, the Court has the duty and the power to monitor, evaluate and, if necessary, modify the abatement process until it is complete—until the nuisance is abated.

This is especially true here, where all the evidence in the case demonstrates that abatement will take decades. See the testimony of Commissioner Terri White, Trial Tr. (6/25/19 a.m.) at 101:19-102:4; Jessica Hawkins, Trial Tr. (6/21/19 p.m.) at 48:2-49:8; and Dr. Julie Croff, Trial Tr. (6/20/19 a.m.) at 77:17-24; all of which were quoted above. Beyond just the opinions of qualified public health experts, the evidence also showed the following, all of which supports the fact that abatement will take years:

- A person living with Opioid Use Disorder (OUD) today will have this condition for the rest of their life because it is a chronic disorder. Trial Tr. (6/21/19 p.m., Hawkins) at 49:17-20; Trial Tr. (6/25/19 a.m., Commissioner White) at 69:1-4, 91:20-25; *see also, e.g.*, Trial Tr. (6/14/19 a.m., Hoos) at 81:14-25, 84:3-12 (testifying that her opioid addiction is a lifelong disease that she has to work on every day); S-1574 at 68 (federal recommendations for combatting the opioid crisis agreeing that "[a]ddiction is a chronic relapsing disease of the brain which affects multiple aspects of a person's life"). If a person has OUD and is receiving medication assisted treatment, it is likely that treatment will continue to require medication, in certain cases for the duration of their life. Trial Tr. (6/21/19 p.m., Hawkins) at 49:21-24.

- "Addiction can be treated, but it is difficult to treat." Trial Tr. (6/25/19 a.m., Commissioner White) at 68:24. Addiction does not "run a course like a cold or a flu in a few days." Trial Tr. (6/25/19 a.m., Commissioner White) at 68:25. "People can and do recover and live a life in recovery, but relapse is common, and it is a disease [that] people have for the rest of their life." Trial Tr. (6/25/19 a.m., Commissioner

White) at 69:2-4; *see also* Trial Tr. (6/21/19 p.m., Hawkins) at 49:24-50:1; Trial Tr. (5/28/19 p.m., Rojas) at 58:1-2. "Treatment for opioid use disorder" must continue for an individual's lifetime. Trial Tr. (6/17/19 p.m., Beaman) at 58:1-59:10 & 56:21-57:10 (OUD is a "lifelong illness" that requires "constant vigilance in treatment."); *see also* Trial Tr. (6/21/19 p.m., Hawkins) at 50:1-4; *see also* Trial Tr. (5/28/19 p.m., Rojas) at 57:20; *see also, e.g.,* Trial Tr. (6/7/19 a.m., McGregor) at 40:2-16; Trial Tr. (6/14/19 a.m., Hoos) at 73:8-12.

- Changing the way the public thinks about addiction takes a long time. Looking at other public health crises such as HIV-AIDS, it can take decades to change these societal norms. Trial Tr. (6/18/19 a.m. Mendell) at 73:10-15 ("When you look at those societal change movements, they took decades."); Trial Tr. (6/18/19 a.m. Mendell) at 73:24-74:2 ("Stigma reduction, when you look at the time it took to educate the public about this disease, when it talked about HIV-AIDS and those others that I mentioned, took decades.").

- It will take that long to educate and train healthcare professionals on topics including, but not limited to addiction, non-pharmacological or non-opioid therapies to treat pain, safe prescribing and critical appraisal of scientific evidence. Trial Tr. (6/20/19 a.m., Croff) at 69:20-23 & 84:8-85:4; see also Trial Transcript (6/17/19 p.m. Beaman) at 68:7-14 (the only way to return to narcotic conservatism is to teach medical students to prescribe conservatively).

- The negative impact of OUD, opioid overdose death, and other associated aspects of the nuisance is intergenerational. Trial Tr. (6/21/19 p.m., Hawkins) at 50:5-12; Trial Tr. (6/24/19 p.m., Hawkins) at 55:24-56:3. 818. For example, the impact of NAS is long-lasting on the future development of those infants born with this condition and their families. Trial Tr. (6/21/19 p.m., Hawkins) at 50:5-12; Trial Tr. (6/19/19 p.m., Ratcliff) at 36:3-37:3; 46:24-49:6. 820. There is also the trauma caused because of the separation of children and parents due to parental opioid use and abuse. Trial Tr. (6/21/19 p.m., Hawkins) at 50:5-12. 821. OUD can also lead to child death, child abandonment and parental overdose. Trial Tr. (6/19/19 p.m., Ratcliff) at 28:14-29:7; 35:5-36:8; 38:1-11; 39:2-5; 46:6-15; 54:10-55:21; 64:3-9. 827. A 2019 JAMA study on the risks to children from parental use of opioids showed the children of parents who were on opioids for a year or more had "double the risk" for suicide attempts. Id.; Trial Tr. (6/25/19 a.m., Commissioner White) at 80:11-81:10; see also Ct. Ex. 112 (illustrating data in aid of Commissioner White's testimony).

