IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

vs.

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

Defendants.

For Judge Balkman's Consideration

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

MAR 15 2019

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

TEVA DEFENDANTS' MOTION TO COMPEL CORPORATE WITNESS TESTIMONY ON TOPICS 6, 7, 9 AND 36

Pursuant to 12 O.S. § 3237, Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc., (collectively the "Teva Defendants") respectfully move to compel further deposition testimony of a corporate representative of Plaintiff State of Oklahoma (the "State") on the Teva Defendants' Topics 5, 6, 7, 9 and 36. After this Court ordered the State to provide corporate witness testimony on topics related to the Teva Defendants (*See* Ex. A, Feb. 14, 2019, Hearing Tr. at 71:1-5), the Teva Defendants duly noticed the State to provide a corporate representative to testify on several topics,

including Topics 6, 7, 9 and 36. Those topics sought testimony regarding the State's factual basis for its claims that 1) prescriptions of the Teva Defendants' medications have caused the State alleged harm, 2) coverage decisions regarding any prescriptions of the Teva Defendants' medications that have caused the State alleged harm, 3) the identification of allegedly false or fraudulent claims for opioid prescriptions submitted to the State for reimbursement for which the State seeks to hold the Teva Defendants liable, and 4) identification of all "unnecessary" or "excessive" prescriptions within the 245 prescriptions of the Teva Defendants' branded opioid medicines identified in the State's Petition.

On March 14, 2019, the State produced Dr. Jason Beaman, who also serves as a State expert witness in this case, as its corporate designee on Topics 6, 7, 9 and 36. Those topics are:

> **Topic 5**. The nature and circumstances regarding any patients in Oklahoma that were harmed by any prescription opioid manufactured by any Teva Defendant.
>
> **Topic 6**. The nature and circumstances regarding any prescription of any Opioid manufactured by any Teva Defendant, including Actiq and Fentora, that the State contends caused it harm and for which it is seeking to recover damages in this lawsuit.
> **Topic 7**. For each prescription identified in response to Topic 6, whether or not the prescription was reimbursed by Plaintiff and if so, the circumstances surrounding the coverage decision.
>
> **Topic 9**. Any allegedly false or fraudulent claims that were submitted for payment to the Oklahoma Medicaid Program (or any other of Your Programs) that the State seeks to attribute to (a) Cephalon; (b) Teva USA; (c) Watson; (d) Actavis LLC; and/or (e) Actavis Pharma.
>
> **Topic 36**. Identification of and the circumstances behind all "unnecessary" or "excessive" prescriptions within the 245 prescriptions identified in paragraph 37 and Exhibit 3 of the Petition, including, but not limited to, the factual basis for alleging the prescription was "unnecessary or excessive" for each prescription." [1]

[1] The Teva Defendant's March 10, 2019, Notice to Take Deposition of Corporate Representative of the State is attached hereto as Exhibit "B".

These topics go directly to the Teva Defendants' defenses to this case. To prove its claims, the State must show that the Teva Defendants misled Oklahoma doctors into writing opioid prescriptions that were medically unnecessary and harmed Oklahoma patients. The State has acknowledged this very point. After the Court entered a comprehensive protective order compliant with the Health Insurance Portability and Accountability Act ("HIPAA"), the State's expert disclosures identified only a small "sample" of Medicaid reimbursed opioid prescriptions that it contends are "medically unnecessary" and for which it is seeking significant damages in this case under the Oklahoma Medicaid False Claims Act. With respect to that "sample", the State has produced limited prescriber information (i.e. medical records) which purports to support the State's determination that those claims are "medically unnecessary". To date, however, the State has refused to produce any patient or other information about the millions of other allegedly "medically unnecessary" prescriptions it contends are at issue, including the Teva Defendants' prescriptions that it has specifically identified in its Petition.

Regardless of how the State intends to prove its own claims, the Teva Defendants are entitled to discover the facts and knowledge possessed by the State which support its underlying determination that any reimbursed claim for a prescription medication manufactured by a Teva Defendant was "unnecessary" or "excessive", that any such claims were "false" or "fraudulent", and that any such claims resulted in any harm to the State. This is fundamental to Teva's defenses and necessary to respond to the State's false marketing claims. Defendants have a Constitutional due process right to seek from the State the factual basis for its assertion in this case that claims for opioid medications manufactured by the Teva Defendants' opioid prescriptions were "medically unnecessary" and/or excessive, including the identification of the specific prescriptions the State contends were not necessary, the specific misrepresentations and damages the State seeks

to attribute to the Teva Defendants associated with those prescriptions, and the specific coverage or reimbursement decisions the State made with respect to those prescriptions. And this, among other things, is precisely the information sought by Teva in Topics 5, 6, 7, 9 and 36.

Dr. Beaman, however, refused to give any meaningful testimony on Topics 5, 6, 7, 9 and 36. For example,

- Dr. Beaman testified that it is possible to identify the specific prescriptions of the Teva Defendants' medications the State claims are "unnecessary" or "excessive", but he did not do so in preparation for his deposition.
- Dr. Beaman testified that, although the information sought in Topics 5, 6, 7, 9 and 36 is "knowable" by the State, he made no effort to educate himself on that information because he relied on a prior discovery order from this Court which permits the State to attempt to prove its case through an aggregate proof model.
- Dr. Beaman testified that he believed that the State was only required to provide an "aggregate proof" model, and therefore the State did not endeavor to analyze all claims for the Teva Defendants opioid medications, although it is possible that the State could have done so if it wanted to. In fact, according the Dr. Beaman, the State has done such an analysis with respect to "sample set" of claims and is aware of the result of that analysis, yet Dr. Beaman, as the State's corporate representative, repeatedly refused to answer any factual questions regarding that analysis. It is absolutely essential for the Teva Defendants to obtain such factual testimony and information underlying the State's so-called "sample set" to determine if the conclusions as to the "sample set" are accurate and supported.

In other words, ***the State actually possesses the exact information sought by Topics 5, 6, 7, 9 and 36***, and ***the State could have analyzed that information*** and answered the Teva Defendants'

questions on those topics, ***but the State chose not to do so*** because the State does not believe the Teva Defendants are entitled to present their defenses in the manner in which they choose. This is not how due process of law works.

This is not the first time that the State has produced an unprepared witness to testify as a corporate representative.[2] That time, the State was ordered to produce a prepared witness. What happened this week with Dr. Beaman presents an even more critical situation in which the Teva Defendants are now substantially prejudiced by being deprived of the opportunity to discover basic factual information about the State's claims. Because Dr. Beaman was unprepared and/or flatly refused to testify about the noticed Topics, the State should be ordered to prepare and produce another witness to testify about them. The Teva Defendants therefore move the Court for an order that requires the State to present a corporate representative who adequately prepares for the deposition in advance by educating him or herself on the State's factual knowledge regarding Topics 5 6, 7, 9 and 36 and, further, answers questions and provides complete and truthful testimony regarding the factual basis for the State's claims.

