



IN THE DISTRICT COURT OF CLEVELAND COUNTY PART A
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.

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

STATE OF OKLAHOMA
CLEVELAND COUNTY, S.S.
FILED

MAY 10 2018

In the office of the
Court Clerk MARILYN WILLIAMS

THE STATE'S OPPOSITION TO DEFENDANTS
TEVA PHARMACEUTICALS USA, INC., CEPHALON, INC.,
WATSON LABORATORIES, INC., ACTAVIS LLC,
AND ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC.'S
MOTION TO COMPEL DISCOVERY

The State hereby responds to Teva's¹ *Motion to Compel Discovery* ("Motion") as unnecessary and premature. The State has fulfilled its discovery obligations to date, and it will continue to supplement its disclosures and provide information to Defendants in accordance with the Court's Scheduling Order and applicable law. In support of this Response, the State shows the Court as follows:

INTRODUCTION

Teva's *Motion* seeks to compel two types of information: (1) a computation of damages for each of the State's claims; and (2) the names of all individuals likely to have discoverable information. Teva argues it "cannot properly assess the case against [it] or efficiently challenge the [State's] claims" without this information. [*Motion at p. 5*]. This position is meritless for several reasons.

First, the State already served Teva and the other Defendants with Initial Disclosures that comply with the rules. [*Ex. 1, Initial Disclosures (Damages)*]. The economic impact of the opioid epidemic on the State and its citizens is catastrophic, and the complexity of determining the financial consequences of Defendants' wrongful conduct is unprecedented. This computation requires extensive analysis by experts, and the State is diligently working to provide these figures to Defendants well within the discovery period for fact and expert discovery. *Second*, Teva cannot legitimately argue it is operating in the dark without information to properly assess or challenge the State's claims. The State's Petition sets forth a plethora of statistics regarding the financial impact of the opioid epidemic caused by Defendants' fraudulent marketing, and the State's Initial Disclosures provide specific categories and subcategories of damages it is seeking. Teva, who is

¹ Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. are collectively referred to herein as "Teva."

jointly and severally liable for this conduct, is certainly aware of the magnitude of the State's damages. *Third*, many of the State's claims are not subject to the initial disclosure requirements. *And fourth*, the State has complied with its obligation to provide the names of individuals with discoverable information it intends to use to support its claims. To the extent the names of more individuals are learned during discovery, the State will supplement its disclosures. Teva's *Motion* is unwarranted and should be denied.

ARGUMENT AND AUTHORITIES

The State filed this case on June 30, 2017, nearly a year ago. The State served Teva with discovery on August 3, 2017. Teva lost its *Motion to Stay* the case, but the motion was nevertheless effective because Teva was able to avoid responding to discovery for nearly five months. Since that time, Teva has obstructed the discovery process at every turn. Teva forced the State to file three *Motions to Compel*, and Teva, like all the other Defendants, has not allowed the State to take a single deposition to date. Instead, in an effort to create delay, Teva has moved to quash the only deposition notice the State served on it. Teva's game plan is clear—delay discovery as long as possible and hope the State will not be able to try its case in May 2019. Teva's complaints in the current *Motion* are nothing more than a red herring designed to take the Court's focus off of Teva's systemic and strategic obstruction of the discovery process.

It is through this lens the current *Motion* must be viewed.

A. The State Has Met And Will Continue To Meet Its Obligations Regarding Disclosure Of Damages.

In a typical case, the plaintiff is able to calculate medical bills or add up invoices to provide a computation of damages in satisfaction of 12 O.S. § 3226(A)(2)(a). This case is anything but typical. Calculating the amount of money Defendants' fraudulent conduct has cost the State, as well as determining the amount of money it will take to treat and abate the opioid epidemic, is an

undertaking requiring extensive data compilation and expert analysis. The nature of this lawsuit simply does not fit nicely within the parameters of § 3226(A)(2)(a).

Teva's *Motion* ignores the preliminary nature of initial disclosures. "[A] party must make its initial disclosures based on the information then reasonably available to it." *Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 240 (D. Nev. 2017)²; Moore's Federal Practice, § 26.22[4][c][i] (3d ed. 2916) (a party's initial disclosures should provide "the best information then available to it concerning that claim, however limited and potentially changing it may be."). Although it has not yet provided specific damage computations, the State has complied with its disclosure obligations by providing a detailed description of the categories of damages it is seeking and the basis for those damages. *See Silvagni*, 320 F.R.D. at 241 ("A precise damages computation may not be possible until the plaintiff obtains some discovery, undergoes additional treatment, and, in some cases, obtains expert analysis."). "While future expert analysis does not relieve a plaintiff of providing the information reasonably available to her regarding her damages computation, a precise method of calculation need not be disclosed initially to the extent it is properly the subject of expert testimony that will be provided through future expert reports." *Id.* (emphasis added). The State's past and future damage calculations require significant expert analysis, and the State will comply with the expert identification deadline (August 17, 2018) and the expert disclosure deadline (November 1, 2018) set forth in the Court's Scheduling Order. [*Ex. 2, Scheduling Order*]. The State will also supplement its Initial Disclosures as appropriate.

