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15 **SUPERIOR COURT OF ARIZONA**
16 **PIMA COUNTY**

17 STATE OF ARIZONA, *ex rel.*
18 MARK BRNOVICH, Attorney General,

19 Plaintiff,

20 vs.

21 PURDUE PHARMA L.P., PURDUE
22 PHARMA, INC., and THE PURDUE
23 FREDERICK COMPANY, INC. (d/b/a
24 THE PURDUE FREDERICK
25 COMPANY), RICHARD SACKLER,
26 THERESA SACKLER, KATHE
27 SACKLER, JONATHAN SACKLER,
28 MORTIMER D.A. SACKLER,
BEVERLY SACKLER, DAVID
SACKLER, and ILENE SACKLER
LEFCOURT,

Defendants.

Case No. C20072471

**PLAINTIFF'S SUPPLEMENTAL
APPLICATION FOR ORDER TO
SHOW CAUSE**

RE:

**ORDER FOR CONSENT JUDGMENT
ENTERED MAY 14, 2007**

(Assigned to the Hon. Brenden Griffin)

1 In 2007, this Court ordered Purdue to stop marketing its dangerous oxycodone
2 painkillers in deceptive ways. But, following entry of the judgment, Purdue continued to
3 engage in misleading and harmful practices, including promoting opioids as safer and more
4 effective than drugs like aspirin and ibuprofen. Plaintiff previously moved this Court
5 pursuant to A.R.S. § 44-1532, to issue an order requiring Purdue Pharma Inc., Purdue
6 Pharma LP., and The Purdue Frederick Company, Inc. (d/b/a The Purdue Frederick
7 Company) (collectively, “Purdue”) to appear and show cause as to why it should not be
8 found in violation of the Court’s *Order for Consent Judgment* and be ordered to pay civil
9 penalties of up to \$25,000 per violation. That order was granted on September 11, 2018;
10 the matter is set for trial in 2021.

11 Due to their control over Purdue during the period at issue, and their direction of the
12 deceptive sales and marketing practices that violated the Court’s order, Plaintiff now
13 moves this Court to issue an order requiring Defendants Richard Sackler, Beverly Sackler,
14 David Sackler, Ilene Sackler Lefcourt, Jonathan Sackler, Kathe Sackler, Mortimer Sackler,
15 and Theresa Sackler (collectively, the “Sacklers” or the “Sackler Defendants”) to appear
16 and show cause as well. This application is supported by the following memorandum.

17 SUPPORTING MEMORANDUM

18 I. Introduction

19 As discussed in the State’s Show Cause Application against Purdue, incorporated
20 here by reference, this dispute centers on the dangerous oxycodone-based opioids
21 manufactured by Purdue and the tragic toll they have imposed on the nation and in
22 Arizona. Hundreds of Arizonans die each year from prescription opioids, including but
23 not limited to Purdue’s products.¹ These deaths are a part of what has become a tragic
24

25 ¹ Puja Seth, et al., *Overdose Deaths Involving Opioids, Cocaine, and Psychostimulants—*
26 *United States, 2015—2016*, Ctrs. for Disease Control & Prevention, Table 1 (March 30,
27 2018), available at <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6712a1-H.pdf>,
28 attached as Exhibit A.

1 national opioid crisis.

2 Purdue marketed its potentially deadly drugs in ways that contributed to this
3 national crisis. In 2007, Purdue consented to this Court's judgment, which curtailed
4 Purdue's wrongful sales tactics, imposed safeguards in an effort to prevent such
5 wrongdoing in the future, and required Purdue to pay \$19.5 million to states participating
6 in the settlement underlying the judgment. At that time, in federal court, Purdue and three
7 of its top executives pled guilty to charges of illegally misbranding OxyContin in an effort
8 to mislead and defraud physicians and consumers, and they agreed to pay an additional
9 \$634.5 million in criminal and civil penalties, fines, and forfeitures.² Undaunted, Purdue
10 continued to aggressively market prescription opioids, including OxyContin, in the years
11 following 2007.

12 As a result of its aggressive marketing, Purdue earned more than \$35 billion since
13 the release of OxyContin in 1995.³ According to the 2010 Census, about 2% of the
14 country's population resides in Arizona.⁴ Based on Arizona's estimated share of the U.S.
15 population, Purdue generated approximately \$700 million of its \$35 billion in revenue
16 from prescriptions filled in Arizona.

17 Purdue's lucrative-but-deceptive post-2007 marketing put Arizonans at grave risk,
18 with ongoing repercussions. The Arizona Department of Health Services estimated that
19

20 ² *Statement of United States Attorney John Brownlee on the Guilty Plea of the Purdue*
21 *Frederick Company and Its Executives for Illegally Misbranding OxyContin*, U.S. Dept. of
22 *Justice*, 2 (May 10, 2007), available at [https://www.health.mil/Reference-](https://www.health.mil/Reference-Center/Publications/2007/05/10/The-Purdue-Frederick-Company-Inc-and-Top-Executives-Plead-Guilty)
23 [Center/Publications/2007/05/10/The-Purdue-Frederick-Company-Inc-and-Top-](https://www.health.mil/Reference-Center/Publications/2007/05/10/The-Purdue-Frederick-Company-Inc-and-Top-Executives-Plead-Guilty)
[Executives-Plead-Guilty](https://www.health.mil/Reference-Center/Publications/2007/05/10/The-Purdue-Frederick-Company-Inc-and-Top-Executives-Plead-Guilty), attached as Exhibit B.

