

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. No. 1884-cv-01808 (BLS2)

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 RUSSELL J. GASDIA)

AFFIDAVIT OF SYDENHAM B. ALEXANDER III

1. I am an Assistant Attorney General in the Office of Attorney General Maura Healey, representing the Commonwealth in the above-captioned action. I make this affidavit in support of the Commonwealth’s Memorandum of Law in Opposition to the Individual Director Defendants’ Motion to Dismiss the First Amended Complaint Pursuant to Massachusetts Rule of Civil Procedure 12(b)(2).

2. These attached documents are provided, together with the many facts alleged in the Commonwealth’s Complaint, to dispute certain assertions made by the Directors in the Declarations submitted with their Motion to Dismiss and by Directors’ counsel in the Memorandum of Law in Support of the Individual Directors’ Motion to Dismiss for Lack of Personal Jurisdiction (“Dir. 12(b)(2) Mem.”).

3. As specified further below, the exhibits include: (a) documents produced by

Purdue Pharma LP in the federal multi-district litigation and subsequently reproduced in this case (Bates prefixes PPLP and PPLPC; reference to FAC ¶); (b) documents produced by Purdue in the multi-district litigation and not subsequently reproduced in this case (Bates prefixes PPLPC and #); and (c) documents produced by Purdue to attorneys general pursuant to civil investigative demands and under agreement dated February 16, 2017 (Bates prefix PWG).

Directors’ Control and Direction of Marketing, Sales, and Promotional Activities

4. The Directors state: “There is no factual support for the conclusory allegation that ‘[f]rom the 2007 convictions until today, the Sacklers ordered Purdue to hire hundreds of sales reps to carry out their deceptive sales campaign.’” Dir. 12(b)(2) Mem. at 14. The Directors also state, each in his or her own Declaration:

I did not ... direct any marketing, sales or promotional activities by PPI, PPLP or any of their subsidiaries or affiliates, in Massachusetts.

R. Sackler Decl. ¶ 4c; T. Sackler Decl. ¶ 4c; K. Sackler Decl. ¶ 4c; J. Sackler Decl. ¶ 4c; M. Sackler Decl. ¶ 4c; B. Sackler Decl. ¶ 4c; D. Sacker Decl. ¶ 4c; Lefcourt Decl. ¶ 4c; Boer Decl. ¶ 4c; Costa Decl. ¶ 4c; Pickett Decl. ¶ 4c; Snyderman Decl. ¶ 4c; Lewent Decl. ¶ 4c.

I submit the following documents regarding these contentions.

- **Exhibit 1** is a set of excerpts of documents showing decisions of the Directors to expand Purdue’s sales force: Minutes of a Meeting of the Board of Directors of Purdue Pharma Inc. as the General Partner of Purdue Pharma L.P. (“Board Minutes”) dated February 8, 2008 (PKY183212620-21); 2008-2009 Budget Submission dated November 2008 (PPLP004401579, PPLP004401590); Executive Committee Meeting Notes & Actions dated May 20, 2009 (PPLPC012000226606-11); Board Minutes dated July 22, 2010 (PKY183212838-39); and a Decision dated April 21, 2015 of Purdue Pharma Inc., titled,

“Sales Force Expansion and Supporting Marketing Initiatives” (PPLP004417512), referenced at FAC ¶¶ 222, n.125; 250, n.172; 259, n.190; 314, n.288; and 460, n.557.

- **Exhibit 2** is a Purdue Pharma L.P. Budget Presentation 2010 – Notes and Actions dated November 2-3, 2009, bearing Bates numbers PWG004332849-58, and is referenced at FAC ¶ 269 n.211 and in the Affidavit of Jenny Wojewoda accompanying the Commonwealth’s Memorandum of Law in Opposition to the Motion of Defendants Craig Landau, John Stewart, and Mark Timney to Dismiss the First Amended Complaint (“JW Aff.”) at Exhibit 10 (different Bates; attached to email to the Board). Under

“OxyContin” and “Q:”, the document states:

Dr. Richard and Dr. Kathy asked for:

- i. a detailed review of the long acting SEO market, the OER market and OxyContin growth rate for purposes of projecting into the future.
- ii. identify specific programs that Sales and Marketing will implement to profitably grow the OER market and OxyContin in light of competition.
- iii. provide analytics around why/how the proposed increase in share-of-voice translates into sales and profitability growth.
- iv. clarify the situation with respect to OxyContin being used by 35% of new patients, but only retaining 30% of ongoing patients.
- v. provide a copy of the OxyContin McKinsey report on possible ways to increase OxyContin sales and market share.