Teva's assertion that it is entitled to an immediate expert-driven damage calculation is interesting given its previous representations to the Court that any expert-related discovery is

² "Because Oklahoma obtained its discovery code from the Federal Rules of Civil Procedure, [courts] examine the federal cases construing Rule 26" as instructive in construing 12 O.S. § 3226. *Hall v. Goodwin*, 1989 OK 88, 775 P.2d 291, 293.

premature. In response to the State's *Second Motion to Compel* the deposition of a Teva corporate representative on the topic of abatement, Teva stated:

The best way to abate the opioid epidemic does not pose factual questions falling within the experiences and qualifications of a corporate representative...In this case, [Teva's] expert disclosures are not due until September 14, 2018, *after* [the State's] disclosure deadline. Plaintiff will discover [Teva's] legal and expert theories when the parties are required to disclose them via expert reports and briefs.

[*Teva's Response to the State's Second Motion to Compel at p. 9* (emphasis in original)]. Teva cannot legitimately demand immediate disclosure of the State's damage calculations, which rely heavily on expert analysis, yet then hide behind the expert report deadline in order to block depositions of its corporate representatives.

The purpose of initial disclosures is "to avoid trial by ambush." *McCrary v. Country Mut. Ins. Co.*, 2014 WL 314777, at *1 (N.D. Okla. Jan. 28, 2014). Teva will in no way be "ambushed" by the State's damage calculations, and the State will certainly not wait until the eve of trial to provide such information. The State is working diligently to gather and analyze data relating to damages (some of which is in the possession of Defendants), and it will provide its computations as soon as possible. "While a party may not have all of the information necessary to provide a computation of damages early in the case, it has a duty to diligently obtain the necessary information and prepare and provide its damages computation within the discovery period." *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 593 (D. Nev. 2011) (emphasis added). Discovery cutoff in this case is January 1, 2019. Teva will receive information relative to damage calculations well within the discovery period,³ and the State will timely supplement its

³ In fact, two days ago, the State produced to Defendants an excel file with huge amounts of data from the Medicaid Management Information System ("MMIS") database from which a portion of the State's damages are being derived. This file represents Oklahoma Medicaid claims data for all opioid prescriptions for the years 1996-2017.

Initial Disclosures as appropriate.

Moreover, for Teva to imply it is operating in a vacuum without a precise damage calculation from the State is disingenuous at best. On November 1, 2017, the President's Commission on Combating Drug Addition released a lengthy report providing extensive background on the cause and current state of the opioid epidemic, as well as recommendations to combat the problem. [*Ex. 3, President's Commission Report*]. The report provides that in 2016, more than one-third of U.S. civilian, non-institutionalized adults—91.8 million people—used prescription opioids, 11.5 million of which reported misuse. [*Id. at p. 27*]. The Council of Economic Advisers, an agency within the Executive Office of the President, estimated the economic cost of the opioid crisis as **\$504 billion** in 2015. [*Ex. 4, The Underestimated Cost of the Opioid Crisis*]. On a local level, nearly 1,000 Oklahomans are lost each year due to a drug overdose. [*Ex. 5, 01/23/18 Final Report of Oklahoma Commission on Opioid Abuse*]. The State's Petition alleges Oklahoma ranks number one in the nation in milligrams of opioids distributed per adult resident, and the State spends millions of dollars a year on opioid-related criminal justice costs alone. [*See Petition at ¶¶ 5, 45*]. The State has also alleged that all Defendants are jointly and severally liable for the damages it has incurred, regardless of how many prescriptions they respectively submitted for reimbursement. The State's past and future compensatory damage calculations will be in the billions of dollars—a fact that should come as no surprise to Teva.

B. A Computation Of Damages Is Not Required For Many Of The State's Claims For Relief.

Teva seeks to compel a computation of damages from the State, but many of the State's damages are not subject to initial disclosure requirements. For example, the State seeks various types of equitable relief, including injunctive relief, restitution, disgorgement, and abatement. However, these remedies are not “damages” within the meaning of the statute and therefore are

not subject to initial disclosure requirements. *See, e.g., Scott v. City of Phoenix*, 2011 WL 1085992, at *4 (D. Ariz. Mar. 24, 2011) (“[Equitable] forms of relief are not capable of the ‘computation’ required for the Rule 26(a)(1)(iii) initial disclosure.”); *S.E.C v. Razmilovic*, 2010 WL 2540762, at *2 (E.D.N.Y. June 14, 2010) (the disclosure requirement of Rule 26(a)(1)(A)(iii) is inapplicable to the SEC’s claims seeking disgorgement); *S.E.C. v. Cavanagh*, 445 F.3d 105, 117 (2d Cir. 2006) (“Unlike damages, [disgorgement] is a method of forcing a defendant to give up the amount by which he was unjustly enriched...The emphasis on public protection, as opposed to simple compensatory relief, illustrates the equitable nature of the remedy.”).

