



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Case No. CJ-2017-816

Plaintiff,

STATE OF OKLAHOMA
CLEVELAND COUNTY

Thad Balkman

v.

FILED

Special Discovery Master

PURDUE PHARMA L.P., et al.,

William C. Hetherington, Jr.

FEB 07 2019

Defendants.

In the office of the

Court Clerk MARILYN WILLIAMS

PURDUE'S OPPOSITION TO MOTIONS TO QUASH PURDUE'S SUBPOENAS
DUCES TECUM AND MOTIONS FOR PROTECTIVE ORDERS FILED BY CITY OF
BROKEN ARROW, CITY OF OKLAHOMA CITY, AND COMANCHE COUNTY

Purdue Pharma L.P., Purdue Pharma, Inc., and The Purdue Frederick Company Inc. ("Purdue") respectfully submit this opposition to the Motions to Quash and Motions for Protective Orders filed by non-parties the City of Broken Arrow, Oklahoma, the City of Oklahoma City, Oklahoma, and Comanche County ("Movants"). The Motions—which are practically indistinguishable—fail to satisfy, let alone acknowledge, the heavy burden imposed by Oklahoma law on Movants, who seek to block discovery that is not only relevant, but essential, to Purdue's defense of this action. Movants' sought relief required them to provide a particularized showing of "good cause"; instead, they advance a series of generalized, conclusory claims. This falls well short, particularly in light of the historic magnitude and complexity of the State of Oklahoma's claims in this action, and the liberal standard for discovery under Oklahoma law. Because Movants have come nowhere close to meeting their burden, Purdue respectfully requests that the Court deny the Motions in their entirety.

Notwithstanding the Motions' deficiencies, Purdue, in the interest of minimizing discovery disputes, is willing to continue meet-and-confer efforts and negotiate a reasonable plan

for compliance by Movants. As such, denial of the Motions is also warranted to allow the parties to resolve Purdue's subpoenas without further use of judicial resources.

BACKGROUND

On or around November 19, 2018, Purdue served document production subpoenas on the Movants. *See, e.g.*, Exhibit ("Ex.") 1 (Purdue Subpoena Duces Tecum to Comanche County). In accordance with 12 O.K. §2004.1(B)(1), the subpoenas provided a compliance date of December 7, 2018. *Id.* at 2.

On January 16, 2019, counsel for Purdue met and conferred telephonically with counsel for Movants to discuss the scope of the subpoenas. During that conference, Purdue agreed to substantially limit the scope of the requested document production. Specifically, Purdue agreed that Movants could satisfy their subpoena obligations by producing:

- Certain documents that would allow Purdue to determine whether Movants were claiming any categories of damages that overlapped with those being claimed by the State in the above-captioned action (Request 1);
- Certain documents that address efforts that Movants—city and county governments—undertook, or did not undertake, to address or abate the alleged opioid crisis (Requests 4, 7-9, 11-13, 16);
- Certain documents relating to Movants' policies for appropriate opioid prescribing and views on the medical necessity of opioid prescriptions written within the Movant cities and county (Requests 10 and 14); and
- Certain categories of communications that are clearly relevant to the present dispute (Requests 19-20¹).

¹ With respect to Request No. 19, Purdue made clear to Movants that it was only seeking communications between Movants and "any employee, attorney, or agent of the State of Oklahoma . . . regarding any opioid litigation." This was a substantial narrowing of this Request, which originally sought production of the subject communications with both the State and "the United States government"

On January 29, 2019, Movants' counsel indicated to Purdue's counsel that the City of Broken Arrow was willing to produce "documents evidencing state funding of programs to combat the opioid epidemic, and documents evidencing communications relating to any such programs, grants, task forces used to combat the opioid epidemic." Broken Arrow requested sixty (60) days to produce this limited set of documents. Movants' counsel has not communicated the positions of the City of Oklahoma City or Comanche County.

STANDARD

The party resisting discovery bears the burden of showing "good cause" for why that discovery should not be permitted. *YWCA of Oklahoma City v. Melson*, 1997 OK 81, 944 P.2d 304, 310–11 (Okla. 1997). To demonstrate "good cause," Movants must show "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *U.S. v. Childs*, No. 09-cr-146-D, 2018 WL 775018, at *3 (W.D. Okla. Feb. 7, 2018) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981)); see also *Southampton, Ltd. v. Salalati*, No. 14-cv-852, 2017 WL 5892241, at *1 (W.D. Okla. Mar. 27, 2017) (same).² "A party seeking to quash a subpoena duces tecum has a particularly heavy burden as contrasted to a party seeking only limited protection." *Mgmt. Comp. Grp. Lee, Inc. v. Oklahoma State Univ.*, No. 11-cv-967, 2011 WL 5326262, at *3 (W.D. Okla. Nov. 3, 2011) (citation and quotations omitted).

ARGUMENT

I. Movants Have Not Shown Any "Good Cause" to Quash Document Subpoenas or Justify Entry of a Protective Order.

Purdue is entitled to obtain discovery regarding any non-privileged matter that is:

² The Court may consider federal case law in applying provisions of the Oklahoma Code similar to the Federal Rules of Civil Procedure. *Scott v. Peterson*, 2005 OK 84, 126 P.3d 1232, 1238 (Okla. 2005); *Heffron v. District Court Oklahoma Cnty.*, 2003 OK 75, 77 P.3d 1069, 1076 (Okla. 2003).

[R]elevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

12 O.S. §3226(B)(1)(a). This provision reflects the fact that the "scope of discovery is broad," and that "discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing on the subject matter of the action." *Miller v. Love's Travel Stops & Country Stores, Inc.*, No. 06-cv-1008, 2008 WL 11338079, at *6 (W.D. Okla. Mar. 7, 2008) (quoting *Buffington v. Gillette Co.*, 101 F.R.D. 400, 401 (W.D. Okla. 1980)); *see also* 12 O.S. § 2401 (defining "relevant evidence" as "evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence") (emphasis added). Evidence need not be admissible in order to be discoverable (12 O.S. § 3226(B)(1)(a)), and parties are permitted to subpoena non-parties (12 O.S. § 3234(C)).

The Motions do not accurately set forth these basic standards. Rather than acknowledge their "particularly heavy burden," Movants aver that Purdue has failed to make a showing sufficient to justify the subpoena requests. *See, e.g.*, Motion to Quash and For Protective Order for Subpoena Duces Tecum of Comanche County at 7–8. But it is *Movants*, not Purdue, that bear the burden of establishing "good cause." *See YWCA of Oklahoma City*, 944 P.2d at 310–11 ("Because the new statutory regime *shifts* the 'good cause' burden to the party who *opposes* discovery, it is [that] litigant who bears the responsibility to establish an impermissible invasion of privacy or 'annoyance, embarrassment, oppression, or undue burden or expense.'") (emphases in original) (citation omitted).

