

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PURDUE PHARMA L.P.,	)	
THE P.F. LABORATORIES, INC.,	)	
PURDUE PHARMACEUTICALS L.P.	)	
and RHODES TECHNOLOGIES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 15-260 (SLR)
	)	
COLLEGIUM PHARMACEUTICAL, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF APPEAL TO THE UNITED STATES COURT  
OF APPEALS FOR THE FEDERAL CIRCUIT**

Notice is hereby given pursuant to Fed. R. App. P. 4(a)(1) and, as explained in further detail below, 4(a)(4)(B)(i) that Plaintiffs Purdue Pharma L.P., The P.F. Laboratories, Inc., Purdue Pharmaceuticals L.P., and Rhodes Technologies (collectively “Purdue”) appeal to the United States Court of Appeals for the Federal Circuit from the Order (D.I. 30) entered on August 6, 2015 dismissing this action, and the underlying opinions, orders, and rulings on which that Order was based, including, but not limited to, the Court’s Memorandum Opinion dated August 6, 2015 (D.I. 29).

On August 7, 2015, the day after the Court entered its order of dismissal, Purdue filed a motion for re-argument of the Court’s Order under D. Del. LR 7.1.5 (D.I. 32). That motion has been briefed and remains pending as of the filing of this notice. Purdue’s motion for re-argument should toll the time for filing a notice of appeal from the Court’s order of dismissal because it is the “functional equivalent” of a motion pursuant to Fed. R. Civ. P. 59(e) to alter or amend the Court’s judgment, and a motion under Rule 59(e) tolls the time for filing a notice of

appeal. *See* Fed. R. App. P. 4(a)(4)(A); *New Castle Cnty. v. Hartford Accident & Indem. Co.*, 933 F.2d 1162, 1177 (3d Cir. 1991).

However, because the Federal Rules of Appellate Procedure do not expressly refer to motions for “re-argument,” out of an abundance of caution and to avoid any doubt regarding the timeliness of any notice of appeal, Purdue hereby files this Notice of Appeal within the original 30-day period from the Court’s August 6 order set forth by Fed. R. App. P. 4(a)(1) and 26(a).

If the Court grants Purdue’s motion for re-argument in full, Purdue intends to withdraw its appeal. If the Court does not grant Purdue’s motion in full, this notice will become effective upon entry of the Court’s order on that motion. *See* Fed. R. App. P. 4(a)(4)(B)(i).<sup>1</sup>

Included herewith is payment of the Notice of Appeal fee (\$505.00) as required by 28 U.S.C. § 1917, Fed. Cir. R. 52(a)(3)(A), and Fed. R. App. P. 3(e).

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<sup>1</sup> “If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” Fed. R. App. P. 4(a)(4)(B)(i).

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Rodger D. Smith II*

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September 4, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on September 4, 2015, upon the following in the manner indicated:

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