24 ³ Alex Morrell, *The OxyContin Clan: The \$14 Billion Newcomer to Forbes 2015 List of*
25 *Richest U.S. Families*, *Forbes* (July 1, 2015), available at
26 [https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-](https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-newcomer-to-forbes-2015-list-of-richest-u-s-families/#6d3667fc75e0)
[newcomer-to-forbes-2015-list-of-richest-u-s-families/#6d3667fc75e0](https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-newcomer-to-forbes-2015-list-of-richest-u-s-families/#6d3667fc75e0), attached as Exhibit

27 ⁴ *Quick Facts: Arizona; UNITED STATES*, U.S. Census Bureau,
<https://www.census.gov/quickfacts/fact/table/az,US/PST045217> (accessed Sept. 5, 2018).

1 between June 15, 2017, and August 30, 2018, the state suffered 10,974 suspected
2 overdoses attributable to all opioids, licit and illicit, 15% of which were fatal.⁵

3 Purdue's conduct has hardly gone unnoticed. Indeed, it is the subject of thousands
4 of lawsuits nationally, including actions by 48 states' attorneys general,⁶ seeking billions
5 of dollars in tort liabilities. Because of Purdue's substantial presence in the opioid market
6 and the longstanding allegations regarding its improper conduct, detailed at length in the
7 State's initial Show Cause Application, the possibility of bankruptcy has long loomed
8 over the company.

9 Purdue has acknowledged that possibility in recent months. In August, news
10 outlets reported that Purdue had hired the law firm Davis Polk & Wardwell LLP for
11 restructuring advice.⁷ On March 4, 2019, Reuters reported that Purdue was exploring
12 filing for bankruptcy as a trial date approached in the State of Oklahoma's action against
13 the company.⁸ And on March 13, Purdue CEO Craig Landau told the Washington Post
14 that bankruptcy "is an option We are considering it, but we've really made no
15 decisions on what course of actions to pursue. A lot depends on what unfolds in the
16 weeks and months ahead."⁹

17
18 ⁵ *Opioid Report: Opioid Overdoses & Deaths*, Ariz. Dep't of Health Servs.,
19 [https://www.azdhs.gov/documents/prevention/womens-childrens-health/injury-](https://www.azdhs.gov/documents/prevention/womens-childrens-health/injury-prevention/opioid-prevention/opioid-report.pdf)
20 [prevention/opioid-prevention/opioid-report.pdf](https://www.azdhs.gov/documents/prevention/womens-childrens-health/injury-prevention/opioid-prevention/opioid-report.pdf) (accessed Sept. 5, 2018), attached as
21 Exhibit D.

22 ⁶ Berkeley Lovelace, Jr., *Nearly every US state is now suing OxyContin maker Purdue*
23 *Pharma*, CNBC (June 4, 2019), [https://www.cnbc.com/2019/06/04/nearly-every-us-state-](https://www.cnbc.com/2019/06/04/nearly-every-us-state-is-now-suing-oxycontin-maker-purdue-pharma.html)
24 [is-now-suing-oxycontin-maker-purdue-pharma.html](https://www.cnbc.com/2019/06/04/nearly-every-us-state-is-now-suing-oxycontin-maker-purdue-pharma.html), attached as Exhibit E.

25 ⁷ Sara Randazzo and Lillian Rizzo, *Purdue Pharma Hires Davis Polk for Restructuring*
26 *Help*, Wall Street Journal (August 17, 2018), [https://www.wsj.com/articles/purdue-](https://www.wsj.com/articles/purdue-pharma-hires-davis-polk-for-restructuring-help-1534536369)
27 [pharma-hires-davis-polk-for-restructuring-help-1534536369](https://www.wsj.com/articles/purdue-pharma-hires-davis-polk-for-restructuring-help-1534536369), attached as Exhibit F.

28 ⁸ Mike Spector, et al., *Exclusive: OxyContin maker Purdue Pharma exploring bankruptcy*,
Reuters (March 4, 2019), available at [https://www.reuters.com/article/uk-purduepharma-](https://www.reuters.com/article/uk-purduepharma-bankruptcy-exclusive/exclusive-oxycontin-maker-purdue-pharma-exploring-bankruptcy-sources-idUSKCN1QL1KP)
bankruptcy-exclusive/exclusive-oxycontin-maker-purdue-pharma-exploring-bankruptcy-
sources-idUSKCN1QL1KP, attached as Exhibit G.