- **Exhibit 3** shows follow-up action by Directors Richard Sackler and Kathe Sackler regarding OxyContin Marketing one week after the date of **Exhibit 2**. It is an email chain to/from Richard Sackler dated November 10, 2009, titled “Oxy Marketing Meeting,” bearing Bates number PWG004456361.

- Exhibit 4** is a December 13, 2010 email from William Mallin to the Board bearing Bates number PWG004495122 together with an attachment titled “Purdue Pharma US Budget Meeting November 1-3, 2010 Board Room Notes & Actions,” bearing Bates numbers PWG004495130-46. (*AGO highlighting in document*). Under “Marketing and Sales,” the document lists as questions from the Board: “What is the evidence that supports the belief that ‘called on’ prescribers write significantly more OxyContin prescriptions than their ‘non-called on’ counterparts?” Under “OxyContin – Product Life Cycle,” the document lists, as a question from the Board: “What is the effectiveness/return on investment of the patient savings cards? Since the card can be used every 14 days, could we be paying \$140 per patient/month? Why is the card limit the same by strength? Provide a cost analysis and a P&L by strength,” and “Several Board members asked management to prepare an analysis regarding the potential for development of ORF 5 mg, 120 mg and 160 mg strengths.” Under “Sales Force Activities” the document lists as a demand from the Board: “Track the number of new reps that will be managed by new managers and consider additional training and monitoring for those representatives and their managers.”
- Exhibit 5** is an email chain dated June 16, 2011 to/from Richard Sackler and then to/from Bert Weinstein “Re: Feedback from District Manager Advisory Council – FYI,” bearing Bates numbers PPLPC012000329722-25, and is cited at FAC ¶ 353-354, n.363. (*highlighting in the original*). Richard Sackler quotes from Russell Gasdia’s report on the District Manager Advisory Council: “1. The manager’s [sic] all felt that we can improve in our call focus and frequency on high-potential prescribers.” About this point in Gasdia’s report, Richard Sackler says: “1 Above suggests that we are calling on non-

high potential prescribers. How can our managers have allowed this to happen?”

Richard Sackler emails Gasdia again and asks: “Who have you chosen for me to go to the field with the week after the budget meetings? Where are they? Can we conveniently do two reps each day especially if I travel to get to the right place as I probably should do.”

Gasdia forwards the email exchange to Compliance Officer Bert Weinstein, who replies, “LOL.... We agreed Richard needs to be mum and be anonymous.”

- **Exhibit 6** is an email chain dated February 8, 2012 to/from Mortimer and Richard Sackler “Re: Butrans Weekly Report for the week ending January 27, 2012 – FYI,” bearing Bates numbers PPLPC026000095655-62, and is referenced at FAC ¶ 368, nn.386-388. Mortimer Sackler writes to Gasdia: “Do you feel based on these results that in future years we should not plan the national sales meeting so close following the winter break as it extends the period of time since the doctor last saw our rep?” Richard Sackler writes: “Maybe the thing to have done was not have the meeting at all.”
- **Exhibit 7** is an email chain dated March 8, 2012 to/from John Stewart “Re: Copy of Butrans Weekly Report,” bearing Bates numbers PPLPC012000368569-70, and is referenced at FAC ¶ 658, n.790 (also attached to the JW Aff. as Exhibit 2). Russell Gasdia writes to John Stewart: “Anything you can do to reduce the direct contact of Richard [Sackler] into the organization is appreciated.” Stewart tells Gasdia that this is something he works on “virtually every day.”
- **Exhibit 8** is an email chain to/from Mortimer Sackler and Richard Sackler, copying MNPCConsultingLimited-BoardofDirectors@pharma.com, dated August 18, 2013, bearing Bates numbers PWG004528141-45. In the first email, Mortimer Sackler forwards a

Bloomberg article titled, “Florida Pain Victims Trapped by Prescription Crackdown: Health,” saying:

“FYI. We didn’t get to discuss yesterday what ideas management has for creating a new distribution system to help relieve this problem of product access for legitimate chronic pain patients. The McKinsey report describes one possible version. Are you pursuing that or an alternate and if so, how long do we think it could take to get it going?”

