

REDACTED RESPONSE TO NOTICE OF AGENCY ACTION

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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.

**RESPONSE TO
NOTICE OF AGENCY ACTION**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

**RESPONSE OF RICHARD SACKLER AND KATHE SACKLER TO THE
DIVISION'S NOTICE OF AGENCY ACTION AND ADMINISTRATIVE CITATION**

Respondents Richard Sackler and Kathe Sackler (collectively, the “**Individual Respondents**”) each respond to the Notice of Agency Action (the “**Notice**”) and the

Administrative Citation (the “**Citation**”) incorporated therein of the Utah Division of Consumer Protection of the Department of Commerce of the State of Utah (the “**Division**”).¹

STATEMENT OF THE RELIEF SOUGHT

The Individual Respondents respectfully state that this Administrative Action, the Citation, and all of the Division’s claims against them, should be dismissed with prejudice for lack of personal jurisdiction, lack of subject matter jurisdiction, and failure to state a claim. Further, the Individual Respondents deny all allegations set forth against them in the Citation. The Individual Respondents also join in the request by Purdue Pharma, Inc. (“**PPI**”), Purdue Pharma, L.P. (“**PPLP**”), and Purdue Frederick Company (“**PFC**,” and together, “**Purdue**”) for dismissal on the grounds set forth in Purdue’s Response and Motion to Dismiss.

STATEMENT OF FACTS

As an initial matter, the Citation does not and cannot allege that either Individual Respondent is domiciled in Utah (¶¶ 5-6). In fact, neither Individual Respondent is domiciled in Utah. Indeed, Kathe Sackler has never even been to Utah. The Citation also fails to identify any suit-related conduct by either Individual Respondent in or directed at this State.

Instead, the Citation alleges that, as former officers or members of the board of directors of “Purdue,” the Individual Respondents purportedly took part in conduct that the Division contends “led to Utah’s opioid epidemic.” (¶ 129). However:

¹ The Individual Respondents object to the adjudication of the Division’s claims in this Administrative Action, and to the Division’s attempt to assert personal jurisdiction over them. Both violate the Individual Respondents’ constitutional due process rights. The Individual Respondents have moved to dismiss the matter on that basis and others set forth in (1) the Motion to Dismiss and supporting memorandum of law and affidavits filed on behalf of the Individual Respondents; and (2) Purdue’s Response to the Citation and its Motion to Dismiss and supporting papers, which the Individual Respondents have incorporated and adopted.

- The Division does not and cannot allege that either Individual Respondent sold any of Purdue’s FDA-approved prescription opioid medicines, directly or indirectly, to any consumer in Utah. They did not.
- The Division does not and cannot allege that either Individual Respondent made any misstatements about Purdue’s FDA-approved prescription opioid medicines to any healthcare providers in Utah or told anyone else to do so. They did not.
- The Division does not and cannot allege that either Individual Respondent made any representation whatsoever related to any of Purdue’s FDA-approved prescription opioid medicines to any consumer in Utah. They did not.
- The Division does not and cannot plead any facts which support its allegation that the Individual Respondents are “suppliers” or engaged in a “consumer transaction” within the meaning of the Utah Consumer Sales Practices Act or are otherwise subject to the Utah Consumer Sales Practices Act. They are not.

Moreover, most of the allegations against the Individual Respondents concern events that took place before the start of the limitations period, which began in January 2009. Among the Citation’s stale allegations, most relate to the time period before year-end 2001, and many are even earlier. *See, e.g.*, ¶¶ 130, 134-38, 140-42, 146-47, 149, 159 (Richard Sackler); ¶¶ 152-54 (Kathe Sackler); ¶¶ 139, 155 (Individual Respondents).