I. BACKGROUND

Topics 5, 6, 7, 9 and 36 are intended to obtain discovery regarding the State's factual basis for its claims that prescriptions for medications manufactured by the Teva Defendants have caused the State alleged harm. This includes the State's factual basis for any coverage/reimbursement decisions regarding any prescriptions for opioid medications manufactured by the Teva Defendants' that have caused the State alleged harm, the identification of allegedly false or

[2] The State has previously been found by the Court to have presented unprepared corporate witnesses. This gamesmanship from the State is nothing new. *See* Special Master's October 22, 2018 Order, attached hereto as Exhibit "C" (ordering State to produce a prepared corporate representative for testimony regarding Department of Corrections).

fraudulent claims for opioid prescriptions submitted to the State for reimbursement for which the State seeks to hold the Teva Defendants liable, and identification of all "unnecessary" or "excessive" prescriptions within the 245 prescriptions of the Teva Defendants' branded opioid medicines identified in the State's Petition at Paragraph 37. Nothing is more relevant to the State's claims or the Teva Defendants' defenses. Without the identification of each purportedly "medically unnecessary" prescription, and the State's factual basis in support of such finding, the Teva Defendants will be denied the ability to take fundamental discovery to challenge the State's legal claims. To cure this prejudice, the Court should require the State to immediately present a witness fully educated and prepared in advance to testify to Topics 5, 6, 7, 9 and 36.

II. ARGUMENT AND AUTHORITY

A. Oklahoma Law Required The State To Produce A Prepared Witness

Oklahoma's discovery code requires designated corporate representatives to testify "as to matters known or reasonably available to the organization." 12 Okla. Stat. § 3230(C)(5). The recipient of a deposition notice seeking corporate testimony has "an affirmative duty" to designate a knowledgeable representative, which includes an "obligat[ion] to make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought ... and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed." *ZCT Sys. Grp., Inc. v. Flightsafety Int'l*, 2010 WL 1541687, at *2 (N.D. Okla. Apr. 19, 2010).[3]

Further, "[i]f the organization fails to produce a designee with sufficient knowledge, it is required to produce an additional designee with adequate knowledge." *Id.* And even if a party, in

[3] While Oklahoma courts have not clearly defined the requirements for such corporate testimony, Oklahoma Courts "may look to discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code." *Crest Infiniti, II, LP v. Swinton,* 174 P.3d 996, 999 and n.4 (Okla. Oct. 10, 2007) (recognizing parallels between Oklahoma Discovery Code 12 Okla. Stat. § 3230(C)(5) and Fed R. Civ. P. 30(b)(6)).

good faith, thought its designee would satisfy a deposition notice, "it ha[s] a duty to substitute another person once the deficiency of its [corporate representative] designation became apparent during the course of the deposition." *Marker v. Union Fid. Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989). "An inadequate [corporate representative] designation amounts to a refusal or failure to answer a deposition question." *Id.* at 126; *see also*, 12 Okla. Stat. §3237(A)(2) ("If a deponent fails to answer a question propounded or submitted...the discovering party may move for an order compelling an answer.").

B. The Court Has Already Held That The State Must Produce A Witness On Topics 5, 6, 7, 9 and 36.

The Court already has held that the State must produce a witness on these topics. The Teva Defendants initially served a deposition notice on this Topic in January 2019. The State moved to quash that notice, and Judge Hetherington granted the motion to quash. The Teva Defendants appealed. *See* Defendant's Objections to Special Master's Rulings on the State's Motion to Quash, filed January 29, 2019, attached as Exhibit D. The Court sustained the objections, holding that the Teva Defendants were entitled to depositions covering the topics identified in the notices, including topics 6, 7, 9 and 36. *See* Ex. A at 71. After substantial exchange between the parties on this issue, the Court ruled: "I'm prepared to allow them to go forward with those notices on new topics, so long as they don't overlap, they're not duplicative. I would like to limit those to four hours, and that would be exclusive of cross-examination. And those would need to be completed by March 15th." *Id.* at 71. This ruling is clear.

Consistent with this ruling, the Teva Defendants served a new Rule 3230(C)(5) notice. Under the protocol, the State was obligated to move to quash the notice within three days of its issuance. The State never objected to the Teva Defendants' newly served notice on these Topics and never moved to quash Topics 5, 6, 7, 9 and 36 after the Court directed that depositions go

forward on those Topics. Instead, the State continued its pattern of delay and chose to produce a witness – on the final two days of the fact discovery period – knowing that the witness would simply refuse to answer questions directly responsive to the topics. This is pure gamesmanship. The State must produce a witness fully educated and prepared to testify on these Topics.

C. The Information Sought By Topics 6, 7, 9 and 36 Is Relevant To The State's Claims.

The State alleges that the Teva Defendants made false and misleading statements about the risks of opioids in Oklahoma, and, as a result, "knowingly caused" Oklahoma doctors to "present[] false or fraudulent claims" to the State's Medicaid Program." (Pet. ¶¶ 75, 83.) The State further alleges that, as a result of medically unnecessary opioid prescriptions, Oklahoma patients became addicted to, abused, and misused them, thereby causing a public health crisis for which the State has had to pay. (*Id.* ¶¶ 31–50, 118–120.)

Both of these theories hinge upon each prescriber's independent medical assessment of each patient who was prescribed an opioid medication. The State must prove that the Teva Defendant's alleged misrepresentations caused each prescriber to ignore his or her professional obligation and suspend his or her medical judgment as to the medical necessity for prescription opioids and the needs and characteristics of his or her patients. The medical necessity of a prescription requires an individualized factual assessment into both patient and provider. It is not a "one-size-fits-all" inquiry. *In re Zyprexa Prods. Liab. Litig.*, 671 F. Supp. 2d 397, 457 (E.D.N.Y. 2009) (granting pharmaceutical manufacturers' motion for summary judgment of similar claims under Mississippi's analogous Medicaid Fraud Control Act). Each patient presents a unique set of symptoms and indications, and each patient may respond differently to any given medication. Thus, the concept of "medical necessity" makes relevant the conduct of the provider and the patient; it "does not operate in a mechanical way . . . to render individualized proof of reliance or

loss causation unnecessary." *Id.*

This information is also relevant to the State's public nuisance theory—that the Teva Defendants' alleged false marketing of opioids generally caused a "public health crisis" in Oklahoma. (Pet. ¶¶ 45, 117–120.) While the Teva Defendants dispute the legal viability of this theory, the State's attenuated causal chain includes, at a minimum: (i) an alleged misstatement by each Defendant to a particular prescriber; (ii) the prescriber's reliance on that misstatement; (iii) a prescription or opioids that the State claims was medically unnecessary; (iv) a patient who was purportedly harmed by that prescription; and (v) resultant harm to the State. (*Id.*) To prove causation on this theory, therefore, the State must identify specific medically unnecessary prescriptions, establish who wrote them, and prove that wrongful conduct by Defendants that constitutes a public nuisance caused those medically unnecessary prescriptions to be written. Dr. Beaman's repeated evasiveness and repeated refusal to answer questions deprives the Teva Defendants of fundamental due process by denying them information relevant to their defenses and within the State's possession.

