



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.; PURDUE )  
PHARMA, INC.; THE PURDUE )  
FREDERICK COMPANY; TEVA )  
PHARMACEUTICALS USA, INC.; )  
CEPHALON, INC.; JOHNSON & )  
JOHNSON; JANSSEN )  
PHARMACEUTICALS, INC.; ORTHO- )  
McNEIL-JANSSEN )  
PHARMACEUTICALS, INC.; n/k/a )  
JANSSEN PHARMACEUTICALS, INC., )  
JANSSEN PHARMACEUTICA, INC., )  
n/k/a JANSSEN PHARMACEUTICALS, )  
INC.; ALLERGAN, PLC, f/k/a ACTAVIS )  
PLC, f/k/a ACTAVIS, INC., f/k/a )  
WATSON PHARMACEUTICALS, INC.; )  
WATSON LABORATORIES, INC.; )  
ACTAVIS LLC; and ACTAVIS PHARMA, )  
INC., f/k/a WATSON PHARMA, INC., )  
 )  
Defendants. )

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

FILED

DEC 14 2018

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:  
William C. Hetherington, Jr.

**MOTION TO QUASH AND FOR PROTECTIVE ORDER**  
**FOR SUBPOENA DUCES TECUM OF THE CITY OF OKLAHOMA CITY**

Non-party the City of Oklahoma City, Oklahoma (“Oklahoma City” of “City”), pursuant to 12 Okla. Stat. §§ 2004.1(C)(3)(a) and 3226(C), respectfully moves for a protective order and requests that this Court quash the Subpoena Duces Tecum (“Subpoena”) served upon it by Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (“Purdue Defendants”) in the above captioned action. On December 13, 2018, counsel for

Oklahoma City conferred with counsel for the Purdue Defendants concerning the Subpoena and Oklahoma City's objections thereto, pursuant to Section 3226(C)(1), in an effort to resolve the dispute without court action. However, the parties were unable to resolve this dispute.

As shown herein, the Subpoena seeks to require a non-party to this action to scour its records for documents bearing no connection with the causes asserted, defenses alleged, or damages sought in the captioned case brought by the State of Oklahoma – not Oklahoma City. The Subpoena is overbroad, not relevant, and will not lead to the discovery of admissible evidence on the claims or defenses asserted in the case at hand. Further, the Subpoena is unnecessary, violates Oklahoma City's interests in the privacy of its employees and residents, and is harassing in nature causing annoyance, oppression and undue burden on Oklahoma City as it is merely a fishing expedition to explore matters that are not presently germane to the case at hand. Lastly, the Subpoena seeks documents that may be subject to attorney-client privilege, work product doctrine and/or other protections. For all these reasons, the Subpoena should be quashed and a protective order issued.

### **INTRODUCTION AND BACKGROUND**

Oklahoma City is a non-party to the case pending before this Court. Oklahoma City recently filed its own case against Purdue Defendants, other opioid manufacturers, opioid distributors, and physicians, which is pending in Oklahoma County District Court, Case No. CJ-2018-6179. Oklahoma City filed its case on November 8, 2018. Oklahoma City has not yet served Purdue Defendants or other defendants in the case. No discovery has occurred in Oklahoma City's case. Yet Purdue Defendants attempt to use 12 Okla. Stat. § 2004.1 to burden Oklahoma City with production requests not only prohibited under Oklahoma's Discovery Code, but also which are an obvious attempt to circumvent discovery procedure in Oklahoma City's case and which are in clear disregard to production protocol agreed to by Purdue Defendants and set in place by

courts presiding over opioid lawsuits across the United States. *See In re National Prescription Opiate Litigation*, MDL 2804, Case Management Order 3 Regarding Document and Electronically Stored Information Production Protocol; Discovery Ruling No. 5; and Government Plaintiff Fact Sheet, attached hereto as Exhibits A, B, and C. The production protocols in other pending opioid litigations (which are typical in this type of litigation) are the result of months of discussion and conferring to reach an agreement on discovery with various protections and limitations in place to avoid the very thing Purdue Defendants are attempting to do by issuing the Subpoena at issue. In fact, the Special Discovery Master in this Court previously issued orders denying Purdue Defendants' ability to seek documents from the State of Oklahoma that Purdue Defendants now seek to obtain via Subpoena from Oklahoma City. *See, e.g.*, Order of Special Discovery Master, Case No. CJ-2017-816 (Oct. 10, 2018) (the Special Master disallowed discovery from the "complex chain of causation flowing through marketing providers to . . . physician prescribers . . .[and] ultimately issuing prescriptions to individualized patients."). The Special Discovery Master recognized his "obligation to weigh privacy rights against the Defendant's desire to individually personalize their discovery . . . [and] proportionality would prohibit individualized discovery." *Id.* at 2. In adhering to this obligation, Purdue Defendants' argument for full disclosure of all claims data information, as is being sought from Oklahoma City, was "insufficient to warrant discovery of personal and doctor/prescriber information in the scope sought to be compelled by Defendants." *Id.* p. 3 Additionally, the Special Discovery Master allowed for a statistical modeling approach method and access to various state databases for purposes of producing relevant information, both of which will ultimately be in place in the Oklahoma City action. *See id.* at 1-3. Moreover, Purdue Defendants have cherry picked fewer than 15 cities and counties combined throughout the State

of Oklahoma to whom they issued subpoenas calling into question the true relevancy or necessity for the requested information. In spite of these facts, Purdue Defendants issued an overly broad Subpoena to Oklahoma City on November 19, 2018, seeking detailed and highly intrusive information that is not only privileged and irrelevant, but overly burdensome, duplicative, and harassing. *See* Subpoena attached hereto as Exhibit D.

The Subpoena commanded the production of the following documents:

1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crises.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing or sale of Prescription Opioids.
3. All of Your communications with the State of Oklahoma, concerning Prescription Opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis.
4. All of Your communications the with State of Oklahoma concerning efforts by You, the State of Oklahoma, manufacturers, or distributors of Prescription Opioids to report suspiciously large or frequent orders of Prescription Opioids to law enforcement agencies.
5. Your educational efforts or community outreach efforts, including publications, studies, reports, or other information that You sponsored, disseminated, produced, supported, or participated or engaged in pertaining to Prescription Opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs, including, but not limited to, the legal or illegal use, misuse or abuse of, or addiction to, such drugs.
6. All records of investigations, including, but not limited to, interviews, inquiries, reports, or reviews conducted internally or by a third party on your behalf (including but not limited to any auditor, consultant, law enforcement agency. or regulator), concerning your response to issues concerning opioid misuse, abuse, or the opioid crisis.
7. All your records and communications relating to disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion.
8. All records, analyses, or reports of drug abuse in Oklahoma City prior to 1996, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
9. All records, analyses or reports of drug abuse in Oklahoma City from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.

10. Your policies, procedures, manuals, formal or informal guidance, and/or training provided to Your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids.
11. All documents showing actions taken by You in response to the CDC's declaration of an "opioid epidemic" in 2011 and to implement the CDC's proposed guidelines relating to Prescription Opioid prescribing, including, but not limited to, efforts to treat, reduce, or prevent Prescription Opioid abuse, reduce the amount of Prescription Opioids prescribed by physicians or other health care providers, reduce improper Prescriptions Opioid prescribing, and reduce the use of heroin, illicitly manufactured fentanyl and fentanyl-type drugs, and substances containing those drugs.
12. All records relating to the investigation and/or arrests for the illegal sale, distribution, or use of Prescriptions Opioids or illicit opioids.
13. All records of emergency or first responder interactions with users of opioids, including overdoses or death related to opioids.
14. To the extent that You believe, claim, or determined that any opioid prescriptions that were written by health care providers in Oklahoma City or written to patients who lived in Oklahoma City were medically unnecessary, inappropriate, or excessive, all records relating to such prescriptions and your basis for your belief, clam, or determination.
15. All records of Your request for information or material received from the Oklahoma Prescription Monitoring Program (PMP), actions You took or considered taking based on information You received from PMP, Your policies and procedures relating to PMP, the use of PMP data, and any requirements or guidelines concerning health care providers' use and reporting obligations concerning PMP.
16. All of Your communications with any local, state or federal agency or task force , including, but not limited to, the U.S. Drug Enforcement Agency, any United States Attorney, the State of Oklahoma Bureau of Narcotics and Dangerous Drugs, and the Oklahoma Commission on Opioid Abuse, relating to the use, misuse, abuse, prescribing, sale, distribution, addiction to, or diversion of Prescriptions Opioids or illicit, non-prescription opioids.
17. All of Your annual operating budgets and the annual costs or expenses incurred by You to address misuse, abuse, or addiction issues relating to Prescriptions Opioids or illicit, nonprescription opioids, and all funding requests made by You to the State of Oklahoma, including any funding requests related to the misuse, abuse, or addiction issues relating to Prescriptions Opioids or illicit, non- prescriptions opioids.
18. All documents or information You provided to or obtained form the National Association of State Controlled Substances Authorities ("NASCSA") or the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") relating to Prescriptions Opioids.

19. All of Your communications with any person or entity including, but not limited to, any employee, attorney, or agent of the State of Oklahoma or the United States government, regarding any opioid litigation.
20. All of Your communications with any person or entity regarding Purdue Pharma L.P., Purdue Pharma Inc., or The Purdue Frederick Company Inc.

The Court should quash the Subpoena in its entirety because it “requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.” 12 Okla. Stat. § 2004.1(C)(3)(a)(5). This Court must also quash the Subpoena in its entirety because it “requires disclosures of privileged or other protected matter” and “subjects a person to undue burden.” *Id.* at (C)(3)(a)(3)-(4). Additionally, the Court should grant Oklahoma City’s request for a Protective Order.