Moreover, even assuming the State’s equitable claims are subject to the initial disclosure requirements (they are not), Teva is estopped from demanding immediate discovery with respect to claims dependent upon expert testimony. As stated above, Teva already took the position (and Judge Hetherington ultimately agreed) that deposition testimony regarding abatement could not be compelled at this stage of the litigation because expert disclosure deadlines are still months away. [See *Teva’s Response to the State’s Second Motion to Compel* at p. 9; *Ex. 6, 04/25/18 Order* at p. 5; *Ex. 7, 04/19/18 Hearing Transcript* at pp. 59-60, 63-64, 68, 77]. Judicial estoppel provides that “a party who has knowingly assumed a particular position dealing with matters of fact is estopped from assuming an inconsistent position to the detriment of the adverse party.” *Bank of the Wichitas v. Ledford*, 2006 OK 73, ¶ 23, 151 P.3d 103, 112. The purpose of the doctrine “is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *Sill v. Hydrohoist Int’l*, 2011 OK CIV APP 80, ¶ 17, 262 P.3d 377, 383; *Reynolds v. Commissioner of Internal Revenue*, 861 F.2d 469, 472-73 (6th Cir. 1988) (“Courts have used a variety of metaphors to describe the doctrine, characterizing it as a rule against playing fast and loose with the courts, blowing hot and cold as the occasion demands, or

having one's cake and eating it too.”). Teva should either be bound to its prior position that expert-driven discovery is premature given the current Scheduling Order, or it should be required to produce a corporate representative to testify to the State's previous deposition notice. Teva cannot have it both ways.

As with the State's equitable claims, the State's claim for punitive damages is also not subject to initial disclosure requirements. Punitive damages represent an assessment by the jury of an appropriate amount to punish the defendant for certain egregious misconduct and are not meant to compensate the plaintiff for any injury. *Thiry v. Armstrong World Indus.*, 1983 OK 28, 661 P.2d 515, 518. The jury usually considers the net worth of the wrongdoer in determining punitive damages, and such information is determined from the financial records of the defendant. *McCrary v. Country Mut. Ins. Co.*, No. 13-CV-507-JED-PJC, 2014 WL 314777, at *2 (N.D. Okla. Jan. 28, 2014). “A party is not required to provide a calculation of damages when that calculation depends on information in the possession of another party.” *Id.* (citing *AVX Corp. v. Cabot Corp.*, 252 F.R.D. 70, 77 (D. Mass. 2008); Advisory Committee Notes, 1993 Amendments). In addition, punitive damages are difficult to quantify, rendering disclosure inappropriate. *See, e.g., Anderson v. United Parcel Service*, 2010 WL 4822564, at *10 (D. Kan. Nov. 22, 2010) (“[D]istrict courts have frequently denied motions to compel computations of emotional distress and punitive damages because they are ‘difficult to quantify’ and are ‘typically considered a fact issue for the jury.’”); *Breen v. Black*, 2016 WL 4268957, at *7 (D. Wyo. July 6, 2016) (courts typically do not require computations for punitive damages because they are difficult to quantify).

In addition, the State's seeks to recover all civil penalties as permitted by the Oklahoma Medicaid False Claims Act and the Oklahoma Medicaid Program Integrity Act. These penalties are separate and distinct from any compensatory damages the State is seeking for monies

wrongfully paid for prescription opioids through government-payor programs, and are mandatorily assessed by the Court pursuant to statute. Initial disclosures are not required with respect to civil penalties. *See, e.g., S.E.C v. Razmilovic*, 2010 WL 2540762, at *2 (E.D.N.Y. June 14, 2010) (the disclosure requirement of Rule 26(a)(1)(A)(iii) is inapplicable to the SEC’s claims seeking civil penalties because such remedies are not “damages” within the Rule). However, even if initial disclosures are required, the State provided Defendants with significant details regarding the specific statutory penalties it is seeking under those Acts and the basis for those penalties. [*Ex. 1, Initial Disclosures (Damages) at pp. 8-9* (citing 63 O.S. § 5053.1 and 56 O.S. § 1007)]. The State’s Petition sets forth the number of prescriptions Defendants submitted for reimbursement to the Oklahoma Health Care Authority on behalf of the Oklahoma Medicaid System. [*See Petition at pp. 9-10*]. The State recently provided Defendants with all Oklahoma Medicaid claims data for all opioid prescriptions for the years 1996-2017. The State’s disclosures are sufficient.

To the extent Teva’s *Motion* seeks to compel computation of damages for the State’s equitable or punitive damage claims or statutory penalties, it must be denied.

