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Attorneys for Respondent Richard Sackler, M.D.

**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 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.

**RESPONDENT RICHARD SACKLER'S
REQUEST TO SERVE FIRST SET OF
REQUESTS FOR PRODUCTION ON
THE DIVISION OF CONSUMER
PROTECTION**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

Pursuant to Utah Admin. Code R151-4-514, Respondent Richard Sackler, M.D. (the “**Individual Respondent**”), through counsel, respectfully requests approval from the Administrative Law Judge to serve the First Set of Requests for Production of Respondent Richard Sackler (the “**Requests**”) on the Division of Consumer Protection (“**Division**”). The Requests are attached hereto as **Exhibit A**.

As set forth in Utah Admin. Code R151-4-502(1), a party may obtain discovery regarding any matter that is: (1) not privileged; (2) is relevant to the subject matter involved in the proceeding; and (3) relates to a claim or defense of the party seeking discovery or another party. Utah Admin. Code R151-4-514(1)(a) further provides that upon approval by the presiding officer, a party may serve on another party a request to produce documents which constitute or contain matters within the scope of R151-4-502(1). However, pursuant to Utah Admin. Code R151-4-514(2), “[b]efore permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.”

The Division has brought sweeping claims under the Utah Consumer Sales Protection Act (“**UCSPA**”) against the Individual Respondent in a 70-page, 174-paragraph Administrative Citation, alleging the Individual Respondent made or participated in numerous misrepresentations and falsehoods in Utah that allegedly violated the UCSPA. To establish its claims under the UCSPA, the Division must, among other things, identify each specific statement alleged to be a misrepresentation or falsehood, prove that the statement was a misrepresentation or falsehood, and prove that the statement was made in connection with a consumer transaction in Utah. The discovery the Individual Respondent seeks through his Requests is directly relevant to the Division’s claims against him and to Individual Respondent’s defenses to the Division’s

allegations, and the documents the Individual Respondent seeks in the Requests have not previously been produced to it.

For the foregoing reasons, the Individual Respondent respectfully requests that the Administrative Law Judge grant approval for the Individual Respondent to serve the Requests on the Division.

DATED: July 22, 2019

COHNE KINGHORN, P.C.

By: /s/ Timothy J. Bywater
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Attorneys for Respondent Richard Sackler, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2019, I served the above-captioned document on the parties of record in this proceeding set forth below by delivering a copy thereof by electronic means and U.S. Mail and/or as more specifically designated below, to:

By hand-delivery:

Utah Department of Commerce
Bruce Dibb, Administrative Law Judge
160 East 300 South, 2ndFloor
PO Box 146701
Salt Lake City, UT 84114-6701

Utah Division of Consumer Protection
160 East 300 South, 2ndFloor
PO Box 146704
Salt Lake City, UT 84114-6704

By electronic mail:

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/s/ Timothy J. Bywater

EXHIBIT A

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**BEFORE THE DIVISION OF CONSUMER PROTECTION
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Respondents.

**FIRST SET OF REQUESTS FOR
PRODUCTION OF RESPONDENT
RICHARD SACKLER**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

Pursuant to Utah Code § 63G-4-204(1) and Utah Administrative Code Rules R151-4-501, R151-4-502, R151-4-505, Richard Sackler, by and through his undersigned counsel, requests that the Division of Consumer Protection of the Department of Commerce of the State of Utah produce any and all documents and things responsive to the requests set forth below (the “**Requests**”), at

the offices of Cohne Kinghorn, P.C., 111 East Broadway, 11th Floor, Salt Lake City, Utah 84111, no later than July 31, 2019.

DEFINITIONS

1. **“2007 Utah Settlement”** means the State of Utah’s July 2007 settlement with Purdue.
2. **“All,” “any” and “each”** shall be construed as meaning any and all.
3. **“Alleged Conduct”** means, with respect to any Person, your claim that the Person:
 - (a) “misle[d] consumers about the nature of the product they are receiving,” as alleged in Citation ¶ 163;
 - (b) communicated “marketing material and messages that overstated the benefits of opioids and understated their risks, and by omitting or concealing material facts,” as alleged in Citation ¶ 164;
 - (c) engaged in “intentional[] and persistent[] . . . deceptive acts or practices,” as alleged in Citation ¶ 166;
 - (d) “indicat[ed] that opioids had sponsorship, approval, performance characteristics, uses, or benefits, when they did not,” as alleged in Citation ¶ 167;
 - (e) “omit[ed] or conceal[ed] material facts and failing to correct prior misrepresentations and omissions about the risks and benefits of opioids,” as alleged in Citation ¶ 168;
 - (f) “indicat[ed] that opioids were of a particular standard, quality, grade, style, or model, when they were not,” as alleged in Citation ¶ 169;
 - (g) “indicat[ed] that opioids had been supplied in accordance with Purdue’s previous representations, when they had not,” as alleged in Citation ¶ 170;

- (h) made any false, misleading or deceptive statement on which you base your claims other than as set forth in (a)-(g) above; or
- (i) engaged in any deceptive act or practice on which you base your claims other than as set forth in (a)-(h) above.

4. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside the scope.

5. “**Communication(s)**” means every manner of disclosing, transferring, exchanging, transmitting or receiving information, including conversations (whether face-to-face, by telephone, electronic or otherwise), meetings, conferences, consultations, discussions, negotiations, Documents and agreements.

6. “**Citation**” means the Notice of Agency Action and accompanying Citation filed by the Division on March 8, 2019.

7. “**Concerning**” means relating to, referring to, describing, evidencing or constituting.

8. “**Division,**” “**you,**” and “**your**” refer to the Division of Consumer Protection of the Department of Commerce of the State of Utah, and its offices, departments, divisions, commissions, agents, officers, employees, boards, instrumentalities, vendors, administrators and other Persons or entities acting behalf of the Division.

9. “**Division’s Initial Disclosures**” means that Initial Disclosures served by the Division on May 7, 2019, and any supplements or amendments.

10. “**Document(s)**” is used consistent with how the term is defined and construed under Utah law. The term includes, but is not limited to, any tangible thing and any correspondence,

memoranda, writing, Communication, Electronically Stored Information, drawing, data, graph, chart, record, tape, message, note, text message and communication of any form or nature, no matter how transmitted or stored, including any file folders or meta data associated with the Document, calendar, diary, log, envelope, email and facsimile transmission, whether printed or recorded or reproduced by any mechanical, photographic, xerographic or electronic process or written or produced by hand and including, but not limited to, any information contained in any computer or reasonably accessible computer memory or memory media, although not yet printed. A draft or non-identical copy is a separate Document within the meaning of this term.

11. “**Electronically Stored Information**” or “**ESI**” is used consistent with how the term is defined and construed under Utah law and includes without limitation all electronic data (including reasonably accessible active, archival, or backup data, such as backup tapes, distributed data, electronic mail, forensic copies, metadata and residual data) stored in a medium from which information can be reasonably obtained.

12. “**GAO 2004 Report**” is GAO report number GAO-04-110, *Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem*, publicly released on or around January 22, 2004.

13. “**Including**” means “including, but not limited to.”

14. “**KOL**” means “key opinion leader” or “opinion leader” as those terms are used and defined in Citation ¶¶ 17, 38, 94, 97, and Dr. Lynn Webster, as alleged in Citation ¶¶ 52, 95, Dr. Perry Fine, as alleged in Citation ¶ 94, Dr. Russell Portenoy, as alleged in Citation ¶ 96.

15. The “**MDL**” means the case captioned *In Re: National Prescription Opiate Litigation*, 1:17-md-02804-DAP (N.D. Ohio).

16. “**Person**” means any natural person, corporation, partnership, association, joint

venture, sole proprietorship, firm, entity, business enterprises, contractors, governmental or regulatory agencies or boards, or any division, subdivision, bureau, office or other unit thereof.

17. “**Prescription Opioid(s)**” refers to FDA-approved pain-reducing medications containing opioids, including OxyContin.

18. “**Purdue**” means Purdue Pharma L.P., Purdue Pharma Inc. and The Purdue Frederick Company Inc.

19. “**Purdue Plea Agreement**” means the May 2007 plea agreement between The Purdue Frederick Company, Inc. and the United States of America, by counsel, announced publicly on or around May 10, 2007, and any press reports or other Documents concerning that agreement.

20. “**Purdue Multistate Settlement**” means the May 2007 agreements or Consent Judgments between Purdue and the Attorneys General or other entities of the States and Commonwealths of Arizona, Arkansas, California, Connecticut, District of Columbia, Idaho, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin, acting on behalf of their respective states, and pursuant to their respective consumer protection statutes, and any press reports or other Documents concerning those agreements or Consent Judgments.

21. The “**Period**” means the time from January 30, 2009, through to January 30, 2019.

22. “**State of Utah**” or “**Utah**” includes to the State of Utah and all of its executive and legislative branches, agencies, offices, departments, divisions, commissions, agents, employees, boards, instrumentalities, vendors, administrators and other Persons or entities acting behalf of the State of Utah.

