



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.

STATE OF OKLAHOMA }  
CLEVELAND COUNTY } S.S.

FILED

FEB 26 2019

In the office of the  
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

**REDACTED FOR PUBLIC FILING**

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UNDER SEAL**

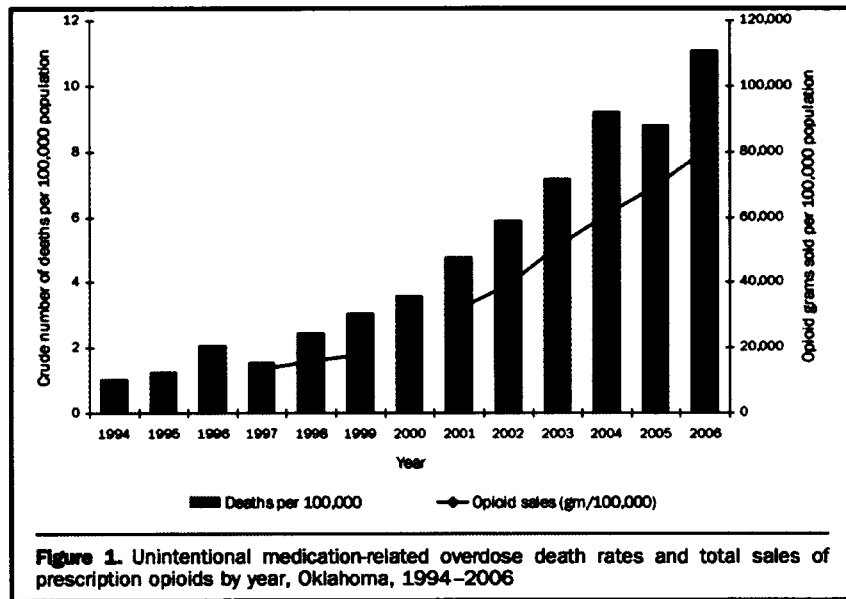
**THE STATE’S MOTION FOR DE-DESIGNATION OF ALLEGED  
CONFIDENTIAL DOCUMENTS AND BRIEF IN SUPPORT**

The State of Oklahoma (“State”) moves for an order from this Court de-designating documents that Defendants Janssen Pharmaceuticals, Inc. and Johnson & Johnson (collectively “J&J”) have produced in this litigation, yet improperly marked as “confidential” under the Protective Order in order to unjustifiably shield this information from the eyes of the public. With this Motion, the State asks this Court to end J&J’s secrecy once and for all.

## BACKGROUND

In October 2017, the President of the United States, Donald J. Trump, declared the opioid crisis a national Public Health Emergency, effective immediately.<sup>1</sup> Specifically, by the authority vested in him “by the Constitution and laws of the United States of America,” President Trump declared it “shall be the policy of the United States to use all lawful means to combat the drug demand and opioid crisis currently afflicting our country.”<sup>2</sup> According to President Trump, drug “overdoses now kill more Americans than motor vehicle crashes or gun-related incidents, and more than 300,000 Americans have died of an opioid overdose since 2000.”<sup>3</sup> Simply put, this public health crisis is “the deadliest drug epidemic this country has ever seen.”<sup>4</sup>

Oklahoma has suffered disproportionately from this public health crisis. As prescription opioid sales increased fourfold from 1997 to 2006, overdose deaths followed on a parallel track:



From 1999 to 2012, drug overdose deaths in Oklahoma increased eightfold, surpassing deaths from

<sup>1</sup> See Presidential Memorandum for the Heads of Executive Departments and Agencies (Oct. 26, 2017), available at <https://www.whitehouse.gov/opioids/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Opening Statement of Attorney General Jeff Sessions Before the Senate Judiciary Committee (Oct. 18, 2017), available at <https://www.justice.gov/opa/speech/opening-statement-attorney-general-jeff-sessions-senate-judiciary-committee>.

motor vehicles.<sup>5</sup> In 2012, Oklahoma had the fifth-highest unintentional poisoning death rate and prescription opioids contributed to the majority of these deaths.<sup>6</sup> In 2014, Oklahoma’s unintentional poisoning rate was 107% higher than the national rate.<sup>7</sup> There are more prescription drug overdose deaths each year in Oklahoma than overdose deaths from alcohol and all illegal drugs combined.<sup>8</sup> Oklahoma leads the nation in non-medical use of opioid painkillers.<sup>9</sup> And, in 2016, Oklahoma ranked number one in the nation in milligrams of opioids distributed with approximately 877 milligrams per adult resident.<sup>10</sup>