C. The State Has Disclosed Its Known Witnesses And Will Supplement Its Disclosures As Appropriate.

Teva argues the State’s Initial Disclosures are incomplete because “they failed to identify the *name* of all persons who may have information relevant to Plaintiff’s claims.” [*Motion at p. 6* (emphasis in original)]. This is a misstatement of the State’s disclosure obligations. The Scheduling Order requires the parties to “disclose the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses.” [*Ex. 2, Scheduling Order at p. 2* (emphasis added)]. Courts have interpreted this language to only require disclosure of the witness a party may use—not every single individual who might have

relevant knowledge. *See, e.g., Brown v. Celgene Corp.*, 2015 WL 12731923, at *3 (C.D. Cal. July 24, 2015) (“Rule 26(a)(1)(A)(i) requires the identification of only persons whom a party ‘may use’ to support its claims or defenses, not everyone with knowledge about the subject matter.”) (internal citations omitted); *Harris v. Advance Am. Cash Advance Ctrs., Inc.*, 288 F.R.D. 170, 171 (S.D. Oh. 2012) (“Rule 26(a)(1)(A)(i) does not require defendant to initially disclose the names of all individuals who have discoverable information, but only those individuals who defendant may use to support its defenses.”); *Gov’t Benefits Analysts, Inc. v. Gradient Ins. Brokerage, Inc.*, 2012 WL 3292850, at *5-6 (D. Kan. Aug. 13, 2012) (the Rule only requires parties to disclose the names and contact information of the witnesses they intend to use); *Clauss Constr. v. UChicago Argonne LLC*, No. 13 CV 5479, 2015 WL 222478, at *1 (N.D. Ill. Jan. 14, 2015) (stating that where defendant never intended to call a witness to support its claims or defenses, the witness “was not someone that it was required to identify in its Rule 26(a) disclosures”). Accordingly, the State need only identify those witnesses whom it “believes in good faith, at an early stage of the litigation, it ‘may use’ to support its claims or defenses.” *Brown*, 2015 WL 12731923, at *3.

Based on the information available to date, the State has complied with this obligation, providing the names of seventeen (17) specific individuals and their anticipated areas of knowledge. [*Ex. 8, State’s Initial Disclosures (Individuals) at pp. 2, 4-5*]. The State also listed six (6) other agencies or six (6) non-party entities employing individuals the State believes it may use to support its claims. [*Id. at pp. 2-4*]. Discovery is ongoing, and the State has not yet determined the names of the employees from each of these entities it may use to support its claims. The State anticipates it will learn of additional individuals it may use, and it will certainly supplement these disclosures as information becomes available as required by Oklahoma law. *See* 12 O.S. § 3226(E). As submitted, however, the State’s Initial Disclosures provide sufficient information for Teva to

engage in meaningful discovery. Teva's request to compel supplemental disclosures is simply unnecessary.

CONCLUSION

The State's Initial Disclosures provide a significant amount of detail regarding the types of relief it seeks and the basis for such relief. These disclosures are sufficient based on the nature of the lawsuit, the information available to the State, and the necessity for expert analysis. The State will comply with the Court's Scheduling Order and will supplement its damage and witness disclosures as required under the law as appropriate. For the reasons set forth above, the State respectfully requests the Court deny Teva's *Motion to Compel* in its entirety, and for such further relief the Court deems proper.

Dated: May 10, 2018.



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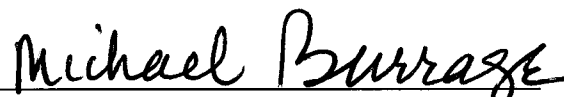
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becomes available. The State also reserves the right to produce additional information during the course of discovery in fulfillment of its disclosure obligations, and to rely on such information as evidence in this case.

These disclosures are made subject to and without waiving any applicable privileges or exemptions from discovery, including, without limitation, the attorney-client privilege and the attorney work-product doctrine. The State will supplement these disclosures to the extent required by 12 O.S. § 3226(E). The State further reserves the right to object to production and/or introduction into evidence of any document within the categories described herein or any testimony of the witnesses identified herein on the basis of privilege, relevance, or otherwise as appropriate.

As compensation, restitution, and relief for the harm caused by Defendants' unlawful actions, the State seeks the following: (1) damages caused by Defendants' wrongdoings in the form of past and future compensatory damages, statutory penalties, and punitive damages; (2) restitution and disgorgement of Defendants' ill-gotten gains; (3) injunctive relief and other forms of non-monetary remediation and abatement; (4) the costs of bringing this action, including litigation costs and attorney's fees; and (5) all other appropriate relief to which the State is entitled.

The State intends to rely on expert testimony in calculating past and future damages and in addressing other forms of monetary and non-monetary relief including, but not limited to, abating the nuisance Defendants created and other injunctive relief. No scheduling order has been entered. When a scheduling order is entered, the Court will set a date for the designation of expert witnesses and/or the exchange of expert reports. The State will comply with any such order and provide damages testimony and other information that is the subject of expert testimony. Until such time, however, any such calculation is premature and not required.

In addition, multiple categories of information the State and its experts need to compute the State's damages are not in the State's possession or control and will be obtained through discovery, which has only just begun. Consequently, the State is unable at this time to provide a precise computation of all its damages; however, the State reserves the right to supplement these Disclosures at the appropriate time in accordance with the Oklahoma Code of Civil Procedure and the Court's orders. Subject to the foregoing, the State provides the following information that is currently and readily available regarding damages:

1. Past and Future Compensatory Damages

The State seeks to recover all actual damages, both past and future, resulting from Defendants' unlawful actions that caused the opioid epidemic and related public nuisance, including: opioid prescription costs, opioid addiction treatment costs, increased health care costs, criminal justice costs, opioid-overdose prevention costs, opioid-related education costs, lost work productivity, and abatement costs, among others. The State of Oklahoma would not have spent substantial public resources and funding on opioid use and abuse treatment, education, prevention and intervention programs but for Defendants' false and deceptive prescription opioid marketing campaign.

