



STATE OF ()
 CLEVELAND COUNTY J. S.
FILED In The
 Office of the Court Clerk
 APR 12 2018

IN THE DISTRICT COURT OF CLEVELAND COUNTY
 STATE OF OKLAHOMA

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

In the office of the
 Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
 Judge Thad Balkman

Special Master:
 William Hetherington

**PLAINTIFF'S OPPOSITION AND MOTION TO STRIKE PURDUE'S MOTION TO
 COMPEL PRODUCTION OF DOCUMENTS AS MOOT**

The Purdue Defendants' Motion to Compel is moot and unnecessary.

Purdue expressly acknowledges that the "State agreed not to stand on its objections and indicated it would produce everything responsive to Purdue's requests." Motion at 3. Purdue admits the State is not currently withholding any documents based on objections. Purdue also admits that the State agreed to produce the documents requested. Importantly, Purdue had all of this information before it filed its Motion.

Acknowledging that there is no controversy on which the Court can rule, the Motion simply asks for the State to begin its rolling production. Motion at 9. The Court recently ordered "the parties to further develop the 'rolling basis' for production process." April 4, 2018 Order at ¶7. The State has already done so—just as it told Purdue it would. Indeed, on April 10, the State began producing documents responsive to all Defendants' joint requests for production and will continue to roll out production sets as they become available (as it did on April 11). Accordingly, Purdue's Motion is moot. The Court's inquiry can and should end there.

However, Purdue's Motion raises several admissions that are important to note. For example, Purdue admits that "[t]he parties are on an extremely accelerated timeline." *Id.* at 4. The State agrees. Purdue admits that "delays prejudice [a party's] ability to prepare its case and move forward in the discovery process." *Id.* at 2. The State agrees.

Unfortunately, Purdue has not lived up to these statements. Indeed, unlike Purdue, the State has attempted to move swiftly and efficiently toward trial. The State has not delayed this case nor its production. Instead, the State has consistently opposed Purdue's efforts to delay this case and kick the can down the road on discovery issues. Purdue, not the State, filed a motion to stay discovery in this case. Purdue, not the State, moved to dismiss the entire case or, alternatively,

stay prosecution entirely under inapplicable doctrines. Purdue, not the State, has refused to address discovery issues related to their own objections at hearings, repeatedly claiming that issues are “premature.” Purdue, not the State, was not prepared to discuss their own objections at the hearing on March 9.¹ Purdue, not the State, attempted to avoid the March 29 hearing by initially stating that no such hearing was set to attempt to delay the State’s First Motion to Compel until April 19.² Purdue, not the State, chose not to promptly file a motion for protection from properly-noticed depositions in order to delay the issue being heard by the Court on April 19. In short, the State agrees that document production is important and needs to happen quickly to prepare this case for trial. The State is producing documents and will continue to do so.

Purdue’s Motion mischaracterizes the parties’ respective production and discovery efforts. The State served its initial discovery requests to Purdue on *August 3*. Purdue had 132 days to search, gather, and review documents before they were ordered to respond to the discovery on December 13. Purdue had months to gather documents specifically responsive to the State’s requests. Further, Purdue already had batches of documents ready for production based upon their prior submissions to federal agencies and the fact that Purdue was involved in litigation in multiple other states based on similar allegations. Despite those facts, the Court had to compel Purdue’s production of documents to which the State is entitled. Further, the State has had to file a Motion to Compel deposition testimony because Purdue will not make corporate representatives available for even the most basic testimony in response to properly served deposition notices.

The State is in a far different situation. Purdue could have served the State with discovery requests in August. Had Purdue done that, the State’s production likely would be substantially complete (if not completed). Purdue chose not serve any discovery on the State until January 12,

¹ See Hearing Transcript, March 9, 2018, at 58:13-17, 61:09-62:05.

² See March 12, 2018 Correspondence from Purdue’s Counsel, attached hereto as Exhibit A.

2018. Nor did Purdue ever send the State a letter or any communication whatsoever indicating what documents it might want to obtain from the State. So, while Purdue had 132 days to prepare for its document production, the State did not have the benefit of that time.

Despite Purdue's choice to not initiate discovery as to the State for over four months, the State was able to start producing documents within 90 days of initially receiving discovery requests. The State has diligently been searching, gathering and reviewing documents for production and will continue to do so. And, the State is gathering and collecting documents across numerous state agencies.