The facts alleged in the Citation do not bear out its conclusory assertions that the Individual Respondents “controlled” Purdue or “oversaw” its marketing of prescription opioids. To the contrary, the Citation’s allegations concern routine board activities (¶¶ 125-129) (without specifying how, if at all, each Individual Respondent voted on an matter before the Board), sporadic requests for information by the Individual Respondents (¶¶ 144-45, 148, 156), or a transaction that the Division acknowledges never happened (¶¶ 157-58, 160), or are otherwise false, irrelevant, or conclusory. (¶¶ 131-33, 150-51, 161). None of the allegations demonstrates any misconduct by either Individual Respondent — much less any misconduct by them in or directed at Utah — and none substantiates any of the claims alleged in the Citation against them.

Indeed, within the limitations period, the only timely allegations for Richard Sackler are that he asked for limited information — entirely unrelated to what information Purdue was conveying to healthcare providers — from management (§§143, 156); in 2011, he expressed an interest in joining a sales representative to visit with a healthcare provider — with no suggestion that the visit would be in Utah (§143); and that he obtained a patent for “an addiction treatment drug” (§150, 160), which is neither true nor the basis of any of the Division’s claims. And as to Kathe Sackler, within the limitations period, the Citation only alleges that she requested certain information in November 2009 and that she was told about a proposal for a business venture being evaluated by management. (§§ 156, 157). The proposed business venture, Project Tango, was opposed by Kathe Sackler, was only discussed at a handful of meetings before being abandoned by Purdue, and had no impact on the sale or marketing of Purdue’s prescription opioids.

While repeatedly criticizing the Individual Respondents through false and misleading statements which are refuted by the documents upon which they rely, the Division conspicuously hides from this Tribunal the fact that — in Board reports upon which the Division supposedly relied as evidence of the Board’s control of Purdue (§ 126) — the Board (including Individual Respondents and others) were in fact repeatedly told throughout the 10-year limitations period that Purdue was in full compliance with the law. From 2007 to 2012, Purdue was under federal scrutiny, and the Board received regular certifications that Purdue was acting in accordance with its integrity commitments under Purdue’s Corporate Integrity Agreement (“**CIA**”) with the federal Office of Inspector General (“**OIG**”).² And that after the CIA successfully concluded at

² See Prop. Supp. Response Ex. A at 59

Prop. Supp. Response Ex. B at 52

the end of 2012, Purdue regularly certified to the Board that the Company remained in full compliance with all legal requirements.³ There is no basis for suggesting that either Individual Respondent participated in misconduct aimed at this State.

THE CITATION SHOULD BE DISMISSED WITH PREJUDICE

The claims against the Individual Respondents set forth in the Citation should be dismissed for the reasons set forth in (1) the Motion to Dismiss and supporting memorandum of law and affidavits filed on behalf of the Individual Respondents; (2) Purdue’s Response to the Citation and its Motion to Dismiss and supporting papers, which the Individual Respondents have incorporated and adopted; and (3) the affirmative defenses enumerated below.

FIRST AFFIRMATIVE DEFENSE

Each Individual Respondent denies the allegations set forth in the Citation.

See also, e.g., Prop. Supp. Response Ex. C at 28
Prop. Supp. Response Ex. D at 23
Prop. Supp. Response Ex. E at 16
); Prop. Supp. Response
Ex. F at 23-24
; Prop. Supp. Response Ex. G at 24
); Prop. Supp. Response

Ex. H at 33 (same).

³ See Prop. Supp. Response Ex. B at 52; *see also, e.g.,* Prop. Supp. Response Ex. I at 49 (same); Prop. Supp. Response Ex. J at 46 (same); Prop. Supp. Response Ex. K at 39 (same).

SECOND AFFIRMATIVE DEFENSE

The Division lacks personal jurisdiction over each of the Individual Respondents.

THIRD AFFIRMATIVE DEFENSE

The Division lacks subject matter jurisdiction to assert the claims in this Administrative Action against the Individual Respondents.

FOURTH AFFIRMATIVE DEFENSE

The Division fails to state a claim against the Individual Respondents upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

The Division lacks standing to bring an action against the Individual Respondents.

SIXTH AFFIRMATIVE DEFENSE

The Citation fails to plead alleged misleading statements or fraud by the Individual Respondents with sufficient particularity.