INSTRUCTIONS

The following instructions shall apply to each Request:

1. You must produce all responsive Documents in your possession, custody or control, including the possession, custody or control of your agents, affiliates, employees, investigators, consultants, attorneys and representatives.

2. All Documents are to be produced organized and labeled to correspond with the Request(s) to which they are responsive, including to subdivisions of Requests. Documents may be deemed produced by indicating bates ranges of Documents responsive to specific Requests.

3. If any portion of a Document is considered responsive to any Request, the Request shall be construed as requesting production of the entire Document.

4. For any Document or part thereof that is withheld under a claim of attorney-client privilege, attorney work product protection or other immunity from production, submit a list setting forth as to each Document: (a) the identity of each author or preparer of the Document, including their name, title and business affiliation; (b) the identity of the addressee and of every other Person who received the Document, including their name, title and business affiliation; (c) the date the Document bears; (d) the nature of the Document, *e.g.*, letter, memorandum, e-mail, etc.; (e) either the title the Document bears or the specific subject matter of the Document, and a short description of the Document sufficient to determine the validity of the assertion of the privilege; and (f) the nature of the privilege claimed. For all redactions or attachments withheld as privileged, also include identifying information, such as bates number or file path, to indicate the Document of which the redacted portion or attachment is a part.

5. If a Document contains information over which you assert a claim of privilege, produce the document in a form that redacts only the information over which you assert the

privilege claim.

6. If you have no Documents responsive to a specific Request, so state.

7. Copies of all labels or other markings indicating the nature, source or other characteristics of Documents produced, such as labels on file folders, dividers and other containers, should be included with the Documents produced so as to facilitate the Individual Respondents in understanding who keeps the Documents produced, where they are kept and how they are organized.

8. In addition to original and final versions of Documents, all drafts, alterations, modifications, changes and amendments of Documents should be produced, as well as all copies non-identical to the original in any respect, including any copy bearing non-identical markings or notations of any kind. A draft or non-identical copy is a separate Document. A document in the possession of multiple custodians should be produced in such a way as to identify the fact that multiple custodians possessed the document.

9. The use of the singular form of any word in these Requests includes the plural, and vice versa.

10. All Electronically Stored Information shall be produced in the format specified in the Document Production Protocol entered in the MDL on May 15, 2018 (ECF No. 443).

11. These Requests shall be deemed continuing so as to require you to supplement your response and production of Documents if, at any time prior to the termination of this action, you obtain or discover additional or different Documents that render any previous response or production incomplete. Such supplemental response(s) and production(s) shall be made promptly after the Document(s) become available to you or your counsel.

12. Except as otherwise specified, each Request is related to the Period.

13. State for each Request whether you will produce any documents. If you believe that documents produced for one Request are sufficient to respond to another Request, so state.

14. A Request calling for the production of “Documents” means that you should produce any and all documents responsive to the Request.

15. Respondent reserves the right to supplement these Requests or serve additional Requests.

REQUESTS FOR PRODUCTION

Please produce the following Documents:

1. Documents that you claim show that Richard Sackler personally engaged in any Alleged Conduct—

(a) during the Period; or

(b) before the Period.

2. Documents that you claim show that Richard Sackler personally directed Purdue to engage in any Alleged Conduct—

(a) during the Period; or

(b) before the Period.

3. Documents that you claim show that Richard Sackler personally directed any other Person, including any KOL, to engage in any Alleged Conduct—

(a) during the Period; or

(b) before the Period.

4. Documents evidencing that Richard Sackler knew or should have known that (a) any statement within Request Nos. 1-3 was false or misleading, or (b) any act within Request Nos. 1-3 was deceptive.

5. With respect to each statement or act within Request Nos. 1-3, Documents sufficient to show:

- (a) the identity of the person making the statement or engaging in the act;
- (b) the words of the statement or description of the conduct;
- (c) the basis for your claim that Richard Sackler is responsible for the statement or conduct;
- (d) whether the statement was made, or the act occurred, in the State of Utah; and
- (e) the identity of the person or person(s) you claim were deceived by the statement or act, and the date and time of this deception.

6. With respect to each statement or act within Request Nos. 1-3, Documents sufficient to identify the consumer(s) or prescriber(s) in the State of Utah you claim were misled by the statement or act.

7. With respect to each statement or act within Request Nos. 1-3, Documents evidencing any prescription(s) written in the State of Utah as a result of the statement or act.

