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

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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.**

**RESPONDENT RICHARD SACKLER'S  
AND KATHE SACKLER'S OBJECTION  
TO DIVISION'S REQUEST TO SERVE  
DISCOVERY REQUESTS AND MOTION  
TO STAY DISCOVERY AGAINST  
INDIVIDUAL RESPONDENTS**

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

**DCP Case No. 107102**

The Individual Respondents<sup>1</sup> through counsel,<sup>2</sup> object to the Utah Division of Consumer Protection's (the "Division") Request for Approval from the Administrative Law Judge to Serve Request for Production of Documents on Respondents (the "Request for Leave to Serve Document Requests" or "Request") and move the Administrative Law Judge to stay all discovery against the Individual Respondents pending a determination of whether the Tribunal and the Division has personal jurisdiction over each Individual Respondent and subject matter jurisdiction over the Division's claims against each Individual Respondent.

### **BACKGROUND**

1. On January 30, 2019, the Division issued an Administrative Citation against Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company (the "Purdue Respondents") and the Individual Respondents.
2. On March 8, 2019, the Division issued its Notice of Agency Action. The Notice of Agency Action and Citation ("Notice of Agency Action") alleging that the Respondents violated the Utah Consumer Sales Practices Act.
3. On April 9, 2019, the Individual Respondents filed a Motion to Dismiss the Division's Notice of Agency Action and Citation (the "Motion to Dismiss") asserting, *inter alia*, that the Division and this tribunal lacked personal jurisdiction over the Individual Respondents.
4. After filing the Motion to Dismiss, the Individual Respondents responded to the Notice of Agency Action, noting that, unlike the Utah Rules of Civil Procedure, the Department of

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<sup>1</sup> This submission is made on behalf of Respondent Richard Sackler. It is also made on behalf of Respondent Kathe Sackler. The aforesaid Respondents will be referred to as the "Individual Respondents."

<sup>2</sup> 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. By filing the foregoing response to the Division's Request for Leave to Serve Document Requests, the Individual Respondent specifically preserve those arguments, are not making a general appearance in these proceedings and do not consent to the jurisdiction of this tribunal.

Commerce Administrative Procedures Act Rules (“APA Rules”) did not excuse a party from filing a response to the Notice of Agency Action (the “Response”) by filing the Motion to Dismiss. The Response specifically preserved all jurisdictional arguments.

5. Briefing on the Motion to Dismiss concluded on May 7, 2019, and oral argument will be held on May 21, 2019.

6. The Motion to Dismiss has not been decided, and the Division has not yet established that this Tribunal has personal jurisdiction over the Individual Respondents or that the Notice of Agency Action should survive dismissal.

### ARGUMENT

The Individual Respondents object to the Request for Leave to Serve Document Requests because the Division has not established that this Tribunal may exercise personal jurisdiction over each Individual Respondent and that the claims set forth against each Individual Respondent in the Notice of Agency Action should not be dismissed on other grounds. Having failed to meet this threshold question, the Administrative Law Judge should deny the Request and stay all discovery in relation to each Individual Respondent until such time as it has been determined that they are proper parties to these proceedings.

It is axiomatic that, until a tribunal has established that it has jurisdiction over parties, parties should not be compelled to participate in discovery. “Questions of jurisdiction should be resolved at the earliest stages of litigation, so as to conserve the time and resources of the Court and the parties. Thus, a stay of discovery during the pendency of a dispositive motion asserting a jurisdictional challenge may be appropriate and efficient.” *Gena Golden v. Mentor Capital Inc.*, 2:15-cv-176, (D. Utah July 12, 2017) (granting motion to stay discovery) (quoting *Am. Tradition Inst. v. Colorado*, 2011 WL 3705108, at \*2 (D. Colo. Aug. 23, 2011) (attached hereto as **Exhibit A**); see *Entyce Group, LLC v. Moon Dance 2009, LLC*, No. 2:09-cv-548, 2010 WL 465835, at \*1

(D. Utah Feb. 9, 2010) (“Requiring Defendants to engage in discovery on claims that may be dismissed, and in a court that may not retain jurisdiction, is untenable at this stage of the case.”) (granting motion to stay discovery pending motion for judgment on the pleadings); *accord String Cheese Incident, LLC v. Stylus Shows, Inc.*, No. 1:02-cv-01934, 2006 WL 894955, at \*2 (D. Colo. Mar. 30, 2006) (“[S]ubjecting a party to discovery when a motion to dismiss for lack of personal jurisdiction is pending may subject him to undue burden or expense, particularly if the motion to dismiss is later granted.”) (granting 30-day stay to allow for ruling on pending motion to dismiss).