- There is no evidence that the nuisance in the State of Oklahoma is ending. Trial Tr. (6/21/19 p.m. Hawkins) at 48:4-5. To the contrary, there have been reports that have predicted a worsening of the nuisance over the next ten years and calls for cautious optimism for any sort of gains that have been made to address the nuisance. Trial

Tr. (6/21/19 p.m.. Hawkins) at 48:4-10; Trial Tr. (6/24/19 p.m., Hawkins) at 34:7-16. For example, in Oklahoma, while prescription unintentional opioid overdose deaths have decreased, there has been an increase in unintentional illicit opioid overdose deaths in recent years. Trial Tr. (6/24/19 p.m., Hawkins) at 35:19-25

- Other addiction epidemics and public health crisis, like Oklahoma's struggle with tobacco and the heroin epidemic of the 1970's, have required decades of ongoing remediation programming. Trial Tr. (6/21/19 p.m., Hawkins) at 48:22-49:2; Trial Tr. (6/11/19 a.m., Kolodny) at 82:18-83:13.

- In order obtain the benefits of the programs in the Abatement Plan, those programs and services have to remain in place over time Trial Tr. (6/21/19 p.m., Hawkins) at 64:3-7, 64:18-19. These are public health approaches to addressing the nuisance, which require continual provision of services through time. Trial Tr. (6/21/19 p.m., Hawkins) at 81:17-19. "You can't take your foot off the gas." Id.

- Defendants' own corporate representative and expert witness, Bruce Moskovitz, testified under oath during a deposition that this nuisance is complex and will be expensive to abate. *See* Trial Tr. (6/24/19 a.m., Hawkins) at 111:2-13; 113:14-21 (discussing deposition testimony); *see also* S4734 at 0008 (citing Moskovitz Depo. at 287:17-25).

Thus, a periodic hearing examining the status of abatement does not relitigate liability, but rather conforms to this wealth of evidence indicating it will be a lengthy process, satisfies the needs of abating a pervasive public nuisance, and balances these needs against the interests of Defendants, ensuring the abatement ordered is only that which is necessary to provide relief. The State's proposed Final Judgment recognizes and implements these inherent aspects of equity jurisdiction and as such, in the tradition of cases like *Crushed Stone* and *Meinders*, should be adopted.

Defendants claim the State's proposed Judgment is simply a request to relitigate its case. That is not true. The State's case against Defendants required proof that there was a public nuisance in Oklahoma, that Defendants caused that nuisance, and that said nuisance is abatable. The Court found that the State proved all of these.

The State is not relitigating whether there is a nuisance. The State is not relitigating liability. And the State is not relitigating the remedy sought—or that it is available and appropriate for this particular nuisance. Rather, the State understands the Court ordered abatement of the nuisance but did not find the State showed the specific time period that it would take to abate. August 26 Order at p.41, ¶60. Nor was the Court required to make a specific finding as to *exactly* how long it will take to abate the nuisance, for "the plastic remedies of equity are molded to the needs of justice and are employed to protect the equities of all parties[.]" *Ellis v. Potter*, 1969 OK CIV APP 4, ¶ 16. Thus, just as in *Crushed Stone* and *Meinders*, a review process is necessary to achieve the Court's order of abatement and can be the only result consistent with the Court's power and duty to abate, now that it has found an abatable nuisance. The State's proposed Final Judgment merely conforms to the evidence that abatement will take years (though the Court found insufficient evidence to set the specific number of years right now) and acknowledges the Court's continuing jurisdiction to oversee and accomplish abatement.

Defendants also argue a separation-of-powers issue—that the Court intended for the Legislature to determine whether additional programs and funding are needed over time. But that argument rests on the false premise that this Court somehow lacks the power necessary to afford complete relief on its own. As the law and examples above demonstrate, that is clearly not the case. Not only is this Court empowered to provide complete relief in this matter, it is obligated to do so in its exercise of equitable jurisdiction.