### **ARGUMENT**

Title 12, Section 2004.1 sets out a number of protections for persons or entities who are subject to subpoenas. Subsection 2004.1(C)(1) expressly places a duty upon the party or attorney issuing a subpoena to “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena,” and the duty on Purdue Defendants “is higher when the subpoena is directed to a non-party.” *Young v. May*, 2001 OK 4, ¶ 13, 21 P.3d 44. Additionally, the statute requires that a subpoena be quashed if it requires disclosure of privileged or other protected matter, subjects a person to undue burden, or requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

A party's right to discovery is tempered by the countervailing interest of the person from whom discovery is sought to be free from abusive or burdensome discovery. Even under the most liberal interpretation of the Oklahoma Discovery Code, the documents sought by Purdue Defendants can be neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

The Oklahoma Discovery Code permits “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. . . .” 12 Okla. Stat. 3226(B)((1)(a). The Oklahoma Supreme Court defined the scope and application of this language by adopting the U.S. Supreme Court’s comments on the federal discovery rule “the requirement that the material sought in discovery be ‘relevant’ should be firmly applied, and the district courts should not neglect power to restrict discovery where ‘justice requires [protection for] a party or person from annoyance, embarrassment, oppression or undue burden or expense.’” *Quinn v. City of Tulsa*, 1989 OK 112, ¶ 63, 777 P.2d 1331 (quoting *Herbert v. Lando*, 441 U.S. 153 (1979)).

Oklahoma's statutory provisions regarding discovery were modeled after their federal counterparts, thus for this reason, federal jurisprudence can be instructive in the interpretation of the state statute. *Barnett v. Simmons*, 2008 OK 100, ¶ 16, 197 P.3d 12, 18; *Payne v. Dewitt*, 1999 OK 93, ¶¶ 8–9, 995 P.2d 1088, 1092–93. It is well settled that the right to discovery is not unencumbered. A party does not have the right simply because a lawsuit is filed to rummage unnecessarily and unchecked through the matters of anyone or any entity the party chooses. *Cook v. Yellow Freight System, Inc.*, 132 F.R.D. 548, 551 (E.D. Cal. 1990) (overruled on other grounds by *Jackson v. County of Sacramento*, 175 F.R.D. 653 (E.D. Cal. 1997) and later quoted in *Goodyear Tire & Rubber Co v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003)); see also *Hesselbine v. von Wedel*, 44 F.R.D. 431, 434 (W.D. Okla. 1968) (court should confine itself to matters involved in the pleadings). Even though the relevancy standard is liberal, discovery statutes do not allow a party to “roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.” (Internal citations omitted.) *In re Fontaine*, 402 F. Supp. 1219, 1221 (E.D.N.Y. 1975).

**I. Documents requested by the Subpoena fall well outside the scope of discovery permitted by 12 Okla. Stat. § 3226.**

Purdue Defendants' Subpoena should be quashed as it seeks documents that have no bearing on the claims or issues in this case. The right to discovery is not unlimited and the requirement that material sought be relevant should be firmly applied. *Quinn*, 1989 OK 112, ¶ 63, 777 P.2d 1331. Discovery is available *only* for information that is relevant to the claims or defenses of a party. 12 Okla. Stat. § 3226(B)(1). A request for documents should be denied where a party does not demonstrate good cause that the extremely broad information sought is relevant. *See Jones Packing Co. v. Caldwell*, 1973 OK 53, ¶ 3, 510 P.2d 683. Not a single showing has been made demonstrating a connection between the requested documents from Oklahoma City and the State of Oklahoma's lawsuit. Without such a showing, there was no basis for the trial court to determine that the documents are relevant.

Purdue Defendants' requests for production above are merely a *carte blanche* production request that is unenforceable under Section 3226. Documents sought to be produced regarding Oklahoma City's specific guidelines, communications, records, reports, investigations, prescription records, budgeting, mental health protocols, correspondence occurring in Oklahoma City with Purdue Defendants or various other agencies are specific to Oklahoma City alone and have no connection or relation to the State of Oklahoma. Only four of the Subpoena's 20 requests reference the State;<sup>1</sup> the other 16 requests are specific to Oklahoma City, which highlights Purdue Defendants' misguided attempt to conduct their discovery for Oklahoma City's case in this case brought by the State. Additionally, many of the documents sought by Purdue Defendants (see requests 6-9, 11-16, and 19-20) have been disallowed by this Court and various other courts presiding over opioid

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<sup>1</sup> Requests 3 and 4 request Oklahoma City's communications with the State on certain subjects; Request 17 seeks funding requests made by Oklahoma City to the State; Request 19 is a catch-all request for all of Oklahoma City's communications regarding any opioid litigation with "any person or entity" and includes reference to the State.



litigation. *See, e.g.* Exhibit A (detailed and agreed upon protocol governing the production of hard-copy and electronically stored information recognizing the documents are subject to confidentiality, privilege, and/or protected health information previously agreed to by the parties or entered by the court); Exhibit B, p. 1 (disallowing and significantly limiting the request of *all* prescriptions and *every* person to avoid imposing an excessive burden on plaintiffs); Exhibit C (Government Fact Sheet agreed upon by all parties and limiting document production to a time span of *10 years*). Purdue Defendants mistakenly appear to equate the similarity of the current proceedings before this Court to that of various other recently filed, or forthcoming, lawsuits involving various Oklahoma counties and cities. Case in point, the Subpoena requests documents from a separate and distinct governmental entity possessing differing, unrelated, claims, and damages. Oklahoma City.

Moreover, the claims at issue, damages, and remedies sought in Oklahoma City include the actions of distributors and physicians unlike the case before this Court in which only manufacturers are defendants making the Subpoena's relevance even that much more questionable. Information concerning and specific to Oklahoma City will not aid in resolving issues involving the State of Oklahoma, is not relevant to the claims or defenses to be tried in this action and has no importance whatsoever to the issues at stake currently before this Court. As a result, Oklahoma City should not be required to respond to broad discovery requests by Purdue Defendants that are not necessarily relevant to the current proceedings.

## **II. The Subpoena is Overbroad and is Merely Designed to Harass and Place Undue Burden on Oklahoma City.**

Purdue Defendants' request for production of documents for inspection consists of more than two single spaced pages of document requests. *See* Exhibit D. The documents requested numbered 2-20 above, not surprisingly, cover far more than even Plaintiff, the State of Oklahoma, has been ordered to produce. *See e.g.*, Order of Special Discovery Master, Case No. CJ-2017-816 (Oct.

10, 2018) (allowing statistical modeling for evidentiary proof of the state's damages). The documents requested seek to inquire into privileged information as well as information that may be protected for varying reasons. The crux of the matter is that the request is simply unduly burdensome for a non-party, violates Oklahoma City's privacy interests, and is harassing in nature. 12 Okla Stat. 12 § 2004.1(C)(3)(a)(4); § 3226(C)(1).

A subpoena on its face that is facially overbroad constitutes an undue burden. *See Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998); *Linder v. Calero-Portocarrero*, 180 F.R.D. 168, 174 (D.D.C. 1998) ("a request for relevant information may be denied if the request is unreasonable or oppressive and [u]ndue burden can be found when a subpoena is facially overbroad."). While courts promote broad discovery, it is not unlimited. *Quinn*, 1989 OK 112, ¶ 63, 777 P.2d 1331.

The Subpoena seeks documents in Requests 5-18 that are private to Oklahoma City, involve potentially ongoing private investigations, or relate to confidential personnel related matters that if disclosed would cause embarrassment. Purdue Defendants' Subpoena is essentially a "fishing expedition" targeting a select number of Oklahoma counties and cities currently represented by counsel as a means to cause delay in the case before this Court, cause undue hardship and harassment on these select few other governmental entities, and uncover a wide range of information generally about opioids despite the information having no connection to the case at hand.

Certain of the information sought by Purdue Defendants conceivably may be discoverable in Oklahoma City's case by agreed upon discovery protocols governed by the District Court of Oklahoma City where Oklahoma City recently filed its case against Purdue Defendants. Thus, enforcing Purdue Defendants' overbroad search in this case by the State would not only cause undue burden to Oklahoma City but would result largely in the production of information which is

“unreasonably cumulative or duplicative” of information that will possibly be produced in the future. *See* 12 Okla. Stat. 3226(B)(2)(c)(1). The time and expense required for Oklahoma City to respond to Purdue Defendants’ broad search would require an exorbitant amount of effort hence hampering Oklahoma City’s ability to conduct other tasks essential to support the needs of its citizens, county officials and law enforcement. It is unreasonable to expect a non-party to produce tens, if not hundreds, of thousands of documents for the past twenty-two years without any showing by Purdue Defendants that the requests are directly relevant to the claims or defenses in this case before the Court. The subpoena seeks documents back to 1996 without explanation as to the relevancy of such a broad request in the case before the Court. Such a request is clearly unduly burdensome and harassing and should be denied.

**III. The Subpoena Requests Information Protected by the Discovery Code, the Open Records Act, and the Special Master’s Order.**

**A. Privileged Documents or Communication are Protected from Disclosure.**

A court must quash a subpoena if it “requires disclosure of privileged or other protected matter and no exception or waiver applies.” 12 Okla Stat. 12 § 2004.1(C)(3)(a)(3). Documents requested in Purdue Defendants’ requests for production numbered 1-4, 6-9, 11-12, 14-17, and 19-20 above are protected as attorney-client privileged communications or attorney work product.

The attorney-client privilege is “designed to shield the client’s confidential disclosures and the attorney’s advice.” *Chandler v. Denton*, 1987 OK 38, 741 P.2d 855, 865; *see Upjohn Co. v. U.S.*, 449 U.S. 383, 388 (U.S. 1981) (the purpose of the attorney-client privilege “is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administrative justice.”). The privilege belongs to the client, and not the lawyer and is firm unless an exception or waiver theory applies. *Id.* The Subpoena seeks documents and communications between Oklahoma City’s in-house attorneys, outside counsel,

various personnel, and city or county officials regarding potential claims, transactions, and other protected matters. Additionally, all counsel generate and transmit work product containing their thoughts, impressions, and opinions regarding these various matters. Purdue Defendants requests for “all records,” all communications,” “all analyses,” and “all documents” sweep too broadly affording it the protective measures allowed under the statute and barring production. Oklahoma City has neither consented nor waived the attorney-client privilege thus the production of the requested documents is strictly prohibited.