It is uncertain when the Administrative Law Judge will decide the Motion to Dismiss, but it will not be before the hearing date on May 21, 2019, which is 11 days from today. If the Division’s Request for Leave to Serve the Discovery Requests is granted, under APA Rule R151-4-514(2)(d)—which requires the Individual Respondents to respond within 20 days—it is likely that the Individual Respondents will be required to respond to the Document Requests prior to the Tribunal’s decision on the Motion to Dismiss. The Individual Respondents have already been hauled into Utah, necessitating the drafting and filing of the Motion to Dismiss. They should not be subjected to the burdens of participating in discovery until it has been affirmatively established that they are proper parties to these proceedings. Not surprisingly, another court has stayed discovery against the Individual Respondents pending resolution of jurisdictional motions in related proceedings. *See Mayor and City Council of Baltimore v. Purdue Pharma, LP*, Case No. 24-C-18-000515, March 29, 2019 Order Temporarily Staying Discovery Against Certain Individual Respondents (attached hereto as **Exhibit B**).

Further, the Division will not be prejudiced by a short delay in discovery against the Individual Respondents. *See Entyce Grp., LLC*, 2010 WL 465835, at \*1 (granting stay of discovery where no undue prejudice). Additionally, tens of millions of pages of documents, including documents from Purdue’s custodial files for each Individual Respondent, and documents

from Richard Sackler's personal email accounts, have already been produced in the multi-district litigation pending as *In Re: National Prescription Opiate Litigation*, 1:17-md-2804 (N.D. Ohio). Therefore, the Division has ample documents to review to build its case while the Tribunal decides the Motion to Dismiss.

### CONCLUSION

Accordingly, the Individual Respondents object to the Request for Leave to Serve Document Requests and move the Tribunal to stay all discovery against them until the Motion to Dismiss has been decided. In the alternative, and only if the Administrative Law Judge permits the issuance of the Document Requests and requires to the Individual Respondents to participate in discovery, the Administrative Law Judge should issue an order which provides that the Individual Respondents' participation in discovery will not waive their jurisdictional arguments.

Dated this 10th day of May, 2019.

COHNE KINGHORN, P.C.

By: /s/ Patrick E. Johnson

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*Attorney for Respondent Richard Sackler*  
*Attorney for Respondent Kathe Sackler*

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 10th day of May, 2019, I served the above-captioned document on the parties of record in this proceeding set forth below by delivering a copy thereof by hand-delivery, U.S. Mail, electronic means 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

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/s/ Patrick E. Johnson

# EXHIBIT A



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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GENA GOLDEN et al.,

Plaintiffs,

v.

MENTOR CAPITAL, INC. et al.,

Defendants.

MEMORANDUM DECISION AND ORDER  
GRANTING MOTION TO QUASH AND TO  
STAY DISCOVERY

Case No. 2:15-cv-176 JNP

District Judge Jill Parrish

Magistrate Judge Brooke Wells

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Counter-claim Defendant Scott Van Rixel moves to quash discovery served upon him by Defendants because “jurisdiction before this Court has not been established.”<sup>1</sup> On December 5, 2016, Van Rixel filed a motion to dismiss asserting a lack of personal jurisdiction.<sup>2</sup> That motion is still pending before the Court.

Van Rixel argues he is not a party to this action until jurisdiction is established and presumably until after the motion to dismiss is resolved. In the motion to dismiss Van Rixel asserts that service was untimely and beyond the time allowed by Rule 4(m).<sup>3</sup> A third party complaint was filed against Van Rixel on May 4, 2016.<sup>4</sup> A summons was issued on that same date and that summons was personally served on Van Rixel November 15, 2016.<sup>5</sup> Third-Party Plaintiff Mentor Capital, Inc. argues service of a summons “establishes personal jurisdiction over the served party.”<sup>6</sup>

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<sup>1</sup> Motion to Quash p. 2, docket no. 97.

<sup>2</sup> Docket no. 79.

<sup>3</sup> Motion to Dismiss p. 2, docket no. 79.

<sup>4</sup> Docket no. 65.

<sup>5</sup> Docket no. 72.

