**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TEVA PHARMACEUTICALS USA, INC., MCKESSON CORPORATION, AMERISOURCEBERGEN DRUG CORPORATION, CARDINAL HEALTH, INC., CARDINAL HEALTH 6 INC., CARDINAL HEALTH TECHNOLOGIES LLC, CARDINAL HEALTH 108 LLC d/b/a METRO MEDICAL SUPPLY, CEPHALON, INC., ENDO HEALTH SOLUTIONS INC., ENDO PHARMACEUTICALS INC., ALLERGAN USA, INC., ALLERGAN FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC., ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC., ACTAVIS LLC, and MALLINCKRODT, LLC,

Petitioners,

v.

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the County of Washoe, and the HONORABLE BARRY L. BRESLOW, DISTRICT JUDGE,

Respondents,

and

CITY OF RENO,

Real Party in Interest.

Supreme Court Case No.

District Court Case No. CV18-01895



**PETITIONERS' APPENDIX**
**VOLUME XII**

PAT LUNDVALL (NSBN 3761)
AMANDA C. YEN (NSBN 9726)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Fax: (702) 873-9966
plundvall@mcdonaldcarano.com
ayen@mcdonaldcarano.com

JOHN D. LOMBARDO
JAKE R. MILLER
ARNOLD & PORTER KAYE SCHOLER LLP
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Fax: (213) 243-4199
john.lombardo@arnoldporter.com
jake.miller@arnoldporter.com
*Pro Hac Vice*

*Attorneys for Petitioners*
*Endo Pharmaceuticals Inc. and Endo Health Solutions Inc.*

## CHRONOLOGICAL INDEX TO PETITIONERS' APPENDIX

| DATE | DOCUMENT | VOLUME | PAGE RANGE | |
|---|---|---|---|---|
| 12/7/2017 | Complaint and Demand for Jury Trial (Case No. A-17-765828-C) | I | PA00001 | PA00050 |
| 5/15/2018 | First Amended Complaint and Demand for Jury Trial (Case No. A-17-765828-C) | I | PA00051 | PA00109 |
| 9/18/2018 | Complaint (Case No. CV18-01895) | II | PA00110 | PA00167 |
| 12/03/2018 | First Amended Complaint (Case No. CV18-01895) | II | PA00168 | PA00226 |
| 3/4/2019 | Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint | III | PA00227 | PA00264 |
| 3/5/2019 | Distributors' Joint Motion to Dismiss First Amended Complaint | III | PA00265 | PA00386 |
| 4/26/2019 | City of Reno's Opposition to Manufacturer Defendants' Joint Motion to Dismiss and All Joinders Thereto | IV-V | PA00387 | PA00709 |
| 4/26/2019 | City of Reno's Opposition to Distributor Defendants' Joint Motion to Dismiss and All Joinders | VI-VII | PA00710 | PA00958 |
| 5/28/2019 | Reply in Support of Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint | VIII-IX | PA00959 | PA01214 |
| 5/28/2019 | Distributors' Joint Reply in Support of Motion to Dismiss First Amended Complaint | X | PA01215 | PA01285 |

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|---|---|---|---|---|
| 6/17/2019 | Complaint (Case No. A-19-796755-B) | XI-XII | PA01286 | PA01535 |
| 6/27/2019 | First Amended Complaint (Case No. A-19-796755-B) | XIII-XV | PA01536 | PA02049 |
| 7/3/2019 | Order Directing Answer (Case No. 79002) | XVI | PA02050 | PA02052 |
| 8/22/2019 | Complaint (Case No. A-19-800695-B) | XVI | PA02053 | PA02144 |
| 8/22/2019 | Complaint (Case No. A-19-800697-B) | XVI | PA02145 | PA02235 |
| 8/22/2019 | Complaint (Case No. A-19-800699-B) | XVII | PA02236 | PA02326 |
| 9/12/2019 | Third Amended Complaint and Demand for Jury Trial (Case No. A-17-76828-C) | XVII | PA02327 | PA02423 |
| 9/13/2019 | City of Reno's Supplemental Briefing in Support of Oppositions to Defendants' Motions to Dismiss | XVIII | PA02424 | PA02560 |
| 10/4/2019 | Distributors' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss | XVIII | PA02561 | PA02566 |
| 10/4/2019 | Manufacturer Defendants' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss | XVIII | PA02567 | PA02587 |
| 10/21/2019 | Order Dismissing Petition (Case No. 79002) | XVIII | PA02588 | PA02591 |

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| 1/4/2020 | City of Reno's Supplemental Briefing in Support of Oppositions to Distributors' Joint Motion to Dismiss | XVIII | PA02592 | PA02602 |
| 1/7/2020 | Transcript of Proceedings | XIX-XX | PA02603 | PA02871 |
| 1/8/2020 | Transcript of Proceedings | XXI | PA02872 | PA03034 |
| 2/14/2020 | Omnibus Order Granting In Part and Denying in Part Defendants' Motions to Dismiss; and Granting Leave to Amend | XXI | PA03035 | PA03052 |

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| 8/22/2019 | Complaint (Case No. A-19-800699-B) | XVII | PA02236 | PA02326 |
| 9/18/2018 | Complaint (Case No. CV18-01895) | II | PA00110 | PA00167 |
| 12/7/2017 | Complaint and Demand for Jury Trial (Case No. A-17-765828-C) | I | PA00001 | PA00050 |
| 3/5/2019 | Distributors' Joint Motion to Dismiss First Amended Complaint | III | PA00265 | PA00386 |
| 5/28/2019 | Distributors' Joint Reply in Support of Motion to Dismiss First Amended Complaint | X | PA01215 | PA01285 |
| 10/4/2019 | Distributors' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss | XVIII | PA02561 | PA02566 |
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| 1/7/2020 | Transcript of Proceedings | XIX-XX | PA02603 | PA02871 |
| 1/8/2020 | Transcript of Proceedings | XXI | PA02872 | PA03034 |

## AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that Petitioners' Appendix Volume XII does not contain the social security number of any person.

Dated this 1st day of May, 2020.

McDONALD CARANO LLP

By: */s/Pat Lundvall*

PAT LUNDVALL (NSBN 3761)
AMANDA C. YEN (NSBN 9726)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Fax: (702) 873-9966
plundvall@mcdonaldcarano.com
ayen@mcdonaldcarano.com

John D. Lombardo
Jake R. Miller
ARNOLD & PORTER
KAYE SCHOLER LLP
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Fax: (213) 243-4199
john.lombardo@arnoldporter.com
jake.miller@arnoldporter.com
*Pro Hac Vice*

*Attorneys for Petitioners*
*Endo Pharmaceuticals Inc. and*
*Endo Health Solutions Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 1st day of May, 2020, a copy of the foregoing Petitioners' Appendix Volume XII was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex) and served via U.S. Mail, postage prepaid, on the following individuals:

Robert T. Eglet
Robert Adams
Richard K. Hy
Cassandra S.M. Cummings
Eglet Prince
400 S. 7th Street, 4th Floor
Las Vegas, Nevada 89101

Bill Bradley
Bradley, Drendel & Jeanney
6900 S. McCarran Blvd., Suite 2000
Reno, Nevada 89509

*Attorneys for Plaintiff City of Reno*

Steve Morris
Rosa Solis-Rainey
Morris Law Group
411 E. Bonneville Ave., Suite 360
Las Vegas, Nevada 89101

Nathan E. Shafroth
Covington & Burling LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533

*Attorneys for Defendant McKesson Corporation*

Rand Family Care, LLC
c/o Robert Gene Rand, M.D.
3901 Klein Blvd.
Lompoc, California 93436

Robert Gene Rand, M.D.
3901 Klein Blvd.
Lompoc, California 93436

Philip M. Hymanson, Esq.
Hymanson & Hymanson PLLC
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Steven A. Reed, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Collie F. James, IV, Esq.
Adam D. Teichter, Esq.
Morgan, Lewis & Bockius LLP
600 Anton Blvd., Ste. 1800
Costa Mesa, CA 92626-7653

Brian M. Ercole, Esq.
Morgan, Lewis & Bockius LLP
200 South Biscayne Blvd., Suite 5300
Miami, FL 33131

*Attorneys for Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.*

Lawrence J. Semenza III
Christopher D. Kircher
Jarrod L. Rickard
Katie L. Cannata
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Steven J. Boranian
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, California 94105

Sarah B. Johansen, Esq.
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, California 90071

Rachel B. Weil
Reed Smith LLP
Three Logan Square
1717 Arch Street. Suite 3100
Philadelphia, Pennsylvania 19103

*Attorneys for Defendant AmerisourceBergen Drug Corporation*

Steven E. Guinn
Ryan W. Leary
Laxalt & Nomura, LTD.
9790 Gateway Dr., Suite 200
Reno, Nevada 89521

Rocky Tsai
Ropes & Gray LLP
Three Embarcadero Center
San Francisco, California 94111-4006

*Attorneys for Defendant Mallinckrodt LLC; Mallinckrodt US Holdings, Inc.*

Daniel F. Polsenberg
J. Christopher Jorgensen
Joel D. Henriod
Abraham G. Smith
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy
Suite 600
Las Vegas, Nevada 89169-5996

Suzanne Marguerite Salgado
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington D.C. 20005

*Attorneys for Defendants Cardinal Health, Inc.; Cardinal Health 6 Inc.; Cardinal Health Technologies LLC; Cardinal Health 108 LLC d/b/a Metro Medical Supply*

Max E. Corrick II
Olson Cannon Gormley &
Stoberski
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorney for Defendants Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. and Allergan USA, Inc.*

In addition, in compliance with NRAP 21(a)(1) and Administrative Order 2020-05, a copy of this Petitioners' Appendix Volume XII was served upon the Honorable Barry Breslow, District Judge via electronic service and email to Christine.Kuhl@washoecourts.us.

By: /s/ Pat Lundvall
An Employee of McDonald Carano LLP

frequent orders placed by pharmacies, some of them knowingly supplying the drug rings." "Instead, the DEA officials said, the company raised its own self-imposed limits, known as thresholds, on orders from pharmacies and continued to ship increasing amounts of drugs in the face of numerous red flags."

725. Since at least 2002, Purdue has maintained a database of health care providers suspected of inappropriately prescribing OxyContin or other opioids. Physicians could be added to this database based on observed indicators of illicit prescribing such as excessive numbers of patients, cash transactions, patient overdoses, and unusual prescribing of the highest-strength pills (80 mg OxyContin pills or "80s," as they were known on the street, were a prime target for diversion). Purdue claims that health care providers added to the database no longer were detailed, and that sales representatives received no compensation tied to these providers' prescriptions.

726. Yet, Purdue failed to cut off these providers' opioid supply at the pharmacy level— meaning Purdue continued to generate sales revenue from their prescriptions—and failed to report these providers to state medical boards or law enforcement. Purdue's former senior compliance officer acknowledged in an interview with the *Los Angeles Times* that in five years of investigating suspicious pharmacies, the company never stopped the supply of its opioids to a pharmacy, even where Purdue employees personally witnessed the diversion of its drugs.

727. The same was true of prescribers. For example, as discussed above, despite Purdue's knowledge of illicit prescribing from one Los Angeles clinic which its district manager called an "organized drug ring" in 2009, Purdue did not report its suspicions until long after law enforcement shut it down and not until the ring prescribed more than 1.1 million OxyContin tablets.

728. Indeed, the New York Attorney General found that Purdue placed 103 New York health care providers on its "No-Call" List between January 1, 2008 and March 7, 2015, and that Purdue's sales representatives had continued to detail approximately two-thirds of these providers, some quite extensively, making more than a total of 1,800 sales calls to their offices

over a six- year period.

729. As all of the governmental actions against the Defendants show, Defendants knew that their actions were unlawful, and yet deliberately refused to change their practices because compliance with their legal obligations would have decreased their sales and their profits.

730. Meanwhile, despite the State's efforts to limit the impact of the crisis, the opioid epidemic rages unabated in Nevada.

731. The epidemic still rages because the fines and suspensions imposed by the DEA do not change the conduct of the industry. They pay fines as a cost of doing business in an industry that generates billions of dollars in annual revenue. They hold multiple DEA registration numbers and when one facility is suspended, they simply ship from another facility.

732. The Defendants have knowingly abandoned their duties imposed under Nevada law and federal law that is incorporated therein, taken advantage of a lack of DEA law enforcement in Nevada, and abused the privilege of distributing controlled substances in this community.

## V. LEGAL CAUSES OF ACTION

### FIRST CAUSE OF ACTION

### NRS § 202 *et seq.* and common law (Against all Defendants)

733. The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

734. The Attorney General may bring an action to abate a public nuisance in the name of the State under NRS § 202.480.

735. Defendants, individually and in concert with each other, have contributed to and/or assisted in creating and maintaining a condition that is harmful to the health of thousands of Nevada residents and which interferes with the enjoyment of life in violation of Nevada law.

