

**Superior Court of the State of California  
County of Orange**

**DEPT CX 102 TENTATIVE RULINGS**

**Judge Robert J. Moss**

The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5302. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:00 p.m. on the day before the hearing.

**COURT REPORTERS WILL ONLY BE PROVIDED FOR TRIAL, WRIT HEARINGS ON CEQA MATTERS, AND OTHER HEARINGS WHERE LIVE EVIDENCE WILL BE PRESENTED. IF A PARTY DESIRES A COURT REPORTER FOR ANY OTHER HEARING INCLUDING, BUT NOT LIMITED TO, LAW AND MOTION MATTERS, EX PARTE MATTERS AND CASE MANAGEMENT CONFERENCES, IT WILL BE THE RESPONSIBILITY OF THAT PARTY TO PROVIDE ITS OWN COURT REPORTER. PARTIES MUST COMPLY WITH THE COURT'S POLICY ON THE USE OF PRO TEMPORE COURT REPORTERS WHICH CAN BE FOUND ON THE COURT'S WEBSITE AT: [http://www.occourts.org/media/pdf/7-25-2014\\_Privately\\_Retained\\_Court\\_Reporter\\_Policy.pdf](http://www.occourts.org/media/pdf/7-25-2014_Privately_Retained_Court_Reporter_Policy.pdf)**

**Date:** August 27, 2015

#	Case Name	Tentative
1.	People of the State of California v Purdue Pharma  2014-00725287	<p>Defendant's demurrer to the first through third causes of action of the second amended complaint on the basis of primary jurisdiction, equitable abstention, and the court's inherent power to stay proceedings. <b>The demurrer is sustained and the motion to stay is granted pursuant to the court's inherent authority to manage its own cases. The action will be dismissed without prejudice upon the defendants stipulating to the waiver of a statute of limitations defense. The matter is otherwise stayed until further order of this court.</b></p> <p>[All counsel are admonished that each document filed in relation to a motion must contain the relevant hearing date and reference the exact motion to which it relates. Multiple documents were filed in violation of this rule. Those documents have not been considered by the court. Further, when reference is made to an exhibit or document in their papers, counsel must include the exact location of that document in the court's record.]</p> <p>The fundamental premise of the plaintiff's opposition, (that since this case only deals with false or misleading marketing and therefore that is well within the realm of what a California court should take on under the dictates of the consumer statutes) is incorrect. As the second amended</p>

complaint clearly shows, this case is about determining what the public and doctors needs to be told about opioids. That determination necessary entails much more than determining issues of false and misleading marketing. Underlying every issue here, this case requires this court to become an expert in the field in which it has no expertise. It will have to determine which study, trial, etc. is appropriate and correct as to each issue concerning the use of opioids, and to what extent.

While the second amended complaint cites to various treatises and the like showing that the representations made by the defendants are misleading, there is no doubt that defendants' experts will assert the exact opposite. Then, the court will have to determine how such a study, trial, treatise, etc. (if they can be resolved as to conflicts), defeats, or partially defeats, each of the claims and representations made by each defendant, and then structure the appropriate remedy so as to fully and properly inform the public and doctors on the subject. After that, the court will be required to monitor that remedy in light of changing circumstances (new studies, new trials showing different results) to make sure that the public and doctors have the most accurate and up to date information.

Most importantly, this court will need to protect the public's right to access this apparently important set of drugs, along with appropriately making certain that medical personnel are properly informed of the risks and benefits of the drugs and how to access them.

The scenario described above is exactly what the U.S. Supreme Court advised against in *Weinberger* and that is reason enough for this ruling.

As to the FDA, while it is certainly true that the FDA did not, and will not, rule on the propriety of the marketing which defendants employ, that, once more, is not the issue on this motion. The issue on this motion is what determinations this court will need to make to rule on the propriety of the marketing. All of those determinations fall within the purview of the FDA. The PROP and the FDA explored all the underlying issues involved in this lawsuit, and those determinations, and has taken action to further explore them.

Not one case cited by plaintiff involved, and indicated the propriety of, a court immersing itself in the convoluted, exacting, expertise driven, issue expanded, nuanced action which is involved here. The patients, potential patients, and the medical community deserve more. This action could lead to inconsistencies with the FDA's findings, inconsistencies among the States, a lack of uniformity, and a potential chilling effect on the prescription of these drugs for those who need them most. The proposed ongoing role of the court in this litigation, and in the monitoring of any