My thought would be to continue to have doctors prescribe as before... but to enter into agreements with each of the pharmacy chains whereby they provide the patients with only the first 3-4 days of product and then we would directly ship them the rest after using an independent service to verify the legitimacy of their prescription. This way the pharmacies will be happy as they won’t need to stock as much of the medicines, the patients will be happy as they will be assured of getting their needed medicines, and we can provide a service (and charge for it) which handles in a much more streamlined way (so the doctors [sic] offices will also be happy) the verification process and supply of the remaining pills directly to the patient. We could set this up for ALL controlled drugs not just OxyContin. What do you think?”

Mortimer Sackler later adds:

“I do think there maybe [sic] an opportunity here for us to set up a complementary business to handle this for Purdue as well as other controlled drug manufacturers. Do we have a team who could explore this possibility?”

Richard Sackler joins with:

I had the same idea and expressed it to JHS after the Board meeting.

- **Exhibit 9** is an email dated August 21, 2013 from Stuart Baker to the Board of Directors regarding “McKinsey Report Regarding Purdue Pharma L.P.,” bearing Bates number PWG004481237, and the attachment “Identifying granular growth opportunities for OxyContin: Addendum to the July 18th and August 5th updates,” bearing Bates numbers PWG004481238-44. The email states:

“Dr. Richard has arranged a face to face meeting with McKinsey on Friday, August 23, 2013 commencing at 2:00pm to discuss the McKinsey report. This report was included in the Board book for the Thursday, August 15, 2013 meeting.... Any Directors who would like to attend the meeting can do so.”

- *See also* Exhibits 4 and 6 of the JW Aff.
- **Exhibit 10** is an email chain to/from Richard Sackler dated January 31, 2008 “RE: Teva looks to be done,” bearing Bates numbers PWG004522176-82, cited at FAC ¶ 219, n.122. Richard Sackler asks a series of questions about OxyContin patient savings cards.
- **Exhibit 11** is an email dated November 14, 2012 from Edward Mahony to the Board of Directors regarding “Purdue 2013 Budget,” bearing Bates number PWG004478894, and the attachment “Opportunities and Threats v6.docx,” bearing Bates numbers PWG004478895-901. (*AGO highlighting in document*). The email states, “Paulo [Costa] and Judy [Lewent] suggested that Purdue prepare a probability adjusted list of Opportunities and Threats to Purdue’s 2013 sales and profit budget. The list is attached.” The attached list is titled “Opportunities and Threats – potential 2013 impact on sales and profits” and includes a section on “OxyContin Promotional Programs” with subsections analyzing “Primary Detail Equivalents” and “Patient Savings Card.”
- **Exhibit 12** is an email dated November 18, 2013 from John Stewart, bearing Bates number PPLPC012000452389 together with an attachment titled “Purdue U.S. Budget Presentation October 29th and 30th, 2013 Notes & Actions, bearing Bates numbers PPLPC012000452390-95 (a draft of which bearing Bates numbers PPLPC012000451665-68 is cited at FAC ¶ 685, n.827). The attachment notes, at the bottom of page 1: “Concern was expressed over the low prescription growth rate. Can we explore promotion pertaining to specific populations (e.g. the elderly) for whom the

product seems to be particularly important, and/or should we increase or re-allocate S&P resources?”

Directors’ Control of and Motivation for Payments to Massachusetts General Hospital

5. The Directors state: “There is no support for the Commonwealth’s allegation that each Individual Director ‘[t]hrough targeted funding and programming... unfairly and deceptively promoted opioids at Massachusetts medical institutions including... Massachusetts General Hospital.” Dir. 12(b)(2) Mem. at 20. The also Directors state, “the FAC’s allegations that the Individual Directors knew about or approved Purdue’s” payments “to various institutions in Massachusetts are [] jurisdictionally irrelevant because there are no facts or documents linking Purdue’s” payments “to the Commonwealth’s Claims.” *Id.* at 21.

I submit the following documents regarding these contentions.