The Court has the power to fashion whatever remedy it sees fit. The Court ordered equitable abatement. Obviously, the Court cannot, and did not, order partial abatement.

As such, it is the Court's duty to ensure that the nuisance is fully abated and relief is fully achieved. Reexamining the state of the nuisance annually (or even monthly, as in the case of *Meinders*) does not equate to mini trials or a second bite at the apple. Rather, it ensures complete justice and is in accordance with well-established authority on equitable abatement of a nuisance.

IV. The Nuisance Is More Than Just the Offensive Conduct

As this Court has now held time and again in this case, Oklahoma law defines a nuisance as more than just the offensive conduct at issue; the statute, caselaw, and logic all dictate that the concept of a "nuisance" must also include the injurious condition that offensive conduct creates. *See* 50 O.S. § 1 ("A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either: [1] Annoys, injures or endangers the comfort, repose, health, or safety of others; or [2] Offends decency; or... [4] In any way renders other persons insecure in life, or in the use of property...."); *Epps v. Ellison*, 1921 OK 279, ¶ 3, 200 P. 160, 161 ("Section 4250, Rev. Laws 1910 [(former numbering for 50 O.S. § 1)] defines a nuisance to be any act *which annoys, injures, or endangers the comfort, repose, health, or safety of others, or in any way renders other persons insecure in life or in the use of property.*" (emphasis added)); *see also Mid-Continent Petro. Corp. v. Fisher*, 1938 OK 483, ¶ 3, 84 P.2d 22, 23 (describing the nuisance created by oil-filed pollution as a "injurious condition"); *Town of Jennings v. Pappenfuss*, 1928 OK 61, ¶ 1, 263 P. 456, 457 (affirming judgment that the "odor and stench" from an overflowing septic tank was a "*condition* [that] was detrimental to plaintiff and endangered her comfort, health, and repose") (emphasis added); *People v. ConAgra Grocery Prods.*

Co., 17 Cal.App.5th 51, 91 (2017) ("A public nuisance cause of action is not premised on a defect in a product or a failure to warn but on affirmative conduct that assisted in the creation of a *hazardous condition*." (emphasis added)); 58 Am. Jur. 2d *Nuisances* § 34 (1971) ("A nuisance is a condition, and not an act or failure to act on the part of the person responsible for the condition. If the condition exists, and the person charged therewith is responsible for its existence, he is liable for the resulting damages to others although he may have used the highest possible degree of care to prevent or minimize the deleterious effects."). As such, the State hereby incorporates by reference its response to this now tired argument as articulated in ¶¶ 179-183 of its proposed Conclusions of Law.

The only nuance J&J brings to this iteration of its *nuisance-equals-conduct* argument is a single line from this Court's August 26 Order that states: "I conclude (a) that Defendants engaged in false and misleading marketing of both their drugs and opioids generally; and (b) this conduct constitutes a public nuisance under extant Oklahoma law." But this, just like Defendants' excerpt of only half of the statutory nuisance definition, is taken out of context. For example, in the paragraph just before, this Court said of the same false and misleading marketing:

> [T]he law makes clear that such conduct is more than enough to serve as the act or omission necessary to establish ***the first element*** of Oklahoma's public nuisance law.

August 26 Order at p. 26, ¶ 10 (emphasis added). Then, in ¶ 17, the Court explains that Oklahoma's statutory nuisance definition also requires proof that "Defendants' actions caused harm and that those harms are of the kind recognized under the statute." And in ¶

21, the Court discusses a nuisance as being the result of conduct—*i.e.,* conduct is the cause of a nuisance, not its sole constituent.[4]

In short, one sentence from the Court's order is not sufficient to erase either the context surrounding that sentence or the consistent position of this Court, the law, and logic—all of which say that the nuisance is more than just Defendants' offensive conduct.

V. Depositing the Abatement Funds in the Opioid Lawsuit Abatement Fund Is Lawful And Proper

J&J again argues that any abatement funds must be placed into the State Treasury, and "[n]othing in Oklahoma law authorizes the Attorney General to instead direct litigation proceeds to special-purpose funds." Objection at 7-8. This is an apparent reference to the State's Proposed Final Judgment, which, if adopted, would require funding from J&J for year one of the Abatement Plan to be deposited into the "Opioid Lawsuit Abatement Fund of the State of Oklahoma." *See* Objection, Ex. A at ¶ 16. But contrary to J&J's contention, this fund ***does*** reside in the State Treasury and will be utilized to accomplish abatement of the public nuisance, consonant with the Legislature and the Governor and in accordance with the Abatement Plan. *Id.* There is no conflict between deposit of the court-ordered abatement funding into the "Opioid Lawsuit Abatement Fund of the State of Oklahoma," i.e. a State Treasury fund, and 74 O.S. § 18b(A)(11), which requires the Attorney General "to pay into the State Treasury, immediately upon its receipt, all monies received . . . belonging to the state[.]"

