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**BEFORE THE DIVISION OF CONSUMER PROTECTION**

**OF THE UTAH DEPARTMENT OF COMMERCE**

| | |
|---|---|
| IN THE MATTER OF:<br><br>PURDUE PHARMA L.P., PURDUE PHARMA INC., THE PURDUE FREDERICK COMPANY, RICHARD SACKLER, M.D., and KATHE SACKLER, M.D.,<br><br>Respondents. | **RESPONDENTS' OPPOSITION TO THE UTAH DIVISION OF CONSUMER PROTECTION'S MOTION TO CONVERT INFORMAL HEARING**<br><br>DCP Legal File No. CP-2019-005<br><br>DCP Case No. 107102<br><br>Administrative Law Judge Bruce Dibb<br><br>**Oral Argument Requested** |

Respondents Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company (together, "Purdue") and Dr. Richard Sackler and Dr. Kathe Sackler (together, "the Individual Respondents") (collectively with Purdue, "Respondents"), by and through counsel, hereby submit their Opposition to the *Motion to Convert Informal Hearing* (the "Motion to

Convert") filed by the Utah Division of Consumer Protection (the "Division"), and request oral argument thereon.[1]

## SUMMARY

The Division's Motion is part of a concerted strategy to deny Respondents the Constitutional due process rights to which they are entitled. Respondents would have been afforded these rights had this matter continued to proceed in the court of law where it was originally filed.

The Division's claims are similar to other actions filed in courts across the country, including multiple cases filed by the same private counsel hired to represent Utah here.[2] Its allegations stem from an immensely complex public health crisis, and allegedly involve a decades-long "marketing campaign," dozens of third parties, and thousands of physicians. The parties and the Presiding Officer will have to wade through millions of pages of documents spanning decades, extensive state and federal controlled-substance regulations, and expert testimony on myriad topics including pharmacology, pain medicine, and epidemiology. The Division seeks potentially hundreds of millions of dollars in penalties, calculated on an unspecified basis—requiring expert analysis and raising questions of constitutional dimension. The timeframes and procedures established by the Division for ordinary administrative actions are inadequate in a case of this

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[1] Respondents intend to move to dismiss this action and expressly reserve all defenses, including (i) lack of personal jurisdiction; (ii) lack of subject matter jurisdiction because, among other things, the Individual Respondents are not "suppliers" within the meaning of UTAH CODE ANN. § 13-11-3(6) and the Individual Respondents did not engage in any "consumer transaction" within the Division's jurisdiction under *Id.* § 13-11-3(2); (iii) that these proceedings violate due process; and (iv) failure to state a claim.

[2] *See* https://attorneygeneral.utah.gov/wp-content/uploads/2019/01/Opioid-RFP-Contract-FINAL.pdf.

magnitude and complexity. Indeed, an administrative action of this size is unprecedented in the Division's history.

Until only recently, the State intended to pursue these claims in a highly publicized civil lawsuit, in which Respondents would have received procedural protections commensurate with the action's scope and complexity. After declining for over eight months to pursue that case, however, the State abruptly changed course—dismissing its civil Complaint and issuing an Administrative Citation ("Citation") making virtually *identical* allegations against Purdue, and new allegations against two individuals.[3]

As Respondents will explain in greater detail in their Motions to Dismiss,[4] both formal and informal administrative proceedings lack critical procedural safeguards needed to ensure due process in a case as complex as this one. Such proceedings—of both types—are designed for far less complicated matters, with procedures targeted toward resolving those matters quickly and with minimal discovery and process. The State's decision to refile this action as an administrative proceeding is a thinly veiled attempt to strip away the due process protections to which Respondents are entitled. Indeed, the State proudly acknowledged the reason for its about-face: it "felt like it would take far too long to get to a judgment" in traditional litigation, where an administrative procedure would allow it to short-circuit the judicial process, "expedite legal proceedings against Purdue," and, most egregiously of all, "to put new 'pressure' on defendants to

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[3] The addition of the Individual Respondents raises additional complexity, and will require resolution of a host of important legal issues. Among them are the absence of personal jurisdiction and director liability, and disposition of the State's unfounded assertion that two individuals who used to be directors of a pharmaceutical company are somehow, personally, "suppliers" engaged in "consumer transactions" under the Utah Consumer Sales Practices Act ("UCSPA").

[4] Respondents will file their Motions to Dismiss before their Responses to the Division's Notice of Agency Action, due on April 8, 2019. *See* UTAH ADMIN. CODE R151-4-204(3), -302(1), -107.

be 'more reasonable.'" In short, the State and its private counsel—who are also lead Plaintiffs' counsel in the MDL—are improperly using this administrative proceeding as a strategy to leverage a settlement.