- **Exhibit 13** is a memorandum dated July 9, 2009 from J. David Haddox to John Stewart copying the Board of Directors titled “Re: Massachusetts General Hospital (MGH) Purdue Pharma Pain Program,” bearing Bates numbers PPLPC023000228147-53, and is referenced in the FAC at ¶ 273, n.216. The memorandum states at page 3:

There has been a great deal of legislative activity/debate in Massachusetts around the issues of whether or not OxyContin [] Tablets should remain available to persons in the Commonwealth. Some legislators have suggested that the product should be classified as a banned substance under the Commonwealth’s controlled substances regulation – it the same class as heroin and LSD – by introducing a total of five bills to this end.... In the most recent legislative session a newly-formed *OxyContin and Heroin Commission* has been active; evidence that the legislative focus on Purdue and OxyContin continues (see Appendix 2). I believe that these activities are relevant, since our actions regarding the continued support of this project may have an impact on those in the legislature. I fear that a termination of support might fuel the efforts of those already hostile to us, or reduce the willingness of those who have supported our positions to continue to do so.

(AGO highlighting in document).

- **Exhibit 14** is an email chain between John Stewart and J. David Haddox regarding “2010 Health Policy Budget,” bearing Bates numbers PPLPC018000330859-60. Stewart writes: “The remaining items in the proposed budget can go forward, but the \$500K for MGH can’t be committed or spent until agreed to be high priority/valuable vs other opportunities – and at least agreed by the Board.”
- See also Exhibits 22 and 23 to the JW Aff.: a letter dated May 16, 2001 from Dr. Martin Acquadro of Massachusetts General Hospital to Purdue asking for \$3 million for a new pain center at MGH, bearing Bates numbers PPLPC059000000440-42; and an email dated August 3, 2014 from Brianne Weingarten with a slide deck attachment titled “Partners Profile Aug 3 2014_BW.pptx” bearing Bates numbers PPLPC012000489542-43). The slide deck included in JW Aff. Ex. 23 states, on slide 12, that Martin McQuadro (Acquadro) was “‘forever in Purdue’s debt’ for that.” The same slide, under “Other connections” states “Dr. Sackler (owner) is major donor to MGH” and under “Next steps” states, “Reach out to Dr. Sackler.”

Massachusetts as a Target

6. The Directors state: “The documents on which the FAC relies and the sworn declaration by each Individual Director confirm that, as a factual matter, none of the Individual Directors has contacts with—or engaged in conduct in or aimed at—the Commonwealth that would allow the Court to exercise personal jurisdiction over them.” Dir. 12(b)(2) Mem. at 4. The Directors also state: “There is no support for the allegation that the Individual Directors ‘directed and/or managed efforts to advance favorable legislation and block unfavorable lawmaking in Massachusetts that would impact Purdue’s sales in the Commonwealth.’” *Id.* at 17.

I submit the following documents regarding these contentions.

- **Exhibit 15** is an email chain to/from Richard Sackler dated November 11, 2013, bearing Bates number PPLPC020000733992, and is referenced at FAC ¶ 417, nn.483-484. Richard Sackler forwards an alert about a bill concerning controlled substances filed by State Rep. Alan Silvia of Fall River, Massachusetts. Raul Damas says that staff would “review the bills and share our strategy” when “it’s clear we’d oppose these arbitrary restrictions on access and increased burdens on patient compliance.” Damas asks: “Can we provide Dr. Richard with a sense of the probability of passage?”
- **Exhibit 16** is an email from Richard Sackler to CEO Mark Timney and the Board dated May 14, 2014 bearing Bates numbers PWG004412795-96, and is referenced at FAC ¶ 439, nn.520-521 (different Bates). Timney reports: “Yesterday, the Massachusetts Senate passed legislation that included a provision developed by Purdue, prohibiting a non-abuse-deterrent formulation from being dispensed if an abuse-deterrent formulation is available.” Richard Sackler responds: “Good news.”

The Directors Derived Substantial Revenue from Sales of Opioids In Massachusetts

7. The Directors state: “The documents cited in [the FAC] show only that *Purdue* derived revenue from sales in all 50 states.” Dir. 12(b)(2) Mem. at 9.

I submit the following documents regarding these contentions.

