



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

PART A

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**

**Case No. CJ-2017-816
Honorable Thad Balkman**

**William C. Hetherington
Special Discovery Master**

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

MAY 24 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**MOTION PURSUANT TO 12 O.S. § 2509(C) TO DISMISS THE STATE'S PUBLIC
NUISANCE CLAIM OR, IN THE ALTERNATIVE, EXCLUDE EVIDENCE THAT THE
TEVA AND ACTAVIS GENERIC DEFENDANTS' MARKETING INFLUENCED ANY
INDIVIDUAL OKLAHOMA HEALTHCARE PROVIDER**

I. INTRODUCTION

Pursuant to 12 O.S. § 2509(C), the interests of justice require that the State of Oklahoma's public nuisance claim be dismissed or, at a minimum, that the State be excluded from introducing any individualized evidence that the Teva and Actavis Generic Defendants'¹ allegedly false marketing influenced any individual Oklahoma healthcare provider into writing a medically inappropriate, harmful, unnecessary, or otherwise improper opioid prescription. This Court previously sustained the State's invocation of privilege and refusal to produce non-public investigatory files and information maintained by Oklahoma law enforcement and medical licensing agencies related to opioid prescribing of Oklahoma healthcare providers. Section 2509 provides that where a governmental claim of privilege is sustained and thus deprives a defendant of evidence material to its defense, the Court "*shall make any* further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the actions." 12 O.S. § 2509(C) (emphasis added). Such orders are warranted here.

The State's central allegation is that allegedly false marketing by the Teva and Actavis Generic Defendants (and other manufacturers) of their opioid medicines (*i.e.*, the public nuisance) "convinced[d] medical professionals to prescribe more opioids to a broader range of patients," which in turn "created an opioid epidemic in Oklahoma." Pet. ¶¶ 3, 118. The non-public documents and information in the State's possession about the criminal and other wrongful conduct of Oklahoma health care providers related to their opioid prescribing is therefore

¹ The term "Teva and Actavis Generic Defendants" is defined to include: Defendants Watson Laboratories, Inc., Actavis LLC, Actavis Pharma, Inc. (collectively, the "Actavis Generic Defendants") and Defendants Cephalon, Inc. and Teva Pharmaceuticals USA, Inc. (collectively, the "Teva Defendants").

undeniably relevant and material to the Teva and Actavis Generic Defendants' ability to challenge the State's sweeping allegations and defend this case. Those withheld documents likely include patient complaints and other initiating documents, investigator reports, witness statements, statements from the doctors themselves, undercover recordings, prescription drug monitoring program records, information about confidential informants, and other information regarding the healthcare providers' opioid prescribing practices.² In sum, by invoking the privilege to deny the Teva and Actavis Generic Defendants access to that material evidence in the State's possession that directly relates to the healthcare providers that the State alleges they improperly influenced, the State has consistently denied these Defendants relevant evidence that would show their marketing did not influence those doctors or cause any improper opioid prescription in Oklahoma, but rather that these Oklahoma healthcare providers engaged in improper and potentially criminal behaviors resulting in the improper distribution of opioids in the State.

Dismissal of the State's public nuisance claim is therefore appropriate. Although it does not appear that § 2509 has been applied by Oklahoma courts, the United States Supreme Court has made clear that the successful invocation of the analogous "state secrets" privilege under federal law works both ways—and comes with consequences. That is, where the government is the plaintiff and successfully invokes the privilege to deny the defendant access to discovery to defend against that action, it would be "the height of injustice" to allow the government to continue its action. *Gen. Dynamics Corp. v. United States*, 563 U.S. 478, 487 (2011) (Scalia, J.) (emphasis added). It would be the height of injustice in this case as well, where the State seeks over \$17

² Despite the requirements of 12 O.S. § 3226(5), the State has never provided a privilege log in this case and, in fact, the Court recently ruled that the State does not have to do so. As a result, the Teva and Actavis Generic Defendants have been denied access to the full scope of the documents that have been withheld.

billion from the Teva and Actavis Generic Defendants because, it asserts, they are liable for the entirety of the decades-long, multifaceted opioid crisis in Oklahoma. The State's public nuisance claim therefore should be dismissed.

In the alternative, the State should be precluded from introducing any evidence that the Teva and Actavis Generic Defendants' marketing influenced the opioid prescribing of any individual Oklahoma healthcare provider. As noted above, the State's case hinges on its allegation that the Teva and Actavis Generic Defendants' false and deceptive marketing of their opioid medicines to Oklahoma healthcare providers was a public nuisance that "created an opioid epidemic in Oklahoma." Pet. ¶¶ 3, 118. The State cannot have it both ways. It cannot, on the one hand, assert that the Teva and Actavis Generic Defendants caused a decades-long statewide opioid crisis by improperly influencing doctors but, on the other hand, invoke the privilege to deny the Teva and Actavis Generic Defendants access to important documents and information in the State's possession that would challenge and potentially rebut the State's claim. Principles of due process and fundamental fairness prevent the State from using the government privilege as both a sword and a shield over such critical information. .

The State chose to bring its sweeping claims yet also assert the governmental privilege over critical individualized evidence that challenges these very claims—and that is critical to support the Teva and Actavis Generic Defendants' defenses. It must now bear the consequences of that decision. Section 2509 has empowered Oklahoma courts to dismiss claims or exclude evidence for this very reason: to protect parties from being denied due process because of the State's invocation of government privilege. The Teva and Actavis Generic Defendants' motion should be granted.

II. BACKGROUND

A. The Teva And Actavis Generic Defendants Have Long Sought Discovery Into The State's Investigations About Improper Prescribing, Distribution, And Dispensing Practices—Over Which The State Has Asserted The State Secrets Privilege.

On May 10, 2018, Watson Laboratories, Inc. served the State with Requests for Production (the “RFPs”). The RFPs sought documents pertaining to criminal investigations, administrative investigations, and other documents in the State’s possession related to the opioid prescribing practices of eight specifically identified Oklahoma healthcare providers, other Oklahoma healthcare providers, and a specifically identified Oklahoma pain management clinic. Ex. 1, Watson’s RFPs (5/10/18). After the State objected to producing this relevant information on the basis of the “state secrets” privilege, among other reasons, Watson filed its Motion to Compel Discovery regarding production of criminal and administrative files on October 4, 2018. Ex. 2, Watson’s Motion to Compel (10/4/18). The Special Discovery Master issued an Order denying Watson’s Motion to Compel on October 22, 2018, and Watson filed its Objection to the Special Discovery Master’s Order on November 13, 2018. Ex. 3, Watson’s Objection to Special Discovery Master’s Order (11/13/18).

In its objection, Watson argued, among other things, that its due process rights under both the United States and Oklahoma Constitutions would be violated if it was refused access to relevant information that directly contradicted the State’s claim that its alleged false marketing “convinced” Oklahoma healthcare providers to wrongfully prescribe more opioids. *See* Exs. 3 and 4, Watson’s Reply in Support of Objections to Special Discovery Master’s Order. In support of its arguments, Watson cited to civil forfeiture cases with parallel criminal proceedings where the courts stayed civil discovery because, otherwise, the government would be required to “to answer interrogatories concerning facts related to the criminal investigation or produce testimonial declarations from

officers who conducted the investigation . . .” *United States v. \$160,280.00 in U.S. Currency*, 108 F. Supp. 324, 326 (S.D.N.Y. 2015); *see also Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009)(“A district court may stay a civil proceeding in deference to a parallel criminal matter for other reasons, such as *to prevent either party from taking advantage of broader civil discovery rights . . .*”)(emphasis added).

Watson also explained that the Supreme Court’s decision in *General Dynamics* supported its position. There, the Supreme Court held that when, to protect state secrets, a court dismisses a valid affirmative defense to the government’s claims, the case could not continue, and the parties should be put into the same position as they were on the date of the filing. In discussing the implications of the invocation of the state secrets privilege, the Supreme Court made clear that if the shoe were on the other foot—that is, if it had been the government, like the State here, seeking to recover while invoking the state secrets privilege in a way that prevented the defendant from presenting a defense—it would be “the height of injustice” to allow the government to proceed:

It seems to us unrealistic to separate . . . the claim from the defense, and to allow the former to proceed while the latter is barred. It is claims and defenses *together* that establish the justification, or lack of justification, for judicial relief; and *when public policy precludes judicial intervention for the one it should preclude judicial intervention for the other as well*. If, in *Totten* [*v. United States*, 92 U.S. 105 (1876)], it had been the Government seeking return of funds that the estate claimed had been received in payment for espionage activities, *it would have been the height of injustice to deny the defense because of the Government’s invocation of state-secret protection, but to maintain jurisdiction over the Government’s claim and award it judgment.*

Gen. Dynamics Corp., 563 U.S. at 487 (emphasis added).

B. The Court Sustained the State’s Assertion of the State Secrets Privilege.

On November 29, 2018, this Court heard argument on this dispute. After hearing argument, this Court sustained the State’s objection as to the production of documents and

information related to on-going criminal and administrative investigations, and investigations that did not lead to formal charges or administrative proceedings. Ex. 5, Hearing Transcript (11/29/18) at pp. 77-121. The Court narrowly limited the State's required production to publicly available, unsealed documents from criminal, civil, and administrative hearings related to the prescription of opioids. *Id.* The Court then followed up with a written order on December 20, 2018. Ex. 6, Balkman Order (12/20/18). The Order required the State to produce documents from criminal, civil and administrative proceedings by the State against doctors relating to the prescription of opioids that were either (a) filed with a tribunal or (b) produced to an opposing attorney. *Id.* In sum, because of the State's invocation of privilege and the Court's resultant ruling requiring only limited production based on that privilege assertion, the Teva and Actavis Generic Defendants were improperly and unfairly denied access to highly relevant information in the State's files that was not already public.

The Order also directed the State to produce to Special Discovery Master Judge Hetherington, *in camera*, a list of healthcare professionals investigated by the State relating to opioid prescriptions but where the investigation did not result in proceedings. The Teva and Actavis Generic Defendants were not allowed access to these materials. On January 17, 2019, Judge Hetherington reviewed the list provided by the State *in camera* and held that the State may withhold all of these materials pursuant to its governmental privilege. Ex. 7, Hetherington Order (1/17/19). That list has never been disclosed to the Teva and Actavis Generic Defendants.

C. The State Has Continued To Withhold Critical Discovery And Information On The Basis Of The State Secrets Privilege.

Based on these orders sustaining the State's exercise of governmental privilege, the State continued to withhold material evidence during deposition of the State's corporate representatives. On May 21, 2019, the State presented four corporate representatives to provide testimony on the

topic of the State's investigation into, civil or criminal prosecution of, and/or discipline of doctors and pharmacists for the improper prescribing or diversion of opioids. Ex. 8, Amended Depo. Notice on Topic 17. The State presented representatives from the Oklahoma Medical Board (Lawrence Carter), the State Board of Osteopathic Examiners (Richard Zimmer), the Oklahoma State Board of Pharmacy (Gary Larue), and the Oklahoma Bureau of Narcotics and Dangerous Drugs (Chris Smith) to testify regarding this topic.

During those depositions, the State continued to invoke the privilege and this Court's prior order and instructed those witnesses not to answer no fewer than *64 different questions* by the Teva and Actavis Generic Defendants, including questions seeking details about several relevant topics:³

- Non-public investigatory files maintained by these agencies;
- Whether certain doctors or pharmacists had been criminally prosecuted;
- Whether State agencies received information about improper opioid prescribing by healthcare providers and chose not to initiate any disciplinary action;
- Why the State agencies allowed certain doctors and pharmacists to maintain their license once it received information about improper opioid prescribing; and
- Whether a recommendation was made for criminal prosecution of certain doctors or pharmacists.

In short, the State continues to assert the state secrets privilege over key investigative documents and information that directly rebut the State's theory of causation for its lone public nuisance claim.

