

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.

— Electronically Filed
May 04 2020 10:37 a.m.
District Court Case No. Brown
CV18-01895 of Supreme Court

**PETITIONERS' APPENDIX
VOLUME XIII**

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

DATE	DOCUMENT	VOLUME	PAGE	RANGE
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

DATE	DOCUMENT	VOLUME	PAGE	RANGE
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

ALPHABETICAL INDEX TO PETITIONERS' APPENDIX

DATE	DOCUMENT	VOLUME	PAGE	RANGE
4/26/2019	City of Reno's Opposition to Distributor Defendants' Joint Motion to Dismiss and All Joinders	VI-VII	PA00710	PA00958
4/26/2019	City of Reno's Opposition to Manufacturer Defendants' Joint Motion to Dismiss and All Joinders Thereto	IV-V	PA00387	PA00709
9/13/2019	City of Reno's Supplemental Briefing in Support of Oppositions to Defendants' Motions to Dismiss	XVIII	PA02424	PA02560
1/4/2020	City of Reno's Supplemental Briefing in Support of Oppositions to Distributors' Joint Motion to Dismiss	XVIII	PA02592	PA02602

DATE	DOCUMENT	VOLUME	PAGE	RANGE
6/17/2019	Complaint (Case No. A-19-796755-B)	XI-XII	PA01286	PA01535
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
9/18/2018	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
6/27/2019	First Amended Complaint (Case No. A-19-796755-B)	XIII-XV	PA01536	PA02049
12/03/2018	First Amended Complaint (Case No. CV18-01895)	II	PA00168	PA00226
5/15/2018	First Amended Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00051	PA00109
3/4/2019	Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	III	PA00227	PA00264

DATE	DOCUMENT	VOLUME	PAGE	RANGE
10/4/2019	Manufacturer Defendants' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss	XVIII	PA02567	PA02587
2/14/2020	Omnibus Order Granting In Part and Denying in Part Defendants' Motions to Dismiss; and Granting Leave to Amend	XXI	PA03035	PA03052
7/3/2019	Order Directing Answer (Case No. 79002)	XVI	PA02050	PA02052
10/21/2019	Order Dismissing Petition (Case No. 79002)	XVIII	PA02588	PA02591
5/28/2019	Reply in Support of Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	VIII-IX	PA00959	PA01214
9/12/2019	Third Amended Complaint and Demand for Jury Trial (Case No. A-17-76828-C)	XVII	PA02327	PA02423
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 XIII 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 XIII 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

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

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

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

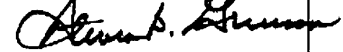
*Attorneys for Defendants Cardinal
Health, Inc.; Cardinal Health 6 Inc.;
Cardinal Health Technologies LLC;
Cardinal Health 108 LLC d/b/a Metro
Medical Supply*

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 XIII 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



ACOM

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.
TROY RAFFERTY, ESQ.
PETER MOUGEY, ESQ.
LAURA DUNNING, ESQ.
NED MCWILLIAMS, ESQ.
BRANDON BOGLE, ESQ.
JEFF GADDY, 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

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
*Attorneys for Plaintiff
State of Nevada*

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
ARTEMUS W. HAM, ESQ.
Nevada Bar No. 7001
ERICA D. ENSTMINGER, ESQ.
Nevada Bar No. 7432
CASSANDRA S.M. CUMMINGS, ESQ.
Nevada Bar No. 11944
RICHARD K. HY, ESQ.
Nevada Bar No. 12406
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.
JOSEPH LANE, ESQ.
ANGELA MASON, ESQ.
JOHN GIVENS, ESQ.
JESSICA GIVENS, ESQ.
CHASE 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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF NEVADA,

Plaintiff,

vs.

MCKESSON CORPORATION; CARDINAL
HEALTH INC.; CARDINAL HEALTH 105, INC.;
CARDINAL HEALTH 108, LLC; CARDINAL
HEALTH 110, LLC; CARDINAL HEALTH 200,
LLC; CARDINAL HEALTH 414, LLC; CARDINAL
HEALTH PHARMACY SERVICES, LLC;
AMERISOURCEBERGEN DRUG CORPORATION;
WALGREENS BOOTS ALLIANCE, INC.;
WALGREEN CO.; WALGREEN EASTERN CO.,
INC.; WALMART INC.; CVS HEALTH
CORPORATION; CVS PHARMACEUTICALS, INC.; TEVA
PHARMACEUTICALS USA,; TEVA
PHARMACEUTICAL INDUSTRIES, LTD.;
ACTAVIS PHARMA, INC.; PURDUE PHARMA
L.P.; PURDUE PHARMA, INC.; PURDUE
HOLDINGS, L.P.; THE PURDUE FREDERICK
COMPANY, INC.; INC.; P.F. LABORATORIES,
INC.; RICHARD S. SACKLER; JONATHAN D.
SACKLER; MORTIMER D.A. SACKLER; KATHE
A. SACKLER; ILENE SACKLER LEFCOURT;
DAVID A. SACKLER; BEVERLY SACKLER;
THERESA SACKLER; PLP ASSOCIATES
HOLDINGS L.P.; ROSEBAY MEDICAL
COMPANY L.P.; BEACON COMPANY; DOE
ENTITIES 1-10; ENDO HEALTH SOLUTIONS
INC.; ENDO PHARMACEUTICALS, INC.; PAR
PHARMACEUTICAL, INC.; MALLINCKRODT
PLC; MALLINCKRODT LLC; SPECIX LLC;
STEVEN A. HOLPER; STEVEN A. HOLPER MD
PROFESSIONAL CORPORATION; HOLPER OUT-
PATIENTS MEDICAL CENTER, LTD.; ROBERT
GENE RAND; RAND FAMILY CARE LLC;
DEVENDRA I. PATEL; PATEL NORTH EASTERN
NEVADA CARDIOLOGY PC; HORACE PAUL
GUERRA IV; ALEJANDRO JIMINEZ INCERA;
ROBERT D. HARVEY; INCERA-JUVENTUS
MEDICAL GROUP PC; INCERA LLC

Defendants.

Case No.: A-19-796755-B

Dept. No.: 11

**FIRST AMENDED
COMPLAINT**

**REQUEST FOR BUSINESS
COURT**

**EXEMPT FROM
ARBITRATION**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PARTIES	7
A.	<u>Plaintiff</u>	7
B.	<u>Defendants</u>	7
1.	Manufacturer Defendants	8
a.	<u>Teva Entities</u>	8
b.	<u>Purdue Entities and the Sackler Defendants</u>	9
c.	<u>Endo Entities</u>	13
d.	<u>SpecGX and Mallinckrodt Entities</u>	15
2.	Distributor Defendants	17
a.	<u>McKesson Corporation</u>	17
b.	<u>Cardinal Health Entities</u>	18
c.	<u>AmerisourceBergen Drug Corporation</u>	19
d.	<u>Walgreens Entities</u>	19
e.	<u>Walmart Entities</u>	20
f.	<u>CVS Entities</u>	20
3.	Health Care Provider Defendants	21
a.	<u>Holper Defendants</u>	217
b.	<u>Rand Defendants</u>	22
c.	<u>Patel Defendants</u>	22
d.	<u>Incera Defendants</u>	23
C.	<u>Agency and Authority</u>	24

1	III. JURISDICTION & VENUE.....	24
2	IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS.....	26
3	A. <u>Opioids and Their Effects</u>	26
4	B. <u>The Resurgence of Opioid Use in the United States</u>	29
5	1. The Sackler Family Integrated Advertising and Medicine.....	29
6	2. Purdue Developed and Aggressively Promoted OxyContin.	31
7	3. Other Manufacturer Defendants Leapt at the Opioid Opportunity.	35
8	C. <u>Defendants' Conduct Created an Abatable Public Nuisance.</u>	38
9	D. <u>The Manufacturer Defendants' Multi-Pronged Scheme to Change</u>	
10	<u>Prescriber Habits and Public Perception to Increase Demand for Opioids</u>	39
11	1. The Manufacturer Defendants Promoted Multiple Falsehoods About	
12	Opioids.	40
13	a. <u>Falsehood #1: The false or misleading claims that the risk of</u>	
14	<u>addiction from chronic opioid therapy is low.</u>	41
15	i. <i>Purdue's misrepresentations regarding addiction risk</i>	42
16	ii. <i>As the Owners of Purdue, members of Purdue's Board and</i>	
17	<i>Former Officers of the Company, the Sacklers had actual</i>	
18	<i>knowledge of, sanctioned, and participated in Purdue's deceptive,</i>	
19	<i>misleading, and otherwise illegal practices</i>	47
20	iii. <i>Endo's misrepresentations regarding addiction risk</i>	61
21	iv. <i>Actavis's misrepresentations regarding addiction risk</i>	63
22	v. <i>Mallinckrodt's misrepresentations regarding addiction risk</i>	

b.	<u>Falsehood #2: The false or misleading claims that to the extent there is a risk of addiction, it can be easily identified and managed.</u>	66
c.	<u>Falsehood #3: The false or misleading claims that signs of addictive behavior are “pseudoaddiction,” requiring more opioids.</u>	68
d.	<u>Falsehood #4: The false or misleading claims that opioid withdrawal can be avoided by tapering.</u>	70
e.	<u>Falsehood #5: The false or misleading claims that opioid doses can be increased without limit or greater risks.</u>	71
f.	<u>Falsehood #6: The false or misleading claims that long-term opioid use improves functioning.</u>	74
g.	<u>Falsehood #7: The false or misleading claims that alternative forms of pain relief pose greater risks than opioids.</u>	78
h.	<u>Falsehood #8: The false or misleading claims that OxyContin provides twelve hours of pain relief.</u>	80
i.	<u>Falsehood #9: The false or misleading claims that new formulations of certain opioids successfully deter abuse.</u>	84
i.	<i>Purdue’s deceptive marketing of reformulated OxyContin and Hysingla ER</i>	85
ii.	<i>Endo’s deceptive marketing of reformulated Opana ER</i>	88
iii.	<i>Other Manufacturer Defendants’ misrepresentations regarding abuse deterrence</i>	94
2.	The Manufacturer Defendants Disseminated Their Misleading Messages About Opioids Through Multiple Channels	96
a.	<u>The Manufacturer Defendants Directed Front Groups to Deceptively Promote Opioid Use.</u>	96

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

i. American Pain Foundation	98
ii. American Academy of Pain Medicine and the American Pain Society.....	100
iii. The Federation of State Medical Boards.....	103
iv. The Alliance for Patient Access.....	105
v. The U.S. Pain Foundation	108
vi. American Geriatrics Society	108
b. <u>The Manufacturer Defendants Paid Key Opinion Leaders to Deceptively Promote Opioid Use.</u>	110
i. Dr. Russell Portenoy.....	112
ii. Dr. Lynn Webster	114
iii. Dr. Perry Fine.....	116
iv. Dr. Scott Fishman.....	117
c. <u>The Manufacturer Defendants Disseminated Their Misrepresentations Through Continuing Medical Education Programs.</u>	118
d. <u>The Manufacturer Defendants Used “Branded” Advertising to Promote Their Products to Doctors and Consumers.</u>	120
e. <u>The Manufacturer Defendants Used “Unbranded” Advertising to Promote Opioid Use for Chronic Pain Without FDA Review.</u>	121
f. <u>The Manufacturer Defendants Funded, Edited, and Distributed Publications that Supported Their Misrepresentations.</u>	123
g. <u>The Manufacturer Defendants Used Detailing to Directly Disseminate Their Misrepresentations to Prescribers.</u>	124

1	h. <u>Manufacturer Defendants Used Speakers’ Bureaus and Programs</u>	
2	<u>to Spread Their Deceptive Messages.</u>	126
3	3. The Manufacturer Defendants Targeted Vulnerable Populations.	127
4	4. The Manufacturer Defendants’ Scheme Succeeded, Creating a	
5	Public Health Epidemic.	128
6	a. <u>Manufacturer Defendants Dramatically Expanded Opioid</u>	
7	<u>Prescribing and Use.</u>	128
8	b. <u>Manufacturer Defendants’ Deception in Expanding Their Market</u>	
9	<u>Created and Fueled the Opioid Epidemic.</u>	130
10	E. <u>Defendants Throughout the Supply Chain Deliberately Disregarded Their</u>	
11	<u>Duties to Maintain Effective Controls to Prevent Diversion and to Identify, Report,</u>	
12	<u>and Take Steps to Halt Suspicious Orders.</u>	132
13	1. All Defendants Have a Duty to Provide Effective Controls and	
14	Procedures to Guard Against Theft and Diversion, and to Report Suspicious	
15	Orders and Not to Ship Those Orders Unless Due Diligence Disproves Their	
16	Suspicious.	133
17	2. Defendants Were Aware of and Have Acknowledged Their	
18	Obligations to Prevent Diversion and to Report and Take Steps to Halt	
19	Suspicious Orders.	139
20	3. Defendants Worked Together to Inflate the Quotas of Opioids They	
21	Could Distribute.	143
22	4. Defendants Kept Careful Track of Prescribing Data and Knew	
23	About Diversion and Suspicious Orders and Prescribers.	151
24	5. Defendants Failed to Report Suspicious Orders or Otherwise Act to	
25	Prevent Diversion.	158
26		
27		
28		

1	6.	Defendants Delayed a Response to the Opioid Crisis by Pretending to	
2		Cooperate with Law Enforcement.	164
3	7.	The National Retail Pharmacies Were on Notice of and Contributed	
4		to Illegal Diversion of Prescription Opioids.	168
5	a.	The National Retail Pharmacies Have a Duty to Prevent Diversion	
6		169	
7	b.	Multiple Enforcement Actions against the National Retail	
8		Pharmacies Confirm their Compliance Failures	173
9	i.	CVS.....	173
10	ii.	Walgreens.....	174
11			
12	F.	The Opioids the Defendants Sold Migrated into Other Jurisdictions.....	175
13	G.	Nevada’s Opioid Epidemic.....	178
14	H.	Defendants’ Unlawful Conduct And Breaches Of Legal Duties Caused	
15		Substantial Damages.....	182
16	I.	The Defendants Conspired To Engage In The Wrongful Conduct	
17		Complained Of Herein and Intended To Benefit Both Independently and Jointly	
18		From Their Conspiracy.....	184
19	1.	Conspiracy Among Manufacturer Defendants.....	184
20	2.	Conspiracy Among All Defendants.....	187
21			
22	J.	Statutes of Limitations are Tolled and Defendants Are Estopped From	
23		Asserting Statutes of Limitations as Defenses.	188
24	1.	Continuing Conduct.....	188
25	2.	Equitable Estoppel.....	189
26	3.	Intentional Concealment	191
27			
28			

1	<u>K. Facts Pertaining to Civil Penalties and Punitive Damages</u>	193
2	V. LEGAL CAUSES OF ACTION	201
3	FIRST CAUSE OF ACTION PUBLIC NUISANCE.....	201
4	SECOND CAUSE OF ACTION VIOLATION OF NEVADA DECEPTIVE TRADE	
5	PRACTICES	207
6	THIRD CAUSE OF ACTION VIOLATION OF THE NEVADA RACKETEERING	
7	ACT (NRS §§ 207.350 TO 207.520).....	215
8	<u>A. THE OPIOID DIVERSION ENTERPRISE</u>	218
9	<u>B. CONDUCT OF THE OPIOID DIVERSION ENTERPRISE</u>	230
10	<u>C. PATTERN OF RACKETEERING ACTIVITY</u>	235
11	1. The Racketeering Defendants Conducted the Opioid Diversion	
12	Enterprise through Acts of Fraud.	238
13	2. The Racketeering Defendants Unlawfully Trafficked in and	
14	Distributed Controlled Substances.....	239
15	<u>D. DAMAGES</u>	244
16	FOURTH CAUSE OF ACTION VIOLATION OF NEVADA FALSE CLAIMS ACT	
17	244
18	FIFTH CAUSE OF ACTION NEGLIGENCE.....	246
19	SIXTH CAUSE OF ACTION NEGLIGENCE PER SE	248
20	SEVENTH CAUSE OF ACTION VIOLATIONS OF 2007 CONSENTE JUDGMENT	
21	250
22	VI. PUNITIVE DAMAGES	252
23	VII. RELIEF	253
24		
25		
26		
27		
28		

Plaintiff, the State of Nevada, by and through the undersigned attorneys, files this Complaint against Plaintiff, the State of Nevada, by Aaron D. Ford, Attorney General (the “State”), brings this Complaint against Defendants McKesson Corporation; Cardinal Health, Inc.; Cardinal Health 105, Inc.; Cardinal Health 108, LLC; Cardinal Health 110, LLC; Cardinal Health 200, LLC; Cardinal Health 414, LLC; Cardinal Health Pharmacy Services, LLC; AmerisourceBergen Drug Corporation; Walgreens Boots Alliance, Inc.; Walgreen Co.; Walgreen Eastern Co., Inc.; Walmart Inc.; CVS Health Corporation; CVS Pharmacy, Inc.; Teva Pharmaceuticals USA, Inc.; Teva Pharmaceutical Industries, Ltd.; Actavis Pharma, Inc.; Purdue Pharma L.P.; Purdue Pharma Inc.; Purdue Holdings L.P.; The Purdue Frederick Company, Inc.; P.F. Laboratories, Inc.; Richard S. Sackler; Jonathan D. Sackler; Mortimer D.A. Sackler; Katha A. Sackler; Ilene Sackler Lefcourt; David A. Sackler; Beverly Sackler; Theresa Sackler; PLP Associates Holdings L.P.; Rosebay Medical Company L.P.; Beacon Company; Doe Entities 1-10; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Mallinckrodt plc; Mallinckrodt LLC; SpecGx LLC; Steven A. Holper; Steven A. Holper MD Professional Corporation; Holper Out-Patients Medical Center, Ltd.; Robert Gene Rand; Rand Family Care LLC; Devendra I. Patel; Patel North Eastern Nevada Cardiology PC; Horace Paul Guerra IV; Alejandro Jimenez Incera; Robert D. Harvey; Incera-Iuventus Medical Group PC; Incera LLC (collectively “Defendants”) and alleges, upon information and belief, as follows:

I. INTRODUCTION

1. The State of Nevada, by and through Aaron Ford, Attorney General for the State of Nevada, and Ernest Figueroa, Consumer Advocate, files this Complaint on behalf of the State to eliminate the hazard to public health and safety caused by the opioid epidemic, to abate the nuisance in this State, and to recover civil fines arising out of Defendants’ false, deceptive and unfair marketing and/or unlawful diversion of prescription opioids (hereinafter “opioids”).¹

¹ As used herein, the term “opioid” refers to the entire family of opiate drugs including natural, synthetic and semi-synthetic opiates.

Such economic damages were foreseeable to Defendants and were sustained because of Defendants' intentional and/or unlawful actions and omissions.

2. The State asserts two categories of claims: (1) claims against the pharmaceutical manufacturers of prescription opioid drugs that engaged in a massive false marketing campaign to drastically expand the market for such drugs and their own market share and (2) claims against entities in the supply chain that reaped enormous financial rewards by refusing to monitor and restrict the improper distribution of those drugs.

3. Opioid analgesics are widely diverted and improperly used, and the widespread use of the drugs has resulted in a national epidemic of opioid overdose deaths and addictions.²

4. The Centers for Disease Control ("CDC") recently estimated that prescription opioid misuse costs the United States \$78.5 billion per year, taking into account healthcare expenses, lost productivity, addiction treatment, and criminal justice involvement.³ In 2015, over 33,000 Americans died as a result of opioid overdose, while an estimated 2 million people in the United States suffered from substance abuse disorders relating to prescription opioids.⁴

5. This case arises from the worst man-made epidemic in modern medical history—the misuse, abuse, diversion, and over-prescription of opioids. Nevada has been greatly impacted by this opioid crisis. By 2016, Defendants had flooded the State with enough opioid prescriptions for 87 out of every 100 Nevadans and Nevadan overdoses well exceeded the national average for opioid deaths.⁵ The impact of Defendants' scheme to misinform and deceptively promote the use of opioids is evident in the numerous instances of overprescribing in Nevada communities; for example, Dr. Robert Rand, Reno's notorious "Pill Mill" case, Dr. Steven Holper in Clark County who has been indicted for prescribing excess quantities of

² See Nora D. Volkow & A. Thomas McLellan, *Opioid Abuse in Chronic Pain—Misconceptions and Mitigation Strategies*, 374 N. Eng. J. Med. 1253 (2016).

³ See Curtis S. Florence, et al., *The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States*, 2013, 54 Medical Care 901 (2016).

⁴ See Rose A. Rudd et al., *Increases in Drug and Opioid-Involved Overdose Deaths—United States, 2010–2015*, 65 Morbidity & Mortality Wkly. Rep. 1445 (2016); Substance Abuse and Mental Health Servs. Admin., U.S. Dep't of Health and Human Servs., *National Survey on Drug Use and Health, 2015 Detailed Tables* (2016).

⁵ Nev. Div. of Pub. and Behavioral Health, *The Scope of Opioid Use in Nevada*, 2016, NEV. DIV. OF PUB. AND BEHAVIORAL HEALTH (DPBH), 1 (Oct. 18, 2017), <http://dpbh.nv.gov/uploadedFiles/dpbhnmvgov/content/Resources/opioids/Opioid%20Infographic.pdf>.

opiooids to his patients, and Lam’s Pharmacy, the Las Vegas top five seller of OxyContin in the nation.

6. The opioid crisis is “directly related to the increasingly widespread misuse of powerful opioid pain medications.”⁶

7. Opioids are regulated as Schedule II controlled substances under both Nevada and federal law. *See* NAC § 435.520(a).⁷ Controlled substances are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the most dangerous. *See* NAC, §§ 435.510 to 435.550. The Nevada Controlled Substances Act imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally are categorized as Schedule II or Schedule III drugs. Schedule II drugs have a high potential for abuse and may lead to severe psychological or physical dependence. Schedule III drugs are deemed to have a lower potential for abuse, but their abuse still may lead to moderate or low physical dependence or high psychological dependence.

8. ***Hydrocodone*** is the most frequently prescribed opioid in the United States and is associated with more drug abuse and diversion than any other licit or illicit opioid. Its street names include Hydro, Norco, and Vikes. It is an orally active agent most frequently prescribed for the treatment of moderate to moderately severe pain. There are numerous brand and generic hydrocodone products marketed in the United States. The most frequently prescribed combination is hydrocodone and acetaminophen (for example, Vicodin®, Lorcet®, and Lortab®). Other examples of combination products include those containing aspirin (Lortab ASA®), ibuprofen (Vicoprofen®) and antihistamines (Hycomine®). Most often these drugs are

⁶ *See* Robert M. Califf et al., *A Proactive Response to Prescription Opioid Abuse*, 374 N. Eng. J. Med. 1480 (2016).

⁷ The Nevada Controlled Substances Act and Administrative Code incorporate by reference relevant federal laws and regulations. NAC 435.100, 435.140, 435.150, 639.426, 639.266, 639.295. References made to the federal Controlled Substances Act, 21 USC § 801 et seq. (“CSA”) are for reference only and to state the duty owed under Nevada tort law, *not* to allege an independent federal cause of action and *not* to allege any substantial federal question. *See* Section III, *infra*.

1 abused by oral rather than intravenous administration.⁸

2 9. *Oxycodone* is a semi-synthetic narcotic analgesic and historically has been a
3 popular drug of abuse among the narcotic abusing population. Its street names include Hillbilly
4 Heroin, Kicker, OC, Ox, Oxy, Perc, and Roxy. Oxycodone is marketed alone as OxyContin®
5 in 10, 20, 40 and 80 mg controlled-release tablets and other immediate-release capsules like 5
6 mg OxyIR®. It is also marketed in combination products with aspirin such as Percodan® or
7 acetaminophen such as Roxicet®. Oxycodone is abused orally or intravenously. The tablets
8 are crushed and sniffed or dissolved in water and injected. Others heat a tablet that has been
9 placed on a piece of foil then inhale the vapors.⁹

10 10. By now, most Americans have been affected, either directly or indirectly, by the
11 opioid disaster. But few realize that this crisis arose from the opioid manufacturers' deliberately
12 deceptive marketing strategy to expand opioid use, together with the distributors' equally
13 deliberate efforts to evade restrictions on opioid distribution. Manufacturers and distributors
14 alike acted without regard for the lives that would be trampled in pursuit of profit.

15 11. From 1999 through 2016, overdoses killed more than 350,000 Americans.¹⁰
16 Over 200,000 of them, more than were killed in the Vietnam War, died from opioids prescribed
17 by doctors to treat pain.¹¹ These opioids include brand-name prescription medications such as
18 OxyContin, Opana ER, Vicodin, Subsys, and Duragesic, as well as generics like oxycodone,
19 hydrocodone, and fentanyl.

20 12. Most of the overdoses from non-prescription opioids are also directly related to
21 prescription pills. Many opioid users, having become addicted to but no longer able to obtain
22 prescription opioids, have turned to heroin. According to the American Society of Addiction
23 Medicine, 80% of people who initiated heroin use in the past decade started with prescription
24

25 ⁸ See Drug Enf't Admin., *Drug Fact Sheet: Hydrocodone* (n.d.),
https://www.dea.gov/druginfo/drug_data_sheets/Hydrocodone.pdf.

26 ⁹ See Drug Enf't Admin., *Drug Fact Sheet: Oxycodone* (n.d.),
https://www.dea.gov/druginfo/drug_data_sheets/Oxycodone.pdf.

27 ¹⁰ *Understanding the Epidemic*, Ctrs. for Disease Control and Prevention,
<https://www.cdc.gov/drugoverdose/epidemic/index.html> (last updated Aug. 30, 2017).

28 ¹¹ *Prescription Opioid Overdose Data*, Ctrs. for Disease Control and Prevention,
<https://www.cdc.gov/drugoverdose/data/overdose.html> (last updated Aug. 1, 2017).

