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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.**	**DIVISION'S MEMORANDUM IN OPPOSITION TO PURDUE RESPONDENTS' REQUEST TO THE PRESIDING OFFICER TO SEEK AN EXTENSION AND CONTINUANCE FROM THE EXECUTIVE DIRECTOR AND TO RICHARD SACKLER'S AND KATHE SACKLER'S JOINDERS THEREIN** **DCP Legal File No. CP-2019-005** **DCP Case No. 107102**

The Utah Division of Consumer Protection ("Division") respectfully opposes Respondents Purdue Pharma L.P., Purdue Pharma, Inc., and the Purdue Frederick Company ("Purdue") Request to the Presiding Officer to Seek an Extension and Continuance from the

Executive Director ("Request). R151-4-109 sets forth specific factors that must be considered when addressing a request for an extension or continuance. Purdue does not even attempt to apply these factors. Nor could it justify its request under any of them. Instead, the Request merely reiterates the same failed arguments Respondents have made in opposing conversion of this matter into a formal proceeding and in their motions to dismiss. It also mischaracterizes the status of the parties' meet and confer concerning their respective discovery requests, criticizes the Division for not taking steps Purdue has yet to take itself, and makes arguments to this Tribunal about matters about which they have not responded to the Division, despite multiple attempts to follow up, including, telephone and e-mail communications the same day as, and made before, they filed their motion. These are not grounds for an extension. And once again, Purdue's motive is transparent—delay for the sake of delay. Respondents Richard Sackler, M.D. and Kathe Sackler, M.D. (collectively, "the Sackler Respondents"), are even more brazen. In "Joinders" in Purdue's Request, the Sackler cite their own delay in providing discovery as grounds for still more time. The Tribunal should not countenance Respondents' groundless attempts to derail this important public interest proceeding.

A. Purdue's Amorphous Request Offers No Basis Circumventing the Rules.

The Administrative Rules are clear that an extension of the time period for conducing the hearing is unavailable absent "extenuating circumstances not contemplated in R151-4-109(2)(b)." R151-4-109(2)(c). Respondents purport to invoke this provision. However, Respondents fail to cite any such circumstances.

First, and most importantly, the Request merely reiterates the same failed Due Process arguments made twice already. The purportedly "extenuating circumstances," are the Rules themselves, *see* Request at 2 (citing what Purdue describes as the "extremely truncated

timeframes" for discovery), and arguments that the Division's claims are "complex" and "technical" in nature, *see id.* The claims (other than the dismissal of the unconscionability claim, which in no way increases Respondents' discovery obligations), have not changed since April, when the Division previously explained that in this streamlined proceeding, it asserts only UCSPA violations, not all of the same causes of action as it might in a court. As remedies, it also seeks only injunctive relief and civil penalties. As such, there will be no need for the Presiding Officer to consider, in this proceeding, questions of reliance, causation, or damages. *See F.T.C. v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1203 (10th Cir. 2005). This case is no more complex than, for example, an action the Division previously brought against other respondents in the securities industry last year, or matters such as licensing of liquefied natural gas facilities, which also proceeded on timelines Respondents would describe as compressed.

The Division likewise explained that Purdue's deceptive practices having targeted more people over a longer period of time than other respondents who have faced citations from the Division, or that the Citation's allegations discuss them in 174 paragraphs of detail, does not entitle Purdue to special solicitude. Nothing has changed in this equation since the Tribunal rejected these contentions on June 20, 2019, less than a month ago. Quite the opposite, the Tribunal expressed confidence that despite receiving a lengthy reprieve from and an extension of time to respond to discovery, the Sackler Respondents would be able to comply with applicable deadlines. There is no reason to believe that the Division, which has been diligently moving forward both in its discovery responses to Purdue and in seeking to remedy deficiencies in Respondents' initial disclosures and in meeting and conferring on Purdue's discovery responses.