⁹ Katie Zeima, *Purdue Pharma CEP says bankruptcy is 'an option' as company faces*
opioid lawsuits, Washington Post (March 13, 2019), available at

1 **III. Factual Background**

2 The Sackler family owns Purdue and has perpetually held a majority of the seats on
3 its Board. Effectively controlling the privately held drug company, the Sacklers had the
4 power to sell Purdue’s addictive narcotics. They hired hundreds of sales representatives to
5 carry out their wishes and fired those who failed to sell enough drugs. The Sacklers
6 facilitated more patients taking opioids, at higher doses and for longer, than ever before
7 and were able to pay themselves billions of dollars as a result. They should be held
8 accountable.

9 The Sackler Defendants were the chief architects and beneficiaries of Purdue’s
10 deception, directing the misconduct described in the State’s Show Cause Application.
11 Each Sackler Defendant knew what Purdue publicly denied for decades: that prescription
12 opioids and opioid addiction are naturally linked. Each Sackler Defendant sent sales
13 representatives to promote opioids to prescribers in Arizona thousands of times. Each
14 Sackler Defendant realized that sales reps in Arizona would unfairly and deceptively
15 promote opioid sales that are risky for patients, including by:

- 16 • falsely blaming the dangers of opioids on patients instead of the addictive
17 drugs;
- 18 • pushing opioids for elderly patients, without disclosing the higher risks;
- 19 • pushing opioids for patients who had never taken them before, without
20 disclosing the higher risks;
- 21 • pushing opioids as substitutes for safer medications, with improper
22 comparative claims;
- 23 • falsely assuring doctors and patients that reformulated OxyContin was safe;
- 24 • pushing doctors and patients to use higher doses of opioids, without
25 disclosing the higher risks;
- 26 • pushing doctors and patients to use opioids for longer periods of time,
27 without disclosing the higher risks; and
28

- pushing opioid prescriptions by doctors that Purdue knew were writing dangerous prescriptions.

Each Sackler Defendant recognized that Purdue’s sales representatives would not tell Arizona doctors and patients the truth about Purdue’s opioids. They appreciated that these unfair and deceptive tactics achieved their purpose by concealing the truth. Each Sackler Defendant understood that Purdue’s deceptive sales campaign would impact prescribers, pharmacists, and patients in Arizona in making decisions whether to prescribe, dispense, and take Purdue opioids.

Each Sackler Defendant realized that staff reporting to them would pay top prescribers thousands of dollars in speaker fees to encourage other doctors to write dangerous prescriptions in Arizona. They understood that staff reporting to them would reinforce these misleading acts in Arizona including by sending deceptive publications to Arizona doctors and deceptively promoting Purdue’s opioids throughout Arizona.

Each Sackler Defendant took money from Purdue’s deceptive business in Arizona. Each Sackler Defendant sought to conceal his or her misconduct.

A. The Sacklers’ Conduct Leading to the 2007 Consent Judgment.

From the 1990s until 2007, the Sacklers directed a decade of misconduct, which led to criminal convictions, a judgment of this Court, and commitments that Purdue would not deceive doctors and patients again.

The Sackler family’s first drug company was The Purdue Frederick Company, which they bought in 1952. In 1990, they created Purdue Pharma Inc. and Purdue Pharma L.P. Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, and Theresa Sackler took seats on the Board. For events before July 2012, this Application uses the “Sackler Defendants” or the “Sacklers” to refer to them. David Sackler joined the Board in July 2012. From that time forward, the “Sackler Defendants” or the “Sacklers” includes him as well.

The Sacklers maintained family control of Purdue and held the majority of Board seats. Beginning in 1994, the Sacklers received all Board documents during their tenures,

1 requiring that staff provide them with all Quarterly Reports and any other reports directed
2 to the Board.

3 In 1995, Purdue released OxyContin, a long-lasting narcotic intended to help
4 patients suffering from moderate to severe pain. The drug has generated some \$35 billion
5 dollars in revenue for Purdue. OxyContin, however, also generated controversy. Its sole
6 active ingredient is oxycodone, a chemical cousin of heroin which is up to twice as
7 powerful as morphine. In the past, doctors had been reluctant to prescribe strong opioids
8 except for acute pain, surgery recovery, cancer treatment, or end-of-life palliative care,
9 because of a long-standing—and well-founded—fear about the addictive properties of
10 these drugs.

11 Purdue launched OxyContin with a marketing campaign that attempted to counter
12 this attitude and change prescribing habits. The company funded research and paid
13 doctors to make the case that concerns about opioid addiction were overblown, and that
14 OxyContin could safely treat an ever-wider range of maladies. Millions of patients found
15 the drug to be a vital salve for excruciating acute pain. But millions more—many of
16 whom were now taking the drug for chronic pain—grew so hooked on it that, between
17 doses, they experienced debilitating withdrawal.

18 As Purdue kept aggressively promoting opioids, the company was engulfed in a
19 wave of investigations by state attorneys general, the Drug Enforcement Administration,
20 and the Department of Justice. These investigations discovered that Purdue knew about
21 significant abuse of OxyContin as far back as 1996, yet actively concealed that
22 information from the public. Company officials had received reports that the pills were
23 being crushed and snorted, stolen from pharmacies, and that some doctors were being
24 charged with selling prescriptions. Yet Purdue continued to market OxyContin as less
25 prone to abuse and addiction than other opioids. The Department of Justice also
26 discovered that the Sacklers had received reports detailing the ways in which Purdue's
27 opioids were being abused.