³ Mr. Zimmer was given this instruction approximately 29 times; Mr. Carter was given this instruction 16 times; Mr. Larue was given this instruction approximately 10 times; and Mr. Smith was given this instruction approximately 9 times. The final deposition transcripts were not available at the time of this filing. The Teva and Actavis Generic Defendants will provide them when they are final, if requested by the Court.

III. ARGUMENT

12 O.S. § 2509(C) provides that:

If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the action.

This language is mandatory. A court “shall” issue all orders necessary to remedy the prejudice that flows from the assertion of a government privilege over material evidence. *Id.*

A. **The Teva And Actavis Generic Defendants Have Been Deprived Of Material Evidence And Severely Prejudiced By The State’s Assertion Of The Privilege.**

Here, the evidence of criminal, civil, and administrative investigations into the opioid-prescribing practices of Oklahoma healthcare providers withheld pursuant to the State’s governmental privilege goes to the essence of the State’s lone remaining public nuisance claim. The State alleges that Defendants “falsely represented and/or omitted the risks of addiction and falsely touted the benefits of [its] opioids.” Pet. ¶ 53. The State further alleges that these purported misrepresentations and omissions “convinced[d] medical professionals to prescribe more opioids to a broader range of patients,” which, in turn, “created an opioid epidemic in Oklahoma.” *Id.* ¶¶ 3, 75, 83, 118. The State “seeks to abate the public nuisance Defendants created and all necessary relief to abate such public nuisance.” *Id.* ¶ 120.

To succeed on its lone remaining public nuisance claim, the State must prove (among other things) that the Teva and Actavis Generic Defendants acted “unlawfully” and that this nuisance, in turn, affected “at the same time an entire community or neighborhood or considerable number of persons.” 50 O.S. §§ 1–2. The State has chosen to proceed on a theory that the Teva and Actavis Generic Defendants’ purported “false” marketing influenced Oklahoma doctors to improperly prescribe opioids. The Teva and Actavis Generic Defendants will defend this case,

among other ways, by contending that they did not improperly influence any Oklahoma healthcare provider's prescribing, including that they bear no liability where an Oklahoma doctor engaged in independent criminal or improper prescribing. In other words, the Teva and Actavis Generic Defendants cannot be held liable for illegal acts such as diversion of prescription medicines, willful ignorance of prescribing guidelines by doctors, and self-motivated acts by irresponsible and/or criminal doctors operating pill mills or otherwise knowingly distributing opioid medications for improper reasons. That is the real nuisance, not the alleged marketing by the Teva and Actavis Generic Defendants. Yet the evidence withheld by the State pursuant to governmental privilege is perhaps the *only* kind of evidence that would contain this fundamental information.

This Court sustained the State's invocation of governmental privilege over two types of evidence: (1) non-public investigator reports, evidence summaries, and witness statements for *all* criminal, civil, and administrative investigations related to the opioid prescribing practices of Oklahoma healthcare providers; and (2) *all* evidence related to such investigations where the investigation is either pending or closed without any finding of liability. *See* Exs. 6-7. The number and breadth of investigate materials withheld pursuant to the governmental privilege—and the identities of the Oklahoma healthcare providers involved in them—were also withheld from Defendants. *Id.*

Both of the categories of evidence withheld by the State are likely to contain evidence of willful, knowing and, indeed, criminal misbehavior by individual Oklahoma healthcare providers showing that the Teva and Actavis Generic Defendants' marketing did not cause the harm the State claims. By way of example, if the State investigated an Oklahoma healthcare provider who wrote a prescription for one of Cephalon's medicines (Actiq or Fentora) while operating an illegal pill mill, such evidence would help show that the independent conduct of that doctor caused harm to

the community—not the conduct of the Teva or Actavis Generic Defendants. That doctor's unlawful conduct would be the nuisance—not any marketing. Yet the State has asserted the state secrets privilege over all of this critical information.

This critical information also is precisely what the State further withheld during the deposition of its corporate representatives. The State instructed its four corporate representatives—which were required to provide testimony on the State's investigation into, civil or criminal prosecution of, and/or discipline of doctors and pharmacists for the improper prescribing or diversion of opioids (Ex. 8, Amended Depo. Notice on Topic 17)—not to answer approximately 64 different questions (or any follow-up questions) on the basis of the state secrets privilege. The State denied the Teva and Actavis Generic Defendants key information regarding, among other things: (1) whether certain doctors or pharmacist had been criminally prosecuted; (2) whether State agencies received information about improper opioid prescribing by healthcare providers and chose not to initiate any disciplinary action; (3) why these State agencies allowed certain doctors and pharmacists to maintain their license once it received information about improper opioid prescribing; and (4) whether a recommendation was made for criminal prosecution of certain doctors or pharmacists.

Given these assertions of privilege, the Teva and Actavis Generic Defendants do not even know the full universe of Oklahoma healthcare providers whom the State has investigated for improper and/or criminal conduct involving the distribution of opioids. But that information is in the possession of the State and was the proper subject of discovery. Absent this basic information, the Teva and Actavis Generic Defendants have no way of knowing which Oklahoma prescribers who wrote prescriptions of their medicines were investigated by the State for improper and/or criminal conduct and, thus, no way to do any follow-up discovery or analysis of these prescribers.

This is particularly prejudicial because the Teva and Actavis Generic Defendants have been denied discovery as to the names of each of the physicians who wrote the allegedly harmful prescriptions that the State contends are at issue.⁴ By preventing the Teva and Actavis Generic Defendants from obtaining information that is crucial to show that they did not engage in any public nuisance or cause any harm in Oklahoma, the State has clearly deprived the Teva and Actavis Generic Defendants of material evidence. This raises serious due process concerns.

The State is likely to argue that withheld evidence is not material because (i) the State does not seek to introduce any evidence at trial regarding the individual Oklahoma healthcare providers implicated by the withheld evidence or (ii) the contents of the withheld evidence do not reveal any misbehavior that is relevant to the damages it will seek at trial. The State is simply wrong. The withheld evidence is critical to the State's obligation to show that the Teva and Actavis Generic Defendants caused harm to an "entire community" of Oklahomans, as required to support its public nuisance claim. 50 O.S. § 2. The Teva and Actavis Generic Defendants have the due process right defend the case as they see fit, including showing that their marketing (the alleged nuisance) did not cause individual doctors to write improper prescriptions of opioid medicines. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). Worse yet, the State has conceded that *it has not reviewed* the materials it has withheld, Ex. 5, Hearing Transcript (11/29/18) at pp. 72, 88-89, and, thus, has no basis to claim that the withheld evidence fails to reveal any misbehavior relevant to its public nuisance claim. Because the State has no basis to avoid the mandatory language of § 2509(C), the Court must issue an appropriate remedy for the State's assertion of the privilege.

⁴ See Ex. 9, Order of Special Discovery Master (10/10/18) (denying Defendants' motion to compel discovery of claims data which would contain the names of the physicians who wrote the allegedly harmful prescriptions at issue in this action and the names of relevant patients); Ex. 5, Hearing Transcript (11/29/18) at pp. 74-75 (overruling Defendants' objection to Order of Special Discovery Master (10/08/18) and holding that claims data is "not relevant to this case.")

B. The Appropriate Remedy Is Dismissal Of The State's Public Nuisance Claim, Or, Alternatively, A Severe Preclusion Order.

The solution to the State's assertion of the state secrets privilege over relevant and material evidence is clear: dismissal of the State's lone remaining public nuisance claim. Indeed, in this very context, 12 O.S. § 2509(C) expressly empowers the Court to issue any order as the interests of justice require, including "dismissing the action[s]." That is the necessary remedy here because, without such information about the criminal conduct of doctors, pharmacists, and others, the Teva and Actavis Generic Defendants have been denied the due process right to defend against the State's claim. The State is seeking billions of dollars from the Teva and Actavis Generic Defendants in this action. They must be allowed to present all evidence to challenge and negate the State's claim. Because they have been denied that fundamental right by the State's assertion of the privilege, the interests of justice require dismissal.

Critically, other courts across the country have reached the same result in response to similar assertions of the "state secrets" privilege by the federal government. This Court should do the same. *See, e.g., Gen. Dynamics Corp.*, 563 U.S. at 487 (holding that government's invocation of governmental privilege required dismissal of all affected claims and counterclaims); *United States v. Moussaoui*, 382 F.3d 453, 474 (4th Cir. 2004) (holding that "[i]f the government refuses to produce the information [subject to governmental privilege]—as it may properly do—the result is ordinarily dismissal"); *Jencks v. United States*, 353 U.S. 657, 671 (1957) (holding that "the Government can invoke its evidentiary privileges only at the price of letting the defendant go free . . . [S]ince the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense") (alterations in original) (citations omitted); *Liuzzo v. United States*, 508 F. Supp. 923, 940 (E.D. Mich. 1981)

(interpreting language identical to 12 O.S. § 2509(C) and holding, in case where government defendant asserted privilege against plaintiffs, that “if protection of the [evidence subject to governmental privilege] truly deprives the plaintiffs of material evidence to prove their allegations, the court will follow the suggested procedure . . . and enter a finding of liability on the part of the defendant as to the claims dealt.”)

If the Court declines to dismiss the public nuisance claim (and it should dismiss such a claim), the interests of justice require a severe preclusion order that prevents the State from benefitting from its privilege assertion at trial. In particular, the State should be precluded from introducing any evidence that the Teva and Actavis Generic Defendants’ marketing influenced any individual Oklahoma healthcare provider into writing a medically inappropriate, harmful, or otherwise improper opioid prescription. 12 O.S. § 2509(C) (giving broad discretion to fashion a strong order, including “striking the testimony of a witness” or “declaring a mistrial”). At a minimum, such an order is necessary because the State’s privilege assertion has deprived the Teva and Actavis Generic Defendants of material evidence needed to refute the State’s core causation theory in support of its public nuisance claim. It would be the height of injustice to allow the State to profit from its privilege assertion.

IV. CONCLUSION

The Attorney General’s assertion of the state secrets privilege as discussed herein belies the State’s position that it wants the fact finder to have all the evidence upon which to judge this case. Clearly, the State would prefer to selectively reveal the facts and relevant evidence. Pursuant to 12 O.S. § 2509(C), because the State’s exercise of the state secrets privilege has deprived the Teva and Actavis Generic Defendants of material evidence needed to refute the State’s allegations that individual Oklahoma healthcare providers were influenced by their alleged marketing, the

interests of justice require dismissal of the State's public nuisance claim (which is founded on this very premise). In the alternative, the State should be precluded from introducing any evidence at trial that the Teva and Actavis Generic Defendants' marketing influenced any Oklahoma provider into writing a medically inappropriate, harmful, unnecessary, or otherwise improper opioid prescription.