a. Prescription Reimbursement. The State seeks to recover all monies wrongfully paid for prescription opioids through government-payor programs. For example, and without limitation, Oklahoma Medicaid would not have incurred the costs associated with paying for opioid prescription claims that were not medically necessary but for Defendants' false representations and omissions regarding the risks, efficacy, and medical necessity of Defendants' opioids.

b. Medical Expenses. Oklahomans that use, abuse or misuse opioids are more likely to utilize medical services, such as emergency departments, ambulatory services, substance abuse treatment

services, physician outpatient visits, and inpatient hospital stays. Further, opioid users and abusers are also substantial users of medical services at higher costs and for longer duration than non-users and require chronic medical, psychiatric, and addiction care. The State seeks to recover these costs, both past and future, for providing medical care and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths, which were caused by Defendants' creation of the opioid epidemic and related public nuisance.

c. Addiction Treatment Services. As a result of the opioid crisis, the State's addiction treatment program, which pays for the cost of substance abuse and addiction treatment for qualifying indigent citizens, has been overwhelmed. There is currently a wait-list of qualifying Oklahomans seeking entry into the state addiction-treatment program. Opioid abuse and addiction treatment facilities are often managed and treated by a team of trained health care professionals, including physicians, psychologists, licensed counselors, social workers, physician assistants, nurses and nurse practitioners who specialize in addiction care. Addiction treatment can be provided in inpatient, outpatient, or residential sessions. Treatment typically occurs within specialty facilities for substance use disorder treatment, facilities with a broader behavioral health focus, or by specialized units within hospitals. These programs focus on helping individuals change their behaviors in a highly structured setting.

An alternative to inpatient or residential treatment is partial hospitalization or intensive outpatient treatment. These programs have people attend very intensive and regular treatment sessions multiple times a week early in their treatment for an initial period. After completing partial hospitalization or intensive outpatient treatment, individuals often step down into regular outpatient treatment which meets less frequently and for fewer hours per week to help sustain their recovery.

Medication can also be used to treat addiction. Using medication to treat substance use disorders is often referred to as Medication-Assisted Treatment (MAT). Medication-assisted treatment with methadone, buprenorphine, or extended-release injectable naltrexone plays a critical role in the treatment of opioid use disorders.

For those enrolled in the State's addiction-treatment program, the State pays the costs associated with some or all of the above programs and services. The State seeks to recover those costs, both past and future, for providing addiction treatment to individuals with opioid use disorders. The State has already expended substantial amounts in treating opioid-addicted Oklahomans in the past, and the State will continue to spend significant sums treating opioid-addicted Oklahomans for years, if not decades, in the future.

d. Children at Risk. Children are at high risk in opioid-using environments. The incidence of children born with opioid-related medical conditions is increasing and carries an enormous burden in terms of hospital days and costs. For example, pregnant women who continue to use opioids throughout the gestational period are likely to deliver a newborn with neonatal abstinence syndrome (NAS). Children born with NAS require longer hospital stays and more specialized care compared to non-affected infants. The State seeks to recover costs for providing treatment of infants born with opioid-related medical conditions.

Further, children whose parents abuse opioids may be neglected or even require removal to foster care. Indeed, the State of Oklahoma has seen an increase in the number of children who have entered foster care due to parental drug use. Child welfare agencies have seen an increase in their caseloads and are burdened with limited resources, *e.g.*, funds to support drug treatment or parenting classes and community-based support for these children. The State seeks to recover costs

for providing welfare or protective services for children whose parents suffer from opioid-related disability or incapacitation.

e. Loss of Productivity. Prescription opioid overdose, abuse, and dependence carry high costs in terms of loss of productivity. Studies show that the increase in opioid prescriptions can account for a decline in the labor force participation. Employers all over the State of Oklahoma have felt some effect of the opioid crisis among their employees, including absenteeism, incarceration, decreased job performance, or even death. The State seeks to recover costs for loss of productivity for reasons related to the opioid epidemic.

f. Criminal Justice System. The public health crisis caused by Defendants' deceptive marketing campaign also is overwhelming Oklahoma's criminal justice system. The opioid epidemic costs Oklahoma millions of dollars a year on criminal justice-related costs. Oklahoma spends 50 percent of its annual criminal justice system budget on substance abuse-related costs. The State seeks to recover criminal justice-related costs, both past and future, caused by the sale and consumption of opioids. These costs include reduced productivity for incarcerated individuals.

g. Law Enforcement and Public Safety. The State seeks to recover costs directly associated with law enforcement and public safety relating to the opioid epidemic. The opioid epidemic has required substantial resources of Oklahoma law enforcement agencies to work to combat the crime spike associated with rising opioid sales and addiction. For example, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control has been forced to dedicate significant sums and man-hours to investigating and preventing opioid diversion, opioid thefts, illicit opioid drug use, and unintentional overdoses. In addition, the State has expended substantial amounts of taxpayer dollars updating and expanding the State's Prescription Monitoring Program ("PMP"), which tracks prescriptions of dangerous and controlled substances. The primary need for the PMP is to

track opioid prescriptions. The State has been forced to train its law enforcement officers regarding how to identify opioid overdose, what procedures should be taken thereafter, and how to administer Naloxone or Narcan. Further, the State needs to provide more law enforcement with more Naloxone or Narcan and the requisite training. The State seeks to recover the increased law enforcement and public safety costs, both past and future, related to the State's efforts to combat the opioid epidemic and public nuisance caused by Defendants.