1 opioids—which, at the molecular level and in their effect, closely resemble heroin. In fact,
2 people who are addicted to prescription opioids are 40 times more likely than people not
3 addicted to prescription opioids to become addicted to heroin, and the Centers for Disease
4 Control and Prevention (“CDC”) identified addiction to prescription opioids as the strongest
5 risk factor for heroin addiction.¹²

6 13. As a result, in part, of the proliferation of opioid pharmaceuticals between the
7 late 1990s and 2015, the life expectancy for Americans decreased for the first time in recorded
8 history. Drug overdoses are now the leading cause of death for Americans under 50.

9 14. Meanwhile, the Defendants made blockbuster profits. In 2012 alone, opioids
10 generated \$8 billion in revenue for drug companies. By 2015, sales of opioids grew to
11 approximately \$9.6 billion.

12 15. The State brings this suit against the manufacturers of these highly addictive drugs.
13 The manufacturers aggressively pushed highly addictive, dangerous opioids, falsely representing
14 to doctors that patients would only rarely succumb to drug addiction. These pharmaceutical
15 companies aggressively advertised to and persuaded doctors to prescribe highly addictive,
16 dangerous opioids, turned patients into drug addicts for their own corporate profit. Such actions
17 were intentional and/or unlawful.

18 16. The State also brings this suit against the wholesale distributors of these highly
19 addictive drugs, which breached their legal duties under *inter alia* the Nevada Controlled
20 Substances Act, Nev. Rev. Stat., §§ 453.005 to 453.730 and the Nevada Administrative
21 Code, Nev. Admin. Code, §§ 639.010 to 639.978, to monitor, detect, investigate, refuse, and
22 report suspicious orders of prescription opiates. On the supply side, the crisis was fueled and
23 sustained by those involved in the supply chain of opioids, including manufacturers,
24 distributors, and pharmacies who failed to maintain effective controls over the distribution of
25 prescription opioids, and who instead have actively sought to evade such controls. Defendants
26

27 ¹² *Today's Heroin Epidemic*, “Overdose Prevention” tab, Ctrs. for Disease Control and Prevention,
28 <https://www.cdc.gov/drugoverdose/opioids/heroin.html> (last updated Aug. 29, 2017); *see also Today's Heroin Epidemic*, Ctrs. for Disease Control and Prevention <https://www.cdc.gov/vitalsigns/heroin/index.html> (last updated July 7, 2015).

1 have contributed substantially to the opioid crisis by selling and distributing far greater
2 quantities of prescription opioids than they know could be necessary for legitimate medical uses,
3 while failing to report, and to take steps to halt suspicious orders when they were identified,
4 thereby exacerbating the oversupply of such drugs and fueling an illegal secondary market.

5 17. Defendants' conduct has exacted, and foreseeably so, a financial burden on the
6 State of Nevada. Categories of damages sustained by the State include, but are not limited to
7 Medicaid funds paid out as a result of Defendants' wrongful conduct within the State of
8 Nevada; the prospective damages associated with abating the nuisance created by the
9 Defendants; as well as fines attributable to the thousands, if not millions, of incidents of
10 wrongful conduct by Defendants within the State.

11 18. The State brings this action exclusively under the law of the State of Nevada. No
12 federal claims are being asserted, and to the extent that any claim or factual assertion set forth
13 herein may be construed to have stated any claim for relief arising under federal law, such claim
14 is expressly and undeniably disavowed and disclaimed by the State.

15 19. In addition, notwithstanding anything to the contrary, under no circumstance is
16 the State bringing this action against, or bringing an action or claim of any kind directed to, any
17 federal officer or person acting under any officer of the United States for or relating to any act
18 under color of such office; nothing in this Complaint raises such an action, and to the extent
19 that anything in the Complaint could be interpreted as potentially bringing an action against or
20 directed to any federal officer or person acting under any officer of the United States for or
21 relating to any act under color of such office, then all such claims, actions, or liability, in law or
22 in equity, are denied and disavowed in their entirety. Specifically and without limitation,
23 nothing in the State's Complaint seeks to bind the McKesson Corporation, or any other
24 Defendant, in law or in equity, or to otherwise impose any liability or injunction, related to any
25 United States government contract, including without limitation any Pharmaceutical Prime
26 Vendor (PPV) contract that the McKesson Corporation (or any affiliated entity) or any other
27 Defendant has or had with the United States Veterans Administration. Specifically, and without
28 limitation, nothing in this Complaint challenges in any way, in law or in equity or otherwise,

actions of McKesson pursuant to a contract it has or ever had with the United States Veterans Administration.

20. Nor does the State bring this action on behalf of a class or any group of persons that can be construed as a class. The claims asserted herein are brought solely by the State and are wholly independent of any claims that individual users of opioids may have against Defendants.

II. PARTIES

A. Plaintiff

21. The State of Nevada is a body politic created by the Constitution and laws of the State; as such, it is not a citizen of any state. This action is brought by the State in its sovereign capacity in order to protect the interests of the State of Nevada and its citizens as *parens patriae*, by and through Aaron D. Ford, the Attorney General of the State of Nevada. Attorney General Ford is acting pursuant to his authority under, *inter alia*, NRS 228.310, 338.380, 228.390, and 598.0963(3).

B. Defendants

22. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times, each Defendant has occupied agency, employment, joint venture, or other relationships with each of the other named Defendants; that at all times herein mentioned each Defendant has acted within the course and scope of said agency, employment, joint venture, and/or other relationship; that each other Defendant has ratified, consented to, and approved the acts of its agents, employees, joint venturers, and representatives; and that each has actively participated in, aided and abetted, or assisted one another in the commission of the wrongdoing alleged in this Complaint.

23. At all relevant times Defendants, together and independently, have engaged in the business of, or were successors in interest to, entities engaged in the business of researching, licensing, designing, formulating, developing, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting,

1 packaging, advertising, distributing, and/or selling the prescription opioid drugs to individuals
2 and entities in the State of Nevada.

3 24. At all relevant times, Defendants have sold and supplied opioid prescription
4 drugs to individuals and entities located within every county of the State of Nevada.

5 **1. Manufacturer Defendants**

6 25. The Manufacturer Defendants are defined below. At all relevant times, the
7 Manufacturer Defendants have packaged, distributed, supplied, sold, placed into the stream
8 of commerce, labeled, described, marketed, advertised, promoted and purported to warn or
9 purported to inform prescribers and users regarding the benefits and risks associated with the
10 use of the prescription opioid drugs.

11 a. Teva Entities

12 26. Defendant Teva Pharmaceuticals USA, Inc. ("Teva USA") is a Delaware
13 corporation with its principal place of business in North Wales, Pennsylvania. Teva USA was
14 in the business of selling generic opioids, including a generic form of OxyContin from 2005 to
15 2009. Teva USA is a wholly-owned subsidiary of Defendant Teva Pharmaceutical Industries,
16 Ltd. ("Teva Ltd."), an Israeli corporation regularly engaged in business in the United States of
17 America and the state of Nevada.

18 27. Defendant Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.) is registered to do
19 business with the Nevada Secretary of State as a Delaware corporation with its principal place of
20 business in Parsippany-Troy Hills, New Jersey. Actavis Pharma, Inc. was previously responsible
21 for sales of Kadian and Norco. Actavis Pharma, Inc. was sold to Teva Pharmaceutical Industries
22 Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

23 28. Teva USA, Teva Ltd. and Actavis Pharma, Inc., together with their DEA and
24 Nevada registrant and licensee subsidiaries and affiliates (collectively, "Teva"), work together
25 to manufacture, promote, distribute and sell brand name and generic versions (including
26 Kadian, Duragesic, and Opana) of opioids nationally, and in Nevada, including the following:
27
28

Product Name	Chemical Name
Actiq	Fentanyl citrate
Fentora	Fentanyl buccal
Kadian	Morphine sulfate, extended release
Norco	Hydrocodone bitartrate and acetaminophen

29. From 2000 forward, Teva, directly and through its named and unnamed subsidiaries and/or agents, has made thousands of payments to physicians nationwide, many of whom were not oncologists and did not treat cancer pain, ostensibly for activities including participating on speakers' bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services. In fact, these payments were made to deceptively promote and maximize the use of opioids.

b. Purdue Entities and the Sackler Defendants

30. Defendant Purdue Pharma L.P. ("PPL") is a limited partnership organized under the laws of Delaware with its principal place of business in Stamford, Connecticut and is registered with the Nevada Secretary of State to do business in Nevada.

31. Defendant Purdue Pharma Inc. ("PPI") is a New York corporation with its principal place of business in Stamford, Connecticut.

32. Defendant Purdue Holdings L.P. ("PHL") is a Delaware limited partnership and wholly owns the limited partnership interest in Purdue Pharma L.P.

33. Defendant The Purdue Frederick Company, Inc. ("PFC") is a New York corporation with its principal place of business in Stamford, Connecticut.

34. Defendant P.F. Laboratories, Inc. ("PF Labs") is a New Jersey corporation with its principal place of business in Totowa, New Jersey.

35. PPL, PPI, PHL, PFC, and PF Labs, together with their Drug Enforcement Administration ("DEA") and Nevada registrant and licensee subsidiaries and affiliates (collectively, "Purdue"), are engaged in the manufacture, promotion, distribution, and sale of

opiods nationally, and in Nevada, including the following:

Product	Chemical Name
OxyContin	Oxycodone hydrochloride, extended release
MS Contin	Morphine sulfate, extended release
Dilaudid	Hydromorphone hydrochloride
Dilaudid-HP	Hydromorphone hydrochloride
Butrans	Buprenorphine
Hysingla ER	Hydrocodone bitrate
Targiniq ER	Oxycodone hydrochloride and naloxone hydrochloride

36. Purdue made thousands of payments to physicians nationwide, ostensibly for activities including participating on speakers' bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services. In fact, these payments were made to deceptively promote and maximize the use of opiods.

37. OxyContin is Purdue's largest-selling opiod. Since 2009, Purdue's national annual sales of OxyContin have fluctuated between \$2.47 billion and \$3.1 billion, up four-fold from 2006 sales of \$800 million. OxyContin constitutes roughly 30% of the entire market for analgesic drugs (*i.e.*, painkillers). Sales of OxyContin (launched in 1996) went from a mere \$49 million in its first full year on the market to \$1.6 billion in 2002.

38. In 2007, Purdue settled criminal and civil charges against it for misbranding OxyContin and agreed to pay a \$635 million fine – at the time, one of the largest settlements with a drug company for marketing misconduct. None of this stopped Purdue. In fact, Purdue continued to create the false perception that opiods were safe and effective for long-term use, even after being caught, by using unbranded marketing methods to circumvent the system. On May 8, 2007, as part of these settlements, Purdue entered into a consent judgment with the State of Nevada, in which it agreed to a number of terms intended to prevent any further

1 misleading marketing in the State of Nevada. In short, Purdue paid the fine when caught and
2 then continued business as usual, deceptively marketing and selling billions of dollars of opioids
3 each year.

4 39. At all relevant times, Purdue, which is a collection of private companies, has
5 been controlled by members of the extended Sackler family, who are the ultimate intended
6 beneficiaries of virtually all of Purdue's profit distributions. The individual Defendants named
7 in this action are the remaining living Sackler family members who served on the board of
8 Purdue Pharma, Inc. (the "Purdue board"), which functioned as the nexus of decision-making
9 for all of Purdue.

10 40. Defendant Richard S. Sackler became a member of the Purdue board in 1990
11 and became its co-chair in 2003, which he remained until he left the board in 2018. He was
12 also Purdue's head of research and development from at least 1990 through 1999, and its
13 president from 1999 through 2003. He resides in New York, Florida, and Texas. He currently
14 holds an active license to practice medicine issued by the New York State Education
15 Department. He is a trustee of the Sackler School of Medicine, a director and the vice president
16 of the Raymond and Beverly Sackler Foundation, and a director and the president and treasurer
17 of the Richard and Beth Sackler Foundation, Inc., all three of which are New York Not-for-
18 Profit Corporations.

19 41. Defendant Jonathan D. Sackler was a member of Purdue's board from 1990
20 through 2018. He resides in Connecticut. He is a trustee of the Sackler School of Medicine, the
21 president and CEO of the Raymond and Beverly Sackler Foundation, and the vice president of
22 the Richard and Beth Sackler Foundation Inc., all three of which are New York Not-for-Profit
23 Corporations.

24 42. Defendant Mortimer D.A. Sackler has been a member of Purdue's Board since
25 1993. He resides in New York. Mortimer is a director and the president of the Mortimer and
26 Jacqueline Sackler Foundation, and a director and the vice president and treasurer of the
27 Mortimer D. Sackler Foundation, Inc., both of which are New York Not-for-Profit
28

Corporations.

43. Defendant Kathe A. Sackler was a member of Purdue's board from 1990 through 2018. She resides in New York and Connecticut. Kathe is a director and president of the Shack Sackler Foundation, a director and vice president and secretary of the Mortimer D. Sackler Foundation Inc. and is a governor of the New York Academy of Sciences, all three of which are New York Not-for-Profit Corporations.

44. Defendant Ilene Sackler Lefcourt was a member of Purdue's board between 1990 and 2018. She resides in New York. She is a director of Columbia University and is the president of the Sackler Lefcourt Center for Child Development Inc., both of which are New York Not-for-Profit Corporations.

45. Defendant David A. Sackler was a member of Purdue's board from 2012 through 2018. He resides in New York.

46. Defendant Beverly Sackler was a member of Purdue's board from 1993 through 2017. She resides in Connecticut. Beverly Sackler serves as a Director and the Secretary and Treasurer of the Raymond and Beverly Sackler Foundation, a New York Not-for-Profit Corporation.

47. Defendant Theresa Sackler was a member of Purdue's board from 1993 through 2018. She resides in New York and the United Kingdom.

48. These individual Defendants used a number of known and unknown entities named as Defendants herein as vehicles to transfer funds from Purdue directly or indirectly to themselves. These include the following:

49. Defendant PLP Associates Holdings L.P., which is a Delaware limited partnership and a limited partner of Purdue Holdings L.P. Its partners are PLP Associates Holdings Inc. and BR Holdings Associates L.P.

50. Defendant Rosebay Medical Company L.P., which is a Delaware limited partnership ultimately owned by trusts for the benefit of one or more of the individual Defendants. Its general partner is Rosebay Medical Company, Inc., a citizen of Delaware and

1 Connecticut. The Board of Directors of Rosebay medical Company, Inc. includes board
2 members Richard S. Sackler and Jonathan D. Sackler.

3 51. Defendant Beacon Company, which is a Delaware general partnership
4 ultimately owned by trusts for the benefit of members of one or more of the individual
5 Defendants.

6 52. Defendant Doe Entities 1-10, which are unknown trusts, partnerships,
7 companies, and/or other legal entities, which are ultimately owned and/or controlled by, and
8 the identities of which are particularly within the knowledge of, one or more of the individual
9 Defendants.

10 53. The foregoing individual Defendants are referred to collectively as “the
11 Sacklers.” The foregoing entities they used as vehicles to transfer funds from Purdue directly
12 or indirectly to themselves are referred to as “the Sackler Entities.” Together, the Sacklers and
13 the Sackler Entities are referred to collectively as “the Sackler Defendants.”

14 c. Endo Entities

15
16 54. Defendant Endo Health Solutions Inc. (“EHS”) is a Delaware corporation with
17 its principal place of business in Malvern, Pennsylvania.

18 55. Defendant Endo Pharmaceuticals, Inc. (“EPI”) is a wholly-owned subsidiary of
19 EHS and is a Delaware corporation with its principal place of business in Malvern,
20 Pennsylvania.
21

22 56. Defendant Par Pharmaceutical, Inc. is a Delaware corporation with its principal
23 place of business located in Chestnut Ridge, New York. Par Pharmaceutical, Inc. is a wholly-
24 owned subsidiary of Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings,
25 Inc. Defendant Par Pharmaceutical Companies, Inc. is a Delaware corporation with its principal
26 place of business located in Chestnut Ridge, New York. Par Pharmaceutical Companies, Inc.
27 (and by extension its subsidiary, Par Pharmaceutical, Inc.,) (collectively, “Par Pharmaceutical”)
28

was acquired by Endo International plc in September 2015 and is currently an operating company of Endo International plc.

57. EHS, EPI, and Par Pharmaceutical, and their DEA registrant subsidiaries and affiliates, (collectively, “Endo”), manufacture opioids sold nationally, and in Nevada. Among the drugs Endo manufactures or manufactured are the following:

Product Name	Chemical Name
Opana ER	Oxymorphone hydrochloride, extended release
Opana	Oxymorphone hydrochloride
Percodan	Oxymorphone hydrochloride and aspirin
Percocet	Oxymorphone hydrochloride and acetaminophen
Generic	Oxycodone
Generic	Oxymorphone
Generic	Hydromorphone
Generic	Hydrocodone

58. Endo made thousands of payments to physicians nationwide, ostensibly for activities including participating on speakers’ bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services. In fact, these payments were made to deceptively promote and maximize the use of opioids.

59. Opioids made up roughly \$403 million of Endo’s overall revenues of \$3 billion in 2012, accounting for over 10% of Endo’s total revenue; Opana ER yielded revenue of \$1.15 billion from 2010 to 2013. Endo also manufactures and sells generic opioids, in the United States and Nevada, both directly and through its subsidiary, Qualitest Pharmaceuticals, Inc., including generic oxycodone, oxymorphone, hydromorphone, and hydrocodone products.

60. The Food and Drug Administration requested that Endo remove Opana ER from

the market in June 2017. The FDA relied on post-marketing data in reaching its conclusion based on risk of abuse.

d. SpecGX and Mallinckrodt Entities

61. Defendant Mallinckrodt plc is an Irish public limited company with its headquarters in Staines-upon-Thames, Surrey, United Kingdom. Mallinckrodt plc was incorporated in January 2013 with the purpose of holding the pharmaceuticals business of Covidien plc, which was fully transferred to Mallinckrodt plc in June of that year. Mallinckrodt plc also operates under the registered business name Mallinckrodt Pharmaceuticals, with its U.S. headquarters in Hazelwood, Missouri.

62. Defendant Mallinckrodt LLC is a limited liability company organized and existing under the laws of the State of Delaware.

63. Defendant SpecGx LLC is a Delaware limited liability company with its headquarters in Clayton, Missouri, and is registered with the Nevada Secretary of State to do business in Nevada.

64. Mallinckrodt plc, Mallinckrodt LLC, and SpecGx LLC, together with their DEA and Nevada registrant and licensee subsidiaries and affiliates (collectively, "Mallinckrodt"), manufacture, market, sell, and distribute pharmaceutical drugs throughout the United States, and in Nevada. Mallinckrodt is the largest U.S. supplier of opioid pain medications and among the top ten generic pharmaceutical manufacturers in the United States, based on prescriptions.

65. Mallinckrodt manufactures and markets two branded opioids: Exalgo, which is extended-release hydromorphone, sold in 8, 12, 16, and 32 mg dosage strengths, and Roxicodone, which is oxycodone, sold in 15 and 30 mg dosage strengths. In 2009, Mallinckrodt Inc., a subsidiary of Covidien plc, acquired the U.S. rights to Exalgo. Exalgo was approved for the treatment of chronic pain in 2012. Mallinckrodt further expanded its branded opioid portfolio in 2012 by purchasing Roxicodone from Xanodyne Pharmaceuticals. In addition, Mallinckrodt developed Xartemis XR, an extended-release combination of oxycodone and acetaminophen, which the FDA approved in March 2014, and which Mallinckrodt has since

discontinued. Mallinckrodt promoted its branded opioid products with its own direct sales force.

66. While it has sought to develop its branded opioid products, Mallinckrodt has long been a leading manufacturer of generic opioids. Mallinckrodt also estimated, based on IMS Health data for 2015, that its generics claimed an approximately 23% market share of DEA Schedules II and III opioid and oral solid dose medications.¹³

67. Mallinckrodt operates a vertically integrated business in the United States: (1) importing raw opioid materials, (2) manufacturing generic opioid products, primarily at its facility in Hobart, New York, and (3) marketing and selling its products to drug distributors, specialty pharmaceutical distributors, retail pharmacy chains, pharmaceutical benefit managers with mail-order pharmacies, and hospital buying groups.

68. Among the drugs Mallinckrodt manufactures or has manufactured are the following:

Product Name	Chemical Name
Exalgo	Hydromorphone hydrochloride, extended release
Roxicodone	Oxycodone hydrochloride
Xartemis XR	Oxycodone hydrochloride and acetaminophen
Methadose	Methadone hydrochloride
Generic	Morphine sulfate, extended release
Generic	Morphine sulfate oral solution
Generic	Fentanyl transdermal system
Generic	Oral transmucosal fentanyl citrate
Generic	Oxycodone and acetaminophen
Generic	Hydrocodone bitartrate and acetaminophen
Generic	Hydromorphone hydrochloride

¹³ Mallinckrodt plc 2016, Annual Report (Form 10-K), at 5 (Nov. 29, 2016), <https://www.sec.gov/Archives/edgar/data/1567892/000156789216000098/0001567892-16-000098-index.htm>.

Generic	Hydromorphone hydrochloride, extended release
---------	---

Product Name	Chemical Name
Generic	Naltrexone hydrochloride
Generic	Oxymorphone hydrochloride
Generic	Methadone hydrochloride
Generic	Oxycodone hydrochloride
Generic	Buprenorphine and naloxone

69. Mallinckrodt made thousands of payments to physicians nationwide, ostensibly for activities including participating on speakers' bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services. In fact, these payments were made to deceptively promote and maximize the use of opioids.

2. Distributor Defendants

70. The Distributor Defendants are defined below. At all relevant times, the Distributor Defendants have distributed, supplied, sold, and placed into the stream of commerce the prescription drug opioids, without fulfilling their fundamental duty of wholesale drug distributors to detect and warn of diversion of dangerous drugs for non-medical purposes. The State alleges that the unlawful conduct by the Distributor Defendants is a substantial cause for the volume of prescription opioids plaguing the State and that the negligence of those Distributor Defendants caused catastrophic harm to the state of Nevada and its citizens.¹⁴

a. McKesson Corporation

71. Defendant McKesson Corporation is fifth on the list of Fortune 500 companies, ranking immediately after Apple and ExxonMobil, with annual revenue of \$191 billion in 2016. McKesson Corporation, together with and through its DEA and Nevada registrant and licensee

¹⁴ Although addressed in Section 1(e), Defendant Mallinckrodt LLC and related entities are direct distributors of drugs relevant to this action in the state of Nevada and should be considered both a manufacturer defendant as well as distributor defendant.

1 subsidiaries and affiliates (collectively, “McKesson”), is a wholesaler of pharmaceutical drugs
2 that distributes opioids throughout the country, including in Nevada. McKesson operated as a
3 licensed pharmacy wholesaler in the State of Nevada and is and was at all relevant times
4 registered with the Nevada Secretary of State as a Delaware corporation with its principal office
5 located in San Francisco, California.

6 72. In January 2017, McKesson paid a record \$150 million to resolve an
7 investigation by the U.S. Department of Justice (“DOJ”) for failing to report suspicious orders
8 of certain drugs, including opioids. In addition to the monetary penalty, the DOJ required
9 McKesson to suspend sales of controlled substances from distribution centers in Ohio, Florida,
10 Michigan and Colorado. The DOJ described these “staged suspensions” as “among the most
11 severe sanctions ever agreed to by a [Drug Enforcement Administration] registered distributor.”

12 b. Cardinal Health Entities

13 73. Defendant Cardinal Health, Inc. and its subsidiaries Cardinal Health 105, Inc.;
14 Cardinal Health 108, LLC; Cardinal Health 110, LLC; Cardinal Health 200, LLC; Cardinal
15 Health 414, LLC; and Cardinal Health Pharmacy Services, LLC operated as licensed pharmacy
16 wholesalers in the State of Nevada and will be referred to collectively herein as “Cardinal
17 Health.”

18 74. Defendant Cardinal Health, Inc. is an Ohio corporation with its principal place
19 of business in Dublin, Ohio. Cardinal Health, Inc. describes itself as a “global, integrated health
20 care services and products company,” and is the fifteenth largest company by revenue in the
21 U.S., with annual revenue of \$121 billion in 2016. Based on Defendant Cardinal Health’s own
22 estimates, one out of every six pharmaceutical products dispensed to United States patients
23 travels through the Cardinal Health network.

24 75. Defendant Cardinal Health 105, Inc. d/b/a Xiromed, LLC is an Ohio corporation
25 with its principal place of business in Dublin, Ohio.

26 76. Defendant Cardinal Health 108, LLC f/k/a Cardinal Health 108, Inc. is and was
27 at all relevant times registered to do business with the Nevada Secretary of State as a Delaware
28

1 limited liability company with its principal place of business in Tennessee.

2 77. Defendant Cardinal Health 110, LLC d/b/a ParMed Pharmaceuticals is and was
3 at all relevant times registered to do business with the Nevada Secretary of State as a Delaware
4 limited liability company with its principal place of business in Dublin, Ohio.

5 78. Defendant Cardinal Health 200, LLC is and was at all relevant times registered
6 to do business with the Nevada Secretary of State as a Delaware limited liability company with
7 its principal place of business in Waukegan, Illinois.

8 79. Defendant Cardinal Health 414, LLC is and was at all relevant times registered
9 to do business with the Nevada Secretary of State as a Delaware limited liability company with
10 its principal place of business in Dublin, Ohio.

11 80. Defendant Cardinal Health Pharmacy Services, LLC is and was at all relevant
12 times registered to do business with the Nevada Secretary of State as a Delaware limited
13 liability company with its principal place of business in Houston, Texas.

14 c. AmerisourceBergen Drug Corporation

15 81. Defendant AmerisourceBergen Drug Corporation, together with and through its
16 DEA and Nevada registrant and licensee subsidiaries and affiliates (collectively,
17 “AmerisourceBergen”), is a wholesaler of pharmaceutical drugs that distributes opioids
18 throughout the country, including in Nevada. AmerisourceBergen, at all relevant times,
19 operated as a licensed pharmacy wholesaler in the State of Nevada and is and was registered to
20 do business with the Nevada Secretary of State as a Delaware corporation with its principal place
21 of business in Chesterbrook, Pennsylvania. AmerisourceBergen is the eleventh largest
22 company by revenue in the United States, with annual revenue of \$147 billion in 2016.