Purdue's document requests seek information whose relevance is readily apparent—they concern, *inter alia*, the efforts (or lack thereof) by State and local authorities and officials to investigate and limit the misuse of opioids within Oklahoma; the policies used in Oklahoma for prescription of opioids to Oklahoma citizens; the extent to which the costs of responding to the alleged opioid crises were borne by the State, rather than other authorities and agencies within Oklahoma; and communications concerning either opioid litigation or Purdue, specifically. These areas go to the heart of the State's claims: demands for enormous damages and penalties for allegedly unnecessary or excessive opioid prescriptions within Oklahoma, which the State contends were caused by Purdue and others. *See e.g.*, Petition ¶ 6 (“[The State's] costs includ[ed] unnecessary and excessive opioid prescriptions, substance abuse treatment services, ambulatory services, inpatient hospital services and emergency department services, among others.”); ¶ 31 (“Defendants’ deceptive marketing campaign and the resulting opioid abuse and addiction epidemic caused, and continues to cause, the State of Oklahoma, its businesses, communities and citizens to bear enormous social and economic costs including increased health care, criminal justice, and lost work productivity expenses, among others.”).

None of Movants' arguments come close to meeting the “heavy burden” to block Purdue's requests for this relevant material. First, Movants' reference to the MDL (and other proceedings) is a red herring. As the State's counsel have repeatedly articulated, along with the Court, this case is not governed by the MDL. Moreover, discovery in the MDL is proceeding as to a select few cases, which are currently set for trial later this year. The cases brought by Movants are not among them. There is, therefore, no legal basis to allow the litigation schedule in separate cases to obstruct discovery that is necessary to try the claims in this action. Purdue lawfully propounded the subpoenas in this action to defend itself against the State's claims. It is

entitled to that discovery through this Court's jurisdiction, subject to the relevant standards for discovery under Oklahoma law. The existence of related discovery in another jurisdiction, and orders governing that discovery, do not circumscribe Purdue's rights in *this* forum—a separation expressly acknowledged by the MDL court. *See, e.g., Case Management Order One, In re Nat'l Prescription Opiates Litig.*, No. 1:17-md-02804, ECF No. 232 at 11 (N.D. Ohio Apr. 11, 2018) (“The Court acknowledges it has no jurisdiction over related State court proceedings.”).³

Second, Movants' blanket, conclusory claims that Purdue's subpoenas are unreasonable—*e.g.*, that they are “highly intrusive,” “overly broad,” and “overly burdensome”—fall well short of the specific, particularized showing that is required to establish good cause.⁴ *See, e.g., Cory v. Aztec Steel Bldg., Inc.*, 225 F.R.D. 667, 672 (D. Kan. 2005) (“In opposing discovery on the grounds of burdensomeness, a party has the burden to show facts justifying their objection by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome. This imposes an obligation to provide sufficient detail in terms of time, money and procedure required to produce the requested documents.”) (citations and quotations omitted); *Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 666 (D. Kan. 2004)

³ Movants' theorized claims of “duplicative” discovery are overwrought—should the Movants' separate actions proceed to discovery, Purdue will not require them to re-produce discovery that they have previously produced.

⁴ Movants' cited case law is largely unavailing. Most are distinguishable, irrelevant, or affirmatively harmful to their position. *See, e.g., Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 552 (E.D. Cal. 1990) (granting motion to compel disclosure of non-party names and addresses because the “burden or irritation” of such disclosure was “outweighed by the importance of such discovery to the case”), *overruled in part by Jaffe v. Redmond*, 518 U.S. 1 (1996); *In re Fontaine*, 402 F. Supp. 1219, 1221–22 (E.D.N.Y. 1975) (denying discovery “under the circumstances” of the case, which included a finding that there was “no likelihood that useful evidence might be uncovered which is relevant to the subject matter”); *Williams v. City of Dallas*, 178 F.R.D. 103, 110 (N.D. Tex. 1998) (modifying, rather than quashing, overbroad subpoena upon noting that “undue burden is fact specific” and “[m]odification of a subpoena is preferable . . . to quashing”) (citations omitted); *Linder v. Calero-Portocarrero*, 180 F.R.D. 168, 176 (D.D.C. 1998) (same).

(“Defendant merely alleges that it would be required to spend ‘significant time’ reviewing the files. The Court cannot find that Defendant has met its burden of showing how responding to this interrogatory would cause undue burden.”). Absent this required particularity, Movants cannot show that the value of Purdue’s discovery is outweighed by the purported burdens they claim. *See* 12 O.S. § 3226(B)(1)(a).

Third, Movants’ claims of various privileges suffer from the same defects. As the ones seeking to withhold otherwise discoverable information on the basis of privilege, Movants are required to substantiate their privilege claims with precision sufficient to “enable other parties to assess the applicability of the privilege or protection.” 12 O.S. § 3226(B)(5)(a); *see also, e.g., Vandelay Entm’t, LLC v. Fallin*, 2014 OK 109, 343 P.3d 1273, 1278 (Okla. 2014) (“A qualified privilege is . . . one in which the burden falls upon the government entity asserting the privilege.”) (citation omitted); *Burke v. Glanz*, No. 11-cv-720, 2013 WL 3994634, at *2 (N.D. Okla. Aug. 5, 2013) (“The party asserting privilege or protection bears the burden of showing that the protection applies.”) (citing *Barclaysamerican Corp. v. Kane*, 746 F.2d 653, 656 (10th Cir. 1984)). They have failed to do so. Instead, the Motions generally claim, in broad categories, that some of Purdue’s requests “*may*” sweep in allegedly privileged materials. These conclusory, blanket claims of privilege fail as a matter of law. *See Scott*, 126 P.3d at 1234, 1236 (rejecting “blanket assertion of . . . privilege” over an entire class of documents and ruling that parties’ assertions of attorney-client and work-product privilege failed because they were not “supported by sufficient facts describing the nature of the documents” withheld).

Movants have failed to meet their burden to establish “good cause.” This failure is dispositive. Denial of the Motions is thus warranted on this basis alone.