The Motion to Convert is part of this strategy. The Division moves to convert to a formal proceeding not because it is more likely to lead to a proper disposition of the Division's claims, but because it will deprive Respondents of a trial *de novo* and the accompanying robust fact-finding procedures to which they would be entitled on appeal from informal proceedings. In sum, Respondents will be severely prejudiced if this administrative proceeding, whether formal or informal, is allowed to continue at all. But converting this to a formal proceeding will only compound the problem, entirely foreclosing Respondents' access to the kind of procedures required to protect a defendant's due process rights in an action of this complexity.

The Motion to Convert should be denied.

## FACTUAL BACKGROUND

On May 31, 2018, the Utah Attorney General's Office brought a civil action against Purdue in the Carbon County District Court, Case No. 180700055,[5] alleging, *inter alia*, violations of the UCSPA, and demanding a jury trial. The State permitted the litigation to languish until the District Court—on its own accord—issued a notice of intent to dismiss the action for failure to prosecute. (Docket Entry "Notice of Intent" (Nov. 14, 2018), Case Docket attached as **Exhibit 1**.) The State urged the District Court not to dismiss the case, explaining that the action "is one piece of a mosaic of litigation involving Purdue, other opioid manufacturers, opioid distributors, and other individuals and entities." (State's Response to Notice of Intent to Dismiss at 2 (Nov. 26, 2018),

[5] The presiding officer "may take judicial notice of public records and may thus consider them on a motion to dismiss." *BMBT, LLC v. Miller*, 2014 UT App 64, ¶ 6, 322 P.3d 1172 (internal quotation marks omitted).

attached as **Exhibit 2**.) The State assured the District Court that the "State and Purdue are actively engaged in the process of gathering information, evaluating claims, and pursuing resolution of the dispute underlying this lawsuit," and cited its ongoing efforts to retain outside counsel (six months after initiating its suit), the potential that the State might amend its complaint, and the potential consolidation of the case with other related cases. (*Id.*)

On January 30, 2019, however, the State abruptly filed a notice of voluntary dismissal of its civil suit, and issued the Citation against Respondents, repeating verbatim almost all the allegations asserted in the civil action, including violations of the UCSPA. Attorney General Sean Reyes publicly announced the issuance of the Citation in a press release, asserting for the first time that the State's claims needed to be "expedit[ed]."[6] In a news conference, the Attorney General admitted that the State preferred the administrative proceeding to traditional legal process because "[w]e felt like it would take far too long to get to a judgment,"[7] and stated that the expedited proceedings are an effort "to put new 'pressure' on defendants to be 'more reasonable.'"[8]

Concurrently with issuance of the Citation, the Division moved to convert the putative proceeding from an informal to formal proceeding. On February 12, 2019, the Presiding Officer

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[6] Press Release, Utah Office of the Attorney General, Utah Escalates Legal Action Against Purdue by Naming Executives and Expediting State's Claims (Jan. 30, 2019), available at https://attorneygeneral.utah.gov/utah-escalates-legal-strategy-against-purdue-pharma/, attached as **Exhibit 3**.

[7] Ben Winslow, *Utah Attorney General Drops Lawsuit, Files Administrative Action Against Purdue over Opioid Crisis*, Fox13 News, Jan. 30, 2019, *available at* https://fox13now.com/2019/01/30/utah-attorney-general-drops-opioid-lawsuit-files-administrative-action-against-purdue-over-opioid-crisis/, attached hereto as **Exhibit 4**.

[8] Katie McKellar, *Utah 'Streamlines' Legal Fight Against OxyContin Maker, Names Family in Filing*, Deseret News, Jan. 30, 2019, *available at* https://www.deseretnews.com/article/900053214/utah-streamlines-legal-fight-against-oxycontin-maker-names-family-in-filing.html, attached hereto as **Exhibit 5**.

granted the Division's Motion to Convert, and ordered that any response to the Citation be filed within twenty days. Purdue filed a Motion to Set Aside the February 12, 2019 Order, arguing that the January 30 Motion to Convert was improper because, at the time the Motion was filed, the administrative proceeding had not yet been commenced in accordance with the Utah Administrative Procedures Act ("UAPA"), and the applicable Administrative Rules governing administrative proceedings brought by the Division. On February 26, 2012, the Presiding Officer issued an Order granting Purdue's Motion to Set Aside. On March 8, 2019, the Division filed its Notice of Agency Action and an informal administrative proceeding was commenced. The Division has now renewed its Motion to Convert.

## ARGUMENT

### I. INTENTIONALLY SEEKING TO CURTAIL A PRIVATE LITIGANT'S RIGHTS AND LIMIT COURT REVIEW IS NOT IN THE PUBLIC INTEREST AND WILL SUBSTANTIALLY PREJUDICE RESPONDENTS' RIGHTS.

