



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

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

Plaintiff,

v.

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

Defendants.

STATE OF OKLAHOMA }  
CLEVELAND COUNTY } S.S.  
FILED

AUG 29 2018

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816  
Honorable Thad Balkman

William C. Hetherington  
Special Discovery Master

**DEFENDANT JANSSEN PHARMACEUTICALS, INC., AND NON-PARTIES JOANNA SAMPLES, DAVID TILLEY, AND ELIZABETH HIGHTOWER'S OBJECTION AND MOTION TO QUASH SUBPOENAS**

Pursuant to Okla. Stat. tit. 12, § 2004.1(C), Defendant Janssen Pharmaceuticals, Inc.

("Janssen"), and Joanna Samples, David Tilley, and Elizabeth Hightower, object and move for

an Order quashing the subpoenas that the State of Oklahoma (the “State”) served on Ms. Samples, Mr. Tilley, and Ms. Hightower, and requiring that the State re-notice the depositions for a time when the witnesses are available. In support of their Objection and Motion, Janssen, Ms. Samples, Mr. Tilley, and Ms. Hightower state as follows:

**I. INTRODUCTION**

On August 9 and 15, 2018, the State served subpoenas for deposition on 15 current and former Janssen sales representatives, including the three at issue here—Joanna Samples, David Tilley, and Elizabeth Hightower. *See* Subpoenas (attached as Exhibit A). The State did not coordinate with Janssen’s counsel to determine the availability of counsel or the witnesses before unilaterally selecting deposition dates. After the subpoenas and deposition notices were served, counsel for Janssen contacted those witnesses who it represents in this litigation to determine whether they were available on the noticed dates. The three witnesses identified here are not.

Accordingly, after completing its outreach, Janssen wrote to the State on August 24 to advise that three of the 15 subpoenaed witnesses were unavailable on the dates noticed for their depositions. *See* 8/24/18 Letter (attached as Exhibit B). Janssen offered four alternative dates for Ms. Hightower and three alternative dates for Ms. Samples. As to Mr. Tilley, Janssen informed the State that he did not promote Nucynta IR, Nucynta ER, or Duragesic, and asked that the State withdraw his deposition subpoena.<sup>1</sup> Given the approaching deposition dates, Janssen asked that the State respond to work through these scheduling issues by August 28. No response came.

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<sup>1</sup> If the State refuses to withdraw Mr. Tilley’s notice, Janssen will move separately for a protective order and to quash his deposition notice outright. But due to the State’s lack of response to Janssen’s August 24 letter, the parties have not yet met and conferred on this issue. If the issue is not resolved through the meet and confer process and if the deposition notice is not quashed, Mr. Tilley is available for deposition on October 4, 15, 18, and 25.

This should be a simple matter of working out mutually available times for depositions when witnesses, including non-party, former employees, can be available. But the lack of response from the State necessitates this motion.

## **II. ARGUMENTS AND AUTHORITIES**

Under Okla. Stat. tit. 12, section 2004.1(C)(3)(a)(4), the Court has broad authority to quash subpoenas that “subject[] a person to undue burden.” When analyzing whether a subpoena amounts to an “undue burden,” courts consider whether the subpoena is “unreasonable or oppressive” under the circumstances. *See, e.g., E.A. Renfro & Co., Inc. v. Moran*, 2007 WL 4276906, \*2-3 (N.D. Miss. Dec. 3, 2007) (“Collapsed down to its essence, the inquiry is one of balancing burden against benefit.”).<sup>2</sup> Requiring a witness to appear at a deposition when she or he is unavailable is the very definition of undue burden—on the subpoenaed individual, the parties, as well as the Court, which is then burdened with needless motion practice.

Janssen hopes that the lack of a response to its August 24 letter is merely a result of the State’s counsel attending to other events during a busy discovery period, and that the State will accept one of the numerous alternative dates offered by Janssen. If the State is not willing to confer with Janssen to identify dates when the witnesses and the parties can be available, it should be ordered to do so.

## **III. CONCLUSION**

For the reasons discussed above, the Court should quash the Subpoenas that the State served on Ms. Samples, Mr. Tilley, and Ms. Hightower and require that, should it wish to

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<sup>2</sup> Because the language of section 2004.1(C)(3) tracks the language of Rule 45 of the Federal Rules of Civil Procedure, *see* 1993 Comment to § 2004.1, the Court may look to federal case law when applying section 2004.1(C)(3). *See Young v. Macy*, 21 P.3d 44, 47 (Okla. 2001).

proceed with these depositions, the State choose one of the dates when the witnesses are available.