II. Purdue Seeks Information That Is Both Relevant And Essential to its Defense of this Action.

Purdue's subpoenas fall comfortably within the liberal standard for discovery. *See* 12 O.S. §§ 2401, 3226(A)(1). The information sought—comparable in scope and nature to discovery Purdue has sought and produced in this action—is key to several of Purdue's defenses, *viz.*, that there are no actionable statements by Purdue (fraudulent or otherwise); that the State and its providers recognized the propriety of, and even encouraged, opioid prescription where appropriate; that, for a variety of reasons, the State cannot prove the required causation, and; that the State's claimed damages are overstated, likely reflect resources expended by others (not the State), and are misattributed to Purdue. It is also in line with what the State has been ordered to produce. Ex. 2, Orders of Special Discovery Master on April 19, 2018 Motion Requests (04/25/18) at pp. 2–3 (compelling production in response to several Purdue document requests and ruling that, “under the claims made in [the State's] petition, details of medical necessity and reimbursable claims under the Oklahoma Medicaid system, State's claims review and reimbursement process and the identity of State personnel with knowledge about efforts to prevent opioid abuse and diversion are all relevant or potentially relevant areas of inquiry in this case”). While Movants grouse that Purdue's subpoenas are too broad, the reality is that the scope is dictated not by Purdue, but by the enormous, unprecedented theories of liability against which Purdue is being forced to defend. *See, e.g.*, Ex. 3, Order of Special Discovery Master on September 7, 2018 Motion Request (10/10/18) at p. 2 (ruling that discovery under 12 O.S. §3226(B)(1)(a) must be based both on reality and the “context of this unique case”). And, notably, materials gathered from non-parties have proven essential thus far, with the bulk of the State's production coming from non-parties rather than the State's own files.

In the interest of minimizing discovery disputes, and in light of Movants' status as non-parties, Purdue is willing to continue meet-and-confer efforts. This includes further discussion of potentially narrowing the document requests and working with Movants in good faith to appropriately balance the burden of subpoena compliance with Purdue's due process rights. To that end, Purdue, consistent with what it offered during the meet and confer, will presently seek compliance only with Requests 1, 4, 7–14, 16, and 19–20.⁵ These requests are critical to investigating, *inter alia*, the source of the State's claimed damages and whether the State is seeking recoveries based on harms allegedly incurred by others (*e.g.*, Request 1), investigating the causes and circumstances of opioid use within Oklahoma and efforts within the State to abate opioid misuse (*e.g.*, Requests 4, 7–14, 16), and the response within Oklahoma to ongoing opioid litigation and Purdue, in particular (*e.g.*, Requests 19–20).

The time period for the Requests should remain 1996 to the present—the same period of time put at issue by the State's petition (*see, e.g.*, Petition ¶ 2 (“[F]rom 1996 to 2000, OxyContin sales rose from \$48 million to more than \$1 billion.”)) and endorsed by the Special Master in a prior discovery ruling (Ex. 4, Order of Special Discovery Master from Hearing on October 18, 2018 (10/22/18) at p. 5 (granting State's motion to modify “relevant time period” to begin in 1996 as to discovery requests concerning “creation of, funding and coordination of marketing and promotional strategies involving the sale of branded and unbranded opioid and other related drugs”)). Consistent with its meet-and-confer position, Purdue is willing to accept a rolling production of materials, contingent on good-faith efforts by Movants to produce the information on a reasonable schedule that is in accordance with the litigation deadlines set by the Court.

⁵ Purdue's willingness to withdraw or narrow certain requests moots several of Movants' objections, including their particular objections to Requests 2–6, 15, 17–18.

Purdue is also willing to confer with Movants on other aspects of the Requests. For instance, Purdue will not require Movants to produce documents that are duplicated in the State's files, such as responsive communications between Movants and the State that the State has already produced. In addition, subject to an appropriate, threshold showing, Purdue will not pursue information or documents that are protected from disclosure by privilege, including non-public active investigation files. And, finally, Purdue will work with Movants to ensure that production of the requested information does not violate the Health Insurance Portability and Accountability Act ("HIPAA") by utilizing the designation protocol set forth in the HIPAA protective order entered in this action on April 11, 2018 and amended on September 27, 2018.

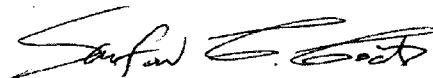
In sum, in order to facilitate continued negotiations towards a reasonable resolution of Purdue's subpoenas, Purdue respectfully requests that the Court deny the Motions.

CONCLUSION

For the foregoing reasons, the Motions should be denied.

Date: February 7, 2019

Respectfully submitted,



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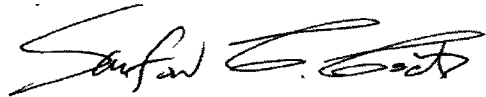
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2019, I caused a true and correct copy of the following:

**PURDUE'S OPPOSITION TO MOTIONS TO QUASH PURDUE'S SUBPOENAS
DUCES TECUM AND MOTIONS FOR PROTECTIVE ORDERS FILED BY CITY OF
BROKEN ARROW, CITY OF OKLAHOMA CITY, AND COMANCHE COUNTY**

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



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EXHIBIT 1

**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.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

SUBPOENA DUCES TECUM

**TO: Carrie Tubbs
Comanche County Clerk
315 SW 5th Street, Suite 304
Lawton, OK 73501**

[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

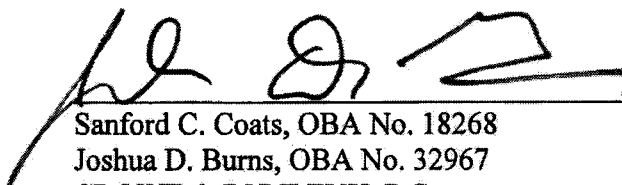
DATE AND TIME: December 7, 2018 at 9:00 A.M.

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.



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

EXHIBIT "A"

Comanche County 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. "Comanche County," "You," and/or "Your" refer to Comanche County in 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

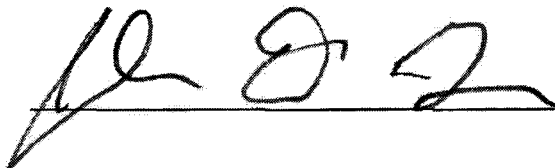
1. Documents sufficient to identify Your departments, units, or subunits responsible for measuring, analyzing, addressing, abating, or mitigating the opioid crisis.
2. All of Your communications with any manufacturers or distributors of prescription opioids, including pharmacies, regarding the marketing 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 Comanche County 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 Comanche County 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 Comanche County or written to patients who lived in Comanche County 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, consisting of three distinct, stylized characters, positioned above a horizontal line.

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EXHIBIT 2



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

Case No. CJ-2017-816

Judge Thad Balkman

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

Defendants.)