h. Opioid Education and Drug Take Back Programs. Oklahoma has taken great strides to provide information to the public on the appropriate disposal and storage of medications through the state media campaigns and local education through community coalitions and stakeholders. For example, the State has sponsored drug Take-Back programs that allow for safe, anonymous disposal of opioids at convenient locations. These programs and other similar initiatives are helping to keep opioids out of the home, and lessening the chance that individuals may use them inappropriately. There are now more than 175 drop boxes across the state, including at least one in every county. The State also sponsors drug "Take-Back Days" throughout the year to further help this effort and to help promote, encourage, and educate local communities on the use of drop boxes and other appropriate disposal mechanisms. These services are free and anonymous, no questions asked. As a result, the State has incurred, and continues to incur, significant costs creating, implementing, and operating these take-back programs all across the State.

i. Other Preventative Programs. The State has also initiated programs and expended significant resources to educate prescribers and dispensers of prescription opioids including working to develop an online pain management curriculum and creating and distributing opioid prescribing and dispensing guidelines. The State also worked to educate providers on the Oklahoma Prescription Monitoring Program (PMP) which requires dispensers of Schedule II, III,

IV and V controlled substances to submit prescription dispensing information to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control within 24 hours of dispensing a scheduled narcotic and allows prescribers to check the prescription history of their patients.

In 2015, the Oklahoma Legislature passed a bill requiring prescribers to check the PMP the first time they prescribe opiate painkillers and two other classes of drugs and to check every 180 days thereafter. The State has also worked to establish hospital emergency department discharge databases, and implement public health surveillance of neonatal abstinence syndrome. The State seeks to recover costs associated with these other opioid-related preventative programs.

2. Statutory Penalties

The State seeks all statutory penalties as permitted under the Oklahoma Medicaid False Claims Act including but not limited to civil penalties plus three times the amount of damages which the state sustains because of the act of that person. *See* 63 O.S. § 5053.1.¹ The State has alleged that it has paid for over 6 million pills for Defendants' named brand drugs, totaling at least \$52,920,146, and Defendants have caused the State to pay millions more for millions of pills of generic opioids. The State will seek the full amount of each available statutory penalty multiplied by the number of false or fraudulent claims Defendants presented, caused to be presented, or conspired to present or cause to be presented for payment by Oklahoma Medicaid that would not have been submitted and would not have been paid by the Oklahoma Medicaid program but for

¹ The civil penalties permitted under the Oklahoma Medicaid False Claims Act range as follows: A civil penalty of not less than Five Thousand Dollars (\$ 5,000.00) and not more than Ten Thousand Dollars (\$ 10,000.00). *See* 63 O.S. § 5053.1 (2007); A civil penalty of not less than Five Thousand Five Hundred Dollars (\$ 5,500.00) and not more than Eleven Thousand Dollars (\$ 11,000.00). *See* 63 O.S. § 5053.1 (2016); Consistent with the civil penalty provisions of the Federal False Claims Act, as adjusted by the Federal Civil Penalties Inflation adjustment Act of 1990, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. *See* 63 O.S. § 5053.1 (2017).

Defendants' wrongdoing. The State also seeks to recover the costs of this action brought to recover any such penalty or damages. *Id.*

The State also seeks all statutory penalties as permitted under the Oklahoma Medicaid Program Integrity Act including but not limited to: Full restitution of all funds or payments received in violation of the Act, investigative costs, litigation fees, and attorney fees, plus (a) a civil penalty of two (2) times the amount of restitution and interest thereon from date of judgment; or (b) a civil penalty in the sum of Two Thousand Dollars (\$2,000.00) and interest thereon from date of judgment for each false or fraudulent claim, statement, or representation submitted for providing goods or services. *See* 56 O.S. § 1007. The penalty under subsection (b) will then be multiplied by the number of false or fraudulent claims Defendants presented or caused to be presented for payment by Oklahoma Medicaid that would not have been submitted and would not have been paid by the Oklahoma Medicaid program but for Defendants' wrongdoing.

