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Attorneys for the Utah Division of Consumer Protection

**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.

**DIVISION'S MEMORANDUM IN
OPPOSITION TO RESPONDENTS
RICHARD SACKLER'S AND
KATHE SACKLER'S MOTION TO
STAY, EXTEND, OR CONTINUE
DISCOVERY UNTIL THE MOTION
TO DISMISS HAS BEEN DECIDED**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

The Utah Division of Consumer Protection ("Division") respectfully opposes Respondents Richard Sackler's and Kathe Sackler's Motion to Stay, Extend, or Continue Discovery Until the Motion to Dismiss Has Been Decided. A stay of discovery would be

needlessly counterproductive, and cannot be squared with Richard Sackler's and Kathe Sackler's (collectively, the "Sackler Respondents") arguments that they need every possible minute available for discovery under the Scheduling Order.

A. The Administrative Rules Do Not Excuse Respondents from Answering or Participating in Litigation Pending the Resolution of Their Motion to Dismiss.

Respondents argue that under the Utah Rules of Civil Procedure, discovery would be stayed until they filed an answer to the complaint. *See* Motion at 3 (arguing that once they filed their Motion to Dismiss, they should have been required to do nothing else because Utah R. Civ. P. 12(a)(1) excuses a litigant from filing an answer until the motion is decided, "thereby pausing the proceedings"). This is simply a distraction. As the Sackler Respondents acknowledge, they have already filed their response to the Citation here, *see* Motion at 2, ¶ 5. Moreover, they are wrong to claim that any court would readily grant them a stay. In fact, "a stay of discovery pending determination of a motion to dismiss 'is rarely appropriate when the pending motion will not dispose of the entire case.'" *Chavous v. Dist. of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 3 (D.D.C. 2001) (quoting *Keystone Coke Co. v. Pasquale*, 1999 WL 46622, at *1 (E.D. Pa. Jan. 7, 1999)).

More to the point, there can be no question the discovery period is, and should be, underway pursuant to the Tribunal's Scheduling Order. Were it otherwise, the Sackler Respondents would have no need to request a stay. Nothing in Utah Admin. Code R151-4-508 concerning timing, sequence, and completion of discovery provides for a stay of discovery pending resolution of motions to dismiss. And, Respondents may, as they did when filing their answer, "specifically preserve all jurisdictional arguments," *see* Motion at 2, ¶ 5, when filing their expert

disclosures. The Division has no intent to argue that complying with the July 12, 2019 deadline in this matter waives Respondents' personal jurisdiction arguments.¹

B. The Last-Minute Request to Stay Discovery Would Needlessly Prejudice the Division.

The Sackler Respondents are wrong to claim that the Division would not be prejudiced by a stay of discovery. They ignore, for example, that none of the documents produced in the MDL focus on Respondents' activities specifically in Utah. In addition, as the Sackler Respondents admit, Kathe Sackler has produced *no* documents in the federal MDL. Motion at 3, ¶ 9. The Division also requires information about and from the Sackler Respondents' experts in order to prepare its case and motions regarding those experts, as well as to consider any rebuttal expert reports.

Further, the Sackler Respondents have not disclosed what, if anything they intend to do to comply with the provisions of R151-4-504, and especially, whether they intend to disclose any expert witnesses independent of Purdue at any time. In other instances, the Sackler Respondents have adopted arguments made by, or stated their intent to rely on discovery produced by, Purdue. The Sackler Respondents also joined in Purdue's Preliminary List of Interviews/Depositions, rather than preparing independent lists. If or to the extent that they intend to rely on Purdue's submissions to comply with the provisions of R151-4-504, the deadline has little to no impact on them, and there is no reason for them not to disclose that intent now.

Finally, the Sackler Respondents waited until the eleventh hour to make a request that would upset the deadlines that have been in place for months. As the Administrative Law Judge

¹ It bears noting that the Sackler Respondents have been arguing that the time-period provided for discovery in this matter is too short. *See, e.g.*, Motion to Dismiss at 41 (arguing that this Tribunal's procedures violate their Due Process Rights). They should not be permitted to attempt to delay discovery, and thereby condense the time available, while simultaneously claiming that they do not have enough time to complete discovery as it is.

is aware, establishing a scheduling order with sufficient time for disclosures, discovery, and motion practice required a complicated balancing of interests and requirements, but it has been accomplished. The Sackler Respondents have known since April 23, 2019 that expert disclosures would be due on July 12, 2019. Surely, they put some planning into what to do, or not do, before they filed their Motion — a mere two days before that deadline. Given this, their request for delay is particularly unfounded.

For the foregoing reasons, the Division urges the Court to deny Respondents Richard Sackler's and Kathe Sackler's Motion to Stay, Extend, or Continue Discovery Until the Motion to Dismiss Has Been Decided.

DATED this 12th day of July, 2019.

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CERTIFICATE OF SERVICE

I certify that I have served or will serve the foregoing document on the parties of record in this proceeding set forth below:

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Dated this 12th day of July, 2019.

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