In the midst of this Public Health Emergency, Oklahomans deserve answers. Our Legislature, Governor, policymakers and doctors need to know the truth about how one particular company, J&J, inserted itself into our State and sought to influence every opioid-related decision the State made or considered—from scheduling to swallowing. This need exists now more than ever because our Legislature is currently in Session, and that Session will end as this trial begins. By then it will be too late. Yet, J&J continues to fight to keep these answers concealed. In the dark. Away from the public.<sup>11</sup>

In his Public Health Emergency Declaration and subsequent speeches on the issue, President Trump has called on “every state, local, and Federal agency” to take up arms in combatting this Public Health Emergency.<sup>12</sup> The Oklahoma Legislature has enacted numerous Bills aimed at addressing this crisis and cleaning up the catastrophe Defendants created over the

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<sup>5</sup> Petition, ¶5.

<sup>6</sup> *Id.*, ¶23.

<sup>7</sup> *Id.*, ¶24.

<sup>8</sup> *Id.*, ¶25.

<sup>9</sup> *Id.*, ¶27.

<sup>10</sup> *Id.* ¶26.

<sup>11</sup> As demonstrated below, J&J continues this course despite the plain fact that J&J cannot meet its burden of establishing that documents regarding products and entities it divested itself of in 2016 are entitled to any protection, let alone establishing “good cause” by showing the particular harm or prejudice that will occur if the designation is removed.

<sup>12</sup> See Remarks by President Trump on Combatting the Opioid Crisis (Mar. 19, 2018), *available at* <https://www.whitehouse.gov/opioids/>.

past Legislative Sessions. And, the Legislature is *currently* considering more and more legislation in the current Session. See **Exhibit 6**.

However, to-date, J&J has managed to shield from public scrutiny J&J's infiltration of every level of local, state and national government. The Legislature most certainly deserves to be fully informed of the facts revealed in this litigation in order to continue its urgent efforts to fight this Public Health Emergency. Now. In the current Legislative Session. Before another Bill comes to the Floor. Before another life is lost.

The public, just like the Oklahoma Legislature, deserves to know the full extent of J&J's efforts to influence policymakers at all levels of government in order to increase sales of their (and their co-conspirators') drugs. The public recently received a glimpse into the answers to these questions, when the Complaint against Purdue filed by the Attorney General of the Commonwealth of Massachusetts became public.<sup>13</sup> The revelations in the Massachusetts Complaint put the world on notice about Purdue. And, the public outcry that followed, including protests by those who lost their loved ones to Defendants' deadly scheme, was deafening.<sup>14</sup> It is sad that Oklahomans have to learn about this case from a document filed in Massachusetts because of improper confidentiality designations. But, it is even sadder that the policymakers of this State have no idea about the role J&J played in creating the crisis in Oklahoma. J&J was there arm-in-arm with Purdue (and Teva) the whole way.

However, the public disclosure of Purdue's sinister actions is a drop in the bucket compared to the evidence generated in this litigation, demonstrating precisely how J&J—a "family company"—acted as the kingpin behind this Public Health Emergency, profiting at every stage.

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<sup>13</sup> See, e.g., NPR.org, *Lawsuit Details How The Sackler Family Allegedly Built an OxyContin Fortune* (Feb. 1, 2019), available at <https://www.npr.org/sections/health-shots/2019/02/01/690556552/lawsuit-details-how-the-sackler-family-allegedly-built-an-oxycontin-fortune>.

<sup>14</sup> See, e.g., NYTimes.com, *Guggenheim Targeted by Protesters for Accepting Money From Family With OxyContin Ties* (Feb. 9, 2019), available at <https://www.nytimes.com/2019/02/09/arts/protesters-guggenheim-sackler.html>.

Indeed, the public is only now learning that concealing the deadly and *known* risks associated with its products represents the *modus operandi* of J&J, as the U.S. Department of Justice has now issued subpoenas to J&J regarding undisclosed tests conducted in the 1970s about the risk of cancer that accompanies J&J's baby powder products.<sup>15</sup> Urgent, immediate and complete exposure to the public of J&J's primary role in creating this public health crisis has become paramount.