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

APR 25 2018

In the office of the
Court Clerk MARILYN WILLIAMS

ORDERS OF SPECIAL DISCOVERY MASTER ON APRIL 19th 2018 MOTION
REQUESTS

On April 19, 2018, the above and entitled matter was heard before the undersigned on the parties' various motions, objections and requests for relief. The undersigned Special Discovery Master having reviewed the pleadings, heard oral arguments and being fully advised in the premises finds as follows:

Purdue's Motion To Compel Production Of Documents

Purdue seeks to compel production of documents responsive to RFPs requested in its first set of requests for production. Purdue Pharma L.P. seeks production of documents numbered two, four, six, seven, eight, and nine. Purdue Fredrick Co. seeks production of documents responsive to requests number one, five, six and seven. Plaintiff, State of Oklahoma, ex. rel. Attorney General of Oklahoma (State) has filed its objection thereto and request to strike as moot.

- A. State's objection and motion to strike as moot is **overruled**. Specific finding is made that under the claims made in this petition, details of medical necessity and reimbursable claims under the Oklahoma Medicaid system, State's claims review and reimbursement process and the identity of State personnel with knowledge about efforts to prevent opioid abuse and diversion are all relevant or potentially relevant areas of inquiry in this case. State argues the only documents that will be withheld or objected to are privileged and confidential information. Therefore, both Purdue Pharma L.P. and Purdue Frederick Company's motion to compel are **sustained** to be produced as soon as practically possible under the agreed "rolling production" process. The undersigned acknowledges State's argument that its objections have been withdrawn. Nevertheless, production is **ordered** consistent with findings made herein:

Purdue Pharma L.P.

1. RFP No. 2 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
2. RFP No. 4 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
3. RFP No. 6 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
4. RFP No. 7 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
5. RFP No. 8 – State's objection withdrawn during meet and confer, motion to compel **sustained**;
6. RFP No. 9 - State's objection withdrawn during meet and confer, motion to compel **sustained**.

Purdue Frederick Co.

1. RFP No. 1 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
2. RFP No. 5 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
3. RFP No. 6 – State’s objection withdrawn during meet and confer, motion to compel **sustained**;
4. RFP No. 7 – State’s objection withdrawn during meet and confer, motion to compel **sustained**.

State’s Second Motion To Compel

State has served notice for corporate designee depositions as described in exhibits one through six of State’s motion:

1. The open letter published by or on behalf of the Purdue Defendants in the New York Times on Thursday, December 14, 2017, entitled, "We manufacture prescription opioids. How could we not help fight the prescription and illicit opioid abuse crisis?" ("Open letter"), including but not limited to all actions taken by Purdue Defendants in support of the recommendations and initiatives identified in the Open Letter, and the reasons the Open Letter was written and published.
2. The Purdue Defendants’ decision to discontinue marketing or promoting opioids to prescribers.
3. The J&J Defendants’ past and present relationship with Tasmanian Alkaloids, the corporate structure and management of Tasmanian Alkaloids during its affiliation with any J&J Defendants, and the terms of any asset purchase agreement, acquisition agreement, and/or purchase and sale agreement by and between any J&J Defendants and Tasmanian Alkaloids, including terms related to the assumption of liability.
- 4.-6. All actions available or necessary to address, fight, update and/or reverse the opioid epidemic. (One Notice For Each Defendant Group)

To these notices, the three Defendant groups have filed requests for protective orders and to quash the deposition notices, to which State has responded. The following Orders are entered with regard thereto:

1. Open Letter (Purdue)

State has described with reasonable particularity two areas of inquiry with regard to this "Open Letter": 1. All actions taken by the Purdue Defendants in support of the recommendations and initiatives identified in the Open Letter; 2. The reasons the Open Letter was written and published. State shall be limited to these two areas of inquiry to include any follow-up inquiry that may become reasonably necessary to identify the exact actions taken, who took them, when and where. To this extent, State's motion to compel is **sustained** and Defendants' opposition thereto and request to quash the notice is **overruled**.

2. Purdue Defendants' decision to discontinue marketing or promoting opioids to prescribers.

State's motion to compel is **sustained** and Defendants' request to quash the notice on this topic is **overruled** as a fact witness could produce likely relevant evidence as it relates to decisions to discontinue marketing and promoting opioids.

3. J&J Defendants/Tasmanian Alkaloids

Finding is entered that State has pled with reasonable particularity the relationship between J&J Defendants and Tasmanian Alkaloids (Not a party to this litigation) during a portion of the relevant time period in this litigation. As a former subsidiary of Johnson & Johnson, Tasmanian Alkaloids manufactured the poppy-based opiate ingredient used in many of the United States marketed and distributed opioids. The J&J Defendants had a direct financial interest in the sale of the opioid products generally, not just limited to their own branded opioids. That places J&J Defendants in a position of having a financial interest in opioids generally and possible motive relevant to issues raised in this case.

State's motion to compel is **sustained** and Defendants' request to quash the notice on this topic is **overruled**.

4-6. Abatement Actions

State gives notice to each Defendant group to depose a corporate designee regarding fact testimony similar to the line of inquiry requested of Purdue Defendants in item notice No. 1. The added fact with regard to Purdue Defendants' being the "Open Letter". These notices are necessarily limited to fact testimony and as argument indicated, cannot include opinion testimony that seeks to elicit a legal opinion on a primary issue a finder of fact may have to determine and that is an action plan, factually and legally, fashioned to abate the opioid crisis. Certain Defendants through negotiations in other cases have agreed to disclose factual efforts that are currently under way and actions planned and expected to take place in the future to seek to abate the opioid crisis. Settlement negotiations are privileged, and there is a strong public policy disfavoring intrusion into confidential and privileged settlement discussions. 12 O.S. § 2408; Fed. R. Evid. 408; *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003). Further, expert witnesses do not have to be determined and disclosed until the deadline of September 14, 2018, with expert depositions to be completed by January 25, 2019.

Therefore, each Defendant groups' request for a Protective Order and to Quash the notice as drafted is **sustained** and should State so desire, new deposition notices to issue to fact witnesses to be designated by each Defendant group for inquiry by State into factual efforts that are currently under way and actions planned and expected to take place in the future which seek to address, fight or abate the opioid crisis.

April 4, 2018 Order of Special Discovery Master On State's First Motion to Compel.