To be clear, the State is not currently withholding any documents based on its objections to Purdue's requests. Purdue admits the State made this clear during the meet-and confer process. *See, e.g.*, Motion at 3.³ Yet, Purdue still filed the Motion. This is directly opposite of the position Purdue took in response to the State's requests for production, which necessitated the State's First Motion to Compel. As made clear in the briefing and in the Court's ruling, Purdue was: (a) standing on multiple objections in its refusal to produce large volumes of documents, such as documents related to a period prior to 2006, and (b) refusing to identify documents it was withholding or refusing to search. *See, e.g.*, April 4, 2018 Order at ¶3 (overruling Defendants' objections to the Relevant Time Period). The State has done no such thing. The State agreed to comply with the time period requested by Purdue (and all Defendants). The State agreed to search for and produce all responsive documents located, to the extent they exist, after a reasonably diligent search (with the exception of any privileged documents). The State made it clear no

³ For clarity, the State's position is that it will produce all responsive documents located in response to Purdue's requests following a reasonable and diligent search, with the exception of privileged materials. The State has not identified any categories of documents it is withholding based on its objections at this time, but it did not "withdraw" any objections during the meet and confer, as Purdue claims. *See, e.g.*, Motion at 4.

documents were currently being withheld pursuant to those objections.⁴ Purdue was aware of all of these facts *before* filing its Motion. Motion at 2-3.

In sum: The State agreed to produce the documents sought; had agreed to do so prior to Purdue filing this Motion; already began producing documents responsive to the joint requests for production originally served by the various Defendants; and will continue to produce documents responsive to all Defendants' joint requests on a rolling basis as advised by the Court in its recent, April 4, 2018 Order.

Thus, there is no controversy at issue. The State has initiated its responsive document production. The State will continue to produce documents on a rolling basis. Therefore, the Motion should be denied and stricken as moot.

Dated: April 12, 2018



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⁴ If and when the State identifies any categories of documents that it intends to withhold based on an objection, it will notify Purdue of their existence and the justifications for withholding them.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on April 12, 2018 to:

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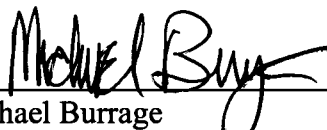
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Michael Burrage

Exhibit A

Thursday, April 12, 2018 at 8:51:19 AM Central Daylight Time

Subject: RE: Meet and Confer - Purdue Responses and Objections
Date: Monday, March 12, 2018 at 2:21:38 PM Central Daylight Time
From: Sanford C. Coats
To: Drew Pate, shielabirnbaum@quinnemanuel.com, Mark Cheffo, haydencoleman@quinnemanuel.com, Jonathan Tam, patrick.fitzgerald@skadden.com, ryan.stoll@skadden.com, paullafata@quinnemanuel.com
CC: 'Michael Burrage (mburrage@whittenburrage.com)', Reggie Whitten, Cynthia Norman, Roxanne Fitzgerald, Brad Beckworth, Jeff Angelovich, Susan Whatley, Lisa Baldwin, Trey Duck, Cody Hill, Winn Cutler, Ross Leonoudakis, Nikki Cameron, Cullen D. Sweeney
Attachments: image001.png

Drew,

Thank you for the email. We are working on a suggestion on a time and date for a meet and confer. However, I think your proposed deadline is off. We are scheduled to have a hearing with Judge Balkman on March 29, not Judge Hetherington. Our next scheduled meeting with Judge Hetherington regarding discovery matters is April 19 (you may recall that it was originally set for April 13 but Judge Hetherington at last Friday's session moved it to April 19). Thus, the deadline for discovery motions for the next conference with Judge Hetherington is April 4.

Please let me know if you disagree with this analysis.

Sandy



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From: Drew Pate [mailto:dpate@nixlaw.com]
Sent: Monday, March 12, 2018 11:49 AM

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Cc: 'Michael Burrage (mburrage@whittenburrage.com)'; Reggie Whitten; Cynthia Norman; Roxanne Fitzgerald; Brad Beckworth; Jeff Angelovich; Susan Whatley; Lisa Baldwin; Trey Duck; Cody Hill; Winn Cutler; Ross Leonoudakis; Nikki Cameron; Sanford C. Coats; Cullen D. Sweeney
Subject: Meet and Confer - Purdue Responses and Objections

Counsel,

Based on the motion schedule set by Judge Hetherington at the hearing on Friday, the deadline for discovery motions is Thursday, March 15 for the March 29 hearing. We sent a letter regarding several of the issues on March 5, and Purdue stated it was premature to discuss these issues at the hearing on Friday. Please advise when you are available to meet and confer regarding Purdue's objections and responses to Plaintiff's first discovery requests.

Best regards,

Drew

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