With this Motion, the State asks this Court—in the name of the public health of Oklahoma citizens—to end J&J's secrecy and bring this urgent information to public light. The public and policymakers should know whether any of the following occurred at the direction of J&J (of course, if they did not occur, then J&J should have no problem agreeing to make all of its documents public):

- Did J&J target children?
- Did J&J target Veterans returning from deployment?
- Did J&J target the elderly?
- Did J&J deploy sales representatives to Oklahoma, like Purdue did?
- Did J&J block legislation and regulatory action aimed at limiting opioid availability?
- Did J&J pay “neutral” third parties as part of its internal marketing plan?
- Did J&J partner with Purdue?

These are questions to which the public and Oklahoma policymakers deserve urgent answers. And, these answers are currently hidden behind J&J's improper confidentiality designations that this Court can end by granting this Motion.

A few examples demonstrate the urgency and public import of such an action by this Court.

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<sup>15</sup> See, e.g., NBCNews.com, *DOJ and SEC subpoena Johnson & Johnson in talc powder asbestos probe* (Feb. 21, 2019), available at <https://www.nbcnews.com/business/business-news/doj-sec-subpoena-johnson-johnson-talc-powder-asbestos-probe-n973901>.

In his Public Health Emergency Declaration, President Trump identified children as among those most “devastated” by this public health crisis.<sup>16</sup> But to-date, the public has not seen the full truth—that J&J specifically ██████████ in its campaign to addict ██████████ ██████████ to its deadly heroin pills and patches. Not just any ██████████ There is nothing confidential, proprietary, or moral about J&J’s campaign to target ██████████ in order to increase its drug sales. ██████████ Oklahoma’s most vulnerable populations— ██████████—deserve to know this information in order to protect ██████████ from becoming the next victims of addiction and/or death, courtesy of J&J—a so-called “family company.” So does the Legislature. And allowing J&J to continue to suppress this truth not only belies President Trump’s call to action, but it puts the lives of Oklahomans in danger.

In his Public Health Emergency Declaration, President Trump informed the country that “since the 1990s, there has been a dramatic rise in opioid pain medication prescriptions.”<sup>17</sup> But to-date, J&J has managed to shield from public scrutiny that it was J&J—through a web of foreign and domestic wholly owned J&J subsidiaries, including Tasmanian Alkaloids Pty Limited (“Tasmanian Alkaloids”) and Noramco, Inc. (“Noramco”)—that created, grew, imported and supplied to J&J and its other co-conspirators, including Purdue, the narcotic raw materials necessary to manufacture the opioid pain medications thrust upon the unsuspecting public since the 1990s. There is nothing confidential or proprietary about these facts.

Indeed, in the midst of the public backlash over this crisis, **J&J divested itself of its global “pain management franchise,”** and these supply-chain entities specifically, in 2016. J&J faces no competitive disadvantage by publicly disclosing information about these companies it no longer owns. The public, on the other hand, deserves to know the face and name of the source, supplier

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<sup>16</sup> See Presidential Memorandum for the Heads of Executive Departments and Agencies (Oct. 26, 2017), available at <https://www.whitehouse.gov/opioids/>.

<sup>17</sup> See Presidential Memorandum for the Heads of Executive Departments and Agencies (Oct. 26, 2017), available at <https://www.whitehouse.gov/opioids/>.

and kingpin responsible for flooding and infecting this country with an unprecedented surplus of deadly drugs—J&J, a “family company.”

President Trump’s Public Health Emergency Declaration called on all U.S. departments, agencies and authorities to “exercise all appropriate emergency authorities . . . to reduce the number of deaths and minimize the devastation the drug demand and opioid crisis inflicts upon American communities.”<sup>18</sup> President Trump has since pledged that “[d]efeating this epidemic will require the commitment of every state, local, and Federal agency. Failure is not an option. Addiction is not our future. . . . And we pledge to honor the memory of those you lost with action and determination and resolve.”<sup>19</sup> President Trump further rightfully declared that this crisis “can affect anyone, and that’s why we want to **educate** everyone.”<sup>20</sup>

This Motion seeks to execute the President’s mandate—to honor those who have tragically lost their lives and protect those at risk of losing their lives in the future through action, determination and resolve. Given the Public Health Emergency that this country, and the State of Oklahoma in particular, now faces, the public interest in **education** about the opioid crisis—Who caused it? Why? When? How?—can no longer be denied. The citizens of Oklahoma, the regulators of Oklahoma, and the Legislators of Oklahoma urgently need the information J&J is concealing.