The documents requested are protected by the attorney work product doctrine. “[D]iscovery of ordinary work product should be granted only upon a convincing showing that the substantial equivalent of the materials sought cannot be obtained without undue hardship, if at all.” *Ellison v. Gray*, 1985 OK 35, 702 P.2d 360, 366-67; *see* 12 Okla. Stat. § 3226(B)(3)(a)(2) (“a party may not discover documents and tangible things that are prepared in anticipation of litigation . . . [unless] the party shows that it has substantial need for the materials to prepare its case and cannot without undue hardship, obtain their substantial equivalent by other means.”).

Section 3226(B)(3) provides that “a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” To the extent the Subpoena requires the release of work product generated by or on behalf of the City in anticipation of any litigation, be it civil or criminal, the City should be protected from the Purdue Defendants’ request for documents.

Purdue Defendants will not be subjected to undue hardship if the requested documents are not produced. Therefore, to the extent the Subpoena seeks to require Oklahoma City to provide documents or information that are protected by attorney-client privilege or the attorney work product doctrine it must be quashed.

**B. Criminal Investigatory Files are Protected from Disclosure.**

The Oklahoma Court of Criminal Appeals has ruled that unsworn statements made by witnesses to police officers are not discoverable. *Nauni v. State*, 670 P.2d 126 (Okl.Cr.1983); *Ray v. State*, 510 P.2d 1395 (Okl.Cr.1973); *State ex rel. Fallis v. Truesdell*, 493 P.2d 1134 (Okl.Cr.1972). The Oklahoma Court of Criminal Appeals has also concluded that a police officer's notes are work-product. *Wilhite v. State*, 701 P.2d 774 (Okl. Cr. 1985).

On October 22, 2018, Special Discovery Master William C. Herrington, Jr., issued an order in which he, among other things, denied Defendant Watson Lab's Motion to Compel Investigatory Files. Special Master Herrington stated, on page 7: "Any production of criminal investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving disciplinary proceedings."

The Special Master has precluded the discovery of State criminal investigatory files. For the reasons stated by the Special Master above, the Court should extend the same protections to the City and preclude the discovery, through the Subpoena, of criminal investigatory files in the possession and control of the City, including, but not limited to, the Oklahoma City Police Department and the Oklahoma City Fire Department.

**C. The Oklahoma Open Records Act Protects Certain Records from Disclosure.**

Additionally, the requested information is protected from disclosure under the Open Records Act. 51 Okla. Stat. §§ 24A.1 - 24A.30. The Act prohibits the release of information or documents "protected by a state evidentiary privilege such as the attorney-client privilege or the work product

immunity from discovery,” or the disclosure or confidential personnel information. *Id.* at §§ 24A.5(1)(a), 24A.5(2) 24A.7.

Section 24A.7(a)(1) and (2) provide that a public body may keep personnel records confidential:

1. Which relate to internal personnel investigations, including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum of the transcripts of certified public school employees.

Requests 6 and 7 of the Subpoena require the release of personnel records. Several other document requests included in the Subpoena are so broad as to encompass personnel records. To the extent the Subpoena requires the release of personnel records protected by the Oklahoma Open Records Act, it requires the disclosure of privileged or other protected matter and should be quashed.

The Open Records Act also protects certain law enforcement agency records from disclosure. *Id.* at § 24A.8(A)(10)(b)(1)-(13) and (B). The Open Records Act further protects from disclosure the litigation files and investigatory reports of the office of the municipal attorney of any municipality. *Id.* at § 24A.12. The documents and information requested by Purdue Defendants in requests 1-4, 6-9, 11-12, 14-17, and 19-20 are specifically protected from public disclosure by provisions of the Open Records Act, thus prohibiting their production.

**D. Juvenile Records are Protected from Disclosure.**

Title 10A, Okla.Stat. § 1-6-102, A. prohibits the dissemination of confidential juvenile records and provides in pertinent part:

Except as provided by this section, and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Court Appointed Special Advocate records pertaining to a child welfare case;
5. Law enforcement records;
6. Nondirectory education records; and
7. Social records.

Title 10A, Okla. Stat., § 1-6-102 addresses the ability of a District Court Judge to order the release of certain confidential juvenile records. It provides in pertinent part:

C. Except as authorized by Section 620.6 of Title 10 of the Oklahoma Statutes and this chapter and except as otherwise specifically provided by state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court. A subpoena or subpoena duces tecum purporting to compel testimony or disclosure of such information or record shall be invalid.

E. When confidential records may be relevant in a criminal, civil, or administrative proceeding, an order of the court authorizing the inspection, release, disclosure, correction, or expungement of confidential records shall be entered by the court only after a judicial review of the records and a determination of necessity pursuant to the following procedure....

The Statute further details the process of petitioning the court to obtain such order releasing confidential records.

Title 10A, Okla.Stat., § 1-6-102, H. provides, in pertinent part, that no provision of the statute shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;
2. Authorizing the disclosure of papers, records, books or other information

relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the provisions of the Oklahoma Adoption Code; or

3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes.

It is the City's position that the Subpoena does not meet the criteria set out in this statute. In addition, due to the complexities of the state and federal laws applicable to the release of confidential juvenile information, the City objects to any requirement that it release any juvenile information prior to its receipt of a complying court order.

**E. Certain Health Information is Protected From Disclosure by HIPPA.**

The Subpoena requires the unauthorized disclosure of health information of individuals who have received care or services from City employees including, but not limited to, paramedics and fire fighters. This violates federal law and could subject the City to harsh penalties.

Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C.A § 1320d-6(a)(3), a person or entity covered by that statute who knowingly discloses individually identifiable health information to another person may be fined up to \$50,000 and imprisoned for up to one year. The Oklahoma City Fire Department is a "covered entity" as defined by 45 C.F.R. § 160.103.

Pursuant to 45 C.F.R. § 164.512(e)(1)(ii), a covered entity may, in response to a subpoena, disclose protected health information of an individual without a court order and without prior written authorization of the individual or the opportunity for the individual to agree or disagree to disclosure if:

- (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or



(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

The City has received no assurance from the Purdue Defendants that they have made any effort to notify individuals treated by the Oklahoma City Fire Department of their request for the individuals' health information. In addition, no protective order has been sought by the Purdue Defendants.

If the City provides the requested information absent proper notice to the individuals treated by the Fire Department or a protective order, the City will be in violation of HIPAA requirements and subject to severe penalties. Because the requested information is protected material, it is imperative that the SDT be quashed or modified.

#### **IV. The Subpoena Fails to Allow Reasonable Time for Compliance**

The Subpoena served on the City on November 20, 2018, required responses to be provided on December 7, 2018. That deadline for the City to respond was extended by agreement to December 14, 2018. Even if the terms of the Subpoena were sufficiently defined for City officials to determine which documents need to be gathered and produced, one can see from a review of the Subpoena itself that production of the requested documentation will take weeks if not months. The Subpoena fails to allow reasonable time for compliance with unreasonable and burdensome requests.

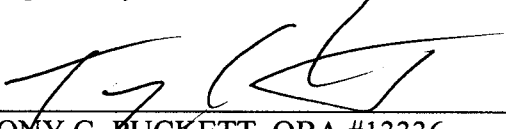
#### **CONCLUSION**

Purdue Defendants attempt to drag a non-party into these proceedings with a burdensome subpoena that requests information that is not relevant to the claims, defenses or damages; places an undue burden on and is harassing to Oklahoma City; and constitutes attorney-client communications, attorney work product and other protected documents is disallowed under the Oklahoma Discovery

Code and the Open Records Act. Therefore, such maneuvers should not be permitted to succeed.

Wherefore, Oklahoma City respectfully requests that this Court enter an Order quashing the Subpoena and issue a Protective Order prohibiting the discovery sought by Purdue Defendants.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on this 14<sup>th</sup> day of December, 2018, a true and correct copy of the above and foregoing document was mailed, postage prepaid to:

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# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION  
OPIATE LITIGATION

This document relates to:

*All Cases*

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**CASE MANAGEMENT ORDER NO 3  
REGARDING DOCUMENT AND ELECTRONICALLY STORED INFORMATION  
PRODUCTION PROTOCOL**

**1. PURPOSE**

This Order will govern production of Documents and ESI (as defined below) by Plaintiffs and Defendants (the "Parties") as described in Federal Rules of Civil Procedure 26, 33, and 34. This Order shall apply to the production of hard-copy and electronic documents by the Parties in this litigation.

The production of documents and ESI by the Parties also shall be subject to the provisions of orders concerning confidentiality, privilege, and/or protected health information as agreed to among the Parties and/or entered by the Court.

The Parties reserve all objections under the Federal Rules of Civil Procedure and applicable decision authority other than concerning matters that are addressed in this Order.

Nothing in this Order shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections to the discoverability, admissibility, or confidentiality of documents

or ESI. Nothing in this Order shall be interpreted to supersede the provisions of orders governing confidentiality, privilege, and/or protected health information entered by the Court in this litigation, unless expressly provided for in such an order.