D. Dr. Beaman Was Intentionally Unprepared To Testify On The Noticed Topics.

Dr. Beaman was intentionally unprepared to testify on Topics 5, 6, 7, 9 and 36 on March 14, 2019. For example, Dr. Beaman admitted that the State had identified both the 245 Actiq and/or Fentora prescriptions identified in the Petition (Paragraph 37 and Exhibit 3 to the Petition), as well as approximately 2700 Actiq and/or Fentora prescriptions in the State's claims database, and that the State undertook an analysis to determine which of those prescriptions were unnecessary or excessive, yet Dr. Beaman flatly and repeatedly refused to identify any information about any of the specific prescriptions the State has admittedly analyzed. Instead of providing specific answers, with specific information about specific claims for the Teva Defendants'

products – which Dr. Beaman admitted the State can access and analyze – Dr. Beaman chose to provide non-responsive or intentionally evasive responses and/or to rely on a written statement (prepared in "collaboration with" the State's lawyers)and December 2018 order from this Court in support of his refusal to provide this information to the Teva Defendants. To wit:

> Q. All right. So, let me just follow up to make sure I'm clear, and I understand the court's ruling, but you have not – you're not able to provide me testimony today whereby you could identify which prescriptions within the 245 [identified in the Petition] are according to the State excessive or unnecessary. Is that correct?
>
> A. That is correct.
>
> Q. Okay. You mentioned earlier that you believe there were 2700 prescriptions [in the State's database], and again I know you're not certain if that was just Actiq or if that's Actiq and Fentora, but, again, regardless of that, of the 2700 prescriptions of Actiq and/or Fentora, do you – does the State know how many of those it considers excessive or unnecessary?
>
> A. Not at this time.
>
> Q. Okay. Does the State contend that all 2700 of those prescriptions of Actiq and/or Fentora were excessive or unnecessary?
>
> A. I can't answer that since I don't know that number.
>
> Q. Okay. All right. So it might be the case that the State considers all 2700 of those prescriptions of Actiq and/or Fentora to be excessive and unnecessary. Is that your testimony?
>
> A. Possible, yes, it might be.
>
> Q. Okay. Has the State undertaken an analysis of which of those – well, strike that. Has the State undertaken any kind of [analysis] you're aware of, Doctor, to determine of the 2700 prescriptions of Actiq or Fentora were excessive or unnecessary?
>
> A. Yes.
>
> Q. Okay. The State has done that?
>
> A. Yes.
>
> ....
>
> Q. Okay. Let me ask the question a different way. Has the State reviewed all 2700 prescriptions for Actiq and/or Fentora to determine which if any of those were excessive or unnecessary?
>
> A. I would say again as I've said before, that the State relies on the information provided in the court order that says the State of Oklahoma is the plaintiff, not the individual plaintiffs, as such it is not an individualized proof process which the State argue to be unnecessary...

See Ex. E, March 14, 2019, Beaman Tr. at 81:8 – 82:17.

Similarly, Dr. Beaman made no effort to distinguish harms caused by any specific prescriptions written by any specific defendant. This information is directly responsive to Topics 6, 7 and 9. For example:

> Q. Okay. So, as it relates to the deposition topics that you were asked about here today, were you looking at this document in order to quantify the harm as it relates to the Teva defendants who are the subject of the topics that we've noticed?
>
> A. We, as – as I've stated before, the State of Oklahoma contends that it is a – that all opioid products by all manufacturers caused all of the harm, and so the answer would be that, yes, it was related specifically to that.
>
> Q. Well, I didn't ask you if it was related specifically to all, I asked you if your review of this document in order to look at the quantification of harm was related specifically to the Teva defendants.
>
> A. And I would say that the State doesn't distinguish. (111:17 – 112:9)
>
> ....
>
> Q. With regard to the 2700 prescriptions of Actiq or Fentora that you referred to here today, does the State know whether any of those patients were harmed by the prescription of Actiq and/or Fentora that they received?
>
> A. The State would contend that those prescriptions would have been harmful, would have been included in all of the harms by all of the opioids.
>
> Q. Objection, nonresponsive. My question is: With regard to the 2700 prescriptions of Actiq or Fentora that you referred to here today, does the State know whether any of the patients were harmed by the particular prescription of Actiq or Fentora that they received?
>
> A. Yeah, I don't think my answer would change.

Id. at 111:17 – 112:9; 90:20 – 91:2.

Dr. Beaman also testified that the State would not provide any testimony or information regarding specific off-label prescriptions of Actiq or Fentora, and repeatedly read from his written statement refusing to provide this information based upon a prior court order. For example:

> Q. Does the State – has the State determined how many off label prescriptions for Actiq or Fentora has caused it harm?
>
> A. I refer back to the written statement that located within the smaller of the two binders, Exhibit 1.
>
> Q. Uh-huh. Which paragraph.
>
> A. Paragraph 1, where it starts with, "During the relevant time period all opioid prescriptions reimbursed by the State of Oklahoma including all [defendants'] branded and generic opioids were subjected to misinformation by defendants' massive multi-faceted marketing campaign to downplay the risks and

exaggerate the benefits of opioids. Defendants' marketing campaign was so broad and sweeping it changed the way prescribers in Oklahoma viewed opioids and impacted their ability to conduct a risk benefit analysis in their prescribing of opioids. (117:24 – 118:20).

...

Q. Okay. Is the State seeking damages for generic opioids manufactured by the Teva Defendants?

A. Yes.

Q. Okay. And has the State made a determination of the number of generic opioids for which it believes – let me strike that. Has the State made a determination as to number of opioids manufactured by Teva which it believes has caused harm from the State of Oklahoma.

A. So I would refer you back to my previous statements where the – referring to the court order, basically saying that the State did not take an individualized prescriptions analysis, that it did an aggregate approach. (137:11 – 24).

...

Q. Okay. Have you determined or strike that. Has the State determined how many false claims were submitted to the State of Oklahoma for unbranded opioid medications manufactured by any of the Teva defendants as I've defined those defendants earlier today?

A. So, again, the State did not take an individualized approach. The State took an aggregate approach. (137:19 – 138:2).

Id. at 117:24 – 118:20; 137:11 – 24; 137:19 – 138:2.

In sum, Dr. Beaman was intentionally unprepared to respond to Topics 5, 6, 7, 9 and 36. He also arbitrarily chose not to respond –without being directed not to testify by the State's counsel – to a myriad questions which he did not deem appropriate. Dr. Beaman and the State have admitted that they possess relevant information regarding specific claims and prescriptions, that they have used this information in their own analysis, but they refuse to produce this information, or answer questions about it, because they contend that the Court's prior Order relieves them from the obligation of doing so.. Yet, the method by which the State chooses to attempt to prove its case has nothing to do with how the Teva Defendants are permitted to defend against the State's "aggregate sampling model" theory. The State possesses highly relevant, critical information and

it must be ordered to provide full, complete and direct testimony on information and facts that are admittedly within its possession.