Dated: May 24, 2019

Respectfully submitted,



Robert G. McCampbell, OBA No. 10390
Nicholas ("Nick") V. Merkle, OBA No. 20284
Leasa M. Stewart, OBA No. 18515
Jeffrey A. Curran, OBA No. 12255
Kyle D. Evans, OBA No. 22135
Ashley E. Quinn, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
T: +1.405.235.3314
E-mail: RMcCampbell@Gablelaw.com
E-mail: NMerkley@Gablelaw.com
E-mail: LStewart@gablelaw.com
E-mail: JCurran@Gablelaw.com
E-mail: KEvans@gablelaw.com
E-mail: AQuinn@Gablelaw.com

OF COUNSEL:

Steven A. Reed
Harvey Bartle IV
Mark A. Fiore
Rebecca Hillyer
Evan K. Jacobs

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street
Philadelphia, PA 19103-2921
T: +1.215.963.5000
E-mail: steven.reed@morganlewis.com
E-mail: harvey.bartle@morganlewis.com

E-mail: mark.fiore@morganlewis.com
E-mail: rebecca.hillyer@morganlewis.com
E-mail : evan.jacobs@morganlewis.com

Nancy L. Patterson
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002-5006
T: +1.713.890.5195
E-mail: nancy.patterson@morganlewis.com

Brian M. Ercole
Melissa M. Coates
Martha A. Leibell
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
T: +1.305.415.3000
E-mail: brian.ercole@morganlewis.com
E-mail: melissa.coates@morganlewis.com
E-mail: martha.leibell@morganlewis.com

Collie T. James, IV
MORGAN, LEWIS & BOCKIUS LLP
600 Anton, Blvd., Suite 1800
Costa Mesa, CA 92626
T: +1.714.830.0600
E-mail: collie.james@morganlewis.com

Tinos Diamantatos
MORGAN, LEWIS & BOCKIUS LLP
77 W. Wacker Dr.
Chicago, IL 60601
T: +1.312.324.1000
E-mail: tinos.diamantatos@morganlewis.com

Steven A. Luxton
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
T: +1.202.739.3000
E-mail: steven.luxton@morganlewis.com

*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 24rd day of May, 2019, to the following:

***Attorneys for
Plaintiff***

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
ATTORNEY GENERAL'S OFFICE
313 N.E. 21st Street
Oklahoma City, OK 73105

Bradley Beckworth
Jeffrey Angelovich
Lloyd Nolan Duck, III
Andrew G. Pate
Lisa Baldwin
Brooke A. Churchman
Nathan B. Hall

NIX, PATTERSON & ROACH
512 N. Broadway Ave., Ste. 200
Oklahoma City, OK 73102

Glenn Coffee
GLENN COFFEE & ASSOCIATES, PLLC
915 N. Robinson Ave.
Oklahoma City, OK 73102

Michael Burrage
Reggie Whitten
J. Revell Parrish
WHITTEN BURRAGE
512 N. Broadway Ave., Ste. 300
Oklahoma City, OK 73102

Robert Winn Cutler
Ross E Leonoudakis
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy.
Suite B350
Austin, TX 78746

<i>Attorneys for Johnson & Johnson, Janssen Pharmaceutica, Inc., N/K/A Janssen Pharmaceuticals, Inc., and Ortho- McNeil-Janssen Pharmaceuticals, Inc. N/K/A Janssen Pharmaceuticals, Inc.</i>	John H. Sparks Benjamin H. Odom Michael W. Ridgeway David L. Kinney ODOM SPARKS & JONES 2500 McGee Drive, Suite 140 Norman, OK 73072	Charles C. Lifland Jennifer D. Cardelus Wallace M. Allan Sabrina H. Strong Houman Ehsan Esteban Rodriguez Justine M. Daniels O'MELVENY & MEYERS 400 S. Hope Street, 18 th Floor Los Angeles, CA 90071
	Stephen D. Brody David Roberts Emilie K. Winckel O'MELVENY & MEYERS 1625 Eye Street NW Washington, DC 20006	Daniel J. Franklin Ross B Galin Desirae Krislie Cubero Tongco Vincent S. Weisband O'MELVENY & MEYERS 7 Times Square New York, NY 10036
	Amy R. Lucas O'MELVENY & MEYERS 1999 Ave. of the Stars, 8 th Fl. Los Angeles, CA 90067	Jeffrey A. Barker Amy J. Laurendeau Michael Yoder O'MELVENY & MEYERS 610 Newport Center Drive Newport Beach, CA 92660
Larry D. Ottaway Amy Sherry Fischer Andrew Bowman Steven J. Johnson Kaitlyn Dunn Jordyn L. Cartmell FOLIART, HUFF, OTTAWAY & BOTTOM 201 Robert S. Kerr Ave., 12th Fl. Oklahoma City, OK 73102		

*Attorneys for Purdue
Pharma, LP,
Purdue Pharma, Inc.
and The Purdue
Frederick Company*

Sheila L. Birnbaum
Mark S. Cheffo
Hayden Adam Coleman
Paul LaFata
Jonathan S. Tam
Lindsay N. Zanello
Bert L. Wolff
Mara C. Cusker Gonzalez
DECHERT, LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

William W. Oxley
DECHERT LLP
U.S. Bank Tower
633 West 5th Street, Suite 4900
Los Angeles, CA 90071

Britta E. Stanton
John D. Volney
John T. Cox, III
Eric W. Pinker
Jared D. Eisenberg
Jervonne D. Newsome
Ruben A. Garcia
Russell Guy Herman
Samuel Butler Hardy, IV
Alan Dabdoub
David S. Coale
LYNN PINKER COX & HURST
2100 Ross Avenue, Suite 2700
Dallas, TX 75201

Erik W. Snapp
DECHERT, LLP
35 W. Wacker Drive, Ste. 3400
Chicago, IL 60601

Meghan R. Kelly
Benjamin F. McAnaney
Hope S. Freiwald
Will W. Sachse
DECHERT, LLP
2929 Arch Street
Philadelphia, PA 19104

Jonathan S. Tam
Jae Hong Lee
DECHERT, LLP
One Bush Street, 16th Floor
San Francisco, CA 94104

Robert S. Hoff
WIGGIN & DANA, LLP
265 Church Street
New Haven, CT 06510

Sanford C. Coats
Joshua Burns
CROWE & DUNLEVY
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102


Robert G. McCampbell

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.

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

Defendants.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

**DEFENDANT WATSON LABORATORIES, INC.'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS FROM PLAINTIFF**

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

INSTRUCTIONS

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

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

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

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and Watson requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

- a. The date of the document;

- b. The author of the document;
- c. The recipient of the document;
- d. All Persons to whom copies of the document have been furnished;
- e. The subject matter of the document;
- f. The file in which the document is kept in the normal course of business;
- g. The current custodian of the document; and
- h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Watson in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

- 1. "Claim" is any request for payment or reimbursement.
- 2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Petition, e.g., ¶¶ 3, 22, 51, 67, 122.
- 3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.
- 4. "Petition" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.

5. "Defendants" are the individual Defendants named in the Petition.
6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.
7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other Electronically Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.
8. "Drug Utilization Review Board" is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.
9. "Educational Activity" refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.
10. "Electronically Stored Information" is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term "employee" includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)" is any Person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any Person or animal.

13. "Interrogatories" refers to Watson's First Set of Interrogatories served on you contemporaneously herewith.

14. "Key Opinion Leader(s)" or "KOL(s)" is used herein consistent with its meaning in the Petition, ¶ 58.

15. "Medication Assisted Treatment" is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

16. "Medical Necessity" has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

17. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma

State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

18. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a Patient's brain or body to produce an analgesic effect.

19. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

20. "Person(s)" is any natural or legal person.

21. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, Person or Persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

22. "Prescription Monitoring Program" is used herein consistent with its meaning in the Petition, ¶ 47.

23. "Prior Authorization" is any program that implements scope, utilization, or product based controls for drugs or medications.

24. "Program(s)" is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

25. "Relevant Time Period" means January 1, 1999 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side's discovery requests in this action.

26. "Relevant Medication(s)" includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to Opioid receptors in a Patient's brain or body to produce an analgesic effect, whether or not listed in the Petition, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

27. "Third-Party Group(s)" is used herein consistent with its meaning in the Petition, including any "seemingly unaffiliated and impartial organizations to promote opioid use." Petition, ¶¶58, 63, 72.

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

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

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

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

32. "Each" includes "every" and vice versa.
33. The term "including" shall be construed to mean "including but not limited to."
34. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Harvey Clarke Jenkins Jr., including the matter of the *State of Oklahoma v. Harvey Clarke Jenkins Jr.*, No. CF-2016-2325 (Oklahoma County).

2. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Regan Ganoung Nichols, including the matter of the *State of Oklahoma v. Regan Ganoung Nichols*, No. CF-2017-3953 (Oklahoma County).

3. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against William Martin Valuck,

including the matter of the *State of Oklahoma v. William Martin Valuck*, No. CF-2014-185 (Oklahoma County).

4. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Roger Kinney, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

5. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Tamerlane Rozsa, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

6. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joshua Livingston, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

7. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joseph Knight, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

8. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Christopher Moses, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

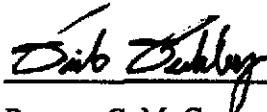
9. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against any other HCP not previously requested related to the prescription of Opioids, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

10. All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding.

11. All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center, 3700 S. Western Avenue, Oklahoma City, Oklahoma.

12. All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center.

Dated: May 10, 2018



ROBERT G. MCCAMPBELL, OBA No. 10390

NICHOLAS V. MERKLEY, OBA No. 20284

ASHLEY E. QUINN, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.

211 North Robinson

Oklahoma City, OK 73102-7255

Telephone: (405) 235-3314

Email: RMcCampbell@Gablelaw.com

NMerkley@Gablelaw.com

AQuinn@Gablelaw.com

OF COUNSEL:

Steven A. Reed

Harvey Bartle IV

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

T: +1.215.963.5000

Email: steven.reed@morganlewis.com

Email: harvey.bartle@morganlewis.com

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

T: +1.305.415.3416

Email: brian.ercole@morganlewis.com

*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 MAILING

I certify that a true and correct copy of the foregoing was emailed this 10th day of May,

2018, to:

*Attorneys for
Plaintiff*

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
**ATTORNEY GENERAL'S
OFFICE**
313 N.E. 21st Street
Oklahoma City, OK 73105

Bradley E. Beckworth
Jeffrey J. Angelovich
Lloyd N. Duck
Lisa Baldwin
NIX, PATTERSON & ROACH
512 N. Broadway Ave., Suite 200
Oklahoma City, OK 73102

Michael Burrage
Reggie Whitten
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102

Andrew G. Pate
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy.
Suite 350
Austin, TX 78746

Glenn Coffee
**GLENN COFFEE &
ASSOCIATES**
915 N. Robinson Ave.
Oklahoma City, OK 73102

*Attorneys for
Purdue Pharma,
LP,
Purdue Pharma,
Inc. and The
Purdue Frederick
Company*

Patrick Joseph Fitzgerald
R. Ryan Stoll
**SKADDEN ARPS SLATE
MEAGHER & FLOM**
155 N. Wacker Drive
Suite 2700
Chicago, IL 60606

Sheila L. Birnbaum
Mark S. Cheffo
Hayden Adam Coleman
**QUINN EMANUEL
URQUHART & SULLIVAN**
51 Madison Avenue, 22nd Floor
New York, NY 10010

Sandy Coats
Cullen Sweeney
CROWE & DUNLEVY
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

*Attorneys for
Johnson &
Johnson, Janssen
Pharmaceutica,
Inc., N/K/A
Janssen
Pharmaceuticals,
Inc., and Ortho-
McNeil-Janssen
Pharmaceuticals,
Inc. N/K/A Janssen
Pharmaceuticals,
Inc.*

John Sparks
Ben Odom
ODOM SPARKS & JONES
2500 McGee Drive, Suite 140
Norman, OK 73072

Stephen D. Brody
O'MELVENY & MEYERS
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
O'MELVENY & MEYERS
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071

Sib Doherty

EXHIBIT 2

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

v.

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

Defendants.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

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

OCT 04 2018

In the office of the
Court Clerk MARILYN WILLIAMS

DEFENDANT WATSON LABORATORIES, INC.'S
MOTION TO COMPEL DISCOVERY

Defendant Watson Laboratories, Inc. ("Watson") respectfully moves to compel discovery from Plaintiff the State of Oklahoma ("Plaintiff" or "the State") pursuant to Okla. Stat. tit. 12, § 3237. As demonstrated herein, Plaintiff's responses to Watson's First Set of Requests for Production of Documents from Plaintiff (the "Requests") are deficient. Accordingly, Watson respectfully asks the Court to order the State to produce the documents demanded in the Requests within ten days of the entry of the Court's order.