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[4] August 26 Order at p. 30, ¶ 21 ("The Court further finds no act or omission by the State was a direct or proximate cause of public nuisance created by the Defendants.").

The remainder of J&J's argument on this issue surrounds the authority of the court to establish a fund to abate a public nuisance. Its position is wrong and highlights J&J's continued misunderstanding of the equitable remedy of abatement and repeated misapplication of law governing legal damages to an equitable award.

First, district courts clearly have the power to direct the abatement of a public nuisance. *See* 50 O.S. § 8; *Simons v. Fahnestock*, 1938 OK 264, 78 P.2d 388 ("As a general rule, courts of equity have power to give relief against either public or private nuisance by compelling the abatement or restraining the continuance of the existing nuisance, or enjoining the commission or establishment of a contemplated nuisance."); *Meinders v. Johnson*, 2006 OK CIV APP 35, ¶ 29, 134 P.3d 858, 867 ("There can be little doubt that a district court possesses jurisdiction and authority to direct abatement of a public nuisance."). Second, Oklahoma law is clear that an abatement can be accomplished through either "the expenditure of money or labor." *Oklahoma City v. West*, 1931 OK 693, ¶ 6, 7 P.2d 888, 890 (defining a temporary nuisance as one that can be "abated by the expenditure of money or labor"). This does not, however, transform the equitable remedy of abatement into a damage award. *See, e.g., Town of Jennings v. Pappenfuss*, 1928 OK 61, ¶¶ 6-7, 263 P. 456 (district court issued a permanent injunction and ordered "that defendant proceed at once to abate the nuisance and pay the cost"; the Oklahoma Supreme Court affirmed and held "the whole matter to be an action in equity"). Accordingly, if the Court has the power to direct abatement, and abatement can be accomplished through the expenditure of funds, then the Court—as part of its innate power over equitable

abatement—must possess the power to establish a vehicle to hold the funds to be deployed pursuant to the Abatement Plan.

This conclusion is consistent with a district court's inherent power to enforce its judgments. Once a valid judgment is entered, the court that entered the judgment has the power to enforce it. *Bowles v. Goss*, 2013 OK CIV APP 76, ¶ 18, 309 P.3d 150, 158 ("The district court has the inherent power to do all things 'necessary to the exercise' of its enumerated powers…One long recognized inherent power is the power to enforce the court's judgments…From these authorities we conclude that every court, including the district court in this case, that has the jurisdiction to render a judgment has the inherent power to enforce that judgment.") (quoting *Winters By and Through Winters v. Oklahoma City*, 1987 OK 62, ¶ 8, 740 P.2d 724, 726)); *see also State ex rel. Crawford v. Corp. Comm'n*, 1938 OK 455, ¶ 12, 85 P.2d 288, 290 (holding that the Corporation Commission, as the judicial body whose judgement created certain funds, had the power to disburse those funds "incident to its power to enforce its judgments"); *Barker v. Bond*, 1941 OK 85, ¶¶ 9-12, 111 P.2d 507, 509 (holding that such power was exclusive to the Corporation Commission, as it was the judicial body that entered the judgment). Here, the Court made the following specific findings: (a) Defendants engaged in false and misleading marketing of their drugs and opioids generally, *see* August 26 Order at pp. 25-26, 29-30, ¶¶ 9-11, 17, 19-20; (b) such conduct constituted a public nuisance under Oklahoma law, *id.*; (c) the public nuisance can be abated, *id.* at p. 30, ¶ 22; (d) a proper remedy for public nuisance is equitable abatement, *id. at ¶ 23*; and (e) the appropriate remedy to address the Opioid Crisis is the abatement of the nuisance. *Id.* at ¶ 24. In accordance with these findings, the Court

found "the contours of the State's proposed Abatement Plan" to be "reasonable and necessary to abate the public nuisance," and the "sum necessary to carry out the Abatement Plan in year one is $572,102,028." *Id.* at p. 30, ¶ 25, p. 41, ¶ 59. Thus, placement of the abatement funds into a State fund designated for the exclusive use of those funds to abate the public nuisance is not unauthorized or unlawful, but falls well within the Court's powers and is entirely consistent with Oklahoma law.