E. In Many Instances Dr. Beaman Simply Refused To Answer Questions

Dr. Beaman's deposition continued on March 15, 2019 on Topics 5, 6, 7, 9, 11 and 12, which include any allegedly false or fraudulent claims that were submitted for payment to the Oklahoma Health Care Authority by Teva Defendants, and the nature and circumstances regarding any prescription of an opioid manufactured by the Teva Defendants that the State contends caused it harm. Dr. Beaman continued to give evasive and non-responsive answers and refused to answer questions, including but not limited to, the following:

- Whether he has reviewed MMIS data regarding generic prescriptions. Dr. Beaman declined to answer. He was not instructed by his counsel not to answer, but decided on his own volition not to provide an answer.
- When shown an excerpt of the State's expert data indicating that the State had determined a particular claim or claims to have been deemed medically unnecessary and asked about whether a particular prescription on that excerpt was deemed medically unnecessary, Dr. Beaman nevertheless refused to provide factual testimony as a corporate representative of the State regarding both whether the prescription was medically unnecessary and, if so, why. Again, his counsel did not instruct him not to answer, but the witness state he was "not willing to answer the question at this time because [he] believe[s] it required [his] expert testimony."
- When shown several more excerpts of state's data and corresponding patient records, Dr. Beaman admitted that the State has the information on whether a particular prescription was deemed medically unnecessary, but he refused to provide factual testimony on that

information. Instead of answering the question asked, Dr. Beaman continued to state that the State relies on its experts for that information.

III. CONCLUSION

The transcript of Dr. Beaman's deposition is clear and conclusive. He repeatedly refused to answer basic questions about the subject of the deposition. He testified that he did not believe he was required to provide full and complete responses, regarding information and facts that are admittedly within the State's possession, due to a prior court order regarding the State's unilateral proof model. The information needed to address the deposition topics was available to Dr. Beaman, but he chose not to take advantage of the resources available to him to prepare. It is clear – and has repeatedly been made clear by the State throughout this litigation – that the State has chosen to abdicate its duty to provide educated corporate representative testimony, comply with the Oklahoma discovery rules, and provide basic due process to the Teva Defendants. The fact that the State chose to designate an expert witness to testify on factual corporate representative topics does not give the State the right to hide information and refuse to testify as to facts within its knowledge. Again, this is pure gamesmanship and it should not be allowed. The Teva Defendants have been substantially prejudiced by this deliberate behavior orchestrated by the State and its counsel which is in violation of the letter and spirit of the discovery rules and all notions of due process.

The discovery sought is relevant and important to the Teva Defendants' defense, and the State should be compelled to designate a new corporate representative who is properly educated and prepared on the deposition topics.

Dated: March 15, 2019

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 15th day of March, 2019, to the following:

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Nancy L. Patterson

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

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

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TRANSCRIPT OF PROCEEDINGS
HAD ON FEBRUARY 14, 2019
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: ANGELA THAGARD, CSR, RPR

EXHIBIT
A

this motion is moot because I think the State has complied with the request from Teva.

MR. DUCK: Thank you, your Honor.

THE COURT: Okay. All right. Let's now turn to Teva's objections to the special master's ruling on the motion to quash the depositions.

Mr. Merkley, we'll recognize you.

MR. MERKLEY: Thank you, Judge. I know the Court's read the parties' submissions, so I'll get right to the point. This motion is about fundamental fairness and due process. The State often characterizes this case as the largest case in the State's history. The State elected to sue more than a dozen different opioid manufacturers on a false marketing theory and seek billions of dollars in damages in penalties.

Now, to establish its claims, the State's been afforded broad, extremely broad discovery, including 80 hours of corporate testimony, covering 43 topics for each defendant group, a total of 240 hours corporate testimony, covering 129 topics.

And just last week, we got notice they want more, and they're going to take the position that they get even more hours. And in response to the State's sweeping allegations, in an effort to fairly prepare to defend this case at trial, the Teva defendants are merely seeking nonduplicative depositions of the State only on factual, not legal or expert, bases for

the allegations and the claims the State has asserted. Fact discovery ends in four weeks, and these depositions are critical to Teva's preparation for trial.

Now, the State has opposed all but six of the depositions on five grounds, and I'll get to those separately in a second. But before I get to the arguments, I need to note for the record the broad standard of discovery applicable in this case.

Under 12 OS Section 3226(B)(1)(A), quote: Parties may obtain discovery regarding any matter not privileged which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the party's relative access to relevant information, the party's resources, and the importance of discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit.

The State doesn't dispute relevance in this instance. There can be no credible dispute that the information sought is important to the issues at stake. We're talking about the factual support for the State's specific allegations of liability.

And, your Honor, the amount in controversy certainly favors permitting discovery. The State itself calls this case the largest case in the state of Oklahoma's history. And it's

seeking billions of dollars in damages and penalties.

Now, the State's first argument, Judge, is the notice seeks to depose witnesses twice. And the State argues that the testimony overlaps with testimony provided by three other witnesses. That first witness, your Honor, is Jeff Stoneking.

Mr. Stoneking is the State's third party eDiscovery expert from Tennessee. He was presented by the State to talk about the existence and location of electronic information and how the State goes about finding it and producing it; e-mails and databases.

He testified he only learned of this lawsuit's existence five weeks before he was put in the stand to testify. His deposition had nothing to do with the factual basis for the claims asserted in this lawsuit. And I'll submit to the Court there's zero chance, if these depositions are permitted to go forward, that the State would designate him to testify about the factual basis for the claims made in this lawsuit.

And I'll tell you, your Honor, the State makes the point, Well, you didn't ask him about that stuff in the deposition; Teva was there, and they didn't ask him. I'll tell you exactly what would have happened if I would have sat down in that chair and asked that witness, Mr. Stoneking, about the factual basis for some of the allegations made in this lawsuit. Mr. Duck defended it.

He would have looked at me like I'm crazy to start with,

and then what he would have done is he would have made an objection on the record. And you can see in our opening brief, it's on page 8, Based on some theory that doesn't exist in Oklahoma law and say that I didn't cross-notice the deposition so I can't ask him about any questions, you'll see on page 8 where we cite Mr. Duck did that exact same thing with respect to Mr. LaFata's attempt to reserve his right to question the witness.

That concept doesn't exist in Oklahoma law. I haven't seen it in the statute, I haven't seen it in the cases, didn't learn it in law school. But that's what Mr. Duck would have done.

So the argument about, Well, you could have asked every one of these witnesses questions about the factual basis for what we say about Teva should fall on deaf ears. Number one, I can't. It's outside the scope of the notice. Number two, Mr. Duck wouldn't have allowed me to.

And frankly, your Honor, I'm shocked that the State argues that there could be any overlap with Mr. Stoneking's eDiscovery testimony. The second was Jessica McGuire. Ms. McGuire is the administrator for the State's prescription database.

Nice lady. She was presented by the State, testified about how that database works. Her deposition had nothing to do with the factual basis for the claims in this lawsuit.