I. INTRODUCTION

The State contends that Watson and the other defendants in this case should be held liable for the effects of *every* medically unnecessary or excessive prescription opioid medication written in the State of Oklahoma for the past twenty years, notwithstanding that the State has brought criminal, civil and administrative proceedings against prescribing physicians, clinic owners, and other healthcare providers *for their own independent misconduct in writing unnecessary or excessive prescriptions*. By prosecuting, investigating, and sanctioning these individuals and entities, the State has necessarily discovered information—and made statements and admissions—that defeat causation in this case. This information demonstrates that rather than any alleged false marketing by Watson and other defendants, responsibility for the damages alleged in this action falls squarely at the feet of others, including healthcare providers who engaged in criminal and improper conduct.

There is thus no doubt that documents and information related to those proceedings is relevant and has been placed at issue by the State. Indeed, the State seeks to hold Watson and the other defendants responsible for “substantial social and economic costs *including criminal justice costs*,” and it has routinely used the independent criminal and improper conduct of healthcare providers to try to support its case, including asking specific questions, about specific prosecutions and administrative proceedings, involving specific doctors and specific prescriptions, during depositions of defense witnesses.

To obtain this relevant information, Watson served document requests, which consist of 12 specific and tailored requests—each aimed at obtaining documents related to disciplinary, civil, or criminal proceedings brought by the State against eight specific physicians, one specific medical center, and other unknown (to Watson and the other defendants, but not the State) healthcare providers. Yet, despite conceding the relevance of this information, the State—which

is the only party with access to it—has objected to producing it, based on the Health Insurance Portability and Accountability Act (“HIPAA”) and various state statutes, including the Oklahoma Anti-Drug Diversion Act, the Multi-County Grand Jury Act (Okla. Stat. tit. 22, § 355), and the Oklahoma Medicaid Program Integrity Act (Okla. Stat. tit. 56, § 1004(d)).¹ The State’s objections are meritless in the first instance because it has waived any purported privilege or other protection by putting this information at issue in this case. Further, any privilege or confidentiality objections the State has are baseless and unfounded in any event, given the Protective Order in place.

Put simply, without any basis, the State has refused to produce concededly relevant documents and information that is in its possession and that it has placed at issue in this case. It should be compelled to produce them.

II. BACKGROUND

A. Document Requests

Watson has requested documents and information specifically tailored to identify the documents, information and knowledge in the State’s possession regarding criminal, civil and administrative proceedings involving opioids brought by the State against healthcare providers. The Requests are attached as Exhibit A and are summarized below.

Requests Nos. 1-8 seek “All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program

¹ While the State has also objected generally on proportionality grounds, it fails to articulate how or why the requests are not proportional to the needs of the case. Nor can it: the State’s general objection to proportionality is clearly unfounded in light of the magnitude of this case and the important public policy concerns at issue. These documents are critical to Watson’s defenses.

records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by” the State against the following healthcare providers:

- **Harvey Clarke Jenkins Jr.**, who was charged by the State with 14 counts of conspiracy to illegally possess/distribute controlled dangerous substances, six counts of making or causing to be made false claims under the Oklahoma Medicaid program, five counts of conspiracy to fraudulently obtain a personal identity of another, one misdemeanor count of conspiracy to practice medicine without a license and four counts of illegally practicing medicine without a license. See: <https://okcfox.com/news/local/warrant-issued-for-metro-doctor-accused-of-running-pill-mill>.
- **Regan Ganoung Nichols**, who was charged by the State with 5 counts of second-degree murder for overprescribing controlled dangerous substances, including opioids. See <https://kfor.com/2018/06/27/oklahoma-doctor-charged-with-5-counts-of-second-degree-murder-bound-over-for-trial/>.
- **William Martin Valuck**, who pleaded guilty to eight counts of second-degree murder related to the over-prescription of opioid medications. See <https://newsok.com/article/5192381/former-oklahoma-city-doctor-pleads-guilty-to-eight-counts-of-murder>
- **Roger Kinney**, who was disciplined by the Oklahoma Medical Licensure Board after two patient deaths resulted from a combination of opioid and benzodiazepine prescriptions. The State called Dr. Kinney’s prescribing practices, “At best slipshod, at worst reckless.” See: <https://newsok.com/article/5564304/sapulpa-doctor-disciplined-after-two-overdose-deaths>.
- **Tamerlane Rozsa**, whose license was suspended by the State for allegedly overprescribing opioid medications. See <https://newsok.com/article/5419244/tulsa-physician-was-known-as-queen-of-lean-for-purple-drunk-prescriptions-board-says>.
- **Joshua Livingston**, whose license was suspended by the State after prescribing nearly 25,000 prescriptions for narcotic medications in a three-month period in 2012. See <https://newsok.com/special/article/3949859/addicted-oklahoma-probation-continues-for-prolific-prescriber-linked-to-deaths>.
- **Joseph Knight**, who lost his license to practice medicine in Oklahoma after at least three of his patients died of suspected opioid overdoses. See: <https://newsok.com/special/article/3949866/addicted-oklahoma-tulsa-physician-has-most-patient-overdose-deaths>.
- **Christopher Moses**, who is allegedly tied to eight overdose deaths of his patients and is accused of writing the equivalent of *seven opioid prescriptions per hour*. The U.S. Drug Enforcement Agency has accused Moses of illegal diversion of opioids. See: <https://www.tulsaworld.com/news/crimewatch/eight-overdose->

[deaths-spur-dea-investigation-of-south-tulsa-doctor/article_64a1bfab-3fba-5e8e-91d2-f7052d68beaf.html](https://www.newsok.com/special/article/5373925/addicted-oklahoma-profiting-from-pain).

Likewise, Request No. 9 seeks the same information but for “any other HCP not previously requested related to the prescription of Opioids.” Finally, Request Nos. 10 through 12 seek similar information about complaints, investigations, and other records regarding prescribers of opioids:

- **Request Nos. 10** - All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding.
- **Request No. 11** - All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center², 3700 S. Western Avenue, Oklahoma City, Oklahoma.
- **Request No. 12** - All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center.

B. State's Responses

In response to Requests 1 through 8 (involving specific doctors), the State objected to the production of confidential and/or privileged information under HIPAA, Part 2, the Anti-Drug Diversion Act, the Multi-County Grand Jury Act and the Oklahoma Medicaid Program Integrity Act, but agreed to produce any non-privileged documents within its possession. In response to Requests 9 through 12, the State raised the same objections and refused to produce any responsive documents.

The State's Responses are attached as Exhibit B. To date, the State has not produced any documents in response to the Requests.

² Vista Medical Center was the clinic at which Dr. William Valuck practiced and was cited by the State as a “problem” because it was owned by non-physicians and therefore not subject to State oversight. At least four doctors practicing at Vista, in addition to Valuck, were disciplined by the State. See: <https://newsok.com/special/article/5373925/addicted-oklahoma-profiting-from-pain>.

C. The Parties' Meet And Confer

The parties held a meet and confer on September 27, 2018. During the meet and confer, the State clarified its position with respect to the Requests, indicating that it is only willing to produce documents that are subject to disclosure under the Oklahoma Open Public Records Act ("OPRA"), and nothing more. But the OPRA only provides access to very limited information related to Law Enforcement Agency records. Okla. Stat. Ann. tit. 51, § 24A.8(A). This Court has the authority to order the release of all of the records, *id.* § 24A.8(B), and, as demonstrated below, it should do so.

III. LEGAL STANDARD³

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

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

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

³ The Oklahoma Discovery Code closely tracks the Federal Rules of Civil Procedure, so federal decisions provide guidance. *See State ex rel. Protective Health Servs. v. Billings Fairchild Ctr., Inc.*, 158 P.3d 484, 489 (Okla. Ct. Civ. App. 2006) (analyzing completeness of a party's interrogatories).

The purpose of discovery is to “provide[] for the parties to obtain the fullest possible knowledge of the issues and facts before trial.” *State ex rel. Protective Health Servs. v. Billings Fairchild Ctr., Inc.*, 158 P.3d 484, 489 (Okla. Ct. Civ. App. 2006) (internal citations and quotations omitted). “A lawsuit is not a contest in concealment, and the discovery process was established so that ‘*either party may compel the other to disgorge whatever facts he has in his possession.*’” *Cowen v. Hughes*, 1973 OK 11, 509 P.2d 461, 463 (quoting *S. Ry. Co. v. Lanham*, 403 F.2d 119 (5th Cir. 1968), quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). “Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.” *Metzger v. Am. Fidelity Assur. Co.*, 245 F.R.D. 727, 728 (W.D. Okla. 2007) (quoting *Hickman*, 329 U.S. at 507). “The aim of these liberal discovery rules is to make a trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *Id.*

Here, evidence of the State’s criminal, civil and administrative proceedings involving opioids against healthcare providers is relevant and, indeed, critical to the claims and defenses in this case. Despite the State’s contentions, this information is not protected by any privilege, and it is reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case. *See Okla. Stat. Ann. tit. 12, § 3226(B)(1)(a)*. This discovery is important, *inter alia*, to: (1) demonstrate that allegedly unnecessary or excessive prescriptions were caused by intervening conduct by non-parties unrelated to the allegations against the defendants, (2) understand whether the State made statements, admissions and uncovered evidence in the course of its investigations that exculpates the defendants, and (3) examine the veracity of the State’s claim for law enforcement-related damages.

The State’s refusal to produce this information, while at the same time acknowledging its

relevance, deprives Watson and other defendants of the ability to fully and fairly address these critical issues and mount their defenses. The State should be ordered to produce it.

A. Evidence of Criminal, Civil and Disciplinary Proceedings Is Relevant to the Claims and Defenses in This Case.

Evidence of criminal, civil and disciplinary proceedings brought by the State against healthcare providers regarding opioids speaks directly to both the State's claims and the Defendants' defenses in this case. The State alleges Defendants "knowingly caused to be presented false or fraudulent claims," and "knowingly made or used, or caused to be made or used, false statements material to a false or fraudulent claim." Pet. ¶¶ 75, 83. Because the State does not allege that Defendants directly submitted claims themselves, the State must prove that Defendants' misrepresentations either (1) caused a provider to submit each alleged false claim, (2) caused a provider to make a false statement material to each alleged false claim; or (3) caused the State to reimburse a particular prescription.

Under each of those theories, a break in the causal chain, such as criminal diversion by healthcare providers or others, defeats the State's claims. For instance, in *Ironworkers Local Union No. 68 v. AstraZeneca Pharmaceuticals LP*, plaintiffs brought RICO and state-law tort claims against the maker of an antipsychotic drug, claiming that the defendant had misrepresented its safety and efficacy. 585 F. Supp. 2d 1339, 1341 (M.D. Fla. 2008). The district court dismissed their claims, holding that the plaintiffs had failed to plausibly plead proximate cause because the "independent medical judgment" of prescribing physicians was a "key independent factor" separating the alleged misconduct from the injury. *Id.* at 1344. Notably, this is true even where the plaintiffs allege, as the State does here, that the defendants' tortious conduct was intended to deceive doctors about the dangers and benefits of the drug in question. *See, e.g., Ironworkers*, 585 F. Supp. 2d at 1341-42; *Yasmin & Yaz (Drospirenone)*

Mktg., Sales Practices & Prods. Liab. Litig. v. Bayer Healthcare Pharm. Inc., No. 3:09-md-02100-DRH-PMF, 2010 U.S. Dist. LEXIS 80758, at *7 (S.D. Ill. Aug. 5, 2010).

Defendants are therefore entitled to obtain evidence concerning the chain of causation between any allegedly wrongful conduct by any party or non-party, on the one hand, and any injury or damages suffered by the State, on the other, to demonstrate that the defendants' conduct did not cause the harm the State claims. Illegal acts like diversion, willful ignorance of prescribing guidelines by doctors, and pill mills, break the causal chain that is crucial to the State's case.

B. Documents Related to Criminal, Civil and Disciplinary Proceedings Are Not Privileged.

The State contends that the Requests seek privileged information subject to HIPAA, Part 2, the Anti-Drug Diversion Act, the Multi-County Grand Jury Act, and the Oklahoma Medicaid Program Integrity Act. As set forth below, the State has waived any claim of privilege and/or confidentiality by putting this information at issue, and none of these privilege claims otherwise have merit under the circumstances of this case.