Equally misplaced is J&J's reliance on *Okla. Educ. Ass'n v. State ex rel. Okla. Legislature*, 2007 OK 30, 158 P.3d 1058, which is cited in support of its position that the State's proposed Final Judgment would encroach on legislative and executive authority and create separation of powers problems. *See* Objection at 3. The *OEA* case did not deal with remediation or the enforcement of a judgment. Rather, it addressed whether the judiciary had the power to direct how the Legislature would appropriate State funds. *See* 2007 OK 30, ¶ 5, 158 P.3d at 1062. The Court held the judiciary cannot "impos[e] mandates" on how the Legislature appropriates State funds without running afoul of the separation of powers doctrine; such a task is not "proper for [the Court's] adjudication." *Id.* at ¶ 25, 158 P.3d at 1066. That case said nothing about how a court may direct funds paid pursuant to a judgment, *i.e.*, facilitate remediation in a case that *is* properly before the court—a power inherently held by the judiciary. Moreover, unlike the *OEA* case, the abatement funds at issue are not general revenue funds set for appropriation. Rather, they are funds created for the purpose of funding a court-ordered abatement of a public nuisance.

In short, by continuing to mischaracterize the funds at issue as an ordinary damages award, J&J attempts to manufacture a separation-of-powers conflict where none exists.

The funds at issue here are not damages, and they are not general revenue. They are abatement funds created pursuant to a valid and enforceable judgment. As such, they are subject to this Court's direction.

VI. J&J's New Trial Motion is Procedurally Infirm and Substantively Meritless

The majority of J&J's Objection (pp. 8-21) is a "new trial motion" filed pursuant to 12 O.S. § 653(C), which provides: "A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree." There are several procedural problems with this motion. First, it highlights the impropriety of J&J's Petition in Error filed in the Oklahoma Supreme Court based on this Court's August 26 Order, which J&J has deemed (over this Court's explicit instructions) to be a final, appealable judgment. As this Court said—and as this filing demonstrates—the August 26 Order is not final, and the State is seeking dismissal of J&J's appeal as premature.[5] Second, in the event the Court's August 26, 2019, ruling is considered final, J&J's motion is out of time as, § 653(A) requires any such motion to be filed within ten (10) days after the judgment has been filed. Third, assuming this motion is being filed after announcement of the decision but before a final judgment (a position with which the State agrees), § 653(C) clearly states the new trial motion is not "deemed filed" until after the final judgment is entered. In other words, because this portion of J&J's Objection is not yet filed, there is nothing before the Court and a response by the State is premature and unnecessary at this time.

[5] As of the date of this filing, the State's Motion to Dismiss is currently pending before the Oklahoma Supreme Court.

However, out of an abundance of caution and to preserve the record, the State provides the following brief response to each of J&J's numbered assertions, referring the Court to other briefs and relevant portions of the record which address J&J's arguments, and adopting and incorporating those arguments as if fully set forth here. The State reserves the right to file a comprehensive brief on J&J's motion for new trial as soon as final judgment is entered and the motion is "deemed filed."

1. J&J argues entry of a judgment against it "is inappropriate because [its] marketing and sale of FDA-approved opioid medications was not actionable under public nuisance statutes." J&J argues nuisance claims are historically limited to real property.

   State's Response *see State's Proposed Conclusions of Law*[6] *¶¶ 10-28; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 1-3.*

2. J&J argues that its conduct on Oklahoma soil does not establish a sufficient connection to property use to qualify as a public nuisance.

   State's Response: *see State's Proposed COL ¶¶ 23-28; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 2-5, pp. 22-24.*

3. J&J argues the Court's interpretation of the public nuisance statutes violates the Fourteenth Amendment's void-for-vagueness doctrine.

   State's Response: *see State's Proposed COL ¶¶ 10-22.*

4. J&J argues the State is not entitled to recovery a monetary award addressing the alleged consequences of a public nuisance.

   State's Response: *see State's Proposed COL ¶¶ 492-499.*

5. J&J argues directing money toward new and existing government program violates the separation of powers under Oklahoma's Constitution as policy making and fiscal decisions are vested in the Legislature.

   State's Response: *see State's Proposed COL ¶¶ 500-507*, and addressed in section V above.