The third one they reference is Ms. Jessica Hawkins.

Again, very nice lady. She's the Director of Prevention Services for the Oklahoma Department of Health.

She was presented by the State to testify about certain policies and procedures of the State and the actions the State has taken to date to abate the opioid epidemic. Her deposition had nothing to do with any actions Teva has taken or anything Teva allegedly did to justify the State's claims.

She did testify to some extent about the opioid epidemic, but her testimony was limited to what the State has done to fix it, not what Teva has allegedly done to cause it. Simply put, not one of these witnesses has either testified or been noticed to testify about the topics for which the Teva defendants seek testimony. Neither the testimony nor the notices are the same.

And, your Honor, it's irrelevant -- and the State makes this argument. It's irrelevant that the State may choose to present the same individual to testify on these topics if they go forward. We, Teva, have designated the same witness to testify on every topic noticed by the State thus far.

John Hassler, great guy from Kansas City, he spent several days and numerous hours answering the State's questions. I think four or three -- three or four of the lawyers that have sat down to ask him questions are in the courtroom today for the State.

But we made the decision to put him up for a deposition on numerous topics. We could have chosen someone else. State has

the same prerogative. It doesn't have to put the same witness up again. It can pick any witness to testify on any of the topics we've noticed. Its only obligation is to prepare the witness to give us the testimony. The bottom line is the topics are different and the depositions are different.

The State's second argument is that the information sought is precluded by your prior rulings. And we've seen some variation of this argument over and over and over again, including, I think four or five times now, on the criminal and investigative files.

The State argues that the information sought is somehow precluded by your rulings on the criminal and investigative proceedings, or your rulings on provider and patient records. Like the first argument, it's simply not true.

With respect to criminal and administrative proceedings, we're not going to ask about anything that you've not already told us we're entitled to ask about. With respect to doctor and patient information, you've told us we can't go get the identities. We're not going to ask about them.

And if the State suspects that I'm not telling the truth about that, they can object at the deposition and instruct the witness not to answer on those particular questions. In fact, that's the procedure that Oklahoma law has in place under the discovery code for dealing with these kind of issues.

12 OS 3230(E)(1) expressly provides, quote: A party may

instruct a deponent not to answer when necessary to preserve a privilege or work product protection, closed quote.

There's no basis to quash a deposition notice in its entirety just because the State has an unfounded suspicion that we're going to go in there and ask about stuff you've told us we can't ask about it.

We're not going to do it. But if for some reason we inadvertently do it, get in the throes of the depositions, and ask a question that they think's out of bounds, they can catch it, they can instruct the witness not to answer it.

State's third argument is that the information is expert discovery. And I want to make sure I'm clear on that, Judge. That argument is also untrue. We are not seeking expert opinions in these depositions. We are seeking the facts that underlie the State's claims.

The experts may rely on those same facts, but that doesn't preclude me from taking a deposition to determine whether those facts are indeed true. I can't be forced to sit and wait for the State's experts to tell me what the facts are.

An expert may say it and rely upon it, but that doesn't make it true. And the State's experts have and the State's experts may have and in my opinion I submit, in fact, have the facts wrong, and I'm entitled to take depositions to prove it.

The end of the day, I get to stand before you in Daubert hearings if they've got all the facts wrong and making their

opinions unreliable and argue that to you. I can't do it if I don't know what the facts are from talking to the State's witnesses.

Also, if they get past Daubert and they go to a jury trial, I've got to be able to show a jury the State's facts are wrong. I can't do it if you don't let me take the depositions.

Fourth argument, Judge, is that the depositions are contention depositions. And first I want to make the point there's nothing wrong with a contention deposition, especially at this stage of the case.

The State makes -- cites a North Carolina case for the proposition that contention interrogatories are disfavored. But the Oklahoma Discovery Code expressly provides the contrary. Stating, quote: An interrogatory is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to the application of law to fact. The Court may order that such interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or a later time, closed quote.

So to the extent some of the deposition topics combine facts, contentions, that's okay under Oklahoma law. Discovery ends in four weeks. It's time for the State to tell us what the facts are that they're relying upon to hold our client's liable for billions of dollars in damages and penalties.

The State's final argument, your Honor, is that the

depositions are premature. That's similar to the prior argument. I only address it separately because the State makes it with respect to more than just the contention depositions.

Judge, these depositions are not premature. We are now four weeks from the close of discovery. If the State wants to delay setting the depositions until the last two weeks, we can, but that's just going to make those last two weeks an absolute nightmare.

Nevertheless, there's no reason not to at least set them now. If they want to put them in the last two weeks, we'll agree to it. We'll sit down with a calendar, we'll put it together. But we only have four more weeks. We have to be able to take the discovery.

Unless you have any questions, that's all I have.

THE COURT: I don't have any.

MR. MERKLEY: Thank you.

THE COURT: Thank you, Mr. Merkley.

Mr. Whitten?

MR. WHITTEN: I will be brief, which should be refreshing.

There are two parts to this, and I'll be honest with you, your Honor, I'm not in the weeds on some of the specifics. So I want to address what I think are the substantive arguments, and I'm going to ask Mr. Duck to respond to the specific arguments -- you heard his name mentioned -- if that's okay

with your Honor.

THE COURT: That's fine.

MR. WHITTEN: First, the way my friend Nick has argued this is interesting. I was there when the first one was argued in front of Judge Hetherington. They lost. They put a tremendous amount of time and effort into that in the briefing and the argument. So cleverly this morning what they've done is they've tried to pivot a little bit.

I submit to you there's a reason we had a special master. It was their idea, but we've embraced it. And the special master, Judge Hetherington, put a lot of time and a lot of effort -- he's sitting here today -- but he put a lot of work into this, and he's got to have some discretion. He was in the weeds on this, certainly, more than I was.

But essentially, what they're doing is they're asking the Court to reconsider what Judge Hetherington did, and I submit that should not happen. Judge Hetherington ruled against them for four reasons.

Number one, he ruled that it was largely duplicative as to topics for which the State had already produced a witness. He was in the weeds on this, he heard all the argument, he read everything, and that was his finding.

Number two, it sought some privileged information. I don't think I heard that addressed.

Number three, it sought information on topics where it was

better suited for expert testimony. And what you didn't hear this morning was the first motion that was ever filed in this case to stop someone from getting into topics that really are better suited for experts, was the defendants' motion. And it was sustained by Judge Hetherington. We were stopped from doing that. But here, the shoe's on the other foot, and he's stopped them from doing it here.

Number four, that it constituted improper contention discovery in several respects.

And number five, it contained topics that were either irrelevant or overly broad.

Now, what was true then and what he found then is still true today. This is just a do-over. There's not -- although they've argued it and put a different twist on it, they don't cite any new law. They don't cite any new facts.

They can't tell you and did not tell you that Judge Hetherington ignored some specific fact in the record or some specific law. He had a complete record. And so I think Judge Hetherington's order should be respected. It was the right ruling.