1. The State Waived Any Claim of Privilege or Confidentiality by Putting This Information Directly At Issue in the Case.

While, as demonstrated *infra*, there is no privilege or other protection that precludes disclosure of the requested documents and information, even if there were, the State has waived them because it put that material "at issue." Courts applying Oklahoma law have applied the test set forth in *Hearn v. Rhay*, 68 F.R.D. 574, 581 (E.D. Wash. 1975), to determine whether a party has waived privilege or other protection by putting a matter "at issue." *Seneca Ins. Co. v. W. Claims, Inc.*, 774 F.3d 1272, 1276 (10th Cir. 2014) (applying Oklahoma law) (citing *Gilson v. State*, 2000 OK CR 14, 8 P.3d 883, 908-09 (Okla. Crim. App. 2000) (applying version of *Hearn*

test)); *see also Lindley v. Life Invs. Ins. Co. of Am.*, 267 F.R.D. 382, 392-393 (N.D. Okla.

2010) (applying *Hearn* test). Under that test, "at-issue" waiver requires:

- (1) the assertion of the privilege or protection was the result of some affirmative act, such as filing suit, by the asserting party;
- (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; *and*
- (3) application of the privilege would have denied the opposing party access to information vital to its defense.

Seneca Ins. Co., 774 F.3d at 1281-82.

All three *Hearn* factors are clearly satisfied here. First, the State asserted the protections as a result of seeking to hold Watson and the defendants liable for criminal and improper conduct of intermediaries such as prescribing healthcare providers. Second, the State put the allegedly protected information at issue by making it relevant to and using it in this case. Indeed, allowing the State to access and use materials that the defendants cannot violates due process. And, third, application of the privileges or confidentialities claimed by the State denies the defendants access to information vital to their defenses. Accordingly, the State has waived any purported privilege or protection for the documents and information sought by the Requests and it should be compelled to fully respond to them.

2. The Protective Order in this Case Addresses the State's HIPAA and Part 2 Concerns.

The State objects to each of the Requests as "seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act

“HIPAA”), 42 C.F.R. Part 2, and other State and federal statutes, rules and regulations.” *See Responses at 1-12. This objection is without merit.*

The Amended Protective Order, entered by this Court on September 27, 2018 (the “Protective Order”), defeats this objection in the first instance. It applies to all documents produced in this case and prohibits any party or witness from disclosing protected health information subject to HIPAA and Part 2. By its very terms, the Protective Order ensures that patients’ privacy rights are safeguarded, and the State’s objections are therefore unfounded. “The [HIPAA] requirement that documents not be produced without a court order presumes that the court, in drafting any production order, will balance the patients’ privacy and confidentiality interests with the documents’ relevance and a party’s need for the documents, before determining whether the documents should be produced and, if so, with what constraints.” *Hussein v. Duncan Reg’l Hosp., Inc.*, 2009 WL 10672479 (W.D. Okla. Apr. 28, 2009) (ordering production of private patient information where “no other discoverable sources . . . could provide the information needed.”).

Consistent with the Protective Order, the Court already has determined that relevant HIPAA-protected and other confidential information cannot be withheld. The Protective Order provides the appropriate measure to protect patient privacy. Indeed, the need for this information is the very reason the Protective Order was entered. The State’s HIPAA objection is therefore baseless.

3. The Anti-Drug Diversion Act Contains No Privilege and Expressly Authorizes the State to Release Information in the Central Repository.

The State also asserts that each of the Requests seeks “information that is privileged or otherwise prohibited from disclosure under 63 O.S. § 2-309D.” *See Responses at 1-12. But that objection too lacks merit. The Anti-Drug Diversion Act contains no privilege provision and*

expressly authorizes the State to release information contained in its central repository, which is the subject of the Requests at issue here.

Oklahoma's Anti-Drug Diversion Act (Okla. Stat. tit. 63, § 2-309, *et seq.*) requires dispensers of Schedule II, III, IV or V controlled dangerous substances (including opioid medications) dispensed pursuant to a valid prescription to transmit certain proscribed information to a central repository designated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. *See id.* § 309C. The information required to be submitted to the database for each dispensation includes: Recipient's and recipient's agent's name, address, date of birth, and identification number; National Drug Code number of the substance dispensed; Date of dispensation; Quantity of the substance dispensed; Prescriber's United States Drug Enforcement Agency registration number; Dispenser's registration number; and other information as required by rule. *Id.*

Although access to repository information is limited to certain enumerated Federal and State agencies, it may be disclosed for law enforcement and other purposes as determined by the Director of Bureau of Narcotics and Dangerous Drugs Control, including disclosure to the Attorney General of Oklahoma. *Id.* § 309D. This defeats the State's assertion of privilege. In other words, the State possesses this information, has utilized this information to identify and prosecute high-prescribers and other wrong-doers with respect to opioid medication, and now seeks to withhold this very same information because it undercuts the State's theory of causation and damages. This is improper.

Even more troubling, the State is the only party with access to the information contained in the database, and has apparently been utilizing this information to question defense witnesses at depositions without first providing this information to the defendants. For example, the

following exchange, which is representative of nearly every sales representative deposition to occur in this case thus far, occurred during the recent deposition of Teva Pharmaceuticals USA, Inc. Sales Manager Brian Vaughan:

11 Q (BY MR. PATE) You're aware that
12 Dr. Harvey Jenkins has been charged with 29
13 felonies and a misdemeanor for running a pill
14 mill?
15 A I wasn't aware of the number, but I did
16 see in the media where he was -- he was charged.

...

7 Q You're aware that he was the largest
8 prescriber of prescription opioids in 2014;
9 correct?

10 MR. FIORE: Object to form.
11 THE WITNESS: I was not aware of that.

12 Q (BY MR. PATE) Are you aware that at
13 least three of his former patients have died?

14 MR. FIORE: Same objection.

15 THE WITNESS: I don't have any knowledge
16 of that.

...

13 Q Are you aware that Dr. Pope has been
14 accused of writing 19 prescriptions over less
15 than a 12-month period for a 27-year-old patient
16 who complained of back pain and was also on
17 Xanax at the same time?

18 MR. FIORE: Objection to the form of the
19 question.

20 THE WITNESS: I don't have -- I was not
21 aware of that. I don't have that knowledge.

Deposition of Brian Vaughan, 190: 11-16; 191:7-16; 211:13-21, September 19, 2018, attached hereto as Exhibit C.

The State cannot be permitted to continue to use information solely in its possession and also refuse to provide it in response to appropriate discovery requests. Nothing in the Anti-Drug Diversion Act indicates that information in the central repository is privileged and, to the extent

that the information is confidential, the Protective Order in this case sufficiently safeguards the information.

4. The Confidentiality Provision of the Multi-County Grand Jury Act Does Not Apply When the State Puts the Information Directly at Issue.

Next, the State objects to each of the Requests on the basis that they seek, "information that is privileged or otherwise prohibited from disclosure under... the Multicounty [sic] Grand Jury Act, 22 O.S. § 350, et seq. (including specifically id. at § 355)." Responses at 1-12. This, too, is incorrect.

The Oklahoma Multi-County Grand Jury Act provides, in pertinent part,

Disclosure of matters occurring before the multicounty grand jury other than its deliberations and the vote of any juror may be used by the Attorney General in the performance of his duties. The Attorney General may disclose so much of the multicounty grand jury proceedings to law enforcement agencies as he considers essential to the public interest and effective law enforcement.

Okla. Stat. tit. 22, § 355. The Attorney General may use this information in the "performance of his duties." As part of his "duties," the Attorney General has brought this lawsuit. The State must therefore disclose this information.

The State has put this information directly at issue by seeking to hold the defendants responsible for every "unnecessary or excessive prescription" for opioid medication written in the State of Oklahoma for the past twenty years, including those for which the State has brought criminal proceedings against prescribing physicians through the Multi-County Grand Jury. Oklahoma Courts have required disclosure of this information in an analogous situation, holding that an accused was entitled to sworn statements and transcripts of grand jury proceedings once a legal proceeding was commenced against him. *See Rush v. Blasdel*, 1991 OK CR 2, 804 P.2d 1140. Here, the State has instituted legal proceedings against Watson and the other defendants

to hold them liable for the criminal conduct of others. The State's refusal to produce information pertaining to this independent criminal conduct violates due process. This objection should be rejected as well.

5. The State Has Brought Claims Under the Oklahoma Medicaid Program Integrity Act While Simultaneously Attempting to Claim its Privilege Protections.

The State also objects to each of the Requests on the basis that they seek "information that is privileged or otherwise prohibited from disclosure under... the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, et seq. (including specifically id. at § 1004(d))." Responses at 1-12. As an initial matter, the State has *expressly brought claims under the Oklahoma Medicaid Program Integrity Act*. Its reliance on that statute as a means to avoid disclosure is therefore preposterous.

Furthermore, the plain language of the Act provides that the Attorney General may authorize the release of confidential information for use in legal proceedings, and there is nothing prohibiting the State from doing so here. The Oklahoma Medicaid Program Integrity Act provides, in pertinent part:

D. Records obtained or created by the Authority or the Attorney General pursuant to the Oklahoma Medicaid Program Integrity Act shall be classified as confidential information and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual *except, if authorized by the Attorney General, in relation to legal, administrative, or judicial proceeding.*

Okla. Stat. tit. 56, § 1004(d) (emphasis added).

The Attorney General has the power to authorize the disclosure of this information "in relation" to this case, but he has refused to do so even though he has sued Watson and the other

defendants under this Act. The State's conduct cannot be countenanced by the Court, and this objection should be overruled.

C. Every Balancing Factor Weighs in Favor of Discoverability.

As described above, the evidence in the State's possession related to criminal, civil and administrative enforcement actions against healthcare providers related to opioids is non-privileged and relevant. The only remaining question is whether this information is proportional to the needs of the case. In making this determination, the Court should consider, "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Okla. Stat. tit. 12, § 3226(B)(1)(a).

The State has not, and cannot, meaningfully contest any of these factors, and each weighs in favor of discoverability. First, although the State continues to refuse to disclose its damages information, it has asserted that every prescription written for anything other than "end-of-life palliative care or for a three-day supply to treat acute pain" was false or fraudulent—and reimbursed in violation of Oklahoma law. *See* Pl.'s Resp. to Cephalon, Inc.'s Second Intros. at 1, attached hereto as Exhibit D. Therefore, the amount in controversy alone warrants a thorough fact-finding process.

Likewise, the information at issue here also should be produced because it implicates significant public policy questions. The information relates directly to the State's conduct in addressing, or failing to address, the opioid epidemic through its law enforcement and regulatory agencies. It helps disprove the State's causation theory and its efforts to blame defendants.

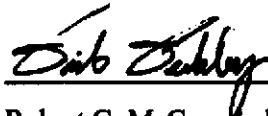
The remaining factors also support disclosure. Only the State has access to criminal, civil and administrative proceeding files against healthcare providers. This information is critical to

Watson's and the other defendants' affirmative defenses, and to evaluate the prescribers' actions and role in contributing to the opioid epidemic. Finally, the State has not identified any undue burden related to the production of this information. There is no reason why the State should not be ordered to produce it.

II. CONCLUSION

The State's Responses to the Requests are deficient because the records at issue are not privileged or otherwise subject to any grounds for withholding. Watson respectfully requests the Court issue an Order compelling the State to fully and adequately respond to Watson's lawfully propounded discovery.

Dated: October 4, 2018.



