IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., *et al.*, Defendants.	Case No. CJ-2017-816 Judge Thad Balkman William C. Hetherington Special Discovery Master

DEFENDANTS' MOTION TO COMPEL DISCOVERY REGARDING CLAIMS DATA AND BRIEF IN SUPPORT

The Oklahoma Attorney General contends that allegedly fraudulent marketing by Defendants caused Oklahoma prescribers to write medically unnecessary and inappropriate prescriptions for opioid medications and submit false or fraudulent claims to the State for reimbursement from Oklahoma Medicaid. These prescriptions, the Attorney General says, contributed to an opioid epidemic and created a public nuisance. Which prescribers wrote those prescriptions? The State refuses to identify them. What information did those prescribers consider when evaluating the benefits and risks of prescription opioid medications for their patients? Did those prescribers rely on any marketing by Defendants when prescribing opioid medications?[1] The State will not identify the prescribers, so Defendants cannot ask them these fundamental questions. For which patients were those alleged medically unnecessary and inappropriate prescriptions

[1] *See* Ex. O, Transcript of Proceedings, *State ex rel. Hunter v. Purdue Pharma L.P. et al.*, No. CJ-2017-816 (Aug. 10, 2018) ("Aug. 10 Tr."), at 60:11–21 (Hetherington, J.) ("I mean, you've got to have those witnesses to prove up the elements you've got to prove up ***like reliance***.") (emphasis added).

written? The State refuses to say. Did those patients benefit from those prescriptions? If the State has its way, Defendants will never be able to find out.

This information is not just relevant to the State's claims and responsive to Defendants' discovery requests. It is essential to Defendants' ability to fairly defend against the sweeping allegations the Attorney General makes in this lawsuit. The State has this essential and relevant—and thus, discoverable—information at its fingertips and should be compelled to provide it.

I. BACKGROUND

In discovery requests served on January 12, 2018, Janssen asked the State to provide "[p]articipant level claims data showing the full Medicaid or other Program claims history . . . for all patients who received a prescription for any Relevant Medication." Ex. A, Janssen's First Requests for Production, at 7. Janssen also requested that the State "specifically identify[] the [healthcare provider] who recommended, drafted, wrote, administered, and/or dispensed each prescription," and "identify the Patient who received the prescription." Ex. B, Janssen's First Introgs., at 6, 7. In order to facilitate this and similar discovery implicated by the State's claims, the parties negotiated a HIPAA-compliant protective order that the Court entered on April 11, 2018. *See* Ex. C. Following that order, and with regard to each of Janssen's prescriptions the State claims were medically unnecessary or excessive, Janssen asked the State to provide "the name and address of the HCP [healthcare provider] who issued the prescription, the name and address of the patient to whom the prescription was issued, the diagnosis of the patient receiving the prescription, and the name of the employee(s) or Vendor who approved [the State's] payment or reimbursement of each such prescription." Ex. D, Janssen's Second Introgs., at 6. Other Defendants propounded document requests and interrogatories seeking similar information.[2] Defendants also sought

[2] *See, e.g.*, Ex. E, Purdue Pharma's First Introgs., at 7 ("For each such Claim, identify and describe the date of the Claim, claim number, ***prescriber identity***, ***patient identity***, amount and

information about substance abuse treatment, substance abuse and overdose deaths, and related services[3] provided to Oklahomans in order to evaluate (and rebut) the State's novel contention that the sale of legal, highly-regulated, FDA-approved, prescription-only medications—as opposed to numerous other independent factors, such as drug diversion, patient misuse, illegal pill mills, and other criminal conduct by third parties—is the cause of the opioid crisis in Oklahoma.

Notwithstanding the existence of the HIPAA protective order, the State announced its intention to "mask" patient-identifying information using an anonymized, patient-specific identifier.[4] Over ***five months*** ago, the State committed to at least one Defendant, Purdue, that it would set forth in a letter how it proposed to redact information in its claims data before producing it so that the parties could confer on the issue.[5] No such letter ever arrived. Nor has the State responded to requests for similar information that Janssen made four months ago.[6]

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reason(s) given for denial.") (emphasis added); Ex. F, Teva's First Introgs., at 6 ("Identify all ***Patients*** whom You acknowledge have been appropriately prescribed an Opioid for the treatment of chronic pain.") (emphasis added).

[3] *See, e.g.*, Ex. A, Janssen's First Requests for Production, at 7 ("All Documents and Communications concerning statistics relating to addiction, abuse, or overdose relating to the Relevant Medications in the State of Oklahoma."); Ex. F, Teva's First Introgs., at 6 ("Identify every time that a Program or Oklahoma Agency . . . administered, offered, or refused a request or recommendation for Medication Assisted Treatment, including naloxone, or any other substance abuse disorder treatment.").

[4] Ex. G, Ltr. from P. LaFata to A. Pate et al., at 2 (Mar. 19, 2018) ("The State further indicated that it intended to redact certain patient identifying information, such as names and social security numbers, from medical records. The State intended to replace that information with a unique identifying number that would allow the parties to identify documents that refer to the same person. The State agreed to set forth in a letter its plan to apply these redactions so that the parties may evaluate the proposal, meet and confer, and reach an agreement.").

[5] *See* Ex. H, Transcript of Meet and Confer between Purdue and the State, *State ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816 (Apr. 3, 2018), at 83:10–84:22 (promising a "single response" about the "general fundamentals" regarding "all of the different places where potential redaction could occur").

[6] *See* Ex. I, Ltr. from D. Roberts to A. Pate et al., at 4 (May 9, 2018) (seeking information about, among other things, "how the proposed masking [of claims data] will occur," "what

Instead, on May 8, 2018, when the State eventually produced what it said was opioid prescription claims data—a small subset of the claims data and related information sought by Defendants' requests—the State unilaterally elected to mask not only patient identities, but also the identities of all prescribers who wrote prescriptions for opioid medications reimbursed by Oklahoma Medicaid. That is, the State hid the names of the prescribers that wrote the prescriptions that it alleges to be false and fraudulent claims and for which the State seeks to hold Defendants liable.

This is untenable. The only way that Defendants can defend against claims that hinge on the alleged impact of Defendants' marketing on prescribers and patients is by identifying and taking discovery from the prescribers and patients involved in the allegedly false claims the State has put at issue. Only if Defendants receive this information can a jury fairly ascertain how, if at all, Defendants' marketing impacted Oklahoma patients and prescribers, and whether that impact, if any, caused the prescriptions at issue to be written.

By both its statements and its silence, the State has repeatedly demonstrated its resolve to withhold information that it concedes is relevant and goes to the heart of its case.[7] Defendants

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methods will be undertaken to allow beneficiaries to be identified or correlated across different state programs or for different types of relevant services," "what kinds of auditing or quality assurance processes, if any, will be employed to ensure that data . . . is accurate, complete, and useable," and "methods by which Defendants can audit or test the accuracy of the masking process the State intends to employ").

[7] Defendants and the State met and conferred on the issue of patient and prescriber identification in May, at which time the State announced that "we're not going to give you the names of the doctors." Ex. J, Transcript of Meet and Confer, *State ex rel. Hunter v. Purdue Pharma L.P.*, No. CJ-2017-816, at 14:8-18:20 (May 17, 2018). In August, the State told Purdue that it might be willing to compromise with Defendants on some aspects of their requests, but once again ignored Defendants' request for any details about what information it would disclose or how it would "mask" other information. *See* Ex. K, Email from S. Coats to M. Burrage (Aug. 17, 2018). The State eventually abandoned that offer.

therefore move to compel the production of patient and prescriber identities in the State's claims data.

II. LEGAL STANDARD

The legal standard governing this discovery dispute is set forth in section 3226 of the Oklahoma Discovery Code:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

OKLA. STAT. ANN. tit. 12, § 3226(B)(1)(a) (West 2018). A party "may move for an order compelling an answer, or a designation, or an order compelling inspection and copying" when a party "fails to produce documents or respond that the inspection or copying will be permitted as requested or fails to permit the inspection or copying as requested." *Id.* § 3237(A)(2).

"A lawsuit is not a contest in concealment, and the discovery process was established so that '***either party may compel the other to disgorge whatever facts he has in his possession***.'" *Cowen v. Hughes*, 1973 OK 11, 509 P.2d 461, 463 (quoting *S. Ry. Co. v. Lanham*, 403 F.2d 119 (5th Cir. 1968), quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). "'Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.'" *Metzger v. Am. Fidelity Assur. Co.*, 245 F.R.D. 727, 728 (W.D. Okla. 2007) (quoting *Hickman*, 329 U.S. at 507).

III. ARGUMENT

Patient and prescriber identities are indispensable to litigating the claims raised in this lawsuit. This information is not protected by any privilege and its production is reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case. *See id.* § 3226(B)(1)(a). Defendants must have an appropriate opportunity to conduct fact

discovery to demonstrate, among other things, that prescriptions the State challenges as "medically unnecessary" or improper (1) were both necessary and based on proper medical criteria, (2) did not result from alleged misrepresentations (because, for example, the prescribers who wrote the prescriptions never received communications from Defendants or were fully aware of the medical risks and benefits the State alleges to have been misstated, or did not rely[8] on any of the alleged misstatements by Defendants when prescribing opioid medications), and (3) benefited the patients who received them.

This information not only goes to the core of the State's false claims theory, but also bears directly on its nuisance theory. For starters, data showing that Defendants did not detail—must less made any false statements to—the doctors who wrote the most opioid prescriptions in the SoonerCare Medicaid program would undermine the State's contention that Defendants' allegedly misleading promotional activities caused a nuisance. Disclosure of prescriber identities would also allow Defendants to examine whether those high-volume prescribers were engaged in illegal conduct, which would likewise undercut the State's causation theory. Obtaining patient identities, meanwhile, is essential to examine, among other things, whether Oklahomans who overdosed or required substance-abuse treatment ever received a lawful and legitimate prescription for one of the Defendants' medications (and, if so, whether it provided effective pain relief), or whether they obtained opioids illegally through diversion or sought things like heroin or street fentanyl.

In short, the State's refusal to produce the patient and prescriber information in its possession deprives Defendants of the ability to address any of these critical issues in the fact discovery process. Common sense and basic fairness require that the State produce it.

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[8] *See supra* note 1 (reliance is an element that must be proved).

For this reason, the court in *City of Chicago v. Purdue Pharma L.P. et al.*, a similar opioid lawsuit against the same Defendants (among others) in this case, ordered the City to identify:

> (1) the prescription claims submitted to and paid for by Plaintiff that it asserts were medically unnecessary and to whom they were written; (2) the ***physicians or health care providers*** who wrote the prescriptions Plaintiff alleges to have been medically unnecessary; and (3) Plaintiff's basis for identifying the prescription claims to be "medically unnecessary."

Ex. L, Order, *City of Chicago v. Purdue Pharma L.P.*, No. 14-cv-4361, ECF No. 604 (N.D. Ill. Aug. 21, 2017) (emphasis added).

This Court should do the same and order the State to produce unredacted claims data showing the Member ID and prescriber fields.

A. Patient and Prescriber Information Is Not Privileged.

The only privilege a party can claim is one "provided by constitution, statute or rules promulgated by the Supreme Court." OKLA. STAT. ANN. tit. 12, § 2501. The State does not assert that patient or prescriber information is privileged. Rather, the State resists only on the ground that "patients . . . have privacy rights." Ex. J, May 17 Tr. at 18:4–6 (Whitten). But the HIPAA protective order ensures that patients' privacy rights are safeguarded. "The requirement that documents not be produced without a court order presumes that the court, in drafting any production order, will balance the patients' privacy and confidentiality interests with the documents' relevance and a party's need for the documents, before determining whether the documents should be produced and, if so, with what constraints." *Hussein v. Duncan Reg'l Hosp., Inc.*, 2009 WL 10672479 (W.D. Okla. Apr. 28, 2009) (ordering production of private patient information where "no other discoverable sources . . . could provide the information needed.").