## 2. DEFINITIONS

a. **“Confidentiality Designation”** means the legend affixed to Documents or ESI for confidential or highly confidential information as defined by, and subject to, the terms of the order concerning confidentiality agreed to and/or entered by the Court in this litigation.

b. **“Document”** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rules 26 and 34 of the Federal Rules of Civil Procedure. The term “document” shall include hard-copy documents, electronic documents, and ESI as defined herein.

c. **“Electronic Document or Data”** means documents or data existing in electronic form at the time of collection, including but not limited to: e-mail or other means of electronic communications, word processing files (e.g., Microsoft Word), computer slide presentations (e.g., PowerPoint or Keynote slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

d. **“Electronically stored information” or “ESI,”** as used herein, has the same meaning as in Rules 26 and 34 of the Federal Rules of Civil Procedure and includes Electronic Documents or Data, and computer-generated information or data, stored in or on any storage media located on computers, file servers, disks, tape, USB drives, or other real or virtualized devices or media.

e. **“Extracted Full Text”** means the full text that is extracted electronically from native electronic files, and includes all header, footer, and document body



information.

f. **“Hard-Copy Document”** means documents existing in paper form at the time of collection.

g. **“Hash Value”** is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA, will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion.

h. **“Load files”** means an electronic file containing information identifying a set of paper-scanned images, processed ESI, or native format files, as well as the corresponding Extracted Full Text or OCR text files, and containing agreed-upon extracted or user-created metadata, as well as information indicating unitization (i.e., document breaks and document relationships such as those between an email and its attachments) used to load that production set into the document review platform of the Party receiving a production (“Receiving Party”), and correlate its data within that platform. A load file is used to import all image, native, and text files and their corresponding production information into a document database. The Producing Party shall produce a load file for all produced documents with each particular production in accordance with specifications provided herein.

i. **“Media”** means an object or device, real or virtual, including but not limited to a disc, tape, computer, or other device on which data is or was stored.

j. **“Metadata”** means: (i) information embedded in or associated with a native file that describes the characteristics, origins, usage, and/or validity of the electronic file; (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system, (iii) information, such as Bates numbers, redaction status, privilege status, or confidentiality status created during the course of processing documents or ESI for production, and (iv) information collected during the course of collecting documents or ESI, such as the name of the media device on which it was stored, or the custodian or non-custodial data source from which it was collected. Nothing in this order shall require any party to manually populate the value for any metadata field.

k. **“Native Format” or “native file”** means the format of ESI in which it was generated and/or used by the Party Producing ESI or documents (the “Producing Party”) in the usual course of its business and in its regularly conducted activities. For example, the native format of an Excel workbook is an .xls or .xlsx file.

l. **“Optical Character Recognition” or “OCR”** means the optical character recognition technology used to read the text within electronic images of paper Documents and create a file containing a visible, searchable text format of such Documents.

m. **“Searchable Text”** means the native text extracted from an electronic document and any Optical Character Recognition text (“OCR text”) generated from the electronic image of a paper Document.

### **3. E-DISCOVERY LIAISON**

The Parties will identify to each other liaisons who are and will be knowledgeable about and responsible for discussing their respective ESI (“E-discovery Liaisons”). Each Party’s designated E-discovery Liaison(s) will be, or will have access to those who are, familiar with their Party’s respective electronic systems and capabilities and knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

### **4. IDENTIFICATION OF DOCUMENTS AND ESI**

a. The Parties agree to meet and confer to discuss (i) the identification of the custodial and noncustodial data sources containing potentially relevant ESI for potential collection, review, and production; (ii) additional parameters for scoping the review and production efforts (e.g., application of date ranges, de-NIST’ing, etc.); (iii) potential use and identification of search terms, tools, or techniques; (iv) the identification and production of documents and ESI from custodial and non-custodial sources that do not require the use of search terms, tools, or techniques; (v) the method each Party proposes to use to identify and de-duplicate duplicate documents, and any exceptions to such de-duplication the Party proposes to implement; and (vi) the treatment of non-responsive documents within parent-child families. The meet and confer between Plaintiffs and each Defendant will take place by the later of seven (7) calendar days following entry of this Order, or ten (10) days after the particular Defendant is served with a first document request herein.

b. The Parties further agree to meet and confer to the extent that this Order imposes any undue burden or expense on any Plaintiff or Defendant with respect to its response to any particular discovery request.

c. Nothing in this order shall be deemed to be a waiver of any Party's right to reasonably seek agreement from the other Parties, or a Court ruling, to modify proposed or previously agreed-to search terms, techniques, or tools (including any proposed as supplements).

## **5. DEDUPLICATION**

a. To the extent exact duplicate documents reside within a Party's ESI data set, the Party shall produce only a single, deduplicated copy of a responsive document. "Exact duplicate" shall mean bit-for-bit identity of the document content with exact hash value matches; so-called "near duplicates" will not be included within this definition.

b. To the extent a party de-duplicates its documents, it shall de-duplicate stand-alone documents or entire document families in their ESI sources by the use of MD5, SHA-1, or SHA256 hash values. Where any such documents have attachments, hash values must be identical for both the document plus-attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone.

c. A Producing Party shall de-duplicate documents across custodians and populate a field of data that identifies each custodian who had a copy of the produced document (the "Duplicate Custodian" field) in addition to a separate field of data identifying the custodian whose document is produced; such de-duplicated documents shall be deemed produced from the custodial files of each such identified custodian for all purposes in this litigation, including for use at deposition and trial. A Producing Party

shall use a uniform description of a particular custodian across productions. Multiple custodians in the "Duplicate Custodian" field shall be separated by a semicolon. Entity/departmental custodians should be identified with a description of the entity or department to the extent applicable.

d. No Party shall identify and/or eliminate duplicates by manual review or some method other than by use of the technical comparison using MD5 or SHA-1 hash values outlined above.

e. Hard-Copy Documents shall not be eliminated as duplicates of ESI.

f. If the Producing Party makes supplemental productions following an initial production, that Party also shall provide with each supplemental production an overlay file to allow the Receiving Party to update the "Duplicate Custodian" field. The overlay file shall include all custodians listed in the "Duplicate Custodian" field in prior productions and any custodians newly identified in the current supplemental production.

## **6. PRODUCTION FORMAT AND PROCESSING SPECIFICATIONS**

a. Standard Format. Unless otherwise specified in Section 6(b) or pursuant to Section 6(j) below, the Parties shall produce documents in tagged image file format ("TIFF"). TIFFs of ESI shall convey the same information and image as the original document, including all commenting, versioning, and formatting that is visible in any view of the document in its native application. All hidden text will be expanded, extracted, and rendered in the TIFF file and, to the extent possible, the Producing Party will instruct its vendor to force off Auto Date. Any TIFFs produced shall be single-page, 300 DPI, Group IV TIFF files. After initial production in image file format is complete, a party must demonstrate particularized need for production of ESI in its native format.

b. Native Format. Except as provided by Section 6(j) below, the Parties shall produce all spreadsheets, computer slide presentations, audio files, video files, and other file types that cannot be accurately represented in TIFF format in native format, provided, however, that the Parties will meet and confer regarding appropriate format of production for databases and structured data (e.g., Microsoft Access, Oracle, or other proprietary databases). For each document produced in native format, a responding Party shall also produce a corresponding cover page in TIFF image format, specifying that the document has been “produced in native format” and endorsed with the Bates Number and Confidentiality Designation, if applicable, which will be inserted into the image population in place of the native file. When the native file is produced, the Producing Party shall preserve the integrity of the electronic document’s contents, i.e., its original formatting and metadata.

c. Color. Documents containing color need not be produced in color, except that (i) word processing documents that contain hidden text, and (ii) certain redacted documents, as further provided in Section 6(j), shall be produced in color in TIFF format. The Producing Party will honor reasonable requests for a color image of a document, if production in color is necessary to understand the meaning or content of the document.

d. Embedded Objects. If documents contain embedded objects, the Parties shall extract the embedded objects as separate documents and treat them like attachments to the document to the extent reasonably possible. To the extent reasonably possible, images embedded in emails shall not be extracted and produced separately.

e. Load Files. Each production of ESI and Documents shall be accompanied by Concordance or comma delimited load files (.dat and .opt) containing a field with the full path and filename to files produced in native format and also containing metadata fields identified in Appendix A, to the extent the information is available in the original ESI file and can be extracted without unreasonable burden using standard litigation support processing platforms (except for vendor-generated fields related to the litigation production, such as "BEGDOC", "ENDDOC", bases for redaction, and Confidentiality Designations).

f. .Txt Files. For all documents containing extracted full text or OCR text, the Producing Party shall provide searchable document level .txt files (named using the Bates start/"BEGDOC"), which shall reside in the same file directory as the images for such documents.

g. Bates Numbering and Other Unique Identifiers. Every item or file of ESI that is produced shall be identified by a unique page identifier ("Bates Number") and a Production Volume Number for any storage device (e.g., CD, USB, hard drive) containing such files. All Bates numbers will consist of an Alpha Prefix, followed by a numeric page index. There must be no spaces in any Bates number. Any numbers with less than 8 digits will be front padded with zeros to reach the required 8 digits. All ESI produced in TIFF format shall contain a unique Bates Number on each page of the document, electronically "burned" onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. If a member of a document family that has otherwise been determined to be responsive cannot be technically processed (e.g., unsupported file format, file corruption, inaccessible

password-protected document), those technical problems shall be identified and disclosed to the Receiving Party by production of a Bates-labeled slip sheet that states "Technical issue—file cannot be processed," along with a log identifying each such file; the associated metadata for the file with the technical problem shall be produced if technically possible. A Receiving Party thereafter may raise with the Producing Party any questions or concerns, and the Parties shall meet and confer to attempt to resolve any issues.

h. Hard-Copy Documents. Except as otherwise set forth in this paragraph, the Parties agree that responsive paper documents shall be converted to single-page TIFF files, and produced following the same protocols set forth in Section 6(a) above, including the production of OCR text that is generated to make such documents searchable. Generally, all paper documents will be scanned and produced electronically, unless a Party establishes good cause for making such documents available via paper and reasonable access is provided to the opposing Party to review the documents directly. In scanning all Hard-Copy Documents, Hard-Copy Documents should be logically unitized. Accordingly, distinct documents should not be merged into a single record, and single documents should not be split into multiple records. In the case of an organized compilation of separate documents (for example, a binder containing several separate documents behind numbered tabs), each of the Hard-Copy Documents should be separately scanned, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and ending documents and attachment fields. The Parties will make their best efforts to unitize the documents correctly. Producing Hard-Copy Documents as provided herein does not



change their character from Hard-Copy Documents into ESI. For Hard-Copy Documents, the Parties need only populate the following metadata fields: "BEGDOC," "ENDDOC," "PROD VOLUME," "CUSTODIAN," "SOURCE," "CONFIDENTIAL," "REDACTION," and "COMPANY" fields, as well as "BEGATTACH" and "ENDATTACH" fields where applicable.

i. Confidentiality Designation. To the extent any Document or ESI (or portion thereof) produced as a TIFF image in accordance with this Order is designated as confidential or highly confidential under the order concerning confidentiality agreed and/or entered in this litigation, the Producing Party will brand the required Confidentiality Designation in a corner of any TIFF images representing the produced item and in a consistent font type and size that does not obscure any part of the underlying image or Bates number, to the extent possible.

j. Redactions. A Party may use redactions to protect attorney-client or work product privileges consistent with the order concerning privilege agreed and/or entered in this litigation. Other than as permitted by this Order or the order concerning confidentiality agreed and/or entered in this litigation, no redactions for relevance may be made within a produced document or ESI item. Any redactions shall be clearly indicated on the face of the document, with each redacted portion of the document stating that it has been redacted and the basis for the redaction, and a metadata field shall indicate that the document contains redactions and the basis for redaction (e.g. "A/C Privilege"). Where a responsive document contains both redacted and non-redacted content, the Producing Party shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions.