Pursuant to the UAPA, a presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding: (1) "is in the public interest"; and (2) "does not unfairly prejudice the rights of any party." UTAH CODE ANN. § 63G-4-202(3).

#### A. Converting this Proceeding to a Formal Adjudicative Proceeding Would Further Substantially and Unfairly Prejudice Respondents' Rights.

The State has acknowledged that it dismissed its civil action and issued the Division's Citation to bypass the comprehensive procedures provided by traditional civil litigation and improperly to exert pressure on Respondents. The Division now contends that Respondents' rights will not be prejudiced because a formal proceeding incorporates "procedural safeguards" that are purportedly "similar to those available to a party in a trial." (Mot. to Convert at 3.) The Division is demonstrably incorrect.

Nothing about a formal administrative proceeding provides "procedural safeguards" that are similar to those in a lawsuit followed by an actual trial. To the contrary, as Respondents will explain in greater detail in their Motions to Dismiss, this proceeding is inadequate to protect Respondents' due process rights. This action is massively complex, and the Division no doubt seeks potentially hundreds of millions of dollars in administrative fines. Yet, in these administrative proceedings, Respondents must complete a tremendous amount of very sophisticated fact and expert discovery, dispositive motions, and a hearing, in just 180—or possibly 240—days. UTAH ADMIN. CODE R151-4-108, R151-4-109(2). Had this case proceeded in the District Court, fact and expert discovery alone would have taken longer than 240 days. And the parties do not start on a level discovery playing field. The Division has retained private counsel who are part of the MDL steering committee, and who have had long-standing access to millions of pages of discovery and numerous deposition transcripts of Purdue witnesses. By contrast, Respondents have taken no discovery of the State, the many agencies responsible for administering the State's policies regarding prescription opioid use, or any of the Utah healthcare professionals who were allegedly deceived.

Moreover, by bringing this matter in an administrative proceeding, Respondents are denied a host of other procedural safeguards:

- The Division is not bound by the Rules of Evidence. UTAH CODE ANN. § 63G-4-206(1)(b)(i), (iii). Critically, the Presiding Officer is allowed to consider hearsay evidence, *id.* § 63G-4-206(1)(c), there are no established procedures for vetting expert opinions, and apparently no requirement that testimony be based on personal knowledge. Rather, "[a]ll that is necessary [in an administrative proceedings] is that admitted evidence have some probative weight and reliability." *Bunnell v. Indus. Comm'n of Utah*, 740 P.2d 1331, 1333 (Utah 1987).

- Respondents are forbidden to depose the Division's experts. UTAH ADMIN. CODE R151-4-504(1)(a)(ii). By contrast, the Utah Civil Rules explicitly permit expert depositions. UTAH R. CIV. P. 26(a)(4)(C)(i).

- Respondents are denied the right to trial by jury. *See Int'l Harvester Credit Corp. v. Pioneer Tractor & Implement, Inc.*, 626 P.2d 418, 421 (Utah 1981) ("[T]he accumulated experience and the combined cognitive powers of jurors may produce more accurate fact finding than a single person, no matter how learned in the law.").

All these procedures severely curtail Respondents' ability to defend themselves, and dramatically increase the risk of an erroneous decision.

The Division's Motion to Convert now goes a step further, seeking to limit Respondents' access to a full and fair adjudication by denying it meaningful review in court. Following an informal proceeding, Respondents would be entitled to a trial *de novo*, albeit without a jury, in the district court. UTAH CODE ANN. § 63G-4-402(a). In contrast, the standard of review in a formal proceeding is far more deferential: relief can be granted only on a showing of substantial prejudice based on several enumerated grounds, and review is limited to the record created under these extremely expedited and truncated procedures in which the discovery period is incredibly short, expert depositions are forbidden, and the Rules of Evidence do not apply. *Id.* § 63G-4-403(4).

Although no administrative proceeding—whether formal or informal—can afford Respondents the requisite constitutional protections, an informal proceeding that provides the right to review via a trial *de novo* in a Utah District Court subject to the Utah Rules of Civil Procedure and Evidence, will at least result in less prejudice to Respondents' rights than an expedited formal administrative proceeding followed by highly deferential review on a limited record. *See Brinkerhoff v. Schwendiman*, 790 P.2d 587, 590 (Utah Ct. App. 1990) (recognizing that prejudice from failure to notify a respondent of whether the proceeding was formal or informal was lessened "when an informal hearing is held under the UAPA because the litigant has an absolute right to a trial de novo before the district court").