This Court has already made this calculation and taken ample measures to protect patient privacy. Indeed, the need for this information—its ***relevance***—is the very reason that protective

order was entered. In the absence of a privilege, this Court need only consider whether such information is relevant. *Id.* § 3226(B)(1)(a).

B. Patient and Prescriber Information Is Crucial to Resolving the State's Claims.

The identities of Oklahoma patients and prescribers speak directly to both the State's claims and the Defendants' defenses. The State alleges Defendants "knowingly caused to be presented false or fraudulent claims," and "knowingly made or used, or caused to be made or used, false statements material to a false or fraudulent claim." Pet. ¶¶ 75, 83; *see also* OKLA. STAT. ANN. tit. 63, §§ 5053.1(B)(1)–(2). Because the State does not allege that Defendants directly submitted claims themselves, the State can only hope to establish Defendants' liability by proving that Defendants' alleged misrepresentations either (1) caused a provider to submit each alleged false claim, or (2) caused a provider to make a false statement material to each alleged false claim. Under either theory, falsity depends on each provider's independent medical judgment as to what was medically necessary for each patient.

The State knows this, which is why it argues that, as a result of Defendants' marketing, "it was not possible for providers or patients to discern whether any prescription was medically necessary." Ex. M, Pl.'s Resp. to Janssen's First Introgs. at 12. But to ***prove*** this assertion, the State must show ***that***—and ***how***—Defendants' alleged misrepresentations prevented each prescriber and patient at issue from discerning the medical necessity or appropriateness of the prescription in question. And for this, the State (and Defendants) must conduct discovery relating to the actual prescribers and patients.

The determination of whether a prescription is "medically necessary" necessarily involves individualized factual determinations:

> Several of the criteria for "medical necessity" are context-sensitive, rather than one-size-fits-all. Because each patient presents a unique set of symptoms and

> indications, and each patient may respond differently to any given medication, it requires a highly specific, individual analysis to determine, for example, whether there exists for a given patient another "effective and more conservative or substantially less costly treatment." . . . Whether a prescription . . . is "medically necessary" must take into account all the information available to the prescribing physician about the risks and benefits with respect to the individual patient in question and the myriad vectors affecting the presenting person, his family, and his associates. . . . The concept of "medical necessity" therefore does not operate in a mechanical way . . . to render individualized proof of reliance or loss causation unnecessary.

In re Zyprexa Prods. Liab. Litig., 671 F. Supp. 2d 397, 457 (E.D.N.Y. 2009) (granting pharmaceutical manufacturers' motion for summary judgment of similar claims under Mississippi's analogous Medicaid Fraud Control Act).

The court in *United States v. Vista Hospice Care, Inc.*, elaborated on this point in a thoughtful analysis of the issue in the context of a federal False Claims Act litigation:

> [C]ertainly you can't extrapolate from how one physician assessed a patient's eligibility to make conclusions about another physician. Thus, proof regarding one claim does not meet [plaintiff's] burden of proof regarding other claims involving different patients, different medical conditions, different caregivers, different facilities, different time periods, and different physicians.

2016 WL 3449833, at *12–13 (N.D. Tex. Jun. 20, 2016) (internal quotations omitted). Accordingly, ***identifying*** the prescribers and patients at issue is just the ***initial*** step in ascertaining ***whether*** and ***how*** Defendants' supposedly false marketing impacted providers' and patients' ability "to discern whether any prescription was medically necessary." Ex. M, Pl.'s Resp. to Janssen's First Introgs., at 12.

The State has previewed that it will attempt to use "statistical sampling" to prove its case,[9] and suggested that it "does not have to turn over those individual names" because its "case can be

[9] Ex. N, Transcript of Proceedings, *State ex rel. Hunter v. Purdue Pharma L.P. et al.*, No. CJ-2017-816 (Dec. 5, 2017), at 136:25–137:5 ("But I believe that I will be able to show you, especially through statistical sampling methods that have been approved specifically in the Burgess vs. Farmers case by our Oklahoma Supreme Court, a case Mr. Burrage and I happened to

proven without doing that." Ex. O, Aug. 10 Tr., at 50:9–51:4 (Whitten). The State simply assumes that it will be allowed to prevail by taking some shortcut of its choosing to try to meet its burden of proof (*i.e.*, without showing reliance by any Oklahoma prescriber). That assumption is misguided as a matter of law—most notably because nothing in Oklahoma law supports the State's approach[10]—but also irrelevant to the discovery dispute before the Court at this time. The issue of whether statistical sampling is an appropriate or sufficient method of proof for claims involving an assertion that third party prescriber purportedly wrote a medically unnecessary prescription based upon an alleged misrepresentation is not the point here, although numerous courts have found such efforts insufficient in similar cases.[11] The point here is that, regardless of how the State may try to prove its claims, Defendants are entitled to discovery that is relevant to the claims ***or*** defenses in this action, and the identities of the doctors who wrote opioid prescriptions and patients who received them are most definitely—indeed critically—relevant. It is black letter law that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to any

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be in, that statistical evidence in cases like this is appropriate, and I think we can prove it.") (Whitten).

[10] *Burgess v. Farmers Ins. Co., Inc.*, 2006 OK 66, ¶ 20 n.28, 151 P.3d 92, 102, cited by the State, did not even consider whether statistical proof was valid in that case. Rather, it simply noted in a footnote that the plaintiff had proffered a statistical sample to estimate the number of insurance claims seeking reimbursement for contractor overhead and profit that the plaintiff contended should have been covered—a sample the defendant did not challenge. That is a far cry from "statistical sampling methods that have been approved specifically . . . by our Oklahoma Supreme Court," as the State argued. *Supra* note 9.

[11] Courts have held that "sampling" or statistical approaches fail, as a matter of law. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011) (rejecting sampling approach in class certification context); *Vista Hospice Care, Inc.*, 2016 WL 3449833, at *12–13 (rejecting statistical approach where claims involved "the ***subjective clinical judgment*** of a number of certifying physicians") (bold emphasis added); *In re Zyprexa Prods. Liab. Litig.*, 671 F. Supp. 2d at 457 (same). In fact, the information Defendants seek will help demonstrate why statistical proof is incapable of satisfying the State's burden of proof—for example, by showing that prescribers who, according to the State, wrote unnecessary prescriptions as a result of Defendants' marketing in fact knew all relevant risks and stand by their prescribing decisions to this day.

party's claim ***or defense*** . . . ." OKLA. STAT. ANN. tit. 12, § 3226(B)(1)(a) (emphasis added). Thus, the State's purported method of proof is not a basis for denying Defendants access to data that is indisputably relevant to their defenses.

Put simply, even if the State is allowed to try to prove causation with statistical or aggregate proof, Defendants are still entitled to explore, and use at summary judgment or trial, evidence concerning the chain of causation between any allegedly wrongful conduct by each Defendant, on the one hand, and any injury or damages suffered by the State, on the other, to demonstrate that the Defendants' conduct could not have caused the harm the State claims. Even ignoring intervening illegal acts like diversion, that causal chain necessarily includes: (i) an alleged misstatement to a prescriber; (ii) the prescriber's reliance on that misstatement; (iii) a prescription for opioids that the State claims should not have been written; (iv) an individual who was

purportedly harmed by that prescription; and (vi) resulting harm to the State.[12] Defendants are entitled to full discovery regarding each step in that causal chain.[13]

The State misses this fundamental point. While Defendants cannot (aside from appropriate summary judgment and expert motions) dictate to the State how it might try to go about attempting to prove its claims, the State cannot dictate to Defendants whether and how they get to defend themselves. For example, the State cannot avoid inconvenient and essential facts (including that the State lacks evidence to support its claims) by simply declaring that it intends to pursue a novel theory of causation that depends on statistical inferences rather than individualized proof. Defendants are still entitled to discovery, including answers to interrogatories, that will refute the State's inferences and show that, contrary to the State's assumptions, individual Oklahoma prescribers did not rely on any allegedly false marketing by Defendants.[14] To conclude otherwise

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[12] *See, e.g.*, *City of Cincinnati v. Deutsche Bank Nat'l Tr. Co.*, 863 F.3d 474, 480 (6th Cir. 2017) ("Proximate cause requires some reasonable connection between the act or omission of the defendant and the damage the plaintiff has suffered. In addition to foreseeability, it requires some direct relation between the injury and the injurious conduct . . . . The failure to tether the damages to nuisance-related problems on Wells Fargo's properties prevents us from assessing the 'directness' of the relationship between the two. That is particularly true for the City's attenuated theories of damage: decreased tax revenue, increased police and fire expenditures, and increased administrative costs. When tied only to a general 'policy' of non-conformance, these damages are difficult to connect to Wells Fargo's actions and nearly impossible to disaggregate from other potential causes of these costs.") (internal quotation marks and citations omitted); *see also Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1062 (N.Y. 2001) ("Such broad liability, potentially encompassing all gunshot crime victims, should not be imposed without a more tangible showing that defendants were a direct link in the causal chain that resulted in plaintiffs' injuries, and that defendants were realistically in a position to prevent the wrongs. Giving plaintiffs' evidence the benefit of every favorable inference, they have not shown that the gun used to harm plaintiff Fox came from a source amenable to the exercise of any duty of care that plaintiffs would impose upon defendant manufacturers.").

[13] *See, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 254 F.R.D. 50, 51 (E.D.N.Y. 2008) (in States' action stemming from alleged unlawful marketing, "[i]t bears repeating, then, that the [medical] records are in fact relevant to [Defendant's] defenses").

[14] *See supra* note 1.

would read out one half of the standard for relevant discovery and deprive Defendants of their due process right to defend themselves. Amend. XIV, U.S. Const.; Art. III, § 7, Okla. Const.

Prescriber and patient identities are likewise essential to Defendants' defenses against the State's nuisance theory. To prevail, the State must show that Defendants proximately caused a public nuisance. *Twyman v. GHK Corp.*, 2004 OK CIV APP 53, ¶ 52, 93 P.3d 51, 61. At summary judgment and, if the case survives, at trial, Defendants will vigorously contest causation. Obtaining prescriber and patient identities forms a central and irreplaceable part of Defendants' efforts to show why the State cannot satisfy this element of its claim.

As to prescribers, claims data showing that the opioid prescribing patterns of doctors participating in the SoonerCare program did not change following communications with Defendants' sales representatives would undermine the State's theory. In addition, claims data may reveal that Defendants did not communicate with a significant number of Oklahoma's high-volume opioid prescribers in its Medicaid program and, even if such communications took place, that there were no false statements made about opioids, such that any alleged general misstatements that the State seeks to attribute to the Defendants could not have affected their prescribing decisions. Claims data showing that some of those high-volume prescribers engaged in improper conduct (like failing to comply with anti-diversion requirements or not utilizing Oklahoma's prescription monitoring program) would further undercut the notion that Defendants' promotion caused any nuisance. *Cf. Prince v. B.F. Ascher Co.*, 2004 OK CIV APP 39, ¶ 20, 90 P.3d 1020, 1028 (there is no duty to "anticipate and prevent the intentional or criminal acts of a third party"); *Butler v. Okla. City Pub. School Sys.*, 1994 OK CIV APP 22, 871 P.2d 444, 446 (proximate cause exists only if conduct causes injury "in a natural and continuous sequence, unbroken by any independent cause").

So, too, knowing patient identities is central to contesting the State's nuisance theory. The State seeks damages based on a variety of social problems it blames on opioids, including addiction and overdose. *See generally* Pet. ¶¶ 21-50. This information is crucial to testing the State's theory that Defendants' promotional activities caused Oklahomans to become addicted to or overdose on opioids. For example, it will enable the jury to learn whether Oklahomans who overdosed on opioids ever were diagnosed with chronic non-cancer pain or received a legitimate prescription for one of the Defendants' medications. Equally significant, this information will show whether Oklahomans who required substance-abuse treatment received one of the Defendants' medications. In the case of Defendant Cephalon's two branded products, this information will also allow Defendants to determine whether the patient and doctor complied with the requirements of the FDA-imposed TIRF REMS program by signing the program documentation certifying, among other things, that they discussed the FDA-approved risk disclosures with their patients with respect to those medications before any prescription was written.