Dated: August 29, 2018

Respectfully submitted,

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AND ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC. N/K/A/  
JANSSEN PHARMACEUTICALS, INC.**

**CERTIFICATE OF MAILING**

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on August 29<sup>th</sup>, 2018, a true and correct copy of the above and foregoing has been served via the United States Postal Service, First Class postage prepaid, to the following:

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COMPANY, INC.**



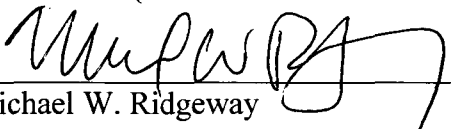
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ACTAVIS, LLC, AND ACTAVIS PHARMA, INC. F/K/A WATSON  
PHARMA, INC.**

  
Michael W. Ridgeway

**"A"**  
**EXHIBIT 1: SUBPOENAS**

**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

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

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**DEPOSITION SUBPOENA DUCES TECUM**

STATE OF OKLAHOMA    )  
                                  ) ss.  
COUNTY OF CLEVELAND )

TO:                    **JOANNA SAMPLES**  
                          4308 Wild Plum Ln  
                          Edmond, Oklahoma 73025-2984

GREETINGS:

YOU ARE HEREBY COMMANDED to appear at Whitten Burrage, 512 N Broadway Ave Suite 300, Oklahoma City, OK 73102, on September 4, 2018, at 8 a.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case, and you are directed to bring with you all documents and things described in Exhibit A attached hereto. The deposition shall be recorded by audio/visual means.

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection.

This subpoena is authorized pursuant to 12 O.S. § 2004.1 and all parties to this case are being given notice of the issuance of this subpoena. The provisions of 12 O.S. § 2004.1(C), relating to your protection as a person subject to a subpoena, and 12 O.S. § 2004.1(D) & (E), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Please direct inquiries regarding this subpoena to Winn Cutler: tel: (512) 328-5333; email: [winncutler@nixlaw.com](mailto:winncutler@nixlaw.com).

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 8th day of August, 2018.

*/s/ Michael Burrage*

---

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**ATTORNEYS FOR PLAINTIFF**

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2004.1, as last amended by Section 5, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2009, Section 2004.1), is amended to read as follows:

Section 2004.1.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. a. A person commanded to produce and permit inspection, copying, testing or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection, copying, testing or sampling or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection, copying, testing or sampling of any or all of the designated materials or of the premises, or to producing electronically stored information in the form or forms requested. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies,
- (4) subjects a person to undue burden, or
- (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### D. DUTIES IN RESPONDING TO SUBPOENA.

1. a. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

b. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena shall produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

c. A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

d. A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If such showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of

paragraph 2 of subsection B of Section 3226 of this title. The court may specify conditions for the discovery.

2. a. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

b. If information is produced in response to a subpoena that is subject to a claim or privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for such claim. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, such shall take reasonable steps to retrieve the information. The person who produced the information shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as trial preparation material or whether such privilege or protection has been waived.

#### E. CONTEMPT.

Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court from which the subpoena issued.



## **EXHIBIT "A"**

### **DEFINITIONS**

1. "J&J/Janssen" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals, Inc. and any and all predecessors, merged entities, subsidiaries and affiliates, whether individuals, corporations, LLC's or partnerships. The term "affiliate" shall include any entity owned in whole or in part by J&J/Janssen or any entity which owns J&J/Janssen in whole or in part. The term "J&J/Janssen," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by J&J/Janssen or who provide services on behalf of J&J/Janssen.
2. "Communication" means the transmission, exchange, or transfer of information in any form between two or more persons, including by telephone, facsimile, telegraph, telex, text message, letter, email, mobile messaging application, or other medium.
3. "Document" includes, but is not limited to, any electronic, written, printed, handwritten, graphic matter of any kind, or other medium upon which intelligence or information can be recorded or retrieved.

### **DOCUMENTS TO BE PRODUCED**

1. All documents and communications in your possession, custody, or control related to your employment at J&J/Janssen, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from J&J/Janssen during and since your employment.

**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

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

Plaintiff,                           §

vs.                                       §

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

Defendants.                       §

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**DEPOSITION SUBPOENA DUCES TECUM**

STATE OF OKLAHOMA    )  
                                  ) ss.  
COUNTY OF CLEVELAND)

TO:                   **DAVID TILLEY**  
                          3920 S Utica Ave  
                          Tulsa, OK 74105-8121

GREETINGS:

YOU ARE HEREBY COMMANDED to appear at Professional Reporters, 20 E 5th St Suite 720, Tulsa, OK 74119, on September 4, 2018, at 1 p.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case, and you are directed to bring with you all documents and things described in Exhibit A attached hereto. The deposition shall be recorded by audio/visual means.