In the interest of the public health, safety, and policy of Oklahoma, the State respectfully requests that the Court enter an Order that de-designates each document produced by J&J in this litigation that was created prior to July 2016, the date by which J&J completely divested itself of its entire “pain management franchise.” The public interest in this information is urgent, enduring and overwhelming. And, there simply is no credible argument that this information represents a

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<sup>18</sup> See Presidential Memorandum for the Heads of Executive Departments and Agencies (Oct. 26, 2017), *available at* <https://www.whitehouse.gov/opioids/>.

<sup>19</sup> See Remarks by President Trump on Combatting the Opioid Crisis (Mar. 19, 2018), *available at* <https://www.whitehouse.gov/opioids/>.

<sup>20</sup> See *id.* (emphasis added).

trade secret, the disclosure of which would subject J&J to imminent competitive harm, as J&J no longer owns the drugs and entities addressed by these pre-July 2016 documents.

### **THE DOCUMENTS AT ISSUE**

As the Court is well aware, the State brings this action in the public interest of its residents for harm stemming from Defendants' deceptive promotion, marketing, and sale of opioid drugs. In particular, among its other claims, the State has brought this action in order to abate the public nuisance that has endangered the comfort, repose, health and safety of Oklahomans.<sup>21</sup> To facilitate discovery, the Court entered a Protective Order that allowed the parties to designate as "Confidential" or "Highly Confidential" documents containing the following: information prohibited from disclosure by law, confidential research, trade secrets, medical information, personal identity information, tax information, and personnel/employment records of non-parties. *See* Protective Order, ¶ 2. During the course of discovery, J&J has produced millions of pages of documents. At almost every turn, J&J has blanket-designated the vast majority of these documents as "Confidential" under the Protective Order. The State predicted this would happen and explained to the Court that blanket designations by Defendants would result in blanket challenges by the State:

Blanket designations are what are going to kill this case, because if they send us blanket designations, we're going to blanket challenge. And we would be entitled to do it, because they're going to have to tell us which are the documents – they bear the burden to show the cause for protection – which of those documents actually warrant protection.

March 9, 2018 Hearing Trans. at 87:4-9, **Exhibit 1**.

Given the magnitude, urgency and importance of the Public Health Emergency the State of Oklahoma finds itself in due to the actions of Defendants—often led or organized by J&J—the time has come that J&J's practice of cloaking its actions in secrecy end. To do so, and in keeping

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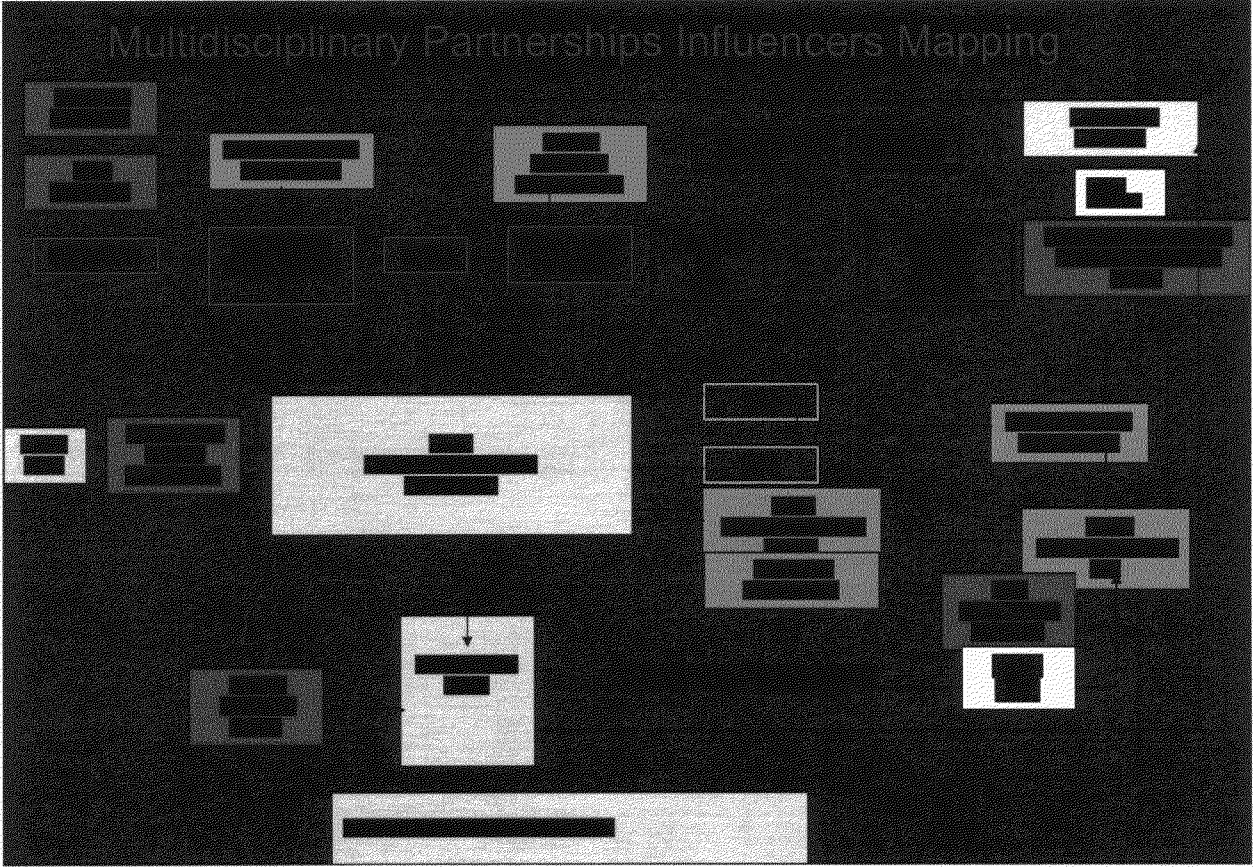
<sup>21</sup> *See* Okla. Stat. tit. 50, §§1, 2, 11.





