

Robert G. Wing (4445)  
Kevin M. McLean (16101)  
Assistant Attorneys General  
SEAN D. REYES (7969)  
Utah Attorney General  
Utah Attorney General's Office  
160 East 300 South, 5th Floor  
PO Box 140872  
Salt Lake City, UT 84114-0872  
Ph. (801) 366-0310  
rwing@agutah.gov  
kmclean@agutah.gov

Linda Singer  
Elizabeth Smith  
Lisa Saltzburg  
Susan L. Burke  
Motley Rice LLC  
401 9th St. NW, Suite 1001  
Washington, DC 20004  
Ph. (202) 386-9627  
lsinger@motleyrice.com  
esmith@motleyrice.com  
lsaltzburg@motleyrice.com  
sburke@motleyrice.com

Matthew McCarley  
Misty Farris  
Majed Nachawati  
Ann Saucer  
Jonathan Novak  
Fears Nachawati, PLLC  
5473 Blair Road  
Dallas, Texas 75231  
Ph. (214) 890-0711  
mccarley@fnlawfirm.com  
mfarris@fnlawfirm.com  
mn@fnlawfirm.com  
asaucer@fnlawfirm.com  
jnovak@fnlawfirm.com

*Attorneys for the Utah Division of Consumer Protection*

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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**, 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.**

**REQUEST FOR APPROVAL TO  
SERVE SUBPOENA FOR DOCUMENTS  
ON A THIRD PARTY**

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

**DCP Case No. 107102**

The Utah Division of Consumer Protection, by and through undersigned counsel, and pursuant to Utah Admin. Code R151-4-502, R151-4-505 and R151-4-514, respectfully requests approval from the Administrative Law Judge to serve a subpoena duces tecum upon McKinsey & Company, Inc. ("McKinsey"), which provided consulting services to Respondents Purdue Pharma, L.P., Purdue Pharma, Inc. and The Purdue Frederick Company ("Purdue"). The subpoenas directed to McKinsey are attached hereto as Exhibit A.

### **RELEVANT PROCEDURAL HISTORY**

1. For the convenience of the Tribunal and the Respondents, the Utah Division of Consumer Protection ("Division"), rather than repeating the relevant procedural history in full, refers the Tribunal to the background set forth in its previous Requests for Approval from the Administrative Law Judge to Serve Requests for Production of Documents.

2. Both document and deposition discovery have been underway and are ongoing in this proceeding. As to all Respondents, the Tribunal has denied Motions to Dismiss with respect to all claims, save claims for unconscionable actions under U.C.A. Section 13-11-5, which were dismissed from the adversary proceeding.

3. The Tribunal has issued an Amended Scheduling Order and Notice of Hearing.

### **DISCUSSION**

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). 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 seeks to subpoena McKinsey for documents will provide information regarding claims or defenses in the case, including Purdue’s marketing and Richard and Kathe Sacklers’ involvement in and responsibility for Purdue’s marketing activities. The subpoena is limited in scope and focused on documents which McKinsey performed consulting work, including creation of a report discussed by the Division’s Expert, Professor John C. Coffee, Jr. in his report. The McKinsey documents are directly related to the Division’s claims, are not privileged and have not yet been produced to the Division. Hence, the subpoena meets the requirements set forth in Utah Administrative Code R151-4-502(1) and R151-4-514(2).

For the foregoing reasons, the Division respectfully requests that the Administrative Law Judge execute the subpoena attached hereto as Exhibit A.

DATED this 20<sup>th</sup> day of August, 2019.

SEAN D. REYES  
UTAH ATTORNEY GENERAL

By: /s/ Kevin M. McLean  
Kevin M. McLean (16101)  
Robert G. Wing (4445)  
Assistant Attorneys General

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Lisa Saltzburg  
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5473 Blair Road  
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Ph. (214) 890-0711  
mn@fnlawfirm.com  
mccarley@fnlawfirm.com  
mfarris@fnlawfirm.com

*Counsel for the Division*

## CERTIFICATE OF SERVICE

I certify that on August 20, 2019 I served the foregoing on the parties of record in this proceeding as set forth below:

By electronic mail:

Elizabeth McOmber, Esq.  
emcomber@swlaw.com

Katherine Nichols  
knichols@swlaw.com

Annika Jones  
aljones@swlaw.com

Mark Cheffo, Esq.  
Mark.Cheffo@dechert.com

Will Sachse, Esq.  
Will.Sachse@dechert.com

Sara Roitman, Esq.  
Sara.Roitman@dechert.com

Paul LaFata, Esq.  
Paul.LaFata@dechert.com

Patrick Johnson  
pjohnson@ck.law

Paul Moxley  
pmoxley@ck.law

Tim Bywater  
tbywater@ck.law

Gregory Joseph  
gjoseph@jha.com

Mara Leventhal  
mleventhal@jha.com

Doug Pepe  
dpepe@jha.com

Christopher Stanley  
cstanley@jha.com

Roman Asudulayev  
rasudulayev@jha.com

Ben Albert  
balbert@jha.com

Dated this 20th day of August, 2019.

    /s/ Lisa Saltzburg      
Lisa Saltzburg

# Exhibit

A

Robert G. Wing (4445)  
Kevin M. McLean (16101)  
Assistant Attorneys General  
SEAN D. REYES (7969)  
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**IN THE MATTER OF:**

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**Respondents.**

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

**DCP Case No. 107102**

**SUBPOENA FOR DOCUMENTS OR  
TANGIBLE THINGS**

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TO: McKinsey & Company, Inc.  
Corporation Service Company  
15 West South Temple, Suite 600  
Salt Lake City, UT 84101



**YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, said method of recording the testimony to be by stenographic and videographic means.

PLACE OF DEPOSITION: LOCATION TO BE AGREED UPON	DATE AND TIME:
	METHOD OF RECORDING:

**YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects):

- All documents, including electronic materials, produced in any investigation or litigation related to work by McKinsey & Company on behalf of Purdue Pharma L.P., Purdue Pharma Inc., the Purdue Frederick Company, or any related corporate entities (collectively, "Purdue"); and
- All communications with or related to Purdue's Board of Directors and/or members of the Sackler family

PLACE: LOCATION TO BE AGREED UPON	DATE AND TIME: 9AM, SEPTEMBER 6, 2019
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**YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below:

PREMISES:	DATE AND TIME:
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**AUTHORITY**

The Division of Consumer Protection ("DCP") issues this subpoena pursuant to Utah Code § 13-2-6(5) and Utah Code § 13-11-16(1). DCP has reason to believe McKinsey & Company has information regarding or relating to Respondents' conduct that is alleged to have violated the Utah Consumer Sales Practices Act. Utah Code § 13-11-1, *et seq.*

**ENFORCEMENT**

Except as otherwise agreed by stipulation or ordered, you shall comply with this subpoena and shall appear to testify on the date set forth herein. Failure to comply with this subpoena may result in a contempt or civil enforcement action. Utah Code §§ 63G-4-501, 78B-6-313.

By: \_\_\_\_\_  
Judge Dibb, Presiding Officer  
Date: August \_\_, 2019