The causation element of the State's nuisance claim aside, obtaining prescriber and patient identities and correlating those with other data sources (like law-enforcement records and prescription-monitoring data) will shed light on the complexity and multifactorial nature of Oklahoma's opioid abuse problem, and, as Defendants expect, will preclude the State from establishing, as it must for a nuisance claim, that there is "a single injury." *Union Texas Petroleum Corp. v. Jackson*, 1995 OK CIV APP 63, ¶ 60, 909 P.2d 131, 150.

C. Every Balancing Factor Weighs in Favor of Discoverability.

Having established that patient and prescriber information is non-privileged and relevant, the only question left is whether this information is

> reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant

> information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

OKLA. STAT. ANN. tit. 12, § 3226(B)(1)(a).

The State has not meaningfully contested any of these balancing factors, and each weighs in favor of discoverability:

First, although the State continues to refuse to disclose its damages information, it has proffered the theory that "every" prescription written for anything other than "end-of-life palliative care or for a three-day supply to treat acute pain" was false or fraudulent, reimbursed in violation of State law, and subject to reimbursement and per-prescription civil penalties.[15] Though the State's theory is contrary to medical evidence and preempted by federal law, the amount in controversy alone warrants a thorough fact-finding process. The monetary figures aside, the information at issue here should be produced because it is central to significant public policy questions. *See, e.g.*, Pet. ¶¶ 6, 46–50. Specifically, the information relates directly to the proper treatment of serious pain conditions and implicates the State's remarkable contention that virtually every opioid prescription reimbursed by the SoonerCare program since 1996 was improper.[16] The State's assertion is notably contrary to the determinations of the Food & Drug Administration, Oklahoma Medicaid Drug Utilization Review Board, the recommendations of the Centers for Disease Control and Prevention, and scores of medical practitioners—and, if accepted, would leave patients stymied by otherwise-intractable pain without treatment options that their doctors

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[15] Ex. M, Pl.'s Resp. to Janssen's First Introgs. at 17.

[16] This is despite the fact that SoonerCare ***continues*** to reimburse opioid prescriptions for other than "end-of-life palliative care or for a three-day supply to treat acute pain" (Ex. M, Pl.'s Resp. to Janssen's First Introgs., at 17), and despite the fact that the Oklahoma Opioid Prescribing Guidelines ***acknowledge*** that chronic opioid treatment is necessary for some patients. OKLA. STATE DEP'T HEALTH, *Oklahoma Opioid Prescribing Guidelines* (2017), available at https://www.ok.gov/health2/documents/Oklahoma_Opioid_Prescribing_Guidelines_2017.pdf.

recommend for them. Of course, if the State has its way, those patients' highly-probative stories will never be heard.

Second, ***only*** the State has access to patient and prescriber information. Without this information, it is impossible for Defendants to correlate each allegedly medically unnecessary prescription with the prescriber who wrote it and the patient who received it, and to investigate the extent to which each prescriber or patient was or was not affected by Defendants' marketing, the symptoms experienced by the patient, the prescribers' consideration of alternatives and weighing of risks and benefits, and the ultimate result of the therapeutic intervention recommended for the patient. This basic information is critical to Defendants' due process right to defend these cases.

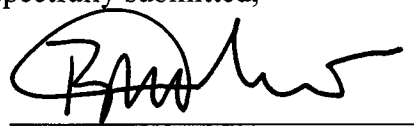
Third, the State's affirmative removal of patient and prescriber information clearly demonstrates not only the ease with which the State could provide Defendants access to this information, but also the ***lack*** of burden in producing this information—for it is easier to provide claims data ***without*** de-identifying fields than it is to provide claims data with masked fields.

IV. CONCLUSION

For all the foregoing reasons, Janssen respectfully requests that this Court issue an order compelling the State to provide claims data with unmasked patient and prescriber information.

Dated: September 7, 2018

Respectfully submitted,



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CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on September 7th, 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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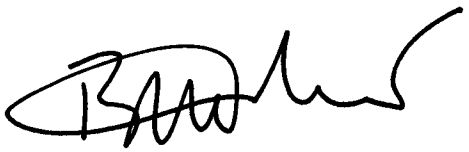

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Exhibit A

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

vs. Case No. CJ-2017-816

PURDUE PHARMA L.P., et al,

Defendants.

DEFENDANT JANSSEN PHARMACEUTICALS, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

DOCUMENTS REQUESTED

1. All Documents, Communications, and Claims identified, referred to, or relied upon in Your answers to Interrogatories served by any Defendant.

2. All minutes, transcripts, agendas, notes, monographs, dossiers, analyses, or other documents relating to meetings of the Drug Utilization Review Board or any P & T Committee, formulary committee, or other equivalent committee(s) or group(s) acting on Your behalf regarding any of the Relevant Medications, including any document containing a discussion relating to (a) the formulary status of the Relevant Medications, (b) restrictions on the purchase, coverage, reimbursement, utilization, use, or prescription of the Relevant Medications, or (c) the safety, efficacy, economic, or other concerns related to any of the Relevant Medications.

3. All Communications with physicians, providers, Health Care Providers, plan sponsors, Medicaid beneficiaries, beneficiaries of any Program, or pharmacies relating to the Relevant Medications.

4. All Documents and Communications concerning statistics relating to addiction, abuse, or overdose relating to the Relevant Medications in the State of Oklahoma, including but not limited to Documents and Communications relating to any evaluation, assessment, analysis, modeling, or review of any financial or economic impact associated with addiction, abuse, or overdose relating to the Relevant Medications.

5. All Documents and Communications relating to any educational efforts You or anyone acting on Your behalf sponsored or engaged in pertaining to the Relevant Medications.

6. Participant level claims data showing the full Medicaid or other Program claims history for prescription medications and other health care services submitted to Medicaid or any other Program, whether reimbursed or not, for all patients who received a prescription for any Relevant Medication, including data sufficient to show the price, Medicaid or other Program payments, co-payments, deductibles, rebates, discounts or any other offsets or adjustments to the price paid by You for any Relevant Medication.

7. All Documents and Communications with or relating to any Key Opinion Leader or Third-Party Group whom You claim communicated or consulted with, or was organized, retained, contracted, sponsored, funded, or controlled, in whole or in part, by any Defendant, including but not limited to the Key Opinion Leaders and Third-Party Groups identified in the Complaint.

8. All Documents and Communications concerning Opioids and misuse, diversion, abuse, addiction, overdose, or death, including Communications and Documents provided or made

available by the State of Oklahoma, the Oklahoma Attorney General, or any Oklahoma Agency or Program to any Person, Patient, or Health Care Provider that discuss substance abuse, diversion, prescribing practices, prescription safety, Opioids, or the treatment of pain, including but not limited to any Documents or Communications for which you provided grants, sponsorships, or other funding.

9. All Documents and Communications relating to Your investigation and/or enforcement of violations of laws governing the marketing of Relevant Medications and/or the use, prescribing, or request for reimbursement for prescriptions for any Relevant Medication, including documents sufficient to identify any Person arrested, indicted, charged, fined, or otherwise penalized for any activity related to the use, prescribing or request for reimbursement of any Relevant Medication.

Dated: January 12, 2018

By: /s/ Charles C. Lifland/JC

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Exhibit B

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

vs. Case No. CJ-2017-816

PURDUE PHARMA L.P., et al,

Defendants.

DEFENDANT JANSSEN PHARMACEUTICALS, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF

Pursuant to 12 O.S. § 3233, Defendant Janssen Pharmaceuticals, Inc. ("Janssen") submits the following interrogatories to the Plaintiff State of Oklahoma ("the State"). You are required to answer each interrogatory separately and fully under oath, and to serve a copy of the answers upon counsel for Janssen within 30 days of service of these interrogatories.

INSTRUCTIONS

1. These interrogatories are directed toward all knowledge or information known or available to the State, including knowledge or information in the possession, custody, or control of the State's employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within the State's control, or available to it upon reasonable inquiry. Where interrogatories cannot be answered in full, they shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information, or belief You possess with respect to each unanswered or incompletely answered

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

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

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

INTERROGATORIES

1. Identify every Opioid prescription, whether manufactured by Defendants or not, that the State contends was false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act, specifically identifying the HCP who recommended, drafted, wrote, administered, and/or dispensed each prescription.

2. Identify every Opioid prescription, whether manufactured by Defendants or not, that the State contends was not a Medical Necessity, was "unnecessary or excessive" as described in the Complaint, or that You otherwise contend should not have been written, specifically identifying the HCP who recommended, drafted, wrote, administered, and/or dispensed each prescription.

3. Identify every Communication (1) that caused or contributed to Your payment or reimbursement of any prescription for one of Defendants' Opioids pursuant to the Oklahoma Medicaid Program, or (2) which states income or expense and was used to determine a rate of payment pursuant to the Oklahoma Medicaid Program for a prescription for one of Defendants' Opioids, or (3) made as part of an application for payment for one of Defendants' Opioids under any Program that You allege was false in violation of the Oklahoma Medicaid Program Integrity Act. In Your answer, specify the information in the Communication that you contend was false and identify the HCP or other Person who drafted, wrote, administered, or submitted each Communication.

4. For each prescription identified or subject to a Communication identified in response to Interrogatory No. 1, Interrogatory No. 2, or Interrogatory No. 3, identify the Patient who received the prescription.

5. For each Patient identified in response to Interrogatory No. 4, describe the alternative course of treatment that should have been implemented or prescribed instead of the Patient's receipt of an Opioid prescription.

Dated: January 12, 2018

By: /s/ Charles C. Lifland /JC

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Exhibit C

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	**Case No. CJ-2017-816** **Judge Thad Balkman**
(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.	)	

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED
APR 11 2018
In the office of the
Court Clerk MARILYN WILLIAMS

AGREED QUALIFIED PROTECTIVE ORDER FOR PROTECTED HEALTH INFORMATION

Pursuant to 12 O.S. § 3226(C) and the Privacy Act of 1974, 5 U.S.C. § 552a, by 45 C.F.R. §§ 164.102-164.534, and specifically, 45 C.F.R. § 164.512(e)(1), by 42 U.S.C. § 1306, or by other privacy protections, the Court finds good cause for the issuance of this qualified protective order and ORDERS as follows:

1. This Protective Order will apply to documents produced in this Action. Plaintiff the State of Oklahoma ("the State"), its attorneys, the Defendants, and the attorneys for Defendants are hereby authorized to receive, subpoena, and securely transmit "Protected Health Information" pertaining to the above-captioned litigation (the "Action").

2. For purposes of this Stipulated Qualified Protective Order for Protected Health Information (the "Order"), "Protected Health Information" shall encompass information within the scope and definition set forth in 45 C.F.R. § 160.103 that is provided to the parties by a covered entity as defined by 45 C.F.R. § 160.103 ("Covered Entities") or by a business associate of a Covered Entity as defined by 45 C.F.R. § 160.103 ("Business Associate") in the course of the Action.

3. Any Party who produces Protected Health Information in this Action shall designate such discovery material "Confidential Protected Health Information" in accordance with the provisions of this Protective Order.

4. Unless otherwise agreed between counsel for the Parties, the designation of discovery material as "Confidential Protected Health Information" shall be made at the following times: (a) for documents or things at the time of the production of the documents or things; (b) for declarations, correspondence, expert witness reports, written discovery responses, court filings, pleadings, and other documents, at the time of the service or filing, whichever occurs first; and (c) for testimony, at the time such testimony is given by a statement designating the testimony as "Confidential Protected Health Information" made on the record or within 30 days after receipt of the transcript of the deposition. The designation of discovery material as "Confidential Protected Health Information" shall be made in the following manner:

(a) for documents, by placing the notation "Confidential Protected Health Information" or similar legend on each page of such document; (b) for tangible things, by placing the notation "Confidential Protected Health Information" on the object or container thereof or if impracticable, as otherwise agreed by the parties; (c) for declarations, correspondence, expert witness reports, written discovery responses, court filings, pleadings, and any other documents containing Protected Health Information, by placing the notation "Confidential Protected Health Information" both on the face of such document and on any particular designated pages of such document; and (d) for testimony, by orally designating such testimony as being "Confidential Protected Health Information" at the time the testimony is given or by written notice within 30 days after receipt of the transcript.