28

1 In 2003, Richard Sackler left his position as President of Purdue. After a few more
2 years of investigation, Jonathan, Kathe, and Mortimer Sackler resigned from their
3 positions as Vice Presidents. Nonetheless, the Sacklers kept control of the company. And,
4 as alleged below, they directed Purdue’s deceptive marketing campaign.

5 By 2006, prosecutors obtained evidence that Purdue intentionally deceived doctors
6 and patients about its opioids. At base, federal prosecutors had uncovered a “corporate
7 culture that allowed this product to be misbranded with the intent to defraud and
8 mislead.”¹⁰ Purdue paid more than \$600 million in fines, among the largest settlements in
9 U.S. history for a pharmaceutical company. The Sacklers voted that The Purdue Frederick
10 Company should plead guilty to a felony for misbranding OxyContin. In May 2007, the
11 Sacklers again voted for their company to plead guilty and enter agreements that Purdue
12 would never deceive doctors and patients about opioids again. The Purdue Frederick
13 Company confessed to a felony and effectively went out of business.¹¹ The Sacklers
14 continued their opioid business in two other companies: Purdue Pharma Inc. and Purdue
15 Pharma L.P.

16 The Sacklers voted to admit in an Agreed Statement of Facts in conjunction with
17 Purdue’s guilty plea to federal misbranding charges that, for more than six years,
18 supervisors and employees intentionally deceived doctors about OxyContin: “Beginning
19 on or about December 12, 1995, and continuing until on or about June 30, 2000, certain
20 Purdue supervisors and employees, with the intent to defraud or mislead, marketed and
21 promoted OxyContin as less addictive, less subject to abuse and diversion, and less likely
22

23 ¹⁰ *Evaluating the Propriety and Adequacy of the OxyContin Criminal Settlement: Hearing*
24 *Before the Senate Comm. on the Judiciary*, 110th Cong. (2007) (statement of John L.
25 Brownlee, U.S. Attorney, Western District of Virginia, Roanoke, Virginia), available at
[https://www.govinfo.gov/content/pkg/CHRG-110shrg40884/html/CHRG-](https://www.govinfo.gov/content/pkg/CHRG-110shrg40884/html/CHRG-110shrg40884.htm)
26 [110shrg40884.htm](https://www.govinfo.gov/content/pkg/CHRG-110shrg40884/html/CHRG-110shrg40884.htm).

27 ¹¹ Paragraph 4(a) of the *Declaration of Seth Meyer in Support of Plaintiff’s Supplemental*
28 *Application for Order to Show Cause* (“Meyer Dec.”), attached as Exhibit I, and Exhibit I-

1 to cause tolerance and withdrawal than other pain medications.”¹² Those intentional
2 violations of the law happened while Richard Sackler was CEO; Jonathan, Kathe, and
3 Mortimer were Vice Presidents; and Richard, Jonathan, Kathe, Mortimer, Ilene, Beverly,
4 and Theresa Sackler were all on the Board.

5 The Sacklers also voted for Purdue to enter a Corporate Integrity Agreement with
6 the U.S. government at the conclusion of a Department of Justice investigation. The
7 agreement required the Sacklers to ensure that Purdue did not deceive doctors and patients
8 again. The Sacklers promised to comply with rules that prohibit deception about Purdue
9 opioids, to complete hours of training, to ensure that they understood the rules, and to
10 report any deception. Counsel for Purdue certified in writing that Richard, Beverly, Ilene,
11 Jonathan, Kathe, Mortimer, and Theresa Sackler had each approved the rules and would
12 obey them.¹³

13 Finally, the Sacklers voted to enter into the 2007 Judgment in this Court. The
14 judgment ordered that Purdue “shall not make any written or oral claim that is false,
15 misleading, or deceptive” in the promotion or marketing of “OxyContin.”¹⁴ It required
16 that Purdue provide fair balance regarding risks and benefits in all promotion of
17 OxyContin, and required fair balance about the risks of taking higher doses for longer
18 periods and the risks of addiction, overdose, and death.¹⁵ The Sacklers voted to enter into
19 similar consent judgments with a number of other states’ attorneys general.

20 The 2007 Judgment and related agreements should have ended the Sacklers’
21 misconduct. Instead, the Sacklers expanded their deceptive sales campaign to make more
22 money from more patients on more dangerous doses of opioids.

23
24 ¹² 2007-05-09 Agreed Statement of Facts, ¶ 20, available at
<https://www.documentcloud.org/documents/279028-purdue-guilty-plea>.

25 ¹³ 2007-05-09 Plea Agreement; Meyer Dec., ¶ 4(b), and Exhibit I-2.

26 ¹⁴ “OxyContin” is defined in the 2007 Judgment as “any controlled-release drug
27 distributed by Purdue which contains oxycodone as an active pharmaceutical ingredient.”

28 ¹⁵ Consent Judgment, ¶¶ 5-6, 11.