SEVENTH AFFIRMATIVE DEFENSE

The Individual Respondents are not “suppliers” under Utah Code § 13-11-1, *et seq.*

EIGHTH AFFIRMATIVE DEFENSE

The Individual Respondents did not engage in a “consumer transaction” under Utah Code § 13-11-1, *et seq.*

NINTH AFFIRMATIVE DEFENSE

The Division cannot assert a claim for alleged unconscionable acts or practices in this Administrative Proceeding. All such claims are barred by Utah Code § 13-11-5.

TENTH AFFIRMATIVE DEFENSE

The Division’s claims are preempted, in whole or in part, by Federal law, and are barred by the provisions of Utah Code § 13-11-22.

ELEVENTH AFFIRMATIVE DEFENSE

The Individual Respondents did not make any false or misleading statements to Utah consumers regarding any of Purdue’s FDA-approved prescription opioid medicines.

TWELFTH AFFIRMATIVE DEFENSE

The Individual Respondents did not direct Purdue to make any false or misleading statements to Utah consumers regarding any of Purdue’s FDA-approved prescription opioid medicines.

THIRTEENTH AFFIRMATIVE DEFENSE

The Individual Respondents cannot be held liable for an alleged omission under Utah Code § 13-11-1, *et seq.*

FOURTEENTH AFFIRMATIVE DEFENSE

The Individual Respondents did not violate the Utah Consumer Sales Practices Act, and did not direct Purdue to violate the Consumer Sales Practices Act.

FIFTEENTH AFFIRMATIVE DEFENSE

The Division cannot hold the Individual Respondents liable for alleged actions of PPI, PPLP, or PFC.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent that any of the Division’s claims arise from conduct that occurred more than 10 years prior to the date the Citation was filed (*i.e.*, alleged conduct that occurred prior to

January 30, 2009), those claims are barred by the statute of limitations under Utah Code § 13-2-6(6)(a).

SEVENTEENTH AFFIRMATIVE DEFENSE

The Division cannot prove that any act or statement by the Individual Respondents caused (1) any healthcare provider to prescribe any Purdue prescription opioid inappropriately or (2) any pharmacy to dispense any Purdue prescription opioid inappropriately or (3) harm to any person in the State of Utah.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Division cannot establish liability over the Individual Respondents through alleged acts of third parties.

NINETEENTH AFFIRMATIVE DEFENSE

If this matter proceeds as an Administrative Action, the Individual Respondents will be denied their rights under both the Constitutions of the United States and Utah.

TWENTIETH AFFIRMATIVE DEFENSE

If this matter proceeds as a formal adjudicative proceeding, the Individual Respondents will be denied their rights under both the Constitutions of the United States and Utah.

TWENTY FIRST AFFIRMATIVE DEFENSE

The penalty sought by the Division in this Administrative Action violates Constitutions of the United States and Utah.

TWENTY SECOND AFFIRMATIVE DEFENSE

The Division lacks statutory authority to regulate the acts or practices complained of, and the Division's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with Utah law; contrary to Constitutional right, power, privilege or immunity; in

excess of statutory jurisdiction, authority, or limitations; short of statutory right; or without observance of procedure required by law.

RESERVATION OF RIGHTS

The Individual Respondents reserve their right to assert additional defenses as these proceedings continue. To the extent there are facts, administrative rules, regulations, or internal memoranda that are unique to the Division which may impact this matter of which the Individual Respondents are not aware, and to preserve the right to assert such facts, administrative rules, regulations, and internal memoranda, the Individual Respondents assert the right to modify or amend this Response.

HEARING REQUEST

The Individual Respondents respectfully request a hearing on the matters set forth above.

DATED this 9th day of April, 2019

COHNE KINGHORN, P.C.

By: /s/ Patrick E. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of April, 2019 (except as noted below), 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, hand-delivery, U.S. Mail and/or as more specifically designated below, to:

By electronic mail:

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/s/ Patrick E. Johnson

* Hand-delivery to be accomplished on April 10, 2019