In these circumstances, where the Division seeks to use the administrative process to resolve highly complex issues and to seek fines of possibly tens or hundreds of millions of dollars,

constitutional safeguards and meaningful appellate review are crucial. Indeed, this is exactly the "unusual case" where conversion from an informal to a formal proceeding will cause unfair prejudice to Respondents. *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). Because conversion will prejudice Respondents' rights, it should be denied.

### B. It Is Not in the Public Interest to Deny Parties Their Rights to Their Day in Court and the Concomitant Procedural and Constitutional Protections.

Nor is conversion in the public interest. The public has an interest in procedural fairness for litigants, particularly where the State seeks to bring its immense resources to bear against private litigants. *See, e.g.*, *Coleman v. Block*, 632 F. Supp. 1005, 1013–14 (D.N.D. 1986) ("[C]ertainly the public interest is advanced when the government acts in accordance with established precepts of due process and fundamental fairness . . . ."); *see also Perry v. McGinnis*, 209 F.3d 597, 606 (6th Cir. 2000); *id.* at 606 ("[D]ue process can only be finessed so much before it ceases to be due process. 'The touchstone of due process is protection of the individual against arbitrary action of government.'" (quoting *Wolff v. McDonnell,* 418 U.S. 539, 558 (1974)).

The Division's primary argument is that the public interest is somehow served by denying Respondents their right to meaningful review via a trial *de novo* in a district court. (Mot. at 2.) It contends that subjecting Respondents to a limited appellate record is preferable because, "if judicial challenge is likely," 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." (*Id.* at 2.) Likewise, the Division contends that because Respondents have "aggressively fought every case" in other jurisdictions, curtailing Respondents' appellate review would promote the interests of "convenience, general efficiency, timeliness, and actual cost." *Id.* In other words, the Division argues that because Respondents have vigorously defended

themselves against wrongful accusations in other cases—as they have every right to do—the Presiding Officer should now limit Respondents' ability to defend themselves in Utah, including obtaining meaningful and fair review of the determination in this administrative proceeding.

As an initial matter, an informal proceeding would not result in duplicative work or increased costs for the Division and Utah taxpayers. An informal proceeding involves minimal discovery, reserving the bulk of discovery for the trial *de novo* before the district court, if one is requested. More critically, and as discussed above, neither the public nor the Division has *any* interest in rushing to judgment or preventing a party from defending itself. To the contrary, "the government's interest here is in the efficient *and fair* administration of the law." *Lander v. Indus. Comm'n of Utah*, 894 P.2d 552, 556 (Utah Ct. App. 1995) (emphasis added). The primary purpose of robust adversarial proceedings is to ensure accurate and truthful fact-finding procedures. *See Polk Cty. v. Dodson*, 454 U.S. 312, 318 (1981) ("The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness.").

It thus is clear that this highly complex dispute should be properly determined through the comprehensive judicial process. Where the State has attempted to foreclose that avenue, the Presiding Officer should not compound the deprivation of the Respondents' rights by converting the proceeding simply to allow the State to "save expenses." Because the Division has failed to carry its burden to establish that conversion is in the public interest, the Motion to Convert should be denied.

## CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Motion to Convert be denied.

DATED this 1st day of April, 2019

SNELL & WILMER L.L.P.

/s/ Elisabeth M. McOmber
Elisabeth M. McOmber
Katherine R. Nichols
Annika L. Jones

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

COHNE KINGHORN

/s/ Patrick E. Johnson
Patrick E. Johnson
Paul Moxley

*Attorneys for Respondents Kathe Sackler and Richard Sackler*

## CERTIFICATE OF SERVICE

I certify that on April 1, 2019, I served a copy of the foregoing document by attachment to electronic mail, or as more specifically identified below, on the following:

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*Via Email and Hand Delivery upon:*

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*/s/ Mary Batchelor*

# EXHIBIT 1

7TH DISTRICT COURT PRICE
CARBON COUNTY, STATE OF UTAH

STATE OF UTAH vs. PURDUE PHARMA LP
'ASE NUMBER 180700055 Miscellaneous

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'URRENT ASSIGNED JUDGE
DOUGLAS B THOMAS

'ARTIES
Plaintiff - STATE OF UTAH
Represented by: ROBERT G WING
Represented by: KEVIN M MCLEAN
Defendant - PURDUE PHARMA LP
Defendant - PURDUE PHARMA INC
Defendant - PURDUE FREDERICK COMPANY

.CCOUNT SUMMARY
TOTAL REVENUE Amount Due: 50.50
Amount Paid: 50.50
Credit: 0.00
Balance: 0.00
REVENUE DETAIL - TYPE: COMPLAINT - NO AMT S
Fee Waiver Status - Government
Original Amount Due: 360.00
Amended Amount Due: 0.00
Amount Paid: 0.00
Amount Credit: 0.00
Balance: 0.00
Account Adjustments

| Date | Amount | Reason |
|---|---|---|
| May 31, 2018 | -360.00 | Government filer |