1 **B. The Sackler Defendants’ Misconduct from the 2007 Judgment Until Today.**

2 From the 2007 Judgment to 2018, the Sacklers controlled Purdue’s deceptive sales
3 campaign. They directed the company to hire more sales representatives to visit doctors
4 thousands more times, insisting that they repeatedly visit the highest prescribers. The
5 Sacklers directed sales representatives to encourage doctors to prescribe more and higher
6 doses of opioids. The Sacklers sometimes demanded more sales detail than anyone else in
7 the entire company, so staff had to create special reports just for them. Richard Sackler
8 even went into the field to personally promote opioids to doctors and supervise
9 representatives.

10 Above all, the Sacklers were laser-focused on the bottom line. From 2007 to 2018,
11 they voted to direct Purdue to pay their family billions of dollars, including millions of
12 dollars from opioids sold in Arizona. These payments show the total control that the
13 Sackler Defendants exercised over Purdue and were deliberate decisions to benefit from
14 deception in Arizona, at great cost to patients and families.

15 From the 2007 convictions and settlements until today, the Sacklers ordered Purdue
16 to hire hundreds of sales representatives to carry out their deceptive sales campaign. They
17 made the fundamental decision to hire a sales force, and then to expand it, controlling the
18 size and activity of Purdue’s sales team.

19 The Sacklers also knew and intended that the sales reps would push higher doses of
20 Purdue’s opioids. Richard Sackler directed Purdue management to “measure our
21 performance by Rx’s by strength, giving higher measures to higher strengths[.]”¹⁶

22 On April 18, 2008 Richard Sackler sent Kathe, Ilene, David, Jonathan, and
23 Mortimer Sackler a secret memo about how to keep money flowing to their family.
24 Richard wrote that Purdue’s business posed a “dangerous concentration of risk.”¹⁷ After
25 the criminal investigations that almost reached the Sacklers, Richard wrote that it was

26 ¹⁶ Meyer Dec., ¶ 4(c), and Exhibit I-3.

27 ¹⁷ *Id.*, ¶ 4(d), and Exhibit I-4.

1 crucial to install a CEO who would be loyal to the family: “People who will shift their
2 loyalties rapidly under stress and temptation can become a liability from the owners’
3 viewpoint.” *Id.* Richard recommended John Stewart for CEO because of his loyalty.
4 Richard also proposed that the family should either sell Purdue in 2008 or, if they could
5 not find a buyer, milk the profits out of the business and “distribute more free cash flow”
6 to themselves. *Id.*

7 That month, the Sacklers voted to have Purdue pay their family \$50,000,000. From
8 the 2007 convictions and settlements until 2018, the Sacklers voted dozens of times to pay
9 out Purdue’s opioid profits to their family—in total more than \$3.5 billion.¹⁸

10 In May 2009, staff told the Sacklers that Purdue had violated its Corporate Integrity
11 Agreement with the U.S. government by failing to supervise its sales reps.¹⁹ Because
12 sales reps lobbying doctors pose a high risk of misconduct (because there are no witnesses
13 and the rep is paid to increase opioid sales), the United States required that Purdue
14 managers supervise sales reps in person at least five days each year.²⁰ Purdue
15 management disregarded that obligation and did not even devise a system to track it.²¹

16 The Sacklers required each representative to visit an average of 7.5 prescribers per
17 day. In April 2010, staff reported that they were falling short. During Q1 2010, reps had
18 averaged only 7.0 visits per day.²² Staff promised to try harder. The Sacklers continued
19 to set a target for daily sales visits for every sales rep, and they tracked the results, quarter
20 by quarter, for at least the next four years. The results were always close to seven visits
21 per day. The Sacklers also set targets for the total number of sales visits by the entire
22 sales force per quarter—huge numbers that were always more than a hundred thousand
23

24 ¹⁸ *Id.*, ¶ 4(e), and Exhibits I-5, I-6, I-7, I-8, I-9, and I-10.

25 ¹⁹ *Id.*, ¶ 4(f), and Exhibit I-11.

26 ²⁰ Purdue Corporate Integrity Agreement section III.K.

27 ²¹ Meyer Dec., ¶ 4(g), and Exhibit I-11 (“Compliance was not monitoring against the ‘five
28 full days’ requirement”).

²² *Id.*, ¶ 4(h), and Exhibit I-12.

1 visits. Meeting those targets was a top priority for the entire company. As with the daily
2 visits per rep, the Sacklers tracked the total number of sales visits per quarter, every
3 quarter, for at least the next four years.

4 In June 2010, staff gave the Sacklers an updated 10-year plan for growing Purdue’s
5 opioid sales. According to the plan, the Sacklers expected Purdue to pay their family at
6 least \$700,000,000 each year from 2010 through 2020. Staff emphasized that selling as
7 many opioids as the Sacklers wanted “will require significant salesforce support” so the
8 plan detailed the “optimization” of sales visits and the number of reps required.²³

9 In 2011, to make sure his directions regarding sales tactics were followed, Richard
10 Sackler insisted on being sent into the field with the sales reps.²⁴ Richard indeed went
11 into the field to promote opioids to doctors alongside a sales representative. When he
12 returned, Richard argued to the Vice President of Sales that a legally required warning
13 about Purdue’s opioids was not needed. Richard insisted there should be “less
14 threatening” ways to describe Purdue opioids.²⁵

15 In March 2012, Purdue staff sent Richard Sackler an assessment of recently-
16 improved opioid sales. Staff told Richard that the increase in prescriptions was caused by
17 tactics that Purdue taught sales reps: pushing opioids for elderly patients with arthritis
18 (“proper patient selection”) and encouraging doctors to use higher doses of opioids
19 (“quick titration”).²⁶ In the coming months, Purdue would study, document, and expand
20 the use of higher doses to increase sales—a tactic that helped to addict and kill Arizonans.