On the first point about the discovery code, 12 OS 3225 prohibits a deposition of a person who's already been deposed from being deposed a second time. And there's no question we're going to have to produce people again, if Judge Hetherington's order was overruled.

Now, I think it's important to note this is the same group of defendants that told us, You can't even pay your teachers, much less defend this case; we're going to work you so bad, you won't be able to defend this case. That's what they said then, that's what they're doing now.

And specifically, Jessica Hawkins, who works -- he was -- my friend Nick was wrong. She works for Terri White in the Department of Mental Health and Substance Abuse, not the Health Department. But Jessica Hawkins has taken, I don't know, probably at least a hundred or more hours of her time to prepare for these.

She's testified more than once, and we're going to have to drag her up here and produce her again. We're under serving our state's citizens now with the limited budget we have. They had a chance to do this. They had a chance to ask those questions. They shouldn't be able to do it again.

Now, with that said, those are our general objections. Judge Hetherington made the right decision. I would like for Mr. Duck, if it's okay with your Honor, to briefly address some of the very specific points.

THE COURT: I'll allow that.

MR. WHITTEN: Thank you.

MR. DUCK: Thank you, Judge. Trey Duck for the State. I just want to address a couple of points that Mr. Merkley raised.

The first point he made was quoting something that I had said in a deposition. And Nick and I have gotten to know each other pretty well in this case, and so well I think he predicted what I might do if future depositions move forward.

I have objected in the past to the defendants not cross-noticing six-hour depositions. We finish up a deposition, and they say, We want to leave this deposition open. It would be nice for us to be on notice if they want to take questions, but never once have we stood on that objection.

Never once have we prevented defendants from asking questions in these depositions. And never once have we come to this Court for a ruling on those objections. In depositions, we make objections on the record so that we can preserve them.

There are instances, many instances, in 30(b)(6) depositions where multiple defendants have asked questions. In fact, this week this happened. On Tuesday, there were three depositions going on simultaneously at our office. Yesterday, there was a deposition that lasted until 7:30 at night.

Unlike the defendants, we have never stood firmly on the six-hour rule unless it is unreasonably late. We've allowed defendants to continue past that when necessary or reasonable. We have never stopped a defendant from asking questions.

In fact, when I finish asking my questions every time, I ask if each representative for each defendant wants to ask questions. Usually, they decline. But often, they ask a few

questions.

In fact, in a 30(b)(6) deposition this week, Teva was present, as Teva's present in all 30(b)(6) depositions the State has sat witnesses for, and Teva asked questions. They only asked three questions; that was their choice. But that's the way depositions work.

And Teva's been on notice for these 30(b)(6) topics. They're primarily topics noticed by Purdue months ago that we've prepared witnesses on. They're usually general topics that relate to the way the State does things or the way the State views what has happened to its agencies. And the answers are relevant for all of the defendants.

I suspect that's why the other defendants don't ask follow-up questions, because they can use the 30(b)(6) testimony that was elicited by a single defendant in the deposition.

Another thing about these contention depositions, if you look at the actual topics, they're very precisely worded. And, you know, we as lawyers like certainty, and we want to know what it is that we're dealing with.

These particular topics are an improper attempt to box the State in before we've even had a chance to review all the documents that have been produced in this case. We met and conferred on this. I was on the meet and confer with Harvey Bartle, and we asked, Hey, on a lot of these contention topics,

you know, you're asking for every single, you know, XYZ fill-in-the-blank that the State can identify or point to.

Well, Judge, we can't be in a position, number one, to identify all of those at this juncture before discovery's over; and second, to have a witness memorize them. So, for instance, name every single misrepresentation that Teva defendants have made with respect to opioids.

Judge, they're countless. There are so many of them that we could never sit a person to actually testify about every single misrepresentation that these defendants made about opioids. We encounter a new one every hour looking through documents in this case.

So what we said to the lawyers on the meet and confer is, Hey, let's have an agreement that this isn't going to box us in and that we continue to move forward, and we can use additional misrepresentations at trial. Why don't you all step back from this every single language that you've got in your topics, and they refused to do it. So that's why we can't do that.

If they could limit these topics to something that is, you know, not unreasonably overbroad, which is one of the reasons that Judge Hetherington quashed them, then we'll talk about it. And we've asked them to come back to us with topics that may work.

Now, of course, those topics, if they can narrow them, should be topics that we have not sat a witness on already.

And the fact of the matter is we have sat witnesses on numerous topics for numerous days after weeks and weeks of preparation.

Some of their preparation will have gone stale. It's the way the human mind works. And the timing of these notices is not coincidental. And Reggie just mentioned it briefly, but you weren't here for this, Judge; it was a discovery hearing with Judge Hetherington.

But we were taking, you know, three or four depositions a day. The calendar was crazy. And we had some scheduling issues with depositions that we got worked out. But Mr. Bartle for the Teva defendants said on the record, If you all think the calendar's crazy now, just wait until we start serving our deposition notices at the end of discovery.

Well, Judge, we're here. And that's exactly what they've done. They've done it on topics that we've already sat witnesses for. They've done it on unreasonably broad, impossible topics that we simply can't sit a witness for, no reasonable party would ever agree to sit a witness on. And we would ask that we be given the same relief that Judge Hetherington already gave us and that that relief stay in place.

There are still 30 days or 29 days left in discovery. Under the deposition protocol, that's enough time for the Teva defendants to work with us, to try to submit some deposition requests that actually make sense that are workable. And we'll

do our best to sit witnesses on new topics that make sense and that are reasonably worded.

Thank you, Judge.

THE COURT: Thank you.

MR. MERKLEY: Briefly, Judge. I've got a lot to respond to, but I think I can do it quick.

With all due respect to Mr. Whitten and Mr. Duck, it shouldn't go unnoticed by the Court that not one of those arguments addressed the substance that I just went through with you where we talked about the actual witnesses, including Mr. Stoneking, an eDiscovery expert from Tennessee that's going to have to be sat again for some reason to come tell Teva what it did in Oklahoma to justify fraudulent marketing allegations and billions of dollars in damages.

The whole sum and substance of their argument is, Judge, just ignore it and defer to Judge Hetherington, and let's get down the road. I addressed the duplicative argument. It's simply not true. I talked about the specific witnesses. I talked about the specific topics for which those witnesses testified. I showed you they absolutely do not overlap. Neither Mr. Whitten nor Mr. Duck stood up here and showed you how they do overlap.

They're not sitting witnesses again specifically for my depositions. If they choose to sit one for my depositions, which are on totally different topics, that's their

prerogative. We do it ourselves.

And Mr. Whitten points out or he says that the rule prohibits sitting witnesses a second time, and that's simply not true. As I told you, I've sat a witness a number of times. They all know Mr. Hassler. They've all deposed him.

And I realize Mr. Whitten isn't involved much with the depositions of his own witnesses, but his folks here are putting up witnesses more than once. Sometimes on corporate rep topics, and they turn around and they're putting them up in their individual capacity. There are a number of those. Nothing prohibits that.