736. Defendants have acted unlawfully and failed to perform their duties imposed by state and federal statutes, as well as common law, which have annoyed, injured, and endangered the safety, health, comfort, or repose of the residents of the State of Nevada.

737. Prescription opioid abuse, addiction, morbidity, and mortality are a public nuisance in Nevada, which, despite the State's efforts, remains unabated. The unlawful conduct by the Defendants as described herein has created these hazards to public health and safety.

738. The health and safety of the citizens of the State, including those who use, have used or will use opioids, as well as those affected by users of opioids, is a matter of great public interest and of legitimate concern to the State's citizens and residents.

739. The public nuisance created by Defendants' actions is substantial and unreasonable - it has caused and continues to cause significant harm to the community, and the harm inflicted outweighs any offsetting benefit.

740. Defendants knew, or should have known, that their promotion and irresponsible distribution of opioids (in violation of their monitoring and reporting obligations) would create a public nuisance.

741. Defendants' actions were, at the least, a substantial factor in opioids becoming widely available and widely used.

742. Defendants' actions were, at the least, a substantial factor in doctors and patients not accurately assessing and weighing the risks and benefits of opioids for chronic pain.

743. Without Defendants' actions, opioid use would not have become so widespread, and the enormous public health hazard of opioid overuse, abuse, and addiction that now exists would have been averted.

744. Defendants, each of them, have contributed to, and/or assisted in creating and maintaining a condition that is harmful to the health of Nevada citizens or interferes with the comfortable enjoyment of life.

745. The public nuisance created by Defendants' actions is substantial and unreasonable. It has caused and continues to cause significant harm to the community and the

harm inflicted outweighs any offsetting benefit. The staggering rates of opioid use resulting from Defendants' marketing efforts have caused harm to the community, and the health and safety of those individuals in Nevada, including those who use, have used, or will use opioids, as well as those affected by users of opioids, is a matter of great public interest and of legitimate concern.

746. Defendants' conduct has affected and continues to affect a considerable number of people within the State and is likely to continue to cause significant harm to chronic pain patients who take opioids, their families, and the community at large.

747. That at all times hereinafter mentioned, upon information and belief, the above-described culpable conduct by Defendants was a proximate cause of injuries sustained by Plaintiff and that Plaintiff will continue to suffer if the nuisance is not abated.

748. That as a result of the aforesaid occurrence, Plaintiff has suffered extensive harm as a result of Defendants' conduct and will continue to suffer such harm if the nuisance is not abated.

749. The opioid crisis is an unreasonable interference with the right to public health and public safety – which are rights common to the public as a whole.

750. Defendants' conduct constitutes a public nuisance and, if unabated, will continue to threaten the health, safety and welfare of the State's residents, creating an atmosphere of fear and addiction that tears at the residents' sense of well-being and security. The State has a clearly ascertainable right to abate conduct that perpetuates this nuisance

751. Defendants' actions created and expanded and/or assisted in the creation and expansion of the abuse of opioids, which are dangerously addictive, and the ensuing associated plague of prescription opioid and heroin addiction. Defendants knew the dangers to public health and safety that diversion of opioids would create in Nevada, however, Defendants intentionally and/or unlawfully failed to maintain effective controls against diversion through proper monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants intentionally and/or unlawfully distributed opioids without reporting or refusing to fill

suspicious orders or taking other measures to maintain effective controls against diversion. Defendants intentionally and/or unlawfully continued to ship and failed to halt suspicious orders of opioids. Such actions were inherently dangerous.

752. Defendants knew the prescription opioids have a high likelihood of being diverted. It was foreseeable to Defendants that where Defendants distributed prescription opioids without maintaining effective controls against diversion, including monitoring, reporting, and refusing shipment of suspicious orders, that the opioids would be diverted, and create an opioid abuse nuisance in Nevada.

753. Defendants acted recklessly, negligently and/or carelessly, in breach of their duties to maintain effective controls against diversion, thereby creating an unreasonable risk of harm.

754. Defendants acted with malice, actual or implied, because Defendants acted with a conscious disregard for the rights and safety of other persons, and said actions have a great probability of causing substantial harm.

755. The damages available to the Plaintiff include, inter alia, abatement costs to stop the rise of damages from an ongoing and persistent public nuisance. Plaintiff seeks all damages flowing from Defendants' conduct as it relates to the increase in Medicaid payments arising out of the opioid epidemic and the thousands, if not millions, of incidents of deceptive trade practices by Defendants within the State. Plaintiff further seeks to abate the nuisance and harm created by Defendants' conduct.

756. The State seeks to abate the nuisance created by the Defendants' unreasonable, unlawful, intentional, ongoing, continuing, and persistent interference with a right common to the public.

757. The public nuisance created by Defendants' actions is foreseeable, substantial, and unreasonable it has caused and continues to cause significant harm to the community, and the harm inflicted outweighs any offsetting benefit. The staggering rates of opioid and heroin use resulting from the Distributor Defendants' abdication of their gate-keeping duties, and the

Manufacturer Defendants' deceptive marketing activities, have caused harm to the entire community that includes, but is not limited to:

a. The high rates of use leading to unnecessary opioid abuse, addiction, overdose, injuries, and deaths.

b. Nor have children escaped the opioid epidemic unscathed. Easy access to prescription opioids made opioids a recreational drug of choice among Nevada teenagers. Even infants have been born addicted to opioids due to prenatal exposure, causing severe withdrawal symptoms and lasting developmental impacts.

c. Even those State residents who have never taken opioids have suffered from the public nuisance arising from Defendants' abdication of their gate-keeper duties and deceptive promotions. Many residents have endured both the emotional and financial costs of caring for loved ones addicted to or injured by opioids, and the loss of companionship, wages, or other support from family members who have used, abused, become addicted to, overdosed on, or been killed by opioids.

d. The opioid epidemic has increased health care costs.

e. Employers have lost the value of productive and healthy employees.

f. Defendants' conduct created an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury.

g. Defendants' dereliction of duties and/or fraudulent misinformation campaign pushing dangerous drugs resulted in a diverted supply of narcotics to sell, and the ensuing demand of addicts to buy them. More pills sold by Defendants led to more addiction, with many addicts turning from prescription pills to heroin. People addicted to opioids frequently require increasing levels of opioids, and many turned to heroin as a foreseeable result.

h. The diversion of opioids into the secondary criminal market and the increased number of individuals who abuse or are addicted to opioids increased the demands on the State's Medicaid program.

i. The significant and unreasonable interference with the public rights caused by Defendants' conduct taxed the human, medical, public health, law enforcement, and financial resources of the State.

j. Defendants' interference with the comfortable enjoyment of life in Nevada is unreasonable because there is no social utility to opioid diversion and abuse, and any potential value is outweighed by the gravity of the harm inflicted by

Defendants' actions.

758. The State has sustained specific and special injuries because its damages include *inter alia* the increase in demands on the State's Medicaid program, as described in this Complaint.

759. Plaintiff, the State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, abatement of the public nuisance, payment to the State of monies necessary to abate the public nuisance, all damages as allowed by law, attorney fees and costs, and pre- and post-judgment interest.

760. The continued tortious conduct by the Defendants causes a repeated or continuous injury. The damages have not occurred all at once but have increased as time progresses. The tort is not completed nor have all the damages been incurred until the wrongdoing ceases. The State has taken efforts to abate the nuisance, but because the wrongdoing is ongoing, the public nuisance remains unabated.

761. Therefore, Plaintiff's claims are subject to equitable tolling, stemming from Defendants' wrongful concealment and from Plaintiff's inability to obtain vital information underlying its claims.

762. That Plaintiff has been required to prosecute this action and is entitled to attorneys' fees and costs as provided by Nevada statute.

763. That Plaintiff's general, special and punitive damages are in amounts in excess of $15,000.00.

**SECOND CAUSE OF ACTION**
**VIOLATION OF NEVADA DECEPTIVE TRADE PRACTICES ACT (NRS §§ 598.0903 to 598.0999)**

764. The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

765. At all times relevant herein, the Defendants violated the Nevada Deceptive

Trade Practices Act, §§ 598.0903 to 598.0999, by repeatedly and willfully committing deceptive acts or practices, and unconscionable trade practices, in the conduct of commerce, both of which are violations of the Act.

766. The Attorney General is authorized to bring an action in the name of the State to remedy violations of the Deceptive Trade Practices Act. NRS §§ 598.0999. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NRS § 598.0915(5).

767. Because Defendants' knowingly made false representations as to the characteristics, uses, and benefits of opioids, they violated the Nevada Deceptive Trade Practices Act.

768. The Distributor Defendants willfully committed deceptive trade practices because of false representations as well as omission of material facts. *See* NRS § 598.0915(5); *see also*§§ 598.0915(2) ("[k]knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale…"), 598.0915(3) ("[k]knowingly makes a false representation as to affiliation, connection, association with or certification by another person"), and 598.0915(15) ("[k]nowingly makes any other false representation in a transaction").

769. The Distributor Defendants knowingly failed to disclose the material facts that *inter alia* they were not in compliance with laws and regulations requiring that they maintain a closed distribution system, protect against addiction and severe harm, and specifically monitor, investigate, report, and refuse suspicious orders. The Distributor Defendants knowingly misrepresented to regulators and the public that their distribution services and methods for preventing diversion were safe and effective when they were not. But for these knowing and material factual misrepresentations and omissions, the Distributor Defendants would not have been able to receive and renew licenses to sell opioids.

770. As alleged herein, each Manufacturer Defendant, at all times relevant to this Complaint, violated the Deceptive Trade Practices Act by committing deceptive trade practices

by representing that the opioid prescription pills "have … characteristics, … uses, [or] benefits …" that they do not have. NRS § 598.0915(5).

771. The Manufacturer Defendants committed further deceptive trade practices by causing confusion or misunderstanding as to what their drugs were actually approved or certified to be used for. NRS § 598.0915(2).

772. The Manufacturer Defendants and Distributor Defendants committed further deceptive trade practices by making "false representation as to [their] affiliation, connection, association with or certification" of opioids by the other Defendants. NRS § 598.0915(3)

773. The Manufacturer Defendants committed further deceptive trade practices by creating and widely disseminating misleading research studies and marketing literature written to resemble research studies without disclosing that the creators of those materials were affiliated, connected with, or associated with the Manufacturer Defendants. NRS § 598.0915(3).

774. The Manufacturer Defendants committed further deceptive trade practices by representing that the opioids were safe and effective when such representations were untrue, false, and misleading. NRS § 598.0915(15)

775. The Manufacturer Defendants committed further deceptive trade practices by disparaging competing products like NSAIDs by misleading consumers into believing that opioids were a safer option. NRS § 598.0915(8).

776. The Manufacturer Defendants committed further deceptive trade practices by using exaggeration and/or ambiguity as to material facts and omitting material facts, which had a tendency to deceive and/or did in fact deceive. NRS § 598.0915(15).

777. The Manufacturer Defendants made deceptive representations about the use of opioids to treat chronic non-cancer pain. Each Manufacturer Defendant also omitted or concealed material facts and failed to correct prior misrepresentations and omissions about the risks and benefits of opioids. Each Defendant's omissions rendered even their seemingly truthful statements about opioids deceptive.

778. On or after May 8, 2007, Defendant Purdue made and/or disseminated deceptive statements, including, but not limited to, the following:

a. Creating, sponsoring, and assisting in the distribution of patient education materials distributed to Nevada consumers that contained deceptive statements;

b. Upon information and belief, within Nevada, distributing materials that contained deceptive statements concerning the ability of opioids to improve function long-term and concerning the evidence supporting the efficacy of opioids long-term for the treatment of chronic non-cancer pain;

c. Disseminating misleading statements nationally that reached doctors and prescribers within Nevada concealing the true risk of addiction and promoting the deceptive concept of pseudoaddiction through Purdue's own unbranded publications and on internet sites Purdue operated that were marketed to and accessible by consumers, including consumers in Nevada;

d. Distributing brochures to doctors, patients, and law enforcement officials nationally, and upon information and belief, in Nevada, that included deceptive statements concerning the indicators of possible opioid abuse;

e. Sponsoring, directly distributing, and assisting in the distribution of publications nationally that were available and distributed to doctors within Nevada, that promoted the deceptive concept of pseudoaddiction, even for high-risk patients;

f. Endorsing, directly distributing, and assisting in the distribution of publications nationally that were distributed, upon information and belief, to doctors within Nevada, that presented an unbalanced treatment of the long-term and dose-dependent risks of opioids versus NSAIDs;

g. Providing significant financial support to pro-opioid KOL doctors who made deceptive statements, available to doctors and patients in Nevada, concerning the use of opioids to treat chronic non-cancer pain;

h. Providing needed financial support to pro-opioid pain organizations that made deceptive statements, including in patient education materials available nationally, and upon information and belief, in Nevada, concerning the use of opioids to treat chronic non-cancer pain;

i. Assisting in the distribution of guidelines nationally and within Nevada, that

contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction;

j. Endorsing and assisting in the distribution of CMEs, attended by or made available to doctors licensed in Nevada, containing deceptive statements concerning the use of opioids to treat chronic non-cancer pain;

k. Developing and disseminating scientific studies nationally, and upon information and belief, within Nevada that misleadingly concluded opioids are safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improve quality of life, while concealing contrary data;

l. Assisting in the dissemination of literature nationally and within Nevada, written by pro-opioid KOLs that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain;

m. Creating, endorsing, and supporting the distribution of patient and prescriber education materials nationally, and upon information and belief, within Nevada, that misrepresented the data regarding the safety and efficacy of opioids for the long-term treatment of chronic non-cancer pain, including known rates of abuse and addiction and the lack of validation for long-term efficacy;

n. Targeting veterans nationally, and upon information and belief, in Nevada, by sponsoring and disseminating patient education marketing materials that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain;

o. Targeting the elderly nationally, and upon information and belief, in Nevada, by assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction in this population;

p. Exclusively disseminating misleading statements in education materials to Nevada hospital doctors and staff while purportedly educating them on new pain standards;

q. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to Nevada prescribers through in-person detailing; and

r. Withholding from Nevada law enforcement the names of prescribers Purdue believed to be facilitating the diversion of its products, while simultaneously marketing opioids to these doctors by disseminating patient and prescriber education materials and advertisements and CMEs they knew would reach these same prescribers.