21 In February 2013, the Sacklers met with staff about tactics for promoting Purdue’s
22 opioids. They discussed research on what influences prescriptions, how doctors had
23 responded to Purdue’s increased promotion, and sales force promotion themes.²⁷ On the

24 _____
25 ²³ *Id.*, ¶ 4(i), and Exhibit I-13.

26 ²⁴ *Id.*, ¶ 4(j), and Exhibit I-14.

27 ²⁵ *Id.*, ¶ 4(k), and Exhibit I-15.

28 ²⁶ *Id.*, ¶ 4(l), and Exhibit I-16.

²⁷ *Id.*, ¶ 4(m), and Exhibit I-17.

1 same day, the Sacklers voted to award bonuses and salary increases to executives,
2 including those involved in marketing Purdue’s opioids.²⁸

3 In January 2014, staff reported to the Sacklers on Purdue’s programs for complying
4 with state and federal law. Staff noted that Purdue still paid reps for generating sales and
5 that it did not disclose to the public the money it spent to influence continuing medical
6 education. Nor had the Sacklers adopted “claw-back” policies so that executives would
7 forfeit bonuses they earned from misconduct, or passed any resolutions certifying the
8 Board of Directors’ oversight of Purdue’s compliance with the law.²⁹

9 In September 2014, Kathe Sackler dialed in to a confidential call about “Project
10 Tango.” Project Tango was a secret plan for Purdue to expand into the business of selling
11 drugs to treat opioid addiction. In their internal documents, Kathe and staff wrote down
12 what Purdue publicly denied for decades: that “[a]ddictive opioids and opioid addiction
13 are ‘naturally linked.’” They determined that Purdue should expand across “the pain and
14 addiction spectrum,” to become “an end-to-end pain provider.” Purdue illustrated the end-
15 to-end business model with a picture of a dark hole labeled “Pain treatment” that a patient
16 could fall into—and “Opioid addiction treatment” waiting at the bottom.³⁰

17 In January 2015, the Sacklers voted to evaluate employees’ 2014 performance on a
18 scorecard that assigned the greatest value to the volume of Purdue opioid sales.
19 Employees were expected to generate more than one-and-a-half billion dollars. The
20 Sacklers also voted to establish the company’s scorecard for 2015: once again, the biggest
21 factor determining employees’ payout would be the total amount of Purdue opioid sales.³¹

22 In 2016, the Sacklers met with the rest of the Purdue Board in January, March,
23 April, June, August, October, November, and December.³²

24 _____
25 ²⁸ *Id.*, ¶ 4(n), and Exhibit I-18.

26 ²⁹ *Id.*, ¶ 4(o), and Exhibit I-19.

27 ³⁰ *Id.*, ¶ 4(p), and Exhibits I-20 and 21.

28 ³¹ *Id.*, ¶ 4(q), and Exhibit I-22.

³² *Id.*, ¶ 4(r), and Exhibit I-23.

1 In June 2016, the Sacklers met to discuss a revised version of Project Tango—
2 another try at profiting from the opioid crisis. This time, they considered a scheme to sell
3 the overdose antidote NARCAN. The need for NARCAN to reverse overdoses was rising
4 so fast that the Sacklers calculated it could provide a growing source of revenue, tripling
5 from 2016 to 2018. Like Tango, Purdue’s analysis of the market for NARCAN confirmed
6 that they saw the opioid epidemic as a money-making opportunity and that the Sacklers
7 understood how Purdue’s opioids put patients at risk. The Sacklers identified a “strategic
8 fit” because NARCAN is a “complementary” product to Purdue opioids. *They specifically*
9 *identified patients taking Purdue’s prescription opioids as the target market for NARCAN.*
10 Their plan called for studying “long-term script users” to “better understand target end-
11 patients” for NARCAN. Likewise, they identified the same doctors who prescribed the
12 most Purdue opioids as the best market for selling the overdose antidote; they planned to
13 “leverage the current Purdue sales force” to “drive direct promotion to targeted opioid
14 prescribers.” Finally, they noted that Purdue could profit from government efforts to use
15 NARCAN to save lives.³³

16 In November 2016, staff prepared statements to the press denying the Sacklers’
17 involvement in Purdue. Their draft claimed: “Sackler family members hold no leadership
18 roles in the companies owned by the family trust.”³⁴ That was untrue; Sackler family
19 members held the controlling majority of seats on the Board and controlled the company.

