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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.

**RENEWED MOTION TO CONVERT
INFORMAL HEARING**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

On January 30, 2019, the Utah Division of Consumer Protection (Division) issued an Administrative Citation against Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Dr. Richard Sackler, and Dr. Kathe Sackler (Respondents) and filed a Motion to Convert Informal Hearing. On February 12, 2019, the Presiding Officer granted

the Division's motion to convert this matter to a formal adjudicative proceeding pursuant to Utah Code § 63G-4-202(3) and Utah Admin. Code R152-6-1(B). *See* February 12, 2019 Order on Motion to Convert Informal Hearing, and Notice of Prehearing Conference. The Purdue Respondents subsequently filed a Motion to Set Aside Order to Convert Informal Hearing. On February 26, 2019, the February 12, 2019 Order was set aside, with permission to file a renewed motion to convert this proceeding to a formal adjudicative proceeding after the Division files a Notice of Agency Action pursuant to U.C.A. Section 63G-4-201. *See* February 26, 2019 Order on Motion to Set Aside Order to Convert Informal Hearing, Notice of Prehearing Conference, and Order to File Responsive Pleadings. On March 8, 2019, the Division issued its Notice of Agency Action. The Division hereby renews its Motion to Convert Informal Hearing and requests that the Presiding Officer convert this proceeding into a formal adjudicative proceeding pursuant to Utah Code § 63G-4-202(3) and Utah Admin. Code R152-6-1(B). Conversion is in the public interest and does not unfairly prejudice the rights of any party.

I. Conversion is in the public interest.

It is in the public interest to convert this matter to a formal proceeding. The agency's decision after an informal hearing may be challenged in a trial *de novo*. In contrast, judicial review of formal adjudicative proceedings occurs "on the basis of the agency's record[.]" Utah Code § 63G-4-403(4). If a judicial challenge is likely, conversion to a formal proceeding may prevent duplicative work by the Division, save unnecessary expenses ultimately borne by Utah's taxpayers, and result in a more timely final decision. In this case, Respondents are facing similar allegations and lawsuits in other jurisdictions across the country, and they have aggressively fought every case, even when their arguments have failed elsewhere. Therefore, there is good

cause to anticipate a judicial challenge in this case. For reasons of convenience, general efficiency, timeliness, and actual cost, it is in the public interest to convert this proceeding.

II. Conversion will not unfairly prejudice the parties.

The Respondents' rights will not be prejudiced by converting this proceeding. "Given the additional procedural safeguards that attend a formal proceeding, it would be an unusual case indeed where conversion *to* a formal proceeding would prejudice a party sought to be sanctioned by an administrative agency." *Johnson-Bowles Co. v. Div. of Sec. of Dep't of Commerce of State of Utah*, 829 P.2d 101, 117 n.7 (Utah Ct. App. 1992) (emphasis original). The procedural safeguards available to Respondents in a formal adjudicative proceeding are similar to those available to a party in a trial, including the ability to conduct discovery, Utah Code § 63G-4-205, and "the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence." Utah Code § 63G-4-206(1)(d). All testimony in a formal hearing is given under oath. *See id.* at (1)(f). Thus, a formal administrative proceeding would give full effect to the parties' due process rights and would not prejudice any of the parties.

III. Relief.

For the foregoing reasons, the Division respectfully requests that the Presiding Officer enter an order converting this proceeding from informal to formal.

DATED this 21st day of March, 2019.

SEAN D. REYES
UTAH ATTORNEY GENERAL

By: /s/ Kevin McLean
(signed with permission by email)

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CERTIFICATE OF SERVICE

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

By first class mail, postage prepaid:

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Dated this 21st day of March, 2019.

/s/ Elizabeth Smith
Elizabeth Smith