Email header information (e.g., date, subject line, etc.) should not be redacted unless it is independently privileged. The production of a document in a redacted form does not affect the Producing Party's obligation to timely assert and substantiate the assertion of privilege over the content in a privilege log. Redacted versions of spreadsheets, computer slide presentations, and word processing files containing hidden text (e.g., track changes, hidden columns, comments, notes, markups, etc.) shall be produced in color in TIFF format. The Parties shall honor reasonable requests for the production of particular redacted documents in other formats where the TIFF image is not reasonably usable.

k. Parent-Child Relationships. The Parties acknowledge and agree that parent-child relationships within a document family (the association between an attachment and its parent document or between embedded documents and their parent) shall be preserved. Responsive non-privileged electronic documents attached to an e-mail or embedded within other electronic documents and hard-copy documents attached or appended to hard-copy documents must be mapped to their parent by the beginning Bates number and immediately follow that parent file in the sequence of the production. Email attachments and embedded files or links "BEGATTACH" and "ENDATTACH" fields listing the unique beginning Bates number of the parent documents and ending number of the last attachment must be populated for each child and parent document.

l. OCR. OCR software shall be set to the highest quality setting during processing.

m. Deviation from Production Specifications. If a particular document or category of documents warrant a different format, the Parties will cooperate in good faith to arrange for a mutually acceptable production format.

n. Productions From Other Proceedings Pursuant to CMO 1. The production of documents made by Defendants in other civil investigations, litigations, and/or administrative actions by federal (including Congressional), state, or local government entities pursuant to CMO 1 shall be made in the format in which they were previously produced, including any previously produced metadata, load files, and accompanying text files.

o. Password Protection. In the event any Document or ESI (or portion thereof) produced is password protected, the Producing Party shall make all reasonable efforts to provide the password needed to access the document or ESI.

p. Use at Deposition. Any document produced in native that a party identifies and/or marks as an exhibit at a deposition must include as part of that identification or exhibit the produced corresponding cover page in TIFF image format, endorsed with document's Bates Number and Confidentiality Designation, as described in Section 6(a), above.

## **7. PRODUCTION MEDIA**

The Producing Party shall produce documents on readily accessible, computer or electronic media, including CD-ROM, DVD, external hard drive (with standard PC compatible interface), via secure FTP site, or such other readily accessible computer or electronic media as the Parties may agree (the "Production Media"). Each piece of Production Media shall be encrypted and assigned a production number or other unique

identifying label (“Production Volume Number”) corresponding to the date of the production of documents on the Production Media as well as the sequence of the material in that production, and shall include (a) the name of the litigation and the case number; (b) the identity of the Producing Party; (c) the production date; (d) the Bates Number range of the materials contained on such Production Media item; and (e) the Production Volume Number of the Production Media. The Producing Party shall accompany all document productions with a transmittal cover letter identifying by Bates number the documents produced. If the Producing Party produces documents via secure FTP site, the Producing Party shall specify the date through which the materials will remain available via the secure FTP site and the Producing Party shall, within a reasonable time, accommodate requests from another Party or Parties that documents be reposted to the FTP site.

## **8. COST SHIFTING**

The costs of production pursuant to this Order shall be borne by the Producing Party. However, in agreeing to this Order, no Party waives or relinquishes any right or interest it may have under the Federal Rules of Civil Procedure to seek cost shifting or apportionment for the costs of electronic discovery.

## **9. THIRD-PARTY ESI**

a. A Party that issues a non-Party subpoena (the “Issuing Party”) shall include a copy of this Order and the order concerning confidentiality agreed and/or entered in this litigation with the subpoena and state that the Parties in the litigation have requested that third-Parties produce documents in accordance with the specifications set forth herein.

b. The Issuing Party shall produce a copy to all other Parties of any

documents and ESI (including any metadata) obtained under subpoena to a non-Party.

c. If the non-Party production is not Bates-stamped, the Issuing Party will endorse the non-Party production with unique Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

#### **10. BEST EFFORTS COMPLIANCE AND DISPUTES**

The Parties agree to use their best efforts to comply with and resolve any differences concerning compliance with any provision/s of this Order. If a Producing Party cannot comply in a particular circumstance with this Order, such Party shall promptly inform the Receiving Party in writing why compliance with the Order is not reasonable or feasible. No Party may seek relief from the Court concerning compliance or non-compliance with the Order until it has met and conferred with the other Party in a good faith effort to resolve or narrow the area of disagreement.

#### **11. MODIFICATION**

This Order may be modified by a Stipulated Order of the Parties or by the Court for good cause shown.

IT IS SO ORDERED.

Date: 5/15/18

/s/Dan Aaron Polster  
Hon. Dan Aaron Polster  
United States District Judge

**Appendix A: ESI Metadata and Coding Fields**

Field Name	Field Description	Populated For	Example Values
BegDoc	Bates number of the first page of the document.	All	Prefix-0000000001
EndDoc	Bates number of the last page of the document.	All	Prefix-0000000002
BegAttach	Bates number of the first page of the first document of the document family.	All	Prefix-0000000001
EndAttach	Bates number of the last page of the last document of the document family.	All	Prefix-0000000004
PageCount	Number of printed pages in the document.	All	2
Confidential	Confidentiality designation, if any, of the document	All	Confidential Highly Confidential
Custodian	<p>Names of all custodians who possessed the document, including deduplicated values, in format: Lastname, Firstname.</p> <p>Where multiple individuals share first and last name, individuals should be distinguished by an initial which is kept constant between productions. For instance: Smith, John A. and Smith, John B.</p> <p>For documents from centralized repositories where custodian name(s) are unavailable, identifying source information should be provided.</p>	All	Doe, John; Smith, John; Smith, Jane
Duplicate Custodian	Names of all other custodians who possessed the document.	ESI	
Duplicate Custodian File Name	The names of unproduced duplicate copies of files.	ESI	
Duplicate Custodians	The file path/directory path correlating to the unproduced	ESI	

Field Name	Field Description	Populated For	Example Values
Directory Path	duplicate copies of files.		
Source	Source shall be used in connection with document obtained from third-Parties and identify the third-Party having provided the particular material. If the third-Party's production of documents included individual custodian information, such information shall also be included in the "CUSTODIAN" field.		
Subject/E-Subject	Subject line of an e-mail.	E-mails	Text of the subject line
To	All recipients that were included on the "To" line of the e-mail.	E-mails	John.Doe@e-mail.com
From	The name and e-mail address of the sender of the e-mail.	E-mails	Jane.Doe@e-mail.com
CC	All recipients that were included on the "CC" line of the e-mail.	E-mails	Bill.Black@email.com
BCC	All recipients that were included on the "BCC" line of the e-mail.	E-mails	ceo-gs@email.com
DateSent	Date an e-mail was sent.	E-mails	01/01/2015
TimeSent	Time an e-mail was sent.	E-mails	12:30:00
DateModified	Date the document was last modified.	E-attachments; Electronic documents	01/01/2015
TimeModified	Time the document was last modified.	E-attachments; Electronic documents	12:30:00
DateCreated	Date the document was created.	E-attachments; Electronic documents	01/01/2015

Field Name	Field Description	Populated For	Example Values
TimeCreated	Time the document was created.	E-attachments; Electronic documents	12:30:00
Family Date	Date last modified or, for e-mails, sent date of the parent	Electronic documents; E-attachments	01/01/2015
Family Time	Time last modified or, for e-mails, sent time of the parent	Electronic documents; E-attachments	12:30:00
DateReceived	Date email was received.	E-mails	01/01/2015
TimeReceived	Time email was received.	E-mails	12:30:00
DateAccessed	Date document last accessed	Electronic documents; E-attachments	01/01/2015
Date Last Printed	Date the document was last printed.	E-attachments; Electronic documents	01/01/2015
Time Last Printed	Time the document was last printed.	E-attachments; Electronic documents	12:30:00
Date Last Saved	Date the document was last saved.	E-attachments; Electronic documents	01/01/2015
Importance	Level assigned by creator	E-mails	High
Conversation	E-mail conversation designation	E-mail	Re: Smith Summary
Conversation Index		E-mail	
Title/E-Title	Title of document	E-attachments; Electronic documents	Smith Summary



Field Name	Field Description	Populated For	Example Values
Redaction	Basis for redactions in document.	E-attachments; Electronic documents	
FileName	File name of original document	Electronic documents; E-attachments	Microsoft Word 2007/2010
File Type	Application type	Electronic documents; E-attachments	Word
File Size	Size of file	All	40 gb
File Extension	The file extension of the document.	E-attachments; Electronic documents	.doc
NativeLink	Relative file path to each native file on the production media.	All documents produced in native format	\\Natives\Document_12345.doc
Author	Document author/creator	E-attachments; Electronic documents	John Doe
Company	Party making the production	All	Company X
Title	Document Title	E-attachments; Electronic documents	Text of the title line
HASH	MD5 or SHA-1 Hash value	Electronic documents; E-attachments; E-mails	
Prod Volume	Production Volume	All	Defendant X Volume 1