REVENUE DETAIL - TYPE: JURY DEMAND - CIVIL
Fee Waiver Status - Government
Original Amount Due: 250.00
Amended Amount Due: 0.00
Amount Paid: 0.00
Amount Credit: 0.00
Balance: 0.00
Account Adjustments

| Date | Amount | Reason |
|---|---|---|
| May 31, 2018 | -250.00 | Government filer |

REVENUE DETAIL - TYPE: TELEPHONE/FAX/EMAIL

| | |
|---|---|
| Amount Due: | 28.00 |
| Amount Paid: | 28.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

REVENUE DETAIL - TYPE: TELEPHONE/FAX/EMAIL

| | |
|---|---|
| Amount Due: | 22.50 |
| Amount Paid: | 22.50 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

'ROCEEDINGS

5-31-18 Filed: Complaint
5-31-18 Case filed
5-31-18 Fee Account created Total Due: 360.00
5-31-18 Fee Account created Total Due: 250.00
5-31-18 Judge DOUGLAS B THOMAS assigned.
5-31-18 Filed: Return of Electronic Notification
6-19-18 Filed return: Summons on Return Waiver of Service upon MARA GONZALEZ, ATTNY FOR DEFENDANT for
Party Served: PURDUE PHARMA LP
Service Type: Personal
Service Date: June 15, 2018
6-19-18 Filed return: Summons on Return upon MARA GONZALEZ, ATTNY FOR DEFENDANT for
Party Served: PURDUE PHARMA INC
Service Type: Personal
Service Date: June 15, 2018
6-19-18 Filed return: Summons on Return upon MARA GONZALEZ, ATTNY FOR DEFENDANT for
Party Served: PURDUE FREDERICK COMPANY
Service Type: Personal
Service Date: June 15, 2018
6-19-18 Filed: Return of Electronic Notification
7-31-18 Filed: Cross-Notice of Deposition of a Representative on Behalf of Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc.

7-31-18 Filed: Cross-Notice of Deposition of S. Seid as Fact Witness for Defendants Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company

7-31-18 Filed: Return of Electronic Notification

0-30-18 Fee Account created Total Due: 28.00

0-30-18 TELEPHONE/FAX/EMAIL Payment Received: 28.00

0-30-18 Fee Account created Total Due: 22.50

0-30-18 TELEPHONE/FAX/EMAIL Payment Received: 22.50

1-14-18 Notice - Notice of Intent for Case 180700055

Notice is hereby given that, due to inactivity, the above entitled matter may be dismissed for lack of prosecution pursuant to Rule 4-103, Code of Judicial Administration. Unless a written statement is received by the court within 20 days of this notice showing good cause why this should not be dismissed, the court will dismiss without further notice.

1-26-18 Filed: Response to Notice of Intent to Dismiss

1-26-18 Filed: Return of Electronic Notification

1-26-18 Note: The case was taken off of OTSC hold

2-14-18 Filed order: Pre-Consolidation Case Management Order
Judge HELPDESK IT
Signed December 13, 2018

1-08-19 Filed order: Minute Entry Regarding Prior Professional Associations (signed by Judge Mrazik)
Judge HELPDESK IT
Signed January 02, 2019

1-30-19 Filed: Notice of Dismissal

1-30-19 Filed: Return of Electronic Notification

1-30-19 Case Disposition is Dismsd w/o prejudice
Disposition Judge is DOUGLAS B THOMAS

# EXHIBIT 2

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SPENCER E. AUSTIN (Bar No. 150)
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*Attorneys for the State of Utah*

**SEVENTH JUDICIAL DISTRICT COURT**
**CARBON COUNTY, UTAH**

| | |
|---|---|
| **STATE OF UTAH,**<br><br>Plaintiff,<br><br>v.<br><br>**PURDUE PHARMA L.P., PURDUE PHARMA INC.,** and **THE PURDUE FREDERICK COMPANY,**<br><br>Defendants. | **RESPONSE TO NOTICE OF INTENT TO DISMISS**<br><br>Case No. 180700055<br><br>Judge: Douglas B. Thomas |

The State of Utah hereby responds to the Notice of Intent to Dismiss issued by the Court on November 14, 2018. Good cause exists for maintaining this action rather than dismissing it.

