

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS,)
v.)
PURDUE PHARMA L.P., PURDUE PHARMA INC.,)
RICHARD SACKLER, THERESA SACKLER, KATHE)
SACKLER, JONATHAN SACKLER, MORTIMER D.A.)
SACKLER, BEVERLY SACKLER, DAVID SACKLER,)
ILENE SACKLER LEFCOURT, PETER BOER, PAULO)
COSTA, CECIL PICKETT, RALPH SNYDERMAN,)
JUDITH LEWENT, CRAIG LANDAU, JOHN)
STEWART, MARK TIMNEY, and RUSSEL J. GASDIA.)

C.A. NO. 1884-CV-01808
(BLS2)

DEFENDANT PURDUE’S PRE-HEARING MEMORANDUM
AND REQUEST TO ADJOURN THE HEARING SET FOR JANUARY 25, 2019

Defendants Purdue Pharma L.P. and Purdue Pharma Inc. (collectively, “Purdue”)
respectfully submit this memorandum in advance of the hearing set for January 25, 2019 and as a
supplement to the Motion to Impound filed by Purdue on December 20, 2018. For the reasons
more fully set forth below, Purdue requests an adjournment of the January 25 hearing. At the
time the Court set the date for tomorrow’s hearing, the parties and the Court were under the
belief that the MDL Special Master would have already issued determinations regarding the
Commonwealth’s challenges to Purdue’s confidentiality designations. However, as the
Commonwealth recently sought and was granted leave until January 29 to file an additional
submission with the Special Master, the MDL process will not be concluded prior to this Court’s
scheduled hearing. Because, as this Court noted, the findings of the Special Master may narrow
or even eliminate the present dispute, Purdue requests an adjournment of the scheduled January

25 hearing until such time as the Special Master (or, if necessary, the judge presiding over the MDL) has issued a ruling as to the confidentiality challenges.

In the alternative, if the Court is inclined to proceed with the January 25 hearing as scheduled, Purdue provides a response to the Commonwealth's Pre-Hearing Memorandum, dated January 15, 2019. As described below, the Commonwealth's Memorandum asks this Court to circumvent not only the ongoing MDL process, but also the parties' agreed-upon stay of discovery pending the resolution of motions to dismiss, and this Court's Protective Order. For the following reasons, these requests should be denied.

I. The Redaction Dispute Is Now Properly Before The MDL Special Master, And The Hearing Should Be Adjourned Until The MDL Process Concludes.

Purdue spent numerous hours reviewing and closely evaluating the confidentiality of the content of hundreds of documents referenced in the Commonwealth's Amended Complaint. In doing so, Purdue voluntarily agreed to remove redactions from over 500 paragraphs of the Amended Complaint. The remaining redactions are currently being evaluated by MDL Special Master Cathy Yanni, per the procedure laid out in the MDL Protective Order. On January 14, the Commonwealth submitted its challenge to Special Master Yanni, and Purdue provided its letter brief to the Special Master on January 22. The Commonwealth subsequently requested, and was granted, leave to respond to Purdue's letter brief by January 29. Accordingly, the MDL process for evaluating the confidentiality of the remaining redactions is currently pending, and the Special Master will likely convene a hearing and issue a recommendation in the near future resolving the confidentiality status of these allegations. As this Court noted during the December 21, 2018 hearing, it is possible that the Special Master's determinations could entirely resolve or significantly narrow the present dispute. *See* Dec. 21, 2018 Hearing Tr. p. 19-20. Accordingly,

Purdue respectfully asks this Court to adjourn the hearing scheduled for January 25 until such time as a determination regarding the confidentiality challenges has been issued by the MDL court.

II. The Court Should Not Permit The Commonwealth To Circumvent The MDL Process.

Despite the ongoing MDL proceedings, the Commonwealth asks this Court to, *inter alia*, compel Purdue to produce again all of the documents cited in the Amended Complaint. This request is a transparent attempt to evade the MDL process, which governs the treatment of documents not only in this case, but in thousands of others. The Commonwealth was able to obtain early access to Purdue's complete MDL production because, in a good faith effort to facilitate discovery and streamline litigation, Purdue agreed to a process by which its MDL production can be made available to state attorneys general on the condition that the recipient agrees to be bound by the terms of the MDL court's protective order. The Commonwealth took advantage of that offer and obtained access to Purdue's 30 million page MDL production – a much broader universe of documents than it otherwise would have been entitled to had traditional discovery proceeded in this action. Contrary to the cooperative spirit in which Purdue agreed to make its MDL documents available, the Commonwealth's Amended Complaint selectively quotes from and blatantly misrepresents the contents of those documents; the Amended Complaint unnecessarily and gratuitously discloses Purdue's confidential information in service of an inaccurate and sensationalist effort to litigate their case through the court of public opinion, rather than through the assertion of good faith allegations necessary to support its substantive claims.