- **Exhibit 17** is a set of excerpts from Board Minutes of the Board of Purdue Pharma Inc. dated April 18, 2008 (PKY183212633); June 27, 2008 (PKY183212646-47); September 25, 2008 (PKY183212654); November 6, 2008 (PKY183212662-63); June 26, 2009 (PKY183212742); September 23, 2009 (PKY183212772); February 4, 2010 (PKY183212818); April 1, 2010 (PKY183212829); September 10, 2010 (PKY183212844); December 2, 2010 (PKY183212869-70); April 6, 2011

(PKY183212896-97); June 24, 2011 (PKY183212924-25), which show payments to the Sackler family, and are referenced at FAC ¶¶ 238, n.154; 242, n.162; 247, n.168; 251, n.175; 259, n.191; 265, n.201; 292, n.261; 295, n.265; 320, n.298; 327, n.309; 340, n.337; and 357, n.366.

- **Exhibit 18** contains excerpts from the deposition of Kathe Sackler taken on April 1, 2019, bearing Bates numbers #3177072.1, #3177072.250-266. Dr. Sackler confirms that the Directors authorized payments to the Sackler family.
- **Exhibit 19** is an email chain dated November 12, 2014 among David, Richard, and Jonathan Sackler, bearing Bates numbers PWG004483783-87. Richard Sackler writes: “[I]n the years when the business was producing massive amounts of cash, shareholders departed from the practice of our industry peers and took the money of the business [sic].” David Sackler refers to a “maddening desire for cash.”

Other Documents

- **Exhibit 20** is an email chain dated July 30, 2001 to/from Richard Sackler bearing Bates numbers PPLPC042000003385-87 (also produced by Purdue as PWG004812926-28). Richard Sackler writes:

“I’d like to try and [sic] argument on you. I believe that the media has nefariously cast the criminal drug abuser as a victim instead of victimizer. These are criminals, and they engage in it with full, criminal intent. Why should they be entitled to our sympathies?

....

The abusers are misbehaving in a way that they know is a serious crime. They are doing it in complete disregard of their duties to society, their family and themselves. The notion that this is genetically programmed is nonsense. Are there genetic predispositions? Perhaps, although this is not shown yet. But whatever their disposition, the fact is that many other people have the same tendencies and are not drug abusers. They are criminals.

....

When we talk, I'll tell you something that will totally revise your belief that addicts don't want to be addicted. It is factually untrue. They get themselves addicted over and over again."

- **Exhibit 21** is an email chain to/from Stuart Baker, Richard Sackler, and Jonathan Sackler regarding "Ralph Snyderman," bearing Bates numbers PWG004460037-39. The email contains information about the expectations for Purdue Directors and states:

Of the two outside Class B Directors being sought, one person's commitment will be only essentially for the 59 days per year, whereas the second person's commitment will in addition require him or her to spend an additional 30 working days with the Independent Associated Companies (e.g., meetings with the other Class A Directors, Class B Directors and executives).

Purdue Has Not Produced Custodial Files for Most of the Director Defendants

8. In 2017 and 2018, the Commonwealth issued Civil Investigative Demands to Purdue and other parties in connection to its investigation of Purdue. The documents Purdue produced in response to the Commonwealth's Civil Investigative Demands did not include custodial files for the individual defendants in this suit.

9. On June 12, 2018, the Commonwealth filed its initial complaint. After filing its initial complaint, the Commonwealth began to receive documents Purdue produced in the multi-district litigation, *In re Nat'l Prescription Opiate Litig.*, Case No. 17-MD-2804 (N.D. Ohio). On December 21, 2018, the Commonwealth filed its First Amended Complaint. At that time, the Commonwealth did not have any Directors' custodial file.

- **Exhibit 22** contains four cover letters for productions by Purdue in the multi-district litigation. Letters dated January 7 and February 13, 2019 indicate production of custodial files of Richard Sackler. Letters dated March 1 and 26, 2019 indicate production of custodial files of Kathe Sackler.

Signed under the pains and penalties of perjury this 19th day of June, 2019.



Sydenham B. Alexander III
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Sydenham B. Alexander III, Assistant Attorney General, hereby certify that I have this day, June 19, 2019, served the foregoing document upon all parties by email to:

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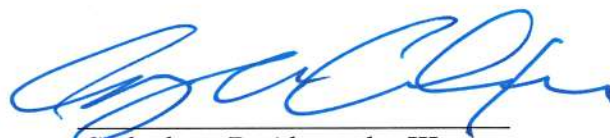
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