779. Defendant Actavis made and/or disseminated deceptive statements, including, but not limited to, the following:

a. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to Nevada prescribers through in-person detailing;

b. Creating and disseminating advertisements nationally and, upon information and belief, in Nevada, that contained deceptive statements that opioids are safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improve quality of life;

c. Creating and disseminating advertisements nationally and, upon information and belief, in Nevada, that concealed the risk of addiction in the long-term treatment of chronic, non-cancer pain; and

d. Developing and disseminating scientific studies nationally that reached doctors and prescribers in Nevada, that deceptively concluded opioids are safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improve quality of life while concealing contrary data.

780. Defendant Mallinckrodt made and/or disseminated deceptive statements, including, but not limited to, the following:

a. Creating, sponsoring, and assisting in the distribution of patient education materials throughout the United States—including, upon information and belief, Nevada prescribers—that contained deceptive statements;

b. Sponsoring and assisting in the distribution of publications that promoted the deceptive concept of pseudoaddiction, even for high-risk patients throughout the United States— including, upon information and belief, in Nevada;

c. Providing significant financial support to pro-opioid KOL doctors who made deceptive statements concerning the use of opioids that, upon information and belief, reached Nevada doctors and prescribers, to treat chronic non-cancer pain and breakthrough chronic non-cancer pain; and

d. Providing needed financial support to pro-opioid pain organizations that made deceptive statements, including in patient education materials that, upon information and belief, reached Nevada doctors and prescribers, concerning the use of opioids to treat chronic non-cancer pain.

781. Defendant Insys made and/or disseminated untrue, false and deceptive

statements, including, but not limited to, the following:

a. Providing significant financial support to pro-opioid doctors who made deceptive statements concerning the use of opioids to treat chronic non-cancer pain and breakthrough chronic non-cancer pain;

b. Providing significant financial support to doctors who increased the dosage amount and number of prescriptions they made for Subsys;

c. Directing its marketing of Subsys to a wide range of doctors who were not oncologists, and promoting the drug for off-label uses like back and neck pain;

d. Making deceptive statements concerning the use of Subsys to treat chronic non-cancer pain to prescribers throughout the United States—including, upon information and belief, Nevada prescribers—through in-person detailing and speakers bureau events, when such uses are unapproved and unsafe; and

e. Making deceptive statements to insurers and pharmacy benefit managers, including misrepresenting that they were the patients' health care provider calling to get prior authorization from the payor for the prescription, and falsely and intentionally implying or stating that the patient had cancer when the patient did not.

782. Defendants' deceptive and unconscionable representations, concealments, and omissions were knowingly made in connection with the sale of opioids, were reasonably calculated to deceive the State, the Nevada Board of Pharmacy and Nevada consumers, were statements that may deceive or tend to deceive, were willfully used to deceive the State, Nevada Board of Pharmacy and Nevada consumers, and did in fact deceive the State, the Nevada Board of Pharmacy, and Nevada consumers, who paid for prescription opioids for chronic pain.

783. As described more specifically above, Defendants' representations, concealments, and omissions constitute a willful course of conduct which continues to this day. Unless enjoined from doing so, the Manufacturer and Distributor Defendants will continue to violate the Nevada Deceptive Trade Practices Act.

784. But for these deceptive representations and concealments of material fact and material omissions, Nevada consumers would not have incurred millions of dollars in damages, including without limitation the costs of harmful drugs.

785. Defendants' deceptive trade practices are willful and subject to a civil penalty and equitable relief. NRS § 598.0971.

786. Defendants' deceptive trade practices toward the elderly are willful and subject to additional civil penalties and equitable relief. NRS § 598.0973.

787. Each exposure of a Nevada resident to opioids resulting from the aforementioned conduct of each and all Defendants constitutes a separate violation of the Deceptive Trade Practices Act.

788. Each and every prescription filled by the Distributor Defendants that was part of a suspicious order or in violation of their duties under the Nevada Controlled Substances Act constitutes a separate violation of the Deceptive Trade Practices Act on the part of the Distributor Defendants.

789. Each exposure of a state employee or contractor, Nevada health care professional or Nevada patient to the Manufacturer Defendants' misleading and deceptive information regarding opioids, including *inter alia* through print information, websites, presentations, brochures, or packaging, constitutes a separate violation pursuant to the Deceptive Trade Practices Act.

790. Plaintiff, State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, abatement, reimbursement of all monies paid for prescription opioids by the State of Nevada via its Medicaid program, damages as allowed by law, all recoverable penalties under all sections of the Deceptive Trade Practices Act including all civil penalties per each violation per each Defendant named in this Count, attorney fees and costs, and pre- and post-judgment interest

**THIRD CAUSE OF ACTION**
**VIOLATION OF THE NEVADA RACKETEERING ACT (NRS §§ 207.350 TO 207.520) (AGAINST DEFENDANTS PURDUE AND THE SACKLER DEFENDANTS, MALLINCKRODT, ACTAVIS, MCKESSON, CARDINAL, AND AMERISOURCEBERGEN)**

792. The State re-alleges all prior paragraphs of this Complaint as if set forth fully

herein.

793. The State, both as a "person" who has sustained injury ***and*** on behalf of Nevada citizens who have been injured, brings this claim for civil remedies under the Racketeering Act, NRS §§ 207.350 to 207.520, against the following Defendants, as defined above: Purdue and the Sackler Defendants, Mallinckrodt, Actavis, McKesson, Cardinal, and AmerisourceBergen (collectively, for purposes of this Count, the "Racketeering Defendants"). The Attorney General has the specific statutory authority to bring this action pursuant to NRS §§ 207.415 and 207.490.

794. The Racketeering Defendants conducted and continue to conduct their business through legitimate and illegitimate means in the form of a criminal syndicate or enterprise as defined by NRS §§ 207.370 and 207.380. At all relevant times, the Racketeering Defendants were "persons" under NRS § 0.039 and are included in the definition stating that a person is "any form of business or social organization…including, but not limited to, a corporation, partnership, association, trust or unincorporated organization."

795. Section 207.400 of the Racketeering Act makes it unlawful "for a person….employed by or associated with any enterprise to conduct or participate, directly or indirectly, in: (1) The affairs of the enterprise through racketeering activity; or (2) Racketeering activity through the affairs of the enterprise." NRS § 207.400(1)(c).

796. The term "enterprise" is defined as including a "sole proprietorship, partnership, corporation, business trust or other legal entity" as well as a "union, association or other group of persons associated in fact although not a legal entity." The definition includes "illicit as well as licit enterprises and governmental as well as other entities." NRS § 207.380.

797. For over a decade, the Racketeering Defendants aggressively sought to bolster their revenue, increase profit, and grow their share of the prescription painkiller market by unlawfully and surreptitiously increasing the volume of opioids they sold. However, the Racketeering Defendants are not permitted to engage in a limitless expansion of their market through the unlawful sales of regulated painkillers. As "registrants," the Racketeering

Defendants operated and continue to operate within the nationwide "closed-system" created under the Controlled Substances Act, 21 USC § 821, *et seq*. (the "CSA") and the Nevada Controlled Substances Act, §§ 453.005 to 453.730. Together, the CSA and Nevada Controlled Substances Act restrict the Racketeering Defendants' ability to manufacture or distribute Schedule II substances like opioids nationally and in Nevada by requiring them to: (1) register to manufacture or distribute opioids; (2) maintain effective controls against diversion of the controlled substances that they manufacturer or distribute; (3) design and operate a system to identify suspicious orders of controlled substances, halt such unlawful sales, and report them to the DEA, the Nevada Pharmacy Board, and the FDA; and (4) make sales within a limited quota set by the DEA for the overall production of Schedule II substances like opioids.

798. The nationwide closed-system, including the establishment of quotas, was specifically intended to reduce or eliminate the diversion of Schedule II substances like opioids from "legitimate channels of trade" to the illicit market by controlling the quantities of the basic ingredients needed for the manufacture of [controlled substances]."[232]

799. Finding it impossible to legally achieve their ever increasing sales ambitions, members of the Opioid Diversion Enterprise (as defined below) systematically and fraudulently violated their duty under Nevada law to maintain effective controls against diversion of their drugs, to design and operate a system to identify suspicious orders of their drugs, to halt unlawful sales of suspicious orders, and to notify the DEA, the Nevada Board of Pharmacy, and the FDA of suspicious orders.[233] As discussed in detail below, through the Racketeering Defendants' scheme, members of the Opioid Diversion Enterprise repeatedly engaged in unlawful sales of painkillers which, in turn, artificially and illegally increased the annual production quotas throughout the United States for opioids allowed by the DEA.[282] In doing so, the Racketeering Defendants allowed hundreds of millions of pills to enter the illicit market

[232] 1970 U.S.C.C.A.N. 4566 at 5490; *see also* Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United States Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).
[233] 21 USC § 823(a)(1), (b)(1); 21 CFR § 1301.74(b)-(c).

which allowed them to generate obscene profits.

800. Defendants' illegal scheme was hatched by an association-in-fact enterprise between the Manufacturer Defendants and the Distributor Defendants, and executed in perfect harmony by each of them. In particular, each of the Racketeering Defendants were associated with, and conducted or participated in, the affairs of the racketeering enterprise (defined below and referred to collectively as the "Opioid Diversion Enterprise"), whose purpose was to engage in the unlawful sales of opioids, and to deceive the public, and federal and state regulators into believing that the Racketeering Defendants were faithfully fulfilling their statutory obligations. The Racketeering Defendants' scheme allowed them to make billions in unlawful sales of opioids and, in turn, increase and/or maintain high production quotas with the purpose of ensuring unlawfully increasing revenues, profits, and market share. As a direct result of the Racketeering Defendants' fraudulent scheme, course of conduct, and pattern of racketeering activity, they were able to extract billions of dollars of revenue from the addicted American public, while entities like the State of Nevada experienced tens of millions of dollars of injury caused by the reasonably foreseeable consequences of the prescription opioid addiction epidemic. As explained in detail below, the Racketeering Defendants' misconduct violated § 207.400 of the Racketeering Act and the State is entitled to treble damages for its injuries under NRS § 207.410.

801. Alternatively, the Racketeering Defendants were members of a legal entity enterprise within the meaning of NRS § 207.380 through which the Racketeering Defendants conducted their pattern of racketeering activity in Nevada and throughout the United States. Specifically, the Healthcare Distribution Alliance (the "HDA")[234] is a distinct legal entity that satisfies the definition of a racketeering enterprise. The HDA is a non-profit corporation formed under the laws of the District of Columbia and doing business in Virginia. As a non-profit corporation, HDA qualifies as an "enterprise" within the definition set out in § 207.380 because it is a corporation and a legal entity.

[234] Health Distribution Alliance, History, Health Distribution Alliance, (last accessed on September 15, 2017), https://www.healthcaredistribution.org/about/hda-history.

802. On information and belief, each of the Racketeering Defendants is a member, participant, and/or sponsor of the HDA and utilized the HDA to conduct the Opioid Diversion Enterprise and to engage in the pattern of racketeering activity that gives rise to the Count.

803. Each of the Racketeering Defendants is a legal entity separate and distinct from the HDA. And, the HDA serves the interests of distributors and manufacturers beyond the Racketeering Defendants. Therefore, the HDA exists separately from the Opioid Diversion Enterprise, and each of the Racketeering Defendants exists separately from the HDA. Therefore, the HDA may serve as a racketeering enterprise.

804. The legal and association-in-fact enterprises alleged in the previous and subsequent paragraphs were each used by the Racketeering Defendants to conduct the Opioid Diversion Enterprise by engaging in a pattern of racketeering activity. Therefore, the legal and association- in-fact enterprises alleged in the previous and subsequent paragraphs are pleaded in the alternative and are collectively referred to as the "Opioid Diversion Enterprise."

