



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

NOV 28 2018

In the office of the
Court Clerk **MARILYN WILLIAMS**

**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
Honorable Thad Balkman
Special Discovery Master
William C. Hetherington, Jr.

**PURDUE'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER
FOR DEPOSITION NOTICE OF PURDUE VIA
JONATHAN SACKLER AND MORTIMER D.A. SACKLER**

Pursuant to Title 12 §§ 2004.1(C)(3) and 3226(C) of Oklahoma's Discovery Code, Purdue Pharma, L.P., Purdue Pharma Inc., and The Purdue Frederick Co. (collectively "Purdue") respectfully move for a protective order and request that the Court quash deposition notices issued to take testimony of Purdue through the depositions of Jonathan Sackler and Mortimer D.A. Sackler. (See Notices for § 3230 Depo. of Corp. Reps. of Purdue ("Notices") (Exs. A and B).)

Messrs. Jonathan and Mortimer D.A. Sackler do not hold any position for Purdue Pharma, L.P. or The Purdue Frederick Co. They are each members of the Board of Directors for Purdue Pharma Inc., but do not exert executive authority over Purdue Pharma Inc. in that capacity. On October 29, 2018, the State asked Purdue's counsel about deposing Messrs. Jonathan and Mortimer D.A. Sackler as *individuals* and asked whether Purdue's counsel represented them for that purpose. After Purdue's counsel responded that they do not represent Messrs. Jonathan and Mortimer D.A. Sackler as individuals on October 30, 2018, the State changed tack. Rather than issue subpoenas seeking the testimony of Messrs. Jonathan and

Mortimer D.A. Sackler in their individual capacity, it issued deposition notices to take testimony *of the Purdue companies* through Messrs. Jonathan and Mortimer D.A. Sackler. Despite knowing that Purdue's counsel do not represent Messrs. Jonathan and Mortimer D.A. Sackler, the State did not attempt to meet and confer. These depositions are substantively improper, and the State neglected even to follow the required deposition protocol when issuing the Notices. As a result, and in addition to the reasons set forth below and in the accompanying Objections to Deposition Notices, Purdue moves to quash the Notices, and for a protective order.

Messrs. Jonathan and Mortimer D.A. Sackler are not employees, officers, directors, or agents of Purdue Pharma, L.P. or The Purdue Frederick Co., so they cannot as a matter of fact or law be deposed as representatives of those companies. Moreover, in their capacity as members of the Board of Directors for Purdue Pharma Inc., Messrs. Jonathan and Mortimer D.A. Sackler do not have any role in, or executive authority over, the day-to-day operations for Purdue Pharma Inc. or any of the other Purdue entities. Their knowledge of day-to-day operations is principally based on what they received second hand, *i.e.*, what they have read in board materials and been told by management at the Purdue entities. Accordingly, other corporate witnesses that Purdue will be providing to testify on the several topics that the State has noticed for over 80 hours of deposition testimony—each of whom is personally involved in Purdue Pharma Inc.'s day-to-day operations in a management capacity—are a much better source of the information the State purports to seek.

ARGUMENT

Depositions of a company's high-level or senior executives present the potential for abuse and harassment. *See Thomas v. Int'l Bus. Machines*, 48 F.3d 478, 483 (10th Cir. 1995).¹ Under Oklahoma's Discovery Code, a court "may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense." Okla. Stat. Ann. tit. 12, § 3226(C)(1). The Court should quash the deposition notices of the Purdue companies through Messrs. Jonathan and Mortimer D.A. Sackler here for the following reasons: (i) because Messrs. Jonathan and Mortimer D.A. Sackler do not hold any positions in Purdue Pharma, L.P. or The Purdue Frederick Co., as a matter of fact or law they cannot be deposed as representatives of those companies; (ii) the State is already taking more than 80 hours of corporate deposition testimony of Purdue that cover a sweepingly broad array of subjects on which the State will get the testimony it seeks here, making these deposition requests overly burdensome, duplicative, and harassing; and (iii) the same discovery the State seeks here is available from less burdensome alternatives that Purdue is providing to the State, including the State's depositions of 3230(C)(5) witnesses and fact witnesses and voluminous document discovery.

A. Deposition notices for corporate testimony for Purdue Pharma, L.P. and The Purdue Frederick Co. are improper because the noticed individuals cannot testify as corporate representatives of these entities.

As a threshold matter, the State issued one Notice for testimony from all three Purdue entities—Purdue Pharma, L.P., The Purdue Frederick Co., and Purdue Pharma Inc.—through Jonathan Sackler, and another through Mortimer D.A. Sackler. But, as a matter of fact, Messrs.

¹ The federal counterpart for Section 3226 is Federal Rule of Civil Procedure 26. Since the "Discovery Code was [] adopted from the federal scheme," Oklahoma courts "have looked to federal authority construing federal Rule 26 for guidance when applying our similar provision." *Scott v. Peterson*, 2005 OK 84, ¶ 22, 126 P.3d 1232, 1238.