such organizations, and certain of Defendants' key opinion leaders ("KOLs") also served in various roles for these organizations, including as board members and officers.

In this regard, J&J produced a document entitled "[REDACTED] [REDACTED]." This document shows a chart in which J&J identified [REDACTED] [REDACTED]. See Exhibit 3. This chart reveals the extent to which Defendants sought collaboration with the [REDACTED] [REDACTED] [REDACTED].



[REDACTED]

[REDACTED]

This is a slideshow presentation in which Defendants expressed their desire to, *inter alia*,

[REDACTED]

[REDACTED] **Exhibit 4.** Within this presentation is a slide entitled “[REDACTED]

[REDACTED],” wherein J&J touts its relationship with [REDACTED]

[REDACTED] J&J note they and [REDACTED]

[REDACTED] J&J also touts the fact that it and [REDACTED]

[REDACTED] Lastly, J&J acknowledges that it and [REDACTED]

The State alleges Defendants engaged in a conspiracy to create a public nuisance in conjunction with their marketing, sale, and distribution of opioids into Oklahoma and its communities; this was done in furtherance of Defendants’ effort to expand the opioid market for their own selfish gain, regardless of the devastating consequences to the State and its residents. This slide shows

[REDACTED]

[REDACTED] (*JAN-MS-02296456*)

This report was created by J&J to [REDACTED]

[REDACTED] **Exhibit 5.** The report contains a section entitled “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Id.* at 13 (emphasis added).

The State’s Petition details how Defendants’ deceptive and misleading prescription opioid marketing campaign has caused a devastating public health crisis in Oklahoma. These documents are but emblematic snapshots of the ongoing problem. Despite the obvious public health concerns raised by these documents, Defendants have asserted a claim of confidentiality pursuant to the

Protective Order. This abuse of the “confidentiality” designation should be overturned. None of the foregoing documents remotely constitute “confidential” information, as that term is defined by the Protective Order. But, these documents only represent a small sample of the millions of pages J&J has hidden from public view behind its spurious claims of “confidentiality.” With the policymakers and citizens of Oklahoma in a dire and unprecedented state of needing to understand the truth behind this public health emergency, the State respectfully asks the Court to end J&J’s secrecy. This important and publicly necessary action can be accomplished by striking J&J’s confidentiality designations for the representative examples attached hereto, along with all documents produced by J&J that were created prior to July 2016, when J&J divested itself of its global “pain management franchise.”