Further, Purdue's Request mischaracterizes the status of the discovery process. Without wading into needless detail, the Division notes, for example, that to hear Purdue tell it, one would

think that the Division served Initial Disclosures and that Purdue asked for additional information on June 28, 2019 and never heard back. In fact, the Division served initial disclosures on May 7, 2019, and a supplement on May 17, 2019. More than a month later, Purdue sent its letter, which asked that the Division "*remove*" and "withdraw," not add, information because it included, for example, too long a list of alleged misrepresentations by Purdue. As purported grounds, Purdue cited its arguments that statements were made outside what Purdue contends is the limitations period, certain other statements Purdue argued were subject to preemption claims, and national marketing materials that were not facially limited to distribution in Utah. *See* Letter from E. McOmber to R. Wing (June 28, 2019). Purdue's attempt to reargue, through its letter, issues that have already been rejected (or that Purdue did not even attempt to raise) in motions to dismiss is improper. The Division is not required to perpetually reargue motions to dismiss in order to make Initial Disclosures. Moreover, the Division has engaged in multiple meet and confers regarding the parties' respective discovery obligations, and Purdue has not, until now, pressed this improper request. It also has not sought further meet and confer concerning various discovery requests to which the Division objected as far outside the scope of the matter at hand, including for example, requests for information concerning sentencing guidelines for criminal violations.

Purdue also misleadingly suggests discovery is far more one-sided than it has been. Purdue did not produce any documents since the Division filed the Citation, until it made its first production this week. Before that, it produced two documents, a spreadsheet of call notes, and a spreadsheet of ride-along reports. Meanwhile, Purdue used a public records request to seek documents from the Division without any limitation as to relevance. The Division is appropriately proceeding based on the discovery it has, and is not prevented from supplementing its expert reports with information from documents Purdue intends to produce on a rolling basis. (In fact,

the parties expressly acknowledged during their scheduling conference with Judge Dibb that this would likely be the case.) Purdue's counting of search terms and custodians are similarly beside the point, particularly as it has not yet provided a substantive response on either issue to the Division.[1] The Division intends to continue to meet and confer with Respondents and to move forward with discovery in good faith. For the time being, it will refrain from arguing here irrelevant points such as how many illustrative examples from call notes a given expert cites.

The Sackler Respondents' attempt to create "extenuating circumstances" fails for the same reason. Further, the Sacklers are wrong to contend that they were "forced" to wait to serve discovery and "could not affirmatively participate in discovery" before that time. *See* Respondent Kathe Sacker's Joinder in Purdue's Request to the Presiding Officer to Seek an Extension and Continuance from the Executive Director at 2: Respondent Richard Sacker's Joinder in Purdue's Request to the Presiding Officer to Seek an Extension and Continuance from the Executive Director at 2 (same). In fact, the Sackler Respondents could, and did, participate in discovery before that time, including by serving Initial Disclosures and Joining in Purdue's Preliminary List of Interviews/Depositions A party's voluntary decision not to serve discovery is not an extenuating circumstance that would justify changing the Tribunal's schedule.

Finally, most of the relevant discovery in this proceeding will be in the hands of Respondents, as the Division bears the burden of proof. If any party would have cause for concern about delay, it would be the Division, but the Division is prepared to move forward expeditiously.

B. The Rules Require that the Request be Denied.

R151-4-109(a), provides that:

[1] The Division also notes that it had both a call and an e-mail in to Purdue on precisely those topics earlier the same day that Purdue filed its Request. Instead of responding, Purdue asked to continue the hearing. Even now, the Division still has not received a response.

When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

R151-4-109(1). All of these factors weigh against the Respondents' request here. First, for the same reasons described above, Respondents have failed to show good cause. Second, the Sackler Respondents have already received repeated extensions, typically requested at the last minute, on briefs and, more recently, on expert disclosures and discovery deadlines. They cannot cite their own foot-dragging as grounds for the highly unusual relief sought in the Request. Third, the other three factors, which may be considered in tandem in these circumstances, also weigh heavily against an extension. The Division objects to the requested extension or continuance, which would both work significant hardship on it and be prejudicial to the health, safety or welfare of the public. The allegations in the Citation set forth a litany of ongoing consequences from Respondents' violations. It is in the public interest to move expeditiously in this matter.

The first deposition in this matter will take place Monday, and there is no reason to delay or disrupt the orderly progress of this case. The Division respectfully requests that Respondents' Request be denied.

DATED this 19th 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 19th day of July, 2019.

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