		<p>decision it makes, is a monumental endeavor. The court does not shrink from its responsibilities to handle complex, convoluted litigation; it handles such matters every day of the week. It does, however, take pause at involving itself in an area which is best left to agencies such as the FDA who are designed to address such issues. Moving party to give notice.</p>
2.	<p>People of the State of California v Purdue Pharma 2014-00725287</p>	<p>[See bracketed paragraph under item 1, above. In addition, if the tentative ruling on item 1 above becomes final, the issues on this and the remaining motions become moot. However, in the event the court is persuaded by oral argument that the tentative ruling on item 1 should be changed, the court provides tentative rulings on the remaining motions.]</p> <p>Purdue Pharma defendants' demurrer to the first, second and third causes of action of the second amended complaint based on final judgment bar, improper claim splitting, <i>et al.</i> <b>Demurrer sustained without leave to amend.</b></p> <p>The demurrer properly addresses the entirety of the causes of action, but if it did not, as plaintiff itself indicates, each violation can stand as a separate cause of action, and even if that were not so, the court can appropriately treat the demurrer as a motion to strike, so as to alleviate the need for repetitious motion practice on the same issues.</p> <p>The quintessential point is that the People of the State of California, the plaintiff in the prior action and the plaintiff here, and its agents and legal counsel, whether at the State or County level, are bound by judgment which already fully addresses the issues involved in this litigation. That judgment has a dispute resolution process to which the plaintiff has not adhered (or has not alleged and does not contend it adhered), and which includes an ongoing injunction which is, in essence, the same relief sought by this case.</p> <p>The court does not question the District Attorney's or County Counsel's legal authority to bring an action on behalf of the People for the alleged wrongdoing. However the District Attorney and County Counsel can only bring actions that the People can bring. Here, the <i>People</i> are barred from taking another bite of the apple and changing lawyers is irrelevant.</p> <p>The People, not the Attorney General of the State, brought the prior action. The People, not the District Attorney or County Counsel, bring this action. The actual party plaintiff in each case are one in the same. As the People have no legal right to bring this action as to defendant, neither does the District Attorney or County Counsel.</p>

		<p>Plaintiff is incorrect that the same primary right is not involved in all causes of action. As the cases cited by both the plaintiff and defendants indicate, the same primary right is implicated when the same harm that is suffered is involved in each. Here, not only is the same exact harm suffered alleged in all causes of action, the same relief is requested, based on the exact same facts. Plaintiff is attempting to split a cause of action and it cannot. The judgment precludes all causes of action attempted to be asserted here, including nuisance.</p> <p>Plaintiff asserts that it is not attempting to enforce the judgment. First of all, that is one the problems with the lawsuit, not a response that defeats the demurrer. More importantly, Plaintiff <i>is attempting to enforce the judgment</i>, at Paragraph 408 of its Second Amended Complaint.</p> <p>The court does not understand why the parties are addressing the <i>res judicata</i> effect of the judgment to claims arising prior to 2007, when the claims brought here, under the FAL and UCL, are limited, and necessarily so, to the four years prior to the filing of this action, as a four year statute of limitation applies, and as the nuisance cause of action could only seek to enjoin or abate marketing that is presently ongoing. The court cannot abate or enjoin what has taken place some seven years ago.</p> <p>While the doctrine of abstention may be the wrong term to use, as it seems limited to cases involving agency or legislature alternative remedies, the very nature of an equitable court, as this court is acting here, allows the court to refrain from issuing injunctive or abatement orders when they necessarily interfere with previously issued injunctions, to the needless burden of the court, and when an effective means of redress already exists. We need not conduct discovery, go through potentially years of litigation, and then conduct a trial, all to come to the same result which has already been reduced to a judgment. The remedy sought has already been effectuated. Moving party to give notice.</p>
3.	<p>People of the State of California v Purdue Pharma</p> <p>2014-00725287</p>	<p>[See bracketed paragraphs under items one and two, above. On this motion, plaintiff filed such documents as "The People's Notice of Supplemental Authority" filed on 6/12/15, without any reference to the motion to which it pertains. Furthermore, such additional briefing is not allowed without court order, and violates the defendants' due process rights. Such documents are not considered by the court.]</p> <p>Defendant Teva Pharmaceutical's motion to quash service of summons. <b>Motion granted.</b></p> <p>Plaintiffs failed to meet their burden of proof to establish, by evidence, that Teva is subject to the jurisdiction of the</p>

		<p>court. They have failed to present any evidence on the issue. They have, instead, referred to the allegations of the second amended complaint, which are not evidence.</p> <p>Plaintiffs seek to conduct discovery on the issue of jurisdiction, but there is not even a hint of a showing of potential personal jurisdiction here so as to provide support for the court to exercise its discretion to allow such discovery. Plaintiffs ask the court to look at some websites, without any foundation as to their accuracy or competence. This is not a sufficient offer of proof. And, as argued by defendant, none of the suggested "evidence" comes close to establishing jurisdiction or the notion that evidence may exist to establish jurisdiction.</p> <p>Plaintiffs sued Teva without any facts to support jurisdiction. They do not now get to conduct discovery to fulfill their <i>hope</i> of jurisdiction. And, they have failed to make a colorable showing that the court has personal jurisdiction over Teva, so as to allow discovery on the issue. Moving party to give notice.</p>
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