Mr. Whitten said that the privilege objections were not addressed. They were. Their privilege objections aren't truly privilege objections, so I can understand why it was missed. Their privilege objections are what they want to know, you've already told them they can't have, doctor and patient identification.

Told you we won't ask that. And they can be at the deposition, and if they want to shut us down, if we happen to get into that, and ask for an identity of a patient or a doctor, and they want to shut us down on that, we can save that for a later day. But that's not the intent of what we're going in there for.

I don't know if the Court cares much to get into this, but I can explain the difference between the defendants' motion,

which prohibited deposition testimony of a corporate rep on future harm associated with the opioid epidemic. What Judge Hetherington did do was make us sit a witness on past actions we've taken and present actions we've taken.

It doesn't have anything to do with future. I'm not asking them to tell us about the future. I'm going to ask their experts to tell us what they think needs to be done in the future. What I'm asking about, which is not even the opioid epidemic, I'm asking them specifically about the allegations they make against my client and what evidence they have to support it.

With respect to the cross-notice thing, still, it's a concept that doesn't exist. It's not a situation where we're running out the time or that we've run out the six hours and then we want more questions. We all should have the opportunity to ask questions, and we shouldn't be told, even if it's not the time limit, that we can't ask questions because we didn't shuffle a piece of paper across the board that says, Me too. That's not the way it works in Oklahoma. Never has.

One party notices a deposition. The notice says everybody's invited to attend and cross-examine. The problem is and where we've run into disputes is the State wants to run out the clock on the full six hours and not give the defendants time to ask questions. That's obviously unfair.

I don't know how we're going to fix that. I guess

ultimately we're going to have to address it with Judge Hetherington, but we've got to have the opportunity to ask questions, even if it means I'm going to have to shuffle a subpoena, a second subpoena, or another notice, just burn some more trees so that everybody's clear we want to ask questions.

In open court, I'll tell them all right now, for every deposition that's noticed, we want the opportunity to ask questions.

Finally, Judge, on the contention topics, it's good to know they're willing to sit this witness for the contention topics, and all we're talking about is when. It's unfortunate that the State hasn't had the opportunity to look through the documents that we've been producing to them on a rolling basis.

If the State wants to agree and put the witnesses up on the contention topics and allow us to take the depositions after the discovery cutoff, when the discovery is concluded, and the universe -- the documents they plan on using at trial is confined so that I know exactly what I'm facing when I walk into the courtroom at trial, I'm happy to schedule that deposition at the conclusion of the discovery cutoff. We can work with them, whatever they want to do on that.

What I don't want is to take that deposition on X date and then have them come in after the discovery cutoff and have hundreds of more documents that they want to use at trial and that their witness didn't say they were going to rely upon and

just surprise me with it because I took the deposition before the discovery cutoff.

There's a reason we waited on contention depositions until the end of discovery. It wasn't to overload them. It was because we knew we would face the objection, if you want to take a contention deposition in the middle of the discovery period, we're not ready. So we save it to the end. We're at the end. We have four weeks, and we need to take these depositions.

Thank you, your Honor.

THE COURT: We're going to take just a ten-minute break. We're going to give everybody a chance to stand up, stretch, go to the bathroom, get a drink. Let's start back here right after 10:40. Okay?

MR. MERKLEY: Thank you, Judge.

(A recess was taken, after which the following transpired in open court, all parties present:)

THE COURT: Invite you all to get back, settled down. I think Mr. Merkley was about to get up, is that right, or I can't remember who was before we broke.

MR. DUCK: I think he had just sat down.

THE COURT: It's all a blur.

MR. MERKLEY: I'll get back up and go some more if you want, Judge.

THE COURT: No, I don't think you need to.

Mr. Duck, you're recognized.

MR. DUCK: Thank you, Judge. Couple of quick points.

Nick said we hadn't addressed his arguments. I think I can do that fairly easy. We raised this Jeff Stoneking discovery deposition, which I'm sure you could not find to be more boring. But they've asked for a topic on the discovery process.

One, we received a list of, you know, 40-something topics, and one of them we thought -- maybe they can correct me if I'm wrong -- related to the discovery process. We sat a witness on that earlier in the case. It was the first deposition in the case, in fact, and there's no need for us to sit a witness on it again. So the process is the process.

For Jessica Hawkins, up to ten of the topics on Teva's list related to abatement, what the State has done to address this crisis. She has sat for, I don't know, three days. And, in fact, I believe Judge Hetherington ordered her back for one of those days.

And so she's sat in giving all the testimony she's got on what the State has done to address the crisis, and Teva's topics overlapped with that. There's just no reason for us to sit her again. The testimony's there.

And then, you know, Nick mentioned Mr. Hassler, who has sat for, I don't know, ten days for Teva, all on different topics. In fact, I think we're close to being done with Teva's

topics. That's not what we're talking about.

We'll certainly bring back the same witness to testify about different topics that haven't been covered yet. In fact, I'm sure we will. You know, we haven't finished all the topics, and for all I know, Jessica Hawkins may come back for new topics she hasn't testified on before. That's different.

But I think the overall point, Judge, is this. Judge Hetherington has a year's worth of institutional knowledge on all of the details about how we got here today with respect to 30(b)(6) depositions.

He's heard it all. He's seen it all. He knows the State's witnesses, who we've sat, what kind of questions have been asked, who wants what. He's presided over hearings in the middle of depositions where all of the parties are present.

And we think that based on all of his experience and knowledge with respect to this process and what's happened, the order he entered quashing this 30(b)(6) notice should stand.

Thank you, Judge.

THE COURT: Thank you, Mr. Duck.

Mr. Merkley, I'll give you the final word since it's your motion.

MR. MERKLEY: I think maybe a lot of our problem is the State's misunderstanding of what we're looking for. With respect to the Jessica Hawkins and the abatement example, I want to make clear I'm not looking to determine again what the

State has done to address the opioid epidemic.

What I'm looking for is what the State says Teva has done to cause the opioid epidemic. Two totally separate things. Teva's entitled to know, as a matter of fundamental fairness and due process, what is the State saying we did outside of conclusory allegations in a petition. We're entitled to take discovery on that. We have to take discovery on it.

THE COURT: Thank you.

A lot's been said about the fact that, you know, this is an appeal, basically, of an order by the discovery master. And you know, certainly, we can all agree that Judge Hetherington has a lot more time invested in these matters.

I do have the benefit of reviewing those transcripts. I won't say I've read them all word for word, but I've reviewed a lot of them and certainly you all cite them in your briefs and I have the benefit of discussing those matters with you and with Judge Hetherington.

My recollection is that the discovery master has said that if there are specific topics that arise as discovery unfolds, then the decision on limiting these depositions would be reconsidered, and that's what we're here on today.

It's my understanding in these matters that I think it's consistent with previous rulings, previous orders from Judge Hetherington in the scope of discovery that Teva be allowed limited depositions.