## **ARGUMENT**

### **I. Standard**

The Protective Order states that information can be designated “confidential” if it contains information prohibited from disclosure by law, confidential research, trade secrets, medical information, personal identity information, tax information, or personnel/employment records of non-parties. Protective Order, ¶ 2. J&J, as the designating party, has the burden of establishing that the material whose designation is challenged is entitled to protection. *See* Okla. Stat. tit. 12, § 3226(C). J&J must establish “good cause” by showing the particular harm or prejudice that will occur if the designation is removed. *Crest Infiniti, II v. Swinton*, 2007 OK 77, ¶17, 174 P.3d 996, 1004. J&J must demonstrate the *specific harm or prejudice* with *specific factual information*, rather than broad, conclusory allegations of harm. *See id.* (“We agree that petitioners must show more than these blanket statements to satisfy their burden for a protective order.”). In determining whether good cause exists, a court examines a number of factors, including whether the information is important to public health and safety. *See, e.g., Wiggins v. Burge*, 173 F.R.D. 226,

229 (N.D. Ill. 1997). “If confidentiality is sought over information important to public health and safety, or other issues of public import, that weighs against confidentiality.” *Davis v. Starwood Hotels and Resorts Worldwide, Inc.*, No. 3:12-1915, 2013 WL 12310085, at \*1 (M.D. Pa. Oct. 31, 2013).<sup>22</sup>

The State formally challenges all documents designated as “confidential” by J&J in this matter created prior to July 2016 when J&J divested itself of its global “pain management franchise.” The public deserves and has a right to learn and understand J&J’s true role in creating this public health crisis. J&J has not and cannot meet its burden to overcome this challenge.

### ARGUMENT

At the onset, public policy favors the public nature of court proceedings and access to judicial records. *See Collier v. Reese*, 2009 OK 86, ¶¶ 19, 21, 223 P.3d 966, 974-76 (recognizing presumption of public access to judicial proceedings and that “judicial records of the state should always be accessible to the people for all proper purposes....”); 75 Am. Jur. 2d *Trial* § 136 (noting “strong presumption” of public access to court proceedings and records).<sup>23</sup> As shown below, the documents J&J has produced in this litigation should be de-designated because, subject to the foregoing policy—and the requisite burden under §3226(C)—the materials J&J has produced do not qualify as “confidential” and J&J cannot establish any specific harm from their de-designation.

## **II. J&J’s Pre-July 2016 Documents Are Not Confidential and Should Be De-Designated**

As discussed above, the State of Oklahoma (like the rest of the country) is in the midst of a deadly public health crisis due to Defendants’ decades-long campaign to oversupply this State with deadly and addictive drugs. The public need and interest in education about and understanding

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<sup>22</sup> Section 3226(C) closely parallels its federal counterpart, Rule 26 of the Federal Rules of Civil Procedure. Thus, federal decisions are instructive. *Hall v. Goodwin*, 1989 OK 88, ¶ 7, 773 P.2d 291, 293.

<sup>23</sup> *Compare Shadid v. Hammond*, 2013 OK 103, ¶ 2, 315 P.3d 1008, 1009 (“Sealing a public record should be a very rare event that occurs in only the most compelling of circumstances.”) (Taylor, J., dissenting).

of how Defendants victimized unsuspecting Oklahomans to create this public health crisis is plain, palpable and overbearing. The President has declared this crisis a Public Health Emergency and called on all those with the authority to do so to take action, with resolve and determination, to end this crisis through, *inter alia*, education and information.<sup>24</sup> The State of Oklahoma, by and through the Attorney General, are taking such action and asking this Court to do so too—by forbidding J&J from continuing to shield this critical information in darkness and out of public view.

As the supplier and source of the materials used to manufacture these opioid drugs, J&J—a “family company”—has acted as a ringleader in Defendants’ scheme. Yet, as public scrutiny over the actions of the opioid manufacturers, including Defendants here, began to mount, J&J elected to divest itself of its opioid-related assets. Specifically, in April 2015, J&J announced its complete divestiture of its flagship opioid—Nucynta.<sup>25</sup> By July 1, 2016, J&J had sold its “opium poppy processing” and global supply-chain subsidiaries, Tasmanian Alkaloids and Noramco, to a private investment company.<sup>26</sup> And, J&J’s only other opioid product, Duragesic, went off patent over ten years ago, at which time J&J entirely stopped promoting the drug due to generic competition. As such, J&J faces no present competitive disadvantage from the public disclosure of its internal records relating to opioids created prior to July 2016. Nevertheless, J&J has designated millions of pages of such documents as “confidential” under the Protective Order in this litigation. Such designations are frivolous and an assault on the very command of President Trump. With no further proprietary interest in the opioid business, J&J cannot meet its burden to