Defendant groups have filed objections to and requests to strike or modify the above referred-to discovery order. Argument was heard and considered at the April 19, 2008 hearing and the following orders are entered:

1. Review of the record indicates State did not move to compel RFP No. 17 and objections to and requests to strike any findings made by the undersigned with regard to RFP No. 17 are **sustained**. Further, the undersigned recognizes that certain Defendants have already produced and there are agreements for future production relevant to the RFPs in question. Any rulings, orders or modifications to previous orders with regard RFPs take into consideration this reality and the ongoing "rolling production" process. Nothing in the undersigned's orders here-in are meant to require duplication of production.

A. With regard to findings made numbered “1” through “7” of the April 4th Order, the following findings are entered:

1. Regarding finding numbered “3”, the finding the likely relevant time period for Purdue defendants is from the original OxyContin release date of May 1, 1996 to present is amended in part to specific findings that will be made below as to each State requested RFP and Purdue Defendants' request to modify is **sustained** to that extent.
2. The balance of the findings made numbered “1” through “7” of the April 4th Order remain unchanged and any Defendant requests to modify or strike are **overruled**.

B. Requests For Production, State’s First Motion To Compel

RFP No. 1 – Defendants’ various motions to strike or modify are **overruled** subject to the previous ruling that Defendants must specifically identify any category of documents from other cases they intend to withhold as non-public or confidential governmental investigations or regulatory actions;

RFP No. 2 – Defendants’ various motions to strike or modify are **overruled** subject to the previous ruling that Defendants must specifically identify any category of documents from other cases they intend to withhold as non-public or confidential governmental investigations or regulatory actions;

RFP No. 3 – This RFP in conjunction with RFP 4 and in part 5 seek discovery of sales, training and marketing materials that did help define the pharmaceutical industry's approach to sales, relevant to the claims made in this case. Regarding document discovery concerning sales, training and education materials for opioid sales representatives, the relevant time period is found to be from May 1, 1996, the commencement of the marketing of the original OxyContin as it relates to Purdue, and the known marketing start dates for the balance of the Defendant groups. Such production as to Purdue may be restricted to materials in Purdues’ possession, possession of its current employees, and its third-party sales representatives under promotional contracts on and after 1996 and relevant to branded or un-branded advertisements and/or marketing materials. Therefore, Defendants' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 4 – Purdue is **ordered** to produce training and education materials provided to medical liaisons, retained or funded by You concerning medical liaisons with health care professionals, KOLs, and front groups regarding opioids and/or pain treatment for branded and unbranded materials beginning in 2004 and thereafter. Other Defendants are so **ordered** beginning with their relevant marketing time period. Therefore, Defendant groups' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 5 – Defendants are **ordered** to produce related communications relevant to RFP 4, 5, 7 and 9 currently in their possession, Purdue beginning in 2004 and thereafter and other Defendants' beginning with the relevant marketing time period. Therefore, Defendant groups' various motions to strike or modify are **sustained** in part and **overruled** in part;

RFP No. 6 – Defendant groups' motions to strike or modify are **sustained** in part and **overruled** in part, in that production shall be **ordered** of all branded or un-branded advertisements and/or marketing materials published by You concerning opioids, including, without limitation all videos, pamphlets, brochures, presentations and treatment guidelines. Purdue beginning in 2004 and thereafter and other Defendants' beginning with the relevant marketing time period. Drafts of such materials are **not ordered** located or produced;

RFP No. 7 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 8 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 9 – Defendant groups' motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 3, 4, 5 and 6;

RFP No. 10,11 – Defendant groups' motion to strike or modify is **sustained** in part and **overruled** in part as to RFP 10 and 11. Defendant groups are **ordered** to produce documentation reflecting amount spent by You on advertising and marketing related to branded or unbranded opioid advertising, and to KOLs and other Front Groups, Purdue beginning in 2004 and thereafter and other Defendant groups beginning with the relevant marketing date;

RFP No. 12 – Defendant groups’ motion to strike or modify is **sustained** in part in that Defendant groups are ordered to produce all organizational charts identifying your employees involved in (1) the sale, promotion marketing and advertising of your opioids, Purdue since May 1, 1996 and other Defendant groups since the relevant marketing date; and (2) communication with Healthcare Professionals, KOLs and Front Groups regarding opioids, including OxyContin and pain treatment, Purdue beginning in 2004 and other Defendant groups beginning with the relevant marketing date;

RFP No. 13 – Defendant groups’ motion to modify or strike is **sustained** in part and **overruled** in part in that a search for all communications between you and trade groups, trade associations, nonprofit organizations and/or other third-party organizations concerning opioids and/or pain treatment since 1996 is overly burdensome on Purdue and likely impossible to comply with. Production of communications from Purdue relevant to this RFP and currently in the possession of Purdue is **ordered** produced from and since 2006. As to other Defendant groups, such communications in their possession are **ordered** produced beginning with the relevant marketing date;

RFP No. 14 – Regarding communications between you and other opioid manufacturers, distributors, wholesalers, pharmacies and/or BPMs as described in this RFP and RFP 15, communications may be relevant to State’s conspiracy allegations. Defendant groups’ motion to modify or strike is **sustained** in part and **overruled** in part in that a search for all communications referred to in RFP 14 and 15 since 1996 is overly burdensome. Production of communications as described in RFP 14 and 15 and currently in the possession of Purdue is **ordered** produced from and after 2004. As to other Defendant groups, such communications in their possession are ordered produced beginning with the relevant marketing date;

RFP No. 16 – Defendant group’s motion to modify or strike is **overruled**;

RFP No. 18 – Defendant groups’ motions to strike is **sustained** as this RFP is now included in Orders entered in RFPs 4, 5, 10 and 12;

RFP No. 19 – Defendants’ motion to strike or modify the undersigned’s April 4, 2018 Order is **overruled**;

RFP No. 20 – Purdue has now produced or agreed to produce documents concerning the concept of "pseudoaddiction" or "pseudo-addiction". Purdue has also agreed to identify custodians of responsive communications and search for documents to produce, relevant to "pseudoaddiction" or "pseudo-addiction". Therefore, Defendants' request to strike or modify is **sustained** subject to State producing future evidence sufficient to demonstrate failure to produce or to expand the scope of this RFP;

RFP No. 21 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 22 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 23 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 24 – This RFP does seek production of virtually every document and communication generated by potentially hundreds of individuals in Purdues' and other Defendants' departments responsible for scientific research, studies, journal articles, and/or clinical trials regarding opioids and/or pain treatment, including all drafts. This request is found to be overly broad and burdensome. Therefore, Defendants' motion to strike or modify this RFP is **sustained** and the April 4, 2018 ruling is **ordered** stricken and State's request to compel is **denied** in this RFP's current form;

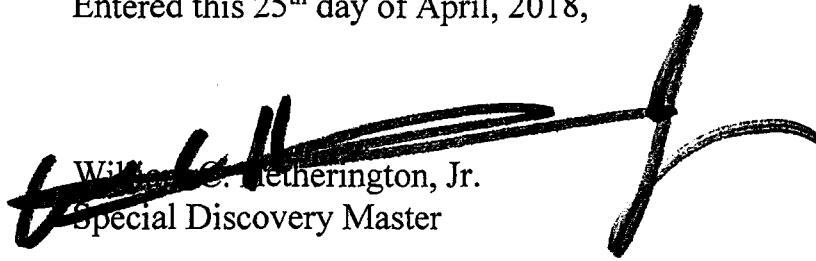
RFP No. 25 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 26 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 27 – Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**;

RFP No. 28 - Defendants' motion to strike or modify the undersigned's April 4, 2018 Order is **overruled**.