Field Name	Field Description	Populated For	Example Values
File Path			
AttachDocID		Electronic documents; E-attachments; E-mails	
ATTACHNAME			
ATTACHRANGE			
FOREIGN LANGUAGE			
TIME ZONE PROCESSED			
E-LAST MODIFIED BY			
MESSAGE TYPE			
CALENDAR MEETING STOP/START			
RECORD TYPE			
HAS HIDDEN DATA			
HIDDEN COLUMNS			
HIDDEN NOTES			
HIDDEN ROWS			
HIDDEN SHEETS			
HIDDEN SHEETS COUNT			
HIDDEN SLIDES			
HIDDEN TEXT			
HIDDEN TRACK CHANGES			

Field Name	Field Description	Populated For	Example Value
HIDDEN VERY HIDDEN SHEETS			
HIDDEN VERY HIDDEN SHEETS COUNT			
HIDDEN WHITE TEXT			
HIDDEN WORKBOOK			
HIDDEN WORKBOOK WRITE PROTECTED			
MESSAGE ID			
NUMBER OF ATTACHMENTS			
ORIGINAL FOLDER PATH			
IS EMBEDDED			
TextPath	Relative file path to each extracted text/OCR text file on the production media.	All	\\Text\Document_12345.txt

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION )	CASE NO. 1:17-MD-2804
OPIATE LITIGATION )	
)	SPECIAL MASTER COHEN
THIS DOCUMENT RELATES TO: )	
"Track One Cases" )	
)	
)	<u>DISCOVERY RULING NO. 5</u>
)	

This *Ruling* addresses Interrogatories propounded by defendants that ask plaintiffs to identify (1) specific, inappropriate opioid prescriptions, and (2) specific persons who became addicted due to those prescriptions. Plaintiffs insist this discovery is inappropriate and irrelevant, and also imposes an excessive burden. Defendants respond their Interrogatories are highly relevant and directed at the heart of plaintiffs' claims, and the burden is reasonable.

Having considered the parties' position statements, and also oral arguments related to similar topics, the Special Master concludes as follows. The plaintiffs' objections are upheld in part, to the extent that plaintiffs do not have to identify *all* prescriptions and *every* person, as requested in the Interrogatories. Rather, the Special Master rules that plaintiffs must respond to the five

Interrogatories at issue *as rewritten below*.<sup>1</sup>

\* \* \* \* \*

**Manufacturer Interrogatory No. 6**

Identify and describe all prescriptions of opioids that were written in [Plaintiff's jurisdiction] in reliance on any alleged misrepresentations, omissions or other alleged wrongdoing by any Defendant. Include in the response the healthcare provider; the patient; the date of prescription; which opioid or opioids were prescribed; the specific misrepresentation, omission, or wrongdoing that allegedly caused the prescription to be written; the Defendant and the specific sales representative(s), employee(s), or agent(s) of the Defendant that made or committed the alleged misrepresentation, omission, or wrongdoing; the person or persons to whom the alleged misrepresentation or omission was made or to whom the alleged wrongdoing was directed; and whether, by whom, and for how much the prescription was approved for reimbursement.<sup>2</sup>

**Plaintiffs must answer this Interrogatory, but shall replace 'all prescriptions' with '500 prescriptions.' Plaintiffs' responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this**

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<sup>1</sup> The Special Master issued via email an informal ruling on this matter on October 2, 2018. Plaintiffs then timely asked the Special Master to formally document the ruling. *See Order of Appointment* (docket no. 69) at 5 (“If a Special Master issues an informal ruling or order that is not on the record (such as the resolution of a discovery dispute) either orally, via email, or through other writing, and a party wishes to object to that ruling or order, the party shall ask the Special Master to formalize the ruling or order by filing it on the docket or appearing before a court reporter. Such request shall be made within three days of issuance of the informal order or ruling, else the opportunity to object shall be waived.”).

<sup>2</sup> In letters, defendants have characterized this Interrogatory as asking: “*Which prescriptions, if any, of each Defendant's opioids were written in Plaintiff's jurisdiction in reliance on any Defendant's alleged misrepresentations, omissions or other alleged wrongdoing?*”

**Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether each prescription was “written in [Plaintiff’s jurisdiction] in reliance on any alleged misrepresentations, omissions or other alleged wrongdoing by any Defendant,” and if so the details thereof (e.g. who made the misrepresentations and what they were).**

**Manufacturer Interrogatory No. 7**

Identify every person who allegedly became addicted to any substance or was otherwise harmed as a result of any prescription of an opioid(s) in [Plaintiff’s jurisdiction]. Include in the identification of each such individual: (i) the particular type of alleged harm that the individual experienced, (ii) the particular opioid(s) that he or she took and/or was prescribed, (iii) when each prescription at issue was written, (iv) the condition for which each prescription was written, and (v) the allegedly false, misleading, or deceptive statement or omission that purportedly caused the healthcare provider to write the prescription.<sup>3</sup>

**Plaintiffs must answer this Interrogatory, but shall replace ‘every person’ with ‘300 persons.’ Plaintiffs’ responses must include information for at least 10 persons who were prescribed an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this Interrogatory to identify 100 specific persons in Plaintiff’s jurisdiction and require Plaintiffs to state whether each person became addicted to any substance or was otherwise harmed as a result of any prescription of an opioid(s).**

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<sup>3</sup> Defendants have characterized this Interrogatory as asking: “*Who, if anyone, purportedly became addicted or was otherwise harmed as a result of such prescriptions in Plaintiff’s jurisdiction?*”

**Manufacturer Interrogatory No. 10**

Identify and describe all prescriptions of opioid(s) that Plaintiff contends were unauthorized, medically unnecessary, ineffective, or harmful. Include in the response as to each such prescription the healthcare provider; the patient; the date of prescription; which opioid or opioids were prescribed; the basis for your assertion that the prescription was unauthorized, medically unnecessary, ineffective or harmful; and whether, by whom, and for how much the prescription was approved for reimbursement.<sup>4</sup>

**Plaintiffs must answer this Interrogatory, but shall replace ‘all prescriptions’ with ‘500 prescriptions.’ Plaintiffs’ responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Manufacturer Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether those prescriptions were “unauthorized, medically unnecessary, ineffective, or harmful,” and if so the basis therefor.**

\* \* \* \* \*

(The following Pharmacy Interrogatories are largely duplicative of the Manufacturing Interrogatories above, and so the rulings are essentially the same.)

**Pharmacy Interrogatory No. 2**

Identify each prescription upon which you base, or which you contend supports, Your claims in this case. For each prescription, identify the prescriber, dispensing pharmacy, dispensing pharmacist, and dispensing date, and explain how it supports Your claims.

---

<sup>4</sup> Defendants have characterized this Interrogatory as asking: “*Which prescriptions, if any, were unauthorized, medically unnecessary, ineffective, or harmful?*”



**Plaintiffs must answer this Interrogatory, but shall replace ‘each prescription’ with ‘500 prescriptions.’ Plaintiffs’ responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Pharmacy Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether and how each prescription supports Plaintiffs’ claims.**

**Pharmacy Interrogatory No. 3**

Identify each prescription the filling of which caused or led to harm for which you seek to recover in this case. For each prescription, identify the prescriber, dispensing pharmacy, dispensing pharmacist, and dispensing date, and explain how it supports Your claims.

**Plaintiffs must answer this Interrogatory, but shall replace ‘each prescription’ with ‘500 prescriptions.’ Plaintiffs’ responses must include at least 10 prescriptions for an opioid sold by each manufacturing defendant. In addition, Pharmacy Defendants may amend this Interrogatory to identify 200 specific prescriptions and require Plaintiffs to state whether and how each prescription supports Plaintiffs’ claims.**

\* \* \* \* \*

In addition, the Special Master clarifies as follows. For a given plaintiff: (1) the ‘500 prescriptions’ referred to in Manufacturer Interrogatory Nos. 6 and 10 and Pharmacy Interrogatory Nos. 2 and 3 *may* all be the same 500 prescriptions; (2) the ‘200 specific prescriptions’ referred to in Manufacturer Interrogatory Nos. 6 and 10 and Pharmacy Interrogatory Nos. 2 and 3 *must* all be the same 200 prescriptions; (3) the 300 persons identified in Manufacturer Interrogatory No. 7 *may* overlap with the 500 prescriptions; and (4) the ‘100 specific persons’ identified in Manufacturer

Interrogatory No. 7 *may* overlap with the '200 specific prescriptions'.

Finally, the Special Master observes that, if any plaintiff expert or defense expert relies on any specific prescriptions, or specific persons who obtained prescriptions, those prescriptions and persons must be identified with specificity in the expert's disclosure and should also be identified to opposing counsel substantially before the deadline for non-expert discovery. The parties will negotiate this deadline.

In addition, I direct the parties to negotiate deadlines for responding to the re-written interrogatories. My suggestions are that: (a) plaintiffs should identify and provide information regarding prescriptions/persons within 28 days; (b) defendants should identify prescriptions/persons within 21 days, and plaintiffs should provide responsive information within 14 days thereafter.<sup>5</sup> If the parties cannot come to agreement regarding these deadlines on or before October 15, 2018, they must let me know and I will resolve it.

\* \* \* \* \*

Given the amount of time left for fact discovery; the fact that these issues were first raised by defendants two months ago, on August 4, 2018; and that the parties have been negotiating and briefing this issue since then; the Special Master further orders as follows:

- objections to this *Ruling* must be filed on or before October 10, 2018;
- responses to objections must be filed on or before October 12, 2018; and
- regardless of whether any party files an objection, all parties remain obligated to negotiate the above-described deadlines and take actions consistent with this *Ruling* being affirmed

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<sup>5</sup> Defendants' suggested deadline assumes plaintiffs have produced databases from which defendants can identify relevant prescriptions and persons.

by the Court. In other words, no party may rely on the filing of an objection to avoid or postpone any obligation described in this *Ruling*; these obligations remain in full force unless and until the Court modifies this *Ruling*.