Robert G. McCampbell, OBA No. 10390
Nicholas ("Nick") V. Merkley, OBA No. 20284
Ashley E. Quinn, OBA No. 33251
GABLEGOTWALS
One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
T: +1.405.235.3314
E-mail: RMcCampbell@Gablelaw.com
E-mail: NMerkley@Gablelaw.com
E-mail: AQuinn@Gablelaw.com

OF COUNSEL:

Steven A. Reed
Harvey Bartle IV
Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street

Philadelphia, PA 19103-2921

T: +1.215.963.5000

E-mail: steven.reed@morganlewis.com

E-mail: harvey.bartle@morganlewis.com

E-mail: mark.fiore@morganlewis.com

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131

T: +1.305.415.3416

E-mail: brian.ercole@morganlewis.com

*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 4th day of October, 2018, to the following:

***Attorneys for
Plaintiff***

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
**ATTORNEY GENERAL'S
OFFICE**
313 N.E. 21st Street
Oklahoma City, OK 73105

Bradley E. Beckworth
Jeffrey J. Angelovich
Lloyd N. Duck
Lisa Baldwin
NIX, PATTERSON & ROACH
512 N. Broadway Ave., Suite 200
Oklahoma City, OK 73102

Michael Burrage
Reggie Whitten
J. Revell Parrish
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102

Andrew G. Pate
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy.
Suite 350
Austin, TX 78746

Glenn Coffee
**GLENN COFFEE &
ASSOCIATES**
915 N. Robinson Ave.
Oklahoma City, OK 73102

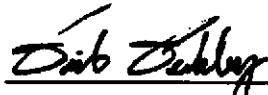
***Attorneys for
Purdue Pharma,
LP,
Purdue Pharma,
Inc. and The
Purdue Frederick
Company***

Sheila L. Birnbaum
Mark S. Cheffo
Hayden Adam Coleman
Paul LaFata
Jonathan S. Tam
Lindsay N. Zanello
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Sandy Coats
Joshua Burns
CROWE & DUNLEVY
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

Erik W. Snapp
DECHERT LLP
35 West Wacker Drive
Suite 3400
Chicago, IL 60601

Attorneys for Johnson & Johnson, Janssen Pharmaceutica, Inc., N/K/A Janssen Pharmaceuticals, Inc., and Ortho- McNeil-Janssen Pharmaceuticals, Inc. N/K/A Janssen Pharmaceuticals, Inc.	John H. Sparks Benjamin H. Odom Michael W. Ridgeway David L. Kinney ODOM SPARKS & JONES 2500 McGee Drive, Suite 140 Norman, OK 73072	Charles C. Lifland Jennifer D. Cardelus Wallace M. Allan Sabrina H. Strong Houman Ehsan Esteban Rodriguez O'MELVENY & MEYERS 400 S. Hope Street, 18 th Floor Los Angeles, CA 90071
	Stephen D. Brody David Roberts O'MELVENY & MEYERS 1625 Eye Street NW Washington, DC 20006	Daniel J. Franklin Ross B Galin O'MELVENY & MEYERS LLP 7 Times Square New York, NY 10036
	Amy R. Lucas O'MELVENY & MEYERS 1999 Avenue of the Stars, 8 th Floor Los Angeles, CA 90067	



Nicholas ("Nick") V. Merkley

EXHIBIT A

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

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

Plaintiff,

v.

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

Defendants.

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

**DEFENDANT WATSON LABORATORIES, INC.'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS FROM PLAINTIFF**

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



INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.
2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.
3. You should produce electronically stored information (“ESI”) and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g., Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.
4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.
5. This request is continuing in character, and Watson requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.
6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:
 - a. The date of the document;

- b. The author of the document;
- c. The recipient of the document;
- d. All Persons to whom copies of the document have been furnished;
- e. The subject matter of the document;
- f. The file in which the document is kept in the normal course of business;
- g. The current custodian of the document; and
- h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Watson in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

- 1. "Claim" is any request for payment or reimbursement.
- 2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Petition, e.g., ¶¶ 3, 22, 51, 67, 122.
- 3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.
- 4. "Petition" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.

5. "Defendants" are the individual Defendants named in the Petition.
6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.
7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other Electronically Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.
8. "Drug Utilization Review Board" is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.
9. "Educational Activity" refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.
10. "Electronically Stored Information" is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term “employee” includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. “Healthcare Professional(s),” “Health Care Provider(s)” or “HCP(s)” is any Person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any Person or animal.

13. “Interrogatories” refers to Watson’s First Set of Interrogatories served on you contemporaneously herewith.

14. “Key Opinion Leader(s)” or “KOL(s)” is used herein consistent with its meaning in the Petition, ¶ 58.

15. “Medication Assisted Treatment” is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

16. “Medical Necessity” has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

17. “Oklahoma Agency” or “Oklahoma Agencies” collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma

State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

18. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a Patient's brain or body to produce an analgesic effect.

19. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

20. "Person(s)" is any natural or legal person.

21. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, Person or Persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

22. "Prescription Monitoring Program" is used herein consistent with its meaning in the Petition, ¶ 47.

23. "Prior Authorization" is any program that implements scope, utilization, or product based controls for drugs or medications.

24. "Program(s)" is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

25. "Relevant Time Period" means January 1, 1999 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side's discovery requests in this action.

26. "Relevant Medication(s)" includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to Opioid receptors in a Patient's brain or body to produce an analgesic effect, whether or not listed in the Petition, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

27. "Third-Party Group(s)" is used herein consistent with its meaning in the Petition, including any "seemingly unaffiliated and impartial organizations to promote opioid use." Petition, ¶¶58, 63, 72.

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

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

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

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

32. "Each" includes "every" and vice versa.
33. The term "including" shall be construed to mean "including but not limited to."
34. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Harvey Clarke Jenkins Jr., including the matter of the *State of Oklahoma v. Harvey Clarke Jenkins Jr.*, No. CF-2016-2325 (Oklahoma County).

2. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Regan Ganoung Nichols, including the matter of the *State of Oklahoma v. Regan Ganoung Nichols*, No. CF-2017-3953 (Oklahoma County).

3. All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against William Martin Valuck,

including the matter of the *State of Oklahoma v. William Martin Valuck*, No. CF-2014-185 (Oklahoma County).

4. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Roger Kinney, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

5. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Tamerlane Rozsa, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

6. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joshua Livingston, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

7. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joseph Knight, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

8. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Christopher Moses, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

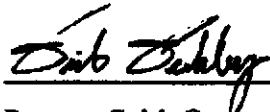
9. All documents concerning any disciplinary, civil, or criminal proceedings brought by You against any other HCP not previously requested related to the prescription of Opioids, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments.

10. All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding.

11. All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center, 3700 S. Western Avenue, Oklahoma City, Oklahoma.

12. All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center.

Dated: May 10, 2018



ROBERT G. MCCAMPBELL, OBA No. 10390
NICHOLAS V. MERKLEY, OBA No. 20284
ASHLEY E. QUINN, OBA No. 33251

GABLEGOTWALS

One Leadership Square, 15th Fl.
211 North Robinson
Oklahoma City, OK 73102-7255
Telephone: (405) 235-3314

Email: RMcCampbell@Gablelaw.com
NMerkley@Gablelaw.com
AQuinn@Gablelaw.com

OF COUNSEL:

Steven A. Reed
Harvey Bartle IV
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
T: +1.215.963.5000
Email: steven.reed@morganlewis.com
Email: harvey.bartle@morganlewis.com

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
T: +1.305.415.3416
Email: brian.ercole@morganlewis.com

*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 MAILING

I certify that a true and correct copy of the foregoing was emailed this 10th day of May,

2018, to:

***Attorneys for
Plaintiff***

Mike Hunter, Attorney General
Abby Dillsaver, General Counsel
Ethan Shaner, Dep. Gen. Counsel
**ATTORNEY GENERAL'S
OFFICE**
313 N.E. 21st Street
Oklahoma City, OK 73105

Bradley E. Beckworth
Jeffrey J. Angelovich
Lloyd N. Duck
Lisa Baldwin
NIX, PATTERSON & ROACH
512 N. Broadway Ave., Suite 200
Oklahoma City, OK 73102

Michael Burrage
Reggie Whitten
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102

Andrew G. Pate
NIX PATTERSON & ROACH
3600 N. Capital of Texas Hwy.
Suite 350
Austin, TX 78746

Glenn Coffee
**GLENN COFFEE &
ASSOCIATES**
915 N. Robinson Ave.
Oklahoma City, OK 73102

***Attorneys for
Purdue Pharma,
LP,
Purdue Pharma,
Inc. and The
Purdue Frederick
Company***

Patrick Joseph Fitzgerald
R. Ryan Stoll
**SKADDEN ARPS SLATE
MEAGHER & FLOM**
155 N. Wacker Drive
Suite 2700
Chicago, IL 60606

Sheila L. Birnbaum
Mark S. Cheffo
Hayden Adam Coleman
**QUINN EMANUEL
URQUHART & SULLIVAN**
51 Madison Avenue, 22nd Floor
New York, NY 10010

Sandy Coats
Cullen Sweeney
CROWE & DUNLEVY
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

*Attorneys for
Johnson &
Johnson, Janssen
Pharmaceutica,
Inc., N/K/A
Janssen
Pharmaceuticals,
Inc., and Ortho-
McNeil-Janssen
Pharmaceuticals,
Inc. N/K/A Janssen
Pharmaceuticals,
Inc.*

John Sparks
Ben Odom
ODOM SPARKS & JONES
2500 McGee Drive, Suite 140
Norman, OK 73072

Stephen D. Brody
O'MELVENY & MEYERS
1625 Eye Street NW
Washington, DC 20006

Charles C. Lifland
Jennifer D. Cardelus
O'MELVENY & MEYERS
400 S. Hope Street, 18th Floor
Los Angeles, CA 90071



EXHIBIT B

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

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

Plaintiff, §

vs. §

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

Defendants. §

Case No. CJ-2017-816

The Honorable Thad Balkman

JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT WATSON
LABORATORIES, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS FROM PLAINTIFF**

Pursuant to 12 O.S. 3234, Plaintiff, the State of Oklahoma (the "State" or "Plaintiff"), hereby submits its Responses and Objections to Defendant Watson Laboratories, Inc.'s ("Watson" or "Defendant") First Set of Requests for Production of Documents from Plaintiff. The State



specifically reserves the right to supplement, amend and/or revise these Responses and Objections in accordance with 12 O.S. 3226.

GENERAL OBJECTIONS

1. By responding to Defendant's discovery requests, the State concedes neither the relevance nor admissibility of any information provided or documents or other materials produced in response to such requests. The production of information or documents or other materials in response to any specific interrogatory does not constitute an admission that such information is probative of any particular issue in this case. Such production or response means only that, subject to all conditions and objections set forth herein and the requirements of 12 O.S. 3234, following a reasonably diligent investigation of reasonably accessible and non-privileged information, the State will produce or permit the inspection and copying of the reasonably accessible, responsive, non-privileged documents within the State's possession, custody or control that the State is reasonably able to locate at a time and place mutually agreeable to the parties.

2. To the extent the State is able to locate responsive, non-privileged documents, the State will produce or permit inspection of such documents in the forms in which they are ordinarily maintained by the State in the regular course of business. *See* 12 O.S. 3234.

3. The State provides the responses and objections set forth herein solely based upon information presently known to and within the possession, custody or control of the State. Subsequent discovery, information produced by Defendant and/or the other named Defendants in this litigation and/or third parties, investigation, expert discovery, third-party discovery, depositions and further analysis may result in additions to, changes or modifications in, and/or variations from the responses and objections set forth herein. Accordingly, the State specifically

and expressly reserves the right to supplement, amend and/or revise the responses and objections set forth herein in due course and in accordance with 12 O.S. 3226.

OBJECTIONS TO INSTRUCTIONS

1. The State objects to Defendant's Instruction Number 1, which purports to require the State's Responses to "include all documents created within the Relevant Time Period and continuing through the date of this request" as overbroad, unduly burdensome, disproportionate to the needs of the case and improperly seeking information created after this lawsuit was filed that is protected from disclosure as attorney work product or trial preparation materials.