5. The parties may show deponents documents that are designated as being subject to this order. However, efforts should first be made, if practicable, to conceal the patient identifying information in the record by redacting and coding the information in the document to substitute a numerical or other designation for the patient's name or other identifying information. Deposition transcripts that contain Confidential Protected Health Information will be subject to this Protective Order.

6. The procedures for use of designated confidential documents during any hearing or the trial of this mater shall be determined by the parties and the Court in advance of the hearing or trial. The parties shall consider redacting Confidential Protected Health Information to remove individual patient identifiers, request the court to submit such documents under seal, code the documents to substitute a numerical or other designation for the patient's name or other identifying information, request that any exhibit be placed under seal, introduce summary evidence where practicable which may be more easily redacted, and assure that all Social Security and HIC

numbers associated with the names of individual patients have been removed. No disclosure of designated Confidential Protected Health Information in open Court shall occur without prior consideration by the Court.

7. The Clerk shall accept for filing under seal any documents or filings so marked by the parties pursuant to the above paragraphs.

8. Nothing in this Order shall prevent any party from seeking modification of this Protective Order or from objecting to discovery that it believes to be otherwise improper.

9. The failure to designate any materials as provided in paragraph 2 shall not constitute a waiver of a party's assertion that the materials are covered by this Protective Order.

10. This Protective Order does not constitute a ruling on the question of whether any particular material is properly discoverable or admissible and does not constitute any ruling on any potential objection to the discoverability of any material.

11. All Covered Entities and their Business Associates (as defined in 45 C.F.R. § 160.103) are hereby authorized to disclose Protected Health Information pertaining to the Action to counsel representing the parties in this Action.

12. The Parties shall not use or disclose Protected Health Information for any purpose other than the Action, including any appeals. Accordingly, the Parties may, inter alia, disclose Protected Health Information to (a) Counsel for the Parties and employees of counsel who have responsibility for the Action; (b) the Court and its personnel; (c) Court reporters; (d) experts and consultants; and (e) other entities or persons involved in the Action.

13. Prior to disclosing the Protected Health Information to persons involved in this litigation, counsel shall inform each such person that the Protected Health Information may not be used or disclosed for any purpose other than this litigation.

14. Within sixty-three days after dismissal or entry of final judgment not subject to further appeal, the Parties, their counsel, and any person or entity in possession of Protected Health Information received pursuant to this Order shall return the Protected Health Information to the Covered Entity or destroy all copies of Protected Health Information pertaining to the Action. Any Protected Health Information destroyed pursuant to this paragraph must be rendered unusable, unreadable, or indecipherable consistent with the United States Department of Health and Human Services Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals.

15. Nothing in this Order authorizes the parties to obtain Protected Health Information through means other than formal discovery requests, subpoenas, depositions, pursuant to a patient authorization, or any other lawful process.

ENTER:

Judge William C. Hetherington
Special Discovery Master

Exhibit D

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
PURDUE PHARMA L.P., et al,	)	
Defendants.	)	

DEFENDANT JANSSEN'S SECOND SET OF INTERROGATORIES TO PLAINTIFF

Pursuant to 12 O.S. § 3233, Defendants Johnson & Johnson and Janssen Pharmaceuticals, Inc. ("Janssen") submit the following interrogatories to the Plaintiff State of Oklahoma ("the State"). You are required to answer each interrogatory separately and fully under oath, and to serve a copy of the answers upon counsel for Janssen within 30 days of service of these interrogatories.

INSTRUCTIONS

1. These interrogatories are directed toward all knowledge or information known or available to the State, including knowledge or information in the possession, custody, or control of the State's employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within the State's control, or available to it upon reasonable inquiry. Where interrogatories cannot be answered in full, they shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information, or belief You possess with respect to each unanswered or incompletely answered

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

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

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

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

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

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

INTERROGATORIES

1. Identify which of the "over 2,600 prescriptions" that You claim "Janssen Defendants have caused to be submitted . . . to the Oklahoma Health Care Authority" (Pet. ¶ 38, Ex. 4) were "unnecessary or excessive" (*id.* ¶ 34), including, but not limited to, the prescription date, quantity, refills (if any), cost, and the amount of that cost paid for or reimbursed by You.

2. For each prescription You identified as "unnecessary or excessive" in response to Interrogatory No. 1, describe Your basis for alleging that it was "unnecessary or excessive."

3. For each prescription You identified as "unnecessary or excessive" in response to Interrogatory No. 1, identify the name and address of the HCP who issued the prescription, the name and address of the patient to whom the prescription was issued, the diagnosis of the patient receiving the prescription, and the name of the employee(s) or Vendor who approved Your payment or reimbursement of each such prescription.

4. For each HCP You identified in response to Interrogatory No. 3, identify each misrepresentation to that HCP that caused the HCP to prescribe the "unnecessary or excessive" prescription You identified in response to Interrogatory No. 1, including the date the HCP received

the misrepresentation and the means by which the misrepresentation was communicated to the HCP.

5. For each employee or Vendor You identified in response to Interrogatory No. 3, identify and describe the misrepresentation to the employee or Vendor, if any, that caused that employee or Vendor to approve the payment for or reimbursement of each "unnecessary or excessive" prescription You identified in response to Interrogatory No. 1, including the date the employee or Vendor received that misrepresentation and the means by which that misrepresentation was communicated to the employee or Vendor.

6. Identify and describe each instance in which You or any other entity that provides or administers benefits for Your Programs denied payment or reimbursement for a Duragesic, Nucynta, or Nucynta ER prescription as "unnecessary or excessive," including the date, claim number, name and address of the HCP, name and address of the patient, reason(s) given for the denial, and associated records or other documentation.

7. Identify and describe all disciplinary proceedings, civil actions, or criminal charges brought or initiated by You related to the prescribing practices of any HCP identified in Your responses to these Interrogatories.

8. For each disciplinary proceeding, civil action, or criminal charge identified by You in response to Interrogatory No. 7, identify the Oklahoma Agency and employee(s) responsible for conducting and supervising the investigation.

9. State whether You have received any complaints regarding the prescribing practices of any HCP identified in your responses to these Interrogatories, and identify the HCP(s) against whom the complaints were made, the Oklahoma Agency that received the complaint, the

employee(s) who was responsible for investigating the complaint, the date of the complaint, the name and address of the person making the complaint, and describe the substance of the complaint.

10. State whether You initiated any investigation concerning the prescribing practices of any HCP identified in your responses to these Interrogatories that did not result in disciplinary proceedings, civil actions, or criminal charges against that HCP, identifying the HCP(s) investigated and the dates of the investigation(s), and describing the findings and conclusions of each investigation.

11. For each investigation identified by You in response to Interrogatory No. 10, identify the employee(s) responsible for conducting and supervising the investigation.

12. Identify all Janssen conduct You seek to prohibit or Janssen actions you seek to compel to abate the "public nuisance" alleged in Section VII.K of Your Petition.

By: _____

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Exhibit E

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
PURDUE PHARMA L.P., et al,	)	
Defendants.	)	

DEFENDANT PURDUE PHARMA, L.P.'S
FIRST SET OF INTERROGATORIES TO PLAINTIFF

Pursuant to 12 O.S. § 3233, Defendant Purdue Pharma, L.P. ("Purdue Pharma") submits the following interrogatories to the Plaintiff State of Oklahoma ("the State"). You are required to answer each interrogatory separately and fully under oath, and to serve a copy of the answers upon counsel for Purdue Pharma within 30 days of service of these interrogatories.

INSTRUCTIONS

1. These interrogatories are directed toward all knowledge or information known or available to the State, including knowledge or information in the possession, custody, or control of the State's employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within the State's control, or available to it upon reasonable inquiry. Where interrogatories cannot be answered in full, they shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information, or belief You possess with respect to each unanswered or incompletely answered

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

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

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

INTERROGATORIES

1. Describe any course of action, program, or other efforts that You or anyone acting on Your behalf considered or implemented to (i) ensure that HCPs did not write Opioid prescriptions that You claim were unnecessary, excessive, and/or not a Medical Necessity; (ii) ensure that the Programs did not reimburse claims for payment of Opioid prescriptions that You claim were unnecessary, excessive, and/or not a Medical Necessity; or (iii) attempt to recoup payments or reimbursements made by You for Opioid prescriptions that You allege were unnecessary, excessive, and/or not a Medical Necessity. For each course of action, program, or other effort identified in response to this Interrogatory, provide the dates and identify the Person(s) most knowledgeable.

2. Identify all of Your current and former employees, contractors, agencies, boards, committees, and other third parties responsible for, involved in, or knowledgeable regarding the payment or reimbursement of Opioid prescriptions under any Program.

3. Identify each Claim for any Opioid prescription which You, anyone acting on Your behalf, or entity that provides or administers benefits for Your Programs denied. For each such Claim, identify and describe the date of the Claim, claim number, prescriber identity, patient identity, amount, and reason(s) given for denial.

4. Describe the processes, practices, and procedures in place during the Relevant Time Period, if any, that You or any Program(s) or Oklahoma Agency used to determine whether, under what circumstances, and to what extent an Opioid prescription Claim would be

paid or reimbursed for each Program that adjudicates claims seeking the payment for or reimbursement of Opioids dispensed or prescribed to Program beneficiaries, and identify the Person(s) most knowledgeable about Opioids claims processing for each Program.

5. Identify the Persons, methods, criteria, information, reports, studies, and medical or scientific research that You, anyone acting on Your behalf, or any Program(s) or Oklahoma Agency considered, used, consulted, or relied on during the Relevant Time Period in determining whether a Claim for an Opioid prescription involved a Medical Necessity and was otherwise eligible for payment for each Program identified in response to Interrogatory No. 4.

Exhibit F

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

vs. Case No. CJ-2017-816

PURDUE PHARMA L.P., et al,

Defendants.

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

Pursuant to 12 O.S. § 3233, Defendant Teva Pharmaceuticals USA, Inc. ("Teva") submits the following interrogatories to the Plaintiff State of Oklahoma ("the State"). You are required to answer each interrogatory separately and fully under oath, and to serve a copy of the answers upon counsel for Teva within 30 days of service of these interrogatories.

INSTRUCTIONS

1. These interrogatories are directed toward all knowledge or information known or available to the State, including knowledge or information in the possession, custody, or control of the State's employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within the State's control, or available to it upon reasonable inquiry. Where interrogatories cannot be answered in full, they shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information, or belief You possess with respect to each unanswered or incompletely answered

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

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

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

INTERROGATORIES

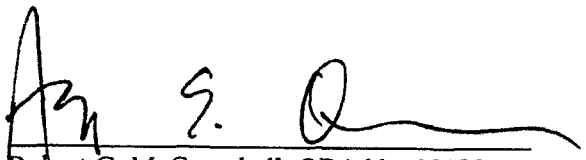
1. Identify all HCPs whom You identified or investigated for potential suspicious Opioid prescribing or diversionary behavior relating to Opioids and the basis for having done so.

2. Identify all Patients whom You acknowledge have been appropriately prescribed an Opioid for the treatment of chronic pain.

3. Identify every Person who allegedly became addicted to any substance or was otherwise harmed as a result of any prescription for one of Defendants' Opioids that you allege was unnecessary, excessive, not a Medical Necessity, or otherwise improper. For each such individual, identify: (i) the particular type of alleged harm that the individual experienced, (ii) the particular Opioids that he or she took and/or was prescribed, (iii) when the allegedly unnecessary or improper prescription was written, (iv) whether You reimbursed for any prescription, hospitalization, and/or treatment costs, and the total amount of such cost.