Entered this 25th day of April, 2018,

A large, bold, handwritten signature in black ink, consisting of several thick, sweeping strokes. The signature is positioned above the printed name and title.

William C. Hetherington, Jr.
Special Discovery Master

EXHIBIT 3

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

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

Plaintiff,)

vs.)

Case No. CJ-2017-816

Judge Thad Balkman

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

Defendants.)

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 10th day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on Defendants' Motion To Compel Discovery Regarding Claims Data and State's Response thereto on October 3, 2018.

The undersigned finds as follows:

State argues it proceeds under the Okla. Medicaid False Claims Act (FCA) and will utilize statistical modeling to prove causal connection between Defendant's promotion and marketing conduct and damage to State. As argued, State's proof approach does not require proof of individualized doctor and patient interaction as a global population of individualized

proof of each physician's reliance on false and/or misleading promotion and marketing resulting in individual excessive or unnecessary prescriptions. State argues that under this statistical modeling manner of proof, it does not have to establish an individualized and complex chain of causation flowing through thousands of marketing "providers" to thousands of physician "prescribers" ultimately issuing prescriptions to individual patients, many of whom became State Medicaid claims recipients. State chooses to limit this inquiry arguing a proof method that seeks to provide the quantity and quality of proof necessary for the State to carry its burden of proof. While the question of legal sufficiency of State's proof method shall be left for another day, 12 O.S. § 3226(B)(1)(a) requires the undersigned to structure a discovery process based upon reality and in the context of this unique case "... reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action,..." I also have an obligation to weigh privacy rights against the Defendant's desire to individually personalize their discovery. In the context of this case, proportionality would prohibit individualized discovery as it would not be feasible to allow discovery into approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers contained in the State data bases.

The State of Oklahoma is the plaintiff, not individual patients. As such, it is not an individualized proof process which State argues to be unnecessary and in fact would likely result in an unreasonably lengthy and highly burdensome discovery process as Defendants have stated intentions to depose all patients with claims.

State argues it has produced approximately 9,000,000 pages of prescriber, prescription and patient information with personal information redacted. State in its response to Purdue's First Set of Interrogatories – No. 3(May 8, 2018 Oklahoma Medicaid Claims Data for all opioid prescriptions for 1996-2017), describes these data base information sources and data parameters for what constitutes "unnecessary or excessive" prescriptions to be supplemented subject to ongoing discovery requiring State to produce additional documents, information, reports studies and research gathered as a part of State's ongoing investigation. The record also indicates Defendants do have the doctor/prescriber names but do not have patient names. The data bases do provide individual identifying numbers to allow for tracking of State Medicaid claims through the system while protecting the patient's personal information.

I am satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery through a combination of access to data information already in their possession and by way of access to numerous State databases such as the Oklahoma Medicaid Management Information System (MMIS) and Enhanced Code System, Online Query System (ODMHSAS or OOmQues) and the Oklahoma Fatal Unintentional Poisoning Surveillance System which reviews Medical Examiner's Reports. To the extent Defendants do not have access to these data bases, State has been and again is **Ordered** to produce the data base information according to our rolling production process.

It appears most likely true that through this database information, Defendants' have a fair and proportional way to defend this case and can bring in their own experts, doctors/providers and patients as they choose to defend and test the State's theory. Also, I am not satisfied patient

private information protection is fully waived in this case under the terms of the HIPPA Protective Order.

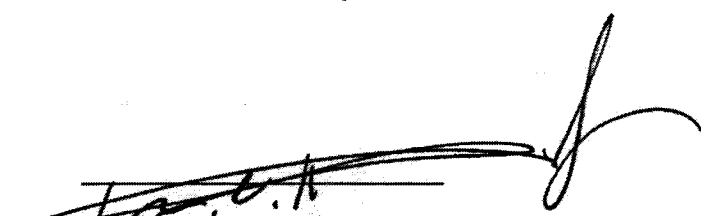
Defendants argue patient and prescriber identities and personal information are required in order to compare to marketing and promotional activities, to research utilization of services such as treatment facilities, overdose records, law enforcement contact emergency service contacts and State Medical Examiner records. Pursuant to the above findings and scheduling order deadlines, Defendants now have and will receive more specific patient and prescriber information in this manner and as a part of the proposed expert statistical modeling sample, and will be entitled to appropriate discovery.

Regarding Cephalon, State argues evidence of a history of joint promotion efforts and agreements to promote and market drugs generally and specifically even though it appears this Defendant may have a total of 245 prescriptions for either Actiq or Fentora issued in Oklahoma. Regardless, Cephalon is entitled, and it is not unreasonable in scope, to full production of all information relevant to details pled and as referenced in Ex. 3 to State's Petition as to these 245 prescriptions. Again, as found above, Cephalon has in its possession or has the same access to data base information that protects patient private personal information. That personal information protection remains protected here, but State **shall** produce any and all other information that has not yet been produced and consistent with this Order as to these 245 claims (prescriptions).

At this time, I do not agree with Defendants' argument that to deny them full disclosure of all claims data information as requested precludes them from meaningful discovery. An aggregation approach to this case I find to be reasonable and can fairly fit the needs of all parties. Personal individualized discovery is not the only way Defendants can fairly defend this case. A broad view of the factors of this unique case must be taken into consideration and equally weighed in determining the scope and propriety of discovery. Defendants argument that this claims data is "relevant" and discoverable I find to be insufficient to warrant discovery of personal patient and doctor/prescriber information in the scope sought to be compelled by Defendants.

Therefore, Defendant's Motion To Compel Discovery Regarding Claims Data as requested is **Denied** consistent with findings made in this Order.

It is so **Ordered** this 10th day of October, 2018.



William C. Hetherington, Jr.
Special Discovery Master

EXHIBIT 4

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,)

vs.)

