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*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.**

**DIVISION'S RESPONSE IN PARTIAL  
OPPOSITION TO THE SACKLER  
RESPONDENTS' FILING OF  
PROPOSED EXHIBITS TO THEIR  
PREVIOUSLY FILED MOTION TO  
DISMISS AND RESPONSE TO THE  
DIVISION'S NOTICE OF AGENCY  
ACTION**

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

**DCP Case No. 107102**

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On May 7, 2019, Respondents Dr. Richard Sackler and Dr. Kathe Sackler (collectively, “the Sackler Respondents” or the “Sacklers”) jointly served a copy of a filing titled “Exhibits to Respondents Richard Sackler, M.D.’s and Kathe Sackler, M.D.’s Motion to Dismiss the Notice of Agency Action and Citation” (collectively, the “Sacklers’ Proposed Supplement Exhibits”).<sup>1</sup> For the reasons set forth below, the Division of Consumer Protection (“Division”) respectfully submits this response in partial opposition to the Sackler Respondents’ attempt to submit the Sacklers’ Proposed Supplemental Exhibits nearly a month after filing their Motion to Dismiss and their Response to the Notice of Agency Action.

Concerning the content of the Sacklers’ Proposed Supplemental Exhibits, these materials fall into two groups, each of which the Division addresses separately. The Sackler Respondents seek to file what they describe as “Proposed Supplemental Exhibits” to their Motion to Dismiss the Division’s Notice of Agency Action and Citation (the “Motion to Dismiss”). The Division recognizes that the Administrative Law Judge may consider materials outside the Citation in connection with the Motion to Dismiss *solely* for purposes of the Sacklers Respondents’ personal jurisdiction arguments. Because the Sacklers’ relied on such materials, the Division, solely for purposes of the personal jurisdiction dispute, also submitted and referenced additional materials. As a result, the Division would not, in principle, have an objection to the Sacklers’ use the documents attached to their May 7, 2019 Exhibit filing as “Proposed Supplemental Exhibits A-G,” and will not oppose the belated submission of two of these exhibits (A & B). Because Proposed Supplemental Exhibits C-G are heavily and needlessly redacted and/or constitute only

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<sup>1</sup> Although the filing was made on May 6, 2019, and the certificate of service on the same is also dated May 6, 2019, the Sackler Respondents appear to have waited until the afternoon of May 7, 2019 to provide a service copy by e-mail.

brief excerpts of the documents, none of which are particularly voluminous, however, the Division does object to these proposed exhibits.

The Sackler Respondents purportedly offer these materials to show “context” concerning the Division’s allegations related to personal jurisdiction. The Administrative Law Judge cannot see this context if receiving only, for example, part of an email chain or the title page to a presentation with the presentation itself omitted. There is no reason for these materials, which were not redacted by Purdue when producing the documents in discovery in other litigation, should be redacted or pages omitted now. Further, the Sacklers’ Proposed Supplemental Exhibit D was already in the record, in unredacted form, as an Exhibit to the Division’s Opposition to the Sacklers’ Motion to Dismiss, making submission of a redacted version both superfluous and particularly inappropriate. To avoid burdening the Administrative Law Judge with a motion to file this response under seal, which would be necessary to discuss the content of the proposed exhibits and the manner in which they in fact support a finding of personal jurisdiction, the Division will not expound upon these arguments here.

The Sackler Respondents also submitted another group of documents, their “Proposed Supplemental Response Exhibits” A-K. As their name reflects, these documents were not submitted solely for purposes of contesting personal jurisdiction, but are relied on generally in the Sackler Respondents’ Motion to Dismiss. It is black-letter law that matters outside the pleadings cannot be considered and relied on by the tribunal without converting the rule 12(b)(6) motion to a motion for summary judgment and affording the Division an opportunity for response and discovery. *See* Utah R. Civ. P. 56; *see also, e.g., Carlton v. Brown*, 2014 UT 6, ¶ 14, 323 P.3d 571, 576 n.5; *BMBT, LLC v. Miller*, 2014 UT App. 64, 322 P.3d 1172. Again, the Division cannot appropriately discuss the content of the documents without permission to file this response under

seal, but the title and use of the documents, which are quoted in the Motion to Dismiss, but not offered directly as exhibits to the Motion to Dismiss, speaks for itself.<sup>2</sup> The Division has sought to avoid burdening the Administrative Law Judge with a voluminous response on matters that cannot be considered in the context of the Motion to Dismiss and objects to consideration of the Proposed Supplemental Response Exhibits.

Accordingly, the Division does not object to the Sacklers Respondents belated submission of Proposed Supplemental Exhibits A & B, which appear to be complete, unredacted documents offered only for purposes of contesting personal jurisdiction. The Division does object to the Sacklers' submission of all other proposed exhibits identified in their letter filed May 6, 2019 served May 7, 2019.

DATED this 16<sup>th</sup> day of May, 2019.

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<sup>2</sup> Although the Sacklers' April 9, 2019 letter listed documents and Bates numbers, it was unclear precisely what excerpts would be included in certain exhibits, or what information would be redacted. In addition, the Sacklers have not explained why, if they considered the Administrative Law Judge's April 8, 2019 Order sufficiently protective of the information contained in these materials (many of which are short excerpts of longer documents) that they quoted them directly in their Motion to Dismiss, they could not have filed them earlier.

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## CERTIFICATE OF SERVICE

I certify that I have served or will serve the foregoing document on the parties of record in this proceeding set forth below:

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Dated this 16<sup>th</sup> day of May, 2019.

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