**A. <u>THE OPIOID DIVERSION ENTERPRISE</u>**

805. Throughout the United States—and within the State of Nevada—the Racketeering Defendants have operated at all relevant times under a "closed distribution system" of quotas that governs the production and distribution of prescription opioid drugs. The Opioids Diversion Enterprise is an ongoing and continuing business organization that created and maintained systemic links for a common purpose: To protect and maximize their profitability under this quota system through the unlawful sale of opioids. The Racketeering Defendants participated in the Opioids Diversion Enterprise through a pattern of racketeering activity, which includes multiple violations of Nevada state criminal law.

806. Recognizing that there is a need for greater scrutiny over controlled substances due to their potential for abuse and danger to public health and safety, the United States Congress enacted the Controlled Substances Act in 1970.[235] The CSA and its implementing

[235] Joseph T. Rannazzisi Decl. ¶4, *Cardinal Health, Inc. v. Eric Holder, Jr., Attorney General*,

regulations created a closed-system of distribution for all controlled substances and listed chemicals.[236] Congress specifically designed the closed chain of distribution to prevent the diversion of legally produced controlled substances into the illicit market.[237] As reflected in comments from United States Senators during deliberation on the CSA, the "[CSA] is designed to crack down hard on the narcotics pusher and the illegal diverters of pep pills and goof balls."[238] Congress was concerned with the diversion of drugs out of legitimate channels of distribution when it enacted the CSA and acted to halt the "widespread diversion of [controlled substances] out of legitimate channels into the illegal market."[239] Moreover, the closed-system was specifically designed to ensure that there are multiple ways of identifying and preventing diversion through active participation by registrants within the drug delivery chain.[240] All registrants – manufacturers and distributors alike – must adhere to the specific security, recordkeeping, monitoring and reporting requirements that are designed to identify or prevent diversion.[241] When registrants at any level fail to fulfill their obligations, the necessary checks and balances collapse.[242] The result is the scourge of addiction that has occurred.

807. Central to the closed-system created by the CSA was the directive that the DEA determine quotas of each basic class of Schedule I and II controlled substances each year. The quota system was intended to reduce or eliminate diversion from "legitimate channels of trade"

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D.D.C. Case No. 12-cv-185 (Document 14-2 February 10, 2012).

[236] *See* H.R. Rep. No. 91-1444, 1970 U.S.C.C.A.N. at 4566.

[237] *Gonzalez v. Raich*, 545 U.S. 1, 12-14 (2005); 21 USC § 801(20; 21 USC §§ 821-824, 827, 880; H.R. Rep. No. 91-1444, 1970 U.S.C.C.A.N. 4566, 4572 (Sept. 10, 1970).

[238] *See* H.R. Rep. No. 91-1444, 1970 U.S.C.C.A.N. at 4566; 116 Cong. Rec. 977-78 (Comments of Sen. Dodd, Jan 23, 1970).

[239] *See* Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United State Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

[240] *See* Statement of Joseph T. Rannazzisi before the Caucus on International Narcotics Control United States Senate, July 18, 2012 (available at https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/07/18/12/07-18-12-dea-rannazzisi.pdf).

[241] *Id.*; 16.19.8.13(F) NMAC (requiring anyone licensed to distribute Schedule II controlled substances in Nevada to "report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and where applicable, to the DEA."); 16.19.20.48(A) NMSA ("All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.").

[242] Joseph T. Rannazzisi Decl. ¶ 10, *Cardinal Health, Inc. v. Eric Holder, Jr., Attorney General*, Case No. 12-cv-185 (Document 14-2 February 10, 2012).

by controlling the "quantities of the basic ingredients needed for the manufacture of [controlled substances], and the requirement of order forms for all transfers of these drugs."[243] When evaluating production quotas, the DEA was instructed to consider the following information:

a. Information provided by the United States Department of Health and Human Services;

b. Total net disposal of the basic class by all manufacturers;

c. Trends in the national rate of disposal of the basic class;

d. An applicant's production cycle and current inventory position;

e. Total actual or estimated inventories of the class and of all substances manufactured from the class and trends in inventory accumulation; and

f. Other factors such as: changes in the currently accepted medical use of substances manufactured for a basic class; the economic and physical availability of raw materials; yield and sustainability issues; potential disruptions to production; and unforeseen emergencies.[244]

808. Under the CSA, as incorporated into Nevada law, it is unlawful for a registrant to manufacture a controlled substance in Schedule II, like prescription opioids, that is (1) not expressly authorized by its registration and by a quota assigned to it by DEA, or (2) in excess of a quota assigned to it by the DEA.[245]

809. At all relevant times, the Racketeering Defendants operated as an enterprise formed for the purpose of unlawfully increasing sales, revenues and profits by disregarding their duty under Nevada law to identify, investigate, halt or report suspicious orders of opioids

[243] 1970 U.S.C.C.A.N. 4566 at 5490; *see also* Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United States Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

[244] *See* Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United State Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

[245] *Id.* (citing 21 USC 842(b)); NRS § 453.385 (regulations must ensure "compliance with, but may be more stringent than required by, applicable federal law governing controlled substances and the rules, regulations and orders of any federal agency administering such law.")); NRS § 453.146 (the Nevada Board of Pharmacy may consider findings of "the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.").

and diversion of their drugs into the illicit market, *see generally* **IV.E.1** *supra*, in order to unlawfully increase the quotas set by the DEA and allow them to collectively benefit from the unlawful formation of a greater pool of prescription opioids from which to profit. The Racketeering Defendants conducted their pattern of racketeering activity in Nevada and throughout the United States through this enterprise.

810. The Racketeering Defendants hid from the general public and suppressed and/or ignored warnings from third parties, whistleblowers and governmental entities, about the reality of the suspicious orders that the Racketeering Defendants were filling on a daily basis -- leading to the diversion of a tens of millions of doses of prescriptions opioids into the illicit market.

811. The Racketeering Defendants, with knowledge and intent, agreed to the overall objective of their fraudulent scheme and participated in the common course of conduct to commit acts of fraud and illegal trafficking in and distribution of prescription opioids, in violation of Nevada law.

812. Indeed, for the Defendants' fraudulent scheme to work, each of the Defendants had to agree to implement similar tactics regarding reports and representations about their systems for controlling against diversion, and refusal to report suspicious orders.

813. The opioid epidemic has its origins in the mid-1990s when, between 1997 and 2007, nationwide per capita purchases of methadone, hydrocodone, and oxycodone increased 13-fold, 4- fold, and 9-fold, respectively. By 2010, enough prescription opioids were sold in the United States to medicate every adult in the county with a dose of 5 milligrams of hydrocodone every 4 hours for 1 month.[246] On information and belief, the Opioid Diversion Enterprise has been ongoing nationally and in Nevada for at least the last decade.[247]

814. The Opioid Diversion Enterprise was and is a shockingly successful endeavor.

[246] Keyes KM, Cerdá M, Brady JE, Havens JR, Galea S. *Understanding the rural-urban differences in nonmedical prescription opioid use and abuse in the United States*. Am J Public Health. 2014;104(2):e52-9.

[247] Matthew Perrone, *Pro-Painkiller echo chamber shaped policy amid drug epidemic*, The Center for Public Integrity (September 19, 2017, 12:01 a.m.), https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy- amid-drug-epidemic.

The Opioid Diversion Enterprise has been conducting business uninterrupted since its genesis. But, it was not until recently that State and federal regulators finally began to unravel the extent of the enterprise and the toll that it exacted on the American public and the State of Nevada and its citizens.

815. At all relevant times, the Opioid Diversion Enterprise: (a) had an existence separate and distinct from each Racketeering Defendant; (b) was separate and distinct from the pattern of racketeering in which the Racketeering Defendants engaged; (c) was an ongoing and continuing organization consisting of legal entities, including each of the Racketeering Defendants; (d) characterized by interpersonal relationships among the Racketeering Defendants; (e) had sufficient longevity for the enterprise to pursue its purpose; and (f) functioned as a continuing unit. Each member of the Opioid Diversion Enterprise participated in the conduct of the enterprise, including patterns of racketeering activity, and shared in the astounding growth of profits supplied by fraudulently inflating opioid sales generated as a result of the Opioid Diversion Enterprise's disregard for their duty to prevent diversion of their drugs into the illicit market and then requesting the DEA increase production quotas, all so that the Racketeering Defendants would have a larger pool of prescription opioids from which to profit.

816. The Opioid Diversion Enterprise functioned by selling prescription opioids. While there may be some legitimate uses and/or needs for prescription opioids, the Racketeering Defendants, through their illegal enterprise, engaged in a pattern of racketeering activity that involves a fraudulent scheme to increase revenue by violating State and Federal laws requiring the maintenance of effective controls against diversion of prescription opioids, and the identification, investigation, and reporting of suspicious orders of prescription opioids destined for the illicit drug market. The goal of Defendants' scheme was to increase profits from opioid sales. But, Defendants' profits were limited by the production quotas set by the DEA, so the Defendants refused to identify, investigate and/or report suspicious orders of their prescription opioids being diverted into the illicit drug market. The end result of this strategy

was to increase and maintain artificially high production quotas of opioids so that there was a larger pool of opioids for Defendants to manufacture and distribute for public consumption.

817. Within the Opioid Diversion Enterprise, there were interpersonal relationships and common communication by which the Racketeering Defendants shared information on a regular basis. These interpersonal relationships also formed the organization of the Opioid Diversion Enterprise. The Opioid Diversion Enterprise used their interpersonal relationships and communication network for the purpose of conducting the enterprise through a pattern of racketeering activity.

818. Each of the Racketeering Defendants had a systematic link to each other through joint participation in lobbying groups, trade industry organizations, contractual relationships and continuing coordination of activities. The Racketeering Defendants participated in the operation and management of the Opioid Diversion Enterprise by directing its affairs, as described herein. While the Racketeering Defendants participated in, and are members of, the enterprise, they each have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

819. The Racketeering Defendants exerted substantial control over the Opioid Diversion Enterprise by their membership in the Pain Care Forum ("PCF"), the HDA, and through their contractual relationships.

820. PCF has been described as a coalition of drugmakers, trade groups and dozens of non-profit organizations supported by industry funding. The PCF recently became a national news story when it was discovered that lobbyists for members of the PCF quietly shaped federal and state policies regarding the use of prescription opioids for more than a decade.

821. The Center for Public Integrity and The Associated Press obtained "internal documents shed[ding] new light on how drugmakers and their allies shaped the national response to the ongoing wave of prescription opioid abuse."[248] Specifically, PCF members

[248] Matthew Perrone, *Pro-Painkiller echo chamber shaped policy amid drug epidemic*, The Center for Public

spent over $740 million lobbying in the nation's capital and in all 50 statehouses on an array of issues, including opioid-related measures.[249]

822. Not surprisingly, each of the Racketeering Defendants who stood to profit from lobbying in favor of prescription opioid use is a member of and/or participant in the PCF.[250] In 2012, membership and participating organizations included the HDA (of which all Racketeering Defendants are members), Purdue, Actavis, and Teva.[251] Each of the Manufacturer Defendants worked together through the PCF to advance the interests of the enterprise. But, the Manufacturer Defendants were not alone. The Distributor Defendants actively participated, and continue to participate in the PCF, at a minimum, through their trade organization, the HDA.[252] The State is informed and believes that the Distributor Defendants participated directly in the PCF as well.

823. The 2012 Meeting Schedule for the Pain Care Forum is particularly revealing on the subject of the Defendants' interpersonal relationships. The meeting schedule indicates that meetings were held in the D.C. office of Powers Pyles Sutter & Verville on a monthly basis, unless otherwise noted. Local members were "encouraged to attend in person" at the monthly meetings. And, the meeting schedule indicates that the quarterly and year-end meetings included a "Guest Speaker."

824. The 2012 Pain Care Forum Meeting Schedule demonstrates that each of the Defendants participated in meetings on a monthly basis, either directly or through their trade organization, in a coalition of drugmakers and their allies whose sole purpose was to shape the national response to the ongoing prescription opioid epidemic, including the concerted lobbying efforts that the PCF undertook on behalf of its members.

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Integrity (September 19, 2017, 12:01 a.m.), https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy- amid-drug-epidemic (emphasis added).

[249] *Id.*

[250] PAIN CARE FORUM 2012 Meetings Schedule, (last updated December 2011), https://assets.documentcloud.org/documents/3108982/PAIN-CARE-FORUM-Meetings- Schedule-amp.pdf.

[251] *Id.* The State is informed and believes that Mallinckrodt became an active member of the PCF sometime after 2012.

[252] *Id.*

825. Second, the HDA – or Healthcare Distribution Alliance – led to the formation of interpersonal relationships and an organization between the Racketeering Defendants. Although the entire HDA membership directory is private, the HDA website confirms that each of the Distributor Defendants and the Manufacturer Defendants named in the Complaint, including Actavis, Purdue, and Mallinckrodt, were members of the HDA.[253] The HDA and each of the Distributor Defendants eagerly sought the active membership and participation of the Manufacturer Defendants by advocating that one of the benefits of membership included the ability to develop direct relationships between Manufacturers and Distributors at high executive levels.