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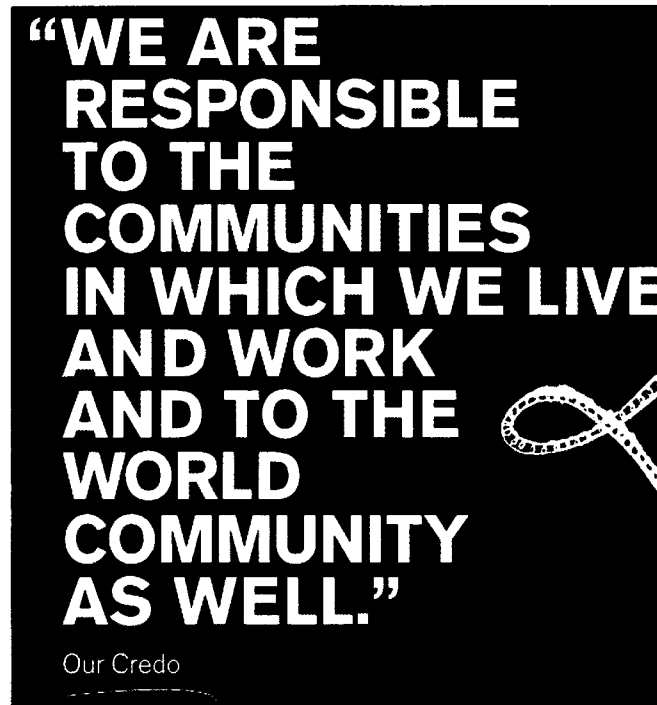
<sup>24</sup> See Remarks by President Trump on Combatting the Opioid Crisis (Mar. 19, 2018), *available at* <https://www.whitehouse.gov/opioids/>.

<sup>25</sup> See Janssen Pharmaceuticals, Inc. Completes Divestiture of U.S. License Rights to NUCYNTA® (tapentadol), NUCYNTA® ER (tapentadol) extended-release tablets and NUCYNTA® (tapentadol) Oral Solution to Depomed, Inc. (Apr. 2, 2015), *available at* <https://www.jnj.com/media-center/press-releases/janssen-pharmaceuticals-inc-completes-divestiture-of-us-license-rights-to-nucynta-tapentadol-nucynta-er-tapentadol-extended-release-tablets-and-nucynta-tapentadol-oral-solution-to-depomed-inc>.

<sup>26</sup> See, e.g., Gareth Macdonald, *US investor buys J&J’s opiate API business and announces restructuring* (July 20, 2016), *available at* <https://www.in-pharmatechnologist.com/Article/2016/07/21/US-investor-buys-J-J-s-opiate-API-business-and-announces-restructuring>.

justify keeping them in the dark. The only conceivable basis for doing so has been non-existent since July 2016. Yet, J&J persists in attempting to keep this information hidden.

J&J publicly casts itself as a “family company” dedicated to “communities:”<sup>27</sup>



Such statements only beg the question: if J&J has nothing to hide, why is it fighting so hard to keep its involvement in creating the opioid crisis a secret?

The answer is clear: this “family company” has destroyed families. Those families deserve to see and hear the truth. And, J&J lacks any legitimate justification for depriving the families it has destroyed, as well as the public at large, from learning the truth. *Compare Wiggins*, 173 F.R.D. at 229-30 (“[T]here is an important public interest at stake—the health and welfare of the general public .... The public has a right to know how matters concerning their daily protection are being investigated and handled...[W]e conclude that public interest far outweighs any harm to the [defendants] and thus, there is no good cause to keep the documents confidential.”).

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<sup>27</sup> J&J Code of Business Conduct, available at <https://www.jnj.com/code-of-business-conduct>, at 28.

J&J's Code of Business Conduct further obligates J&J and all its employees to "work with third parties who also value and demonstrate high, ethical standards in their business practices" and requires J&J's partners to follow J&J's Code of Business Conduct.<sup>28</sup> Oklahoma Legislators and policymakers deserve to know whether J&J ever did anything to hold its two partners—Purdue and Cephalon (both convicted federal criminals) responsible or in compliance with J&J's Credo and Code of Business Conduct.

Because J&J lacks any justifiable basis for continuing to keep its pre-2016 documents related to opioids "confidential," the State requests the Court order that each such document be de-designated at once.