I'm prepared to allow them to go forward with those notices on new topics, so long as they don't overlap, they're not duplicative. I would like to limit those to four hours, and that would be exclusive of cross-examination. And those would need to be completed by March 15th.

MR. MERKLEY: Thank you, Judge.

THE COURT: Okay.

MR. DUCK: Just for clarity, Judge, we'll receive a new notice, new topics from Teva, so we can look at what they want to do?

THE COURT: Yes.

MR. DUCK: Thank you.

MR. MERKLEY: But just to be clear, if it's going to be the topics that we've already -- we'll renotice them for dates and stuff --

THE COURT: Just renotice them.

MR. MERKLEY: It's going to be the same topics we've addressed. I don't want to start the meet and confer and have another hearing process over again so that we don't get to do this by March 15th.

THE COURT: Yes.

MR. MERKLEY: Thank you.

THE COURT: Okay.

MR. DUCK: Well, I'm still confused. I'm sorry. I mean, you said new topics which don't overlap that are limited.

My understanding is the current notice has been found to be overlapping and unlimited. So do we get a new notice that has more limited topics than the ones they've already -- I mean, I just don't want to get the same notice again.

THE COURT: Sure.

Mr. Merkley, what I heard you say here this morning in the courtroom is that you're not going to simply ask for depositions on topics that have already been covered; that you're seeking information specific to Teva. Is that correct?

MR. MERKLEY: That's correct.

THE COURT: Okay. So I would expect that those deposition notices would reflect what you've represented here in court this morning.

MR. MERKLEY: That's correct, and I'm happy to do that. What I just want to make clear is when I do do that, we're going to set the depositions and go forward; we're not going to start a three-day meet and confer process, another week hearing with Judge Hetherington, and start that process all over again, because we only have four weeks.

And I think I'm hearing the State saying we don't have to do that and they will agree to sit this witness once I revise and send out individual notices, but I want to make that clear on the record so that we're not back here doing this again on March 14th, one day before the 15th.

THE COURT: Well, I would hope that you all can meet

and confer on that, but I don't think it's proper to automatically extinguish any side's right to complain or to bring up something if they think they do need to bring it to the discovery master. I'm not inviting that or encouraging that, but I don't think I can just say, no, the State has to just take whatever they get.

If they have a good faith reason to believe that it violates a previous ruling, then I suspect that they would be able to bring that to the discovery master.

MR. MERKLEY: Fair enough, Judge. I'll do my very best to make sure there's no violation.

THE COURT: Thank you, Mr. Merkley.

MR. DUCK: Thank you, Judge.

THE COURT: Mr. McCampbell?

MR. MCCAMPBELL: Yes, your Honor. We have -- if the Court's done with the motions that are set, we have a couple of logistics things we would like to talk about in the course of getting this ready?

THE COURT: Sure.

MR. MCCAMPBELL: One of the things would be hearing dates with your Honor and with Judge Hetherington. The last time we were here, Judge Hetherington brought up the idea there could be additional hearing dates scheduled. I remember March 4 was one of the dates he said. I don't know if that date is still available.

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

NOTICE TO TAKE SECTION 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE REPRESNTATIVE(S) OF THE STATE

To: State of Oklahoma

Via Electronic Mail

Bradley Beckworth
Jeffrey Angelovich
Lloyd Nolan Duck, III
Brooke A. Churchman
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Glenn Coffee
Glenn Coffee & Associates, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102

EXHIBIT
B

Please take notice that, pursuant to 12 O.S. § 3230(C), Defendants Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. (collectively, "Teva Defendants") will take the deposition upon oral examination of one or more corporate representative(s) of Plaintiff the State of Oklahoma (the "State") on the matters described in **Exhibit A** on **March 14 & 15, 2019, starting at 9:00 AM**, at the offices of Whitten Burrage, 512 North Broadway Avenue, Suite 300, Oklahoma City, Oklahoma 73102.

This deposition is to be used as evidence in the trial of the above action, and the deposition will be taken before an officer authorized by law to administer oaths. It will be recorded by stenographic means and will be videotaped. It will continue from day to day until completed.

Pursuant to 12 O.S. § 3230(C)(5), the State is hereby notified of its obligation to designate one or more officers, directors, managing agents, or other persons who consent to testify on the State's behalf about all matters described in **Exhibit A**. Please take further notice that each such officer, director, managing agent, or other person produced by the State to testify under 12 O.S. § 3230(C)(5) has an affirmative duty to have first reviewed all documents, reports, and other matters known or reasonably available to the State, and spoken to all potential witnesses known or reasonably available to the State, in order to provide informed and binding answers at the deposition(s).

DATED: March 10, 2019.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 10th day of March, 2019, to the following:

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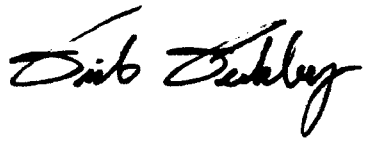


Nick Merkley

EXHIBIT A

TOPIC #	TOPIC DESCRIPTION
6	The nature and circumstances regarding any prescription of any Opioid manufactured by any Teva Defendant, including Actiq and Fentora, that the State contends caused it harm and for which it is seeking to recover damages in this lawsuit.
7	For each prescription identified in response to Topic No. 6, whether or not the prescription was reimbursed by Plaintiff and if so, the circumstances surrounding the coverage decision.
9	Any allegedly false or fraudulent claims that were submitted for payment to the Oklahoma Medicaid Program (or any other of Your Programs) that the State seeks to attribute to (a) Cephalon; (b) Teva USA; (c) Watson; (d) Actavis LLC; and/or (e) Actavis Pharma.
11	Your understanding of the proper prescribing and appropriate use of Actiq, Fentora, or other prescription Opioids manufactured by any of the Teva Defendants during the Relevant Time Period.
12	Your understanding of the risks of Actiq, Fentora, or other prescription Opioids manufactured by any Teva Defendant during the Relevant Time Period.
36	Identification of and the circumstances behind all "unnecessary" or "excessive" prescriptions within the 245 prescriptions identified in paragraph 37 and Exhibit 3 of the Petition, including, but not limited to, the factual basis for alleging the prescription w "unnecessary or excessive" for each prescription.

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.,	STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY } FILED OCT 22 2018 In the office of the Court Clerk MARILYN WILLIAMS
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

EXHIBIT C

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.

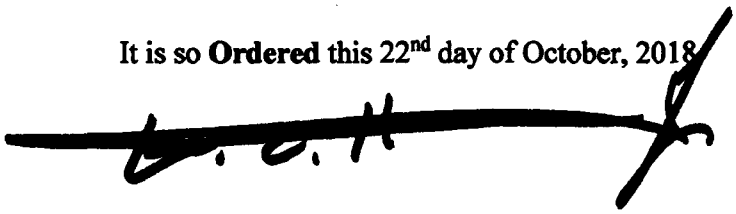
9. **Watson Lab's Motion to Compel Investigatory Files**

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

EXHIBIT D

FILED UNDER SEAL
PURSUANT TO
AMENDED PROTECTIVE ORDER
DATED 04/16/18