2. The State objects to the part of Defendant's Instruction Number 2 that purports to require the State to organize and label any documents the State produces "to correspond with the categories in the request." Any responsive, non-privileged documents that the State produces will be produced in the form in which they are kept in the usual course of business.

3. The State objects to Defendant's Instruction Number 3 as overly broad, unduly burdensome, disproportionate to the needs of the case and an effort to impose a greater burden on the State than what is permitted under 12 OKLA. STAT. §3234 by requiring the State to create new information or convert information in the State's possession, custody or control into forms in which such information is not maintained by the State in its usual course of business. The State will produce electronically stored information ("ESI") in accordance with the ESI protocol agreed to by the parties.

4. The State objects to Defendant's Instruction Number 4 as vague, ambiguous, overly broad, disproportionate to the needs of the case and seeking to impose a burden on the State that exceeds what is permissible under Oklahoma law by instructing the State to produce "all documents known or available to the State," on top of and in addition to any documents within the

State's possession, custody or control. Subject to all conditions and objections set forth herein and the requirements of 12 O.S. 3234, following a reasonably diligent investigation, the State will produce or permit inspection and copying of the responsive, non-privileged documents within the State's possession, custody or control that the State is reasonably able to locate and access at a time and place mutually agreeable to the parties.

5. The State objects to Defendant's Instruction Number 5, which states that Defendants' requests are "continuing in character," as seeking to impose a burden upon the State that is beyond what is permissible under Oklahoma law, and as inconsistent with Defendant's Instruction Number 1. The State will reasonably construe this ambiguity to mean that the requests seek documents created through the date the requests were served (excluding documents created to assist in the prosecution of this case under the attorney-client and/or work-product privileges), and the State will amend or supplement its responses, if necessary, in accordance with 12 O.S. 3226.

6. The State objects to Defendant's Instruction Number 6 as ambiguous, vague, unreasonable, overbroad, unduly burdensome and an impermissible attempt to impose a burden upon the State beyond what is allowable under Oklahoma law. To the extent the State withholds otherwise discoverable information from production on the basis of any claim of privilege or work-product trial material, the State will supply Defendant with the information required under Oklahoma law related to such information at the appropriate time and/or in accordance with the orders of the Court. *See* 12 O.S. 3226(B)(5)(a). To the extent the State withholds any document "for any other reason or objection," the State will state its objection or "other reason" for withholding the document with specificity at the appropriate time and as required by Oklahoma law.

7. The State objects to Defendant's Instruction Number 7 because it seeks to impose a burden on the State beyond those permitted or contemplated under Oklahoma law. The State will respond to Defendant's requests according to how they are written. To the extent Defendant chose to use vague or indecipherable terms, the State will reasonably construe such term based upon their plain and ordinary meaning.

OBJECTIONS TO DEFINITIONS

1. The State objects to Defendant's Definition Number 1 of the term "Claim" as vague, overbroad, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, irrelevant and unworkable. "[A]ny request for payment or reimbursement" encompasses an infinitely unlimited amount of information that has no bearing whatsoever on the parties to this action or the claims or defenses asserted in this action. Based on the claims and defenses at issue in this case, the State will reasonably interpret the term "claim" to mean a request for payment or reimbursement submitted to the Oklahoma Health Care Authority pursuant to Oklahoma's Medicaid Program as related to the claims and defenses at issue in this litigation.

2. The State objects to Defendant's Definition Number 3 of the term "Communication(s)" as vague, ambiguous, unduly burdensome, disproportionate to the needs of the case, unreasonable, unworkable and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. Specifically, the State objects to the terms "conduct" and "omissions" in Defendant's purported Definition Number 3. The State will reasonably interpret the term "communication(s)" to mean the transmittal of information between two or more persons, whether spoken or written.

3. The State objects to Defendant's Definition Number 7—Defendant's second purported definition of the term "document(s)"—as overly broad, unduly burdensome,

disproportionate to the needs of the case, irrelevant and attempting to impose a burden on the State beyond what is permissible under Oklahoma law. The State will not create "instructions" or "other materials" that do not otherwise exist. Nor will the State produce: (i) "file-folder[s], labeled-box[es], or notebook[s]"; and (ii) "ind[ices], table[s] of contents, list[s], or summaries that serve to organize, identify, or reference" a document simply because a responsive document is related to or contained within such information. Pursuant to 12 O.S. §§3233-3234, following a reasonably diligent investigation, the State will permit inspection of the reasonably accessible, responsive, non-privileged documents, as that term is defined in 12 O.S. 3234(A)(1), within the State's possession, custody or control that the State is reasonably able to locate at a time and place mutually agreeable to the parties. To the extent a folder, label, container, index, table of contents, list or summary is otherwise responsive to a request and satisfies these conditions, it will be made available for inspection or produced.

4. The State objects to Defendant's Definition Number 9 of the term "Educational Activity" as vague and ambiguous because it fails to rationally indicate what is meant by "other forms of" communication. The State further incorporates its objections to Definition Number 18 ("Opioid(s)") as if fully set forth in this objection to Definition Number 9.

5. The State objects to Defendant's Definition Number 10 of "Electronically Stored Information" as overly broad, unduly burdensome, disproportionate to the needs of the case, irrelevant to the claims and defenses at issue, and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. The State will not produce ESI from sources that are not reasonably accessible or over which the State does not have sufficient custody and/or control. The State will produce or permit the inspection of ESI in the manner set forth in the parties' agreed ESI protocol.

6. The State objects to Defendant's Definition Number 11 of the term "Employee" as overly broad, unduly burdensome, disproportionate to the needs of the case, irrelevant to the claims and defenses at issue, calling for information beyond what is within the State's possession, custody and control, and seeking to impose a burden upon the State beyond what is permissible under Oklahoma law. The State will reasonably construe the term "employee" to mean an individual employed by the State during the inquired-about time period over whom the State maintains sufficient custody and control to enable the State to possess or access responsive records or information pertaining to the individual.

7. The State objects to Defendant's Definition Number 12 of the terms "Healthcare Professional(s)," "Health Care Provider(s)" or "HCP(s)." Defendant's proposed definition is overly broad, irrelevant to the claims and defenses at issue, unduly burdensome and disproportionate to the needs of the case in that the definition is not limited in any way to the State of Oklahoma or any particular time period. The State will reasonably construe the use of these terms to mean healthcare professionals or providers who provided medical or health care services in the State of Oklahoma to citizens—not "animals"—in the State of Oklahoma from January 1, 1999 to the date Defendant's requests were served. The State further incorporates each of its objection to Definition Numbers 15 (the term "Medical Assisted Treatment") as if fully set forth in this objection to Definition Number 12.

8. The State objects to Defendant's Definition Number 15 of the term "Medication Assisted Treatment." Defendant's purported definition is overly broad, unduly burdensome, irrelevant to the claims and defenses in this action, and disproportionate to the needs of this case, because it attempts to encompass treatment related to any "substance abuse disorder[]" and any effort to "prevent Opioid overdose." The State incorporates its objections to Defendant's

Definition Number 18 of the term "Opioid(s)" as if fully set forth in this objection to Definition Number 15. The State will reasonably construe the term "Medication Assisted Treatment" to mean substance abuse treatment related to the claims and defenses at issue in this litigation.

9. The State objects to Defendant's Definition Number 17 of the terms "Oklahoma Agency" or "Oklahoma Agencies" as overly broad, unduly burdensome, irrelevant to the claims and defenses in this action, disproportionate to the needs of the case, and improperly calling for information that is not in the possession, custody or control of the State. The State will reasonably construe the terms "Oklahoma Agency" or "Oklahoma Agencies" to mean agencies of the State of Oklahoma reasonably calculated to have information or materials relevant to the claims or defenses asserted in this litigation and over whom the State of Oklahoma, through the Office of the Attorney General, maintains sufficient control to allow the State to have reasonable access to and possession of responsive information maintained by the agency.

10. The State objects to Defendant's Definition Number 18 of the term "Opioid(s)" as misleading because of its use of the terms "FDA-approved" and "pain-reducing" and because it is defined without regard to any of the pharmaceutical products or drugs at issue in this case. The State will reasonably construe the terms "Opioid(s)" to mean the opioid medications or drugs related to the claims and defenses at issue in this litigation.

11. The State objects to Defendant's Definition Number 19 of the term "Patient(s)." This definition—"any human being to whom an Opioid is prescribed or dispensed"—is overly broad, unduly burdensome, irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of the case on its face because it lacks any geographical or temporal limitation that has any bearing on this case, and could be construed to seek information outside the State's possession, custody, or control. The State will reasonably construe the term "patient" to

mean an individual who was prescribed an Opioid in the State of Oklahoma from January 1, 1999 through the date these requests were served.

12. The State objects to Defendant's Definition Number 24 of the term "Program(s)" and incorporates its objections to Definition Numbers 17 ("Oklahoma Agency") and 18 ("Opioids") as if fully set forth herein. Defendant's purported definition of "Program" is similarly overly broad, irrelevant to the claims and defenses at issue in this action, unduly burdensome and disproportionate to the needs of the case, because it includes no temporal limitations and is entirely untethered to the issues involved in this litigation. The State will reasonably construe the term "Program" to mean a program administered by the State of Oklahoma that reviews, authorizes, and/or determines the conditions for payment or reimbursement for the opioid medications or drugs and related treatment relevant to the claims and defenses at issue in this litigation and over which the State possesses control.

13. The State objects to Defendant's Definition Number 28 of the term "Vendor" as overly broad, unduly burdensome, disproportionate to the needs of the case, seeking to impose a burden upon the State that exceeds what is permitted under Oklahoma law, and calling for information that is not within the State's possession, custody or control. The State further incorporates its objections to and reasonable constructions of the terms defined in Definition Numbers 12 ("HCP") and 24 ("Program") as if fully set forth herein.

14. The State objects to Defendant's Definition Number 29 of the terms "You," "Your," "State," "Oklahoma," and "Plaintiff" as overly broad, unduly burdensome, disproportionate to the needs of the case, seeking to impose a burden upon the State that exceeds what is permitted under Oklahoma law, and calling for information that is not within the State's possession, custody or control because the definition attempts to require the State to not simply

respond on its own behalf, but also on behalf of "all its departments, agencies, and instrumentalities" without regard for whether the State represents such entities in this litigation and maintains sufficient control over such entities to enable the State to have reasonable access to or possession, custody or control of such entities' records. The State will respond on behalf of the State and those State agencies reasonably calculated to have information or materials relevant to the claims or defenses asserted in this litigation and over whom the State of Oklahoma, through the Office of the Attorney General, maintains sufficient control to allow the State to have reasonable access to and possession of responsive information maintained by the agency.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against Harvey Clarke Jenkins Jr., including in the matter of the *State of Oklahoma v. Harvey Clarke Jenkins Jr.*, No. CF-2016-2325 (Oklahoma County).

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable

document ever created with respect to an identified criminal proceeding, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent the identified criminal matter has any limited degree of relevance to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigation of this criminal matter (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), law enforcement attorneys' protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks publicly available information that is equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for

all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Harvey Clarke Jenkins, Jr., including in the matter of the *State of Oklahoma v. Harvey Clarke Jenkins Jr.*, No. CF-2016-2325 (Oklahoma County), if any.

REQUEST FOR PRODUCTION NO. 2: All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You

against Regan Ganoung Nichols, including in the matter of the *State of Oklahoma v. Regan Ganoung Nichols*, No. CF-2017-3953 (Oklahoma County).

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to an identified criminal proceeding, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent the identified criminal matter has any limited degree of relevance to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigation of this criminal matter (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), law enforcement attorneys' protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from

discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks publicly available information that is equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of

reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Regan Ganoung Nichols., including in the matter of the *State of Oklahoma v. Regan Ganoung Nichols*, No. CF-2017-3953 (Oklahoma County).