<sup>6</sup> Op. p. 2, docket no. 102.

The court agrees with Mentor that the presumption is service of a summons establishes personal jurisdiction over a served party, but this presumption relies upon timely service in accordance with Rule 4(m) and is rebuttable. “Questions of jurisdiction should be resolved at the earliest stages of litigation, so as to conserve the time and resources of the Court and the parties. Thus, a stay of discovery during the pendency of a dispositive motion asserting a jurisdictional challenge may be appropriate and efficient.”<sup>7</sup> The Supreme Court has noted the burdens that discovery may cause when there are outstanding questions regarding absolute immunity.<sup>8</sup> Here, there are no questions regarding absolute immunity but there are jurisdictional questions and those questions from time to time may also warrant a stay of discovery.<sup>9</sup>

Although the undersigned believes there are some serious questions regarding whether or not Van Rixel attempted to avoid service, based upon the instant facts the court finds a temporary stay of discovery toward Van Rixel is proper until the jurisdictional question is resolved. The court will therefore grant the motion to quash and to stay discovery.<sup>10</sup> When the question regarding jurisdiction is resolved Mentor may move the court to extend discovery as to Van Rixel.

#### ORDER

It is therefore ordered that Counter-claim Defendant Scott Van Rixel’s Motion to Quash and Stay Discovery until jurisdiction has been decided is GRANTED.

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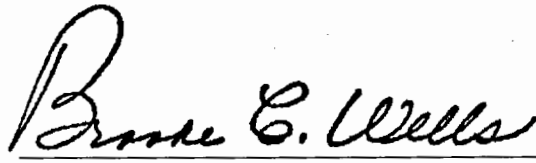
<sup>7</sup> *Am. Tradition Inst. v. Colorado*, 2011 WL 3705108, at \*2 (D. Colo. Aug. 23, 2011).

<sup>8</sup> *See Behrens v. Pelletier*, 516 U.S. 399, 308 (1996).

<sup>9</sup> *See Twin City Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989) (“[A] pending Motion to Dismiss is not ordinarily a situation that in and of itself would warrant a stay of discovery. Common examples of such situations, however, occur when jurisdiction, venue, or immunity are preliminary issues.”).

<sup>10</sup> *See Wyatt v. Kaplan*, 686 F.2d 276 (5th Cir.1982) (district judge properly granted defendants' protective order barring discovery prior to a decision on a pending motion to dismiss for jurisdictional defects); *Sperberg v. Firestone Tire & Rubber Co.*, 61 F.R.D. 70 (N.D. Ohio 1973) (discovery as to defendant partially stayed in patent infringement case where venue would be improper if defendant had not been guilty of infringement in that particular district).

DATED this 12 July 2017.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large initial "B".

Brooke C. Wells  
United States Magistrate Judge

# EXHIBIT B



**MAYOR AND CITY COUNCIL OF  
BALTIMORE,**

**Plaintiff,**

**v.**

**PURDUE PHARMA L.P., et al.,**

**Defendants.**

**IN THE  
CIRCUIT COURT**

**FOR**

**BALTIMORE CITY**

**Case No. 24-C-18-000515**

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**ORDER TEMPORARILY STAYING DISCOVERY  
AGAINST CERTAIN INDIVIDUAL DEFENDANTS**

Certain individual Defendants have filed Individual Former Directors' Motion for Protective Order to Stay Discovery (Paper No. 292). Plaintiff has opposed the motion. The Court heard argument on the motion at the hearing on March 22, 2019.

For the reasons stated on the record at the hearing, it is this 29th day of March, 2019, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED** that Individual Former Directors' Motion for Protective Order to Stay Discovery (Paper No. 292) is **GRANTED IN PART**.

It is further **ORDERED** that discovery directed to Defendants Beverly Sackler, David A. Sackler, Ilene Sackler Lefcourt, Jonathan D. Sackler, Kathe Sackler, Mortimer D.A. Sackler, Richard S. Sackler, and Theresa Sackler as parties is **STAYED** until the motion to dismiss filed by those Defendants based on alleged lack of personal jurisdiction is decided or until further order of the Court.

It is further **ORDERED** that this stay does not affect discovery directed to other Defendants that may require responses by or information from one or more of these individual Defendants.

*Judge Fletcher-Hill's signature appears on  
the original document in the court file.*

Judge Lawrence P. Fletcher-Hill