3. Injunctive Relief

The State seeks all necessary injunctive relief to abate the nuisance Defendants created including all costs associated with implementing such abatement procedures. Such abatement relief should include, but is not limited to:

a. Change in Defendants' Marketing Behavior. The Defendants' deceptive and misleading prescription opioid marketing campaign has caused a devastating public health crisis in Oklahoma. Defendants must be forced to change the way they promote, market, and sell their prescription drugs so that this can never happen again. It is premature to say exactly what preventative measures are appropriate, but the State expects to learn through discovery the types of systematic wrongdoing that led to this crisis.

b. Media Campaigns. The State anticipates that expansive multi-media campaigns will be required to fight this health emergency. These campaigns will include aggressive television and social media outreach, and must focus on telling our children of the dangers of these drugs and addiction and to educate the public on risks and consequences of opioids.

c. Opioid Education and Drug Take-Back Programs. As discussed above, drug Take-Back programs are one way in which the State focused efforts on reducing access to opioids by instituting programs that provide for safe and anonymous opioid disposal for the public and for providers. Preventative programs like Take-Back programs will be needed in the future to continue to educate the public and increase awareness of prescription drug misuse/abuse and remove unused medications from homes.

d. Addiction Treatment Services. As mentioned above a direct result of the opioid crisis facing the State of Oklahoma is the increased need for addiction treatment services. The need for these addiction treatment services will continue for the foreseeable future.

e. Recovery Support Services. Recovery support services are non-clinical services that are used with treatment to support individuals in their recovery goals. Recovery support can include:

- Transportation to and from treatment and recovery-oriented activities
- Employment or educational supports
- Specialized living situations (Recovery Support Housing)
- Peer-to-peer services, mentoring, coaching
- Spiritual and faith-based support
- Parenting education
- Self-help and support groups
- Outreach and engagement
- Staffing drop in centers, clubhouses, respite/crisis services, or warmlines (peer-run listening lines staffed by people in recovery themselves)
- Education about strategies to promote wellness and recovery
- Recovery coach programs

The need for these types of recovery support services will continue for the foreseeable future.

f. Other Effective Opioid Related Programs. The State of Oklahoma must continue to create strategies and programs aimed at prevention, education, and treatment related to opioid abuse. One example would be Screening, Brief Intervention and Referral to Treatment (SBIRT). SBIRT is a program that uses a screening tool by trained staff to identify at-risk youth who may need treatment. This should be deployed for adolescents in middle school, high school and college levels. This is a significant prevention tool. Other programs will be required in the future to continue to combat this health emergency.

g. Necessary Injunctive Relief. The State seeks all necessary injunctive relief to abate the nuisance Defendants created including all costs associated with implementing such abatement procedures.

4. Restitution

Under the Oklahoma Medicaid Program Integrity Act, the State seeks full restitution of all funds or payments Defendants received in violation of the Oklahoma Medicaid Program Integrity Act. More investigation and discovery is needed before Plaintiff is able to calculate the full amount of restitution because documents and information necessary for the computation of such damages are currently unavailable to Plaintiff at this early stage in the case.

a. Unjust Enrichment. Due to Defendants' wrongful conduct, Defendants were unjustly enriched at the expense of the State. The State is entitled to recover Defendants' ill-gotten gains. More investigation and discovery is needed before Plaintiff is able to ascertain the extent to which the Defendants profited from their wrongful conduct because documents and information necessary for the computation of such profits are currently unavailable to Plaintiff at this early stage in the case.

5. Punitive Damages

The State seeks to recover punitive damages sufficient to set an example that Defendants' wrongful conduct will not be tolerated in the State of Oklahoma and to punish the Defendants based upon the following factors outlined in 23 O.S. § 9.1:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

6. Joint & Several Liability

Under Oklahoma law, joint liability is available in "actions brought by or on behalf of the State." 23 O.S. § 15(B). The State contends that Defendants are jointly and severally liable for the damages described herein.

Dated: January 10, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed via first class mail and emailed, on this 10th day of January, 2018 to:

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Michael D. Burrage

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

Defendants.

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

JAN 25 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

JURY TRIAL DEMANDED

SCHEDULING ORDER

WHEREAS, the parties assert that the above-entitled cause is at issue, the Court, pursuant to Rule 5 of the Rules for the District Courts of Oklahoma, finds and Orders as follows:

2

Scheduling Order

1. The following deadlines shall apply:

Event	Deadline
Ruling on Motion for Protective Order:	Court denied by Summary Order dated November 14, 2017
Ruling on Motions to Dismiss:	Granted in part, denied in part by written Order, dated December 6, 2017
Parties disclose the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses.	March 15, 2018
Motions to join additional parties:	March 30, 2018
Motions to amend pleadings:	June 29, 2018
Plaintiff disclose expert witnesses and provide information set forth in 12 O.S. § 3226(B)(4)(a)(1):	August 17, 2018
Defendants disclose expert witnesses and provide information set forth in 12 O.S. § 3226(B)(4)(a)(1):	September 14, 2018
Discovery completed by:	January 31, 2019
Plaintiff disclose information for expert witnesses set forth in 12 O.S. § 3226(B)(4)(a)(3) by:	November 1, 2018
Defendants disclose information for expert witnesses set forth in 12 O.S. § 3226(B)(4)(a)(3) by:	November 29, 2018
Expert Witness Depositions Complete by:	January 25, 2019
<i>Daubert</i> Hearings to be completed by:	March 8, 2019
All dispositive motions to be filed by:	March 29, 2019
Motions in limine shall be filed by:	20 days prior to pretrial conference
Plaintiff to submit to defendant final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed by:	20 days prior to pretrial conference
Defendant to submit to plaintiff final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed by:	20 days prior to pretrial conference
Plaintiff to submit to defendant final exhibit list (if	20 days prior to pretrial conference

exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise defendant of what is intended will suffice) by:	
Defendant to submit to plaintiff final exhibit list (if exhibit is nondocumentary, a photograph or brief description thereof sufficient to advise plaintiff of what is intended will suffice) by:	20 days prior to pretrial conference
Trial briefs to be filed by:	7 days prior to trial
Mediation shall be completed prior to the Status Conference	
All stipulations to be filed by:	May 13, 2019
Trial Date:	May 28, 2019