REQUEST FOR PRODUCTION NO. 3: All documents, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders, and judgments, concerning any disciplinary, civil, or criminal proceedings brought by You against William Martin Valuck, including in the matter of the *State of Oklahoma v. William Martin Valuck*, No. CF-2014-185 (Oklahoma County).

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to an identified criminal proceeding, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent the identified criminal matter has any limited degree of relevance to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigation of this criminal matter (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), law enforcement attorneys' protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks publicly available information that is equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Harvey Clarke Jenkins, Jr., including in the matter of the *State of Oklahoma v. William Martin Valuck*, No. CF-2014-185 (Oklahoma County).

REQUEST FOR PRODUCTION NO. 4: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Roger Kinney, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the identified individual are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to

Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Roger Kinney, M.D.

REQUEST FOR PRODUCTION NO. 5: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Tamerlane Rozsa, M.D., including but not

limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the identified individual are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining

to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including

specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Tamerlane Rozsa, M.D., if any.

REQUEST FOR PRODUCTION NO. 6: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joshua Livingston, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or

control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the identified individual are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Joshua Livingston, D.O., if any.

REQUEST FOR PRODUCTION NO. 7: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Joseph Knight, M.D., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the identified individual are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this

matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of

reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Joseph Knight, M.D., if any.

REQUEST FOR PRODUCTION NO. 8: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against Christopher Moses, D.O., including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the identified individual are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

Subject to and without waiving the foregoing objections (including those incorporated by reference in this response), the State responds as follows: After a reasonably diligent search of reasonably accessible sources over which the State maintains possession, custody or control, the State will produce or permit the inspection and copying of non-privileged documents pertaining to proceedings by the State against Christopher Moses, D.O., if any.

REQUEST FOR PRODUCTION NO. 9: All documents concerning any disciplinary, civil, or criminal proceedings brought by You against any other HCP not previously requested related to the prescription of Opioids, including but not limited to initiating documents, witness interview notes and transcripts, witness statements, reports, documentary evidence, evidence receipts, video and audio recordings, Prescription Monitoring Program records, hearing transcripts, grand jury transcripts, pleadings, motions, orders and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to an unlimited amount of unidentified criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. This vague, open-ended "catch-all" Request fails entirely to identify with any degree of particularity the universe of purported "disciplinary, civil, or criminal proceedings" brought by the State since the beginning of time for which the Request seeks information. As such, on its face, the Request is too overbroad and vague to enable the State to attempt to respond to it. By purporting to seek information related to any conceivable "proceeding[] brought by" the State against a healthcare professional "related to the prescription of Opioids," the Request fails to identify with any degree of particularity the type of proceedings contemplated by the Request. Moreover, this overbroad Request is not narrowly tailored to the claims or defenses at issue in this litigation because the Request seeks a vast amount of information related to unidentified "proceedings" that somehow "related to the prescription of Opioids[.]" Any number of "proceedings" or matters that tangentially could be characterized as "relat[ing] to the prescription of Opioids," but that have nothing to do with this litigation, could therefore fall within the all-encompassing scope of this Request. As such, the Request seeks information that is irrelevant.

Further, due to the expansive and unreasonable scope of this Request, to the extent any responsive information exists and actually has any marginal degree of relevance to the claims and defenses at issue in this litigation, this minimal degree of relevance is vastly outweighed by the substantial burden the State would incur to gather, collect, review and produce such information.

Accordingly, the State objects that this Request is unduly burdensome and disproportionate to the needs of this case.

The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State, including but not limited to, for example, information pertaining to unidentified "disciplinary" or "civil" proceedings that could conceivably fall within the expansive scope of this Request.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified proceedings against the unidentified healthcare professionals inquired about in this Request are in any way relevant to this litigation, the Request is plainly overbroad because it seeks confidential and sensitive information pertaining to law enforcement agencies' investigations (e.g., "witness statements," "reports," "evidence receipts," "video and audio recordings"), protected attorney work product or trial preparation materials (e.g., "witness interview notes"), and information that is immune from discovery in this matter (e.g., "grand jury transcripts"). The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request because it seeks information that, to the extent it exists, is publicly available information and, thus, equally available to Defendants (e.g., "pleadings, motions, orders, and judgments"). Because this information is equally available to Defendants, the Request is unduly burdensome and disproportionate to the needs of the case in that Defendants are attempting to shift the burden of gathering and collecting publicly available

information that Defendants appear to believe could somehow relate to this litigation on the State. Defendants cannot shift the burden associated with investigating Defendants' defenses on the State, most especially when that burden is the same for all parties due to the public availability of certain of the information Defendants seek with this Request.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

REQUEST FOR PRODUCTION NO. 10: All documents concerning any complaints or investigations by You concerning the prescribing practices of any HCP that did not result in the initiation of a disciplinary, civil, or criminal proceeding.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this

action and disproportionate to the needs of this case. This Request, which seeks every conceivable document ever created with respect to an unlimited amount of unidentified "complaints or investigations" that specifically did *not* lead to the initiation of criminal, disciplinary or civil proceedings, is not tailored to the subject matter of the specific claims and defenses at issue in this action. This vague, open-ended "catch-all" Request fails entirely to identify with any degree of particularity the universe of purported "complaints or investigations" by the State since the beginning of time for which the Request seeks information. As such, on its face, the Request is too overbroad and vague to enable the State to attempt to respond to it. By purporting to seek information related to any conceivable "complaint[]" or investigation[]" by the State against a healthcare professional concerning that individual's vaguely-described "prescribing practices," the Request is overbroad and untethered to the claims and defenses at issue in this litigation. Any number of "prescribing practices" that have nothing to do with this litigation could lead to a "complaint or investigation" that has no relation to the claims and defenses at issue in this litigation. Moreover, the Request fails to articulate with any particularity how a "complaint[]" or investigation[]" related to the undefined universe of "prescribing practices of any HCP" that "did not result in the initiation of a disciplinary, civil, or criminal proceeding" could conceivably bear upon the claims and defenses at issue in this litigation.

Further, due to the expansive and unreasonable scope of this Request, to the extent any responsive information exists and actually has any marginal degree of relevance to the claims and defenses at issue in this litigation, this minimal degree of relevance is vastly outweighed by the substantial burden the State would incur to gather, collect, review and produce such information. Specifically, the Request purports to require the State to search and account for every conceivable "complaint[]" or investigation[]" related to any "prescribing practice" of an "HCP" since the

beginning of time, regardless whether such practice relates to this litigation. Accordingly, the State objects that this Request is unduly burdensome and disproportionate to the needs of this case.

The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State. The State further objects to this Request to the extent it seeks to force the State to disclose information that is protected from disclosure under pertinent statutes intended to protect the confidentiality and/or anonymity of whistleblowers or others who submit confidential "complaints" to the State and/or its agencies.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified "complaints or investigations" against the unidentified healthcare professionals inquired about in this Request are in any way relevant to this litigation, the Request is plainly overbroad because it appears to seek confidential and sensitive information pertaining to law enforcement agencies' investigations, protected attorney work product or trial preparation materials, and information that is immune from discovery in this matter pertaining to such unidentified "complaints or investigations." Moreover, to the extent this Request seeks information about ongoing investigations, the State objects to Request as improper. The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

REQUEST FOR PRODUCTION NO. 11: All documents concerning any complaints or investigations by You concerning the prescription of Opioids at Vista Medical Center, 3700 S. Western Avenue, Oklahoma City, Oklahoma.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case.

The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State. The State further objects to this Request to the extent it seeks to force the State to disclose

information that is protected from disclosure under pertinent statutes intended to protect the confidentiality and/or anonymity of whistleblowers or others who submit confidential "complaints" to the State and/or its agencies.

The State further objects to this Request because it seeks information that, to the extent it exists, is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. To the extent any unidentified "complaints or investigations" against the unidentified healthcare professionals inquired about in this Request are in any way relevant to this litigation, the Request is plainly overbroad because it appears to seek confidential and sensitive information pertaining to law enforcement agencies' investigations, protected attorney work product and mental impressions or trial preparation materials, and information that is immune from discovery in this matter pertaining to such unidentified "complaints or investigations." Moreover, to the extent this Request seeks information about ongoing investigations, the State objects to Request as improper. The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure

under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

REQUEST FOR PRODUCTION NO. 12: All Prescription Monitoring Program records related to the Opioids prescribed by HCPs employed by Vista Medical Center.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

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

The State further objects that this Request is vague, ambiguous, overly broad, unduly burdensome and seeks information that is irrelevant to the claims and defenses at issue in this action and disproportionate to the needs of this case. The State further objects to this Request as seeking information outside the possession, custody or control of the State and/or information that is not reasonably accessible by the State.

The State further objects to this Request because it seeks information, including "Prescription Monitoring Program records" that is protected from disclosure under pertinent State and federal statutes, rules, regulations, privileges and immunities, including but not limited to, the deliberative process privilege, the work-product or trial preparation privilege, and/or the attorney-client privilege. The State further objects to this Request because it seeks information pertaining to law enforcement agencies' investigations, protected attorney work product and mental impressions or trial preparation materials, and information that is immune from discovery in this matter. Moreover, to the extent this Request seeks information about ongoing investigations, the

State objects to Request as improper. The State will not jeopardize ongoing criminal and/or disciplinary investigations initiated or pursued by certain agencies of the State.

The State further objects to this Request to the extent that it seeks materials or information that are the subject of any other confidentiality, protective or non-disclosure Orders entered in other proceedings, investigations or litigation.

The State further objects to this Request as seeking protected health information prohibited from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 C.F.R. Part 2, and other State and federal statutes, rules, and regulations. The State also objects to this Request as seeking information that is privileged or otherwise prohibited from disclosure under 63 O.S. §2-309D; the Multicounty Grand Jury Act, 22 O.S. §350, *et seq.* (including specifically *id.* at §355; and the Oklahoma Medicaid Program Integrity Act, 56 O.S. §1001, *et seq.* (including specifically *id.* at §1004(d)).

DATED: June 11, 2018.

Respectfully submitted,



Reggie Whitten, OBA No. 9576
Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 North Broadway Avenue, Suite 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: rwhitten@whittenburragelaw.com
mburrage@whittenburragelaw.com

Mike Hunter, OBA No. 4503
ATTORNEY GENERAL FOR THE STATE
OF OKLAHOMA
Abby Dillsaver, OBA No. 20675

**GENERAL COUNSEL TO THE ATTORNEY
GENERAL**

Ethan A. Shaner, OBA No. 30916
DEPUTY GENERAL COUNSEL
313 N.E. 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 521-6246
Email: abby.dilsaver@oag.ok.gov
ethan.shaner@oag.ok.gov

Bradley E. Beckworth, OBA No. 19982
Jeffrey J. Angelovich, OBA No. 19981
Trey Duck, OBA No. 33347
NIX, PATTERSON & ROACH, LLP
512 North Broadway Avenue, Suite 200
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: bbeckworth@nixlaw.com
jangelovich@nixlaw.com
tduck@nixlaw.com

Glen Coffee, OBA No. 14563
GLEN COFFEE & ASSOCIATES, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, on June 11, 2018 to:

Sanford C. Coats, OBA No. 18268
Cullen D. Sweeney, OBA No. 30269
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Ste. 100
Oklahoma City, OK 73102

Sheila Birnbaum
Mark S. Cheffo
Hayden A. Coleman
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

Patrick J. Fitzgerald
R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

Robert G. McCampbell, OBA No. 10390
Travis J. Jett, OBA No. 30601
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson
Oklahoma City, OK 73102-7255


Steven A. Reed
Harvey Bartle IV
Jeremy A. Menkowitz
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Brian M. Ercole
MORGAN, LEWIS & BOCKIUS LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
Benjamin H. Odom, OBA No. 10917
John H. Sparks, OBA No. 15661
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Oklahoma City, OK 73072

Charles C. Lifland
Jennifer D. Cardelus
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071

Stephen D. Brody
O'MELVENY & MYERS LLP

1625 Eye Street NW
Washington, DC 20006


Michael Burrage