8. With respect to each prescription within Request No. 7, Documents sufficient to show (a) the identity of the prescriber; (b) the dispensing pharmacy; (c) that the prescription would not have been written but for the statement or act within Request Nos. 1-4; and (d) that any Person becoming addicted to a Prescription Opioid as a result of the prescription.

9. With respect to each prescription within Request No. 7, Documents concerning the harm you claim the State and its agencies suffered from that prescription, including the “costs of (a) medical care, therapeutic and prescription drugs, and other treatments for patients suffering from opioid-related addiction, overdoses, or disease, or from medical conditions exacerbated from opioid abuse; (b) treatment of infants born with opioid-related addiction or medical conditions; (c)

law enforcement and public safety measures necessitated by the opioid crisis; (d) opioid-related counselling and rehabilitation services; (e) welfare for children whose parents suffer from opioid-related disease or incapacitation; (f) expenditures under Medicaid for purchases of prescription opioids for non-medical, illegitimate, or other improper purposes; and (g) emergency room care,” as alleged in Citation ¶ 28.

10. Documents concerning any conduct on or after May 18, 2018, on which you base your claims against Richard Sackler.

11. Documents evidencing knowledge by the State of Utah on or before January 30, 2009, of the Purdue Plea Agreement.

12. Documents evidencing knowledge by the State of Utah on or before January 30, 2009, of the Purdue Multistate Settlement.

13. Documents evidencing knowledge by the State of Utah on or before January 30, 2009, of the GAO 2004 Report.

14. Documents concerning any investigation or inquiry conducted by the State of Utah, including the Division, on or before January 30, 2009, concerning Purdue’s marketing of Prescription Opioids, including Documents from the files of the Utah Attorney General’s Office and the Attorney General’s Medicaid Fraud Control Unit concerning the 2007 Utah Settlement or any investigation giving rise to or arising from the 2007 Utah Settlement.

15. Documents concerning any analysis or study conducted by the Utah Department of Health on or before January 30, 2009, concerning Prescription Opioids.

16. Documents concerning any grant application by the State of Utah with respect to its prescription monitoring program on or before January 30, 2009 that discusses Prescription Opioids.

17. Documents evidencing any statement by any official or representative of the State of Utah, on or before January 30, 2009, concerning (a) OxyContin marketing or (b) abuse of, or addiction to, Prescription Opioids, including Documents concerning or supporting Utah Attorney general Mark Shurtleff's statement in September 2007 that "OxyContin has a long track record in Utah as a drug known for widespread abuse and illegal sales. Purdue and all pharmaceutical companies will be held accountable for the way they market heavy duty narcotics like Oxycontin."

18. Documents that you claim establish that Richard Sackler took any affirmative step to conceal any information on which you base your claim against him on or after January 30, 2009.

19. Documents concerning any analysis or study conducted by the Utah Department of Health concerning opioid addiction or misuse.

20. Documents sufficient to show each act with respect to which you seek to impose a penalty on Richard Sackler in the Citation.

21. With respect to each act within Request No. 15, Documents sufficient to show the basis for any penalty you seek to impose on Richard Sackler.

22. Documents reflecting any Communication or agreement between you (including your counsel) and (a) any witness, deponent or interviewee in these proceedings or (b) any Person identified on the Division Initial Disclosures.

23. Documents sufficient to show the precise information in your possession, custody or control on or before January 30, 2019, on which you based your allegations that Richard Sackler:

- (a) committed "actionable conduct...wholly or partly within Utah" (Citation ¶ 9);
- (b) engaged in conduct outside Utah that "constituted an attempt to commit a violation within Utah" (*id.*);
- (c) used "transactional resources located within Utah" that "directly or indirectly

facilitated a violation or attempted violation” (*id.*);

- (d) “personally directed Purdue to conduct the deceptive or unfair acts or practices alleged [in the Citation] that took place in Utah” (*id.* ¶ 8);
- (e) “knowingly caused the unlawful promotion and sales of Purdue’s opioids in Utah” (*id.* ¶ 8);
- (f) “directed ... sales representatives ... in Utah ... to visit doctors in their local offices for the purpose of delivering deceptive marketing messages” (*id.*);
- (g) “determined the methods by which prescribers were targeted by Purdue’s sales representatives, how often the doctors were visited, and what messages and strategies were used with them” in the State of Utah (*id.*);
- (h) “directed Purdue’s sales representatives ... in Utah ... to promote the use of opioids at high doses and for long periods of time” (*id.*).

DATED: _____, 2019

COHNE KINGHORN, P.C.

Paul T. Moxley
Hal L. Reiser
Patrick E. Johnson
Timothy J. Bywater

Attorneys for Richard Sackler, M.D.

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