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

Dated: January 12, 2018

By: 

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Attorneys for Defendants Cephalon, Inc., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, and *Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.*

Exhibit G

quinn emanuel trial lawyers | new york
51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

March 19, 2018

VIA E-MAIL

Andrew G. Pate
Bradley E. Beckworth
Jeffrey J. Angelovich
Nix Patterson & Roach LLP
512 N. Broadway Avenue, Suite 200
Oklahoma City, OK 73102

Re: *Oklahoma v. Purdue Pharma L.P.* – March 14, 2018 Meet-and-Confer

Dear Counsel:

We write in follow-up to the one-hour meet-and-confer discussion that the State and Purdue held on March 14, 2018. We spent about 35-40 minutes discussing Purdue's responses to document requests and the balance of time discussing the State's responses to Purdue's document requests before the State discontinued the discussion on the hour. Purdue wrote to the State identifying document requests for the discussion.

The State was not able to provide a date when it expected to start producing documents. Nor could it identify the general nature of the documents that would be covered by its first production. Please promptly inquire into this information, and provide it to Purdue.

The State also stated that it would not be withholding any documents on the basis of any objection in the State's responses to Purdue's document requests with the exception of privilege and documents that are in criminal investigation files that are open and active. With respect to the latter group of documents, please specify whether the documents being withheld are limited to those held by the Attorney General's Office or, if other offices or agencies, what those offices or agencies are. The State further agreed to search for responsive documents in all the Oklahoma agencies

identified in Purdue's document requests and possibly others that the State may believe to have responsive documents.

The State further indicated that it intended to redact certain patient identifying information, such as names and social security numbers, from medical records. The State intended to replace that information with a unique identifying number that would allow the parties to identify documents that refer to the same person. The State agreed to set forth in a letter its plan to apply these redactions so that the parties may evaluate the proposal, meet and confer, and reach an agreement.

Very truly yours,
/s/ Paul LaFata
Paul LaFata

CC (by email):
Michael Burrage
Reggie Whitten

Exhibit H

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	
Plaintiff,	Case No. CJ-2017-816 Judge Thad Balkman
vs.	Special Master: William Hetherington
PURDUE PHARMA L.P., et al.,	
Defendants.	

DISCOVERY CONFERENCE BETWEEN THE PARTIES
(Purdue Defendants)
April 3, 2018
(Via Telecommunications)

DISCOVERY CONFERENCE BETWEEN THE PARTIES, taken in the above-styled and numbered cause on April 3, 2018, from 4:05 p.m. to 5:59 p.m., before WILLIAM M. FREDERICKS, CSR in and for the State of Texas, reported by machine shorthand at the offices of Nix Patterson & Roach, LLP, 3600 North Capital of Texas Highway, Suite B350, Austin, Texas.

Job No. 2861859
Pages 1 - 86

this call right here has gone over another call I was going to get on. In fact, I'm going to jump over to that one and follow up on that. I have communicated with you -- that's Trey I'm assuming?

MR. DUCK: Yeah.

MR. LaFATA: I think that we should be complete with that. I just need to get sign-off from the Co-Defendants. So I told you by e-mail that I had tried to get that yesterday and was not successful, and I -- I'm trying again today because that really should be done, I think should be done.

And again, I kind of thank you for noting that there was a misperception of what some of the language was, and it's always nice to be able to resolve things when it turns out there's nothing to resolve. We just kind of look to the language together.

Anyway, so I don't really see an open issue left for that. I'm just trying to get consent to get it done. And as I mentioned before, I'm working on that, and I'll, you know, keep e-mailing you about it and maybe suggestions on shaking the tree on it to get it filed.

MR. DUCK: Great. Let me know if I can help. I'm happy to get involved. It just seemed like

it would be easier for you to do that, or at least faster. Maybe not easier. And, you know, I -- I had this -- you could probably tell at the hearing afterwards, I had this feeling that I was having trouble explaining that we were conflating two separate issues, but I just -- I didn't have all of the language in front of me. And so I was -- I was glad to see that hopefully we don't have an issue here.

On the other issue that we were conflating, I still intend to get you a description of the redaction deal for --

MR. LaFATA: Uh-huh.

MR. DUCK: -- you know, what we had discussed was with respect to Medicaid claims. It's just right now while we're finishing gathering that information I can't articulate exactly what's going to happen because I haven't gotten a full understanding of the universe of information that we're going to be dealing with; and rather than send you a piecemeal explanation of how that process will work, I would rather wait until I know, okay, here are all of the different places where potential redaction could occur, which I'm still learning, and give you a single response.

So if you're okay with that, then we'll move forward that way. I do not think that should affect the HIPAA order in any way.

MR. LaFATA: I don't think it should either. And I appreciate the candor in how this is being set up, and the whole point of this is so that we can work together on it to get it into a shape that we can both live with, and that should be achievable -- I understand it was mainly the names of patients or maybe it's a Social Security or something like that -- with some kind of code that could be if it were necessary to be decoded or deanonymized if necessary.

So, I mean, those are fundamentals that could be outlined, and we can kind of just confer on this. It doesn't have to be on the phone. We can do it by e-mail if you prefer and, you know, just put something down so we both know what's going to happen, and if there is an issue -- maybe there's no issue, and if there is an issue, then we can resolve it.

MR. DUCK: Okay. I can send you an e-mail on just general fundamentals.

MR. LaFATA: All right. Well, I better go. Is there anything -- I think we've covered all the issues that we flagged, is that right? I think we

have.

MR. DUCK: Great. Well, thank you, all.

MR. LaFATA: All right, guys. Have a good night.

MR. DUCK: You too.

MR. PATE: Thank you. Bye.

(Conference concluded.)

Exhibit I

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omm.com

File Number:
427,892-297

May 9, 2018

Dave Roberts
D: +1 202 383 5155
droberts2@omm.com

VIA E-MAIL

Andrew G. Pate
Lloyd "Trey" Nolan Duck, III
Nix Patterson & Roach LLP
3600 N. Capital of Texas Hwy.
Suite 350
Austin, TX 78746
512-328-5333

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

Dear Drew and Trey:

We write regarding the State's deficient responses to interrogatories and document requests served by Janssen and Johnson & Johnson. Please let us know your availability for a meet and confer session to discuss those responses on Monday, May 14, including the issues set out here. We will arrange for a court reporter to transcribe the meet and confer.

General Discovery Issues

We request further information or clarification regarding your objections and responses on several general issues. In particular:

- The State's objections purport to narrow the relevant time period to end on the date that the Requests were served. This cut off is not appropriate given that the State alleges ongoing harm and seeks injunctive relief. Please confirm that the State is not limiting its responses on this ground, and will produce documents created after the date our document requests were served.

- During the parties' March 29, 2018 discovery conference, Plaintiff argued to the Special Master that Defendants were seeking discovery going back only to January 1, 2007. *See* Tr. (Mar. 29, 2018), at 54-55. But the relevant time period for purposes of Defendants' discovery requests is "January 1, 2007 to the present, ***or such other time period as*** the parties may later agree or ***the Court determines should apply*** to each side's discovery requests in this action." As you know, the Discovery Master has determined that "the relevant time period is found to be from May 1, 1996 ... as it relates to Purdue" regarding certain requests, and from 2004 regarding other requests. Orders of Special Discovery Master on April 19th, 2018 Motion Requests (Apr. 25, 2018), at 6. The State filed objections seeking to expand even that definition. *See* Pl.'s Obj. to and

Mot. to Modify Orders of Special Master (May 2, 2018), at 1 (alleging that "[t]he Purdue Defendants started th[e] sweeping false marketing campaign in May of 1996" and that "[t]he other Defendants followed suit"). We expect the State's discovery responses, including documents, answers to interrogatories, and testimony from witnesses designated pursuant to 12 O.S. § 3230(C)(5), to cover the period determined by the Court and Judge Hetherington to apply to discovery in this case. Please confirm that the State will not limit its responses to a shorter time period.

- Despite the specific reference to numerous offices, boards, commissions, programs and other entities in the Janssen Defendants' definition of the terms "Oklahoma Agency" and "Oklahoma Agencies," the State purports to narrow this definition to unspecified agencies that the State deems likely to have relevant information. The State also fails to identify the entities or individuals whose files it will search for responsive materials. Please provide this information, including identification of any sources, whether or not specifically identified in Defendants' document requests, that the State is omitting from its search for and production of documents.

- The State's objection to the definition of "claim" unilaterally and improperly narrows the term to "a request for payment or reimbursement submitted to the Oklahoma Health Care Authority pursuant to Oklahoma's Medicaid Program as related to the claims and defenses at issue in this litigation," without defining what it means by that limitation or specifying what information it is refusing to produce based on this objection. Please confirm that the State is not withholding or declining to search for documents on this ground, or should it plan to do so, identify exactly what documents it will withhold or not search for.

- The State's objection to the definition of "Medication Assisted Treatment" unilaterally and improperly narrows the term to "substance abuse treatment" that the State deems "related to the claims and defenses at issue," without defining what it means by that limitation or specifying what information it is refusing to produce based on this objection. Please confirm that the State is not withholding or declining to search for documents on this ground, or should it plan to do so, identify exactly what documents it will withhold or not search for.

- The State unilaterally and improperly narrows the definitions of "Program" and "Vendor" without specifying what information it is refusing to produce based on these objections. Please confirm that the State is not withholding or declining to search for documents on these grounds, or should it plan to do so, identify exactly what documents it will withhold or not search for.

Document Requests

Within two weeks of the parties finalizing an ESI protocol, Janssen produced 10,278 documents. In this production, Janssen frontloaded some of its most relevant marketing and sales training materials, which directly pertain to the State's core allegations. Janssen followed up two weeks later with a production threefold larger than its first production, totaling 62,397

documents. Like the first production, that production responded to nearly all of the State's requests and contained substantive discussions about each of the opioids at issue. Janssen continued its rolling productions on April 4, 2018, producing 106,216 documents totaling 380,688 pages. Janssen plans to make another rolling production on May 9, 2018, with 283,974 documents totaling 1,698,945 pages. In addition, Janssen's interrogatory responses, served in December 2017, contained over 800 pages of data. In total, Janssen will have produced 2,415,011 pages of documents, and will continue to produce documents on a rolling basis as requested by Judge Hetherington. *See* Order of Special Discovery Master on State's First Motion to Compel (Apr. 4, 2018) ("The undersigned recognizes the discovery burden unique to this case and encourages the parties to further develop the 'rolling basis' . . . .").

By contrast, the State has made only three productions. Its first two productions contained just 750 documents and 22,000 pages, while its third consisted of certain claims data. As to the first two productions, the documents were not accompanied by any explanation of where the documents came from, the requests to which they are responsive, or whether they represent the entirety of documents the State will produce from any source or in response to any request. Our review of these documents suggests that the State merely assembled a collection of publicly-available materials in order to get something out the door, but has not to date produced any documents that are the product of an effort to collect documents from relevant agencies, programs, and custodians. This unacceptable delay in producing documents and failure to provide basic information about its productions are hindering Defendants' efforts to mount a defense, serve deposition notices, or otherwise prepare for a fast-approaching trial. *See* Ltr. from S. Brody to M. Burrage et al. (Apr. 12, 2018), at 1.

During our pre-conference meet-and-confer on April 19, 2018 in Norman, the State committed to provide us with an anticipated schedule for its production, including an approximate estimate of when the State might be able to complete production in response to Defendants' document requests. We have yet to receive any information at all.

Moreover, the State has interposed boilerplate objections that have no basis in law or fact. For example, the State objects that Janssen Request for Production No. 8—which calls for documents "concerning Opioids and misuse, diversion, abuse, addiction, overdose, or death"—seeks "irrelevant" information, when the State itself has repeatedly put these issues front and center in its submissions. *See generally, e.g.*, State's Omnibus Response to Motions to Dismiss (Oct. 30, 2017). Similarly, the State objects that Johnson & Johnson Request for Production No. 9 is "disproportionate to the needs of the case," even though the information sought—documents concerning the State's and others' efforts "to identify, treat, reduce, or prevent Opioid abuse and illicit Opioid prescribing and dispensing"—goes to the heart of this case. We understand that the State has abandoned similar objections it lodged to other defendants' discovery requests. *See* Ltr. from S. Coats to Hon. Hetherington (Mar. 22, 2018), at 1.