Having received the benefit of access to these MDL documents, the Commonwealth now asks this Court to approve its effort to dodge the MDL procedure it agreed to when it accessed the documents in the first place. As the MDL Judge made clear in a December 20, 2018 telephonic hearing, if this tactic were permitted, the Commonwealth's agreement to be bound by the CMO would effectively be a nullity. *See* Dec. 20, 2018 Tel. Mot. Tr. p. 17, MDL No. 2804 Doc. No. 1208 ("it's ultimately my control over whether confidential documents that started in the MDL and that were produced to other parties pursuant to my order can be made public. So everyone has to follow that protocol that was set up in the protective order that I signed and I issued Massachusetts can't file [an unredacted version of the Amended Complaint] until this process is over."). This is exactly what the Commonwealth improperly seeks to do here. Accordingly, this Court should defer consideration of the Commonwealth's requests at least until the MDL process for challenging confidentiality designations has been completed.

III. The Commonwealth's Proposal That Purdue "Produce" The Documents Cited In The Amended Complaint Violates the Agreed Discovery Stay And Should Be Rejected.

Purdue further objects to the Commonwealth's request that this Court "order Purdue, by March 1, to produce in this litigation copies of the documents cited in the Amended Complaint." This request, which is essentially a demand for expedited discovery, is a further attempt at circumvention, this time involving the parties' agreed-upon stay of discovery.

On August 24, 2018, Purdue and the Commonwealth agreed to "a stay of discovery with respect to the Commonwealth's document requests and interrogatories on defendants Purdue Pharma, L.P., and Purdue Pharma Inc., ("Defendants") pending our anticipated Motion to

Dismiss.”¹ The Commonwealth’s current request for the production of documents is therefore improper because Purdue’s Motion to Dismiss is not scheduled to be served until March (with an opposition and reply anticipated in subsequent months). Furthermore, the Commonwealth has never made a formal discovery request for scores of the documents it cited to in the Amended Complaint. Indeed, prior to the parties’ agreed-upon stay of discovery, the Commonwealth had served only five narrow document requests on Purdue, which were targeted only to the allegations made in the present action.² Nowhere in these demands is there a request for the broad array of irrelevant documents now sought by the Commonwealth.

Finally, the Commonwealth’s request should be denied because it goes against the interest of judicial efficiency. *See, e.g., Segal, M.D. v. Genitrix, LLC*, No. 09-776, 2010 WL 10911186, at *1 (Mass. Super. Mar. 05, 2010) (directing courts to consider “judicial interest in the efficient disposition of cases”); *Bouvier Bros. Inc. v. Baker Protective Servs.*, No. 93421, 1994 WL 879634, at *4 (Mass. Super. Apr. 15, 1994) (citing the interests of “efficient judicial management”); *Parrell v. Keenan*, 389 Mass. 809, 817 (1983). Should Purdue prevail in all or part of its motion to dismiss, additional discovery in this case may never be necessary, thereby mooted the Commonwealth’s request. *See Finnegan v. VBenx Corp.*, No. SUCV200903772BLS1, 2017 WL 7053912, at *3, *4 (Mass. Super. Nov. 20, 2017) (delaying ruling on a § 6F motion until a pending appeal was decided, because resolution of the pending appeal might make it unnecessary for the court to rule on the § 6F motion). Accordingly, at this

¹ A letter outlining this agreement is attached as Ex. A. Similar agreements were made with the individual defendants.

² The Commonwealth’s five discovery requests consisted of requests for Purdue’s audited combined financial statements, documents related to meetings of the boards of directors, and certain documents provided to the individual defendants.

juncture, the Court should deny the Commonwealth's request that the documents cited in the Amended Complaint be produced.