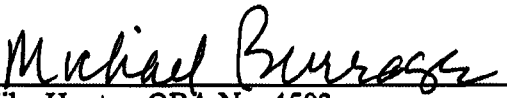
In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection.

This subpoena is authorized pursuant to 12 O.S. § 2004.1 and all parties to this case are being given notice of the issuance of this subpoena. The provisions of 12 O.S. § 2004.1(C), relating to your protection as a person subject to a subpoena, and 12 O.S. § 2004.1(D) & (E), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Please direct inquiries regarding this subpoena to Winn Cutler: tel: (512) 328-5333; email: [winncutler@nixlaw.com](mailto:winncutler@nixlaw.com).

HEREOF FAIL NOT, UNDER PENALTY OF LAW.

Issued this 9th day of August, 2018.

  
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**ATTORNEYS FOR PLAINTIFF**

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2004.1, as last amended by Section 5, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2009, Section 2004.1), is amended to read as follows:

Section 2004.1.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. a. A person commanded to produce and permit inspection, copying, testing or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection, copying, testing or sampling or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection, copying, testing or sampling of any or all of the designated materials or of the premises, or to producing electronically stored information in the form or forms requested. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(1) fails to allow reasonable time for compliance,

(2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies,

(4) subjects a person to undue burden, or

(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### D. DUTIES IN RESPONDING TO SUBPOENA.

1. a. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

b. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena shall produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

c. A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

d. A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If such showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of paragraph 2 of subsection B of Section 3226 of this title. The court may specify conditions for the discovery.

2. a. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

b. If information is produced in response to a subpoena that is subject to a claim or privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for such claim. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, such shall take reasonable steps to retrieve the information. The person who produced the information shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as trial preparation material or whether such privilege or protection has been waived.

#### E. CONTEMPT.

Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court from which the subpoena issued.

## **EXHIBIT "A"**

### **DEFINITIONS**

1. "J&J/Janssen" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals, Inc. and any and all predecessors, merged entities, subsidiaries and affiliates, whether individuals, corporations, LLC's or partnerships. The term "affiliate" shall include any entity owned in whole or in part by J&J/Janssen or any entity which owns J&J/Janssen in whole or in part. The term "J&J/Janssen," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by J&J/Janssen or who provide services on behalf of J&J/Janssen.
2. "Communication" means the transmission, exchange, or transfer of information in any form between two or more persons, including by telephone, facsimile, telegraph, telex, text message, letter, email, mobile messaging application, or other medium.
3. "Document" includes, but is not limited to, any electronic, written, printed, handwritten, graphic matter of any kind, or other medium upon which intelligence or information can be recorded or retrieved.

### **DOCUMENTS TO BE PRODUCED**

1. All documents and communications in your possession, custody, or control related to your employment at J&J/Janssen, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from J&J/Janssen during and since your employment.



**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

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

vs. §

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

Case No. CJ-2017-816  
JURY TRIAL DEMANDED

**DEPOSITION SUBPOENA DUCES TECUM**

STATE OF OKLAHOMA    )  
  ) ss.  
COUNTY OF CLEVELAND)

TO:           **ELIZABETH HIGHTOWER**  
                  10305 S BRADEN AVE  
                  TULSA, OK 74137-6057

**GREETINGS:**

**YOU ARE HEREBY COMMANDED** to appear at Professional Reporters, 20 E 5th St Suite 720, Tulsa, OK 74119, on September 6, 2018, at 1 p.m., to testify as a witness in a deposition noticed by the State of Oklahoma in the above-captioned case, and you are directed to bring with you all documents and things described in Exhibit A attached hereto. The deposition shall be recorded by audio/visual means.

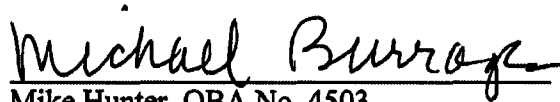
In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection.

This subpoena is authorized pursuant to 12 O.S. § 2004.1 and all parties to this case are being given notice of the issuance of this subpoena. The provisions of 12 O.S. § 2004.1(C), relating to your protection as a person subject to a subpoena, and 12 O.S. § 2004.1(D) & (E), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Please direct inquiries regarding this subpoena to Winn Cutler: tel: (512) 328-5333; email: [winncutler@nixlaw.com](mailto:winncutler@nixlaw.com).

**HEREOF FAIL NOT, UNDER PENALTY OF LAW.**

Issued this 9th day of August, 2018.



