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L.P., Purdue Pharma Inc., and The Purdue  
Frederick Company*

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

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**IN THE MATTER OF:**

**PURDUE PHARMA L.P.**, a Delaware limited partnership; **PURDUE PHARMA INC.**, a New York Corporation; **THE PURDUE FREDERICK COMPANY INC.**, 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.**

**PURDUE RESPONDENTS' REQUEST  
TO THE PRESIDING OFFICER TO  
SEEK AN EXTENSION AND  
CONTINUANCE FROM THE  
EXECUTIVE DIRECTOR**

*Expedited Consideration Requested*

**DCP Legal File No. CP-2019-005**

**DCP Case No. 107102**

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Respondents Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (collectively, "Purdue"), through counsel, hereby request that the Presiding Officer issue a written request to the Executive Director of the Department of Commerce for an extension of the discovery schedule and continuance of the October 15, 2019 hearing pursuant to Utah Administrative Code R151-4-109(2)(c). Purdue respectfully requests expedited consideration.

Pursuant to Utah Administrative Code R151-4-109(2)(c), the Presiding Officer may issue a request to the Executive Director of the Department of Commerce when “extenuating circumstances not contemplated in R151-4-109(2)(b) justify a continuance beyond the 240-day deadline.” At the hearing on Purdue’s motion to dismiss in this matter, Administrative Law Judge Bruce L. Dobb (“Judge Dobb”) noted this exact provision as providing “an opportunity to extend to do additional discovery” that “hasn’t been employed yet.” (Trans. at 70:23–71:1; *see also id.* at 73:8-13.) Moreover, the Order Granting in Part and Denying in Part Purdue’s Motion to Dismiss specifically held that the availability of this procedure “help[ed] render Purdue’s due process argument without merit.” (Or. at 9.) Under the circumstances of this proceeding, as explained more fully below, Purdue submits that extenuating circumstances exist that justify extension of the deadlines in this proceeding and a continuance of the administrative hearing currently set to begin on October 15, 2019. Accordingly, the mechanism previously suggested by Judge Dobb to permit the parties additional time to conduct discovery should now be employed.

Here, the complex, technical nature of the claims raised by the Division in its Administrative Citation coupled with the extremely truncated timeframes for completing both fact and expert discovery imposed by the administrative rules and procedures has created just the “extenuating circumstances” contemplated by Rule 151-4-109(2)(c). As the Presiding Officer is aware, the Administrative Citation is 65 pages long with 174 paragraphs of allegations against Purdue. Both Purdue and each Individual Respondent filed motions to dismiss on April 10, 2019, and a hearing on the motions to dismiss was held on May 21, 2019. The Presiding Officer issued a decision denying Purdue’s motion to dismiss on June 20, 2019. However, a decision denying the Individual Respondents’ respective motions to dismiss was just issued on July 15, 2019. On April 23, 2019, an initial scheduling conference was held and Judge Dobb set the date for a three-

week administrative hearing to begin on October 15, 2019. This date was set to comply with the administrative rules' requirement that the hearing conclude within 240 days after the administrative proceeding was commenced. R151-4-109(2)(a). Also on April 23, 2019, Judge Dibb set a case schedule, which required the parties provide Initial Disclosures by May 7, 2019, an initial list of proposed witnesses for deposition by May 21, 2019, initial expert witness reports by July 12, 2019, rebuttal expert reports by August 20, 2019, and all fact and expert discovery to be completed by August 28, 2019.

Purdue has been diligently trying to move forward with discovery in this case, but with only 6 weeks remaining to complete all discovery, it has not received *any* documents in response to discovery requests it served on May 28, 2019. Although the Division provided written responses to Purdue's discovery requests on June 17, 2019, and represented that it would produce some responsive documents, Purdue has yet to receive a single document in response. Tellingly, the Division objected to the great majority of Purdue's discovery requests on the grounds that providing a response "would require unreasonable amounts of time and resources." Moreover, the Division's Initial Disclosures specifically identified only one state employee and otherwise provided only general categories of *types* of witnesses who might have knowledge the Division intended to rely on at the hearing. On June 28, Purdue sent a letter identifying the deficiencies in the Division's Initial Disclosures. The Division has yet to respond. This is all despite the fact that the Division has had access to millions of pages of documents from Purdue, scores of depositions, and call notes from 2006-2017—call notes the Division asserted provide the basis for their claims. Yet the Division's experts have identified only 9 call notes within the relevant time period, and have not identified any actionable misrepresentations.