IV. The Commonwealth Has No Right To “Strenuously Oppose” Any Motion To Impound.


Finally, the Commonwealth requests that the Court order Purdue to file, by March 15, a motion to impound, which “[t]he Commonwealth anticipates strenuously opposing.” But such an opposition is not permitted under the terms of the Protective Order, which provides that “[u]nless the parties agree the document may be filed without redactions, the filing party (here, the Commonwealth) shall move, pursuant to Trial Court Rule VIII: Uniform Rules of Impoundment Procedure and Mass. R. Civ. P. 26(c), for a court order permitting such documents to be filed under seal, and any other party *may join in that motion or file a separate memorandum in support of that motion.*” See Protective Order ¶ 12 (emphasis added). The Protective Order thus contemplates only support for the motion to impound. Indeed, nowhere in the Protective Order is the Commonwealth's desired strenuous opposition to a motion to impound contemplated or even permitted. This is yet another example of the Commonwealth attempting to avoid being bound by its agreements, and this Court should reject it as such. If the Commonwealth wishes to contest Purdue's designation of documents as Confidential/Highly Confidential, it should be required to use the process laid out in the Protective Order for that purpose. *See id.* at ¶ 16.

For the foregoing reasons, the hearing scheduled for January 25 should be adjourned, or, in the alternative, each of the requests made in the Commonwealth's Pre-Hearing Memorandum should be denied.

Dated: January 24, 2019

Respectfully submitted,

DECHERT LLP



Timothy C. Blank (BBO # 548670)

Jon E. Olsson (BBO # 698783)

One International Place
100 Oliver Street, 40th Floor

Boston, MA 02110

(617) 728-7154

timothy.blank@dechert.com

jon.olsson@dechert.com

Sheila L. Birnbaum

Mark S. Cheffo

Bert L. Wolff

Debra D. O'Gorman

Three Bryant Park

1095 Avenue of the Americas

New York, NY 10036

(212) 698-3500

sheila.birnbaum@dechert.com

mark.cheffo@dechert.com

bert.wolff@dechert.com

debra.o'gorman@dechert.com

*Attorneys for Defendant Purdue Pharma L.P. and Purdue
Pharma Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served via e-mail upon the following counsel of record on January 24, 2019:

Office of The Massachusetts Attorney General
Health Care & Fair Competition Bureau
Maura Healy
Sydenham B. Alexander III (BBO # 671182)
Gillian Feiner (BBO # 664152)
Eric M. Gold (BBO # 660393)
Jeffrey Walker (BBO # 673328)
Jenny Wojewoda (BBO # 674722)
One Ashburton Place
Boston, Massachusetts 02108
617-727-2200
sandy.alexander@state.ma.us
eric.gold@state.ma.us
gillian.feiner@state.ma.us

Attorneys for Plaintiff

Joan A. Lukey (BBO # 307340)
CHOATE HALL & STEWART LLP
Two International Place
Boston, Massachusetts 02110
(617) 248-5000
joan.lukey@choate.com

Attorneys for Defendants

*Richard Sackler, Theresa Sackler, Kathe Sackler,
Jonathan Sackler, Mortimer D.A. Sackler, Beverly
Sackler, David Sackler, Ilene Sackler Lefcourt, Peter
Boer, Paulo Costa, Cecil Pickett, Ralph Snyderman and
Judy Lewent*

James R. Carroll (BBO #554426)
Maya Florence (BBO #661628)
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
500 Boylston Street
Boston, Massachusetts 02116
(617) 573-4800
james.carroll@skadden.com

maya.florence@skadden.com

*Attorneys for Defendants
Craig Landau, John Stewart, and Mark Timney*

Juliet A. Davison (BBO #562289)
DAVISON LAW, LLC
280 Summer St., 5th Floor
Boston, MA 02210
juliet@davisonlawllc.com

Julie B. Porter (admitted *pro hac vice*)
SALVATORE PRESCOTT & PORTER, PLLC
1010 Davis Street
Evanston, IL 60201
(312) 283-5711
porter@spplawyers.com

Attorneys for Defendant Russell J. Gasdia



Jon E. Olsson

Exhibit A

TIMOTHY C. BLANK

timothy.blank@dechert.com
+1 617 728 7154 Direct

VIA EMAIL

Gillian Feiner, Esq.
Assistant Attorney General
False Claims Division
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108

Re: Commonwealth v. Purdue Pharma L.P. et al (C.A. No. 1884-cv-01808)

Dear Gillian:

This letter confirms our telephone conversation on Friday, August 24 in which you agreed to a stay of discovery with respect to the Commonwealth's document requests and interrogatories served on defendants Purdue Pharma, L.P., and Purdue Pharma Inc., ("Defendants") pending our anticipated Motion to Dismiss. We also agreed that Defendants have reserved all rights and objections with respect to the discovery requests, and that Defendants' responses and objections will be due 30 days after a ruling on the Motion to Dismiss (if denied).

Please let me know if this does not accurately reflect our agreement.

Thank you very much for your courtesy.

Very truly yours,



Timothy C. Blank

cc: Sheila L. Birnbaum
Sheila.birnbaum@dechert.com