23 d. Walgreens Entities

24 82. Defendant Walgreens Boots Alliance, Inc. is a Delaware corporation with its
25 principal place of business in Illinois.

26 83. Defendant Walgreen Co. is and was registered to do business with the Nevada
27 Secretary of State as an Illinois with its principal place of business in Deerfield, Illinois.
28

Walgreen Co. is a subsidiary of Walgreens Boots Alliance, Inc. and does business under the trade name Walgreens.

84. Defendant Walgreen Eastern Co., Inc. is a New York corporation with its principal place of business in Deerfield, Illinois.

85. Defendants Walgreens Boots Alliance, Inc., Walgreen Eastern Co., and Walgreen Co. are collectively referred to as “Walgreens”. Walgreens, through its various DEA registered subsidiaries and affiliated entities, conducts business as a licensed wholesale distributor. At all times relevant to this Complaint, Walgreens distributed prescription opioids throughout the United States, including in Nevada. At all relevant times, this Defendant operated as a licensed pharmacy wholesaler in the State of Nevada.

e. Walmart Entities

86. Defendant Walmart Inc., (“Walmart”) formerly known as Wal-Mart Stores, Inc., is and was registered to do business with the Nevada Secretary of State as a Delaware corporation with its principal place of business in Arkansas. Walmart, through its various DEA registered subsidiaries and affiliated entities, conducts business as a licensed wholesale distributor under named business entities including Wal-Mart Warehouse #6045 a/k/a Wal-Mart Warehouse #45. At all times relevant to this Complaint, Walmart distributed prescription opioids throughout the United States, including in Nevada. At all relevant times, this Defendant operated as a licensed pharmacy wholesaler in the State of Nevada.

f. CVS Entities

87. Defendant CVS Health Corporation (“CVS HC”) is a Delaware corporation with its principal place of business in Woonsocket, Rhode Island. CVS HC conducts business as a licensed wholesale distributor under the following named business entities, among others: CVS Orlando FL Distribution L.L.C. and CVS Pharmacy, Inc. (collectively “CVS”). At all times relevant to this Complaint, CVS distributed prescription opioids throughout the United States, including in Nevada.

88. Defendant CVS Pharmacy, Inc. (“CVS Pharmacy”) is a Rhode Island

1 corporation with its principal place of business in Woonsocket, Rhode Island. CVS Pharmacy
2 is a subsidiary of CVS HC. At all times relevant to this Complaint, CVS Pharmacy operated as
3 a licensed pharmacy wholesaler, distributor and controlled substance facility in Nevada.

4 89. Defendants CVS HC, and CVS Pharmacy are collectively referred to as “CVS.”
5 CVS conducts business as a licensed wholesale distributor. At all times relevant to this
6 Complaint, CVS distributed prescription opioids throughout the United States, including in
7 Nevada.

8 **3. Health Care Provider Defendants**

9 90. The Health Care Provider Defendants are defined below. At all relevant times, the
10 Health Care Provider Defendants played an integral role in the chain of opioids being sold an
11 distributed throughout the State of Nevada. The State alleges that the unlawful conduct by the
12 Health Care Provider Defendants is a substantial cause for the volume of prescription opioids
13 plaguing the State and that the actions of those Health Care Provider Defendants caused
14 catastrophic harm to the state of Nevada and its citizens.

15
16
17 a. Holper Defendants

18 91. Defendant Steven A. Holper is, and was at all times relevant herein, a resident
19 of Clark County, Nevada and was a licensed medical doctor in the State of Nevada. Upon
20 information and belief, and at all times relevant hereto, Defendant Steven A. Holper conducted
21 business and provided medical services as Defendant Steven A. Holper MD Professional
22 Corporation, a Nevada Domestic Professional Corporation in Clark County, Nevada.
23 Defendant Holper Out-Patients Medical Center, Ltd. (Collectively, with Steven A. Holper and
24 Steven A. Holper M.D., PC, “Holper Defendants”), is, and was at all times relevant herein, a
25 Nevada Domestic Corporation with its principal place of business in Clark County, Nevada,
26 and served as the location from which Defendant Steven A. Holper provided his medical
27 services.

28 92. The Holper Defendants habitually prescribed and delivered highly addictive and

1 potentially lethal opioid medications to patients in the State of Nevada who did not meet the
2 qualifications for such medication.

3 93. The Holper Defendants participated in a deceptive scheme to obtain
4 authorization for such prescriptions from health insurance providers.

5 94. On or about December 10, 2018, Defendant Steven A. Holper pleaded guilty to
6 one count of distribution of a controlled substance.

7 b. Rand Defendants

8 95. Defendant Robert Gene Rand is, and was at all times relevant herein, a resident
9 of Washoe County, Nevada and was a licensed medical doctor in the State of Nevada.
10 Defendant Rand Family Care LLC (Collectively, with Robert G. Rand, "Rand Defendants"),
11 is, and was at all times relevant herein, a limited liability company organized and existing under
12 the laws of the State of Nevada and served as the location from which Defendant Robert G.
13 Rand provided his medical services.

14 96. The Rand Defendants habitually prescribed and delivered highly addictive and
15 potentially lethal opioid medications to patients in the State of Nevada who did not meet the
16 qualifications for such medication.

17 97. The Rand Defendants participated in a deceptive scheme to obtain authorization
18 for such prescriptions from health insurance providers.

19 98. Defendant Robert G. Rand pleaded guilty to involuntary manslaughter and
20 distribution of a controlled substance.

21 c. Patel Defendants

22 99. Defendant Devendra I. Patel, a/k/a Devendrakumar I. Patel, is, and was at all
23 times relevant herein, a resident of Elko County, Nevada and was a licensed medical doctor in
24 the State of Nevada. Defendant Patel North Eastern Nevada Cardiology PC (Collectively, with
25 Devendra I. Patel, "Patel Defendants"), is, and was at all times relevant herein, a Nevada
26 Domestic Professional Corporation in Elko County, Nevada and served as the location from
27 which Defendant Devendra I. Patel provided his medical services.
28

1 100. The Patel Defendants habitually prescribed and delivered highly addictive and
2 potentially lethal opioid medications to patients in the State of Nevada who did not meet the
3 qualifications for such medication.

4 101. The Patel Defendants participated in a deceptive scheme to obtain authorization
5 for such prescriptions from health insurance providers.

6 102. On or about November 26, 2018, Defendant Devendra I. Patel pleaded guilty to
7 distribution of a controlled substance.

8 d. Incera Defendants

9 103. Defendant Horace Paul Guerra IV is, and was at all times relevant herein, a
10 resident of Clark County, Nevada and was a licensed medical doctor in the State of Nevada.
11 Defendant Alejandro Jiminez Incera is, and was at all times relevant herein, a resident of Clark
12 County, Nevada and was a licensed nurse practitioner in the State of Nevada. Defendant Robert
13 D. Harvey is, and was at all times relevant herein, a resident of Clark County, Nevada and was
14 a surgical technician in the State of Nevada. Upon information and belief, and at all times
15 relevant hereto, Defendant Horace Paul Guerra IV and Defendant Alejandro J. Incera
16 conducted business and provided medical services as Defendant Incera-Iuventus Medical
17 Group PC, a Nevada Domestic Professional Corporation in Clark County, Nevada. Defendant
18 Incera LLC. (Collectively, with Horace P. Guerra IV, Alejandro J. Incera, Robert D. Harvey,
19 and Incera-Iuventus Medical Group PC, "Incera Defendants"), is, and was at all times relevant
20 herein, a limited liability company organized and existing under the laws of the State of Nevada
21 and served as the location from which Defendants Horace P. Guerra IV, Alejandro J. Incera,
22 and Robert D. Harvey provided their medical services.

23 104. The Incera Defendants habitually prescribed and delivered highly addictive and
24 potentially lethal opioid medications to patients in the State of Nevada who did not meet the
25 qualifications for such medication.

26 105. The Incera Defendants participated in a deceptive scheme to obtain
27 authorization for such prescriptions from health insurance providers.

28

106. On or about July 25, 2018, Defendant Horace P. Guerra IV pleaded guilty to one count of conspiracy to distribute a controlled substance. On or about October 2, 2018, Defendant Alejandro J. Incera pleaded guilty to eight counts of distribution of a controlled substance and eight counts of health care fraud, while Defendant Robert D. Harvey pleaded guilty to one count of conspiracy to distribute a controlled substance and three counts of distribution of a controlled substance.

C. Agency and Authority

107. All of the actions described in this Complaint are part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized, ordered, and/or done by Defendants' officers, agents, employees, or other representatives while actively engaged in the management of Defendants' affairs within the course and scope of their duties and employment, and/or with Defendants' actual, apparent, and/or ostensible authority.

III. JURISDICTION & VENUE

108. Subject matter jurisdiction for this case is conferred upon this Court pursuant to, inter alia, Article 6, Section 6 of the Nevada Constitution.

109. This Court has personal jurisdiction over Defendants because Defendants do business in Nevada and/or have the requisite minimum contacts with Nevada necessary to constitutionally permit the Court to exercise jurisdiction with such jurisdiction also within the contemplation of the Nevada "long arm" statute, NRS § 14.065.

110. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 USC § 1332, as the State is not a citizen of any state and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005. Likewise, federal question subject matter jurisdiction pursuant to 28 USC § 1331 is not invoked by the Complaint, as it sets forth herein exclusively viable state law claims against Defendants. Nowhere herein does

1 Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises
2 under federal law. The issues presented in the allegations of this Complaint do not implicate
3 any substantial federal issues and do not turn on the necessary interpretation of federal law. No
4 federal issue is important to the federal system as a whole under the criteria set by the Supreme
5 Court in *Gunn v. Minton*, 568 U.S. 251 (2013) (*e.g.*, federal tax collection seizures, federal
6 government bonds). Specifically, the causes of action asserted, and the remedies sought herein,
7 are founded upon the positive statutory, common, and decisional laws of Nevada. Further, the
8 assertion of federal jurisdiction over the claims made herein would improperly disturb the
9 congressionally approved balance of federal and state responsibilities. Accordingly, any
10 exercise of federal jurisdiction is without basis in law or fact.

11 111. In this complaint, Plaintiff cites federal statutes and regulations. Plaintiff does so
12 to state the duty owed under Nevada tort law, *not* to allege an independent federal cause of
13 action and *not* to allege any substantial federal question under *Gunn v. Minton*. “A claim for
14 negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of
15 care, (2) breach, (3) legal causation, and (4) damages.” *Turner v. Mandalay Sports*
16 *Entertainment, LLC*, 124 Nev. 213, 180 P.3d 1172 (Nev. 2008). The element of duty is to be
17 determined as a matter of law based on foreseeability of the injury. *Estate of Smith ex rel.*
18 *Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. 855, 265 P.3d 688, 689 (Nev. 2011). To be
19 clear, Plaintiff cites federal statutes and federal regulations for the sole purpose of stating the
20 duty owed under Nevada law to the citizens of Nevada. Thus, any attempted removal of this
21 complaint based on a federal cause of action or substantial federal question is without merit.

22 112. Venue is proper in this Court pursuant to NRS § 598.0989(3) because
23 Defendants’ conduct alleged herein took place in Clark County, Nevada.
24
25
26
27
28

IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS¹⁵

A. Opioids and Their Effects

113. Opioids are a class of drugs that bind with opioid receptors in the brain and includes natural, synthetic, and semi-synthetic opioids. Natural opioids are derived from the opium poppy. Generally used to temporarily relieve pain, opioids block pain signals but do not treat the source of the pain. Opioids produce multiple effects on the human body, the most significant of which are analgesia, euphoria, and respiratory depression.

114. The medicinal properties of opioids have been recognized for millennia—as has their potential for abuse and addiction. The opium poppy contains various opium alkaloids, three of which are used in the pharmaceutical industry today: morphine, codeine, and thebaine. Early use of opium in Western medicine was with a tincture of opium and alcohol called laudanum, which contains all of the opium alkaloids and is still available by prescription today. Chemists first isolated the morphine and codeine alkaloids in the early 1800s.

115. In 1827, the pharmaceutical company Merck began large-scale production and commercial marketing of morphine. During the American Civil War, field medics commonly used morphine, laudanum, and opium pills to temporarily relieve the pain of the wounded, and many veterans were left with morphine addictions. By 1900, an estimated 300,000 people were addicted to opioids in the United States, and many doctors prescribed opioids solely to prevent their patients from suffering withdrawal symptoms. The nation's first Opium Commissioner, Hamilton Wright, remarked in 1911, "The habit has this nation in its grip to an astonishing extent. Our prisons and our hospitals are full of victims of it, it has robbed ten thousand businessmen of moral sense and made them beasts who prey upon their fellows . . . it has become one of the most fertile causes of unhappiness and sin in the United States."¹⁶

¹⁵ The allegations in this Complaint are made upon facts, as well as upon information and belief. The State reserves the right to seek leave to amend or correct this Complaint based upon analysis of DEA data or other discovery, including, upon analysis of the ARCOS, IMS Health, and other data and upon further investigation and discovery.

¹⁶ Nick Miroff, *From Teddy Roosevelt to Trump: How Drug Companies Triggered an Opioid Crisis a*

116. Pharmaceutical companies tried to develop substitutes for opium and morphine that would provide the same analgesic effects without the addictive properties. In 1898, Bayer Pharmaceutical Company began marketing diacetylmorphine (obtained from acetylation of morphine) under the trade name “Heroin.” Bayer advertised heroin as a non-addictive cough and cold remedy suitable for children, but as its addictive nature became clear, heroin distribution in the U.S. was limited to prescription only in 1914 and then banned altogether a decade later.

117. Although heroin and opium became classified as illicit drugs, there is little difference between them and prescription opioids. Prescription opioids are synthesized from the same plant as heroin, have similar molecular structures, and bind to the same receptors in the human brain.

118. Due to concerns about their addictive properties, prescription opioids have usually been regulated at the federal level as Schedule II controlled substances by the U.S. Drug Enforcement Administration (“DEA”) since 1970.

119. Throughout the twentieth century, pharmaceutical companies continued to develop prescription opioids like Percodan, Percocet, and Vicodin, but these opioids were generally produced in combination with other drugs, with relatively low opioid content.

120. In contrast, OxyContin, the product whose launch in 1996 ushered in the modern opioid epidemic, is pure oxycodone. Purdue initially made it available in the following strengths: 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg. The weakest OxyContin delivers as much narcotic as the strongest Percocet, and some OxyContin tablets delivered sixteen times that.

121. Medical professionals describe the strength of various opioids in terms of morphine milligram equivalents (“MME”). According to the CDC, doses at or above 50

Century Ago, The Wash. Post (Oct. 17, 2017),
https://www.washingtonpost.com/news/retropolis/wp/2017/09/29/the-greatest-drug-fiends-in-the-world-an-american-opioid-crisis-in-1908/?utm_term=.7832633fd7ca.

1 MME/day double the risk of overdose compared to 20 MME/day, and one study found that
2 patients who died of opioid overdose were prescribed an average of 98 MME/day.

3 122. Different opioids provide varying levels of MMEs. For example, just 33 mg of
4 oxycodone provides 50 MME. Thus, at OxyContin's twice-daily dosing, the 50 MME/day
5 threshold is nearly reached by a prescription of 15 mg twice daily. One 160 mg tablet of
6 OxyContin, which Purdue took off the market in 2001, delivered 240 MME.

7 123. The wide variation in the MME strength of prescription opioids renders
8 misleading any effort to capture "market share" by the number of pills or prescriptions
9 attributed to Purdue or other manufacturers. Purdue, in particular, focuses its business on
10 branded, highly potent pills, causing it to be responsible for a significant percent of the total
11 amount of MME in circulation, even though it currently claims to have a small percentage of
12 the market share in terms of pills or prescriptions.

13 124. Fentanyl is a synthetic opioid that is 100 times stronger than morphine and 50
14 times stronger than heroin. First developed in 1959, fentanyl is showing up more and more
15 often in the market for opioids created by Manufacturer Defendants' promotion, with
16 particularly lethal consequences.

17 125. The effects of opioids vary by duration. Long-acting opioids, such as Purdue's
18 OxyContin and MS Contin, Endo's Opana ER, and Actavis's Kadian, are designed to be taken
19 once or twice daily and are purported to provide continuous opioid therapy for, in general, 12
20 hours. Short-acting opioids, such as Cephalon's Actiq and Fentora, are designed to be taken in
21 addition to long-acting opioids to address "episodic pain" (also referred to as "breakthrough
22 pain") and provide fast-acting, supplemental opioid therapy lasting approximately 4 to 6 hours.
23 Still other short-term opioids are designed to be taken in addition to long-acting opioids to
24 specifically address breakthrough cancer pain, excruciating pain suffered by some patients with
25 end-stage cancer. The Manufacturer Defendants promoted the idea that pain should be treated
26 by taking long-acting opioids continuously and supplementing them by also taking short-acting,
27 rapid-onset opioids for episodic or "breakthrough" pain.

28

126. Patients develop tolerance to the analgesic effect of opioids relatively quickly. As tolerance increases, a patient typically requires progressively higher doses in order to obtain the same perceived level of pain reduction. The same is true of the euphoric effects of opioids—the “high.” However, opioids depress respiration, and at very high doses can and often do arrest respiration altogether. At higher doses, the effects of withdrawal are more severe. Long-term opioid use can also cause hyperalgesia, a heightened sensitivity to pain.

127. Discontinuing opioids after more than just a few weeks of therapy will cause most patients to experience withdrawal symptoms. These withdrawal symptoms include: severe anxiety, nausea, vomiting, headaches, agitation, insomnia, tremors, hallucinations, delirium, pain, and other serious symptoms, which may persist for months after a complete withdrawal from opioids, depending on how long the opioids were used.

128. As a leading pain specialist doctor put it, the widespread, long-term use of opioids “was a *de facto* experiment on the population of the United States. It wasn’t randomized, it wasn’t controlled, and no data was collected until they started gathering death statistics.”

B. The Resurgence of Opioid Use in the United States

1. The Sackler Family Integrated Advertising and Medicine.

129. Given the history of opioid abuse in the U.S. and the medical profession’s resulting wariness, the commercial success of the Manufacturer Defendants’ prescription opioids would not have been possible without a fundamental shift in prescribers’ perception of the risks and benefits of long-term opioid use.

130. As it turned out, Purdue Pharma was uniquely positioned to execute just such a maneuver, thanks to the legacy of a man named Arthur Sackler. The Sackler family is the sole owner of Purdue and one of the wealthiest families in America, with a net worth of \$13 billion as of 2016. All of the company’s profits go to Sackler family trusts and entities.¹⁷ Yet the Sacklers have avoided publicly associating themselves with Purdue, letting others serve as the

¹⁷ David Armstrong, *The Man at the Center of the Secret OxyContin Files*, STAT News (May 12, 2016), <https://www.statnews.com/2016/05/12/man-center-secret-oxycontin-files/>.

1 spokespeople for the company.

2 121. The Sackler brothers—Arthur, Mortimer, and Raymond—purchased a small
3 patent-medicine company called the Purdue Frederick Company in 1952. It was Arthur Sackler
4 who created the pharmaceutical advertising industry as we know it, laying the groundwork for
5 the OxyContin promotion that would make the Sacklers billionaires.

6 122. Arthur Sackler was both a psychiatrist and a marketing executive. He pioneered
7 both print advertising in medical journals and promotion through physician “education” in the
8 form of seminars and continuing medical education courses. He also understood the persuasive
9 power of recommendations from fellow physicians and did not hesitate to manipulate
10 information when necessary. For example, one promotional brochure produced by his firm for
11 Pfizer showed business cards of physicians from various cities as if they were testimonials for
12 the drug, but when a journalist tried to contact these doctors, he discovered that they did not
13 exist.¹⁸

14 123. It was Arthur Sackler who, in the 1960s, made Valium into the first \$100-
15 million drug, so popular it became known as “Mother’s Little Helper.” When Arthur’s client,
16 Roche, developed Valium, it already had a similar drug, Librium, another benzodiazepine, on
17 the market for treatment of anxiety. So, Arthur invented a condition he called “psychic
18 tension”—essentially stress—and pitched Valium as the solution.¹⁹ The campaign, for which
19 Arthur was compensated based on volume of pills sold,²⁰ was a remarkable success.

20 124. Arthur Sackler created not only the advertising for his clients but also the vehicle
21 to bring their advertisements to doctors—a biweekly newspaper called the *Medical Tribune*,
22 which was distributed for free to doctors nationwide. Arthur also conceived a company called
23 IMS Health Holdings Inc. (now called IQVIA), which monitors prescribing practices of every
24

25 ¹⁸ Barry Meier, *Pain Killer: A “Wonder” Drug’s Trail of Addiction and Death*, 204 (Rodale
26 2003)
(hereinafter “Meier”).

27 ¹⁹ *Id.* at 202; see also, One Family Reaped Billions From Opioids, *WBUR On Point* (Oct.
28 23, 2017), <http://www.wbur.org/onpoint/2017/10/23/one-family-reaped-billions-from-opioids>.

²⁰ Meier, *supra*, at 201-203.

1 doctor in the

2 U.S and sells this valuable data to pharmaceutical companies like Manufacturer Defendants,
3 who utilize it to target and tailor their sales pitches to individual physicians.

4 **2. Purdue Developed and Aggressively Promoted OxyContin.**

5
6 125. After the Sackler brothers acquired the Purdue Frederick Company in 1952,
7 Purdue sold products ranging from earwax remover to antiseptic, and it became a profitable
8 business. As an advertising executive, Arthur Sackler was not involved, on paper at least, in
9 running Purdue, which would have been a conflict of interest. Raymond Sackler became
10 Purdue's head executive, while Mortimer Sackler ran Purdue's UK affiliate.

11 126. In the 1980s, Purdue, through its UK affiliate, acquired a Scottish drug producer
12 that had developed a sustained-release technology suitable for morphine. Purdue marketed this
13 extended-release morphine as MS Contin, and it quickly became Purdue's bestseller. As the
14 patent expiration for MS Contin loomed, Purdue searched for a drug to replace it. Around that
15 time, Raymond's oldest son, Richard Sackler, who was also a trained physician, became more
16 involved in the management of the company. Richard had grand ambitions for the company;
17 according to a long-time Purdue sales representative, "Richard really wanted Purdue to be
18 big—I mean *really* big."²¹ Richard believed Purdue should develop another use for its "Contin"
19 timed-release system.

20 127. In 1990, Purdue's vice president of clinical research, Robert Kaiko, sent a memo
21 to Richard and other executives recommending that the company work on a pill containing
22 oxycodone. At the time, oxycodone was perceived as less potent than morphine, largely
23 because it was most commonly prescribed as Percocet, a relatively weak oxycodone-
24 acetaminophen combination pill. MS Contin was not only approaching patent expiration but
25 had always been limited by the stigma associated with morphine. Oxycodone did not have that
26

27
28 ²¹ Christopher Glazek, *The Secretive Family Making Billions from the Opioid Crisis*, Esquire (Oct. 16, 2017),
<http://www.esquire.com/news-politics/a12775932/sackler-family-oxycotin/>.

1 problem, and what's more, it was sometimes mistakenly called "oxycodone," which also
 2 contributed to the perception of relatively lower potency, because codeine is weaker than
 3 morphine. Purdue acknowledged using this to its advantage when it later pled guilty to criminal
 4 charges of "misbranding" in 2007, admitting that it was "well aware of the incorrect view held
 5 by many physicians that oxycodone was weaker than morphine" and "did not want to do
 6 anything 'to make physicians think that oxycodone was stronger or equal to morphine' or to
 7 'take any steps . . . that would affect the unique position that OxyContin'" held among
 8 physicians.²²

9 128. For Purdue and OxyContin to be "I mean *really* big,"²³ Purdue needed to both
 10 distance its new product from the traditional view of narcotic addiction risk and broaden the
 11 drug's uses beyond cancer pain and hospice care. A marketing memo sent to Purdue's top sales
 12 executives in March 1995 recommended that if Purdue could show that the risk of abuse was
 13 lower with OxyContin than with traditional immediate-release narcotics, sales would increase.
 14 As discussed below, Purdue did not find or generate any such evidence, but this did not stop
 15 Purdue from making that claim regardless.

16 129. To achieve its marketing goals and avoid the "stigma" attached to less potent
 17 opioids, Purdue persuaded the FDA examiner, over internal objections within the FDA, to
 18 approve a label stating: "Delayed absorption as provided by OxyContin tablets, is believed to
 19 reduce the abuse liability of a drug."

20 130. The basis for this reduced abuse liability claim was entirely theoretical and not
 21 based on any actual research, data, or empirical scientific support, and the FDA ultimately
 22 pulled this language from OxyContin's label in 2001.

23 131. Nonetheless, as set forth in detail below, Purdue made reduced risk of addiction
 24 and abuse the cornerstone of its marketing efforts.

25 132. At the OxyContin launch party, Richard Sackler asked the audience to imagine
 26 a series of natural disasters: an earthquake, a volcanic eruption, a hurricane, and a blizzard. He
 27

²² *Id.*

²³ *Id.*

1 said, “the launch of OxyContin Tablets will be followed by a blizzard of prescriptions that will
2 bury the competition. The prescription blizzard will be so deep, dense, and white....”