We therefore request that the State promptly confirm that it is not withholding or declining to search for documents based on its objections, or, should it plan to do so, identify exactly what documents it will withhold or not search for and the specific objection that it relies on to support its position.

Another objection that requires clarification is the State's insistence that certain discovery requests, including Janssen Request No. 4 and J&J Request Nos. 1, 4, and 5, "prematurely seek[] information related to damages that will be the subject of expert testimony and expert discovery." This objection is ill-founded. The requests seek factual information that is plainly relevant; that the parties' experts may use or analyze this information is no basis to withhold its prompt production. Accordingly, please confirm that you will not withhold any information based on this objection, or, should you plan to do so, identify exactly what documents the State will withhold or refuse to search for.

The State's objections to other requests, such as Janssen Request Nos. 3 and 9 and J&J Request No. 8, on the ground that they seek information about and would "compromise" pending investigations, law enforcement actions, or litigation fail to explain why production would compromise these activities. The State also fails to cite any authority for its position, or to specify what information, if any, it will withhold or decline to search for based on this objection. Please explain what, if any, documents the State will withhold or decline to search for on this ground, and the basis for doing so.

As we advised on April 19, we would also like to address the State's intention to produce "de-identified claims data related to both medical provider services and pharmacy claims that relate to the opioid medications or drugs relevant to the claims and defenses at issue" in response to Janssen Request No. 6 and J&J Request Nos. 4, 6, and 10, and in response to certain interrogatories. On May 8, 2018, the State produced certain claims data, namely, Medicaid claims data for opioid prescriptions between 1996 and 2017. We would like to discuss several issues regarding the claims data, including the following:

- the agencies and programs from which the produced claims data was obtained and whether this production constitutes the entirety of claims data for opioid prescriptions;
- when the State will produce the remaining claims data requested by Defendants, including an anticipated date for completion;
- sources from which claims data will be provided;
- how the proposed masking will occur;
- what methods will be undertaken to allow beneficiaries to be identified or correlated across different state programs or for different types of relevant services;
- what kinds of auditing or quality assurance processes, if any, will be employed to ensure that data produced by the State is accurate, complete, and usable in discovery;
- methods by which Defendants can audit or test the accuracy of the masking process the State intends to employ; and
- the production of claims data regarding medical services other than prescriptions.

Interrogatory Answers

The State's responses to Janssen's and J&J's interrogatories are likewise deficient in several respects, failing to provide basic and indisputably relevant information. For example, J&J Interrogatory No. 2 asks the State to disclose and describe "each Communication by any Defendant, KOL, or other Third-Party group that the State claims was false, misleading, or deceptive, was made recklessly or negligently, or was otherwise improper, that the State attributes, in whole or part, to any Defendant, specifying the Defendant which the State seeks to hold liable for making the Communication." The State's objection that this interrogatory is premature lacks merit: Defendants are entitled to know what statements are at issue in this case in order to defend themselves, and the possibility that the State may wish to supplement its response later is no excuse not to provide the information it does possess now. Indeed, the State could not have filed its Petition without possessing this information. And while the State purports to provide a handful of such "communications," it does not identify all communications of which it is now aware. Moreover, this list contains vague references to "Defendants" generally and individual physicians, without attributing the statements to any particular Defendant. Finally, the only such "communications" attributed to Janssen are in fact characterizations so vague—unspecified representations that supposedly describe Nucynta as "appropriate for broader pain conditions than indicated" and "downplay[] its risks"—as to be unresponsive. We therefore request that the State supplement this and other responses promptly.

The State also fails to provide crucial information about the prescription reimbursement claims that form the basis for much of its case. Janssen Interrogatory No. 1 seeks disclosure of "every Opioid prescription, whether manufactured by Defendants or not, that the State contends was false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act," along with related information about each such reimbursement claim. Similarly, Janssen Interrogatory No. 2 calls for disclosure of "every Opioid prescription ... that the State contends was not a Medical Necessity, was 'unnecessary or excessive' as described in the Complaint, or that You otherwise contend should not have been written." The State fails to provide this information. Instead, it interposes a lengthy non-responsive narrative composed largely of legal argument. It also insists, perplexingly, that unidentified misstatements about opioids somehow made it "not possible for providers or patients to discern whether any prescription was medically necessary," despite the extensive warnings about those medications that appear prominently in their labels.

Multiple courts addressing similar claims against manufacturers of opioid medications have ordered other governmental plaintiffs to provide this crucial information. For example, in the *City of Chicago* action, the court ordered the City to identify:

> (1) the prescription claims submitted to and paid for by Plaintiff that it asserts were medically unnecessary and to whom they were written; (2) the physicians or health care providers who wrote the prescriptions Plaintiff alleges to have been medically unnecessary; and (3) Plaintiff's basis for identifying the prescription claims to be "medically unnecessary."

Order (ECF No. 604), *City of Chicago v. Purdue Pharma L.P.*, No. 14-cv-4361 (N.D. Ill. Aug. 21, 2017). The MDL court has recently ordered the disclosure of the same information. *See* Case Management Order No. 1 (ECF No. 232) at 16-17, *In re Nat'l Prescription Opiate Litig.*, No. 17-md-2804 (N.D. Ohio Apr. 11, 2018).

Defendants are plainly entitled to this information. We therefore request that you provide it promptly. In addition, please clarify whether you seek damages, penalties, fines, or other relief for every prescription of an extended-release, long-acting opioid to treat chronic non-cancer pain.

* * * * *

Please confirm your availability for a telephonic meet and confer session on Monday between 2:30 and 5:00 pm CT. We will arrange for a court reporter to transcribe the meet and confer.

Sincerely,

/s/ Dave Roberts

Dave Roberts
for O'MELVENY & MYERS LLP

cc: Counsel of Record

Exhibit J

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, vs. (1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (9) JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; AND (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	Case No. CJ-2017-816

TRANSCRIPT OF MEET AND CONFER
HAD ON MAY 17, 2018

REPORTED BY: ANGELA THAGARD, CSR, RPR

MR. BARTLE: So this is Harvey Bartle on behalf of Teva, Teva related defendants, just with regard to our motion to compel. Has the State changed its position with regard to disclosures of damages or employees?

MR. WHITTEN: We've laid out our response in our brief filed on May 10, 2018, and we're going to stand on that.

MR. BARTLE: Great. Thanks.

MR. BRODY: Since we have a five minutes or so, you guys know the one issue that we thought -- from the letter we sent on the 9th, we haven't had a chance to meet and confer on that. Given the limited time this morning, and I think there are a number of issues there that we probably need to set aside hour, hour and a half, where we can all get on the phone and talk about it.

But the one issue we did want to talk about is I think Dave Roberts mentioned in an e-mail he sent in response to you, Drew, yesterday was our concern initially -- and we have a lot of concerns about the little bit of claims data that has been produced so far -- but the de-identification --

MR. PATE: About the what? I couldn't hear you.

MR. BRODY: The claims data. The limited amount of claims data that has been produced thus far. We have a real concern about the de-identification of prescribers and the inability to see what doctor wrote any opioid prescription in the state of Oklahoma that was submitted to Medicaid.

The State had talked before it made its production about de-identifying patient IDs, and we have some real concerns about that? And we don't think it's warranted here because we have a HIPAA compliant protective order that allows production of that information and protection of that information, but the de-identification of prescriber identities is a real concern.

And frankly, we were surprised to see that, because our understanding was that the only thing that would be masked would be patient IDs. Again, we're reserving on that because want to talk that up. But if we don't know who wrote these allegedly false or fraudulent prescriptions, I don't know what we're going to do.

MR. WHITTEN: Steven, what is your concern, if I may ask?

MR. BRODY: Well, if you're saying a doctor wrote a false or fraudulent prescription that shouldn't have been reimbursed by Medicaid, I need to know who that doctor is.

MR. WHITTEN: For what purpose?

MR. BRODY: So I can ask him.

MR. WHITTEN: So you would intend to talk to every one of the doctors in the statistical sample?

MR. BRODY: Maybe I will.

MR. WHITTEN: Do you intend to talk to the patients as well?

MR. BRODY: I think we might.

MR. WHITTEN: What would you ask them?

MR. BRODY: I think we would ask them about some of the positive differences that opioid medications have had in their lives, about their knowledge about addiction, the conversations they had with their doctors about these medications, about the risks and benefits, about how their lives have changed and been given back to them as a result of the alleviation of debilitating pain.

And in addition -- and this is a little too complicated for the time we have this morning, but there are some real questions about the ability to say, Okay, the patient who received a prescription for an opioid medication reimbursed by Medicaid, did that patient who got -- and actually got a prescription and didn't get the drugs through diversion and didn't buy street fentanyl somewhere or wasn't taking heroin, did those patients need addiction treatment. Did those patients overdose. Did any of those patients wind up tragically dying as a result of an overdose. So we have some real questions about the ability to trace and to identify.

You know, that's a complicated question. We're going to have to have some serious discussions on that. But this morning the issue that we wanted to address was, you know, we were really shocked to find out that when we got the data for the first time or the first -- it's not even all the data, it's just a part of it -- last week to find that prescriber IDs were

masked, we can't tell -- you know, you're saying doctors wrote all these false and fraudulent and medically unnecessary and medically inappropriate prescriptions for opioids. Well, who are they? So that's a concern. That's a concern.

MR. WHITTEN: I'm sorry that you were shocked. That was not our intent. Are you suggesting that other people in the country under the false claims act are turning over the names of doctors to you?

MR. BRODY: We expect that, yeah. Absolutely.

MR. WHITTEN: But has anybody yet?

MR. BRODY: You know, I'm not sure. I would have to check. We haven't gotten much claims data. I would have to check on where we landed --

MR. WHITTEN: Fair enough.

MR. BRODY: -- when the Chicago case got pulled into the MDL.

MR. WHITTEN: Do you know individuals or doctors in the state of Oklahoma currently who fit the criteria that you just talked about who say that opioids are wonderful -- and I can't remember everything you said but you know what I'm talking about. Do you know those individuals already, some of them, in Oklahoma?

MR. BRODY: I'm sure that if we put our minds to it, we could find a couple. But we need to know -- we need to know who are the doctors that wrote these allegedly medically

unnecessary prescriptions. Who are they?

MR. WHITTEN: Well, we're not going to give you the names of the doctors. We're not going to give you the names of the patients. Those patients, unlike a personal injury case, have not put their physical or mental conditions into issue, and they have privacy rights. However, you're free to knock yourself out. There's three and a half million people that live in Oklahoma. Go bring in all the doctors or patients that you can find who love opioids and think it made their life better, and just have at it.

We're talking about a statistically meaningful sample on the false claims side of the house, and unless the Oklahoma Supreme Court orders us to turn their names over, we're not going to do it.

MR. BRODY: All right. So can we say we have fully met and conferred on that issue --

MR. WHITTEN: We have.

MR. BRODY: -- and we can move to compel, and we will take that up at the next hearing?

MR. WHITTEN: You may.

MR. BRODY: All right. Well, we made some progress. We'll save the other issues for --

MR. WHITTEN: On the shocking side, since we're sharing our shock and awe, I'm in shock that we've asked for depositions for months and months and months and haven't been

able to take one deposition, so I guess we're all in shock. But you know, we'll talk about that later.

MR. BRODY: Well, you'll have that opportunity. You have a Janssen witness coming into Oklahoma City two weeks from tomorrow.

MR. WHITTEN: Yeah. Well, you know, it seems to take months to get a deposition set up, and we don't see how we're going to get this case tried using the process that's been going on the last couple of months.