In this case, the State seeks relief from Purdue Pharma, L.P., et al., (jointly "Purdue Pharma") for the role Purdue Pharma played in the opioid crisis. This is a matter of substantial

public concern, which the State and Purdue Pharma take seriously. This case is one piece of a mosaic of litigation involving Purdue Pharma, other opioid manufacturers, opioid distributors, and other individuals and entities. Both the State and Purdue Pharma are actively engaged in the process of gathering information, evaluating claims, and pursuing resolution of the dispute underlying this lawsuit, though those activities are not yet evident in this case. The State anticipates this litigation will be vigorously contested. Two events must occur.

1. The process by which the State obtains outside counsel must be completed. Shortly after the State filed this action, it notified Purdue Pharma of two facts. First, the State was about to issue (and subsequently has issued) a Request for Proposals to engage outside counsel for this litigation. Second, once outside counsel was engaged, the State and counsel would determine whether to amend the Complaint. The State would not expect Purdue to answer or otherwise respond to the Complaint until after outside counsel was engaged and a decision about amendment reached. Purdue agreed to this approach.

The State received dozens of responses to its Request for Proposals, has evaluated them, and has interviewed candidates. It expects a contract with outside counsel to issue shortly.

2. On November 9, 2018, Purdue Pharma filed a Motion to Consolidate pursuant to Rule 42 of the Utah Rules of Civil Procedure. In that Motion, Purdue Pharma seeks to consolidate this case for purposes of discovery and pretrial procedures with cases filed by numerous counties and other political subdivisions. Purdue filed its motion jointly with several other entities which are not named in the State's complaint.

That Motion is pending in the Third Judicial District Court in Summit County, Utah and is currently being briefed. *See* Exhibit A, the State's Memorandum Opposing Manufacturer

Defendants' Joint Motion to Consolidate (filed three days ago on November 23, 2018). Once a determination about consolidation is made, the State anticipates this matter will move forward.

The State intends to pursue this matter vigorously and expects that Purdue will defend with equal vigor. Accordingly, the State asks that the matter be maintained and not be dismissed.

Dated this 26th day of November 2018.

SEAN D. REYES
UTAH ATTORNEY GENERAL

/s/ Robert G. Wing
ROBERT G. WING
ASSISTANT ATTORNEY GENERAL
UTAH ATTORNEY GENERAL'S OFFICE

## Certificate of Service

I hereby certify that on this 26th day of November 2018 I caused a true and correct copy of the foregoing **Response to Notice of Intent to Dismiss** to be filed with the Court's electronic filing system, resulting in electronic delivery to counsel registered for automatic delivery, and that I sent the foregoing to the following, counsel for Purdue, by electronic mail:

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SEAN D. REYES
UTAH ATTORNEY GENERAL

/s/ Kevin McLean
Kevin McLean
Assistant Attorney General
UTAH ATTORNEY GENERAL'S OFFICE

# EXHIBIT 3

# Utah Escalates Legal Action Against Purdue Pharma

**FOR IMMEDIATE RELEASE**
January 30, 2019

**UTAH ESCALATES LEGAL ACTION AGAINST PURDUE PHARMA BY NAMING EXECUTIVES AND EXPEDITING STATE'S CLAIMS**

*State seeks administrative relief for misleading marketing practices by OxyContin producer*

SALT LAKE CITY – Today, the Utah Attorney General's Office filed an administrative action against Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Richard Sackler, M.D., and Kathe Sackler, M.D., as part of the State's efforts to hold accountable the opioid companies and individuals that created and fueled the opioid epidemic throughout Utah.

In the filing, under Utah Code § 13-2-6, the Division of Consumer Protection of the Department of Commerce issued an administrative action, in the form of a citation, against the defendants alleging violations of the Utah Consumer Sales Practices Act. An administrative proceeding allows the State to seek to prove its claims and obtain a judgment, injunctive relief, and civil penalties more promptly than state district court proceedings.

Based on evidence that has emerged over the last year, this administrative action alleges that not only

Purdue, but two of its owners, R[redacted]ard and Kathe Sackler, participate[redacted] Purdue's fraudulent conduct.

"We are committed to achieving the best results for the State of Utah and pursuing all legal avenues appropriate to hold the companies and individuals that created this crisis accountable," said Utah Attorney General Sean Reyes. "After seeing multiple media reports about Purdue retaining restructuring counsel, we decided that filing an administrative action is in the best interest of the people of Utah. This action allows us to expedite legal proceedings against Purdue and the named executives, who we allege incited and participated in the deceptive sales and marketing tactics that ultimately led to an epidemic of prescription opioid abuse in our state."

"The administrative process, which the Division of Consumer Protection regularly uses, will provide prompt and full consideration of the State's claims," added AG Reyes. "Our families, health care professionals, first responders, and law enforcement officers know the urgency of the opioid epidemic. As we recognized when we filed suit, and in the several months since then, we don't have more time to lose. Meanwhile, we are continuing to investigate other potential wrongdoers."