3 133. Armed with this and other misrepresentations about the risks and benefits of its
4 new drug, Purdue was able to open an enormous untapped market: patients with non-end-of-
5 life, non- acute, everyday aches and pains. As Dr. David Haddox, a Senior Medical Director
6 at Purdue, declared on the Early Show, a CBS morning talk program, “There are 50 million
7 patients in this country who have chronic pain that’s not being managed appropriately every
8 single day. OxyContin is one of the choices that doctors have available to them to treat that.”²⁴

9 134. In pursuit of these 50 million potential customers, Purdue poured resources into
10 OxyContin’s sales force and advertising, particularly to a far broader audience of primary care
11 physicians who treated patients with chronic pain complaints. The graph below shows how
12 promotional spending in the first six years following OxyContin’s launch dwarfed Purdue’s
13 spending on MS Contin.²⁵
14 MS CONTIN AND OXYCONTIN ARE EQUIVALENT.

15 135. Prior to Purdue’s launch of OxyContin, no drug company had ever promoted
16 such a pure, high-strength Schedule II narcotic to so wide an audience of general practitioners.

17 136. In the two decades following OxyContin’s launch, Purdue continued to devote
18 substantial resources to its promotional efforts.

19 137. Purdue has generated estimated sales of more than \$35 billion from opioids
20 since 1996, raking in more than \$3 billion in 2015 alone. Remarkably, its opioid sales continued
21 to climb even after a period of media attention and government inquiries regarding OxyContin
22 abuse in the early 2000s and a criminal investigation culminating in guilty pleas in 2007. Purdue
23 proved itself skilled at evading full responsibility and continuing to sell through the controversy.
24 The company’s annual opioid sales of \$3 billion in 2015 represent a four-fold increase from its
25

26 ²⁴ Meier, *supra*, at 269.

27 ²⁵ U.S. General Accounting, *OxyContin Abuse and Diversion and Efforts to Address the Problem*, Office
28 Report to Congressional Requesters at 22 (Dec. 2003), <http://www.gao.gov/new.items/d04110.pdf>.

1 2006 sales of \$800 million.

2 138. Facing increasing domestic scrutiny from the public and increasing awareness
3 of the harm their drugs cause, Purdue and Richard Sackler now have their eyes on even greater
4 profits. Under the name of Mundipharma International, the Sacklers are looking to new markets
5 for their opioids—employing the exact same playbook in South America, China, and India as
6 they did in the United States.

7 139. In May 2017, a dozen members of Congress sent a letter to the World Health
8 Organization, warning it of the deceptive practices Purdue is unleashing on the rest of the world
9 through Mundipharma:

10 We write to warn the international community of the deceptive
11 and dangerous practices of Mundipharma International—an arm
12 of Purdue Pharmaceuticals. The greed and recklessness of one
13 company and its partners helped spark a public health crisis in
14 the United States that will take generations to fully repair. We
15 urge the World Health Organization (WHO) to do everything in
16 its power to avoid allowing the same people to begin a worldwide
17 opioid epidemic. Please learn from our experience and do not
18 allow Mundipharma to carry on Purdue’s deadly legacy on a
19 global stage. . . .

20 Internal documents revealed in court proceedings now tell us that
21 since the early development of OxyContin, Purdue was aware of
22 the high risk of addiction it carried. Combined with the
23 misleading and aggressive marketing of the drug by its partner,
24 Abbott Laboratories, Purdue began the opioid crisis that has
25 devastated American communities since the end of the 1990s.
26 Today, Mundipharma is using many of the same deceptive and
27 reckless practices to sell OxyContin abroad. . . .

28 In response to the growing scrutiny and diminished U.S. sales,
the Sacklers have simply moved on. On December 18, the Los
Angeles Times published an extremely troubling report detailing
how in spite of the scores of lawsuits against Purdue for its role in
the U.S. opioid crisis, and tens of thousands of overdose deaths,
Mundipharma now aggressively markets OxyContin
internationally. In fact, Mundipharma uses many of the same
tactics that caused the opioid epidemic to flourish in the U.S.,
though now in countries with far fewer resources to devote to the

1 fallout.²⁶

2 140. With the opioid epidemic in the United States now a national public health
3 emergency, Purdue announced on February 9, 2018, that it had reduced its sales force and
4 would no longer promote opioids directly to prescribers. Under this new policy, sales
5 representatives will no longer visit doctors' offices to discuss opioid products. Despite its new
6 policy, however, Purdue continues to use the same aggressive sales tactics to push opioids in
7 other countries. Purdue's recent pivot to untapped markets—after extracting substantial profits
8 from American communities and leaving local governments to address the devastating and still
9 growing damage the company caused—only serves to underscore that Purdue's actions have
10 been knowing, intentional, and motivated by profits throughout this entire story.

11 **3. Other Manufacturer Defendants Leapt at the Opioid Opportunity.**

12
13 141. Purdue created a market for the use of opioids for a range of common aches and
14 pains by misrepresenting the risks and benefits of its opioids, but it was not alone. The other
15 Manufacturer Defendants—already manufacturers of prescription opioids—positioned
16 themselves to take advantage of the opportunity Purdue created, developing both branded and
17 generic opioids to compete with OxyContin, while, together with Purdue and each other,
18 misrepresenting the safety and efficacy of their products. These misrepresentations are
19 described in greater detail below.

20 142. Endo, which already sold Percocet and Percodan, was the first to submit an
21 application for a generic extended-release oxycodone to compete with OxyContin. At the same
22 time, Endo sought FDA approval for another potent opioid, immediate-release and extended-
23 release oxymorphone, branded as Opana and Opana ER. Oxymorphone, like OxyContin's
24
25

26
27 ²⁶ Letter from Members of Congress to Dr. Margaret Chan, Director-General, World Health Organization (May
28 3, 2017), http://katherineclark.house.gov/_cache/files/a577bd3c-29ec-4bb9-bdba-1ca71c784113/mundipharma-letter-signatures.pdf.

active ingredient oxycodone, is not a new drug; it was first synthesized in Germany in 1914 and sold in the U.S. by Endo beginning in 1959 under the trade name Numorphan. However, Numorphan tablets proved highly susceptible to abuse. Called “blues” after the light blue color of the 10 mg pills, Numorphan provoked, according to some users, a more euphoric high than heroin. As the National Institute on Drug Abuse observed in its 1974 report, “Drugs and Addict Lifestyle,” Numorphan was extremely popular among addicts for its quick and sustained effect. Endo withdrew oral Numorphan from the market in 1979.²⁷

143. Two decades later, however, as communities around the U.S. were first sounding the alarm about prescription opioids and Purdue executives were being called to testify before Congress about the risks of OxyContin, Endo essentially reached back into its inventory, dusted off a product it had previously shelved after widespread abuse, and pushed it into the marketplace with a new trade name, Opana.

144. The clinical trials submitted with Endo’s first application for approval of Opana were insufficient to demonstrate efficacy, and some subjects in the trials overdosed and had to be revived with naloxone. Endo then submitted new “enriched enrollment” clinical trials, in which trial subjects who do not respond to the drug are excluded from the trial, and obtained approval. Endo began marketing Opana and Opana ER in 2006.

145. Like Numorphan, Opana ER was highly susceptible to abuse. On June 8, 2017, the FDA sought removal of Opana ER. In its press release, the FDA indicated that “[t]his is the first time the agency has taken steps to remove a currently marketed opioid pain medication from sale due to the public health consequences of abuse.”²⁸ On July 6, 2017, Endo agreed to

²⁷ John Fauber & Kristina Fiore, *Abandoned Painkiller Makes a Comeback*, MedPage Today (May 10, 2015), <https://www.medpagetoday.com/psychiatry/addictions/51448>.

²⁸ Press Release, U.S. Food & Drug Admin., *FDA Requests Removal of Opana ER for Risks*

withdraw Opana ER from the market due to the public health consequences of abuse.²⁹

146. By adding additional opioids or expanding the use of their existing opioid products, the other Marketing Defendants took advantage of the market created by Purdue's aggressive promotion of OxyContin and reaped enormous profits. For example, Opana ER alone generated more than \$1 billion in revenue for Endo in 2010 and again in 2013.

147. Actavis also pursued a broader chronic pain market. Its predecessor, Watson Pharmaceuticals, Inc., obtained approval for Norco (hydrocodone and acetaminophen) and launched the product in 1997. Actavis also developed Kadian (morphine sulfate) and was the contract manufacturer for Kadian starting in 2005. Actavis then acquired Kadian in December 2008.³⁰ Kadian sales grew 50 percent from 2007 to 2011 to approximately \$275 million for the year ending September 30, 2011 and Actavis then introduced a generic version of the drug.³¹ As described with more particularity below, Actavis deceptively promoted Kadian to its highest prescribers in order to increase sales and stated that Kadian was less likely to be abused when it had no evidence of this.

148. Mallinckrodt also pursued a broader chronic pain market - marketing its branded and generic drugs by misrepresenting their addictive nature and falsely claiming that the drugs could be taken in higher doses but without disclosing the greater risks of addiction. From 2009 to 2014, Mallinckrodt expanded its branded opioid portfolio while also maintaining its role as leading manufacturer of generic opioids. As described with more particularity below, Mallinckrodt, through its website, sales force, and unbranded communications, promoted its opioids by consistently mischaracterizing the risk of addiction. Specifically, Mallinckrodt

Related to Abuse (June 8, 2017),

<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm562401.htm>.

²⁹ *Endo Pulls Opioid as U.S. Seeks to Tackle Abuse Epidemic*, Reuters (July 6, 2017, 9:59am), <https://www.reuters.com/article/us-endo-intl-opana-idUSKBN19R2II>.

³⁰ *Actavis Acquires Kadian; Extends Specialty Drug Portfolio in U.S.*, Business Wire (December 30, 2008) <https://www.businesswire.com/news/home/20081230005227/en/Actavis-Acquires-Kadian-Extends-Specialty-Drug-Portfolio>.

³¹ *Actavis Launches Generic KADIAN® Capsules in the U.S.*, PR Newswire, (Nov. 11, 2011), <https://www.prnewswire.com/news-releases/actavis-launches-generic-kadian-capsules-in-the-us-133689873.html>.

1 promoted both Exalgo (hydromorphone hydrochloride) and Xartemis XR (oxycodone
2 hydrochloride and acetaminophen) as formulated to reduce abuse when it had no evidence of
3 this. In anticipation of Xartemis XR's approval, Mallinckrodt added 150-200 sales
4 representatives to promote it.

5 149. By adding opioid products or expanding the use of their existing opioid products,
6 the other Manufacturer Defendants took advantage of the market created by Purdue's
7 aggressive promotion of OxyContin and reaped enormous profits. For example, Opana ER
8 alone generated more than \$1 billion in revenue for Endo in 2010 and again in 2013.

9
10 **C. Defendants' Conduct Created an Abatable Public Nuisance.**

11
12 150. As alleged throughout this Complaint, Defendants' conduct created a public
13 health crisis and a public nuisance.

14 151. The public nuisance—*i.e.*, the opioid epidemic—created, perpetuated, and
15 maintained by Defendants can be abated and further recurrence of such harm and
16 inconvenience can be abated by, *inter alia*, (a) educating prescribers (especially primary care
17 physicians and the most prolific prescribers of opioids) and patients regarding the true risks
18 and benefits of opioids, including the risk of addiction, in order to prevent the next cycle of
19 addiction; (b) providing effective, long-term addiction treatment to patients who are already
20 addicted to opioids; (c) making naloxone and other overdose reversal drugs widely available so
21 that overdoses are less frequently fatal; and (d) ensuring that state regulators have the
22 information they need to investigate compliance.

23 152. Defendants have the ability to act to abate the public nuisance, and the law
24 recognizes that they are uniquely well-positioned to do so. It is the manufacturer of a drug that
25 has primary responsibility to assure the safety, efficacy, and appropriateness of a drug's
26 marketing and promotion. And, all companies in the supply chain of a controlled substance are
27 primarily responsible for ensuring that such drugs are only distributed and dispensed to
28

appropriate patients and not diverted. These responsibilities exist independent of any FDA or DEA regulation, to ensure that their products and practices meet state consumer protection laws and regulations, as well as the obligations under the Nevada Controlled Substances Act and the Nevada Administrative Code. As registered manufacturers and distributors of controlled substances, Defendants are placed in a position of special trust and responsibility and are uniquely positioned, based on their knowledge of prescribers and orders, to act as a first line of defense.

D. The Manufacturer Defendants' Multi-Pronged Scheme to Change Prescriber Habits and Public Perception to Increase Demand for Opioids

153. In order to accomplish the fundamental shift in perception that was key to successfully marketing their opioids, the Manufacturer Defendants designed and implemented a sophisticated and deceptive marketing strategy. Lacking legitimate scientific research to support their claims, the Manufacturer Defendants turned to the marketing techniques first pioneered by Arthur Sackler to create a series of misperceptions in the medical community and ultimately reverse the long-settled understanding of the relative risks and benefits of opioids.

154. The Manufacturer Defendants promoted, and profited from, their misrepresentations about the risks and benefits of opioids for chronic pain even though they knew that their marketing was false and misleading. The history of opioids, as well as research and clinical experience over the last 20 years, established that opioids were highly addictive and responsible for a long list of very serious adverse outcomes. The FDA and other regulators warned Manufacturer Defendants of these risks. The Manufacturer Defendants had access to scientific studies, detailed prescription data, and reports of adverse events, including reports of addiction, hospitalization, and deaths—all of which made clear the harms from long-term opioid use and that patients were and are suffering from addiction, overdoses, and death in alarming numbers. More recently, the FDA and CDC issued pronouncements based on existing medical evidence that conclusively expose the known falsity of these Defendants' misrepresentations.

155. The deceptive marketing scheme to increase opioid prescriptions centered around nine categories of misrepresentations, which are discussed in detail below. The Manufacturer Defendants disseminated these misrepresentations through various channels, including through advertising, sales representatives, purportedly independent organizations these defendants funded and controlled, “Front Groups,” so-called industry “Key Opinion Leaders,” and Continuing Medical Education (“CME”) programs discussed subsequently below.

1. The Manufacturer Defendants Promoted Multiple Falsehoods About Opioids.

156. The Manufacturer Defendants’ misrepresentations fall into the following nine categories:

- a. False or misleading claims that the risk of addiction from chronic opioid therapy is low.
- b. False or misleading claims that to the extent there is a risk of addiction, it can be easily identified and managed.
- c. False or misleading claims that signs of addictive behavior are actually signs of “pseudoaddiction,” requiring more opioids.
- d. False or misleading claims that opioid withdrawal can be avoided by tapering.
- e. False or misleading claims that there are no risks associated with taking increased doses of opioids.
- f. False or misleading claims that long-term opioid use improves functioning.
- g. False or misleading claims that alternative forms of pain relief pose greater risks than opioids.

h. False or misleading claims that certain opioids, including, but not limited to OxyContin, provide twelve hours of pain relief.

i. False or misleading claims that new formulations of certain opioids successfully deter abuse.

157. Each of these propositions was false. The Manufacturer Defendants knew this, but they nonetheless set out to convince physicians, patients, and the public at large of the truth of each of these propositions in order to expand the market for their opioids.

158. The categories of misrepresentations are offered to organize the numerous statements the Manufacturer Defendants made and to explain their role in the overall marketing effort, not as a checklist for assessing each Manufacturer Defendant's liability. While each Manufacturer Defendant deceptively promoted their opioids specifically, and, together with other Manufacturer Defendants, opioids generally, not every Manufacturer Defendant propagated (or needed to propagate) each misrepresentation. Each Manufacturer Defendant's conduct, and each misrepresentation, contributed to an overall narrative that aimed to—and did—mislead doctors, patients, and payors about the risk and benefits of opioids. While this Complaint endeavors to document examples of each Manufacturer Defendant's misrepresentations and the manner in which they were disseminated, they are just that—examples. The Complaint is not, especially prior to discovery, an exhaustive catalog of the nature and manner of each deceptive statement by each Manufacturer Defendant.

a. Falsehood #1: The false or misleading claims that the risk of addiction from chronic opioid therapy is low.

159. Central to the Manufacturer Defendants' promotional scheme was the misrepresentation that opioids are rarely addictive when taken for chronic pain. Through their marketing efforts, the Manufacturer Defendants advanced the idea that the risk of addiction is low when opioids are taken as prescribed by "legitimate" pain patients. That, in turn, directly

1 led to the expected and intended result that doctors prescribed more opioids to more patients—
2 thereby enriching the Manufacturer Defendants and substantially contributing to the opioid
3 epidemic.

4 160. Each of the Manufacturer Defendants claimed that the potential for addiction
5 from its opioids was relatively small or non-existent, even though there was no scientific
6 evidence to support those claims. None of them have acknowledged, retracted, or corrected
7 their false statements.

8 161. In fact, studies have shown that a substantial percentage of long-term users of
9 opioids experience addiction. Addiction can result from the use of any opioid, “even at
10 recommended dose,”³² and the risk substantially increases with more than three months of
11 use.³³ As the CDC Guideline states, “[o]pioid pain medication use presents serious risks,
12 including overdose and opioid use disorder” (a diagnostic term for addiction).³⁴

13 *i. Purdue’s misrepresentations regarding addiction risk*

14
15 162. When it launched OxyContin, Purdue knew it would need data to overcome
16 decades of wariness regarding opioid use. It needed some sort of research to back up its
17 messaging. But Purdue had not conducted any studies about abuse potential or addiction risk
18 as part of its application for FDA approval for OxyContin. Purdue (and, later, the other
19 Defendants) found this “research” in the form of a one-paragraph letter to the editor published
20 in the *New England Journal of Medicine* (NEJM) in 1980.

21 163. This letter, by Dr. Hershel Jick and Jane Porter, declared the incidence of
22
23

24 ³² *FDA Announces Safety Labeling Changes and Postmarket Study Requirements For Extended- Release and Long-*
25 *Acting Opioid Analgesics*, MagMutual (Aug. 18, 2016), [https://www.magmutual.com/learning/article/fda-](https://www.magmutual.com/learning/article/fda-announces-safety-labeling-changes-and-postmarket-study-requirements-opioids)
26 *announces-safety-labeling-changes-and-postmarket-study-requirements-opioids*; *see also* Press Release, U.S. Food
& Drug Admin., *Announces Enhanced Warnings For Immediate-Release Opioid Pain Medications Related to*
27 *Risks of Misuse, Abuse, Addiction, Overdose and Death*, FDA (Mar. 22, 2016),
<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm491739.htm>.

28 ³³ Deborah Dowell, M.D. et al., *CDC Guideline for Prescribing Opioids for Chronic Pain – United States 2016*,
65(1) *Morbidity & Mortality Wkly. Rep.* 1, 21 (Mar. 18, 2016) (hereinafter “CDC Guideline”).

³⁴ *Id.* at 2.

addiction “rare” for patients treated with opioids.³⁵ They had analyzed a database of hospitalized patients who were given opioids in a controlled setting to ease suffering from acute pain. Porter and Jick considered a patient not addicted if there was no sign of addiction noted in patients’ records.

164. As Dr. Jick explained to a journalist years later, he submitted the statistics to NEJM as a letter because the data were not robust enough to be published as a study.³⁶

**ADDICTION RARE IN PATIENTS TREATED
WITH NARCOTICS**

To the Editor: Recently, we examined our current files to determine the incidence of narcotic addiction in 39,946 hospitalized medical patients¹ who were monitored consecutively. Although there were 11,882 patients who received at least one narcotic preparation, there were only four cases of reasonably well documented addiction in patients who had no history of addiction. The addiction was considered major in only one instance. The drugs implicated were meperidine in two patients,² Percodan in one, and hydromorphone in one. We conclude that despite widespread use of narcotic drugs in hospitals, the development of addiction is rare in medical patients with no history of addiction.

JANE PORTER
HERSHEL JICK, M.D.
Boston Collaborative Drug
Surveillance Program

Waltham, MA 02154 Boston University Medical Center

1. Jick H, Mietinen OS, Shapiro S, Lewis GP, Siskind Y, Stone D. Comprehensive drug surveillance. JAMA. 1970; 213:1455-60.
2. Miller RR, Jick H. Clinical effects of meperidine in hospitalized medical patients. J Clin Pharmacol. 1978; 18:180-8.

165. Purdue nonetheless began repeatedly citing this letter in promotional and educational materials as evidence of the low risk of addiction, while failing to disclose that its source was a letter to the editor, not a peer-reviewed paper.³⁷ Citation of the letter, which was largely ignored for more than a decade, significantly increased after the introduction of OxyContin. Purdue was the first Manufacturer to rely upon this letter to assert that its opioids were not addictive, but the other Manufacturer Defendants eventually followed suit, citing to the letter as a basis for

³⁵ Jane Porter & Herschel Jick, MD, *Addiction Rare in Patients Treated with Narcotics*, 302(2) New Eng. J. Med. 123 (Jan. 10, 1980), <http://www.nejm.org/doi/pdf/10.1056/NEJM198001103020221>.

³⁶ Meier, *supra*, at 174.

³⁷ J. Porter & H. Jick, *Addiction Rare in Patients Treated with Narcotics*, *supra*.

their misrepresentations regarding the addictive nature of their products. Dr. Jick, author of the letter, later stated “that’s not in any shape or form what we suggested in our letter.”

166. Purdue specifically used the Porter and Jick letter in its 1998 promotional video “I got my life back,” in which Dr. Alan Spanos says “In fact, the rate of addiction amongst pain patients who are treated by doctors is *much less than 1%*.”³⁸ Purdue trained its sales representatives to tell prescribers that fewer than 1% of patients who took OxyContin became addicted. (In 1999, a Purdue-funded study of patients who used OxyContin for headaches found that the addiction rate was thirteen per cent.)³⁹

167. Other Manufacturer Defendants relied on and disseminated the same distorted messaging. The enormous impact of Manufacturer Defendants’ misleading amplification of this letter was well-documented in another letter published in the NEJM on June 1, 2017, describing the way the one-paragraph 1980 letter had been irresponsibly cited and, in some cases, “grossly misrepresented.” In particular, the authors of this letter explained:

[W]e found that a five-sentence letter published in the *Journal* in 1980 was heavily and uncritically cited as evidence that addiction was rare with long-term opioid therapy. We believe that this citation pattern contributed to the North American opioid crisis by helping to shape a narrative that allayed prescribers’ concerns about the risk of addiction associated with long-term opioid therapy . . .⁴⁰

168. “It’s difficult to overstate the role of this letter,” said Dr. David Juurlink of the University of Toronto, who led the analysis. “It was the key bit of literature that helped the opiate manufacturers convince front-line doctors that addiction is not a concern.”⁴¹

³⁸ Our Amazing World, *Purdue Pharma OxyContin Commercial*, YouTube (Sept. 22, 2016), <https://www.youtube.com/watch?v=Er78Dj5hyeI>.

³⁹ Patrick R. Keefe, *The Family That Built an Empire of Pain*, New Yorker (Oct. 30, 2017) (hereinafter, “Keefe, *Empire of Pain*”).

⁴⁰ Pamela T.M. Leung, B.Sc. Pharm., et al., *A 1980 Letter on the Risk of Opioid Addiction*, 376 New Engl. J. Med. 2194, 2194-95 (June 1, 2017), <http://www.nejm.org/doi/full/10.1056/NEJMc1700150>.

⁴¹ Marilyn Marchione, Assoc. Press, *Painful Words: How a 1980 Letter Fueled the Opioid Epidemic*, STAT News (May 31, 2017), <https://www.statnews.com/2017/05/31/opioid-epidemicnejm-letter/>.

1 169. Alongside its use of the Porter and Jick letter, Purdue also crafted its own
2 materials and spread its deceptive message through numerous additional channels. In its 1996
3 press release announcing the release of OxyContin, for example, Purdue declared, “The fear of
4 addiction is exaggerated.”⁴²

5 170. At a hearing before the House of Representatives’ Subcommittee on Oversight
6 and Investigations of the Committee on Energy and Commerce in August 2001, Purdue
7 emphasized “legitimate” treatment, dismissing cases of overdose and death as something that
8 would not befall “legitimate” patients: “Virtually all of these reports involve people who are
9 abusing the medication, not patients with legitimate medical needs under the treatment of a
10 healthcare professional.”⁴³

11 171. Purdue spun this baseless “legitimate use” distinction out even further in a
12 patient brochure about OxyContin, called “A Guide to Your New Pain Medicine and How to
13 Become a Partner Against Pain.” In response to the question “Aren’t opioid pain medications
14 like OxyContin Tablets ‘addicting’?,” Purdue claimed that there was no need to worry about
15 addiction if taking opioids for legitimate, “medical” purposes:

16
17 Drug addiction means using a drug to get “high” rather than to
18 relieve pain. You are taking opioid pain medication for medical
19 purposes. The medical purposes are clear and the effects are
20 beneficial, not harmful.⁴⁴

21 172. Sales representatives marketed OxyContin as a product “to start with and to

22 ⁴² Press Release, Purdue Pharma L.P., *New Hope for Millions of Americans Suffering from Persistent Pain: Long-*
23 *Acting OxyContin Tablets Now Available to Relieve Pain* (May 31, 1996, 3:47pm),
<http://documents.latimes.com/oxycontin-press-release-1996/>.

24 ⁴³ *Oxycontin: Its Use and Abuse: Hearing Before the House Subcomm. on Oversight and Investigations of the Comm.*
25 *on Energy and Commerce*, 107th Cong. 1 (Aug. 28, 2001) (Statement of Michael Friedman, Executive Vice
26 President, Chief Operating Officer, Purdue Pharma, L.P.), [https://www.gpo.gov/fdsys/pkg/CHRG-](https://www.gpo.gov/fdsys/pkg/CHRG-107hhrg75754/html/CHRG-107hhrg75754.htm)
27 [107hhrg75754/html/CHRG-107hhrg75754.htm](https://www.gpo.gov/fdsys/pkg/CHRG-107hhrg75754/html/CHRG-107hhrg75754.htm).

28 ⁴⁴ *Partners Against Pain* consists of both a website, styled as an “advocacy community” for better pain care, and a
set of medical education resources distributed to prescribers by sales representatives. It has existed since at least the
early 2000s and has been a vehicle for Purdue to downplay the risks of addiction from long-term opioid use. One
early pamphlet, for example, answered concerns about OxyContin’s addictiveness by claiming: “Drug addiction
means using a drug to get ‘high’ rather than to relieve pain. You are taking opioid pain medication for medical
purposes. The medical purposes are clear and the effects are beneficial, not harmful.”