Jonathan and Mortimer D.A. Sackler do not hold any positions in two of the three Purdue entities whose testimony is sought: Purdue Pharma, L.P. and The Purdue Frederick Co.² Because no witness can give corporate representative testimony on behalf of a company for which the witness is not an employee, officer, director, or managing agent, *see Minter v. Prime Equip. Co.*, 356 F. App'x 154, 162 (10th Cir. 2009), Messrs. Jonathan and Mortimer D.A. Sackler cannot be deposed as representatives of those companies.

B. Deposition notices for corporate testimony for Purdue Pharma Inc. will only result in duplicative and harassing testimony.

The State's Notices to Purdue Pharma Inc. through Messrs. Jonathan and Mortimer D.A. Sackler should be quashed. Courts consistently hold that depositions of corporate representatives are improper where they are duplicative of testimony already obtained from other sources. For example, in *In re Yasmin & Yaz*, the plaintiffs sought to depose two senior executives of a pharmaceutical company. 2011 WL 3759699, at *1 (S.D. Ill. Aug. 18, 2011). Though the two executives had overarching business responsibilities that encompassed the product at issue, they lacked involvement in the type of day-to-day decision-making that would have given them unique knowledge relevant to the litigation. *Id.* at *6. The court refused to compel the witnesses to appear for depositions, observing that "plaintiffs have already deposed (and are scheduled to depose) numerous senior-level employees intimately familiar with the design, development, safety, marketing, and distribution of the subject drugs." *Id.* Thus, the court reasoned that "any information sought from [the executives] has been obtained (or will be obtained) through other deponents and would be duplicative." *Id.*

² In addition, pursuant to a transition that began months before the Notice was served in this case, Jonathan Sackler began the process of effecting his planned resignation from the board of Purdue Pharma Inc., and his resignation from that board is expected to take place in the near term.

For similar reasons, in *Thomas v. International Business Machines*, the Tenth Circuit held that the district court properly issued a protective order blocking the deposition of the defendant's chairman of the board of directors where the company made available for deposition another employee who could properly testify on the matter, and the chairman lacked personal knowledge of facts relevant to plaintiff's claims. 48 F.3d 478, 483 (10th Cir. 1995); *see also Evans v. Allstate Ins. Co.*, 216 F.R.D. 515, 519 (N.D. Okla. 2003) (barring plaintiffs from taking depositions of senior corporate officers who had no unique personal knowledge of claims at issue).

Here, Messrs. Jonathan and Mortimer D.A. Sackler serve as directors at Purdue Pharma Inc. and, in their roles as directors, do not participate in the day-to-day operations of that company or any other Purdue entity. To the extent they receive information about the operations of Purdue Pharma Inc. or the other Purdue entities, such information is reflected in board materials that have been and are being produced to the State. Other witnesses—including corporate witnesses noticed by the State who participated in the operations described in these board materials and fact witnesses—can testify based on the requisite first-hand knowledge that Messrs. Jonathan and Mortimer D.A. Sackler lack.

Not surprisingly, the State has already been taking corporate representative testimony of Purdue by way of the normal mechanism for such testimony under Section 3230(C)(5). The State is seeking to take **over 80 hours** of such testimony of Purdue covering many topics, such as research conducted or funded by Purdue related to its opioid medications' risks and efficacy and Purdue's communications and relationships with medical schools in Oklahoma. The State already has deposed two Purdue corporate representatives who testified extensively on a broad array of subjects. The State deposed Purdue on August 29, 2018 on such topics as the alleged

responsibility for the opioid crisis, efforts taken to abate that crisis, and other subjects at deposition. The State further deposed Purdue on August 30, 2018 on the complete consolidated financial documents for Purdue companies, the organizational structure for Purdue companies, and ownership of those companies. In addition, the State has already deposed over 20 fact witnesses, including a territory business manager and the controller of Purdue Pharma, L.P. These depositions have covered a myriad of topics relating to the subject matter at the core of the State's allegations, namely the marketing and promotion of prescription opioid products.

It is inconceivable that there are subject areas that the State cannot cover through deposition of Purdue's fact witnesses or 3230(C)(5) witnesses and that can be obtained only by taking Purdue Pharma Inc.'s corporate representative testimony from Messrs. Jonathan and Mortimer D.A. Sackler. Moreover, the State has already received more than **40 million pages** of discovery, including documents from the Board of Directors. The deposition Notices thus do not appear calculated to seek discovery that the State lacks or will not obtain from other sources. The Notices instead appear calculated to harass and delay by merely obtaining duplicative information, and thus should be quashed. *See, e.g., Ameritox, Ltd. v. Millennium Labs., Inc.*, 2012 WL 6568226, at *3 (N.D. Ill. Dec. 14, 2012) (granting motion to quash where discovery requests were cumulative and duplicative of requests already made in the litigation).