826. In fact, the HDA touted the benefits of membership to the Manufacturer Defendants, advocating that membership included the ability to, among other things, "network one on one with manufacturer executives at HDA's members-only Business and Leadership Conference," "networking with HDA wholesale distributor members," "opportunities to host and sponsor HDA Board of Directors events," "participate on HDA committees, task forces and working groups with peers and trading partners," and "make connections."[254] Clearly, the HDA and the Distributor Defendants believed that membership in the HDA was an opportunity to create interpersonal and ongoing organizational relationships between the Manufacturers and Distributors.

827. The application for manufacturer membership in the HDA further indicates the level of connection that existed between the Racketeering Defendants.[255] The manufacturer membership application must be signed by a "senior company executive," and it requests that the manufacturer applicant identify a key contact and any additional contacts from within its company. The HDA application also requests that the manufacturer identify its current

[253] Manufacturer Membership, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/about/membership/manufacturer.
[254] Manufacturer Membership Benefits, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/~/media/pdfs/membership/manufacturer-membership- benefits.ashx?la=en.
[255] Manufacturer Membership Application, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/~/media/pdfs/membership/manufacturer-membership-application.ashx?la=en.

distribution information and its most recent year end net sales through any HDA distributors, including but not limited to, Defendants AmerisourceBergen, Cardinal Health, and McKesson.[256]

828. After becoming members, the Distributors and Manufacturers were eligible to participate on councils, committees, task forces and working groups, including:

a. Industry Relations Council: "This council, composed of distributor and manufacturer members, provides leadership on pharmaceutical distribution and supply chain issues."[257]

b. Business Technology Committee: "This committee provides guidance to HDA and its members through the development of collaborative e-commerce business solutions. The committee's major areas of focus within pharmaceutical distribution include information systems, operational integration and the impact of e- commerce." Participation in this committee includes distributors and manufacturer members.[258]

c. Health, Beauty and Wellness Committee: "This committee conducts research, as well as creates and exchanges industry knowledge to help shape the future of the distribution for health, beauty and wellness/consumer products in the healthcare supply chain." Participation in this committee includes distributors and manufacturer members.[259]

d. Logistics Operation Committee: "This committee initiates projects designed to help members enhance the productivity, efficiency and customer satisfaction within the healthcare supply chain. Its major areas of focus include process automation, information systems, operational integration, resource management and quality improvement." Participation in this committee includes distributors and manufacturer members.[260]

e. Manufacturer Government Affairs Advisory Committee: "This committee provides a forum for briefing HDA's manufacturer members on federal and state legislative and regulatory activity affecting the pharmaceutical distribution channel. Topics discussed include such issues as prescription drug traceability, distributor licensing, FDA and DEA regulation of distribution, importation and Medicaid/Medicare reimbursement." Participation in this committee includes

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[256] *Id.*
[257] Councils and Committees, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/about/councils-and-committees.
[258] *Id.*
[259] *Id.*
[260] *Id.*

manufacturer members.[261]

f. Bar Code Task Force: Participation includes Distributor, Manufacturer and Service Provider Members.[262]

g. eCommerce Task Force: Participation includes Distributor, Manufacturer and Service Provider Members.[263]

h. ASN Working Group: Participation includes Distributor, Manufacturer and Service Provider Members.[264]

i. Contracts and Chargebacks Working Group: "This working group explores how the contract administration process can be streamlined through process improvements or technical efficiencies. It also creates and exchanges industry knowledge of interest to contract and chargeback professionals." Participation includes Distributor and Manufacturer Members.[265]

829. The councils, committees, task forces and working groups provided the Manufacturer and Distributor Defendants with the opportunity to work closely together in shaping their common goals and forming the enterprise's organization.

830. The HDA also offers a multitude of conferences, including annual business and leadership conferences. The HDA and the Distributor Defendants advertise these conferences to the Manufacturer Defendants as an opportunity to "bring together high-level executives, thought leaders and influential managers . . . to hold strategic business discussions on the most pressing industry issues."[266] The conferences also gave the Manufacturer and Distributor Defendants "unmatched opportunities to network with [their] peers and trading partners at all levels of the healthcare distribution industry."[267] The HDA and its conferences were significant opportunities for the Manufacturer and Distributor Defendants to interact at a high-level of leadership. And, it is clear that the Manufacturer Defendants embraced this opportunity by

[261] *Id.*
[262] *Id.*
[263] *Id.*
[264] *Id.*
[265] *Id.*
[266] Business and Leadership Conference – Information for Manufacturers, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/events/2015-business-and-leadership-conference/blc-for- manufacturers.
[267] *Id.*

attending and sponsoring these events.[268]

831. Third, the Racketeering Defendants maintained their interpersonal relationships by working together and exchanging information and driving the unlawful sales of their opioids through their contractual relationships, including chargebacks and vault security programs.

832. The Manufacturer Defendants engaged in an industry-wide practice of paying rebates and/or chargebacks to the Distributor Defendants for sales of prescription opioids.[269] As reported in the Washington Post, identified by Senator McCaskill, and acknowledged by the HDA, there is an industry-wide practice whereby the Manufacturers paid the Distributors rebates and/or chargebacks on their prescription opioid sales.[270] On information and belief, these contracts were negotiated at the highest levels, demonstrating ongoing relationships between the Manufacturer and Distributor Defendants. In return for the rebates and chargebacks, the Distributor Defendants provided the Manufacturer Defendants with detailed information regarding their prescription opioid sales, including purchase orders, acknowledgements, ship notices, and invoices.[271] The Manufacturer Defendants used this information to gather high-level data regarding overall distribution and direct the Distributor Defendants on how to most effectively sell the prescription opioids.

833. The contractual relationships among the Racketeering Defendants also include vault security programs. The Racketeering Defendants are required to maintain certain security protocols and storage facilities for the manufacture and distribution of their opiates. The State is informed and believes that manufacturers negotiated agreements whereby the

[268] 2015 Distribution Management Conference and Expo, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/events/2015- distribution-management-conference.

[269] Lenny Bernstein & Scott Higham, *The government's struggle to hold opioid manufacturers accountable*, The Washington Post, (April 2, 2017), https://www.washingtonpost.com/graphics/investigations/dea-mallinckrodt/?utm_term=.b24cc81cc356; *see also*, Letter from Sen. Claire McCaskill, (July 27, 2017), https://www.mccaskill.senate.gov/imo/media/image/july-opioid-investigation-letter- manufacturers.png; Letter from Sen. Claire McCaskill, (July 27, 2017), https://www.mccaskill.senate.gov/imo/media/image/july-opioid-investigation-letter- manufacturers.png; Letters From Sen. Claire McCaskill, (March 28, 2017), https://www.mccaskill.senate.gov/opioid-investigation; Purdue Managed Markets, Purdue Pharma, (accessed on September 14, 2017), http://www.purduepharma.com/payers/managed- markets/.

[270] *Id.*

[271] Webinars, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/resources/webinar-leveraging-edi.

Manufacturers installed security vaults for Distributors in exchange for agreements to maintain minimum sales performance thresholds. The State is informed and believes that these agreements were used by the Racketeering Defendants as a tool to violate their reporting and diversion duties under Nevada law,[272] in order to reach the required sales requirements.

834. Taken together, the interaction and length of the relationships between and among the Manufacturer and Distributor Defendants reflects a deep level of interaction and cooperation between two groups in a tightly knit industry. The Manufacturer and Distributor Defendants were not two separate groups operating in isolation or two groups forced to work together in a closed system. The Racketeering Defendants operated together as a united entity, working together on multiple fronts, to engage in the unlawful sale of prescription opioids. The HDA and the Pain Care Forum are but two examples of the overlapping relationships and concerted joint efforts to accomplish common goals and demonstrate that the leaders of each of the Racketeering Defendants were in communication and cooperation.

835. According to articles published by the Center for Public Integrity and The Associated Press, the Pain Care Forum – whose members include the Manufacturers and the Distributors' trade association – has been lobbying on behalf of the Manufacturers and Distributors for "more than a decade."[273] From 2006 to 2016 the Distributors and Manufacturers worked together through the Pain Care Forum to spend over $740 million lobbying in the nation's capital and in all 50 statehouses on issues including opioid-related measures.[274] Similarly, the HDA has continued its work on behalf of Distributors and Manufacturers, without interruption, since at least 2000, if not longer.[275]

836. Defendants, individually and collectively through trade groups in the industry, pressured the U.S. Department of Justice to "halt" prosecutions and lobbied Congress to strip

[272] *See, e.g.*, NRS § 453.231(a).
[273] Matthew Perrone & Ben Wieder, *Pro-Painkiller Echo Chamber Shaped Policy Amid Drug Epidemic*, The Ctr. for Pub. Integrity, https://www.publicintegrity.org/2016/09/19/20201/pro ainkiller-echo-chamber-shaped-policy-amid-drug-epidemic (last updated Dec. 15, 2016, 9:09 AM).
[274] *Id.*
[275] HDA History, Healthcare Distribution Alliance, (accessed on September 14, 2017), https://www.healthcaredistribution.org/about/hda-history.

the DEA of its ability to immediately suspend distributor registrations. The result was a "sharp drop in enforcement actions" and the passage of the "Ensuring Patient Access and Effective Drug Enforcement Act" which, ironically, raised the burden for the DEA to revoke a distributor's license from "imminent harm" to "immediate harm" and provided the industry the right to "cure" any violations of law before a suspension order can be issued.[276]

837. As described above, the Racketeering Defendants began working together as early as 2006 through the Pain Care Forum and/or the HDA to further the common purpose of their enterprise. The State is informed and believes that the Racketeering Defendants worked together as an ongoing and continuous organization throughout the existence of their enterprise.

**B. CONDUCT OF THE OPIOID DIVERSION ENTERPRISE**

838. The Racketeering Defendants conducted the Opioids Diversion Enterprise, and participated in the enterprise, by engaging in a pattern of racketeering activity, as prohibited by NRS § 207.400.

839. During the time period alleged in this Complaint, the Racketeering Defendants exerted control over, conducted and/or participated in the Opioid Diversion Enterprise by fraudulently failing to comply with their obligations under Nevada law (and federal law, as incorporated into Nevada law) to identify, investigate and report suspicious orders of opioids in order to prevent diversion of those highly addictive substances into the illicit market, to halt such unlawful sales as set forth below. In doing so, the Racketeering Defendants increased production quotas and generated unlawful profits.

840. The Racketeering Defendants disseminated statements that were false and misleading – either affirmatively or through half-truths and omissions – to the general public, the State, Nevada consumers, and the Nevada Board of Pharmacy, claiming that they were complying with their obligations to maintain effective controls against diversion of their

[276] *See* Bernstein & Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, *supra*; Bernstein & Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, *supra*; Eyre, *supra.*

prescription opioids.

841. The Racketeering Defendants disseminated statements that were false and misleading – either affirmatively or through half-truths and omissions – to the general public, the State, Nevada consumers, and the Nevada Board of Pharmacy, claiming that they were complying with their obligations to design and operate a system to disclose to the registrant suspicious orders of their prescription opioids.

842. The Racketeering Defendants disseminated statements that were false and misleading – either affirmatively or through half-truths and omissions – to the general public, the State, Nevada consumers, and the Nevada Board of Pharmacy claiming that they were complying with their obligation to notify the DEA of any suspicious orders or diversion of their prescription opioids.

843. The Opioid Diversion Enterprise worked to scale back regulatory oversight by the DEA that could interfere with the Racketeering Defendants' ability to distribute their opioid drugs in the State of Nevada. To distribute controlled substances in Nevada, the Racketeering Defendants had to be able to demonstrate possession of a current Nevada registration. *See* NRS § 453.226. Even if they held a current registration, the Racketeering Defendants' ability to obtain a Nevada registration could be jeopardized by past suspension or revocation of their DEA registration. NRS § 453.231(1)(g).

844. The Racketeering Defendants paid nearly $800 million dollars to influence local, state and federal governments throughout the United States and in Nevada, through joint lobbying efforts as part of the Pain Care Forum. The Racketeering Defendants were all members of the Pain Care Forum either directly or indirectly through the HDA. The lobbying efforts of the Pain Care Forum and its members included efforts to pass legislation making it more difficult for the DEA to suspend and/or revoke the Manufacturers' and Distributors' registrations for failure to report suspicious orders of opioids—protecting the Racketeering Defendants' ability to distribute prescription opioids in Nevada.

845. The Racketeering Defendants exercised control and influence over the

distribution industry by participating and maintaining membership in the HDA.