20 In 2017, the Sacklers met with the rest of the Purdue Board in February, March,
21 April, June, July, August, October, November, and December.³⁵

22 By 2017, Purdue staff began feeling the pressure of the opioid epidemic and
23 elevated to the Sacklers their concern and belief that Purdue should do something to
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25 ³³ *Id.*, ¶ 4(s), and Exhibits I-24 and I-25. (planning to “Segment opioid patients to better
26 understand target end-patients (e.g., long-term script users).”)

27 ³⁴ *Id.*, ¶ 4(t), and Exhibit I-26.

28 ³⁵ *Id.*, ¶ 4(u), and Exhibits I-27 and I-28.

1 address the crisis. In one presentation, staff told the Sacklers: “Purdue Needs a New
2 Approach,” suggesting a “New Narrative: Appropriate Use.” Staff also suggested that the
3 Sacklers create a family foundation to help solve the opioid crisis.³⁶

4 The Sacklers did not redirect the company toward appropriate use or create the
5 foundation. Instead, they decided to sell harder. For 2018, the Sacklers approved a target
6 for sales reps to visit prescribers 1,050,000 times—almost double the number of sales
7 visits they had ordered during the heyday of OxyContin in 2010.³⁷

8 In October 2017, Beverly Sackler served her last day on the Board. A week later,
9 the New Yorker published an article entitled “The Family That Built an Empire of Pain.”³⁸

10 In January 2018, Richard Sackler received a patent for a drug to treat opioid
11 addiction—his own version of Project Tango. *Richard had applied for the patent in 2007.*
12 He assigned it to a different company also controlled by the Sacklers, instead of Purdue.
13 Richard’s patent application says opioids are addictive, calls the people who become
14 addicted to opioids “junkies,” and effectively asks for a monopoly on a method of treating
15 addiction.³⁹

16 In Spring of 2018, states’ attorneys general began filing lawsuits to hold Purdue
17 and the Sacklers accountable. The Sacklers began departing the company. Kathe Sackler
18 resigned from the Board in May, Richard Sackler in July, David Sackler in August, and
19 Theresa Sackler in September. As of the date of this filing, all the Sacklers have stepped
20 down from the Board.⁴⁰

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23 ³⁶ *Id.*, ¶ 4(v), and Exhibit I-29.

24 ³⁷ *Id.*, ¶ 4(w), and Exhibit I-30.

25 ³⁸ *Id.*, ¶ 4(x), and Exhibit I-31.

26 ³⁹ 2018-01-09, U.S. Patent No. 9,861,628 (“a method of medication-assisted treatment for
opioid addiction”); 2007-08-29, international patent publication no. WO 2008/025791 A1.

27 ⁴⁰ Paul Schott, *Sacklers quit board amid shifts for OxyContin maker*, Associated Press
(Apr. 7, 2019) available at <https://www.apnews.com/7b14f628aceb4849b957f7aec489c8f>.

1 **IV. Argument**

2 **A. The Sacklers Guided Purdue’s Continued Deceptive and Unbalanced**
3 **Marketing of Its Oxycodone Drugs in Violation of the 2007 Consent**
4 **Judgment.**

5 As demonstrated above, the Sacklers’ conduct both before, during, and after entry
6 of the 2007 Judgment reflects their continuous control of Purdue and direction of its
7 numerous violations. Thus, the Sacklers should be required to appear and show cause in
8 their personal capacity as to why they should not be found to have violated the 2007
9 Judgment.

10 To begin, officers and directors of a company can be held responsible for violating
11 an order that binds that company. Indeed, the Arizona Consumer Fraud Act (or the
12 “CFA”), which served as the basis for the underlying claims resolved by the 2007
13 Judgment, contemplates holding directors responsible for violative actions of the company
14 they control. Specifically, the CFA requires that “a person who violates any order or
15 injunction issued pursuant to this article shall forfeit and pay to the general fund of the
16 state of Arizona a civil penalty of not more than twenty-five thousand dollars per
17 violation.” A.R.S. § 44-1532. The CFA defines “person” to include a company and its
18 officers and directors. A.R.S. § 44-1521.

19 The CFA’s provisions align with the general common-law rule in Arizona: “a
20 director or officer of a corporation is individually liable for fraudulent acts or false
21 representations of his own or in which he participates, even though his action in such
22 respects may be in furtherance of the corporate business.” *State ex rel. Corbin v. United*
23 *Energy Corp. of Am.*, 151 Ariz. 45, 51, 725 P.2d 752, 758 (Ariz. Ct. App. 1986) (citing
24 18B Am. Jur. 2d, *Corporations* § 1882 at 730 (1985)); *see also Parks v. Macro-Dynamics,*
25 *Inc.*, 121 Ariz. 517, 521, 591 P.2d 1005, 1009 (Ariz. Ct. App. 1979) (“As for the corporate
26 directors, when the corporate entity is used to perpetrate fraud, it is disregarded and the
27 directors are personally responsible for the fraud.”).

