STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 1, 2021

The Honorable Carolyn B. Maloney
2308 Rayburn House Office Building
Washington, DC 20515

The Honorable James Comer
2410 Rayburn House Office Building
Washington, DC 20515

Re: The SACKLER Act

Dear Representatives Maloney and Comer:

I write to offer my support for the legislation introduced after your recent oversight hearing: the Stop shielding Assets from Corporate Known Liability by Eliminating non-debtor Releases Act or the "SACKLER Act."

As Idaho's chief law enforcement officer, I believe that the law should be enforced fairly and squarely against people who deceive the public about addictive drugs, even if they are billionaires. For more than a decade, I served on the Board of Directors of the American Legacy Foundation, the nonprofit created in the wake of the national tobacco settlement to educate youth and adults on the dangers of smoking. I saw how tobacco companies damaged our communities and how much work it takes to address those injuries. In recent years, my team has worked with Attorneys General from across the nation to hold accountable those who contributed to the national opioid crisis.

I am grateful for the bipartisan work of the House Oversight Committee for holding a hearing and questioning members of the Sackler family this past December. In the 25 years since their family launched OxyContin, your hearing marks the only time that members of the Sackler family have testified in public. Your hearing was an important step in a process of demanding accountability that the public deserves. I am also grateful for the Committee's work to release Purdue documents so the people who have been hurt by the opioid crisis can see the evidence for themselves.

I now write to support the legislation that Representative Maloney and Representative DeSaulnier introduced to ensure that the Sacklers and other bad actors cannot use our federal bankruptcy system to evade responsibility for their

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acts. The policy embodied in the SACKLER Act is sound: non-debtors, who have not filed for bankruptcy, should not be allowed to use another party's bankruptcy to escape from government legal claims against them. The Sacklers are not bankrupt – they are billionaires. The federal Bankruptcy Code was never intended to benefit them, and efforts to use it for that purpose should be stopped.

The SACKLER Act builds on a foundation established by many federal courts. In the Ninth Circuit, which includes Idaho, the Court of Appeals does not permit a bankruptcy court to release claims against people who have not filed for bankruptcy.[1] Likewise, the official position of the U.S. Department of Justice is that the non-consensual release of government claims against non-debtors is never lawful.[2] Because some bankruptcy courts have released some claims against non-debtors, there is a split in this area of law – a circumstance in which it is right for Congress to provide a uniform, national standard.

As Committee members recognized during the recent hearing, ensuring appropriate accountability for misconduct that contributed to the opioid crisis is not a partisan cause. It matters to every American.

For these reasons, I hope that the legislation inspired by your recent hearing will receive bipartisan support and will be enacted into law.

Sincerely,

LAWRENCE G. WASDEN
Idaho Attorney General

C: US Senator Mike Crapo
US Senator James E. Risch
US Representative Mike Simpson
US Representative Russ Fulcher

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[1] *See Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401-02 (9th Cir. 1995) ("§ 524(e) specifically states that 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.' 11 U.S.C. § 524(e). This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."); *see also Landsing Diversified Properties–II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund, Inc.)*, 922 F.2d 592, 601-02 (10th Cir. 1990); *Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de CV)*, 701 F.3d 1031, 1061 (5th Cir. 2012).

[2] *See* Brief for the United States as Amicus Curiae at 12, *Lynch v. Mascini Holdings, Ltd. (In re Kirwan Offices S.a.R.L.)*, Case No. 18-3371 (2d Cir. Oct. 7, 2019) ECF No. 119 ("third-party releases are impermissible"); *see also id.* at 15 n.3 ("Moreover, the government's view is that, even assuming that releases may be appropriate in certain circumstances, no such releases should ever apply to the government, as its interests are distinct from those of ordinary creditors or other outsiders who may have claims against participants in the bankruptcy process. For example, no bankruptcy court order should release non-debtors from their obligations under criminal laws, tax laws, environmental laws, or other public health and safety laws….").