1 stay with.”⁴⁵ Sales representatives also received training in overcoming doctors’ concerns
 2 about addiction with talking points they knew to be untrue about the drug’s abuse potential.
 3 One of Purdue’s early training memos compared doctor visits to “firing at a target,” declaring
 4 that “[a]s you prepare to fire your ‘message,’ you need to know where to aim and what you
 5 want to hit!”⁴⁶ According to the memo, the target is physician resistance based on concern about
 6 addiction: “The physician wants pain relief for these patients without addicting them to an
 7 opioid.”⁴⁷

8 173. Purdue, through its unbranded website *Partners Against Pain*, stated the
 9 following: “Current Myth: Opioid addiction (psychological dependence) is an important
 10 clinical problem in patients with moderate to severe pain treated with opioids. Fact: Fears about
 11 psychological dependence are exaggerated when treating appropriate pain patients with
 12 opioids.” “Addiction risk also appears to be low when opioids are dosed properly for chronic,
 13 noncancer pain.”

14 174. Former sales representative Steven May, who worked for Purdue from 1999 to
 15 2005, explained to a journalist how he and his coworkers were trained to overcome doctors’
 16 objections to prescribing opioids. The most common objection he heard about prescribing
 17 OxyContin was that “it’s just too addictive.”⁴⁸ May and his coworkers were trained to “refocus”
 18 doctors on “legitimate” pain patients, and to represent that “legitimate” patients would not
 19 become addicted. In addition, they were trained to say that the 12-hour dosing made the
 20 extended-release opioids less “habit-forming” than painkillers that need to be taken every four
 21 hours.

22 175. According to interviews with prescribers and former Purdue sales
 23 representatives, Purdue has continued to distort or omit the risk of addiction while failing to
 24

25 ⁴⁵ Keefe, *Empire of Pain*, *supra*.

26 ⁴⁶ Meier, *supra*, at 102.

27 ⁴⁷ *Id.*

28 ⁴⁸ David Remnick, *How OxyContin Was Sold to the Masses* (Steven May interview with Patrick Radden Keefe),
 The New Yorker (Oct. 27, 2017), <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/how-oxycontin-was-sold-to-the-masses>.

1 correct its earlier misrepresentations, leaving many doctors with the false impression that pain
2 patients will only rarely become addicted to opioids.

3 176. With regard to addiction, Purdue's label for OxyContin has not sufficiently
4 disclosed the true risks to, and experiences of, its patients. Until 2014, the OxyContin label
5 stated in a black-box warning that opioids have "abuse potential" and that the "risk of abuse is
6 increased in patients with a personal or family history of substance abuse."

7 *ii. As the Owners of Purdue, members of Purdue's Board and Former*
8 *Officers of the Company, the Sacklers had actual knowledge of,*
9 *sanctioned, and participated in Purdue's deceptive, misleading, and*
10 *otherwise illegal practices*

11
12 177. Purdue's deliberate actions to mislead prescribers and the public about the risks
13 and benefits of long-term opioid treatment were orchestrated by the Sacklers from the launch
14 of OxyContin through the present. Purdue is not a publicly traded company, but rather a family
15 business: it is completely Sackler-owned and Sackler-led. The Sacklers were directly involved
16 in development and sanctioning Purdue's deceptive and illegal activities, and they each
17 participated in its decisions to mislead Nevada providers, patients, government authorities, and
18 insurers to normalize opioid prescribing and generate a financial windfall for themselves.

19 178. The Sacklers control Purdue. Each of them took seats on the board of PPI and
20 many served as officers of Purdue entities. Together, they always controlled the directorate that
21 gave them total power over Purdue and its officers and other employees, and they frequently
22 exercised that power in person at Purdue headquarters, some working there on a daily basis.
23 From 1990 to 2018, the Sacklers made up a majority of the Purdue Board of Directors and, in
24 some years, the Board consisted only of members of the Sackler family.

25 179. Each of the Sacklers knew and intended that the sales representatives and
26 Purdue's other marketing employees would not disclose to Nevada providers and patients the
27 truth about Purdue's opioids. They each intended and directed Purdue staff to reinforce these
28 misleading messages throughout Nevada, including by sending deceptive publications to

1 Nevada doctors and deceptively promoting Purdue opioids at CME events in the State of
2 Nevada. And they each knew and intended that patients, prescribers, pharmacists, and insurers
3 in Nevada would rely on Purdue's deceptive sales campaign to request, prescribe, dispense,
4 and reimburse claims for Purdue's opioids.

5 180. The Sacklers—Defendants Richard, Ilene, Jonathan, Kathe, Theresa, Beverly,
6 and Mortimer Sackler—took seats on the Board from PPI's inception in 1990. David Sackler
7 joined the Board in July 2012.

8 181. Richard Sackler played an active and central role in the management of Purdue.
9 He is named as inventor on dozens of patents relating to oxycodone and other pain medications,
10 including patents issued as late as 2016. Most of these patents were assigned to Purdue. He
11 began working for Purdue as assistant to the president in the 1970s. He later served as vice
12 president of marketing and sales. In the early 1990's he became senior vice president, which
13 was the position he held at the time OxyContin was launched in 1996. In 1999, he became
14 president/CEO, and he served in that position until 2003.

15 182. Richard Sackler resigned as President in 2003 but he continued to serve as co-
16 chair of the Purdue board. He was actively involved in the invention, development, marketing,
17 promotion, and sale of Purdue's opioids, including OxyContin. And he saw to it that Purdue
18 launched OxyContin with an unprecedented marketing campaign causing OxyContin to
19 generate a billion dollars in sales within five year of its introduction in the pain management
20 market. For example, in 1998, Richard Sackler instructed Purdue's executives that OxyContin
21 tablets provide more than merely "therapeutic" value and instead "enhance personal
22 performance."

23 183. Defendant Jonathan Sackler served as a vice president of Purdue during the
24 period of development, launch, promotion, and marketing of OxyContin. He resigned that
25 officer position in or after 2003, but he continued to serve on the board of Purdue

26 184. Defendant Mortimer D. A. Sackler also served as a vice president of Purdue
27 during the period of development, launch, promotion, and marketing of OxyContin. He
28

1 resigned that position in or after 2003, but he continued to serve on the board of Purdue.

2 185. Defendant Kathe Sackler also served as a vice president of Purdue during the
3 period of development, launch, promotion, and marketing of OxyContin. She resigned that
4 position in or after 2003, but continued to serve on the board of Purdue.

5 186. Defendant Ilene Sackler served as a vice president of Purdue during the period
6 of development, launch, promotion, and marketing of OxyContin. Like Richard, Jonathan,
7 Mortimer, and Kathe, Ilene resigned that position in or after 2003, but continued to serve on
8 the board of Purdue.

9 187. Defendant David A. Sackler served as a member of Purdue's board between
10 2012 and 2018.

11 188. Defendant Beverly Sackler served on Purdue's board between 1993 and 2017.
12 During the relevant time period, she also served as a trustee of one or more trusts that
13 beneficially own and control Purdue.

14 189. Defendant Theresa Sackler served as a member of Purdue's board between 1993
15 and 2017.

16 190. Through their positions as the owners, directors, and officers of Purdue, the
17 Sacklers had oversight and control over the unlawful sales and marketing described in this
18 complaint.

19 191. From the beginning, the Sacklers were behind Purdue's decision to deceive
20 doctors and patients about opioids' risk of abuse and addiction. In 1997, Richard Sackler, Kathe
21 Sackler, and other Purdue executives determined that doctors had the crucial misconception
22 that OxyContin was weaker than morphine, which led them to prescribe OxyContin much more
23 often, even as a substitute for Tylenol.
24

25 192. The Sacklers who were involved in running the family business knew since at
26 least the summer of 1999 that prescription opioids lead to addiction, and specifically that
27 OxyContin could be, and was, abused. In summer 1999, a Purdue sales representative wrote to
28

the president of Purdue reporting widespread abuse of OxyContin. “We have in fact picked up references to abuse of our opioid products on the internet,” Purdue Pharma’s general counsel, Howard R. Udell, wrote in early 1999 to another company official.

193. In January 2001, Richard Sackler received an email from a Purdue sales representative describing a community meeting at a local high school that organized by mothers whose children overdosed on OxyContin and died. The sales representative wrote: “Statements were made that OxyContin sales were at the expense of dead children and the only difference between heroin and OxyContin is that you can get OxyContin from a doctor.”

194. In February 2001, a federal prosecutor reported 59 deaths from OxyContin in a single state. Defendant Richard Sackler wrote to Purdue executives: “This is not too bad. It could have been far worse.”

195. In 2007, Richard Sackler applied for a patent to treat opioid addiction. He finally received it in January 2018 and assigned it to Rhodes, a different company controlled by the Sackler family, instead of Purdue. Richard’s patent application says opioids *are* addictive. The application calls the people who become addicted to opioids “junkies” and asks for a monopoly on a method of treating addiction.

196. At no point during the relevant time period did the Sacklers receive information showing that prescription opioid abuse had abated.

197. Instead, in 2010, staff gave the Sacklers a map, which showed a correlation between the location of dangerous prescribers with reports of oxycodone poisonings, burglaries and robberies.

198. In March 2013, staff reported to the Sacklers on the devastation caused by prescription opioids. Staff told the Sacklers that drug overdose deaths had more than tripled since 1990—the period during which Purdue had made OxyContin the best-selling painkiller.

1 They told the Sacklers that tens of thousands of deaths were only the “ tip of the iceberg,” and
2 that, for every death, there were more than a hundred people suffering from prescription opioid
3 dependence or abuse.

4 199. Just two months later, at a May 2013 board meeting, staff reported to the
5 Sacklers that they were successfully pushing opioid savings cards through direct mail and email
6 to get patients to “remain on therapy longer.”

7 200. In February 2001, Richard Sackler dictated Purdue’s strategy for responding to
8 the increasing evidence of abuse of prescription opioids and addiction to Purdue’s opioids:
9 blame and stigmatize their own victims. Richard Sackler wrote in an email: “we have to
10 hammer on the abusers in every way possible. They are the culprits and the problem. They are
11 reckless criminals.”

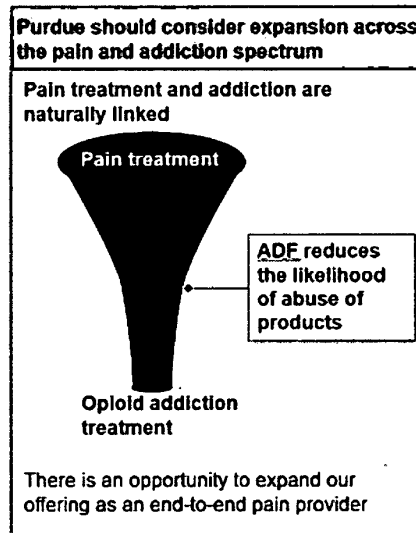
12 201. When *Time* magazine published an article about OxyContin deaths in New
13 England, Purdue employees told Richard Sackler they were concerned. Richard responded with
14 a message to his staff. He wrote that *Time’s* coverage of people who lost their lives to
15 OxyContin was not “ balanced,” and the deaths were the fault of “ the drug addicts,” instead of
16 Purdue.

17 202. The Sacklers’ full understanding of opioids’ abuse and addiction risk is
18 underscored by their willingness to research, quantify and ultimately monetize opioid abuse
19 and addiction by pursuing the development of medications to treat the addiction their own
20 opioids caused.

21 203. Defendants Kathe Sackler, Richard Sackler, and Purdue’s staff determined that
22 millions of people who became addicted to opioids were the Sackler Families’ next business
23 opportunity. A PowerPoint stated: “It is an attractive market. Large unmet need for vulnerable,
24 underserved and stigmatized patient population suffering from substance abuse, dependence
25 and addiction.”

26 204. In September 2014, Kathe Sackler participated in a call about *Project Tango*—
27 a plan for Purdue to expand into the business of selling drugs to treat opioid addiction. In their
28

internal documents, defendant Kathe Sackler and staff memorialized what Purdue publicly denied for decades: “Pain treatment and addiction are naturally linked.” They illustrated this point, and the business opportunity it presented, with a funnel beginning with pain treatment and leading to opioid addiction treatment:



205. The same presentation also provided: “[Opioid addiction] can happen to anyone from a 50 year old woman with chronic lower back pain to a 18 year old boy with a sports injury, from the very wealthy to the very poor.”

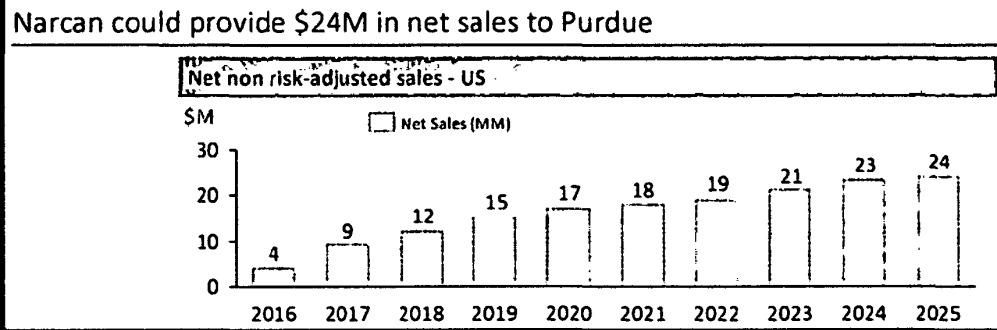
206. Defendant Kathe Sackler and Purdue’s *Project Tango* team reviewed findings that the “market” of people addicted to opioids had doubled from 2009 to 2014. Kathe and the staff found that the national catastrophe they caused provided an excellent compound annual growth rate (“CAGR”): “Opioid addiction (other than heroin) has grown by ~20% CAGR from 2000 to 2010.”

207. Defendant Kathe Sackler ordered staffs “immediate attention, verification, and assessment” of reports of children requiring hospitalization after swallowing buprenorphine as a film that melts in your mouth, and staff assured Kathe that children were *overdosing on pills like OxyContin*, not films, “which is a positive for *Tango*.”

208. In February 2015, staff presented Kathe Sackler's work on *Project Tango* to Purdue's board. The plan was for a joint venture controlled by the Sacklers to sell the addiction medication suboxone and would result in the Sacklers' acquisition of the "market lead[] in the addiction medicine space."

209. During the presentation, the *Tango* team mapped how patients could get addicted to opioids through prescription opioid analgesics such as Purdue's OxyContin or heroin, and then become consumers of the new company's suboxone. The team noted the opportunity to capture customers: even after patients were done buying suboxone the first time, 40-60% would relapse and need it again.

210. In June 2016, the Sacklers met to discuss a revised version of *Project Tango* and considered a scheme to sell the overdose antidote NARCAN. At this meeting, the Sacklers and the Purdue board calculated that the need for NARCAN to reverse overdoses could provide a growing source of revenue, tripling from 2016 to 2018.



211. The Sacklers identified patients on Purdue's prescription opioids as the target market for NARCAN. The plan called for studying "long-term script users" to "better understand target end-patients" for NARCAN. The Sacklers planned to "leverage the current Purdue sales force" to "drive direct promotion to targeted opioid prescribers" and determined that Purdue could profit from government efforts to use NARCAN to save lives.

212. In December 2016, Richard, Jonathan and Mortimer Sackler had a call with staff regarding yet another version of *Project Tango* to discuss acquiring a company that treated

opioid addiction with implantable drug pumps. The business was a “strategic fit,” because Purdue sold opioids and the new business treated the “strategically adjacent indication of opioid dependence.”

213. Despite having full knowledge of opioids’ risk of addiction, abuse, and diversion,

the Sacklers, as the owners of Purdue involved with each and every material decision relating to the development and sale of Purdue’s opioids, were actively involved in marketing Purdue’s opioids in a way that deceptively minimized those risks and overstated the benefits.”

214. For example, the Sacklers oversaw:

- Purdue’s research, including research that contradicted its marketing. Purdue’s board received reports about studies of Purdue opioids in “opioid-naïve” patients and patients with osteoarthritis, down to the details of the strategy behind the studies and the enrollment of the first patients.
- Purdue’s improper response to signs of abuse and diversion by high-prescribing doctors.
- Purdue’s strategy to pay high prescribers to promote Purdue’s opioids. A report for the Purdue board listed the exact number of conferences and dinner meetings, with attendance figures and the board was told the amounts paid to certain doctors, and they received detailed reports on the Return on Investment that Purdue gained from paying doctors to promote its drugs.
- Purdue’s strategy to push patients to higher doses of opioids which are more dangerous, more addictive, and more profitable. The Board routinely received reports on Purdue’s efforts to push patients to higher doses and to use higher doses of opioids to keep patients on drugs for longer periods of time. These internal communications only increased as Purdue’s market share for its opioids declined.
- Purdue’s push to steer patients away from safer alternatives. They tracked the company’s effort to emphasize “the true risk and cost consequence of acetaminophen-related liver toxicity.”

215. The Sacklers focused their attention on the sales force, directing both the messaging and their tactics and closely monitoring compliance with their directives and the results. The Sacklers tracked the exact number of sales representatives and the exact number

1 of visits they made to urge doctors to prescribe Purdue opioids. They knew which drugs were
2 promoted; how many visits sales representatives averaged per workday; how much each visit
3 cost Purdue. They knew the company's plan for sales visits in each upcoming quarter and
4 approved specific plans to hire new sales representatives, hire and promote new District and
5 Regional managers, and create sales "territories" in which representatives would target doctors.
6 The Sacklers knew how many visits sales representatives averaged per workday and required
7 their sales representatives to average 7.5 prescribers per day. As with the daily visits per
8 representative, the Sacklers tracked the total number of sales visits per quarter until at least
9 2014.

10 216. The Sacklers made key decisions relating to Purdue's sales representatives. For
11 example, they considered and approved hiring more sales representatives. They decided to
12 approve sales representatives' compensation, and they even voted to gift sales representatives
13 with laptops.

14 217. The Sacklers oversaw the tactics that sales representatives used to push their
15 opioids. For example, a Purdue board report analyzed a Purdue initiative to use iPads during
16 sales visits, which increased the average length of the sales meeting with the doctor.

17 218. The Sacklers even monitored sales representatives' emails. Purdue held
18 thousands of face-to-face sales meetings with doctors, but the company prohibited its sales
19 representatives from writing emails to doctors, which could create evidence of Purdue's
20 misconduct. When Purdue found that some sales representatives had emailed doctors, the
21 company conducted an "investigation" and reported to the board that sales representatives had
22 been disciplined and that their emails would be discussed at the board meeting.

23 219. Even after Purdue's 2007 guilty plea and the Corporate Integrity Agreement
24 binding Purdue's directors, the Sacklers maintained their control over Purdue's deceptive sales
25 campaign. Richard Sackler even went into the field to supervise representatives face to face.

26 220. The Sacklers directed Purdue to hire hundreds of sales representatives to carry
27 out their deceptive sales campaign subsequent to the 2007 guilty plea. Complying with those
28 orders, Purdue staff reported to the Sacklers in January 2011 that a key initiative in Q4 2010

1 had been the expansion of the sales force.

2 221. In November 2012, the Sacklers voted to set Purdue's budget for Sales and
3 Promotion for 2013 at \$312,563,000.

4 222. Further demonstrating how intimately involved the Sackler Defendants were in
5 decisions concerning the sales force: in February 2012, during a lengthy exchange between
6 some Sackler individual Defendants and Purdue's officers, Defendant Mortimer Sackler
7 suggested that Purdue reschedule its January annual sales meeting to February so that sales
8 representatives "get back to work for January and back in front of doctors who enter the new
9 year refreshed...". Mortimer also suggested that representatives take "three full weeks" to "visit
10 all their doctors while they are still fresh from the winter break." Mortimer posed these
11 questions *despite* Purdue's robust sales during that time period. In response to this exchange
12 defendant Richard Sackler suggested the annual meeting be canceled altogether.

13 223. In October 2013, Mortimer Sackler pressed for more information on dosing and
14 "the breakdown of OxyContin market share by strength." Staff told the Sacklers that "the high
15 dose prescriptions are declining," and "there are fewer patients titrating to the higher strengths
16 from the lower ones." In response to the Sacklers' questions, staff explained that sales of the
17 highest doses were not keeping up with the Sacklers' expectations because some pharmacies
18 had implemented "good faith dispensing" policies to double-check prescriptions that looked
19 illegal and some prescribers were under pressure from the Drug Enforcement Administration
20 ("DEA"). Staff promised to increase the budget for promoting OxyContin by \$50,000,000,
21 and get sales representatives to generate more prescriptions with a new initiative to be presented
22 to the Sacklers the following week.

23 224. In 2013, staff reported to the Sacklers that net sales for 2013 had been \$377
24 million less than budgeted. Staff again reported that Purdue was losing hundreds of millions of
25 dollars in expected profits because prescribers were shifting away from higher doses of Purdue
26 opioids and including fewer pills per prescription. Staff told the Sacklers that a "Key Initiative"
27 was to get patients to "stay on therapy longer." The Sacklers agreed.

28 225. In July and again in August, September, and October 2014, staff warned the

1 Sacklers that two of the greatest risks to Purdue's business were "[continued pressure against
2 higher doses of opioids," and "[c]ontinued pressure against long term use of opioids." Staff
3 told the Sacklers that Purdue's best opportunity to resist that pressure was by sending sales
4 representatives to visit prescribers; and, specifically, by targeting the most susceptible doctors,
5 who could be convinced to be prolific prescribers, and visiting them many times.

6 226. The Sacklers knew that Purdue's marketing had an immense effect in driving
7 opioid prescriptions. According to Purdue's analysis in February 2014, its sales and marketing
8 tactics generated an additional 560,036 prescriptions of OxyContin in 2012 and 2013.

9 227. Purdue and the Sacklers disguised their own roles in the deceptive marketing of
10 chronic opioid therapy by funding and working through patient advocacy and professional
11 Front Groups and KOLs. They purposefully hid behind these individuals and organizations to
12 avoid regulatory scrutiny and to prevent doctors and the public from discounting their
13 messages.

14 228. Purdue and the Sacklers generated and approved the deceptive content used by
15 the KOLs and professional Front Groups.

16 229. In 2013, Purdue abolished the detailed Quarterly Reports that had created a
17 paper trail of targets for sales visits and been emailed among the Board and staff. For 2014,
18 Purdue decided to limit many of its official board reports to numbers and graphs, and relay
19 other information orally. The Sacklers continued to demand information about sales tactics,
20 and their control of Purdue's deceptive marketing did not change.

21 230. While Purdue was under investigation by the U.S. Attorney's Office for its
22 opioid marketing practices, the Sacklers formed a new company to enter the generic opioid
23 business: Rhodes. According to a former senior manager at Purdue, "Rhodes was set up as a
24 'landing pad' for the Sackler family in 2007, to prepare for the possibility that they would need
25 to start afresh following the crisis then engulfing OxyContin."

26 231. Rhodes Pharmaceuticals L.P. is a Delaware limited partnership, and Rhodes
27 Technologies is a Delaware general partnership, and each are 100% owned by Coventry
28 Technologies L.P., a Delaware limited partnership, which is ultimately owned by the same

various trusts for the benefit of members of the Sacklers. The general partner of Rhodes Pharma is Rhodes Pharmaceuticals Inc., and the managing general partner of Rhodes Tech is Rhodes Technologies Inc. Together, these entities are referred to as “Rhodes.” In 2009, Rhodes began selling generic opioids and further enriched the Sacklers.

232. Purdue and the Sacklers oversaw and approved all Rhodes-related activity. The Sacklers received the agendas for Rhodes Pharma and Rhodes Tech board of directors’ meetings in addition to Rhodes’ financial statements and financial results. Some of the individual Sackler Defendants served on Rhodes’ committees. For example, in 2015, Theresa Sackler (Chairperson), Kathe Sackler, and Jonathan Sackler served on Rhodes’ Governance committee. And in 2017, Rhodes’ Business Development Committee included individual Sackler Defendants Kathe Sackler, Jonathan Sackler, Mortimer Sackler, and David Sackler. In 2018, defendant Richard Sackler was listed on Rhodes’ patent for a drug to treat opioid addiction and further profit from the opioid crisis the Sackler Families created. Rhodes relied on Purdue for compliance; for example, in 2018, Rhodes’ Compliance Committee discussed the suspicious ordering system and statistics for 2018 as provided by Purdue. Rhodes also made distributions to defendants Rosebay Medical L.P. and the Beacon Company in the millions, for the benefit of the Sackler Families.

233. According to the *Financial Times*, in 2016, Rhodes had a substantially larger share of prescriptions in the U.S. prescription opioid market than Purdue.⁴⁹ Purdue has often argued that it is a relatively small producer of opioids in the United States, but those claims regarding market share completely omit Rhodes, which when combined with Purdue, the Sacklers control up to six percent of the United States opioid market. By 2018, the two companies owned by the Sacklers, Rhodes and Purdue, ranked seventh in terms of market share for opioids when combined.⁵⁰

234. Whereas the Sacklers have reduced Purdue’s operations and size, Rhodes

⁴⁹ David Crow, *How Purdue’s ‘One-Two’ Punch Fueled the Market for Opioids*, *Financial Times*, Sept. 9, 2018, available at <https://www.ft.com/content/8e64ec9c-bl33-l1e8-8d14-6f049d06439c>.

⁵⁰ Amy Baxter, *Billionaire Drugmaker Granted Patent for Opioid Addiction*, *Health Exec*, Sept. 10, 2018, available at <https://www.healthexec.com/topics/healthcare-economics/billionaire-drugmaker-granted-patent-addiction>.

1 continues to grow and sell opioids for the benefit of the Sackler families.

2 235. The Sacklers caused Purdue and other associated companies that they
3 beneficially owned and controlled to distribute to the Sackler Families billions of dollars in
4 connection with the sale of Purdue's opioids.