846. The Racketeering Defendants applied political and other pressure on the DOJ and DEA to halt prosecutions for failure to report suspicious orders of prescription opioids and lobbied Congress to strip the DEA of its ability to immediately suspend registrations pending investigation by passing the "Ensuring Patient Access and Effective Drug Enforcement Act."[277]

847. The Racketeering Defendants engaged in an industry-wide practice of paying rebates and chargebacks to incentivize unlawful opioid prescription sales. The State is informed and believes that the Manufacturer Defendants used the chargeback program to acquire detailed high-level data regarding sales of the opioids they manufactured. And, the State is informed and believes that the Manufacturer Defendants used this high-level information to direct the Distributor Defendants' sales efforts to regions where prescription opioids were selling in larger volumes.

848. The Manufacturer Defendants lobbied the DEA to increase Aggregate Production Quotas, year after year by submitting net disposal information that the Manufacturer Defendants knew included sales that were suspicious and involved the diversion of opioids that had not been properly investigated or reported by the Racketeering Defendants.

849. The Distributor Defendants developed "know your customer" questionnaires and files. This information, compiled pursuant to comments from the DEA in 2006 and 2007, was intended to help the Racketeering Defendants identify suspicious orders or customers who were likely to divert prescription opioids.[278] On information and belief, the "know your customer" questionnaires informed the Racketeering Defendants of the number of pills that the

[277] *See* HDMA is now the Healthcare Distribution Alliance, Pharmaceutical Commerce, (June 13, 2016, updated July 6, 2016), http://pharmaceuticalcommerce.com/business-and- finance/hdma-now-healthcare-distribution-alliance/; Bernstein & Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, *supra*; Bernstein & Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, *supra*; Eyre, *supra.*

[278] Suggested Questions a Distributor should ask prior to shipping controlled substances, Drug Enforcement Administration (available at https://www.deadiversion.usdoj.gov/mtgs/pharm_industry/14th_pharm/levinl_ques.pdf); Richard Widup, Jr., Kathleen H. Dooley, Esq. Pharmaceutical Production Diversion: Beyond the PDMA, Purdue Pharma and McQuite Woods LLC, (available at https://www.mcguirewoods.com/news-resources/publications/lifesciences/product_diversion_beyond_pdma.pdf).

pharmacies sold, how many non-controlled substances are sold compared to controlled substances, whether the pharmacy buys from other distributors, the types of medical providers in the area, including pain clinics, general practitioners, hospice facilities, cancer treatment facilities, among others, and these questionnaires put the recipients on notice of suspicious orders.

850. The Racketeering Defendants refused to identify, investigate and report suspicious orders to the DEA, the Nevada Board of Pharmacy, and the FDA when they became aware of the same despite their actual knowledge of drug diversion rings. The Racketeering Defendants refused to identify suspicious orders and diverted drugs despite the DEA issuing final decisions against the Distributor Defendants in 178 registrant actions between 2008 and 2012[279] and 117 recommended decisions in registrant actions from The Office of Administrative Law Judges. These numbers include 76 actions involving orders to show cause and 41 actions involving immediate suspension orders – all for failure to report suspicious orders.[280]

851. Defendants' scheme had decision-making structure that was driven by the Manufacturer Defendants and corroborated by the Distributor Defendants. The Manufacturer Defendants worked together to control the State and Federal Government's response to the manufacture and distribution of prescription opioids by increasing production quotas through a systematic refusal to maintain effective controls against diversion and to identify suspicious orders and report them to the DEA and State governments, including the State of Nevada.

852. The Racketeering Defendants also worked together to ensure that the Aggregate Production Quotas, Individual Quotas and Procurement Quotas allowed by the DEA stayed high and to ensure that suspicious orders were not reported to the DEA. By not reporting suspicious orders or diversion of prescription opioids, the Racketeering Defendants ensured that the DEA had no basis for refusing to increase, or to decrease, the production quotas for

[279] Evaluation and Inspections Div., Office of the Inspector Gen., U.S. Dep't of Justice, *The Drug Enforcement Administration's Adjudication of Registrant Actions* 6 (2014), https://oig.justice.gov/reports/2014/e1403.pdf.
[280] *Id.*

prescription opioids due to diversion of suspicious orders. The Racketeering Defendants influenced the DEA production quotas in the following ways:

a. The Distributor Defendants assisted the enterprise and the Manufacturer Defendants in their lobbying efforts through the Pain Care Forum;

b. The Distributor Defendants invited the participation, oversight and control of the Manufacturer Defendants by including them in the HDA, including on the councils, committees, task forces, and working groups;

c. The Distributor Defendants provided sales information to the Manufacturer Defendants regarding their prescription opioids, including reports of all opioid prescriptions filled by the Distributor Defendants;

d. The Manufacturer Defendants used a chargeback program to ensure delivery of the Distributor Defendants' sales information;

e. The Manufacturer Defendants obtained sales information from QuintilesIMS (formerly IMS Health) that gave them a "stream of data showing how individual doctors across the nation were prescribing opioids."[281]

f. The Distributor Defendants accepted rebates and chargebacks for orders of prescription opioids;

g. The Manufacturer Defendants used the Distributor Defendants' sales information and the data from QuintilesIMS to instruct the Distributor Defendants to focus their distribution efforts to specific areas where the purchase of prescription opioids was most frequent;

h. The Racketeering Defendants identified suspicious orders of prescription opioids and then continued filling those unlawful orders, without reporting them, knowing that they were suspicious and/or being diverted into the illicit drug market;

i. The Racketeering Defendants refused to report suspicious orders of prescription opioids despite repeated investigation and punishment of the Distributor Defendants by the DEA for failure to report suspicious orders; and

j. The Racketeering Defendants withheld information regarding suspicious orders

[281] Harriet Ryan, et al., *More than 1 million OxyContin pills ended up in the hands of criminals and addicts. What the drugmaker knew*, Los Angeles Times, (July 10, 2016), http://www.latimes.com/projects/la-me-oxycontin-part2/.

and illicit diversion from the DEA because it would have revealed that the "medical need" for and the net disposal of their drugs did not justify the production quotas set by the DEA.

853. The scheme devised and implemented by the Racketeering Defendants amounted to a common course of conduct characterized by a refusal to maintain effective controls against diversion, in intentional violation of Nevada law, and all designed and operated to ensure the continued unlawful sale of controlled substances.

**C. PATTERN OF RACKETEERING ACTIVITY**

854. The Racketeering Defendants conducted and participated in the conduct of the Opioid Diversion Enterprise through a pattern of racketeering activity as defined in NRS § 207.390, by at least two crimes related to racketeering (NRS § 207.360), trafficking in controlled substances (NRS §§ 207.360(22); 453.3395), and distribution of controlled substances or controlled substance analogues (NRS § 453.331), and punishable by imprisonment of at least one year, with the intent of accomplishing activities prohibited by § 207.400 of the Racketeering Act.

855. The Racketeering Defendants committed, conspired to commit, and/or aided and abetted in the commission of at least two predicate acts of racketeering activity (i.e. violations of NRS §§ 207.360), within a five-year period. The multiple acts of racketeering activity that the Racketeering Defendants committed, or aided and abetted in the commission of, were related to each other, posed a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity." The racketeering activity was made possible by the Racketeering Defendants' regular use of the facilities, services, distribution channels, and employees of the Opioid Diversion Enterprise.

856. The Racketeering Defendants committed these predicate acts, which number in the thousands, intentionally and knowingly with the specific intent to advance the Opioids Diversion Enterprise by conducting activities prohibited by NRS §§ 207.360, 207.390, 207.400.

857. The predicate acts all had the purpose of generating significant revenue and

profits for the Racketeering Defendants while the State was left with substantial injury to its business through the damage that the prescription opioid epidemic caused. The predicate acts were committed or caused to be committed by the Racketeering Defendants through their participation in the Opioid Diversion Enterprise and in furtherance of its fraudulent scheme. The predicate acts were related and not isolated events.

858. The pattern of racketeering activity alleged herein and the Opioid Diversion Enterprise are separate and distinct from each other. Likewise, the Racketeering Defendants are distinct from the enterprise.

859. The pattern of racketeering activity alleged herein is continuing as of the date of this Complaint and, upon information and belief, will continue into the future unless enjoined by this Court.

860. Many of the precise dates of the Racketeering Defendants' criminal actions at issue here have been hidden and cannot be alleged without access to Defendants' books and records. Indeed, an essential part of the successful operation of the Opioid Diversion Enterprise alleged herein depended upon secrecy.

861. Each instance of racketeering activity alleged herein was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results affecting similar victims, including consumers in the State of Nevada. Defendants calculated and intentionally crafted the Opioid Diversion Enterprise and their scheme to increase and maintain their increased profits, without regard to the effect such behavior would have on Nevada, Nevada consumers, or other Nevada citizens. In designing and implementing the scheme, at all times Defendants were cognizant of the fact that those in the manufacturing and distribution chain rely on the integrity of the pharmaceutical companies and ostensibly neutral third parties to provide objective and reliable information regarding Defendants' products and their manufacture and distribution of those products. The Racketeering Defendants were also aware that the State and the citizens of this jurisdiction rely on the Racketeering Defendants to maintain a closed system and to protect against the non-

medical diversion and use of their dangerously addictive opioid drugs.

862. By intentionally refusing to report and halt suspicious orders of their prescription opioids, the Racketeering Defendants engaged in a fraudulent scheme and unlawful course of conduct constituting a pattern of racketeering activity.

863. It was foreseeable to Defendants that refusing to report and halt suspicious orders would harm the State by allowing the flow of prescription opioids from appropriate medical channels into the illicit drug market.

864. The Racketeering Defendants did not undertake the predicate acts described herein in isolation, but as part of a common scheme. Various other persons, firms, and corporations, including third-party entities and individuals not named as defendants in this Complaint, may have contributed to and/or participated in the scheme with the Racketeering Defendants in these offenses and have performed acts in furtherance of the scheme to increase revenues, increase market share, and /or minimize the losses for the Racketeering Defendants.

865. The Racketeering Defendants aided and abetted others in the violations of NRS §§ 207.360, 207.390, and 207.400, while sharing the same criminal intent as the principals who committed those violations, thereby rendering them indictable as principals in the offenses.

866. The last racketeering incident occurred within five years of the commission of a prior incident of racketeering.

**1. The Racketeering Defendants Conducted the Opioid Diversion Enterprise through Acts of Fraud.**

867. Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

868. The Racketeering Defendants' fraudulent conduct, practices, and representations include, but are not limited to:

a. Misrepresentations to facilitate Defendants' DEA registrations, which could be a bar to their registrations with the Nevada Board of Pharmacy;

b. Requests for higher aggregate production quotas, individual production quotas, and

procurement quotas to support Defendants' manufacture and distribution of controlled substances they knew were being or would be unlawfully diverted;

c. Misrepresentations and misleading omissions in Defendants' records and reports that were required to be submitted to the DEA and the Nevada Board of Pharmacy pursuant to Nevada Administrative Code provisions;

d. Misrepresentations and misleading omissions in documents and communications related to the Defendants' mandatory DEA reports that would affect Nevada registrant status; and

e. Rebate and chargeback arrangements between the Manufacturers and the Distributors that Defendants used to facilitate the manufacture and sale of controlled substances they knew were being or would be unlawfully diverted into and from Nevada.

869. Specifically, the Racketeering Defendants made misrepresentations about their compliance with Federal and State laws requiring them to identify, investigate and report suspicious orders of prescription opioids and/or diversion of the same into the illicit market, all while Defendants were knowingly allowing millions of doses of prescription opioids to divert into the illicit drug market. The Racketeering Defendants' scheme and common course of conduct was intended to increase or maintain high production quotas for their prescription opioids from which they could profit.

870. At the same time, the Racketeering Defendants misrepresented the superior safety features of their order monitoring programs, their ability to detect suspicious orders, their commitment to preventing diversion of prescription opioids, and that they complied with all state and federal regulations regarding the identification and reporting of suspicious orders of prescription opioids.

871. The Racketeering Defendants intended to and did, through the above-described fraudulent conduct, practices, and representations, intentionally misappropriate funds from the State and from private insurers, in excess of $500, including, for example:

a. Costs of prescriptions provided under Nevada's Medicaid Program;

b. Public employees' health insurance prescription coverage costs;

c. Retired public employees' group insurance costs;

d. Public employees and school board retirees' group health insurance costs; and

e. Prescription benefits paid by private insurers for opioid prescriptions.

872. Many of the precise dates of the fraudulent acts and practices have been deliberately hidden and cannot be alleged without access to Defendants' books and records. But, the State has described the types of, and in some instances, occasions on which the predicate acts of fraud occurred.

**2. The Racketeering Defendants Unlawfully Trafficked in and Distributed Controlled Substances.**

873. Defendants' racketeering activities also included violations of the Nevada Controlled Substances Act, § 453.3395, and each act is chargeable or indictable under the laws of Nevada and punishable by imprisonment for more than one year. *See* NRS § 207.360(22).

874. Under Nevada law (NRS § 453.3395), it is unlawful to "knowingly or intentionally sell[], manufacture[], deliver[] or bring[] into this state"— prescription opioids, which are Schedule II controlled substances that are narcotic drugs, except as authorized by the Nevada Controlled Substances Act.