**RESPECTFULLY SUBMITTED,**

/s/ David R. Cohen

**David R. Cohen**  
**Special Master**

**Dated: October 6, 2018**

# **EXHIBIT C**

Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

Case No. 1:17-MD-2804

Hon. Dan A. Polster

*APPLIES TO ALL CASES*

GOVERNMENT PLAINTIFF FACT SHEET

Plaintiff (also referred to as "You" throughout) shall provide information responsive to the questions set forth below. Instructions and Definitions are provided at the end of this document. You shall provide information reasonably available to You and are not excused from providing the requested information for failure to appropriately investigate Your case. Plaintiff shall supplement its responses if it learns that they are incomplete or incorrect in any material respect.

PLAINTIFF: \_\_\_\_\_

Case caption and number: \_\_\_\_\_

Contact attorney name for MDL: \_\_\_\_\_

Firm: \_\_\_\_\_

Telephone number: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Description of the citizens and entities that You purport to represent in this lawsuit: \_\_\_\_\_

**I. CLAIM INFORMATION**

**A. Injuries, Damages, and Persons with Relevant Knowledge:**

1. To the best of Your knowledge, for each Defendant You name, identify the approximate date (i.e., month and year) when You claim You were first injured and began to incur damages as a result of the Defendant's alleged conduct. This request is not designed to require an expert evaluation and is not intended to limit any expert testimony related to the damages suffered.

2. Are You seeking in Your lawsuit any monetary damages based on Your payment for allegedly improper opioid prescription claims? Yes \_\_\_\_\_ No \_\_\_\_\_

3. Please identify each category of damages or monetary relief that You allege, including all injunctive relief that You seek.

4. Have You or has anyone acting on Your behalf had any communication, oral or written, with any Defendants or their representatives, other than communications through Your attorneys? Yes \_\_\_\_\_ No \_\_\_\_\_ Don't Know \_\_\_\_\_

If yes, please identify the date(s), method(s), and nature of the communication(s).

5. Have You been involved in opioid-related civil litigation in the past?

Yes \_\_\_\_\_ No \_\_\_\_\_ Don't Know \_\_\_\_\_

If yes, please identify the date(s), jurisdiction(s), and partie(s).

6. List Your Departments or Divisions and the current head of each Department/Division.

7. Identify by name, title, and dates of employment Your current employees or representatives with knowledge regarding the abuse, use, misuse, addiction to, and/or diversion of Prescription Opioids, or the possession, abuse, illegal sale, or addiction to other opioids by Your residents.

8. Identify the person(s) who held the following position(s) or their equivalent, since January 1, 2008:

a. Mayors:

b. City councilmembers:

c. County commissioners:

d. County supervisors:

e. County executives:

f. Chief health officers:

g. Auditors:

h. Recorders:

i. Sheriffs or Police Chiefs:

j. Coroners or Medical Examiners:

k. Treasurers:

- l. Chief accountants:
  - m. Chief financial officers:
  - n. Correctional facility supervisors:
  - o. Wardens:
  - p. Heads of Department of Public Health:
  - q. Fire chiefs:
  - r. Directors of Emergency Medical Services:
9. Identify Your annual budget and the actual expenditure You made since January 1, 2008 with respect to each category of damages You claim, as to the following:
- a. Law enforcement expenditures
  - b. Court expenditures
  - c. Prison/corrections/incarceration expenditures
  - d. Public health expenditures
  - e. Child/family services
  - f. Workers compensation
  - g. Health insurance
10. Identify any specific grant, donation, or other funding designated for or allocated to addressing issues related to Prescription Opioids.

**B. Claim-Specific Information**

- 1. Identify each physician or other healthcare provider within Your boundaries who, based on information reasonably available to You, has been the target of a law enforcement or administrative investigation You conducted concerning the physician's or provider's prescribing or dispensing Prescription Opioids since January 1, 2008 (this request is only intended to pertain to closed investigations). See also Section II, question 3.
- 2. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning physicians or other healthcare providers who wrote Medically Unnecessary Opioid prescriptions in Your geographical boundaries?  
Yes \_\_\_\_\_ No \_\_\_\_\_

3. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning whether a Pharmacy receives Prescription Opioids as a result of a Suspicious Order? Yes \_\_\_\_\_ No \_\_\_\_\_
4. Identify each Pharmacy within Your boundaries, based on information reasonably available to You, that has been the target of a law enforcement or administrative investigation You conducted concerning the Pharmacy's dispensing of Prescription Opioids since January 1, 2008 (this request is only intended to pertain to closed investigations). See also Section II, question 3.
5. Do You identify, track, or otherwise have in Your possession, custody, or control, information concerning whether a Pharmacy filled suspicious orders for Opioids into Your geographic area since January 1, 2008? Yes \_\_\_\_\_ No \_\_\_\_\_
6. Based on information reasonably available to You: (a) provide the number of overdose deaths of Your residents since January 1, 2008 on a year-by-year basis; and (b) for each such death, identify the drug(s) on which Your resident overdosed.
7. Did You ever notify any State or Federal agency (e.g., Board of Pharmacy, Department of Medicaid, Department of Public Safety, Drug Enforcement Agency, etc.) of suspected wrongful conduct related to Prescription Opioids since January 1, 2008? If yes, please identify the date of the notification, the subject of the conduct, and the general nature of the suspected wrongdoing.
8. Identify every medical insurance plan or carrier, behavioral health carriers, or workers' compensation program used for any of Your employees since January 1, 2008. For each response, please provide the following information:

Name	Dates Offered	Plan's Pharmacy Benefit Manager / Claims Processor



9. Identify every Pharmacy Benefit Manager and other third-party administrator You used since January 1, 2006. For each response, please provide the following information:

Name	Relevant Dates	Name and Title of Individuals Who Oversaw Program

**C. Opioid-Related Services and Programs:**

For the following questions, please provide information since January 1, 2008.

1. Have You formed or participated in an Opioid Task Force or other program or group to address opioid use or diversion? If yes, provide the name, members, and dates.
2. Have You had a prescription disposal program? If yes, provide the name and dates.
3. Have You operated any addiction treatment programs related to Prescription Opioids? If yes, provide the name and dates.
4. Have You provided any drug abuse prevention or education programs related to Prescription Opioids? If yes, provide the name and dates.

**II. DOCUMENTS**

Please produce the following documents for the period of January 1, 2008 to present, to the extent that these documents are in Your possession, custody, or control.

1. Documents you maintain that refer or relate to the volume of Prescription Opioids prescribed, dispensed, sold, distributed, diverted, or used in Your geographical boundaries.
2. Meeting agendas for any City Council, County Commission, County Health Board/Commission, or their equivalent that reference Prescription Opioids, the misuse of opioids, or related topics.

3. To the extent that You identified any physician, healthcare provider, or Pharmacy in response to questions I.B.1 and I.B.4 above, please provide that investigation file for those physicians, healthcare providers, or Pharmacies.

**III. CERTIFICATION**

I declare under penalty of perjury that all of the information provided in this Plaintiff's Fact Sheet is complete, true, and correct to the best of my knowledge and information, and that I have provided all of the requested documents that are reasonably accessible to me and/or my attorneys, to the best of my knowledge.

---

Signature

---

Print Name

---

Date

## **INSTRUCTIONS**

1. The Fact Sheet shall be completed in accordance with the requirements and guidelines set forth in the applicable implementing Order.
2. Each Plaintiff must complete this separate form by electronically inserting the responsive information. The electronic version of this Fact Sheet can expand to accommodate as much information as is necessary to fully answer any of these questions. If you are completing this document in a representative capacity, please answer the questions provided herein on behalf of the Plaintiff you represent.
3. All the responses in this Fact Sheet or an amendment thereto are binding upon Plaintiffs as if they were contained in answers to interrogatories. Any responses, however, are without prejudice to future supplementation.
4. In completing this Fact Sheet, you are under oath and must provide information that is true and correct. You must answer every question as specifically as possible. If you cannot recall or locate the details requested, please provide as much information as you can after making a good-faith inquiry and search. For example, if a question asks for a date and the exact date is not known or capable of being ascertained, an approximate date should be provided (e.g., "approximately mid-2001"). You may and should consult records in your possession that contain responsive information to assist you in responding.
5. You must promptly supplement your responses if you learn that they are incomplete or incorrect in any material respect. Each question in this Fact Sheet is continuing in nature and requires supplemental answers if you obtain further information between the time of answering and the trial.
6. Each question in this Fact Sheet should be construed independently, unless otherwise noted. No question should be construed by reference to any other question if the result is a limitation of the scope of the answer to such question.
7. The questions herein do not seek the discovery of information protected by the attorney-client privilege.
8. The words "and" and "or" should be construed as necessary to bring within the scope of the request all responses and information that might otherwise be construed to be outside its scope.

## **DEFINITIONS**

1. "Pharmacy Benefit Manager(s)" means the person or agency that manages Plaintiff's pharmacy network management, drug utilization review, and disease management programs for Plaintiff or on Plaintiff's behalf.
2. "Prescription Opioids" refers to FDA-approved pain-reducing medications consisting of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in a

patient's brain or body to produce an analgesic effect, including, but not limited to, the Prescription Opioids referenced in the Complaint for the wholesale distribution of which You seek to hold Defendants liable.

3. "Medically Unnecessary Opioid" refers to (i) FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to opioid receptors in a patient's brain or body to produce an analgesic effect that (ii) were not prescribed or used for a medically appropriate indication, dosage, or method of administration.

4. "You" and "Your" means each individual Plaintiff named in this action, including, its departments, divisions, agents, and/or employees.

5. "Pharmacy" means a pharmacy located within Plaintiff's geographical boundaries.