5 236. From the 2007 convictions to 2018, the Sacklers voted to pay their families
6 hundreds of millions of dollars each year, reflecting both the Sacklers' personal incentives to
7 sell as many opioids as possible, as well as the extent of their control over the Purdue board
8 and Purdue.

9 237. By 2014, the Sacklers knew that state attorneys general were investigating
10 Purdue, commencing actions against the company, and that settlements and/or judgments
11 against Purdue would become a cost of doing business for Purdue. Despite this knowledge, the
12 Sackler Defendants continued to vote to have Purdue pay the Sackler Families significant
13 distributions and send money to offshore companies. And Purdue continued to forecast
14 hundreds of millions of distributions of Purdue's profits to the Sackler Families.

15 238. Despite knowing that Purdue faces certain liabilities to the states, including the
16 State of Nevada, Purdue—at the Sackler Defendants' direction—continued to pay the Sackler
17 Defendants hundreds of millions of dollars each year in distributions during the relevant time
18 period for no consideration and in bad faith. As a result of Defendants' unlawful distributions
19 to the Sackler Defendants, assets are no longer available to satisfy Purdue's future creditor, the
20 State of Nevada.

21 239. According to publicly available information, annual revenue at Purdue averaged
22 about \$3 billion, mostly due to OxyContin sales, and Purdue had made more than \$35 billion
23 since releasing OxyContin in 1995.⁵¹ According to publicly available information, Purdue, at
24 the direction of the Sackler-controlled board, paid the Sackler Defendants \$4 billion in profits
25 stemming from the sale of Purdue's opioids. In June 2010, Purdue's staff gave the Sacklers an
26 updated 10-year plan for growing Purdue's opioid sales in which the Sacklers stood to receive

27
28 ⁵¹ Ella Nilsen, *AG locked in prolonged battle with drug companies*, Concord Monitor, July 14 2016, available at <https://www.concordmonitor.com/NH-attorney-general-battle-with-drug-companies-3424021>.

1 at least \$700 million each year from 2010 through 2020. In December 2014, Purdue's staff told
2 the Sacklers that Purdue would pay their family \$163 million in 2014 and projected \$350
3 million in 2015. At board meeting after board meeting, the Sacklers voted to have Purdue pay
4 their families hundreds of millions in Purdue profits from the sale of OxyContin, among other
5 drugs.

6 240. Purdue has been involved in two decades of litigation for its misconduct vis-à-
7 vis the sale and marketing of OxyContin. Purdue and the Sackler Defendants thus always
8 understood, and were aware of, the catastrophic effect of investigations and lawsuits relating
9 to the opioid litigation. But Purdue's and the Sacklers' business as usual approach means—by
10 Purdue's own recent admission—that Purdue cannot pay what it owes to plaintiffs including
11 the State of Nevada because distributions to Purdue's owners (the Sackler Defendants)
12 continued unabated during the relevant time period.

13 241. Purdue, at the direction of the Sackler Defendants, inappropriately and illegally
14 conveyed hundreds of millions of dollars of Purdue's profits from opioids to the Sackler
15 Defendants each year during the relevant time period despite Purdue's and the Sacklers'
16 knowledge that they face certain, and significant, liabilities because of the multitude of
17 litigations against Purdue by state attorneys general, including Nevada's Attorney General.

18 242. No regard was given to Purdue's ability to pay creditors like Nevada, or even
19 negotiate a settlement in good faith, given that hundreds of millions of dollars each year were
20 squandered by distributing those funds to members of the Sackler family.

21 243. Now, when faced with reality that Purdue—and the Sacklers—will finally be
22 held accountable commensurate to their misconduct, Purdue has publicly admitted that it
23 cannot pay these liabilities and is threatening to commence bankruptcy proceedings on the eve
24 of a landmark jury trial and in the middle of discovery with dozens of state attorneys general,
25 including Nevada.

26 244. Ultimately, the Sacklers used their ill-gotten wealth to cover up their
27 misconduct with a philanthropic campaign intending to whitewash their decades-long success
28 in profiting at Nevadans' expense.

iii. *Endo's misrepresentations regarding addiction risk*

245. Endo also falsely represented that addiction is rare in patients who are prescribed opioids.

246. Until April 2012, Endo's website for Opana, www.opana.com, stated that "[m]ost healthcare providers who treat patients with pain agree that patients treated with prolonged opioid medicines usually do not become addicted."

247. Upon information and belief, Endo improperly instructed its sales representatives to diminish and distort the risk of addiction associated with Opana ER. Endo's training materials for its sales representatives in 2011 also prompted sales representatives to answer "true" to the statement that addiction to opioids is not common.

248. One of the Front Groups with which Endo worked most closely was the American Pain Foundation ("APF"), described more fully below. Endo provided substantial assistance to, and exercised editorial control, over the deceptive and misleading messages that APF conveyed through its National Initiative on Pain Control ("NIPC")⁵² and its website www.painknowledge.com, which claimed that "[p]eople who take opioids as prescribed usually do not become addicted."

249. Another Endo website, www.PainAction.com, stated: "Did you know? Most chronic pain patients do not become addicted to the opioid medications that are prescribed for

⁵² Endo was one of the APF's biggest financial supporters, providing more than half of the \$10 million APF received from opioid manufacturers during its lifespan. Endo was the sole funder of NIPC and selected APF to manage NIPC. Internal Endo documents indicate that Endo was responsible for NIPC curriculum development, web posting, and workshops, developed and reviewed NIPC content, and took a substantial role in distributing NIPC and APF materials. Endo projected that it would be able to reach tens of thousands of prescribers nationwide through the distribution of NIPC materials.

1 them.”

2 250. In a brochure available on www.painknowledge.com titled “*Pain: Opioid*
3 *Facts*,” Endo-sponsored NIPC stated that “people who have no history of drug abuse, including
4 tobacco, and use their opioid medication as directed will probably not become addicted.” In
5 numerous patient education pamphlets, Endo repeated this deceptive message.
6

7 251. In a patient education pamphlet titled “*Understanding Your Pain: Taking Oral*
8 *Opioid Analgesics*,” Endo answers the hypothetical patient question—“What should I know
9 about opioids and addiction?”—by focusing on explaining what addiction is (“a chronic brain
10 disease”) and is not (“Taking opioids for pain relief”). It goes on to explain that “[a]ddicts take
11 opioids for other reasons, such as unbearable emotional problems. Taking opioids as prescribed
12 for pain relief is not addiction.” This publication is still available online.
13

14 252. An Endo publication, *Living with Someone with Chronic Pain*, stated, “Most
15 health care providers who treat people with pain agree that most people do not develop an
16 addiction problem.” A similar statement appeared on the Endo website, www.opana.com, until
17 at least April 2012.
18

19 253. In addition, a 2009 patient education publication, *Pain: Opioid Therapy*, funded
20 by Endo and posted on www.painknowledge.com, omitted addiction from the “common risks”
21 of opioids, as shown below:
22
23
24
25
26
27
28

As with any medication, there are some side effects that are associated with opioid therapy. The most common side effects that occur with opioid use include the following:

- Constipation
- Drowsiness
- Confusion
- Nausea
- Itching
- Dizziness
- Shortness of breath

Your healthcare provider can help to address and, in some cases, prevent side effects that may occur as a result of opioid treatment. Less severe side effects, including nausea, itching, or drowsiness, typically go away within a few days without the need for further treatment. If you experience any side effects, you should let your healthcare provider know immediately.

iv. *Actavis's misrepresentations regarding addiction risk*

254. Through its "Learn More About Customized Pain Control with Kadian," material, Actavis claimed that it is possible to become addicted to morphine-based drugs like Kadian, but that it is "less likely" to happen in those who "have never had an addiction problem." The piece goes on to advise that a need for a "dose adjustment" is the result of tolerance, and "not addiction."

255. Training for Actavis sales representatives deceptively minimizes the risk of addiction by: (i) attributing addiction to "predisposing factors" like family history of addiction or psychiatric disorders; (ii) repeatedly emphasizing the difference between substance dependence and substance abuse; and (iii) using the term pseudoaddiction, which, as described elsewhere, dismisses evidence of addiction as the under-treatment of pain, and dangerously, counsels doctors to respond to its signs with more opioids.

256. Actavis conducted a market study on takeaways from prescribers' interactions with Kadian sales representatives. The study revealed that doctors reported a strong recollection of the sales representatives' discussion of Kadian's supposed low-abuse potential. Actavis' sales representatives' misstatements on the low-abuse potential were considered an important factor to doctors, and were likely repeated and reinforced to their patients. Additionally, doctors reviewed visual aids that Kadian sales representatives used during the visits, and Actavis noted that doctors who reviewed those visual aids associated Kadian with less abuse and no highs, in

1 comparison to other opioids. Numerous marketing surveys of doctors in 2010 and 2012, for
2 example, confirmed Actavis's messaging about Kadian's purported low addiction potential,
3 and that it had less abuse potential than other similar opioids.

4 257. A guide for prescribers, published under Actavis's copyright, deceptively
5 represents that Kadian is more difficult to abuse and less addictive than other opioids. The guide
6 includes the following statements: 1) "unique pharmaceutical formulation of KADIAN may
7 offer some protection from extraction of morphine sulfate for intravenous use by illicit
8 users," and 2) KADIAN may be less likely to be abused by health care providers and illicit
9 users" because of "Slow onset of action," "Lower peak plasma morphine levels than equivalent
10 doses of other formulations of morphine," "Long duration of action," and "Minimal fluctuations
11 in peak to trough plasma levels of morphine at steady state." The guide is copyrighted by Actavis
12 in 2007, before Actavis officially purchased Kadian from Alpharma. These statements convey
13 both that (1) Kadian does not cause euphoria and therefore is less addictive and that (2) Kadian
14 is less prone to tampering and abuse, even though Kadian was not approved by the FDA as abuse
15 deterrent, and, upon information and belief, Actavis had no studies to suggest it was.

16 258. In March 2010, the FDA found that Actavis had been distributing promotional
17 materials that "minimize[] the risks associated with Kadian and misleadingly suggest[] that
18 Kadian is safer than has been demonstrated."⁵³

19 *v. Mallinckrodt's misrepresentations regarding addiction risk*
20

21 259. As described below, Mallinckrodt promoted its branded opioids Exalgo and
22 Xartemis XR, and opioids generally, in a campaign that consistently mischaracterized the risk
23 of addiction. Mallinckrodt did so through its website and sales force, as well as through
24 unbranded communications distributed through the "C.A.R.E.S. Alliance" it created and led.

25 260. Mallinckrodt in 2010 created the C.A.R.E.S. (Collaborating and Acting
26

27 ⁵³ Letter from Thomas Abrams, Dir., Div. of Drug Mktg., Advert., & Commc'ns, U.S. Food & Drug Admin., to Doug
28 Boothe, CEO, Actavis Elizabeth, LLC (Feb. 18, 2010),
<https://www.fdanews.com/ext/resources/files/archives/a/ActavisElizabethLLC.pdf>.

Responsibly to Ensure Safety) Alliance, which it describes as “a coalition of national patient safety, provider and drug diversion organizations that are focused on reducing opioid pain medication abuse and increasing responsible prescribing habits.” The “C.A.R.E.S. Alliance” itself is a service mark of Mallinckrodt LLC (and was previously a service mark of Mallinckrodt, Inc.) copyrighted and registered as a trademark by Covidien, its former parent company. Materials distributed by the C.A.R.E.S. Alliance, however, include unbranded publications that do not disclose a link to Mallinckrodt.

261. By 2012, Mallinckrodt, through the C.A.R.E.S. Alliance, was promoting a book titled *Defeat Chronic Pain Now!* This book is still available online. The false claims and misrepresentations in this book include the following statements:

- “Only rarely does opioid medication cause a true addiction when prescribed appropriately to a chronic pain patient who does not have a prior history of addiction.”
- “It is currently recommended that every chronic pain patient suffering from moderate to severe pain be viewed as a potential candidate for opioid therapy.”
- “When chronic pain patients take opioids to treat their pain, they rarely develop a true addiction and drug craving.”
- “Only a minority of chronic pain patients who are taking long-term opioids develop tolerance.”
- “**The bottom line:** Only rarely does opioid medication cause a true addiction when prescribed appropriately to a chronic pain patient who does not have a prior history of addiction.”
- “Here are the facts. It is very uncommon for a person with chronic pain to become ‘addicted’ to narcotics IF (1) he doesn’t have a prior history of any addiction and (2) he only takes the medication to treat pain.”
- “Studies have shown that many chronic pain patients can experience significant pain relief with tolerable side effects from opioid narcotic medication when taken daily and no addiction.”

1 262. In a 2013 *Mallinckrodt Pharmaceuticals Policy Statement Regarding the*
2 *Treatment of Pain and Control of Opioid Abuse*, which is still available online, Mallinckrodt
3 stated that, “[s]adly, even today, pain frequently remains undiagnosed and either untreated or
4 undertreated” and cites to a report that concludes that “the majority of people with pain use
5 their prescription drugs properly, are not a source of misuse, and should not be stigmatized or
6 denied access because of the misdeeds or carelessness of others.”

7 263. Manufacturer Defendants’ suggestions that the opioid epidemic is the result of
8 bad patients who manipulate doctors to obtain opioids illicitly helped further their marketing
9 scheme, but those suggestions are at odds with the facts. While there are certainly patients who
10 unlawfully obtain opioids, they are a small minority. For example, patients who “doctor-
11 shop”—i.e., visit multiple prescribers to obtain opioid prescriptions—are responsible for
12 roughly 2% of opioid prescriptions. The epidemic of opioid addiction and abuse is
13 overwhelmingly a problem of false marketing (and unconstrained distribution) of the drugs,
14 not problem patients.

15 b. Falsehood #2: The false or misleading claims that to the extent there is a risk
16 of addiction, it can be easily identified and managed.

17 264. While continuing to maintain that most patients can safely take opioids long-
18 term for chronic pain without becoming addicted, the Manufacturer Defendants assert that to
19 the extent that *some* patients are at risk of opioid addiction, doctors can effectively identify and
20 manage that risk by using screening tools or questionnaires. In materials they produced,
21 sponsored, or controlled, Defendants instructed patients and prescribers that screening tools can
22 identify patients predisposed to addiction, thus making doctors feel more comfortable
23 prescribing opioids to their patients and patients more comfortable starting opioid therapy for
24 chronic pain. These tools, they say, identify those with higher addiction risks (stemming from
25 personal or family histories of substance use, mental illness, trauma, or abuse) so that doctors
26 can then more closely monitor those patients. These false and misleading claims were made by
27 all Manufacturer Defendants, examples of which are in the following paragraphs.
28

1 265. Purdue shared its *Partners Against Pain* “Pain Management Kit,” which
2 contains several screening tools and catalogues of Purdue materials, which included these
3 tools, with prescribers. The website, which directly provides screening tools to prescribers
4 for risk assessments, includes a “[f]our question screener” to purportedly help physicians
5 identify and address possible opioid misuse.⁵⁴

6 266. Purdue and another manufacturer, Cephalon, sponsored the APF’s *Treatment*
7 *Options: A Guide for People Living with Pain* (2007), which also falsely reassured patients that
8 opioid agreements between doctors and patients can “ensure that you take the opioid as
9 prescribed.”

10 267. Purdue sponsored a 2011 webinar taught by Dr. Lynn Webster, a so-called “key
11 opinion leader” (KOL) discussed below, entitled *Managing Patient’s Opioid Use: Balancing*
12 *the Need and Risk*. This publication misleadingly taught prescribers that screening tools, urine
13 tests, and patient agreements have the effect of preventing “overuse of prescriptions” and
14 “overdose deaths.”

15 268. Purdue sponsored a 2011 CME program titled *Managing Patient’s Opioid Use:*
16 *Balancing the Need and Risk*. This presentation deceptively instructed prescribers that
17 screening tools, patient agreements, and urine tests prevented “overuse of prescriptions” and
18 “overdose deaths.”

19 269. Purdue also funded a 2012 CME program called *Chronic Pain Management*
20 *and Opioid Use: Easing Fears, Managing Risks, and Improving Outcomes*. The presentation
21 deceptively instructed doctors that, through the use of screening tools, more frequent refills,
22 and other techniques, even high-risk patients showing signs of addiction could be treated with
23 opioids.

24 270. Endo paid for a 2007 supplement available for continuing education credit in
25 the *Journal of Family Practice* written by a doctor who became a member of Endo’s speaker’s
26

27
28 ⁵⁴ *Risk Assessment Resources*, Prescribe Responsibly, <http://www.prescriberesponsibly.com/risk-assessment-resources> (last modified July 2, 2015).

bureau in 2010. This publication, entitled *Pain Management Dilemmas in Primary Care: Use of Opioids*, (i) recommended screening patients using tools like (a) the *Opioid Risk Tool* created by Dr. Webster and linked to Janssen or (b) the *Screening and Opioid Assessment for Patients with Pain*, and (ii) taught that patients at high risk of addiction could safely receive chronic opioid therapy using a “maximally structured approach” involving toxicology screens and pill counts. The *Opioid Risk Tool* was linked to by Endo-supported websites, as well.

271. There are three fundamental flaws in the Manufacturer Defendants’ representations that doctors can consistently identify and manage the risk of addiction. First, there is no reliable scientific evidence that doctors can depend on the screening tools currently available to materially limit the risk of addiction. Second, there is no reliable scientific evidence that high-risk patients identified through screening can take opioids long-term without triggering addiction, even with enhanced monitoring. Third, there is no reliable scientific evidence that patients who are not identified through such screening can take opioids long-term without significant danger of addiction.

- c. Falsehood #3: The false or misleading claims that signs of addictive behavior are “pseudoaddiction,” requiring more opioids.

272. The Manufacturer Defendants instructed patients and prescribers that signs of addiction are actually indications of untreated pain, such that the appropriate response is to prescribe even more opioids. Dr. David Haddox, who later became a Senior Medical Director for Purdue, published a study in 1989 coining the term “pseudoaddiction,” which he characterized as “the iatrogenic syndrome of abnormal behavior developing as a direct consequence of inadequate pain management.”⁵⁵ In other words, people on prescription opioids who exhibited classic signs of addiction—for example, asking for more and higher doses of opioids, self-escalating their doses, or claiming to have lost prescriptions in order to get more opioids—were not addicted, but rather simply suffering from under-treatment of their pain.

⁵⁵ David E. Weissman & J. David Haddox, *Opioid Pseudoaddiction – An Iatrogenic Syndrome*, 36(3) Pain 363-66 (Mar. 1989), <https://www.ncbi.nlm.nih.gov/pubmed/2710565>. (“Iatrogenic” describes a condition induced by medical treatment.).

1 273. In the materials and outreach they produced, sponsored, or controlled,
2 Manufacturer Defendants made each of these misrepresentations and omissions, and have never
3 acknowledged, retracted, or corrected them.

4 274. Purdue, Endo, and Cephalon, sponsored the Federation of State Medical Boards'
5 ("FSMB") *Responsible Opioid Prescribing* (2007), written by Dr. Scott Fishman and discussed
6 in more detail below, which taught that behaviors such as "requesting drugs by name,"
7 "demanding or manipulative behavior," seeing more than one doctor to obtain opioids, and
8 hoarding, which are signs of genuine addiction, are all really signs of "pseudoaddiction."
9 Nevada doctors could obtain CME credit by reading it.

10 275. Purdue posted an unbranded pamphlet entitled *Clinical Issues in Opioid*
11 *Prescribing* on its unbranded website, *www.PartnersAgainstPain.com*, in 2005, and circulated
12 this pamphlet through at least 2007 and on its website through at least 2013. The pamphlet
13 listed conduct including "illicit drug use and deception" that it claimed was not evidence of true
14 addiction but "pseudoaddiction" caused by untreated pain.

15 276. According to documents provided by a former Purdue detailer, sales
16 representatives were regularly trained and tested on the meaning of pseudoaddiction, implying
17 that sales representatives were directed to, and did, describe pseudoaddiction to prescribers.
18 Purdue's *Pain Management Kit* is another example of publication used by Purdue's sales force
19 that endorses pseudoaddiction by claiming that "pain-relief seeking behavior can be mistaken
20 for drug-seeking behavior." Upon information and belief, the kit was in use from 2011 through
21 June 2016, or later.

22 277. Similarly, internal documents show that Endo trained its sales representatives to
23 promote the concept of pseudoaddiction. A training module taught sales representatives that
24 addiction and pseudoaddiction were commonly confused. The module went on to state that
25 "The physician can differentiate addiction from pseudoaddiction by speaking to the patient about
26 his/her pain and increasing the patient's opioid dose to increase pain relief."

27 278. Endo also sponsored a NIPC CME program in 2009 titled *Chronic Opioid*
28

1 *Therapy: Understanding Risk While Maximizing Analgesia*, which promoted pseudoaddiction
 2 and listed “[d]ifferentiation among states of physical dependence, tolerance, pseudoaddiction,
 3 and addiction” as an element to be considered in awarding grants to CME providers.

4 279. Upon information and belief, Endo itself has repudiated the concept of
 5 pseudoaddiction. In finding that “[t]he pseudoaddiction concept has never been empirically
 6 validated and in fact has been abandoned by some of its proponents,” the New York Attorney
 7 General, in a 2016 settlement with Endo, reported that “Endo’s Vice President for
 8 Pharmacovigilance and Risk Management testified to [the NY AG] that he was not aware of
 9 any research validating the ‘pseudoaddiction’ concept” and acknowledged the difficulty in
 10 distinguishing “between addiction and ‘pseudoaddiction.’”⁵⁶ Endo thereafter agreed not to “use
 11 the term ‘pseudoaddiction’ in any training or marketing” in New York.

12 280. Upon information and belief, Endo used the term pseudoaddiction as part of a
 13 national marketing effort that, upon information and belief, included the State of Nevada.

14 281. The CDC Guideline does not and, upon information and belief, never did
 15 recommend attempting to provide more opioids to patients exhibiting symptoms of addiction.
 16 Dr. Webster admitted that pseudoaddiction “is already something we are debunking as a
 17 concept” and became “too much of an excuse to give patients more medication. It led us down a
 18 path that caused harm.”⁵⁷

19 d. Falsehood #4: The false or misleading claims that opioid withdrawal can be
 20 avoided by tapering.

21
 22 282. In an effort to underplay the risk and impact of addiction, the Manufacturer
 23 Defendants falsely claimed that, while patients become physically dependent on opioids,
 24 physical dependence is not the same as addiction and can be easily addressed, if and when pain
 25

26 ⁵⁶ Attorney General of the State of New York, In the Matter of Endo Health Solutions Inc. & Endo Pharmaceuticals
 27 Inc., Assurance No.:15-228, Assurance of Discontinuance Under Executive Law Section 63. Subdivision 15 at 7,
 28 https://ag.ny.gov/pdfs/Endo_AOD_030116-Fully_Executed.pdf.

⁵⁷ John Fauber, “Chronic Pain Fuels Boom in Opioids,” *Medpage Today*, (Feb. 19, 2012).
<https://www.medpagetoday.com/neurology/painmanagement/31254>.

1 relief is no longer desired, by gradually tapering patients' dose to avoid withdrawal.
2 Manufacturer Defendants failed to disclose the extremely difficult and painful effects that
3 patients can experience upon ceasing opioid treatment – adverse effects that also make it less
4 likely that patients will be able to stop using the drugs. Manufacturer Defendants also failed to
5 disclose how difficult it is for patients to stop using opioids after they have used them for
6 prolonged periods.

7 283. A non-credit educational program sponsored by Endo, *Persistent Pain in the*
8 *Older Adult*, claimed that withdrawal symptoms, which make it difficult for patients to stop
9 using opioids, could be avoided by simply tapering a patient's opioid dose over ten days.
10 However, this claim is at odds with the reported experience of patients addicted to opioids.
11 Most patients who have been taking opioids regularly will, upon stopping treatment, experience
12 withdrawal, characterized by intense physical and psychological effects, including anxiety,
13 nausea, headaches, and delirium, among others.⁵⁸ This painful and arduous struggle to
14 terminate use can leave many patients unwilling or unable to give up opioids and heightens the
15 risk of addiction.

16 284. For example, Purdue sponsored the APF's *A Policymaker's Guide to*
17 *Understanding Pain & Its Management*, which taught that "[s]ymptoms of physical
18 dependence can often be ameliorated by gradually decreasing the dose of medication during
19 discontinuation," but the guide did not disclose the significant hardships that often accompany
20 cessation of use.

21 285. To this day, the Manufacturer Defendants have not corrected or retracted their
22 misrepresentations regarding tapering as a solution to opioid withdrawal.

23 e. Falsehood #5: The false or misleading claims that opioid doses can be
24 increased without limit or greater risks.

25 286. In materials they produced, sponsored or controlled, Manufacturer Defendants
26

27
28 ⁵⁸ Mayo Clinic, *Tapering off opioids: When and how*, <https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/tapering-off-opioids-when-and-how/art-20386036>.

1 instructed prescribers that they could safely increase a patient's dose to achieve pain relief.
2 Each of the Manufacturer Defendants' claims was deceptive in that it omitted warnings of
3 increased adverse effects that occur at higher doses, effects confirmed by scientific evidence.

4 287. These misrepresentations were integral to the Manufacturer Defendants'
5 promotion of prescription opioids. As discussed above, patients develop a tolerance to opioids'
6 analgesic effects, so that achieving long-term pain relief requires constantly increasing the
7 dose.

8 288. In a 1996 sales memo regarding OxyContin, for example, a regional manager
9 for Purdue instructed sales representatives to inform physicians that there is "no[] upward
10 limit" for dosing and ask, "if there are any reservations in using a dose of 240mg-320mg of
11 OxyContin."⁵⁹

12 289. In addition, sales representatives aggressively pushed doctors to prescribe
13 stronger doses of opioids. For example, one Purdue sales representative wrote about how his
14 regional manager would drill the sales team on their upselling tactics:

15
16 It went something like this. "Doctor, what is the highest dose of
17 OxyContin you have ever prescribed?" "20mg Q12h." "Doctor,
18 if the patient tells you their pain score is still high you can increase
19 the dose 100% to 40mg Q12h, will you do that?" "Okay."
20 "Doctor, what if that patient then came back and said their pain
21 score was still high, did you know that you could increase the
22 OxyContin dose to 80mg Q12h, would you do that?" "I don't
23 know, maybe." "Doctor, but you do agree that you would at least
24 Rx the 40mg dose, right?" "Yes."