Mike Hunter, OBA No. 4503  
ATTORNEY GENERAL FOR  
THE STATE OF OKLAHOMA  
Abby Dillsaver, OBA No. 20675  
GENERAL COUNSEL TO  
THE ATTORNEY GENERAL  
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**ATTORNEYS FOR PLAINTIFF**

Oklahoma Session Law, 2010 O.S.L. 50, 2004.1 (c), (d), (e)

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2004.1, as last amended by Section 5, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2009, Section 2004.1), is amended to read as follows:

Section 2004.1.

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2. a. A person commanded to produce and permit inspection, copying, testing or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection, copying, testing or sampling or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection, copying, testing or sampling of any or all of the designated materials or of the premises, or to producing electronically stored information in the form or forms requested. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies,
- (4) subjects a person to undue burden, or
- (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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c. A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

d. A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If such showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of

paragraph 2 of subsection B of Section 3226 of this title. The court may specify conditions for the discovery.

2. a. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

b. If information is produced in response to a subpoena that is subject to a claim or privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for such claim. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, such shall take reasonable steps to retrieve the information. The person who produced the information shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as trial preparation material or whether such privilege or protection has been waived.

#### E. CONTEMPT.

Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court from which the subpoena issued.

## **EXHIBIT "A"**

### **DEFINITIONS**

1. "J&J/Janssen" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals, Inc. and any and all predecessors, merged entities, subsidiaries and affiliates, whether individuals, corporations, LLC's or partnerships. The term "affiliate" shall include any entity owned in whole or in part by J&J/Janssen or any entity which owns J&J/Janssen in whole or in part. The term "J&J/Janssen," where appropriate, shall also include entities and individuals, such as officers, directors, sales representatives, medical liaisons, etc., who are employed by J&J/Janssen or who provide services on behalf of J&J/Janssen.
2. "Communication" means the transmission, exchange, or transfer of information in any form between two or more persons, including by telephone, facsimile, telegraph, telex, text message, letter, email, mobile messaging application, or other medium.
3. "Document" includes, but is not limited to, any electronic, written, printed, handwritten, graphic matter of any kind, or other medium upon which intelligence or information can be recorded or retrieved.

### **DOCUMENTS TO BE PRODUCED**

1. All documents and communications in your possession, custody, or control related to your employment at J&J/Janssen, including but not limited to all training materials, sales call notes, marketing materials, and communications to or from J&J/Janssen during and since your employment.

**"B"**  
**EXHIBIT 2: AUGUST 24, 2018 LETTER TO WHITTEN  
BURRAGE**



O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006-4061

T: +1 202 383 5300  
F: +1 202 383 5414  
omm.com

File Number:  
427892-297

August 24, 2018

**Stephen D. Brody**  
D: +1 202 383 5167  
sbrody@omm.com

**VIA E-MAIL**

Reggie Whitten  
Michael Burrage  
WHITTEN BURRAGE  
512 North Broadway Avenue, Suite 300  
Oklahoma City, OK 73102

**Re: State of Oklahoma v. Purdue Pharma L.P. et al., No. CJ-2017-816**

Dear Reggie and Mike:

We are writing in response to subpoenas that the State recently served on current and former Janssen sales representatives. As an initial matter, please note that we represent the individuals listed below, and that any further communications from the State must be through counsel:<sup>1</sup>

- Keith Auer
- Drue Diesselhorst
- Rebecca Diesselhorst
- David Everly
- William Guthrie
- Elizabeth Hightower
- Stephen Howard
- Melynda McClure
- Amy Ussery Pino
- David Tilley

We also write to advise that Joanna Samples and Elizabeth Hightower are not available on the dates that the State noticed for their depositions. We will work with you to determine mutually agreeable alternative dates. As a starting point toward that effort, please let us know whether September 26, 27 or 28 will work for the deposition of Ms. Samples, and whether September 25, 26, 27, or 28 will work for the deposition of Ms. Hightower. If none of those dates work, we can go back to the witnesses and seek to identify additional alternatives.

Finally, the State subpoenaed four individuals who, according to Janssen's records as well as the subpoenaed individuals' recollections, did not detail Nucynta, Nucynta ER, or Duragesic: Rebecca Diesselhorst, Britini Mabry, Amy Ussery Pino, and David Tilley. Mr. Tilley

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<sup>1</sup> As we previously informed you, we also represent Jason Flanary, Britni Mabry, and Joanna Samples.

is in any event unavailable on the date noticed for his deposition. Proceeding with these depositions would unduly burden the witnesses as well as the parties. Accordingly, we request that you withdraw the subpoenas for these individuals' depositions. Given our limited timeframe before these depositions, please confirm by noon on August 28 that you will withdraw the subpoenas. If we do not hear from you, we will seek judicial relief.

Sincerely,

*/s/ Stephen D. Brody*

Stephen D. Brody  
of O'MELVENY & MYERS LLP