Similarly, the Division's initial list of proposed witnesses for deposition referenced only types of potential deponents, but did not disclose any specific individuals for deposition. And, although Purdue has followed up with the Division and requested that it identify specific witnesses in the various categories so that depositions may be scheduled and taken, the Division has yet to respond with actual witnesses. Indeed, only one deposition has been scheduled by any party in this proceeding. Thus, more than halfway through the permitted discovery period, Purdue has no documents to review and analyze and virtually no witnesses identified to depose in order to evaluate and explore the evidence the Division intends to rely on in prosecuting its Citation. Without any documents or witnesses identified, Purdue is unable to effectively proceed with its defense.

In addition, the Division is seeking extraordinarily expansive discovery from Purdue. For example, the Division, just this week, requested that Purdue compile and produce materials responsive to 69 search terms run on an enormous number of custodial files, including at least 79 specific individuals and broad categories of additional individuals, such as "all Utah district managers," "all Board Members," and "any persons who [were] involved in communications with payors in Utah." Responding to such discovery will require a tremendous dedication of resources on the part of Purdue, as well as a significant amount of time.

Furthermore, Purdue has now received the Division's expert disclosures, which demonstrate the expansive and unclear potential scope of evidence—much of it entirely unrelated to Utah or to the Division's consumer-protection claim—the Division apparently wants to present at the hearing. Although the Division has repeatedly represented that this is a simple and straightforward proceeding, limited to establishing CSPA violations, it disclosed seven expert witnesses on a broad range of subjects: Hui Chen, corporate compliance; John C. Coffee, corporate

governance; Matthew Perri, pharmaceutical marketing; Lacey R. Keller, opioid use data analysis/diversion; James L. Gagne, opioid addiction; Jane C. Ballantyne, opioids and pain treatment; and Gil Miller, penalty calculations. The reports total over 1,000 pages and contain extensive technical information that Purdue will need time to evaluate and prepare any necessary rebuttal reports.

Perhaps most critically, the Division's purported damages expert, Gil Miller, did not provide an actual report with calculations. Rather, he provided a statement indicating that he should be able to calculate the number of potential CSPA violations *if and when* the Division provides him with the information he needs to do so. The Division did not disclose—let alone provide a basis for—a single calculation or figure regarding the potentially millions of dollars in fines for alleged violations at issue here. Thus, in addition to having no documents produced or fact witnesses identified, even after the Division's expert disclosures, Purdue has no information at all about the actual evidence that will be used to calculate the alleged violations and fines claimed by the Division. Not only does this improperly seek to circumvent the requirement that the Division provide an expert report containing all the bases for its expert's opinion, it prejudicially prevents Purdue from exploring the Division's damages theory in discovery and, since there is no substantive content in Mr. Miller's report, renders it impossible for Purdue to provide an effective rebuttal report.

In sum, the current state of both fact and expert discovery in this case demonstrates that it is not feasible or consistent with Due Process to complete the necessary discovery to establish a full and fair record on which to conduct the administrative hearing currently scheduled to begin on October 15, 2019, including document production and review, witness identification, scheduling and taking fact witness depositions, and rebuttal expert reports, in the six weeks

remaining before the August 28, 2019 deadline. If the action proceeds on this schedule, it will violate rights guaranteed to the Respondents by the Utah and United States constitutions. Accordingly, under the circumstances presented by this proceeding, Purdue submits that extenuating circumstances justify and require an extension of the fact and expert discovery period and a corresponding continuance of the administrative hearing of at least six months, moving the date the hearing must conclude to May 6, 2020 or later. Given these circumstances, and to avoid further prejudice and a continuing violation of Purdue's rights, Purdue respectfully requests expedited consideration of this request.

Dated this 17th day of July, 2019.

SNELL & WILMER L.L.P.

/s/ Elisabeth M. McOmber

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 17th day of July, 2019, I served the foregoing on the parties of record in this proceeding by delivering a copy thereof by electronic means to the following:

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