**A. The Subject Matter Of The Representative Documents Is Not Confidential**

Even a cursory review of only a sample of the documents J&J has produced in this litigation show they are not confidential.<sup>29</sup> Information is "confidential" if it contains information prohibited from disclosure by law, confidential research, trade secrets, medical information, personal identification information, tax information, or personnel/employment records of non-parties. The subject matter of the documents—Defendants' public relations efforts, cooperation and conspiring with J&J's co-conspirators and business partners, like Purdue, J&J's targeting [REDACTED], and J&J's acknowledgement that opioid addiction is a [REDACTED] [REDACTED]—are all matters of severe and urgent public concern. Similar to Purdue's conduct regarding the "anti-story," these documents demonstrate Defendants' coordinated efforts to market opioids to [REDACTED]

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<sup>28</sup> J&J Code of Business Conduct, *available at* <https://www.jnj.com/code-of-business-conduct>, at 28.

<sup>29</sup> Again, the State has attached certain documents as illustrative examples of the types of documents that J&J has baselessly designated as confidential. The State certainly requests that the Court de-designate these sample documents. However, the State's request exceeds these representative documents, as the State requests that the Court de-designate all documents produced by J&J in this matter that were created prior to 2016.



█ These documents further only represent a very small sample of the types of document that J&J is wrongfully keeping hidden under spurious claims of “confidentiality.”

These documents, along with the others J&J is keeping hidden, are vitally important to the immediate public health of Oklahoma so that the public knows the truth regarding Defendants’ acknowledgment of the risks surrounding opioids and conscious decision to continually market the drugs despite such knowledge. None of these documents relate to development or commercialization of any product, confidential research, medical information, tax information, or trade secrets. The content in the documents at issue does not fall within the definition of “confidential” pursuant to the Protective Order. Moreover, J&J has divested itself of its opioids business and the entities it utilized to control the global supply chain necessary to import these dangerous drugs into the U.S. Thus, even if these documents did relate to any commercially sensitive product (they do not), J&J faces no *present* competitive harm or disadvantage by their public disclosure. Accordingly, the Court should de-designate each of these documents.

**B. J&J Cannot Establish Particularized Harm from the Disclosure of Its Pre-July 2016 Documents, Including the Sample Documents Attached Hereto**

De-designation of J&J’s pre-July 2016 documents, including the sample documents submitted here, could not possibly cause any commercial or financial harm to J&J. As stated above, none of these documents relate to development or commercialization of any product, confidential research, medical information, tax information, or trade secrets. Indeed, J&J purports to no longer be in the opioids business at all. The mere fact that public disclosure of these documents may be embarrassing or prejudicial to J&J—or even subjects them to future litigation—does not warrant confidential treatment. This is especially true where, as here, the actions in the documents reveal J&J’s efforts at manipulating public opinion about opioids. As the State has previously urged, it is of paramount fairness that the public be afforded a full understanding of J&J’s behind-the-scene activities regarding the opioid crisis. Because J&J cannot articulate any rational and legitimate

basis for its pre-July 2016 documents, including the sample documents submitted here, to remain confidential, the Court should grant the State's Motion and order that J&J's pre-July 2016 documents be de-designated and non-confidential.

In sum, the public interest outweighs any privacy concerns by J&J. The State's Motion begs two pivotal questions: what is the confidential nature of J&J's pre-July 2016 documents and where is the competitive harm if they were disclosed? The fact is there is no confidential information at issue and no harm (other than rightful shame) that would be suffered if the subject documents lost their confidential designation. While these materials reveal a lot about J&J, legitimate confidential or proprietary concern is nowhere on that list. Accordingly, given the overwhelming public need and interest in J&J's pre-July 2016 documents, the Court should strike the confidentiality designations made by J&J and order that J&J's pre-July 2016 documents be exposed to the public.

### **CONCLUSION**

**WHEREFORE**, the State respectfully requests that the Court grant its Motion to De-designate Confidential Documents and award such further relief deemed equitable and just.

Respectfully submitted,



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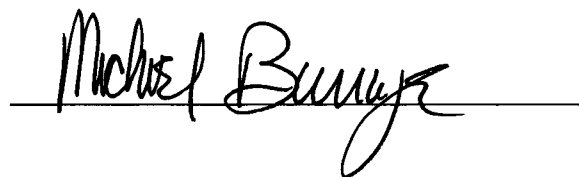
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# **EXHIBIT**

**1**

# **EXHIBIT**

**2**

# **EXHIBIT**

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# **EXHIBIT**

**4**

# **EXHIBIT**

**5**

# **EXHIBIT**

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