2. The above deadlines are firm once set and shall not be changed except by written application, submitted to this Court for a hearing and ruling thereon at least ten (10) days prior to Status Conference, unless good cause is otherwise shown.
3. All discovery must be COMPLETED by the above date. Serve your discovery requests so that responses may be made and any discovery disputes can be concluded prior to the discovery completion date.
4. Unless otherwise ordered, mediation shall be completed in each case. A joint application and order to waive the mediation requirement may be submitted for the Court's review.
5. Courtesy copies of all motions and responses shall be provided to the Court upon filing.

Order for Status Conference

A Status Conference shall be held on the ^{16th} 15th day of May 2019, at 9:00 AM before the undersigned Judge. The following Orders regarding the Status Conference are hereby entered:

1. **Each party** shall be represented at the Status Conference by counsel who will conduct the trial, or by co-counsel, with full knowledge of the case and authority to bind such party by stipulation, or by the party in person, if without counsel;
2. **Default.** Parties who fail to appear pursuant to this Order shall be considered in DEFAULT, and subject to judgment against them, dismissal of claims or sanctions as appropriate;
3. **Resets and Continuances:** Resetting of Status Conference will only be approved upon submission of a joint motion and order OR by a ruling on an opposed Motion for Continuance;

4. **Discovery.** Discovery shall be **COMPLETED**, per paragraph 3 above, prior to the Status Conference, unless a joint request to extend scheduling deadlines for that purpose is approved;
5. **Dispositive Motions.** All dispositive motions shall be **filed AND heard** prior to the Status Conference. Failure to comply shall result in a denial of any dispositive motions filed in violation of this order, unless a joint request to extend scheduling deadlines for that purpose is also approved; and,
6. **Mediation.** Mediation shall be completed prior to Status Conference, unless a joint request to extend scheduling deadlines for that purpose is also approved.

Failure to comply with this Order for Status Conference shall result in an appropriate sanction as allowed by law.

IT IS SO ORDERED this 29th day of June, 2013.

S/Thad Balkman
 JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Michael Burgess
 COUNSEL FOR PLAINTIFF

 COUNSEL FOR DEFENDANTS
 Purdue Pharma, L.P.;
 Purdue Pharma, Inc.; and
 The Purdue Frederick Company, Inc.

Robert McLaughlin
 COUNSEL FOR DEFENDANTS
 Teva Pharmaceuticals USA Inc.;
 Cephalon, Inc.; Watson Laboratories, Inc.;
 Actavis LLC; and Actavis Pharma, Inc.,
 f/k/a Watson Pharma, Inc.

 COUNSEL FOR DEFENDANTS
 Johnson & Johnson; Janssen
 Pharmaceuticals, Inc.; Ortho-McNeil-

4. **Discovery.** Discovery shall be **COMPLETED**, per paragraph 3 above, prior to the Status Conference, unless a **joint** request to extend scheduling deadlines for that purpose is approved;
5. **Dispositive Motions.** All dispositive motions shall be filed **AND** heard prior to the Status Conference. Failure to comply shall result in a denial of any dispositive motions filed in violation of this order, unless a **joint** request to extend scheduling deadlines for that purpose is also approved; and,
6. **Mediation.** Mediation shall be completed prior to Status Conference, unless a **joint** request to extend scheduling deadlines for that purpose is also approved.

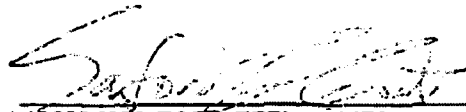
Failure to comply with this Order for Status Conference shall result in an appropriate sanction as allowed by law.

IT IS SO ORDERED this _____ day of _____,

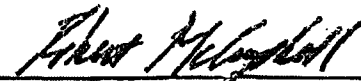
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

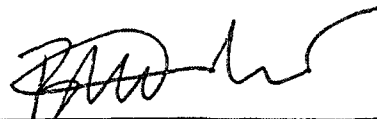
COUNSEL FOR PLAINTIFF



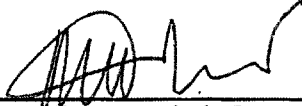
COUNSEL FOR DEFENDANTS
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 Actavis LLC; and Actavis Pharma, Inc.,
 f/k/a Watson Pharma, Inc.



COUNSEL FOR DEFENDANTS
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 Pharmaceuticals, Inc.; Ortho-McNeil-



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Janssen Pharmaceuticals, Inc.; Janssen
Pharmaceutica, Inc., n/k/a Janssen
Pharmaceuticals, Inc.