25 The next week the rep would see that same doctor and go through
26 the same discussion with the goal of selling higher and higher
27 doses of OxyContin.

28 290. These misrepresentations were particularly dangerous. As noted above, opioid

⁵⁹ Letter from Windell Fisher, Purdue Regional Manager, to B. Gergely, Purdue Employee (Nov. 7, 1996), <http://documents.latimes.com/sales-manager-on12-hour-dosing-1996/> (last updated May 5, 2016) (hereinafter "Letter from Fisher").

1 doses at or above 50 MME/day double the risk of overdose compared to 20 MME/day, and 50
2 MME is equal to just 33 mg of oxycodone. The recommendation of 320 mg every twelve hours
3 is ten times that.

4 291. By way of example, in its 2010 Risk Evaluation and Mitigation Strategy
5 (“REMS”) for OxyContin, however, Purdue does not address the increased risk of respiratory
6 depression and death from increasing dose, and instead advises prescribers that “dose
7 adjustments may be made every 1-2 days”; “it is most appropriate to increase the q12h dose”;
8 the “total daily dose can usually be increased by 25% to 50%”; and if “significant adverse
9 reactions occur, treat them aggressively until they are under control, then resume upward
10 titration.”⁶⁰

11 292. Endo sponsored a website, www.painknowledge.com, which claimed that opioid
12 dosages may be increased until “you are on the right dose of medication for your pain,” at
13 which point further dose increases would not be required.

14 293. Endo also published on its website a patient education pamphlet entitled
15 *Understanding Your Pain: Taking Oral Opioid Analgesics*. In Q&A format, it asked, “If I take
16 the opioid now, will it work later when I really need it?” The response is, “The dose can be
17 increased... You won’t ‘run out’ of pain relief.”

18 294. Purdue, along with another manufacturer, sponsored APF’s *Treatment Options:*
19 *A Guide for People Living with Pain* (2007), which taught patients that opioids have “no ceiling
20 dose” and therefore are safer than taking acetaminophen or other non-steroidal anti-
21 inflammatory drugs (“NSAIDs”) like ibuprofen.

22 295. Manufacturer Defendants were aware of the greater dangers high dose opioids
23 posed. In 2013, the FDA acknowledged “that the available data do suggest a relationship
24 between increasing opioid dose and risk of certain adverse events” and that studies “appear to
25 credibly suggest a positive association between high-dose opioid use and the risk of overdose
26

27 ⁶⁰ Purdue Pharma, L.P., *OxyContin Risk Evaluation and Mitigation Strategy*, Purdue Pharma L.P.,
28 [https://web.archive.org/web/20170215190303/https://www.fda.gov/downloads/Drugs/DrugSafety](https://web.archive.org/web/20170215190303/https://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM220990.pdf)
[y/PostmarketDrugSafetyInformationforPatientsandProviders/UCM220990.pdf](https://web.archive.org/web/20170215190303/https://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM220990.pdf) (last modified Nov. 2010).

and/or overdose mortality.” For example, a study of patient data from the Veterans Health Administration published in 2011 found that higher maximum prescribed daily opioid doses were directly associated with a higher risk of opioid overdose deaths.⁶¹

f. Falsehood #6: The false or misleading claims that long-term opioid use improves functioning.

296. Despite the lack of evidence of improved function and the existence of evidence to the contrary, the Manufacturer Defendants consistently promoted opioids as capable of improving patients’ function and quality of life because they viewed these claims as a critical part of their marketing strategies. In recalibrating the risk-benefit analysis for opioids, increasing the perceived benefits of treatment was necessary to overcome its risks.

297. Purdue noted the need to compete with this messaging, despite the lack of data supporting improvement in quality of life with OxyContin treatment:

Janssen has been stressing decreased side effects, especially constipation, as well as patient quality of life, as supported by patient rating compared to sustained release morphineWe do not have such data to support OxyContin promotion. . . . In addition, Janssen has been using the “life uninterrupted” message in promotion of Duragesic for non-cancer pain, stressing that Duragesic “helps patients think less about their pain.” This is a competitive advantage based on our inability to make any quality of life claims.⁶²

298. Despite its acknowledgment that “[w]e do not have such data to support OxyContin promotion,” Purdue ran a full-page ad for OxyContin in the Journal of the American Medical Association, proclaiming, “There Can Be Life With Relief,” and showing a man happily fly- fishing alongside his grandson, implying that OxyContin would help users’ function. This ad earned a warning letter from the FDA, which admonished, “It is particularly

⁶¹ Amy S. B. Bohnert, Ph.D. et al., *Association Between Opioid Prescribing Patterns and Opioid Overdose-Related Deaths*, 305(13) J. of Am. Med. Assoc. 1315, 1315-1321 (Apr. 6, 2011), <https://jamanetwork.com/journals/jama/fullarticle/896182>.

⁶² Meier, *supra* at 281.

1 disturbing that your November ad would tout ‘Life With Relief’ yet fail to warn that patients
2 can die from taking OxyContin.”⁶³

3 299. Purdue sponsored APF’s *A Policymaker’s Guide to Understanding Pain & Its*
4 *Management*, which claimed that “multiple clinical studies” have shown that opioids are
5 effective in improving daily function, psychological health, and health-related quality of life
6 for chronic pain patients. But the article cited as support for this in fact stated the contrary,
7 noting the absence of long-term studies and concluding, “[f]or functional outcomes, the other
8 analgesics were significantly more effective than were opioids.”

9 300. A series of medical journal advertisements for OxyContin in 2012 presented
10 “Pain Vignettes”—case studies featuring patients with pain conditions persisting over several
11 months—that implied functional improvement. For example, one advertisement described a
12 “writer with osteoarthritis of the hands” and implied that OxyContin would help him work
13 more effectively.

14 301. Similarly, since at least May of 2011, Endo has distributed and made available
15 on its website, *www.opana.com*, a pamphlet promoting Opana ER with photographs depicting
16 patients with physically demanding jobs like those of a construction worker or chef,
17 misleadingly implying that the drug would provide long-term pain relief and functional
18 improvement.

19 302. The APF’s *Treatment Options: A Guide for People Living with Pain* (2007),
20 sponsored by Purdue and Cephalon, counseled patients that opioids “give [pain patients] a
21 quality of life we deserve.” The guide was available online until APF shut its doors in May
22 2012.

23 303. Endo’s NIPC website *www.painknowledge.com* claimed that with opioids,
24 “your level of function should improve; you may find you are now able to participate in
25 activities of daily living, such as work and hobbies, that you were not able to enjoy when your
26

27 ⁶³ Chris Adams, *FDA Orders Purdue Pharma to Pull Its OxyContin Ads*, Wall St. J. (Jan. 23,
28 2003, 12:01am), <https://www.wsj.com/articles/SB1043259665976915824>.

1 pain was worse.” In addition to “improved function,” the website touted improved quality of
 2 life as a benefit of opioid therapy. The grant request that Endo approved for this project
 3 specifically indicated NIPC’s intent to make claims of functional improvement.

4 304. Endo was the sole sponsor, through NIPC, of a series of CMEs titled *Persistent*
 5 *Pain in the Older Patient*, which claimed that chronic opioid therapy has been “shown to reduce
 6 pain and improve depressive symptoms and cognitive functioning.” The CME was
 7 disseminated via webcast.

8 305. Mallinckrodt’s website, in a section on responsible use of opioids, claims that
 9 “[t]he effective pain management offered by our medicines helps enable patients to stay in the
 10 workplace, enjoy interactions with family and friends, and remain an active member of
 11 society.”⁶⁴

12 306. The Manufacturer Defendants’ claims that long-term use of opioids improves
 13 patient function and quality of life are unsupported by clinical evidence. There are no controlled
 14 studies of the use of opioids beyond 16 weeks, and there is no evidence that opioids improve
 15 patients’ pain and function long term. The FDA, for years, has made clear through warning
 16 letters to manufacturers the lack of evidence for claims that the use of opioids for chronic pain
 17 improves patients’ function and quality of life.⁶⁵ Based upon a review of the existing scientific
 18 evidence, the CDC Guideline concluded that “there is no good evidence that opioids improve
 19 pain or function with long-term use.”⁶⁶

20 307. Consistent with the CDC’s findings, substantial evidence exists demonstrating
 21

22
 23 ⁶⁴ Mallinckrodt Pharmaceuticals, *Responsible Use*, <http://www.mallinckrodt.com/corporate-responsibility/responsible-use>.

24 ⁶⁵ The FDA has warned other drugmakers that claims of improved function and quality of life were misleading. *See*
 25 Warning Letter from Thomas Abrams, Dir., FDA Div. of Mktg., Adver., & Commc’ns, to Doug Boothe, CEO,
 26 Actavis Elizabeth LLC (Feb. 18, 2010), (rejecting claims that Actavis’ opioid, Kadian, had an “overall positive
 27 impact on a patient’s work, physical and mental functioning, daily activities, or enjoyment of life.”); Warning Letter
 28 from Thomas Abrams, Dir., FDA Div. of Mktg., Adver., & Commc’ns, to Brian A. Markison, Chairman, President
 and Chief Executive Officer, King Pharmaceuticals, Inc. (March 24, 2008), (finding the claim that “patients who are
 treated with [Avinza (morphine sulfate ER)] experience an improvement in their overall function, social function,
 and ability to perform daily activities... has not been demonstrated by substantial evidence or substantial clinical
 experience.”). The FDA’s warning letters were available to Defendants on the FDA website.

⁶⁶ CDC Guideline *supra* at 20.

1 that opioid drugs are ineffective for the treatment of chronic pain and worsen patients' health.
2 For example, a 2006 study-of-studies found that opioids as a class did not demonstrate
3 improvement in functional outcomes over other non-addicting treatments. The few longer-term
4 studies of opioid use had "consistently poor results," and "several studies have showed that
5 opioids for chronic pain may actually worsen pain and functioning . . ." ⁶⁷ along with general
6 health, mental health, and social function. Over time, even high doses of potent opioids often
7 fail to control pain, and patients exposed to such doses are unable to function normally.

8 308. The available evidence indicates opioids may worsen patients' health and pain.
9 Increased duration of opioid use is strongly associated with increased prevalence of mental
10 health disorders (depression, anxiety, post-traumatic stress disorder, and substance abuse),
11 increased psychological distress, and greater health care utilization. The CDC Guideline
12 concluded that "[w]hile benefits for pain relief, function and quality of life with long- term
13 opioid use for chronic pain are uncertain, risks associated with long-term opioid use are clearer
14 and significant." ⁶⁸ According to the CDC, "for the vast majority of patients, the known,
15 serious, and too-often-fatal risks far outweigh the unproven and transient benefits [of opioids
16 for chronic pain]." ⁶⁹

17 309. As one pain specialist observed, "opioids may work acceptably well for a while,
18 but over the long term, function generally declines, as does general health, mental health, and
19 social functioning. Over time, even high doses of potent opioids often fail to control pain, and
20 these patients are unable to function normally." ⁷⁰ In fact, research such as a 2008 study in the
21 journal *Spine* has shown that pain sufferers prescribed opioids long-term suffered addiction
22 that made them more likely to be disabled and unable to work. ⁷¹ Another study demonstrated
23

24 ⁶⁷ Thomas R. Frieden and Debra Houry, *Reducing the Risks of Relief – The CDC Opioid- Prescribing Guideline*,
25 *New Eng. J. Med.*, at 1503 (Apr. 21, 2016).

26 ⁶⁸ CDC Guideline, *supra* at 2, 18.

27 ⁶⁹ Frieden & Houry, *supra*, at 1503.

28 ⁷⁰ Andrea Rubinstein, M.D. *Are We Making Pain Patients Worse?*, Sonoma Med. (Fall 2009),
<http://www.nbcmcs.org/about-us/sonoma-county-medical-association/magazine/sonoma-medicine-are-we-making-pain-patients-worse.aspx?pageid=144&tabid=747>.

⁷¹ Jeffrey Dersh, et al., *Prescription Opioid Dependence Is Associated With Poorer Outcomes In Disabling Spinal Disorders*, 33(20) *Spine* 2219-27 (Sept. 15, 2008).

that injured workers who received a prescription opioid for more than seven days during the first six weeks after the injury were 2.2 times more likely to remain on work disability a year later than workers with similar injuries who received no opioids at all.⁷² Moreover, the first randomized clinical trial designed to make head-to-head comparisons between opioids and other kinds of pain medications was recently published on March 6, 2018, in the Journal of the American Medical Association. The study reported that “[t]here was no significant difference in pain-related function between the 2 groups” – those whose pain was treated with opioids and those whose pain was treated with non-opioids, including acetaminophen and NSAIDs like ibuprofen. Accordingly, the study concluded: “Treatment with opioids was not superior to treatment with nonopioid medications for improving pain-related function over 12 months.”

g. Falsehood #7: The false or misleading claims that alternative forms of pain relief pose greater risks than opioids.

310. In materials they produced, sponsored or controlled, the Manufacturer Defendants omitted known risks of chronic opioid therapy and emphasized or exaggerated risks of competing products so that prescribers and patients would favor opioids over other therapies such as over-the-counter acetaminophen or over-the-counter or prescription NSAIDs.

311. For example, in addition to failing to disclose in promotional materials the risks of addiction, overdose, and death, the Manufacturer Defendants routinely ignored the risks of hyperalgesia, a “known serious risk associated with chronic opioid analgesic therapy in which the patient becomes more sensitive to certain painful stimuli over time,”⁷³ hormonal dysfunction,⁷⁴ decline in immune function, mental clouding, confusion, and dizziness, increased falls and fractures in the elderly,⁷⁵ neonatal abstinence syndrome (when an infant

⁷² Franklin, GM, Stover, BD, Turner, JA, Fulton-Kehoe, D, Wickizer, TM, *Early Opioid Prescription and Subsequent Disability Among Workers With Back Injuries: The Disability Risk Identification Study Cohort*, 33 Spine 199, 201-202.

⁷³ Letter from Janet Woodcock, M.D., Dir., Ctr. For Drug Eval. & Res., to Andrew Kolodny, M.D., Pres. *Physicians for Responsible Opioid Prescribing*, Re Docket No. FDA-2012-P-0818 (Sept. 10, 2013).

⁷⁴ H.W. Daniell, *Hypogonadism in Men Consuming Sustained-Action Oral Opioids*, 3(5) J. Pain 377-84 (2001).

⁷⁵ See Bernhard M. Kuschel, *The Risk of Fall Injury in Relation to Commonly Prescribed Medications Among Older People – a Swedish Case-Control Study*, Eur. J. Pub. H. 527, 527-32 (July 31, 2014).

1 exposed to opioids prenatally suffers withdrawal after birth), and potentially fatal interactions
2 with alcohol or with benzodiazepines, which are used to treat anxiety and may be co-prescribed
3 with opioids, particularly to veterans suffering from pain.⁷⁶

4 312. The APF's *Treatment Options: A Guide for People Living with Pain*, sponsored
5 by Purdue and Cephalon, warned that risks of NSAIDs increase if "taken for more than a period
6 of months," with no corresponding warning about opioids. The publication falsely attributed
7 10,000 to 20,000 deaths annually to NSAID overdoses, when the figure is closer to 3,200.⁷⁷

8 313. Endo's NIPC website, www.painknowledge.com, contained a flyer called
9 "*Pain: Opioid Therapy*." This publication listed opioids' adverse effects but with significant
10 omissions, including hyperalgesia, immune and hormone dysfunction, cognitive impairment,
11 tolerance, dependence, addiction, and death.

12 314. As another example, the Endo-sponsored CME put on by NIPC, *Persistent Pain*
13 *in the Older Adult*, discussed above, counseled that acetaminophen should be used only short-
14 term and includes five slides on the FDA's restrictions on acetaminophen and its adverse
15 effects, including severe liver injury and anaphylaxis (shock). In contrast, the CME downplays
16 the risk of opioids, claiming opioids have "possibly less potential for abuse than in younger
17 patients," and does not list overdose among the adverse effects. Some of those
18 misrepresentations are described above; others are laid out below.

19 315. In April 2007, Endo sponsored an article aimed at prescribers, published in *Pain*
20 *Medicine News*, titled "Case Challenges in Pain Management: Opioid Therapy for Chronic
21 Pain."⁷⁸ The article asserted:

22
23 Opioids represent a highly effective but controversial and often
24 misunderstood class of analgesic medications for controlling

25 ⁷⁶ Karen H. Seal, *Association of Mental Health Disorders With Prescription Opioids and High- Risk Opioids in US*
26 *Veterans of Iraq and Afghanistan*, 307(9) J. Am. Med. Ass'n 940-47 (2012).

27 ⁷⁷ Robert E. Tarone, et al., *Nonselective Nonaspirin Nonsteroidal Anti-Inflammatory Drugs and Gastrointestinal*
28 *Bleeding: Relative and Absolute Risk Estimates from Recent Epidemiologic Studies*, 11 Am. J. of Therapeutics 17-
25 (2004).

⁷⁸ Charles E. Argoff, *Case Challenges in Pain Management: Opioid Therapy for Chronic Pain*, Pain Med. News,
https://www.painmedicineneeds.com/download/BtoB_Opana_WM.pdf.

both chronic and acute pain. The phenomenon of tolerance to opioids – the gradual waning of relief at a given dose – and fears of abuse, diversion, and misuse of these medications by patients have led many clinicians to be wary of prescribing these drugs, and/or to restrict dosages to levels that may be insufficient to provide meaningful relief.⁷⁹

316. To help allay these concerns, Endo emphasized the risks of NSAIDs as an alternative to opioids. The article included a case study that focused on the danger of extended use of NSAIDs, including that the subject was hospitalized with a massive upper gastrointestinal bleed believed to have resulted from his protracted NSAID use. In contrast, the article did not provide the same detail concerning the serious side effects associated with opioids.

317. Additionally, Purdue and Endo sponsored *Overview of Management Options*, a CME issued by the AMA in 2003, 2007, 2010, and 2013. The 2013 version remains available for CME credit. The CME taught that NSAIDs and other drugs, but not opioids, are unsafe at high doses.

318. As a result of the Manufacturer Defendants' deceptive promotion of opioids over safer and more effective drugs, opioid prescriptions increased even as the percentage of patients visiting a doctor for pain remained constant. A study of 7.8 million doctor visits between 2000 and 2010 found that opioid prescriptions increased from 11.3% to 19.6% of visits, as NSAID and acetaminophen prescriptions fell from 38% to 29%, driven primarily by the decline in NSAID prescribing.⁸⁰

h. Falsehood #8: The false or misleading claims that OxyContin provides twelve hours of pain relief.

319. Purdue also dangerously misled doctors and patients about OxyContin's duration and onset of action, making the knowingly false claim that OxyContin would provide 12 hours of pain relief for most patients. As laid out below, Purdue made this claim for two

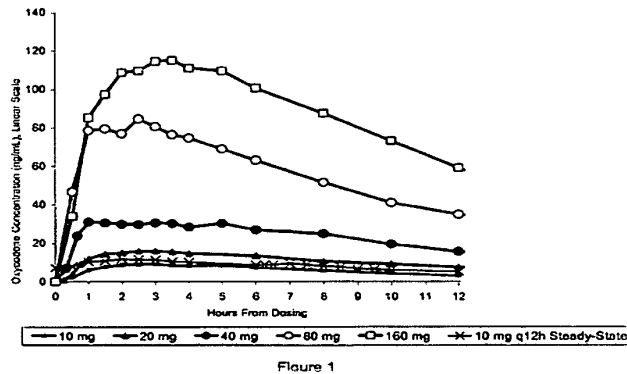
⁷⁹ *Id.* at 1.

⁸⁰ M. Daubresse, et al., *Ambulatory Diagnosis and Treatment of Nonmalignant Pain in the United States, 2000-2010*, 51(10) Med. Care, 870-878 (2013). For back pain alone, the percentage of patients prescribed opioids increased from 19% to 29% between 1999 and 2010, even as the use of NSAIDs or acetaminophen declined from 39.9% to 24.5% of these visits; and referrals to physical therapy remained steady. *See also* J. Mafi, et al., *Worsening Trends in the Management and Treatment of Back Pain*, 173(17) J. of the Am Med. Ass'n Internal Med. 1573, 1573 (2013).

reasons. First, it provides the basis for both Purdue's patent and its market niche, allowing it to both protect and differentiate itself from competitors. Second, it allowed Purdue to imply or state outright that OxyContin had a more even, stable release mechanism that avoided peaks and valleys and therefore the rush that fostered addiction and attracted abusers.

320. Purdue promotes OxyContin as an extended-release opioid, but the oxycodone does not enter the body on a linear rate. OxyContin works by releasing a greater proportion of oxycodone into the body upon administration, and the release gradually tapers, as illustrated in the following chart, which was apparently adapted from Purdue's own sales materials:⁸¹

OxyContin PI Figure, Linear y-axis



321. The reduced release of the drug over time means that the oxycodone no longer provides the same level of pain relief. As a result, in many patients, OxyContin does not last for the twelve hours for which Purdue promotes it—a fact that Purdue has known at all times relevant to this action.

322. OxyContin tablets provide an initial absorption of approximately 40% of the

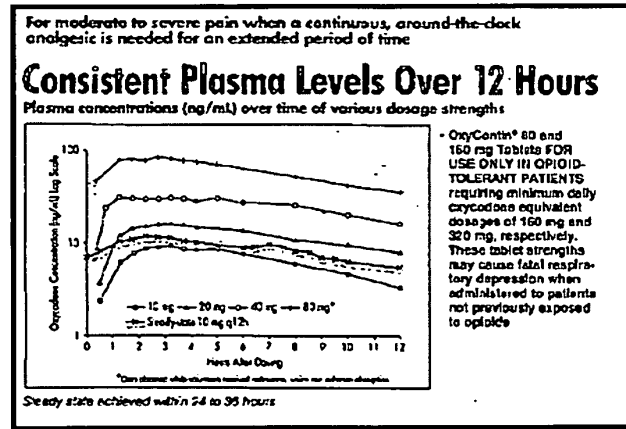
⁸¹ Jim Edwards, "How Purdue Used Misleading Charts to Hide OxyContin's Addictive Power," CBS News, September 28, 2011, <https://www.cbsnews.com/news/how-purdue-used-misleading-charts-to-hide-oxycontin-addictive-power/>; see also Jim Edwards, "Who Signed Off on Purdue's Misleading OxyContin Chart? Judge May Want Answers," CBS News, January 7, 2010, <https://www.cbsnews.com/news/who-signed-off-on-purdue-misleading-oxycontin-chart-judge-may-want-answers/>.

1 active medicine. This has a two-fold effect. First, the initial rush of nearly half of the powerful
2 opioid triggers a powerful psychological response. OxyContin thus behaves more like an
3 immediate release opioid. Second, the initial burst of oxycodone means that there is less of the
4 drug at the end of the dosing period, which results in the drug not lasting for a full twelve hours
5 and precipitates withdrawal symptoms in patients, a phenomenon known as “end of dose”
6 failure. (The FDA found in 2008 that a “substantial number” of chronic pain patients will
7 experience end-of-dose failure with OxyContin.)

8 323. End-of-dose failure renders OxyContin even more dangerous because patients
9 begin to experience withdrawal symptoms, followed by a euphoric rush with their next dose—
10 a cycle that fuels a craving for OxyContin. For this reason, Dr. Theodore Cicero, a
11 neuropharmacologist at the Washington University School of Medicine in St. Louis, has called
12 OxyContin’s 12-hour dosing “the perfect recipe for addiction.”⁸² Many patients will exacerbate
13 this cycle by taking their next dose ahead of schedule or resorting to a rescue dose of another
14 opioid, increasing the overall amount of opioids they are taking.

15 324. Purdue nevertheless has falsely promoted OxyContin as if it were effective for
16 a full twelve hours. Its advertising in 2000 included claims that OxyContin provides
17 “Consistent Plasma Levels Over 12 Hours.” That claim was accompanied by a chart, mirroring
18 the chart on the previous page. However, this version of the chart deceptively minimized the
19 rate of end-of- dose failure by depicting 10 mg in a way that it appeared to be half of 100 mg in
20 the table’s y-axis. That chart, shown below, depicts the same information as the chart above,
21 but does so in a way that makes the absorption rate appear more consistent:

22
23
24
25
26
27
28 ⁸² Harriet Ryan, et al., “‘You Want a Description of Hell?’ OxyContin’s 12-Hour Problem,” Los Angeles Times, May
5, 2016, <http://www.latimes.com/projects/oxycontin-part1/> (hereinafter, “*You Want a Description of Hell*”).



325. Purdue's 12-hour messaging was key to its competitive advantage over short-acting opioids that required patients to wake in the middle of the night to take their pills. Purdue advertisements also emphasized "Q12h" dosing. These include an advertisement in the February 2005 *Journal of Pain* and 2006 *Clinical Journal of Pain* featuring an OxyContin logo with two pill cups, reinforcing the twice-a-day message. A Purdue memo to the OxyContin launch team stated that "OxyContin's positioning statement is 'all of the analgesic efficacy of immediate-release oxycodone, with convenient q12h dosing,'" and further that "[t]he convenience of q12h dosing was emphasized as the most important benefit."⁸³

326. In keeping with this positioning statement, a Purdue regional manager emphasized in a 1996 sales strategy memo that representatives should "convinc[e] the physician that there is no need" for prescribing OxyContin in shorter intervals than the recommended 12-hour interval, and instead the solution is prescribing higher doses."⁸⁴ One sales manager instructed her team that anything shorter than 12-hour dosing "needs to be nipped in the bud NOW!!"⁸⁵

⁸³ Memorandum from Lydia Johnson, Marketing Executive at Purdue, to members of Oxycontin Launch Team (Apr. 4, 1995), <http://documents.latimes.com/oxycontin-launch-1995/> (last updated May 5, 2016).

