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**BEFORE THE DIVISION OF CONSUMER PROTECTION OF THE
DEPARTMENT OF COMMERCE OF THE STATE OF UTAH**

IN THE MATTER OF:

PURDUE PHARMA L.P., a Delaware limited partnership; **PURDUE PHARMA INC.**, a New York Corporation; **THE PURDUE FREDERICK COMPANY**, a Delaware corporation; **RICHARD SACKLER, M.D.**, individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named entities; and **KATHE SACKLER, M.D.**, individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named entities;

Respondents.

**INDIVIDUAL RESPONDENTS'
SUPPLEMENTAL BRIEF ON
TUB CITY ET AL. V. UTAH DIV. OF
CONSUMER PROTECTION IN
SUPPORT OF RICHARD SACKLER'S
AND KATHE SACKLER'S PENDING
MOTIONS TO DISMISS**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

Tub City et al. v. Utah Div. of Consumer Protection, Civ. No. 170902052 (Utah 3d Jud. Dist.), further confirms that the Tribunal lacks subject matter jurisdiction over the Individual Respondents because neither is alleged to have engaged in conduct remotely similar to the activities of the *Tub City* individual respondent that were deemed to fall within the USCPA’s definition of a “supplier.” Utah Code Ann. § 13-11-3(6).¹

In *Tub City*, Deborah Lambert was an officer, director, manager, agent, and/or owner of Tub City, LLC, and Spa Co-op of Utah, LLC, two Utah businesses.² She was personally and intimately involved in the consumer transactions at issue—selling hot tubs. Final Agency Decision at 9. The Division alleged that Ms. Lambert and her company “misrepresented the model or style of hot tubs or hot tub accessories, failed to deliver items to consumers in a timely manner, failed to deliver a hot tub in a timely manner, failed to honor warranties, delivered used items when new items were bargained for, and refused to give refunds when valid requests for refunds were made.”³ The Tribunal held Ms. Lambert was a supplier because she was “*personally* involved with *each* consumer transaction identified in the Citation,” and her activities were sufficient to support a conclusion that she “engaged in or enforced consumer transactions.” Final Agency Decision at 9 (emphasis added). Specifically, Ms. Lambert personally engaged in the following activities with respect to the sale of hot tubs to consumers:

- Communicated with consumers regarding warranties, service, and repairs on the tubs, Agency Order at 2-3, 5;

¹ This submission is made on behalf of Richard Sackler. It is also made on behalf of Kathe Sackler. These individuals are collectively referred to as the “Individual Respondents.” The Individual Respondents join the supplemental submissions made by the Purdue Defendants.

² *In the Matter of Request for Agency Review of Tub City, LLC, et al.*, DCP Case No. 84704, Findings of Fact and Conclusions of Law at 2 (Dep’t of Commerce Feb. 27, 2017) (“Final Agency Decision”).

³ *In the Matter of Tub City, LLC, et al.*, DCP Case No. 84704, Proposed Order at 1-2 (Jan. 15, 2016) (“Agency Order”), *adopted in its entirety* by Order of Adjudication (Jan. 19, 2016).

- Bargained with and made statements and representations to consumers regarding the condition of the tubs they were purchasing and replacements of parts, *id.* at 3, 5, 10;
- Exchanged text messages to discuss deficiencies with consumer purchases, *id.* at 3-4, 6, 8, 11-13; and
- Was physically present when a tub was delivered to a purchaser, *id.* at 9.

The contrast between Ms. Lambert's conduct and the Citation's allegations regarding each Individual Respondent could not be more stark. Unlike Ms. Lambert, neither Individual Respondent is alleged to have interacted even once with a Utah consumer, nor is either Individual Respondent even alleged to have instructed anyone to make statements to any person in Utah (let alone consumers) about Purdue's prescription opioids. Nothing in *Tub City* nor in the UCSPA's plain text supports the Division's attempt to stretch the definition of "supplier" to include directors who are not alleged to have had any personal involvement with consumer transactions in any capacity.

Additionally, the corporate shield doctrine—the applicability of which the Division does not dispute—further confirms that neither Individual Respondent is a "supplier." (*See Mot.* at 34-35). This doctrine precludes the Division from arguing that the Individual Respondents are "suppliers" solely based on Purdue's alleged prescription opioid marketing activities in the State.⁴ Instead, the only relevant question is whether any Individual Respondent personally engaged in any act that falls within the definition of "supplier." *Tub City* confirms that an individual can be a supplier only if he or she **personally** participates in consumer transactions in Utah—something neither Individual Respondent is alleged to have done.

⁴ Regardless, as discussed in Purdue's Motion, its prescription drug marketing activities do not fall within the UCSPA.

Dated this 30th day of May, 2019.

COHNE KINGHORN, P.C.

By: /s/ Patrick E. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of May, 2019, I served the above-captioned document on the parties of record in this proceeding set forth below by delivering a copy thereof by hand-delivery, U.S. Mail, electronic means and/or as more specifically designated below, to:

By hand-delivery:

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Salt Lake City, UT 84114-6701

Utah Division of Consumer Protection
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