6. J&J argues it was entitled to a jury trial.

   State's Response: *see State's Proposed COL ¶¶ 492-499.*

[6] Hereinafter "COL" will be used to refer to "Conclusions of Law," "FOF" shall denote "Findings of Fact," and "MIL" shall denote "Motion in Limine."

7. J&J argues the Court's conclusion its marketing was false and misleading so as to violate 50 O.S. § 1 rested on legally insufficient evidence and was against the weight of the evidence, particularly with respect to the "unreliable expert testimony" of Commissioner Terri White, Renzi Stone, and Dr. Jason Beaman.

State's Response: *see State's Omnibus Response to Defendants' Motions to Exclude the Testimony of* ***Dr. Jason Beaman****, Ms. Jessica Hawkins, Dr. Adriane Fugh-Berman,* ***Mr. C. Renzi Stone****, Dr. David Courtright, Dr. John Duncan, and Mr. Ty Griffith filed April 30, 2019; State's Omnibus Response to JNJ's Motions to Exclude the Testimony of Dr. James Gibson, Dr. Danesh Mazloomdoost, Mr. Gary Mendell, Ms. Claire Nguyen, Christopher Ruhm, PhD, Dr. Susan Sharp, and* ***Commissioner Terri White*** *filed April 30, 2019; August 26, 2019 Judgment After Non-Jury Trial; State's Proposed FOF ¶ 44, p. 17, and COL ¶¶ 6-11, p. 24-26.*

8. J&J argues there was insufficient evidence to support the conclusion that specific statements attributed to J&J were false and misleading (citing examples).

State's Response: *see State's Proposed FOF ¶¶ 399-558.*

9. J&J argues it was prejudicial error to admit testimony of Dr. Andrew Kolodny because he was a member of the State's legal team, lacked qualifications on many subjects, and offered speculative testimony to inject hearsay and interpretations under the "imprimatur" of expertise.

State's Response: *see State's Response to Defendants' Motion to Strike Testimony of Dr. Andrew Kolodny (7/1/19).*

10. J&J argues the FDA preempts the imposition of liability of J&J for promoting its long-acting medications for chronic non-cancer pain.

State's Response: *see State's Proposed COL ¶¶ 54-64; State's Response to JNJ MIL No. 6 to Preclude Insinuation That Janssen's Opioid Medications are Inappropriate for Treating Chronic Pain.*

11. J&J argues the FDA preempts the Court's imposition of liability for statements consistent with the labels of J&J's medications.

State's Response: *see State's Proposed COL ¶¶ 54-64.*

12. J&J argues the First Amendment bars any imposition of liability for promoting its opioids for the FDA-approved indication of treatment of chronic non-cancer pain.

State's Response: *see State's Proposed COL ¶¶ 86-107; see August*

26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 12-16, p. 26-29.

13. J&J argues the safe harbor provision of Oklahoma's nuisance statute, 50 O.S. § 4, prevents a finding of liability.

State's Response: *see State's Proposed COL ¶¶ 51-53.*

14. J&J argues the Court's finding J&J was a factual or proximate cause of the opioid crisis was legally insufficient or against the weight of the evidence.

State's Response: *see State's Proposed FOF ¶¶ 676-748 and COL ¶¶ 108-143; August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 54-55, p. 20, and COL ¶¶ 17-18.*

15. J&J argues the judgment against it violates the Excessive Fine Clauses of the United States and Oklahoma Constitutions.

State's Response: *see State's Proposed COL ¶¶ 508-511.*

16. J&J argues the State contributed to the harm resulting from the nuisance.

State's Response: *see State's Proposed COL ¶¶ 171-175.*

17. – 22. (Addressed in detail in the sections below)

23. J&J argues it was prejudiced by the State's refusal to produce investigative files for Oklahoma doctors who committed misconduct related to opioid prescribing.

State's Response: *see State's Response to the J&J Defendants' Motion to Exclude Evidence Under 12 O.S. § 2509(C) (submitted to the Court via e-mail on 06/01/19).*

24. J&J argues it was prejudiced by the State's refusal to produce investigative files because it allowed the State to present a one-sided story.

State's Response: *see State's Response to the J&J Defendants' Motion to Exclude Evidence Under 12 O.S. § 2509(C) (submitted to the Court via e-mail on 06/01/19).*

25. J&J argues the Court prejudicially erred by refusing to compel the State to produce participant-level claims data for Oklahoma patients who received a prescription for an opioid medication.