So we would ask that we change that process somehow. And -- but I don't anticipate you're going to do it, so we'll probably have to get that resolved by the Court.

MR. BRODY: Well, make a proposal. We'll consider any proposed deposition discovery protocol you want to send us. We'll take a look at it --

MR. WHITTEN: We just did. We had depositions set up that go off; they get moved. We agree on dates, and this little circle jerk Paul just went through is preposterous, so we'll just have to take it up with the Court. But it takes months to get a depo set up. And we can prove that. We'll take it up with the Court. We just can't do that.

You guys tell us who you want to take on our side, and we'll move heaven and Earth to get those witnesses set up. We want to give you what you want, but we want to get what we want in the discovery period. And I just don't think what we're

Exhibit K

From: Sanford C. Coats <sandy.coats@crowedunlevy.com>
Sent: Friday, August 17, 2018 5:18 PM
To: Michael Burrage
Subject: Information/discovery on doctors and patients

Mike:

I am writing to follow up on our phone conversation from August 14, in which you suggested that the parties attempt to resolve their issues with respect to the production of doctor and patient information. I really appreciate your attempt to work through this issue with us. Defendants are certainly receptive to working on a resolution of this issue. I think we left it with you talking to your folks about a proposed protocol. To that end, can you please provide such a written proposal so that we can better understand what you are suggesting? As you know, Defendants view this issue as being of critical importance in this case. If this issue will require motion practice, we need to tee it up with the court as soon as possible. I therefore request that you provide this written proposal no later than next Friday, August 24.

My general understanding is that the State is willing to produce the identities of doctors that prescribed opioids. We request that you produce this information immediately.

I also understand that you propose some masking of patient information. A written proposal is critical to understanding exactly what you are proposing here. Defendants do have concerns about any masking of patient information. In particular, it is critical for Defendants to understand:

- Whether such a masking system would permit Defendants to track patients identities across State agency systems and databases; and
- How the State proposes that the masking would be handled in the depositions of individual doctors.

Defendants must be able to know whether the same patient appears in different systems and databases and how the parties are to know what patient they are talking about during depositions of doctors. Further, Defendants must have some method to audit any masking of patient information that the parties may ultimately agree upon. We hope that your written proposal will address these specific issues.

I sincerely hope that the parties are able to resolve this essential issue by agreement, and I appreciate you reaching out in an attempt to resolve it. Please let me know if you think a phone call would help advance the ball.

Have a great weekend.

Thanks,

Sandy

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Exhibit L

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
Eastern Division

City Of Chicago

Plaintiff,

v.

Case No.: 1:14–cv–04361
Honorable Jorge L. Alonso

Janssen Pharmaceuticals Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, August 21, 2017:

MINUTE entry before the Honorable Young B. Kim: Motion hearing held. For the reasons stated in open court, Defendants' joint motion to compel [588] is granted. The motion is granted to the extent that Plaintiff will be required to respond to Defendants interrogatories and production requests seeking identification of the following after the close of party written discovery and third–party (except health care providers and patients) written discovery: (1) the prescription claims submitted to and paid for by Plaintiff that it asserts were medically unnecessary and to whom they were written; (2) the physicians or health care providers who wrote the prescriptions Plaintiff alleges to have been medically unnecessary; and (3) Plaintiff's basis for identifying the prescription claims to be "medically unnecessary." The court will set the response deadline at the next status hearing, if possible. Mailed notice (ma,)

Exhibit M

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA,	§	
Plaintiff,	§	
vs.	§	
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (9) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; and (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.,	§	Case No. CJ-2017-816 The Honorable Thad Balkman JURY TRIAL DEMANDED
Defendants.	§	

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

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

and maintains sufficient control over such entities to enable the State to have reasonable access to or possession, custody or control of such entities' records. The State will respond on behalf of the State and those State agencies represented in this litigation and over which the State, through the Office of the Attorney General, maintains sufficient control to allow the State to have reasonable access to and possession of responsive information maintained by the agency.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1: Identify every Opioid prescription, whether manufactured by Defendants or not, that the State contends was false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act, specifically identifying the HCP who recommended, drafted, wrote, administered, and/or dispensed each prescription.

RESPONSE TO INTERROGATORY NO. 1:

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

The State further objects to this Interrogatory because it is a premature contention interrogatory that attempts to force the State to marshal all of its evidence, including expert evidence, before any meaningful discovery has taken place in this action. *See* 12 OKLA. STAT. §3233(B). To the extent the State can respond to this Interrogatory at this preliminary stage, the State will do so based on the information currently known to and within the possession, custody and control of the State following a reasonably diligent investigation and will supplement and/or amend its response in due course according to 12 OKLA. STAT. §3226. Moreover, because this Interrogatory implicates the identity of documents and materials at this preliminary stage of discovery while the State is reasonably collecting, gathering, investigating, reviewing and

searching for such responsive documents, the State will supplement and/or amend its response to this Interrogatory in accordance with 12 OKLA. STAT. §3226 and 12 OKLA. STAT. §3233(C). Further, the State will produce and disclose expert information called for by this Interrogatory in accordance with the scheduling Order entered by the Court.

The State further objects to this interrogatory as impermissibly compound because it indiscriminately groups multiple separate topics, subjects, questions and tasks under the guise of a single interrogatory. In reality, this Interrogatory is actually at least two (2) separate interrogatories improperly disguised as one. *See* 12 OKLA. STAT. §3233(A). The State will reasonably and conservatively construe the Interrogatory as requesting the State to: (i) identify every Opioid prescription that the State contends was false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act; and (ii) identify the HCP who recommended, drafted, wrote, administered, and/or dispensed each prescription

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

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

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

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

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

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

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

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

for (1) claims and reimbursement for medical providers' services and (2) claims and reimbursement for prescriptions.

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

Therefore, in order to allow the Medicaid system to work correctly and enable Medicaid beneficiaries to receive timely and effective medical treatment, the State has defined the standards that must be considered in determining whether medical treatment is medically necessary and requires certification that each claim submitted for reimbursement is for medically necessary treatment. The State requires entry of a standard form Provider Agreement in order to be eligible for reimbursement from SoonerCare. *See* OKLA. ADMIN. CODE §317:30-3-2. Under this Provider Agreement, it is expressly certified with each claim for payment that, amongst other things, the services or products for which payment is billed by or on behalf of the provider were medically necessary, as the State, through OHCA, has defined that term. Essential to the proper functioning of SoonerCare is the reasonable presumption that any pharmaceutical marketing that may influence the certifying party's decision-making is proper and lawful and that such medical-

decision making was not unduly influenced or hindered by predatory, false, misleading, coercive, negligent or fraudulent marketing tactics, such as those at issue here.

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

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

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

The State notes that Defendant has pled the learned intermediary doctrine in an attempt to blame physicians for the fallout of the opioid epidemic. The State disagrees that such a defense is legally or factually applicable to this case. In Oklahoma, the learned intermediary defense is only available in products liability cases. *See McKee v. Moore*, 1982 OK 71, ¶¶6–8, 648 P.2d 21; *Brown v. Am. Home Prods. Corp.*, No. 1203, 2009 U.S. Dist. LEXIS 30298, at *24 (E.D. Pa. Apr. 2, 2009). This case is not a products liability case. Therefore, the learned intermediary doctrine is not applicable. Moreover, even if it were applicable, the doctrine only shields manufacturers of prescription drugs from liability "if the manufacturer adequately warns the prescribing physicians

of the dangers of the drug." Edwards, 1997 OK 22, ¶8. "To invoke a defense to liability under the learned intermediary doctrine, a manufacturer seeking its protection must provide sufficient information to the learned intermediary of the risk subsequently shown to be the proximate cause of a plaintiff's injury." *Tortorelli v. Mercy Health Ctr., Inc.*, 2010 OK CIV APP 105, ¶27, 242 P.3d 549. Here, Defendants intentionally *misrepresented* the risks of opioid addiction—often contradicting their own labeling—in a sprawling and coordinated marketing campaign targeting doctors and others throughout Oklahoma and the country. Defendants initiated a scheme to change the way physicians think about opioids. Defendants cannot falsely market their drugs to physicians and, at the same time, claim physicians should have known better. As such, even if the learned intermediary doctrine were applicable here (which it is not), Defendants cannot take advantage of the doctrine because they failed to adequately warn of the true risks of opioids, which risks caused the opioid epidemic in Oklahoma.

Based on the foregoing and by operation of law, every claim for reimbursement for an opioid prescription submitted to Oklahoma Medicaid (including, but not limited to, each of the more than 99,000 identified in the Petition) necessarily was based on certifications that the "services or products" provided (*i.e.*, prescription opioids) met the OHCA's definition of "medical necessity." *See, e.g.*, Provider Agreement at ¶4.3(g); *see also* OAC §317:30-3-2. However, the false representations Defendants and their co-conspirators imbedded in the Oklahoma medical community prevented an accurate and complete assessment of the "medical necessity" of Defendants' drugs for any patient in the first place.

Had Defendants not engaged in the conspiratorial and widespread, unlawful and fraudulent marketing of opioids, which reached every corner of the State, and had medical providers instead been equipped with the full and un-tainted truth regarding the efficacy and addictiveness of the

opioids at issue, such medical providers may never have prescribed opioids at all or would have prescribed exponentially fewer, as was the case prior to 1996, when Defendants' conspiratorial and fraudulent marketing campaign first began. Accordingly, at this time and based on the information reviewed to date, and subject to ongoing discovery and expert disclosures, the State's position is that it is more likely than not that (1) opioid prescriptions written in the State of Oklahoma since 1996 and reimbursed by the SoonerCare, other than those written for end-of-life palliative care or for a three-day supply to treat acute pain, were "false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act," and (2) opioids prescriptions written in the State of Oklahoma since 1996 and reimbursed by the SoonerCare for end-of-life palliative care or for a three-day supply to treat acute pain were not "false, fraudulent, or otherwise reimbursed in violation of the Oklahoma Medicaid False Claims Act." The State will continue to supplement this response as expert review continues for these claims.

Further, the State intends to produce (but cannot guarantee production of) de-identified claims data related to both medical provider services and pharmacy claims, from which Defendants can identify those claims related to opioids which are relevant to this lawsuit. For context, medical providers seeking reimbursement from SoonerCare for medical services submit their claims for reimbursement to the OHCA in the form of CPT codes—accepted numeric codes which indicate the treatment, medical decision-making, and services for which the provider seeks reimbursement. Claims for reimbursement for covered prescriptions are submitted separately by the dispensing pharmacy, such that SoonerCare typically receives two claims for reimbursement related to a single patient visit: one from the medical provider for his or her services (which are identified by CPT codes and based on the medical providers' decision-making and analysis, including any relevant diagnoses identified by ICD-9/10 codes) and one from the pharmacy for any resulting

prescription (which is not accompanied by the medical provider's records or any ICD-9/10 codes). Due to the real-time nature of pharmacy claims, the pharmacy claim is submitted days to weeks ahead of the medical claim. As a result, OHCA maintains separate claims databases for (1) claims and reimbursement for medical providers' services and (2) claims and reimbursement for prescriptions. The State is currently in the process of collecting this claims data in a manner that complies with applicable state and federal regulations and hope to produce such claims data in a de-identified format.

The State will supplement its Response to this Interrogatory No. 1 as additional information is gathered, reviewed and produced as a part of the State's ongoing investigation and reasonably diligent search for information responsive to Defendants' Interrogatories and Requests for Production of Documents.

INTERROGATORY NO. 2: Identify every Opioid prescription, whether manufactured by Defendants or not, that the State contends was not a Medical Necessity, was "unnecessary or excessive" as described in the Complaint, or that You otherwise contend should not have been written, specifically identifying the HCP who recommended, drafted, wrote, administered, and/or dispensed each prescription.

RESPONSE TO INTERROGATORY NO. 2:

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

The State further objects to this Interrogatory because it is a premature contention interrogatory that attempts to force the State to marshal all of its evidence, including expert evidence, before any meaningful discovery has taken place in this action. *See* 12 OKLA. STAT.