7. "Suspicious Order" means any order of Prescription Opioids placed by any source that Plaintiff contends should have been reported to the DEA or State authorities, including the Board of Pharmacy or equivalent. Suspicious Orders are not limited to those placed with the Distributor Defendants, but include those placed with any entity that has a regulatory reporting obligation.

8. "Opioid Task Force" means any group organized for the purpose of studying, evaluating, reporting about, investigating, making recommendations concerning, or otherwise considering the existence, origins, causes, responsible entities, effects, remedies, corrective measures for, or ways of combating the abuse, misuse, or addiction to opioids in Your geographical boundaries.

# **EXHIBIT D**

FILED

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

2017 NOV 20 AM 10:35

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

Plaintiff,

v.

PURDUE PHARMA L.P.; PURDUE  
PHARMA, INC.; THE PURDUE  
FREDERICK COMPANY; TEVA  
PHARMACEUTICALS USA, INC.;  
CEPHALON, INC.; JOHNSON &  
JOHNSON; JANSSEN  
PHARMACEUTICALS, INC.; ORTHO-  
McNEIL-JANSSEN  
PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
JANSSEN PHARMACEUTICA, INC.,  
n/k/a JANSSEN PHARMACEUTICALS,  
INC.; ALLERGAN, PLC, f/k/a ACTAVIS  
PLC, f/k/a ACTAVIS, INC., f/k/a  
WATSON PHARMACEUTICALS, INC.;  
WATSON LABORATORIES, INC.;  
ACTAVIS LLC; and ACTAVIS PHARMA,  
INC., f/k/a WATSON PHARMA, INC.,

Defendants.

CITY OF  
OKLAHOMA CITY OKLA  
OFFICE OF  
CITY CLERK

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:  
William C. Hetherington, Jr.

SUBPOENA DUCES TECUM

TO: Frances Kersey  
City Clerk  
200 N Walker Ave., 2nd Floor  
Oklahoma City, OK 73102

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

The documents to be produced are set forth on Exhibit "A" attached.

PLACE: Law Office of Crowe & Dunlevy, P.C., Braniff Building, 324 North Robinson Avenue, Suite 100, Oklahoma City, OK 73102, where the copying/inspecting will take place

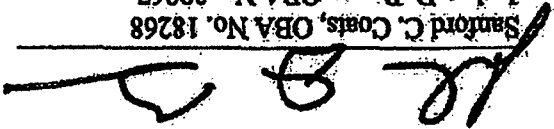
DATE AND TIME: December 7, 2018 at 9:00 A.M.

*It is not necessary that you appear at the date, time, and location specified if the documents are mailed to the address noted herein by the specified date and time.*

In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection. Electronically stored information within the scope of this subpoena should be produced in readable printed form, in the English language, to accomplish the disclosure of the electronically stored information to Plaintiff and its counsel. Unless otherwise agreed, the person commanded to produce and permit inspection, copying, testing, or sampling or any party may, within 14 days after service of the subpoena, or before the time specified for compliance, if such time is less than 14 days after service, serve written objection to the inspection, copying, testing or sampling of any or all of the designated materials or to producing electronically stored information in the form(s) requested.

**YOU ARE ORDERED NOT TO DESTROY, TRANSFER, OR OTHERWISE DISPOSE OF ANY RECORDS WHICH MAY BE RESPONSIVE TO THIS SUBPOENA.**

Dated this 19th day of November, 2018.



Sanford C. Coats, OBA No. 18268

Joshua D. Burns, OBA No. 32967

GROVE & DUNLEAVY, P.C.

Brant Building

324 N. Robinson Ave., Ste. 100

Oklahoma City, OK 73102

Tel: (405) 235-7700

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[jonathan.tam@dechert.com](mailto:jonathan.tam@dechert.com)

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



## **EXHIBIT "A"**

Oklahoma City is required to produce and permit inspection and copying of documents and things in its possession, custody, or control that relate to the following categories of requests according to the following definitions and instructions.

### **Definitions**

The following definitions apply to this Subpoena:

1. "Oklahoma City," "You," and/or "Your" refer to Oklahoma City, a municipality and the capital of the State of Oklahoma, as well as any of its past and present affiliates, operating divisions, parent corporations, subsidiaries, directors, officers, agents, employees, representatives, and all predecessors in interest.
2. The "State of Oklahoma" collectively refers to the State of Oklahoma and any of its agencies, entities, or employees.
3. "Documents" shall be given the broadest meaning permitted under the Oklahoma Rules of Civil Procedure, and includes, without limitation, communications and electronically stored information.
4. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
5. "All" or "any" shall mean "any and all."
6. "Including" shall not be construed as limiting any request, and shall mean "including without limitation."
7. "Prescription Opioids" means FDA-approved pain-reducing medications that consist of natural, synthetic, or semisynthetic chemicals that bind to opioid receptors in the brain or body to produce an analgesic effect, including, but not limited to, prescription medications containing hydrocodone, oxycodone, fentanyl, and hydromorphone, that may be legally obtained by patients in Oklahoma only through prescriptions filled by dispensers duly licensed and regulated.

### **Instructions**

The following instructions apply to this Subpoena:

1. You are required to comply with this subpoena. In responding to this subpoena, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies, or any joint venture to which You are a party.
2. If you cannot fully comply with any category of requested documents, comply to the maximum extent possible and explain: (a) what information you refuse to produce and

(b) why full compliance is not possible. If you object to any request or subpart of a request, state with specificity the grounds for each such objection.

3. Unless otherwise noted, the date range for these requests is from 1996 to the present.

#### **Documents to be Produced**

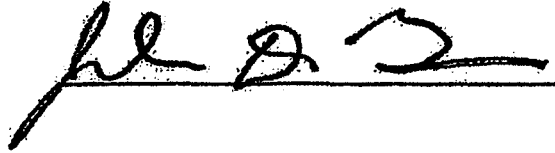
1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crisis.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing or sale of Prescription Opioids.
3. All of Your communications with the State of Oklahoma concerning Prescription Opioids, opioid abuse and misuse, illicit opioids, and/or the opioid crisis.
4. All of Your Communications with the State of Oklahoma concerning efforts by You, the State of Oklahoma, manufacturers, or distributors of Prescription Opioids to report suspiciously large or frequent orders of Prescription Opioids to law enforcement agencies.
5. Your educational efforts or community outreach efforts, including publications, studies, reports, or other information that You sponsored, disseminated, produced, supported, or participated or engaged in pertaining to Prescription Opioids, heroin, or illicitly manufactured fentanyl and fentanyl-type analogs, including, but not limited to, the legal or illegal use, misuse or abuse of, or addiction to, such drugs.
6. All records of investigations, including, but not limited to, interviews, inquiries, reports, or reviews conducted internally or by a third party on your behalf (including but not limited to any auditor, consultant, law enforcement agency, or regulator), concerning your response to issues concerning opioid misuse, abuse, or the opioid crisis.
7. All your records and communications relating to disciplinary matters, investigations, complaints, or other inquiries into Prescription Opioid misuse, abuse, or diversion.
8. All records, analyses, or reports of drug abuse in Oklahoma City prior to 1996, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
9. All records, analyses or reports of drug abuse in Oklahoma City from 1996 to the present, including abuse of prescription medications, opiates, methamphetamine, cocaine, or other illicit drugs.
10. Your policies, procedures, manuals, formal or informal guidance, and/or training provided to Your employees, agents, contractors, and representatives concerning the prescribing of Prescription Opioids.
11. All documents showing actions taken by You in response to the CDC's declaration of an "opioid epidemic" in 2011 and to implement the CDC's proposed guidelines relating to Prescription Opioid prescribing, including, but not limited to, efforts to treat, reduce, or prevent Prescription Opioid abuse, reduce the amount of Prescription Opioids prescribed by physicians or other health care providers, reduce improper Prescription Opioid

prescribing, and reduce the use of heroin, illicitly manufactured fentanyl and fentanyl-type drugs, and substances containing those drugs.

12. All records relating to the investigation and/or arrests for the illegal sale, distribution, or use of Prescription Opioids or illicit opioids.
13. All records of emergency or first responder interactions with users of opioids, including overdoses or deaths related to opioids.
14. To the extent that You believe, claim, or determined that any opioid prescriptions that were written by health care providers in Oklahoma City or written to patients who lived in Oklahoma City were medically unnecessary, inappropriate, or excessive, all records relating to such prescriptions and your basis for your belief, claim, or determination.
15. All records of Your requests for information or material received from the Oklahoma Prescription Monitoring Program (PMP), actions You took or considered taking based on information You received from PMP, Your policies and procedures relating to PMP, the use of PMP data, and any requirements or guidelines concerning health care providers' use and reporting obligations concerning PMP.
16. All of Your communications with any local, state or federal agency or task force, including, but not limited to, the U.S. Drug Enforcement Agency, any United States Attorney, the State of Oklahoma Bureau of Narcotics and Dangerous Drugs, and the Oklahoma Commission on Opioid Abuse, relating to the use, misuse, abuse, prescribing, sale, distribution, addiction to, or diversion of Prescription Opioids or illicit, non-prescription opioids.
17. All of Your annual operating budgets and the annual costs or expenses incurred by You to address misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, nonprescription opioids, and all funding requests made by You to the State of Oklahoma, including any funding requests related to the misuse, abuse, or addiction issues relating to Prescription Opioids or illicit, non-prescription opioids.
18. All documents or information You provided to or obtained from the National Association of State Controlled Substances Authorities ("NASCSA") or the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") relating to Prescription Opioids.
19. All of Your communications with any person or entity including, but not limited to, any employee, attorney, or agent of the State of Oklahoma or the United States government, regarding any opioid litigation.
20. All of Your communications with any person or entity regarding Purdue Pharma L.P., Purdue Pharma Inc., or The Purdue Frederick Company Inc..

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of November, 2018, a true and correct copy of the foregoing Subpoena Duces Tecum was served via email upon the counsel of record listed on the attached Service List.

A handwritten signature in black ink, appearing to be "R. A. S.", is written over a horizontal line.

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