State's Response: *See, e.g., Order of Special Discovery Master (10/10/18), aff'd Order of Judge Balkman (12/04/18); see also State's Response to Defendants' Motion to Compel Discovery Regarding Claims Data (09/14/18); State's Response to Defendants' Objections to the Special Discovery Master's Order on Defendants' Motion to Compel Discovery Regarding Claims Data (10/24/18).*

26. J&J argues the Court erred in imposing liability for speech fully protected by the First Amendment and Article II, § 22 of the Oklahoma Constitution as such speech did not constitute "commercial speech."

State's Response: *see State's Proposed COL ¶¶ 86-103; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 12-16, p. 26-29.*

27. J&J argues that even if its speech were considered "commercial speech," it was not false or misleading.

State's Response: *see State's Proposed COL ¶¶ 86-103; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 12-16, p. 26-29.*

28. J&J argues the Court erred in imposing liability for lobbying and petitioning activities protected by the Petition Clause of the First Amendment and Article II, § 3 of the Oklahoma Constitution.

State's Response: *see State's Proposed COL ¶ 107; State's Response to J&J MIL #2 to Exclude Evidence Regarding Lobbying Activities; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 12-16, p. 26-29.*

29. J&J argues the Court erred in imposing liability on J&J for funding or otherwise associating with third-party groups and medical practitioners because such association is protected by the First Amendment.

State's Response: *see State's Proposed COL ¶¶ 104-106; State's Response to J&J MIL #3 to Exclude Evidence Regarding Advocacy Groups; August 26, 2019 Judgment After Non-Jury Trial, COL ¶¶ 12-16, p. 26-29.*

30. J&J argues the Court erred in holding it liable for the conduct of former subsidiaries Noramco and Tasmanian Alkaloids despite legally insufficient evidence to pierce the corporate veil.

State' Response: *see State's Proposed COL ¶¶ 65-7; State's Response to J&J MIL #4 to Exclude Evidence Related to Noramco and Tasmanian Alkaloids; August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 6-15, p. 5-9.*

31. J&J argues the Court erred in imposing liability on J&J for Noramco and Tasmanian Alkaloids' sales of raw materials for prescription opioid medications when they were sold pursuant to DEA quotas.

State's Response: *See State's Proposed COL ¶¶ 79-83; State's Response to J&J MIL #4 to Exclude Evidence Related to Noramco and Tasmanian Alkaloids. See August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 6-15, p. 5-9.*

32. J&J argues the DEA's authorization pursuant to the Controlled Substances Act also forecloses liability for Noramco's and Tasmanian Alkaloids' sales pursuant to the safe harbor provision of Oklahoma's nuisance statute, 50 O.S. § 4.

State's Response: *see State's Proposed COL ¶¶ 79-83; State's Response to J&J MIL #4 to Exclude Evidence Related to Noramco and Tasmanian Alkaloids. See August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 6-15, p. 5-9.*

33. J&J argues Noramco and Tasmanian Alkaloid are component suppliers with no role in making the finished product at issue, so J&J cannot be held liable under Oklahoma law.

State's Response: *see State's Proposed COL ¶¶ 84-85; State's Response to J&J MIL #4 to Exclude Evidence Related to Noramco and Tasmanian Alkaloids. See August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 6-15, p. 5-9.*

34. J&J argues the Court prejudicially erred in admitting a 1998 FDA letter criticizing certain convention posters promoting Duragesic and relying on it to impose liability as it constituted inadmissible hearsay.

State's Response: *See State's Proposed FOF ¶¶ 402, 404-411, 420 and COL ¶ 57; August 26, 2019 Judgment After Non-Jury Trial, FOF ¶ 45, p. 17.*

35. J&J argues the Court prejudicially erred in admitting the 2004 FDA Warning Letter and relying on it to impose liability as it constituted inadmissible hearsay.

State's Response: *See State's Proposed FOF ¶¶ 422-433 and COL ¶ 57; State's Response to J&J MIL #10 to Exclude the 2004 FDA Warning Letter. See August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 47-49, p. 18.*

36. J&J argues the Court prejudicially erred in admitting the President's Commission on Combating Drug Addiction and the Opioid Crisis and relying on it to impose liability as it constituted inadmissible hearsay.