Exhibit N

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (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.	)	

TRANSCRIPT OF PROCEEDINGS
HAD ON DECEMBER 5, 2017
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE

REPORTED BY: ANGELA THAGARD, CSR, RPR

The Gay case said it does not require the plaintiff to plead detailed evidentiary matters. And of course, we have the definition of constructive fraud up here. It's actually regardless of the actor's intent. We think we're going to prove they intended this. They did this on purpose. They just thought they could never get caught.

I will take one moment to deviate for just a moment, because -- I'm sorry, I can't remember the name of the lawyer that said it, but one of the lawyers was up here criticizing us for not putting all these very minute details in the petition.

For example, as I heard him, he was saying, Well, you need to plead what the doctor did or didn't do, the patient's condition, and what was the doctor thinking, all these particulars he talked about.

Well, that's interesting, and it's hypocritical, because they launched this huge massive marketing program, and yet they didn't drill down on any of these particulars before they launched this massive marketing campaign.

Why did they spend all this money? That's the recurring question you have to ask yourself. Why did they spend all this money? Did they do it for no reason? I think marketing works. I think this epidemic is proof that marketing works.

They changed the way that opioids were prescribed in this country. They actually -- and this is our job to prove it. They advocated and advanced fraudulently and falsely what

responsible opioid use really was. They told a population of doctors a big lie, and the doctors are entitled to listen to them.

THE COURT: Let me interrupt you right there.

MR. WHITTEN: Yes, sir.

THE COURT: It was stated a couple of times that that's why the State's petition fails, is because there isn't any allegation of specifically which doctors were told or when they were told or who told them. What's your response to that?

MR. WHITTEN: Yes, sir. I have a great response to it. Every doctor in the state of Oklahoma was lied to. Every one of them. If they didn't get that from our petition, I don't see how they missed it. But I've cleared it up for them now. They asked for a bill of particulars. Our brief clears it up, I'm clearing it up. Every doctor in the state was lied to.

Now, can I in good faith tell you how many doctors bought it? No, sir, I cannot, yet. But I can show you through the use of that chart. Again, I'm at 35,000 feet. When you're dealing with an epidemic, you're always at 35,000 feet. That's why you have epidemiologists.

Epidemiologists look at group data. We can see, it's like a swarm of data. The swarm of data shows marketing, deaths, treatments for addiction with opioids. So can I tell you how many doctors bought into it? No. But I believe that I will be

able to show you, especially through statistical sampling methods that have been approved specifically in the Burgess vs. Farmers case by our Oklahoma Supreme Court, a case Mr. Burrage and I happened to be in, that statistical evidence in cases like this is appropriate, and I think we can prove it. We also will put a number of doctors on the stand to show how they were lied to.

But the question becomes, your Honor, do I have to call, from a civil procedure or evidence standpoint, when you're dealing with an epidemic, which by definition is, you know, thousands of people, do I have to put each and every doctor and each and every victim on the witness stand? That's a question of course that's not before you today, but I submit the answer's obvious. We could not do that if we wanted to. You would not allow me to go on that long, and I don't want to.

I think we have to meet our burden of proof. The State incurred these costs because they told these lies. And today are we trying this lawsuit? No. Today we're deciding -- or you're deciding if they were on notice of what we're saying. And I submit that they are.

So can you, Barbara -- by the way, if I didn't introduce her, Barbara Urtz has been helping me because I'm totally incompetent on the computer. The very last slide.

I'll just end with this. That is an impactful slide. We've put them on notice, they know what this case is about,

and every minute counts. And on behalf of the State of Oklahoma and our Attorney General and all of our co-counsel and the citizens of the state of Oklahoma, we respectfully ask that you not only overrule this motion, but that you set this trial expeditiously, as soon as possible, because lives are in the balance. Thank you, your Honor.

THE COURT: Thank you, Mr. Whitten.

I'll allow you to address the Court, Mr. Reed.

MR. REED: Thank you, your Honor. I promise you I will be brief. I believe Mr. Cheffo may have a point or two to make as well, but we will keep it brief. And let me first thank you, thank the Court for your attention and your patience, all the time that you've devoted to this important matter today. We really do truly appreciate it. We don't want to abuse that privilege.

I won't try and respond to everything I heard, but I do want to bring us back to the reason we're here, the focus of the motion. And it's this document, your Honor. And the question is: Is this adequately pled.

We're in violent agreement on what the pleading standards are in Oklahoma. Remarkably, in that presentation, I heard very little reference and precious few specific references to what's in this petition. And that's where the Court needs to focus, respectively.

Did they actually plead what they're saying now.

Exhibit O

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.; (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (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.	)	

TRANSCRIPT OF PROCEEDINGS
HAD ON AUGUST 10, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

We'll produce what is reasonable, and we're happy to have a hearing on that. I know you're not going to rule today, but just wanted to kind of give you a flavor for all of these issues. And again, we urge on the 30th that the Court put this to trial in the manner we suggested.

And for guidance, I would move to -- I would urge the Court to look at the Texas Tobacco case, because what happened in that case is despite all their protestations, they said, We can't possibly try the case. And the federal Judge trifurcated that case. They took it up to the Fifth Circuit, and it was affirmed. And then that case got resolved and justice was served.

And I submit whatever method has to be employed by this Court -- and our idea is bifurcation -- but whatever method that puts us to court as early as possible, the better. And May of 2019 is the time that this thing should go to trial.

THE COURT: Mr. Whitten, the defendants have alleged today that the State has chosen to not identify the doctors and the patients. What is your response to that?

MR. WHITTEN: We have covered this before. As the Court knows, in a typical personal injury case, if Joe Smith walks into the courtroom and says, I hurt my back in a car accident that he caused, they've waived their privilege. And all their confidential medical records come into play, no matter how, you know, sensitive those records may be.

That is nothing close to what has happened here. The State of Oklahoma is not a human being. It didn't suffer a personal injury, and it has not put its medical condition into issue. What has happened here is they caused fraudulent marketing. They caused this opioid epidemic. That's our allegation. And the innocent state had to incur all of these expenses, numerous expenses; we say billions of dollars of expenses.

Now, why would they want everybody's medical records? Because they know that people have a right of privacy. And the State of Oklahoma does not have to turn over those individual names. Those people didn't put their medical condition into issue.

The case can be proven without doing that. We can get into the details of how we prove our case. But I think there's been plenty of articles written about this. There's been -- the federal government has studied this. There's been all kinds of data coming out showing that this is a trillion dollar problem.

Some studies indicated it's a 55 billion dollar problem annually for the whole country. We'll be able to prove what the damages are here. That doesn't mean we should intrude upon the privacy of Oklahoma citizens and turn over their medical records or the names of their doctors. There are other ways for us to prove our case.

And I submit they want to do that because they know how sensitive that would be for private citizens to turn over their medical records. There's -- this is simply not a traditional personal injury case.

THE COURT: Thank you. Thank you.

MR. BARTLE: Your Honor, may I just address that?

THE COURT: Yes, Mr. Bartle.

MR. WHITTEN: I might also add, we mentioned earlier we were going to do a statistical sample. We'll have plenty of ways to turn over statistically significant samples of medical records, but they can be redacted. And the name of the patient, the name of the doctor can be redacted.

These are issues we do intend to tee up before your Honor and happy to do so. But there's no need to get the individual doctor and patient's record or names.

THE COURT: Mr. Bartle?

MR. BARTLE: Thank you, your Honor. You know, the irony is the proportionality argument is now being made by the State saying we don't have to produce X, we're only going to be doing anything reasonable.

They're seeking to hold my client, Cephalon, responsible for the entirety of the opioid crisis in the state of Oklahoma for issuing 245 prescriptions over ten years that they reimbursed. That is not proportional if they're not going to produce what we asked for.

If you're going to seek to hold my client for 24 prescriptions every year for ten years that they reimbursed for, what, say -- I think Mr. Duck mentioned in a meet and confer ten billion dollars or billions and billions of dollars? We're entitled to our discovery. We're entitled to it. And I think the proportionality argument rings certainly hollow.

You know, with regard to the doctors, your Honor, and their names, this, again, is a fraudulent misrepresentation. Essential element of fraudulent misrepresentation is reliance. This is not Tobacco where somebody can walk into a corner store and get a pack of cigarettes.

This is a doctor-patient relationship where the doctor made individual assessments as to a propriety of whether or not his or her patient should receive a prescription drug. We're entitled to know whether or not those doctors, as the State alleges, relied on any representations from our clients or misrepresentations of our -- alleged misrepresentations of our clients, whether or not they relied on any of those in issuing that prescription.

Because if they didn't, there's no fraudulent misrepresentation claim. So we're entitled to know that information. So to that, your Honor, I just would argue that we are entitled to that information. We will bring that up in front of Judge Hetherington on motion practice.

And we believe -- and again, just lastly, we're not asking

get that on the 31st so that we can, again, try to move forward.

And I've said before and I'll say again that it seems like one of the impediments we have to moving forward in depositions is just the production of documentation. That seems to continue to be a problem, and I would sure hope that we can, as a part of the process, figure out a way to deal with the documentation production just as quickly as possible relevant to each of those noticed depositions on your side, and maybe more importantly, what they've got to do to prepare for the witnesses that you've got to produce to them.

MR. BECKWORTH: Right.

JUDGE HETHERINGTON: That's holding things up. So however we get to the production of these documents as quickly as possible and talk about that in the process if -- I mean, we really need to fix that.

MR. BECKWORTH: I agree. But just the ones that we've noticed, it's their production we're dealing with. We're going through the review of that, and we've timed these out that way. So yeah, we would love to have more from them, and we understand what you're going to need us to do as well.

I'm trying to make sure we get this, because we'll all go argue about it, and make sure we're clear. When you talk about process for depositions, you're talking about new notices that would be issued. So we'll have a hearing on these, and we'll

talk about the process for anything after that, is what I heard you say.

JUDGE HETHERINGTON: Well, I want to talk about the process first. That's not going to determine -- it's not going to have anything to do with -- you know, we're going to go ahead and I'll also enter rulings to the extent I can on the notices you've given, the objections they file to those notices, and we'll talk about those on the 31st. And if I can rule then, I will. If not, I'll do my thing and enter an order later.

But I really want to talk about this process, because everybody's got their proposed process. Somehow we've got to be able to streamline document productions more -- I'm not doing a really good job of that yet I don't think -- and get it to where -- I mean, because as a practical matter, so many of these witnesses are not experts; they're fact witnesses, and both for the state and -- I mean, you've got to have those witnesses to prove up the elements you've got to prove up like reliance. And if you don't produce the fact witnesses and allow them to depose them, that's what's going to delay the case.

And the same thing over here. If they're not producing the witnesses and the documents to allow you to prepare for the witnesses you have to get to help prove your elements of your case, well, same thing. So let's try to expedite that somehow.

MR. BECKWORTH: You got it.

THE COURT: And we'll talk about that first on the 31st, if that works with everybody, and then deal with the pending deposition notices and objections.

MR. BECKWORTH: Perfect. And the last thing is on -- I don't think this applies to any of this, but on the third party subpoenas that we have to reissue, we now know that some of those folks are represented by these gentlemen. So we've sent e-mails. We'll coordinate with them on those. But we need to be able to go ahead and serve those subpoenas.

I don't think there's a process that's in the rule very clearly about that, and they're represented by third partes. So I just want to make sure we're not going to run afoul with anything by doing that, because we're dealing with lawyers that don't have anything to do with this case. Sorry, they're not in the courtroom; they're third parties who aren't part of the case.

JUDGE HETHERINGTON: Yeah. Well, the answer's yes. We'll just -- yeah. You'll go ahead, and we'll deal with it as it -- whatever comes.

MR. BECKWORTH: Thanks for the clarification.

THE COURT: Mr. Sparks, go ahead.

MR. SPARKS: Just for clarification. It's been mentioned a couple of times, but the insinuation that any deposition protocol that's adopted would only apply to those