875. The Racketeering Defendants intentionally trafficked in prescription opioid drugs, in violation of Nevada law, by manufacturing, selling, and/or distributing those drugs in Nevada in a manner not authorized by the Nevada Controlled Substances Act. The Racketeering Defendants failed to act in accordance with the Nevada Controlled Substances Act because they did not act in accordance with registration requirements as provided in that

Act.

876. Among other infractions, the Racketeering Defendants did not comply with 21

USC § 823 and its attendant regulations (*e.g.*, 21 CFR § 1301.74)[282] which are incorporated into Nevada state law, or the Nevada Pharmacy Board regulations. The Racketeering Defendants failed to furnish notifications and omitted required reports to the Nevada Board.

877. The State is informed and believes that the Racketeering Defendants failed to furnish required notifications and make reports as part of a pattern and practice of willfully and intentionally omitting information from their mandatory reports to the DEA, as required by 21 CFR § 1301.74, throughout the United States.

878. For example, the DEA and DOJ began investigating McKesson in 2013 regarding its monitoring and reporting of suspicious controlled substances orders. On April 23, 2015, McKesson filed a Form-8-K announcing a settlement with the DEA and DOJ wherein it admitted to violating the CSA and agreed to pay $150 million and have some of its DEA registrations suspended on a staggered basis. The settlement was finalized on January 17, 2017.[283]

879. Purdue's experience in Los Angeles is another striking example of Defendants' willful violation of their duty to report suspicious orders of prescription opioids. In 2016, the Los Angeles Times reported that Purdue was aware of a pill mill operating out of Los Angeles yet failed to alert the DEA.[284] The LA Times uncovered that Purdue began tracking a surge in prescriptions in Los Angeles, including one prescriber in particular. A Purdue sales

[282] Once again, throughout this Count and in this Complaint Plaintiff cites federal statutes and federal regulations to state the duty owed under Nevada tort law, *not* to allege an independent federal cause of action or substantial federal question. *See, e.g.*, *Herrera*, 2003-NMSC-018, ¶7.

[283] McKesson, McKesson Finalizes Settlement with U.S. Department of Justice and U.S. Drug Enforcement Administration to Resolve Past Claims, About McKesson / Newsroom / Press Releases, (January 17, 2017), http://www.mckesson.com/about-mckesson/newsroom/press- releases/2017/mckesson-finalizes-settlement-with-doj-and-dea-to-resolve-past-claims/.

[284] Harriet Ryan, et al., *More than 1 million OxyContin pills ended up in the hands of criminals and addicts. What the drugmaker knew*, Los Angeles Times, (July 10, 2016), http://www.latimes.com/projects/la-me-oxycontin-part2/.

manager spoke with company officials in 2009 about the prescriber, asking "Shouldn't the DEA be contacted about this?" and adding that she felt "very certain this is an organized drug ring."[285] Despite knowledge of the staggering amount of pills being issued in Los Angeles, and internal discussion of the problem, "Purdue did not shut off the supply of highly addictive OxyContin and did not tell authorities what it knew about Lake Medical until several years later when the clinic was out of business and its leaders indicted. By that time, 1.1 million pills had spilled into the hands of Armenian mobsters, the Crips gang and other criminals."[286]

880. Finally, Mallinckrodt was recently the subject of a DEA and Senate investigation for its opioid practices. Specifically, in 2011, the DEA targeted Mallinckrodt, arguing that it ignored its responsibility to report suspicious orders as 500 million of its pills ended up in Florida between 2008 and 2012.[287] After six years of DEA investigation, Mallinckrodt agreed to a settlement involving a $35 million fine. Federal prosecutors summarized the case by saying that Mallinckrodt's response was that everyone knew what was going on in Florida, but they had no duty to report it.[288]

881. The Racketeering Defendants' pattern and practice of willfully and intentionally omitting information from their mandatory reports is evident in the sheer volume of enforcement actions available in the public record against the Distributor Defendants.[289] For example:

a. On April 24, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the AmerisourceBergen Orlando, Florida distribution center ("Orlando Facility") alleging failure to maintain effective controls against diversion of controlled substances. On June 22, 2007, AmerisourceBergen entered into a settlement that resulted in the suspension of its DEA registration;

b. On November 28, 2007, the DEA issued an *Order to Show Cause and*

[285] *Id.*
[286] *Id.*
[287] Bernstein & Higham, *The government's struggle to hold opioid manufacturers accountable*, *supra*. This number accounted for 66% of all oxycodone sold in the state of Florida during that time.
[288] *Id.*
[289] Evaluation and Inspections Div., Office of the Inspector Gen., U.S. Dep't of Justice, *The Drug Enforcement Administration's Adjudication of Registrant Actions* 6 (2014), https://oig.justice.gov/reports/2014/e1403.pdf.

*Immediate Suspension Order* against the Cardinal Health Auburn, Washington Distribution Center ("Auburn Facility") for failure to maintain effective controls against diversion of hydrocodone;

c. On December 5, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Lakeland, Florida Distribution Center ("Lakeland Facility") for failure to maintain effective controls against diversion of hydrocodone;

d. On December 7, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Swedesboro, New Jersey Distribution Center ("Swedesboro Facility") for failure to maintain effective controls against diversion of hydrocodone;

e. On January 30, 2008, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Stafford, Texas Distribution Center ("Stafford Facility") for failure to maintain effective controls against diversion of hydrocodone;

f. On May 2, 2008, McKesson Corporation entered into an *Administrative Memorandum of Agreement* ("2008 MOA") with the DEA which provided that McKesson would "maintain a compliance program designed to detect and prevent the diversion of controlled substances, inform DEA of suspicious orders required by 21 CFR § 1301.74(b), and follow the procedures established by its Controlled Substance Monitoring Program";

g. On September 30, 2008, Cardinal Health entered into a *Settlement and Release Agreement and Administrative Memorandum of Agreement* with the DEA related to its Auburn Facility, Lakeland Facility, Swedesboro Facility and Stafford Facility. The document also referenced allegations by the DEA that Cardinal failed to maintain effective controls against the diversion of controlled substances at its distribution facilities located in McDonough, Georgia ("McDonough Facility"), Valencia, California ("Valencia Facility") and Denver, Colorado ("Denver Facility");

h. On February 2, 2012, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Lakeland, Florida Distribution Center ("Lakeland Facility") for failure to maintain effective controls against diversion of oxycodone;

i. On December 23, 2016, Cardinal Health agreed to pay a $44 million fine to the DEA to resolve the civil penalty portion of the administrative action taken

against its Lakeland, Florida Distribution Center; and

j. On January 5, 2017, McKesson Corporation entered into an *Administrative Memorandum Agreement* with the DEA wherein it agreed to pay a $150,000,000 civil penalty for violation of the 2008 MOA as well as failure to identify and report suspicious orders at its facilities in Aurora CO, Aurora IL, Delran NJ, LaCrosse WI, Lakeland FL, Landover MD, La Vista NE, Livonia MI, Methuen MA, Santa Fe Springs CA, Washington Courthouse OH and West Sacramento CA.

882. These actions against the Distributor Defendants confirm that the Distributors knew they had a duty to maintain effective controls against diversion, design and operate a system to disclose suspicious orders, and to report suspicious orders to the DEA. These actions also demonstrate, on information and belief, that the Manufacturer Defendants were aware of the enforcement against their Distributors and the diversion of the prescription opioids and a corresponding duty to report suspicious orders.

883. Many of the precise dates of Defendants' criminal actions at issue herein were hidden and cannot be alleged without access to Defendants' books and records. Indeed, an essential part of the successful operation of the Opioid Diversion Enterprise depended upon the secrecy of the participants in that enterprise.

**D. DAMAGES**

884. The Racketeering Defendants' violations of law and their pattern of racketeering activity directly and proximately caused the State of Nevada and its citizens injury in their business and property because the State paid for costs associated with the opioid epidemic, as described above in allegations expressly incorporated herein by reference.

885. The State's injuries, and those of its citizens, were proximately caused by Defendants' racketeering activities. But for the Racketeering Defendants' conduct, the State would not have paid the health services and law enforcement services and expenditures required as a result of the plague of drug-addicted residents.

886. The State's injuries and those of its citizens were directly caused by the

Racketeering Defendants' racketeering activities.

887. The State was most directly harmed and there is no other plaintiff better suited to seek a remedy for the economic harms at issue here.

888. The State of Nevada seeks all legal and equitable relief as allowed by law, including *inter alia* actual damages, treble damages, equitable relief, forfeiture as deemed proper by the Court, attorney's fees and all costs and expenses of suit (NRS § 207.470), and pre- and post-judgment interest.

**FOURTH CAUSE OF ACTION**
**VIOLATION OF NEVADA**
**FALSE CLAIMS ACT NRS §§ 357.010 to 357.250**
**(Against All Defendants)**

889. The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

890. Defendants' willful and repeated conduct related to opioid sales, as described above, violates the Nevada False Claims Act, NRS § 357.040.

891. As detailed above, the Manufacturer Defendants willfully misrepresented opioids as an appropriate, beneficial, and non-addictive treatment for chronic pain, and Defendants' course of conduct caused the State of Nevada to pay for drugs that were worthless in that they had no beneficial value, and in fact, were harmful to patients.

892. The Distributor Defendants secured and renewed licenses from *inter alia* the Nevada Board of Pharmacy under false pretenses when, in fact, the Distributor Defendants were not abiding by their non-delegable legal duties. As further described above, the Distributor Defendants made false public statements representing that they were operating a closed system safeguarding against diversion of dangerous opioids into illicit channels when, in truth, the Distributor Defendants were ignoring their legal duties for profit.

893. Each Defendant knowingly presented, or caused to be presented, to the State false or fraudulent claims for payment or approval, in violation of NRS § 357.040(1)(a).

894. Each Defendant knowingly made, used, or caused to be made or used, false,

misleading or fraudulent statements or records to obtain or support the approval of, or the payment on, false or fraudulent claims, in violation of NRS § 357.040(1)(b).

895. By engaging in the wrongful conduct described herein, Defendants conspired to defraud the State by obtaining approval or payment on false or fraudulent claims.

896. As a result of the Manufacturer Defendants' fraudulent marketing of opioids, and the Distributor Defendants' abdication of non-delegable duties to prevent opioids from being diverted into illicit channels, the State of Nevada paid millions of dollars for opioids. As a result, Defendants were illegally enriched at the expense of the State of Nevada. Further, the State of Nevada was required and will be required to pay the costs of treatment for State of Nevada participants actively harmed by the Defendants' actions.

897. Each claim for opioid prescriptions for improper purposes; for longer periods than appropriate; and in quantities inappropriate for approved use, presented to the State of Nevada or to a contractor, grantee or other recipient of state funds constitutes a separate violation pursuant to NRS § 357.040.

898. Claims submitted for rehabilitation services for individuals with opioid dependency and/or addiction; claims for sustained opioid use for non-cancer and non-hospice patients; claims for treating Neonatal Abstinence Syndrome; as well as any and all claims arising out of the use of opioids in Nevada by individuals for non-cancer and non-hospice purposes, constitute separate violations pursuant to NRS § 357.040.

899. In addition to, or in the alternative, each exposure of a state employee or contractor, Nevada health care professional or State of Nevada participant to Defendants' misleading and deceptive information, communicated in any manner by Defendants, constitutes a separate violation pursuant to NRS § 357.040.

900. In addition to, or in the alternative, each opioid prescription written in Nevada in connection with State of Nevada programs constitutes a separate and distinct violation pursuant to NRS § 357.040.

901. Plaintiff, State of Nevada seeks all legal and equitable relief as allowed by law,

including *inter alia* actual damages, treble damages, civil penalties of not less than $5,500 and up to $11,000 for each violation, attorney fees and all costs and expenses of suit, and pre- and post-judgment interest.

**FIFTH CAUSE OF ACTION**
**NEGLIGENCE**
**NEVADA COMMON LAW**
**(Against All Defendants)**

902. The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

903. Each Defendant had a duty to exercise reasonable care in manufacturing and distributing highly dangerous opioid drugs in the State of Nevada.

904. Each Defendant owed a duty to the State, and to the public health and safety in Nevada, because the injury was foreseeable, and in fact foreseen, by the Defendants.

905. Reasonably prudent wholesale drug distributors would have anticipated that the scourge of opioid addiction would wreak havoc on communities. As explained above, the system whereby wholesale distributors are the gatekeepers between manufacturers and pharmacies exists ***for the purpose*** of controlling dangerous substances such as opioids. Moreover, Defendants were repeatedly warned by law enforcement.

906. Reasonably prudent manufacturers of pharmaceutical products would know that aggressively pushing highly addictive opioids for chronic pain would result in the severe harm of addiction, foreseeably causing patients to seek increasing levels of opioids, frequently turning to the illegal drug market as a result of a drug addiction that was foreseeable to the Manufacturer Defendants.

907. The escalating amounts of addictive drugs flowing through Defendants' business, and the sheer volume of these pills, further alerted all of the Defendants that addiction was fueling increased consumption and that legitimate medical purposes were not being served.