Concurrent with this action, the state dismissed without prejudice the civil litigation it filed against Purdue Pharma in Carbon County last May, which means the State may refile against Purdue Pharma for the same circumstance at a later day. This action will not preclude Utah from filing lawsuits in district court against other defendants.

In addition to today's actions, Utah continues to participate in investigations against other entities. Attorney General Reyes and a bipartisan group of more than 40 other state attorneys general have been aggressively investigating the extent to which entire opioid industry – manufacturers, distributors and pharmacies – engaged in unlawful practices. Purdue Pharma alone faces hundreds of lawsuits by government entities while other investigations remain ongoing. The State of Utah continues to investigate further lawsuits against additional defendants.

In Utah, non-fatal opioid costs to the state are approximately $524 million annually, according to research from the American Enterprise Institute. From 2013 to 2015, Utah ranked 7th highest in the nation for drug overdose deaths.

In May 2018, Attorney General Sean Reyes said, "Purdue Pharma manufactured one of the deadliest combinations in the history of our nation—OxyContin and lies. That lethal cocktail has led to a national public health crisis of epic proportions.... While Purdue's executives got rich, Utah was plunged into a national public health crisis."

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**NOTES**:

1. A legal briefing on backgroun[redacted]oncerning this matter will be held a[redacted]:30pm and 2:30pm today in the Utah Attorney General's Office. Call Chief of Staff Ric Cantrell at 801-230-9890 for more information.

2. You can review a copy of the administrative action here. The large number of redactions in the document are information subject to a protective order in multi-district litigation which is ongoing in the United State District Court for the Northern District of Ohio. https://attorneygeneral.utah.gov/wp-content/uploads/2019/01/Utah-Admin-Citation-1-30-2019.pdf

3. These administrative claims are not dependent on other counties' or states' lawsuits and will proceed immediately while the district court claims have been stayed. Complex civil litigation takes years. The administrative claims should be adjudicated within 6 months.

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This entry was posted in Recent Posts and tagged Attorney General's Office, OxyContin, Purdue Pharma on January 30, 2019.

# EXHIBIT 4

# Utah Attorney General drops lawsuit, files administrative action against Purdue over opioid crisis

POSTED 4:21 PM, JANUARY 30, 2019, BY BEN WINSLOW, *UPDATED AT 09:35PM, JANUARY 30, 2019*

FOX 13


SALT LAKE CITY -- Utah's Attorney General has dismissed a lawsuit filed against Purdue Pharma over the opioid crisis.

Instead, the state will pursue an administrative action against the pharmaceutical giant through Utah's Division of Consumer Protection.

"We believe it will give us the opportunity to streamline this case and get to a judgment much more rapidly than if we had stayed in state district court," Utah Attorney General Sean Reyes told reporters on Wednesday.

The administrative action was filed Wednesday against Purdue and two of its owners, Richard and Kathle Sackler. It seeks to hold them responsible for Utah's portion of the opioid crisis, accusing Purdue of overmarketing opoids and misstating the addiction risks.

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Reyes, who faced pressure to bring a lawsuit from Utah legislative leaders, defended his decision to drop the lawsuit and pursue administrative action.

"We felt like it would take far too long to get to a judgment, especially given some circumstances that have come to light more recently," he said.

The attorney general cited reports that Purdue was seeking to restructure itself and suggested it may be a way to avoid big payouts in any litigation that went against the pharmaceutical giant. Numerous counties have filed their own lawsuits against pharmaceutical companies, but Reyes said the manufacturers have sought to consolidate them into one.

Under an administrative action in Utah, the average case time is 180 days or less and Purdue could face as much as $2,500 per violation. But the litigation is also stripped down, meaning there wouldn't be the same volume of evidence or witnesses presented in a state courtroom.

In a statement to FOX 13, Purdue denied the accusations and said the state was trying to substitute its judgment for that of the FDA.

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"We share the state's concerns about the opioid crisis. While Purdue Pharma's opioid medicines account for less than 2% of total prescriptions, we will continue to work collaboratively with the state toward bringing meaningful solutions forward to address this public health challenge," the company said.

Dr. Jennifer Plumb, who heads Utah Naloxone and advocates for those dealing with opioid addiction, said she supported the attorney general's decision.

"Ultimately what I want is not only for there to be resources for people desperately struggling and the state to help them, but I want accountability for wrongdoing," she said. "Just because you have millions and billions of dollars does not mean it's OK that you lied, you deceived and you convinced a whole lot of people along the way that you weren't doing that."