1 The rule holding corporate directors accountable for their company’s violations of
2 a court order is also consistent with the ordinary rules governing court orders, which
3 provide that an injunction “binds only the following who receive actual notice of it by
4 personal service or otherwise: (A) the parties; (B) the parties’ officers, agents, servants,
5 employees, and attorneys; and (C) other persons who are in active concert or participation
6 with anyone described” in paragraphs (A) or (B). Ariz. R. Civ. P. 65(d)(2); *see also Regal*
7 *Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945) (holding that “defendants may not nullify
8 a decree by carrying out prohibited acts through aiders and abettors, although they were
9 not parties to the original proceeding”); *Buffalo Wings Factory, Inc. v. Mohd*, No.
10 1:07CV612 (JCC), 2008 WL 4642163, at *9 (E.D. Va. Oct. 15, 2008) (finding corporation
11 owners also bound by consent order binding corporation under Fed. R. Civ. P. 65(d));
12 *Hubbard/Downing, Inc. v. Kevin Heath Enterprises*, No. 1:10-CV-1131-WSD, 2013 WL
13 12239523, at *9 (N.D. Ga. May 30, 2013) (same). Here, the Sacklers actively participated
14 in the promotion of opioids while downplaying the associated risks while serving on
15 Purdue’s Board, in violation of the 2007 Judgment.

16 Nor is there any doubt that the Sacklers were on notice of their companies’
17 obligations to comply with the order in question. As discussed above, the Sacklers voted
18 for Purdue to enter into the 2007 Judgment and individually reviewed the agreement.
19 They also benefited directly from its terms; the 2007 Judgment released any claim of
20 liability prior to that date against Purdue and against the Sacklers as “past and present
21 officers, directors [and] shareholders[.]”⁴¹

22 In sum, during all relevant times the Sacklers exercised control over Purdue, were
23 aware of its obligations under the 2017 Judgment, and knew of and participated in the
24 actions that put the company’s profits ahead of its duty to refrain from false or misleading
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26
27 ⁴¹ Consent Judgment, ¶ 35.

1 representations about its products. They are legally responsible for their company's
2 violative conduct and should be included in the pending proceeding before this Court.

3 **B. The State Provided Notice of the Alleged Violations.**

4 After an investigation, which included the issuance of two civil investigative
5 demands under A.R.S. § 44-1524, on June 29, 2018, pursuant to section VIII of the 2007
6 Judgment, the State sent Purdue written notification of the State's contention that Purdue
7 had violated the 2007 Judgment. The State's notification detailed the sections of the
8 judgment that Purdue violated and the third-party front groups and promotional materials
9 through which these violations occurred.⁴² Purdue received this notice on July 2, 2018,
10 and, after requesting and receiving an extension of its deadline to respond, responded on
11 August 24, 2018.⁴³ Given their controlling interest in Purdue, the Sacklers were no doubt
12 informed of these proceedings. Further, Purdue's response noted that "there is nothing
13 left to 'cure'" because "Purdue has ceased promoting prescription opioids to health care
14 providers and no longer maintains a sales force."⁴⁴

15 In Purdue's response, among other conclusory statements, it denied that it violated
16 the 2007 Judgment. Purdue did admit that it paid the third parties at issue above. And
17 Purdue extolled remedial actions it has taken to address the opioid crisis. But Purdue
18 failed to account for violations occurring before it took remedial action and it failed to
19 support its arguments by providing the State documentary evidence or by referencing
20 documents it had produced to the State previously.⁴⁵

21 **V. Violations**

22 As is evident in their conduct between the 2007 Judgment and the present, the
23 Sacklers controlled Purdue and directed its violations of section II of the 2007 Judgment,
24

25 ⁴² See Plaintiff's Application for Order to Show Cause, at Exhibit E-16.

26 ⁴³ *Id.*, at Exhibit E, ¶ 11.

27 ⁴⁴ See *id.*, at Exhibit E-17.

28 ⁴⁵ See *id.* at Exhibit E, ¶ 11 and Exhibit E-17.

1 as detailed in the State's September Application, particularly: paragraph 2 and 11's
2 prohibitions against false, misleading, or deceptive marketing and paragraph 20's
3 corresponding requirement to communicate truthfully and accurately; paragraph 4, 11, and
4 20's requirements to provide balanced statements in marketing materials; and paragraph 5
5 and 20's prohibitions against deceptive representations minimizing oxycodone's potential
6 for abuse, addiction, or physical dependence.

7 Under A.R.S. § 44-1532, if a person violates an order or injunction issued pursuant
8 to the Consumer Fraud Act, that person shall pay civil penalties of not more than \$25,000
9 per violation. The State intends to seek the maximum allowable penalties in this case,
10 given that the Sacklers misled consumers about the risks of potentially deadly drugs, and
11 did so in defiance of this Court's order.

12 The State also intends to seek any other remedy available by law or equity,
13 including restitution and disgorgement under A.R.S. § 44-1528 and costs and attorneys'
14 fees under A.R.S. § 44-1534.

15 The Sacklers should be required to appear and show cause as to why they should
16 not be found to have violated the 2007 Judgment.

17 **V. Conclusion**

18 The State's evidence shows that the Sacklers violated this Court's 2007 Judgment.
19 Therefore, the State respectfully requests that the court enter the form of *Order to Show*
20 *Cause* submitted with this application.

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Respectfully submitted,

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