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

**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE UTAH DEPARTMENT OF COMMERCE**

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.

**MOTION
TO SET ASIDE ORDER
ON MOTION TO CONVERT**

DCP Legal File No. CP-2019-005

DCP Case No. 107102

Respondents Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company (“Purdue Respondents”), through counsel, hereby move the Presiding Officer of the Division of Consumer Protection (“Division”) of the Utah Department of Commerce to set aside the Order on Motion to Convert entered on February 12, 2019 (“February 12, 2019 Order”). The Purdue Respondents submit that good cause exists to set aside the February 12, 2019 Order for the following reasons.

Less than two weeks ago, on January 30, 2019, the Utah Division of Consumer Protection issued an Administrative Citation (“Citation”) and emailed a copy of the Citation to counsel for the Purdue Respondents. That same day, counsel for the Division also purported to serve the Motion to Convert upon the Purdue Respondents by certified mail (with a courtesy copy emailed counsel for the Purdue Respondents), which requested that the Presiding Officer enter an order converting the Administrative Proceeding from an informal to a formal proceeding.

Last week, counsel for the Purdue Respondents conferred with counsel for the Division about the administrative procedure and the Purdue Respondents’ position that an administrative proceeding had not yet been initiated, making the Motion to Convert premature. Specifically, as their counsel explained to counsel for the Division, it is the Purdue Respondents’ position that in order for an adjudicative proceeding to be officially commenced following issuance of a citation pursuant to UCA 13-2-6(3), a respondent first must request review as indicated under UCA 13-2-6(3)(c), after which “within 20 calendar days after receiving the request, the division shall initiate an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.” UCA 13-2-6(3)(c). Under the Administrative Procedures Act, UCA 63G-4-201, “Commencement of Adjudicative Proceedings,” adjudicative proceedings are commenced upon issuance of a notice of agency action. To summarize, the procedural steps are (1) issuance of Citation; (2) Request for Review by respondent; and (3) issuance of Notice of Agency Action. The adjudicative proceeding is not officially commenced until step 3 is accomplished. Further, the existence of an adjudicative proceeding is a statutory prerequisite to a motion to convert. *See* UCA § 63G-4-202(3) (“Any time before a final order is issued in any adjudicative proceeding, the

presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding . . .”).

Thus, it is the Purdue Respondents’ position that the adjudicative proceeding has not yet commenced and the Motion to Convert is premature. To further support this point, the Motion to Convert itself specifically requested that an order only be entered after “receipt of any request to review the Citation.” Mot. to Convert at 3. The time to submit a Request for Review has not yet passed. Accordingly, good cause exists to set aside the February 12, 2019, Order because, as acknowledged by the Division and its counsel in the Motion to Convert, it is premature and not yet ripe for a decision.

Counsel for the Division agreed that counsel for the parties should discuss the scheduling of deadlines in this matter and agreed to do so this week. In that context, counsel for the Division also agreed to an extension of any deadline that may be running for a response to the Motion to Convert, until the parties could confer and agree to various scheduling issues, including an agreed deadline for a response to the Motion to Convert. *See* email to R. Wing confirming extension, attached as Ex. A.

Further, the Purdue Respondents’ counsel do not represent the individual Respondents, who only secured Utah counsel at the end of last week. Counsel for the individual Respondents also conferred with counsel for the Division about an extension of time for responding to the Motion to Convert, and counsel for the Division confirmed its agreement to that extension.¹ *See* email to E. Smith, attached hereto as Ex. B.

¹ Respondents Dr. Richard Sackler and Dr. Kathe Sackler contest jurisdiction in this proceeding and expressly reserve and do not waive all jurisdictional, service, and any other defenses to the Administrative Citation that was filed on January 30, 2019.

Accordingly, good cause exists to set aside the February 12, 2019 Order because counsel for the Division and counsel for the Respondents agreed to an extension of time prior to the time for providing a response to the Motion to Convert (presuming that this deadline was even running in this matter). There is also good cause to set aside the February 12, 2019, Order because counsel for the individual respondents only became aware of the Citation and Motion a few days prior to the issuance of the Order.

In addition to the above, the copy of the Citation that was emailed to counsel was heavily redacted and no Respondent has been served with or otherwise received an unredacted copy of the Citation. Thus, it appears that proper service of the Citation has not been effected. For this same reason, it appears that the Motion to Convert likewise may not have been properly served. The Purdue Respondents, and on information and belief, the individual Respondents, reserve all their rights and defenses regarding the propriety and validity of service of the Citation and Motion to Convert upon them. In the absence of proper service of the Citation and the Motion to Convert, the Motion is premature and there is good cause to set aside the February 12, 2019, Order.

Finally, even if the Motion to Convert were properly served and not premature, service was effected by mail (*see* Mot. to Convert at 4, Certificate of Service), making the deadline for a response today, February 12, 2019 – ten days from date of service plus three days for service via mail pursuant to Utah Admin. Code R151-4-107(3)(a)(1). Accordingly, the deadline for submitting a response had not yet passed at the time the Presiding Officer entered the Order.