Case No. CJ-2017-816

Judge Thad Balkman

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

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 22nd day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on October 18, 2018.

Rulings entered herein regarding the following Motions:

1. **Cephalon's Motion for State to Show Cause for Failure to Comply with Court Orders**

The undersigned entered rulings on August 31, 2018 overruling State's objections to the nature and number of interrogatories. The record and argument indicates that State

has complied with some production for interrogatories 1 through 6 and then at the October 3rd hearing the undersigned ordered State to fully answer interrogatories it can answer by October 9th. I further ordered that State identify interrogatories for which answers are being withheld.

The record indicates State has not responded to interrogatories numbered 7 through 16 contending Defendants have collectively exceeded the 30 interrogatory limit. The undersigned once again reiterates that in the interest of time and efficiency, it is best for the three Defendant groups to respond as a group to 30 interrogatories per group, however, as ordered before, when that is not possible, State is **required** to fully answer interrogatories limited to 30 per defendant sued.

The specific medications and damage formula defendant is interested in will be identified and fully developed in discovery as part of the State's expert testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

Therefore, I again order compliance and State is Ordered to fully answer to the extent possible, and in compliance with my previous orders protecting patient and physician personal information, interrogatories 1 through 6 and the motion is **Sustained** to that extent.

The undersigned enters the same Order for State to Respond to interrogatories 7 through 16 under the same conditions.

Responses to all of these interrogatories are Ordered to be fully completed and answered within 15 working days from the date of this Order and shall be State's final and complete answers subject to newly acquired evidence that must be produced.

2. State's Second Motion To Show Cause as to Purdue

This motion asks the undersigned to reenter my original Order (Withdrawn by October 5, 2018 Order) with regard to Rhodes entities. Now following argument, review of the record, testimony and pleadings, find State is entitled to full disclosure and discovery regarding Rhodes Pharma and Rhodes Technologies as affiliates related to Purdue Pharmaceutical and involved with Sackler family ownership. The testimony and record now before the undersigned demonstrates significant control over the creation of, reasons for its creation and daily control, such as "to provide a cost competitive API platform to support our Rhodes Pharmaceuticals generic dosage form initiative". Argument and evidence confirms that Rhodes Technologies and Rhodes Pharma fall within the definition of an "Affiliate" about which production is required. I further find pursuant to State's request, State is entitled in this context only, to complete discovery back to the point in time of Rhodes entity creation or 1996, whichever is earlier. I further find the evidence is insufficient to indicate Purdue Pharmaceutical was intentionally concealing or hiding the identity of these affiliates. The evidence is in dispute, however, documentary evidence had been produced to the State prior to depositions disclosing the existence of these entities.

Therefore, State's request to reenter my previously withdrawn order with regard to Rhodes entities is **Sustained** to this extent.

3. Purdue's Motion to Show Cause Against the State

Findings entered with regard to this motion overlap in part with agenda item number 1 as to Cephalon's motion. Again, the undersigned has previously ordered State to answer in full and allowed State to answer only 30 interrogatories from each Defendant group if possible. Regarding interrogatories numbered 7, 8 and 9, I have previously ordered State to answer with specificity and to the extent possible. Consistent with item number 1, final and complete answers to be provided within 15 working days subject to newly discovered evidence required to be produced.

The specific medications and damage formula will be identified and fully developed in discovery as part of the State's expert reports and testimony scheduling and the model they have chosen to proceed with. This will take place according to the scheduling order.

I agree with State's argument and I have encouraged a joint Defendant group interrogatory count of 30 interrogatories to be submitted to the State from the three groups and State to Defendant groups when possible. When a "joint" interrogatory request is made, the State is required to answer the 30 interrogatories to the group as a whole. The State is not required to then answer another set of interrogatories covering the same information propounded to it by individual members of the Defendant group, unless that individual Defendant has a **clearly** unique and independent grounds for separate inquiry following a meet and confer. Once again, as indicated above, in the interest of time and judicial efficiency, it is reasonable in this case to conduct discovery, for the most part, in a three-defendant group format.

Privacy and confidentiality orders have been entered and the issue ruled upon. Therefore, by this Order I order full compliance as to each numbered interrogatory properly propounded consistent with this Order, with State to fully comply within 15 working days from the date of this Order with final and complete responses subject to newly discovered evidence required to be produced.

Purdue's motion to show cause and requests made therein are **Sustained** to this extent.

4. State's Motion to Compel Depositions and Group Topics

The undersigned has reviewed this motion and Purdue's opposition to it, Teva group's response and opposition to it, redacted and unredacted versions containing argument and record evidence relevant to State's motion and, considered Janssen group's response and objection.

This issue concerns corporate designation of witnesses for topic testimony, scope and relevant topic grouping. State argues through this date, State has only been able to reach an agreement with Defendants for designation on topics number 39 and 41

currently scheduled with Janssen group for November 9th and has taken five other depositions (Briefs indicate State has taken depositions of 9 other corporate designated witness). Notices for all of these designated witness depositions have been out since prior to the attempted removal of this case to Federal jurisdiction and subsequent remand. State is asking for a scheduling order with time limitations and grouping of 42 topics for each of the three Defendant groups pursuant to State's Ex. B to the motion. The State and each of the three Defendant groups have submitted exhibits proposing a formula for topic grouping, timing and witness designation. Defendants generally argue State cannot dictate how Defendant groups join topics for each of their representatives and urge the undersigned to set a maximum total time limit for the completion of all corporate designated depositions adopting Defendant Group topic groupings.

Having heard arguments and reviewed each suggestion the following orders are entered:

- A. State is Ordered to specifically define each topic of requested inquiry and serve on counsel for each Defendant group (or a specific Defendant where a topic is unique to that Defendant) within **five (5)** working days following this Order;
- B. Each Defendant group, or individual Defendant, whichever is appropriate, is Ordered to group State defined topics and designate a corporate witness who can testify to as many topics or groupings as possible. While it is appropriate to allow Defendant groups or individual Defendants to group topics, I do so recognizing the potential for abuse but with a clear Order and expectation this will minimize designated witness deposition numbers and provide State with witnesses fully informed, knowledgeable and fully prepared to testify to the designated topic or topic grouping. Each Defendant group or individual Defendant is Ordered to designate corporate witnesses consistent with this Order and provide State with a corporate witness designation matrix pairing witnesses with topic or topic groupings and to so notify State no later than **ten (10)** working days following the receipt of State topic definitions;
- C. Some topics will justifiably require more deposition time than others. Generally, in similar type cases to this case, Courts have approved 6 to 10 hours of deposition time for a designated corporate witness. Under the circumstances of this case, State shall be limited to a total of **eighty (80)** hours to be divided up as State chooses. I recognize that some depositions are currently scheduled and ready to take place. However, review of these proposed depositions indicate they are offered by individual Defendants based upon their own topic definitions and groupings where topics have not been defined by State. In order to minimize delay, I encourage these depositions to proceed even though the above time limits for topic definitions and groupings have not expired.
- D. Regarding State topic witness designations, the record is unclear as to the total number of topics Defendants' wish to take. Purdue's brief indicates it defines