908. As described above in language expressly incorporated herein, Distributor Defendants breached their duties to exercise due care in the business of wholesale distribution

of dangerous opioids, which are Schedule II Controlled Substances, by filling highly suspicious orders time and again. Because the very purpose of these duties was to prevent the resulting harm diversion of highly addictive drugs for non-medical purposes – the causal connection between Defendants' breach of duties and the ensuing harm was entirely foreseeable.

909. As described above in language expressly incorporated herein, Manufacturer Defendants breached their duties to exercise due care in the business of pharmaceutical manufacturers of dangerous opioids, which are Schedule II Controlled Substances, by misrepresenting the nature of the drugs and aggressively promoting them for chronic pain. The causal connection between Defendants' breach of duties and ensuing harm was entirely foreseeable.

910. As described above in language expressly incorporated herein, Defendants' breach of duty caused, bears a causal connection with, and/or proximately resulted in, harm and damages to the State.

911. Defendants' conduct was willful, wanton, malicious, reckless, oppressive, and/or fraudulent. Here, Defendants were selling dangerous drugs statutorily categorized as posing a high potential for abuse and severe dependence. NAC § 435.520(a). Thus, Defendants knowingly traded in drugs that presented a high degree of danger if prescribed incorrectly or diverted to other than medical, scientific, or industrial channels.

912. Plaintiff, the State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, restitution, disgorgement of profits, compensatory and punitive damages, and all damages allowed by law to be paid by the Defendants, attorney fees and costs, and pre- and post-judgment interest.

**SIXTH CAUSE OF ACTION**
**NEGLIGENCE PER SE**
**NEVADA COMMON LAW**
**(Against All Defendants)**

913.The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

914. Nevada recognizes the doctrine of negligence per se. Negligence per se consists of four elements: (1) A duty to exercise due care with respect to a plaintiff as defined by a statue or administrative regulation; 2) plaintiff is in the class of persons the statute or regulation was designed to protect; (3) defendant breached the duty by violating the statute or regulation, constituting negligence as a matter of law; and (4) causation and damages. *Atkinson v. MGM Grand Hotel, Inc.*, 98 P.3d 678, 680 (Nev. 2004).

915. NRS 453.005 to 453.730 and NAC §§ 453.010 to 453.740 are public safety laws that define a standard of conduct. As such, these laws were intended to protect the public welfare and safety, and the State is the proper Plaintiff to enforce these laws. Each Defendant had a duty under *inter alia* these laws to prevent diversion of prescription opioids for non-medical and non-scientific purposes and to guard against, prevent, and report suspicious orders of opioids.

916. Nevada's minimum requirement for controlled substance manufacture and wholesale drug distribution is that they must comply with applicable laws and regulations.

917. Nevada laws and regulations require Defendants to act as gatekeepers guarding against the diversion of the highly addictive, dangerous opioid drugs.

918. Defendants have violated their duties under the Nevada Controlled Substances Act and the Nevada Administrative Code.

919. Defendants' violations of these public safety laws are prima facie evidence of negligence per se. Each Defendant had a duty under, *inter alia*, these laws to maintain effective controls against diversion of prescription opioids and to guard against, prevent, and report suspicious orders of opioids. Defendants' violations of the law constitute negligence per se. Defendants breached mandatory, non-delegable legal duties and did not act reasonably under the circumstances.

920. The State is within the class intended to be protected by the public safety statutes and regulations concerning controlled substances.

921. It was foreseeable that the breach of duty described herein would result in the

damages sustained by the State.

922. Defendants' conduct was willful, wanton, malicious, reckless, and/or oppressive, as described above.

923. As described above in language expressly incorporated herein, Defendants breached their duties to maintain effective controls against diversion of dangerously addictive opioids, including violating public safety statutes requiring that as wholesale drug distributors, Defendants could only distribute these dangerous drugs under a closed system – a system Defendants were responsible for guarding.

924. As described above in language expressly incorporated herein, Defendants' breach of statutory and regulatory duties caused, bears a causal connection with, is and was a substantial factor contributing to, and proximately resulted in, harm and damages to the State. The harm at issue is the type of harm that the legislature sought to prevent in promulgating the public safety statutes at issue.

925. Defendants' violations of the Nevada statutes and public safety regulations cited herein were and are substantial factors in the injuries and damages sustained.

926. It was foreseeable that Defendants' breaches of statutory and regulatory duties described herein would result in the damages sustained.

927. Plaintiff, the State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* injunctive relief, restitution, disgorgement of profits, compensatory and punitive damages, and all damages allowed by law to be paid by the Defendants, attorney fees and costs, and pre- and post-judgment interest.

**SEVENTH CAUSE OF ACTION**
**VIOLATIONS OF 2007 CONSENT JUDGMENT**
**(Against Purdue Defendants)**

928. The State re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs as though fully alleged herein.

929. The 2007 Consent Judgement, as referenced above, prohibited Defendant

Purdue from engaging in certain conduct and required certain affirmative measures by Purdue with respect to the marketing, promotion, and sale of the branded opioid OxyContin.

930. Purdue, by making written and/or oral claims that are false, misleading, or deceptive, has violated, continues to violate, and failed to cure, Section II(2) of the 2007 Consent Judgement, which provides that "Purdue shall not make any written or oral claim that is false, misleading or deceptive."

931. Purdue, by failing, after identifying suspicious prescribers, prescribing patterns, orders, distributions or distribution patterns, to provide notice of such potential abuse or diversion to appropriate medical, regulatory, or law enforcement authorities, has violated, continues to violate, and failed to cure, section II(13) of the 2007 Consent Judgement, which requires Purdue to sufficiently "establish, implement, and follow an OxyContin Abuse and Diversion Detection Program." Specifically, in failing to report suspicious prescribers to Nevada law enforcement or regulatory authorities, Purdue failed to carry out its obligation to "take such further steps as may be appropriate [to combat opioid abuse and unlawful diversion] based on the facts and circumstances" and information learned through the OxyContin Abuse and Diversion Detection Program, including "providing notice of such potential abuse or diversion to appropriate medical, regulatory, or law enforcement authorities."

932. Purdue, under the guise of education, by sending deceptive materials directly to health care professionals, violated and failed to cure section II(15) of the 2007 Consent Judgement, which requires Purdue to provide to health care professionals "written, non-branded educational information related to detecting and preventing abuse and diversion of opioid analgesics." Specifically, Purdue violated and failed to cure section II(15) by (1) sending Nevada health care providers the first, second, and third editions of *Providing Relief, Preventing Abuse* and (2) creating and marinating the website www.inthefaceofpain.com, both of which disseminated information to Nevada health care providers, misrepresenting the signs of opioid abuse.

933. Purdue, by making misrepresentations with respect to OxyContin's potential for

addiction, and by claiming that abuse-deterrent formulations of OxyContin are not subject to abuse, despite knowing that the abuse-deterrent features of reformulated OxyContin have not been effective to prevent abuse, has violated, continues to violate, and failed to cure, section II(20) of the 2007 Consent Judgement, which provides that:

> All material used in promoting OxyContin, regardless of format (audio, internet, video, print) and whether directed primarily to patients or Health Care Professionals, shall, not be inconsistent with the Package Insert, contain only information that is truthful, balanced, accurately communicated, and not minimize the risk of abuse, addiction or physical dependence associated with the use of OxyContin.

934. Purdue's violations of the 2007 Consent Judgement affected and continue to affect the public interest, caused and continue to cause injury to numerous Nevada consumers, political subdivisions, and the State, and contributed to a public health crisis, which has cost consumers, political subdivisions, and the State substantial financial and social harm.

935. Purdue's violations of the 2007 Consent Judgement, on information and belief were, in some cases, also directed toward elderly persons or persons with a disability.

936. Plaintiff, the State of Nevada, seeks all legal and equitable relief as allowed by law, including *inter alia* all relief and damages set forth in the 2007 Consent Judgment. Plaintiff specifically incorporates the 2007 Consent Judgment as if restated fully herein and avails itself of each and every remedy contained therein, in addition to the remedies available by statute, common law, an equity.

## VI. PUNITIVE DAMAGES

937. The State re-alleges all prior paragraphs of this Complaint as if set forth fully herein.

938. The acts, conduct and omissions of Defendants, as alleged throughout this complaint, were willful, malicious, oppressive and/or were done with conscious disregard of the rights and safety of Plaintiff and for the primary purpose of increasing Defendants' profits

from the sale and distribution of the subject drug.

939. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against each Defendant in an amount appropriate to punish and make an example of each Defendant.

940. The continued tortious conduct by the Defendants causes a repeated or continuous injury. The damages have not occurred all at once but have increased as time progresses. The tort is not completed nor have all the damages been incurred until the wrongdoing ceases. The State has made efforts to abate the nuisance, but, the wrongdoing has not ceased and, thus, the public nuisance remains unabated.

941. Here, Defendants were selling dangerous drugs statutorily categorized as posing a high potential for abuse and severe dependence. NAC § 435.520(a). Thus, Defendants knowingly traded in drugs that presented a high degree of danger if prescribed incorrectly or diverted to other than legitimate medical, scientific, or industrial channels. Because of the severe level of danger posed by, and indeed visited upon the State by, these dangerous drugs, Defendants owed a high duty of care to ensure that these drugs were only used for proper medical purposes. Defendants chose profit over patients, and the safety of the community, and an award of punitive damages is appropriate, as punishment and a deterrence

942. Defendants' conduct was despicable, and so contemptible that it would be looked down upon and despised by ordinary, decent people, and was carried on by Defendants with willful and conscious disregard for the safety of Plaintiff, entitling Plaintiff to exemplary damages.

943. Therefore, Plaintiff's claims are subject to equitable tolling, stemming from Defendants' wrongful concealment and from Plaintiff's inability to obtain vital information underlying its claims.

944. Plaintiff is entitled to punitive damages, for the sake of example and by way of punishing Defendants in an amount in excess of $15,000.00.

945. By engaging in the above-described wrongful conduct, Defendants also engaged in willful misconduct and exhibited an entire want of care that would raise the presumption of a conscious indifference to consequences.

## VII. RELIEF

**WHEREFORE,** the State of Nevada, by and through its Attorney General, respectfully prays that this Court grant the following relief:

1. Entering Judgment in favor of the State in a final order against each of the Defendants;

2. Enjoining the Defendants and their employees, officers, directors, agents, successors, assignees, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in deceptive practices in violation of Nevada law and ordering temporary, preliminary or permanent injunction;

3. Order that Defendants compensate the State for its future costs to abate the ongoing public nuisance caused by the opioid epidemic;

4. Declaring that each act and omission of each of the Defendants described in this Complaint constitute multiple, separate violations of the Deceptive Trade Practices Act;

5. Imposing actual damages as well as civil penalties of up to $5,000, per Defendant, for each repeated and willful violation of the Deceptive Trade Practices Act;

6. Awarding actual damages, treble damages, and civil penalties of not less than $5,500 and up to $11,000 for each violation of the False Claims Act;

7. Awarding the State its past and future damages caused by the opioid epidemic, including money wrongfully paid for opioids through government-funded insurance;

8. Awarding judgment against the Defendants requiring Defendants to pay punitive damages;

9. Granting the State:

a. The cost of investigation, reasonable attorneys' fees, and all costs and expenses;

b. Pre-judgment and post-judgment interest; and,

c. All other relief as provided by law and/or as the Court deems appropriate and just.

d. Plaintiff asserts claims herein in excess of the minimum jurisdictional requirements of this Court.

Submitted By:

AARON D. FORD, ESQ.
Attorney General
ERNEST FIGUEROA, ESQ.
Consumer Advocate
MARK J. KRUEGER, ESQ.
Nevada Bar No. 7410
Chief Deputy Attorney General
**State of Nevada, Office of the Attorney General, Bureau of Consumer Protection**
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 684-1100; Fax (702) 684-1108
mkrueger@ag.nv.gov

MIKE PAPANTONIO, ESQ.
*(Pro Hac Vice Pending)*
**LEVIN PAPANTONIO LAW FIRM**
316 S. Bavlen Street, Suite 400
Pensacola, Florida 32502
(850) 435-7064; Fax: (850) 436-6064
mpapantonio@levinlaw.com

*Attorneys for Plaintiff*
*State of Nevada*

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
**EGLET ADAMS**
400 S. Seventh St., Suite 400
Las Vegas, NV 89101
(702) 450-5400; Fax: (702) 450-5451
eservice@egletlaw.com

KEITH GIVENS, ESQ.
*(Pro Hac Vice Pending)*
**THE COCHRAN FIRM-DOTHAN, PC**
111 East Main Street
Dothan, Alabama 36301
(334) 673-1555; Fax: (334) 699-7229
keith@cochranfirm.com

ROLAND TELLIS, ESQ.
*(Pro Hac Vice Pending)*
**BARON & BUDD**
3102 Oak Lawn Avenue, #1100
Dallas, Texas 75219
P. (214) 521-3605
F. (214) 520-1181
rtellis@baronbudd.com