For these reasons, the Purdue Respondents respectfully request that the Presiding Officer set aside the February 12, 2019, Order on the Motion to Convert.

Dated this 12th day of February, 2019.

SNELL & WILMER L.L.P.

/s/ Elisabeth M. McOmber

Elisabeth M. McOmber

Katherine R. Nichols

*Attorneys for Respondents Purdue Pharma LP,
Purdue Pharma Inc., and the Purdue Frederick
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of February, 2019, I served this Motion to Set Aside Order on Motion to Convert 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:

Bruce L. Dibb, Presiding Officer
Administrative Law Judge
Heber M. Wells Building, 2nd Floor
160 East 300 South
Salt Lake City, Utah 84114
bdibb@utah.gov

Robert G. Wing, AAG
Kevin McLean, AAG
Assistant Attorneys General
Utah Attorney General's Office
160 East 300 South, 5th Floor
PO Box 140872
Salt Lake City, Utah 84114-0872
rgwing@agutah.gov
kmclean@agutah.gov

Daniel R. S. O'Bannon – Director
Utah Division of Consumer Protection
P.O. Box 146704
Salt Lake City, Utah 84114-6704

Courtesy copies were provided to the following via U.S. Mail:

Patrick E. Johnson, Esq.
Paul T. Moxley, Esq.
Cohne Kinghorn
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111

*Attorneys for Dr. Richard Sackler, M.D. and Dr. Kathe Sackler, M.D. **

*These Respondents have not yet appeared in this case and reserve all their defenses, including to contest jurisdiction and service.

/s/ Elisabeth M. McOmber

4838-1724-8648

EXHIBIT A

Batchelor, Mary

From: McOmbler, Elisabeth
Sent: Friday, February 8, 2019 4:17 PM
To: Robert Wing
Cc: Kevin McLean; will.sachse@dechert.com
Subject: RE: Purdue Administrative Motion to Convert

Robert – Thanks for speaking with me this afternoon. As discussed, this email confirms that we have an extension on deadlines in this case, including Monday’s deadline for responding to the Motion to Convert (reserving our position that this motion is premature and that deadline is not actually running), until I can have a discussion with Linda Singer to discuss setting extended deadlines which I hope to have early next week.

Thanks,

Liz

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EXHIBIT B

Batchelor, Mary

From: Patrick E. Johnson <pjohnson@ck.law>
Sent: Tuesday, February 12, 2019 10:07 AM
To: McOmer, Elisabeth
Subject: FW: EXTERNAL-FW: Purdue Pharma Admin Action

Patrick E. Johnson

COHNE KINGHORN

pjohnson@cohnekinghorn.com
111 East Broadway, 11th Floor
S.L.C., UT 84111
Office Phone: 801-363-4300
Direct Dial: 801-415-0149
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-----Original Message-----

From: Smith, Elizabeth <esmith@motleyrice.com>
Sent: Monday, February 11, 2019 1:37 PM
To: Patrick E. Johnson <pjohnson@ck.law>
Cc: 'Robert Wing' <rwing@agutah.gov>; Paul T. Moxley <pmoxley@ck.law>; Hal Reiser <hreiser@ck.law>; Singer, Linda <lsinger@motleyrice.com>
Subject: RE: EXTERNAL-FW: Purdue Pharma Admin Action

Patrick,

I am writing in response to your email to Robert, below. I spoke to Liz on Friday regarding an extension of time to respond to the motion to convert, pending resolution of our discussion regarding the procedural status of the administrative citation and applicable deadlines. The Sacklers have the same extension. We were planning on speaking again tomorrow to discuss the procedural issue further, but have not yet set a time for that call. Thanks.

Elizabeth Smith | Attorney at Law | Motley Rice LLC
401 9th St. NW, Suite 1001 | Washington, DC 20004 | esmith@motleyrice.com
o. 202.386.9627 x5627 | c. 843.834.5051 | f. 202.232.5513

-----Original Message-----

From: Patrick E. Johnson <pjohnson@ck.law>

Sent: Monday, February 11, 2019 12:58 PM
To: Robert Wing <rwing@agutah.gov>
Cc: Paul T. Moxley <pmoxley@ck.law>; Hal Reiser <hreiser@ck.law>
Subject: Purdue Pharma Admin Action

Robert,

I am emailing to confirm that, pursuant to our call on Friday, that the Sacklers have an extension to respond to the motion to convert pending reaching a final agreement with Linda Singer at Motley Rice. My understanding was that Liz McOmer was going to send a similar email, but I have yet to see it. If my understanding is incorrect, please let me know.

Thank you, --Patrick.

(Also, I am out of the office today, so please copy Paul and Hal on any correspondence.)

Sent from my iPhone

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