27 topics. Therefore, it is **ordered** that each Defendant group or individual Defendant shall define each topic with State ordered to designate a corporate witness matrix pairing witnesses with topic or topic groupings and notify each defendant group or individual defendant, according to the same deadlines set forth above in paragraph (B). The same **order** is entered regarding State designated witnesses who shall be witnesses fully informed, knowledgeable and prepared to testify. State is not required to designate any corporate witness for a Defendant defined topic that will be the subject of State's expert witness claim proof and damage model and State must so state in its topic designation matrix.

- E. It does appear from briefs and argument that some topics should be subject to written responses and certain Defendants have so offered. While encouraged, State has the right to accept or reject a written response for any particular topic. The same applies to Defendant groups or individual Defendants as to Defendant topics.

5. State's Motion To Reconsider April 25, 2018 Order on Relevant Time Period

State has developed and produced evidence requesting the undersigned to modify its April 25th order to reflect the general "relevant time period" to begin in 1996. State has established a relationship between Defendants and the marketing and promotional strategies some of which began taking shape and were established and ongoing as early as 1996 and moving forward. The relevant time period does cover and effect responses that have been given in various RFPs relating to creation of, funding and coordination of marketing and promotional strategies involving the sale of branded and unbranded opioid and other related drugs. Discovery therefore is relevant in this context only, back to the point in time when the evidence now shows those efforts began but no earlier than 1996. Under State's stated claims for relief and proposed proof model, State should not be limited to inquiry with regard to Oklahoma promotion, marketing and sales efforts and discovery involving Oklahoma relevant promotional representatives or entities. By this amendment, I do not intend to fully modify my previous order that was upheld by Judge Balkman. State is not allowed to request again or explore again from any Defendant group or individual Defendant records, documents and information State already has in its possession or has access to, and not related to marketing and promotional planning and strategies.

Therefore, State's request to modify is **Sustained** to this extent.

6. Purdue's Motion to Compel Witness Testimony from Department of Corrections

State has indicated in previous discovery that Department of Corrections does not prescribe opioids to prisoners. The record indicates there has been differing testimony and Defendants' Motions and argument support ordering testimony by way of deposition from knowledgeable personnel. Defendant's motion is **Sustained** and Defendants are

allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are **Ordered** produced to Defendants in time for preparation.

Purdue's Motion to Compel is **Sustained**.

7. Purdue's Second Motion to Compel Documents

Purdue argues document production requested from various State agencies on January 12th with partial production from 17 State agencies and none from a list of 10 remaining agencies. The undersigned had previously ordered production on April 25th and August 31st as to Purdue's requests resulting in partial production. These orders did require State to produce under the rolling production process, at one time within seven days and to fully produce within 30 working days. Confidentiality orders regarding personal and private information were entered and will be more fully addressed in the "Watson" motion below.

State is **Ordered** to produce within 30 working days from the date of this order, final and complete responses and production, subject to newly discovered evidence required to be produced, relevant production in support of State's evidentiary proof model and Defendants' defense thereto, from the Office of the Medical Examiner, Oklahoma Department of Public Safety, Oklahoma State Board of Dentistry, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy and the Oklahoma State Board of Veterinary Medical Examiners, all subject to previous orders entered regarding protection of physician and patient privacy information. State argues in its brief that the Department of Public Safety and the Oklahoma State Bureau of Investigation possessed no documents relevant to this litigation. To that extent, State must so answer but is required to produce any documentation not found protected by our Protective Order, this order or any previous order. Regarding any Agency requests, information related directly to a criminal investigation to include investigative notes, reports, witness interview notes, contacts and transcripts are deemed protected work product.

Purdue's Second Motion to Compel is **Sustained** to that extent. The same is **Denied** as it relates to The Oklahoma Office of the Governor, the Oklahoma State Bureau of Investigation, the Oklahoma Legislature and the Oklahoma Worker's Compensation Commission involving protected "deliberative process privilege", consistent with the findings made here and to be made below regarding the "Watson" motion.

8. Purdue's Motion to Compel Custodial Files In Advance of Depositions

Sustained consistent with findings made in agenda item No. 6 above.

9. Watson Lab's Motion to Compel Investigatory Files

Watson argues it made 12 requests to obtain documents as to eight physicians, one medical center and "other unknown healthcare providers" relevant to their defense because State must prove Defendants' fraudulent promotion and misrepresentation either,

1. Caused provider to submit alleged false claims; 2. Caused provider to make a false statement material to each false claim or; 3. Caused the State to reimburse a particular prescription. Watson argues the Oklahoma Anti-Drug Diversion Act has no privilege provision and expressly authorizes the State to release information contained in the central repository. However, the Act provides that any information contained in the central repository shall be confidential and not open to the public, and, to the extent the State can permit access to the information, it shall be limited to release to a finite list of State and Federal agencies listed in the statute. Otherwise, disclosure is solely within the discretion of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs to control and only for specific purposes listed. The record does not support Watson's allegation that the State is relying on the same confidential information when taking depositions in this case. State argues it is not and will not rely on any confidential investigatory information that might be included in investigation files in this case. I must also weigh relevant access to this information against practical privacy considerations, and I have previously ordered the confidential information contained in these databases protected. Therefore, if the information Watson seeks is contained in databases I have previously dealt with, Watson has access to these databases with the personal information protected. The same considerations regarding Grand Jury information, transcripts etc., is also protected and can only be released by the Court presiding over a particular Grand Jury. Regarding the Oklahoma Medicaid Program Integrity Act, State has brought claims under this Act and it specifically allows for the Atty. Gen. to authorize release of confidential records, but, to the extent disclosure is essential to the public interest and effective law enforcement only. 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. Again, State argues it will not rely on any confidential or privileged investigatory material for use in this case and the undersigned will watch carefully for any indication that State is violating this representation.

Therefore, Watson's Motion to Compel Investigatory Files is **Denied**.

It is so **Ordered** this 22nd day of October, 2018.

William C. Hetherington, Jr.

Special Discovery Master