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# EXHIBIT 5

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# Utah 'streamlines' legal fight against OxyContin maker, names family in filing

## Utah attorneys allege Purdue Pharma lied about risk of addiction

By **Katie McKellar** **@KatieMcKellar1**
**Published: January 30, 2019 3:27 pm**
**Updated: Jan. 30, 2019 5:48 p.m.**

SALT LAKE CITY — In an effort to "streamline" Utah's lawsuit against Purdue Pharma, the maker of OxyContin and other opioids, the Utah Attorney General's Office has a new strategy.

The office on Wednesday filed an administrative action in the form of a citation against Purdue — while also explicitly naming the companies' owners, Richard and Kathe Sackler — to expedite court proceedings in Utah's efforts to "hold accountable the opioid companies and individuals that created and fueled the opioid epidemic throughout Utah," the attorney general's office said in a statement.

The filing comes after evidence has emerged over the past year, leading Utah attorneys to allege that not only Purdue, but two of its owners participated in fraud.

Prosecutors allege that Purdue violated state consumer protection laws, misrepresented the risk of addiction, and falsely claimed doctors and patients could increase dosages without risk.

"We are committed to achieving the best results for the state of Utah and pursuing all legal avenues appropriate to hold the companies and individuals that created this crisis accountable," Attorney General Sean Reyes said.

After seeing multiple media reports about Purdue retaining restructuring counsel — along with other indications the company could be considering bankruptcy — Utah Attorney General Sean Reyes said his team decided that filing an administrative action would be "in the best interest of the people of Utah."

An administrative filing allows the state to seek to prove its claims and obtain a judgment, injunctive relief and civil penalties more promptly than state district court proceedings, he said. The attorney general's office estimates the administrative filing could be adjudicated within 180 days, rather than years in the court.

"This action allows us to expedite legal proceedings against Purdue and the named executives, who we allege incited and participated in the deceptive sales and marketing tactics that ultimately led to an epidemic of prescription opioid abuse in our state," Reyes said.

Along with the new filing, the state dismissed without prejudice the civil lawsuit Utah filed against Purdue Pharma in Carbon County last May, meaning the state may refile against Purdue Pharma in the future, according to Reyes' office.

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At the time of the lawsuit's filing, Reyes said Purdue Pharma "manufactured one of the deadliest combinations in the history of our nation — OxyContin and lies."

"That lethal cocktail has led to a national public health crisis of epic proportions," Reyes said. "While Purdue's executives got rich, Utah was plunged into a national public health crisis."

The previous complaint sought millions of dollars in damages and a court order stemming the flow of opioids into the state.

Reyes said his office is "confident" in the approach to put new "pressure" on defendants to be "more reasonable." He said the "door is still open" for a settlement, but his office isn't currently engaging in settlement discussions with Purdue or its owners.

Reyes said the aim is not just to get a "payout."

"We want to send a message and we want the practice and behaviors to stop," he said.

The administrative process, which the Division of Consumer Protection regularly uses, will provide "prompt and full consideration of the state's claims," Reyes said.

"Our families, health care professionals, first responders and law enforcement officers know the urgency of the opioid epidemic," he said. "As we recognized when we filed suit, and in the several months since then, we don't have more time to lose."

Attorneys allege in court documents that Purdue and the Sackler family have "intentionally engaged, and continue to engage, in an aggressive marketing campaign to overstate the benefits and misstate and conceal the risks of treating chronic pain with opioids in order to increase their profits."

Purdue Pharma officials in a statement issued Wednesday said they "vigorously deny the allegations" in Utah's filing.

"We share the state's concerns about the opioid crisis," Purdue officials said in the statement. "While Purdue Pharma's opioid medicines account for less than 2 percent of total prescriptions, we will continue to work collaboratively with the state toward bringing meaningful solutions forward to address this public health challenge."

Purdue officials said Utah's filing "disregards basic facts" about Purdue's opioid medications, including that the Federal Drug Administration approved OxyContin and other Purdue medications as "safe and effective for their intended use." Additionally, the FDA approved a reformulated version of OxyContin, which Purdue developed in order to "deter abuse," the statement said.

Meanwhile, Reyes said his office is continuing to investigate other "potential wrongdoers."

Reyes and a group of more than 40 other state attorneys general have been investigating the extent to which the entire opioid industry — manufacturers, distributors and pharmacies — are accused of engaging in unlawful practices.

Purdue Pharma alone faces hundreds of lawsuits by government entities while other investigations remain ongoing.

The filing comes as legal pressure continues to mount on the Sackler family. Last week, a legal filing in Massachusetts accused the Sacklers and other executives of seeking to push prescriptions of the drug and downplay its risks, the Associated Press reported.

Members of the family are also defendants in a lawsuit brought by New York's Suffolk County. Few, if any, other governments have sued the family so far — but Utah's administrative filing Tuesday adds to the pressure.

**Contributing:** Ladd Egan