State's Response: *See State's Proposed FOF ¶¶ 695-697, 732, 784, 787-788, see also, p. 15, 19; August 26, 2019 Judgment After Non-Jury Trial, FOF ¶¶ 56-57.*

J&J's arguments regarding joint and several liability (*see* Objection at pp. 14-16, ¶¶ 17-22) are misplaced. The Court was only asked to find liability, and only found liability,

against the J&J defendants. In such a circumstance, the law is clear: J&J is responsible for the whole nuisance and its remediation, even if others may have contributed to the nuisance along the way. *See Town of Sentinel v. Boggs*, 1936 OK 620, ¶¶ 20-22, 61 P.2d 654, 659.

It has long been the law in Oklahoma that (i) a plaintiff harmed by a nuisance may elect to sue all, or merely one, of the parties that was a cause of the nuisance, and that (ii) when a plaintiff proceeds against less than all potential tortfeasors, the one(s) sued and found responsible will bear responsibility for the entire nuisance:

> Where several parties, acting together or acting independently of each other, purposefully or carelessly and negligently do such acts as to do injury resulting in damage to another, such injured party may maintain an action against all or against any one or more less than all such parties for the entire amount of damage done; and where such injured party brings action for the damage done against one of such parties, it is not error for the court to instruct the jury that, if they find from the evidence that the defendant, along with others, did the injurious acts resulting in damages, the plaintiff may recover from the one sued the entire amount of damage sustained by reason of such acts.

Town of Sentinel, 1936 OK 620, ¶¶ 21, 61 P.2d at 659; *see also Kirkpatrick v. Chrysler Corp.*, 1996 OK 136, ¶ 10, 920 P.2d 122, 126; *Phillips Petro. Co. v. Vandergriff*, 1942 OK 94, ¶¶ 10-13, 122 P.2d 1020, 1022-24. This rule applies even if the conduct of the party sued is insufficient alone to create the nuisance:

> Where the concurrent acts of different persons, although acting independently, combine to produce a condition which is actionable negligence, each is responsible to one injured thereby for the entire result, even though the act or neglect alone of the one sued might not have produced the result.

Town of Sentinel, 1936 OK 620, ¶¶ 21, 61 P.2d 654, 659; *see also Kirkpatrick v. Chrysler Corp.*, 1996 OK 136, ¶ 10, 920 P.2d 122, 126. And this rule is particularly appropriate where, as here, the State is the one bringing the action, because the law that requires apportionment of harm amongst joint tortfeasors "shall not apply to actions brought by or on behalf of the state." 23 O.S. § 15(B); *see also* 8 Okla. Prac., Product Liability Law § 3.10 (2017 ed.) ("If the state was a plaintiff in a cause of action against multiple defendants and established liability against those defendants, the state could employ the doctrine of joint and several liability and recover 100% of the damages suffered by the state against a defendant who was, for example, only 10% or 1% at fault.").

Thus, having found that Defendants directly and proximately caused Oklahoma's public nuisance, and given the clear state of the law cited above, the following questions are entirely irrelevant here: (a) whether the concurrent acts of others may also have been a cause of the nuisance, *see* Objection, part VI, ¶¶ 21-22;[7] (b) whether J&J acted in concert with others to cause the nuisance, *see* Objection, part VI, ¶17; and (c) whether the magnitude of Defendants' conduct was greater or less than that of other potential tortfeasors, *see* Objection, part VI, ¶¶ 20-22. What matters is that, following a full trial exposing to the world the callous, deceitful, and dangerous ways in which J&J marketed these deadly drugs, this Court found J&J directly and proximately caused the public

[7] That the rule in *Town of Sentinel*, assigning liability for the entire tort to only one of multiple potential tortfeasors, was "long established" when that case was decided back in 1936 (1936 OK 620, ¶ 21, 61 P.2d at 659) eviscerates Johnson & Johnson's arguments that imposing similar liability on them here "deviates from the ordinary Oklahoma requirements" and "violates due process of law." Objection, part VI, ¶¶ 21-22.

nuisance that is Oklahoma's opioid crisis. At that point, the law states J&J should be held responsible for the entire nuisance and its remediation.

As for Defendants' remaining arguments in this section regarding whether the public nuisance here is a single injury, whether it is capable of apportionment, and that it is "excessive" (*see* Objection at 15 (¶¶ 18, 19, & 20), the State incorporates by reference its prior response to those arguments found in ¶¶ 162-169, 176, and 508-510 of its Proposed Conclusions of Law.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court overrule J&J's Objection, adopt the State's proposed Final Judgement, and deny J&J's Motion for New Trial.

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