C. The same discovery the State seeks is available from less burdensome alternatives.

Not only can depositions of directors result in improperly duplicative testimony, the same discovery can also be obtained from less burdensome alternatives. In *Thomas v. International Business Machines*, the Tenth Circuit stressed the need for parties to obtain information via depositions from individuals "for whom a deposition might [be] less burdensome. 48 F.3d at 483. This is especially important for individuals affiliated with the board of a corporate

defendant as they are “singularly unique and important individual[s] who can be easily subjected to unwarranted harassment and abuse.” *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985).

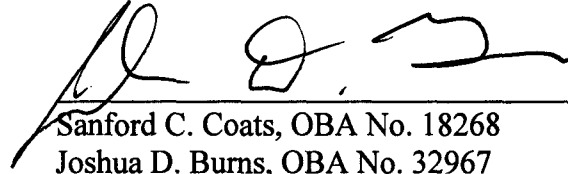
Critically, the State does not, and cannot, identify any corporate information that could not be obtained through other witnesses or documents and can be obtained only through the testimony of Messrs. Jonathan or Mortimer D.A. Sackler. That is because the State’s Notices targeting Messrs. Jonathan and Mortimer D.A. Sackler are not part of a genuine effort to obtain relevant evidence that cannot be obtained from another source. Instead, the Notices are a thinly veiled effort to elide the deposition protocols and to misuse deposition notices to subject Messrs. Jonathan and Mortimer D.A. Sackler to duplicative and harassing questions in the guise of “corporate” testimony. The State’s ruse should not stand. Because it would be unduly burdensome for Messrs. Jonathan and Mortimer D.A. Sackler to sit for cumulative, duplicative, and harassing depositions on behalf of Purdue, this Court should “regulate the discovery process to avoid oppression, inconvenience, and burden,” *Evans*, 216 F.R.D. at 519, by quashing these Notices.

CONCLUSION

For the foregoing reasons, Purdue respectfully requests that this Court grant its Motion to Quash and Motion for Protective Order. Specifically, Purdue requests that the Court quash the Notices and enter a protective order preventing the State from taking the depositions of Jonathan Sackler and Mortimer D.A. Sackler as corporate representatives of Purdue.

Date: November 28, 2018

Respectfully submitted,



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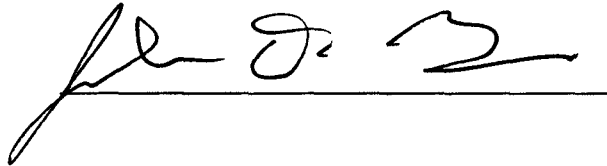
*Counsel for Purdue Pharma L.P.,
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Frederick Company Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 2018, I caused a true and correct copy of the following:

**PURDUE'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER FOR
DEPOSITION NOTICE OF PURDUE VIA
JONATHAN SACKLER AND MORTIMER D.A. SACKLER**

to be served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "J. D. S.", is written above a horizontal line. The signature is cursive and stylized.

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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.)

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

Defendants.)

Case No. CJ-2017-816
Judge Thad Balkman

Special Master:
William Hetherington

**NOTICE FOR 3230 VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; AND
THE PURDUE FREDERICK COMPANY**

TO:

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COUNSEL FOR THE PURDUE DEFENDANTS

Please take notice that, on the date and at the time indicated below, Plaintiff will take the deposition(s) upon oral examination of the corporate representative, Jonathan Sackler, of Defendants, Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company (collectively, the "Purdue Defendants") in accordance with 12 O.S. §3230.

The oral and video deposition(s) will occur as follows:

DATE	TIME	LOCATION
December 7, 2018	8:00 am	Braniff Building 324 N. Robinson Avenue, Suite 100 Oklahoma City, OK 73102

Said depositions are to be used as evidence in the trial of the above cause, the same to be taken before a qualified reporter and shall be recorded by videotape. Said depositions when so taken and returned according to law may be used as evidence in the trial of this cause and the taking of the same will be adjourned and continue from day-to-day until completed, at the same place until it is completed.

Dated: November 7, 2018

/s/ Michael Burrage
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/s/ Michael Burrage
Michael Burrage

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.)

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- (5) CEPHALON, INC.;)
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- (8) ORTHO-MCNEIL-JANSSEN)
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JANSSEN PHARMACEUTICALS;)
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n/k/a JANSSEN PHARMACEUTICALS, INC.;)
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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.)

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Judge Thad Balkman

Special Master:
William Hetherington

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VIA email

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VIA email

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COUNSEL FOR THE PURDUE DEFENDANTS

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Dated: November 7, 2018

/s/ Michael Burrage
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