⁸⁴ Letter from Fisher, *supra*.

⁸⁵ *You Want a Description of Hell, supra*.

1 327. Purdue executives therefore maintained the messaging of twelve-hour dosing
2 even when many reports surfaced that OxyContin did not last twelve hours. Instead of
3 acknowledging a need for more frequent dosing, Purdue instructed its representatives to push
4 higher-strength pills, even though higher dosing carries its own risks, as noted above. It also
5 means that patients will experience higher highs and lower lows, increasing the craving for their
6 next pill. Nationwide, based on an analysis by the *Los Angeles Times*, more than 52% of
7 patients taking OxyContin longer than three months are on doses greater than 60 milligrams
8 per day— which converts to the 90 MME that the CDC Guideline urges prescribers to “avoid”
9 or “carefully justify.”⁸⁶

10 328. The information that OxyContin did not provide pain relief for a full twelve
11 hours was known to Purdue, and Purdue’s competitors, but was not disclosed to prescribers.
12 Purdue’s knowledge of some pain specialists’ tendency to prescribe OxyContin three times per
13 day instead of two was set out in Purdue’s internal documents as early as 1999 and is apparent
14 from MedWatch Adverse Event reports for OxyContin.

15 329. Even Purdue’s competitor, Endo, was aware of the problem; Endo attempted to
16 position its Opana ER drug as offering “durable” pain relief, which Endo understood to suggest
17 a contrast to OxyContin. Opana ER advisory board meetings featured pain specialists citing
18 lack of 12-hour dosing as a disadvantage of OxyContin. Endo even ran advertisements for
19 Opana ER referring to “real” 12-hour dosing.

20 330. Purdue’s failure to disclose the prevalence of end-of-dose failure meant that
21 prescribers were misinformed about the advantages of OxyContin in a manner that preserved
22 Purdue’s competitive advantage and profits, at the expense of patients, who were placed at
23 greater risk of overdose, addiction, and other adverse effects.

- 24 i. Falsehood #9: The false or misleading claims that new formulations of certain
25 opioids successfully deter abuse.
26
27

28 ⁸⁶ CDC Guideline, *supra*, at 16.

1 331. Rather than take the widespread opioid abuse as reason to cease their untruthful
2 marketing efforts, Manufacturer Defendant Purdue and Endo seized the epidemic as a
3 competitive opportunity. These companies developed and oversold “abuse-deterrent
4 formulations” (“ADF”) opioids as a solution to opioid abuse and as a reason that doctors could
5 continue to safely prescribe their opioids as well as an advantage of these expensive branded
6 drugs over other opioids. These Defendants’ false and misleading marketing of the benefits of
7 their ADF opioids preserved and expanded their sales while falsely reassuring prescribers,
8 thereby prolonging the opioid epidemic. Other Manufacturer Defendants, including Actavis
9 and Mallinckrodt, also promoted their branded opioids as formulated to be less addictive or less
10 subject to abuse than other opioids.

11 332. The CDC Guideline confirms that “[n]o studies” support the notion that “abuse-
12 deterrent technologies [are] a risk mitigation strategy for deterring or preventing abuse,” noting
13 that the technologies “do not prevent opioid abuse through oral intake, the most common route
14 of opioid abuse, and can still be abused by non-oral routes.” Tom Frieden, the former Director
15 of the CDC, reported that his staff could not find “any evidence showing the updated opioids
16 [ADF opioids] actually reduce rates of addiction, overdoses, or deaths.”

17 *i. Purdue’s deceptive marketing of reformulated OxyContin and*
18 *Hysingla ER*

19 333. Reformulated ADF OxyContin was approved in April 2010. It was not
20 until 2013 that the FDA, in response to a citizen petition filed by Purdue, permitted reference
21 to the abuse-deterrent properties in its label. When Hysingla ER (extended-release
22 hydrocodone) launched in 2014, the product included similar abuse-deterrent properties and
23 limitations. But in the beginning, the FDA made clear the limited claims that could be made
24 about ADF, noting that no evidence supported claims that ADF prevented tampering, oral
25 abuse, or overall rates of abuse.

26 334. It is unlikely a coincidence that reformulated OxyContin was introduced shortly
27 before generic versions of OxyContin were to become available, threatening to erode Purdue’s
28

1 market share and the price it could charge. Purdue nonetheless touted its introduction of ADF
2 opioids as evidence of its good corporate citizenship and commitment to address the opioid
3 crisis.

4 335. Despite its self-proclaimed good intention, Purdue merely incorporated its
5 generally deceptive tactics with respect to ADF. Purdue sales representatives regularly
6 overstated and misstated the evidence for and impact of the abuse-deterrent features of these
7 opioids. Specifically, Purdue sales representatives:

- 8 • claimed that Purdue's ADF opioids prevent tampering and that its ADFs could
9 not be crushed or snorted;
- 10 • claimed that Purdue's ADF opioids reduce opioid abuse and diversion;
- 11 • asserted or suggested that its ADF opioids are non-addictive or less addictive,
- 12 • asserted or suggested that Purdue's ADF opioids are safer than other opioids,
- 13 could not be abused or tampered with, and were not sought out for diversion;
- 14 and
- 15 • failed to disclose that Purdue's ADF opioids do not impact oral abuse or misuse.

16 336. If pressed, Purdue acknowledged that perhaps some "extreme" patients might
17 still abuse the drug, but claimed the ADF features protect the majority of patients. These
18 misrepresentations and omissions are misleading and contrary to Purdue's own information
19 and publicly available data.

20 337. Purdue knew or should have known that reformulated OxyContin is not more
21 tamper-resistant than the original OxyContin and is still regularly tampered with and abused.

22 338. Purdue's own funded research shows that half of OxyContin abusers continued
23 to abuse OxyContin orally after the reformulation rather than shift to other drugs.

24 339. In 2009, the FDA noted in permitting ADF labeling that "the tamper-resistant
25 properties will have no effect on abuse by the oral route (the most common mode of abuse)".

26 In
27
28

the 2012 medical office review of Purdue's application to include an abuse-deterrence claim in its label for OxyContin, the FDA noted that the overwhelming majority of deaths linked to OxyContin were associated with oral consumption, and that only 2% of deaths were associated with recent injection and only 0.2% with snorting the drug.

340. The FDA's Director of the Division of Epidemiology stated in September 2015 that no data that she had seen suggested the reformulation of OxyContin "actually made a reduction in abuse," between continued oral abuse, shifts to injection of other drugs (including heroin), and defeat of the ADF mechanism. Even Purdue's own funded research shows that half of OxyContin abusers continued to abuse OxyContin orally after the reformulation rather than shift to other drugs.

341. A 2013 article presented by Purdue employees based on review of data from poison control centers concluded that ADF OxyContin can reduce abuse, but it ignored important negative findings. The study revealed that abuse merely shifted to other drugs and that, when the actual incidence of harmful exposures was calculated, there were *more* harmful exposures to opioids after the reformulation of OxyContin. In short, the article deceptively emphasized the advantages and ignored the disadvantages of ADF OxyContin.

342. Websites and message boards used by drug abusers, such as bluelight.org and reddit.com, report a variety of ways to tamper with OxyContin and Hysingla ER, including through grinding, microwaving then freezing, or drinking soda or fruit juice in which a tablet is dissolved. Purdue has been aware of these methods of abuse for more than a decade.

343. One-third of the patients in a 2015 study defeated the ADF mechanism and were able to continue inhaling or injecting the drug. To the extent that the abuse of Purdue's ADF opioids was reduced, there was no meaningful reduction in opioid abuse overall, as many users simply shifted to other opioids such as heroin.

344. In 2015, claiming a need to further assess its data, Purdue abruptly withdrew a supplemental new drug application related to reformulated OxyContin one day before FDA staff was to release its assessment of the application. The staff review preceded an FDA

1 advisory committee meeting related to new studies by Purdue “evaluating the misuse and/or
2 abuse of reformulated OxyContin” and whether those studies “have demonstrated that the
3 reformulated OxyContin product has had a meaningful impact on abuse.”⁸⁷ Upon information
4 and belief, Purdue never presented the data to the FDA because the data would not have
5 supported claims that OxyContin’s ADF properties reduced abuse or misuse.

6 345. Despite its own evidence of abuse, and the lack of evidence regarding the
7 benefit of Purdue’s ADF opioids in reducing abuse, Dr. J. David Haddox, the Vice President
8 of Health Policy for Purdue, falsely claimed in 2016 that the evidence does not show that
9 Purdue’s ADF opioids are being abused in large numbers. Purdue’s recent advertisements in
10 national newspapers also continues to claim its ADF opioids as evidence of its efforts to reduce
11 opioid abuse, continuing to mislead prescribers, patients, payors, and the public about the
12 efficacy of its actions.

13 *ii. Endo’s deceptive marketing of reformulated Opana ER*

14
15 346. As the expiration of its patent exclusivity for Opana ER neared, Endo also made
16 abuse-deterrence a key to its marketing strategy.

17 347. Opana ER was particularly likely to be tampered with and abused. That is
18 because Opana ER has lower “bioavailability” than other opioids, meaning that the active
19 pharmaceutical ingredient (the “API” or opioid) does not absorb into the bloodstream as rapidly
20 as other opioids when taken orally. Additionally, when swallowed whole, the extended-release
21 mechanism remains intact, so that only 10% of Opana ER’s API is released into the patient’s
22 bloodstream relative to injection; when it is taken intranasally, that rate increases to 43%. The
23 larger gap between bioavailability when consumed orally versus snorting or injection, the
24 greater the incentive for users to manipulate the drug’s means of administration

25
26 ⁸⁷ Jill Hartzler Warner, Assoc. Comm’r for Special Med. Programs, *Joint Meeting of the Drug*
27 *Safety and Risk Management Advisory Committee and the Anesthetic and Analgesic Drug*
28 *Products Advisory Committee; Notice of Meeting*, 80(103) Fed. Reg. 30686, 30686 (May 29,
2015).

1 348. Endo knew by July 2011 that “some newer statistics around abuse and diversion
2 are not favorable to our product.”

3 349. In December 2011, Endo obtained approval for a new formulation of Opana ER
4 that added a hard coating that the company claimed made it crush-resistant.

5 350. Even prior to its approval, the FDA had advised Endo that it could not market
6 the new Opana ER as abuse-deterrent. The FDA found that such promotional claims “may
7 provide a false sense of security since the product may be chewed and ground for subsequent
8 abuse.” In other words, Opana ER was still crushable. Indeed, Endo’s own studies dating from
9 2009 and 2010 showed that Opana ER could be crushed and ground, and, in its correspondence
10 with the FDA, Endo admitted that “[i]t has not been established that this new formulation of
11 Opana ER is less subject to misuse, abuse, diversion, overdose, or addiction.”

12 351. Further, a January 4, 2011 FDA Discipline Review letter made clear to Endo
13 that “[t]he totality of these claims and presentations suggest that, as a result of its new
14 formulation, Opana ER offers a therapeutic advantage over the original formulation when this
15 has not been demonstrated by substantial evidence or substantial clinical experience. In
16 addition these claims misleadingly minimize the risks associated with Opana ER by suggesting
17 that the new formulation’s “INTAC” technology confers some form of abuse-deterrence
18 properties when this has not been demonstrated by substantial evidence.” The FDA
19 acknowledged that while there is “evidence to support some limited improvement” provided
20 by the new coating, but would not let Endo promote any benefit because “there are several
21 limitations to this data.” Also, Endo was required to add language to its label specifically
22 indicating that “Opana ER tablets may be abused by crushing, chewing, snorting, or injecting
23 the product. These practices will result in less controlled delivery of the opioid and pose a
24 significant risk to the abuser that could result in overdose and death.”

25 352. The FDA expressed similar concerns in nearly identical language in a May 7,
26 2012 letter to Endo responding to a February 2, 2012 “request . . . for comments on a launch
27 Draft Professional Detail Aid . . . for Opana ER.” The FDA’s May 2012 letter also includes a
28 full two pages of comments regarding “[o]missions of material facts” from Endo’s promotional

materials.

353. Endo also consciously chose not to do any post-approval studies. According to internal documents, the company decided, by the time its studies would be done, generics would be on the market and “any advantages for commercials will have disappeared.” However, this lack of evidence did not deter Endo from marketing Opana ER as ADF while its commercial window remained open.

354. Nonetheless, in August of 2012, Endo submitted a citizen petition asking the FDA for permission to change its label to indicate that Opana ER was abuse-resistant, both in that it was less able to be crushed and snorted and that it was resistant injection by syringe. Borrowing a page from Purdue’s playbook, Endo announced it would withdraw original Opana ER from the market and sought a determination that its decision was made for safety reasons (its lack of abuse and deterrence), which would prevent generic copies of original Opana ER.

355. Endo then sued the FDA, seeking to force expedited consideration of its citizen petition. The court filings confirmed Endo’s true motives: in a declaration submitted with its lawsuit, Endo’s chief operating officer indicated that a generic version of Opana ER would decrease the company’s revenue by up to \$135 million per year. Endo also claimed that if the FDA did not block generic competition, \$125 million, which Endo spent on developing the reformulated drug to “promote the public welfare” would be lost.⁸⁸ The FDA responded that: “Endo’s true interest in expedited FDA consideration stems from business concerns rather than protection of the public health.”⁸⁹

356. Despite Endo’s purported concern with public safety, not only did Endo continue to distribute original, admittedly unsafe Opana ER for nine months after the reformulated version became available, it declined to recall original Opana ER despite its

⁸⁸ Plf.’s Opp. To Defs.’ and Intervenor’s Motions to Dismiss and Plf.’s Reply in Supp. of Motion for Prelim. Inj. [ECF No. 23], *Endo Pharms. Inc. v. U.S. Food and Drug Admin., et al.*, No. 1:12-cv-01936, at 20 (D.D.C. Dec. 14, 2012).

⁸⁹ Defs.’ Resp. to the Court’s Nov. 30, 2012 Order [ECF No. 9], *Endo Pharms. Inc. v. U.S. Food and Drug Administration, et al.*, No. 1:12-cv-01936, at 6 (D.D.C. Dec. 3, 2012).

dangers. In fact, Endo claimed in September 2012 to be “proud” that “almost all remaining inventory” of the original Opana ER had “been utilized.”⁹⁰

357. In its citizen petition, Endo asserted that redesigned Opana ER had “safety advantages.” Endo even relied on its rejected assertion that Opana was less crushable to argue that it developed Opana ER for patient safety reasons and that the new formulation would help, for example, “where children unintentionally chew the tablets prior to an accidental ingestion.”⁹¹

358. However, in rejecting the petition in a 2013 decision, the FDA found that “study data show that the reformulated version's extended-release features can be compromised when subjected to . . . cutting, grinding, or chewing.” In a 2013 letter, the FDA warned that Opana ER tablets’ “extended-release features can be compromised, causing the product to ‘dose dump,’ when subject to . . . forms of manipulation such as cutting, grinding, or chewing, followed by swallowing.”⁹² Also troubling, Opana ER can be prepared for snorting using commonly available methods and “readily prepared for injection.”⁹³ The letter discussed “the troubling possibility that a higher (and rising) percentage of [Opana ER Extended-Release Tablet] abuse is occurring via injection.”⁹⁴

359. Meanwhile, in 2012, an internal memorandum to Endo account executives noted that abuse of Opana ER had “increased significantly” in the wake of the purportedly

⁹⁰ *Id.*; Endo News Release (Sept. 6, 2012) [ECF No. 18-4], *Endo Pharms. Inc. v. U.S. Food and Drug Admin., et al.*, No. 1:12-cv-01936 (D.D.C. Dec. 9, 2012) at 81.

⁹¹ Citizen Petition, FDA Docket 2012-8-0895, at 5.

⁹² Letter from Janet Woodcock, M.D., Dir., Ctr. For Drug Evaluation and Research, U.S. Food and Drug Admin., U.S. Dep’t of Health and Human Servs., to Robert Barto, Vice President, Reg. Affairs, Endo Pharm. Inc. (May 10, 2013), at 5.

⁹³ *Id.* at 6.

⁹⁴ *Id.* at 6, n. 21.

1 abuse- deterrent formulation. In February 2013, Endo received abuse data regarding Opana ER
2 from Inflexxion, Inc., which gathers information from substance abusers entering treatment and
3 reviews abuse-focused internet discussions, that confirmed continued abuse, particularly by
4 injection.

5
6 360. In 2009, only 3% of Opana ER abuse was by intravenous means. Since the
7 reformulation, injection of Opana ER increased by more than 500%. Endo's own data,
8 presented in 2014, found between October 2012 and March 2014, 64% of abusers of Opana
9 ER did so by injection, compared with 36% for the old formulation.⁹⁵ The transition into
10 injection of Opana ER made the drug even less safe than the original formulation. Injection
11 carries risks of HIV, hepatitis C, and, in reformulated Opana ER's specific case, the blood-
12 clotting disorder thrombotic thrombocytopenic purpura (TTP), which can cause kidney failure.

13
14 361. Publicly, Endo sought to marginalize the problem. On a 2013 call with
15 investors, when asked about an outbreak of TTP in Tennessee from injecting Opana ER, Endo
16 sought to limit its import by assigning it to "a very, very distinct area of the country."

17
18 362. Despite its knowledge that Opana ER was widely abused and injected, Endo
19 marketed the drug as tamper-resistant and abuse-deterrent. Upon information and belief, based
20 on the company's detailing elsewhere, Endo sales representatives informed doctors that Opana
21 ER was abuse-deterrent, could not be tampered with, and was safe. In addition, sales
22 representatives did not disclose evidence that Opana was easier to abuse intravenously and, if
23 pressed by prescribers, claimed that while outlier patients might find a way to abuse the drug,
24
25
26

27 ⁹⁵ Theresa Cassidy, *The Changing Abuse Ecology: Implications for Evaluating the Abuse Pattern of Extended-*
28 *Release Oxymorphone and Abuse-Deterrent Opioid Formulations*, Pain Week Abstract 2014,
<https://www.painweek.org/assets/documents/general/724-painweek2014acceptedabstracts.pdf>.

1 most would be protected.

2 363. A review of national surveys of prescribers regarding their “take-aways” from
3 pharmaceutical detailing confirms that prescribers remember being told Opana ER was tamper-
4 resistant. Endo also tracked messages that doctors took from its in-person marketing. Among
5 the advantages of Opana ER, according to participating doctors, was its “low abuse potential.”
6 An internal Endo document also notes that market research showed that, “[l]ow abuse potential
7 continues as the primary factor influencing physicians’ anticipated increase in use of Opana
8 ER over the next 6 months.”

9
10 364. In its written materials, Endo marketed Opana ER as having been designed to
11 be crush-resistant, knowing that this would (falsely) imply that Opana ER actually was crush-
12 resistant and that this crush-resistant quality would make Opana ER less likely to be abused.
13 For example, a June 14, 2012 Endo press release announced “the completion of the company’s
14 transition of its Opana ER franchise to the new formulation designed to be crush resistant.”
15

16 365. The press release further stated that: “We firmly believe that the new
17 formulation of Opana ER, coupled with our long-term commitment to awareness and education
18 around appropriate use of opioids will benefit patients, physicians and payers.” The press
19 release described the old formulation of Opana as subject to abuse and misuse but failed to
20 disclose the absence of evidence that reformulated Opana was any better. In September 2012,
21 another Endo press release stressed that reformulated Opana ER employed “INTAC
22 Technology” and continued to describe the drug as “designed to be crush-resistant.”
23

24 366. Similarly, journal advertisements that appeared in April 2013 stated Opana ER
25 was “designed to be crush resistant.” A January 2013 article in Pain Medicine News, based in
26
27
28

part on an Endo press release, described Opana ER as “crush-resistant.” This article was posted on the *Pain Medicine News* website, which was accessible to patients and prescribers.

367. Endo, upon information and belief, targeted particular geographies for the redesigned Opana ER where abuse was most rampant, including Nevada.

368. In March 2017, because Opana ER could be “readily prepared for injection” and was linked to outbreaks of HIV and TTP, an FDA advisory committee recommended that Opana be withdrawn from the market. The FDA adopted this recommendation on June 8, 2017. Endo announced on July 6, 2017 that it would agree to stop marketing and selling Opana ER. However, by this point the damage had been done. Even then, Endo continued to insist, falsely, that it “has taken significant steps over the years to combat misuse and abuse.”

iii. Manufacturer Defendants’ misrepresentations regarding abuse deterrence

369. A guide for prescribers under Actavis’s copyright deceptively represents that Kadian is more difficult to abuse and less addictive than other opioids. The guide declares that “unique pharmaceutical formulation of KADIAN may offer some protection from extraction of morphine sulfate for intravenous use by illicit users,” and “KADIAN may be less likely to be abused by health care providers and illicit users” because of its “[s]low onset of action.” Kadian, however, was not approved by the FDA as abuse deterrent, and, upon information and belief, Actavis had no studies to suggest it was.

370. Mallinckrodt promoted both Exalgo (extended-release hydromorphone) and Xartemis XR (oxycodone and acetaminophen) as specifically formulated to reduce abuse. For example, Mallinckrodt’s promotional materials stated that “the physical properties of EXALGO may make it difficult to extract the active ingredient using common forms of physical

1 and chemical tampering, including chewing, crushing and dissolving.”⁹⁶ One member of the
2 FDA’s Controlled Substance Staff, however, noted in 2010 that hydromorphone has “a
3 high abuse potential comparable to oxycodone” and further stated that “we predict that
4 Exalgo will have high levels of abuse and diversion.”⁹⁷

5 371. With respect to Xartemis XR, Mallinckrodt’s promotional materials stated that
6 “XARTEMIS XR has technology that requires abusers to exert additional effort to extract the
7 active ingredient from the large quantity of inactive and deterrent ingredients.”⁹⁸ In anticipation
8 of Xartemis XR’s approval, Mallinckrodt added 150-200 sales representatives to promote it,
9 and CEO Mark Trudeau said the drug could generate “hundreds of millions in revenue.”⁹⁹

10 372. While Manufacturer Defendants promote patented technology as the solution to
11 opioid abuse and addiction, none of their “technology” addresses the most common form of
12 abuse—oral ingestion—and their statements regarding abuse-deterrent formulations give the
13 misleading impression that these reformulated opioids can be prescribed safely.

14 373. In sum, each of the nine categories of misrepresentations discussed above
15 regarding the use of opioids to treat chronic pain was deceptive and unconscionable. The
16 misrepresentations were material, false, and misleading, as well as unsupported by or contrary
17 to the scientific evidence. In addition, the misrepresentations and omissions set forth above and
18 elsewhere in this Complaint are misleading and contrary to the Manufacturing Defendants’
19 product labels.

23 ⁹⁶ Mallinckrodt Press Release, *FDA Approves Mallinckrodt’s EXALGO® (hydromorphone HCl) Extended-*
24 *Release Tablets 32 mg (CII) for Opioid-Tolerant Patients with Moderate-to-Severe Chronic Pain* (Aug. 27, 2012),
<http://newsroom.medtronic.com/phoenix.zhtml?c=251324&p=irol-newsArticle&ID=2004159>.

25 ⁹⁷ 2010 Meeting Materials, Anesthetic and Analgesic Drug Products Advisory Committee, at 157-
26 58, FDA, excerpt available at [https://www.markey.senate.gov/imo/media/doc/2016-02-19-Markey-ADF-Opioid-](https://www.markey.senate.gov/imo/media/doc/2016-02-19-Markey-ADF-Opioid-timeline.pdf)
[timeline.pdf](https://www.markey.senate.gov/imo/media/doc/2016-02-19-Markey-ADF-Opioid-timeline.pdf).

27 ⁹⁸ Mallinckrodt, *Responsible Use of Opioid Pain Medications* (Mar. 7, 2014).

28 ⁹⁹ Samantha Liss, *Mallinckrodt Banks on New Painkillers for Sales*, St. Louis Bus. J. 1 (Dec. 30, 2013),
<http://argenticapital.com/mallinckrodt-banks-on-new-painkillers-for-sales/>.

2. The Manufacturer Defendants Disseminated Their Misleading Messages About Opioids Through Multiple Channels

374. The Manufacturer Defendants' false marketing campaign not only targeted the medical community who had to treat chronic pain, but also patients who experience chronic pain.

375. The Manufacturer Defendants utilized various channels to carry out their marketing scheme of targeting the medical community and patients with deceptive information about opioids: (1) "Front Groups" with the appearance of independence from the Manufacturer Defendants; (2) Key Opinion Leaders or "KOLs", that is, doctors who were paid by the Manufacturer Defendants to promote their pro-opioid message; (3) CME programs controlled and/or funded by the Manufacturer Defendants; (4) branded advertising; (5) unbranded advertising; (6) publications; (7) direct, targeted communications with prescribers by sales representatives or "detailers"; and (8) speakers bureaus and programs.

a. The Manufacturer Defendants Directed Front Groups to Deceptively Promote Opioid Use.

376. Patient advocacy groups and professional associations also became vehicles to reach prescribers, patients, and policymakers. Manufacturer Defendants exerted influence and effective control over the messaging by these groups by providing major funding directly to them, as well as through KOLs who served on their boards. These "Front Groups" put out patient education materials, treatment guidelines and CMEs that supported the use of opioids for chronic pain, overstated their benefits, and understated their risks.¹⁰⁰ Manufacturer Defendants funded these Front Groups in order to ensure supportive messages from these

¹⁰⁰ U.S. Senate Homeland Security & Governmental Affairs Committee, Ranking Members' Office, (February 12, 2018), <https://www.hsdl.org/?view&did=808171> at 3 ("*Fueling an Epidemic*"), at 3.

1 seemingly neutral and credible third parties, and their funding did, in fact, ensure such
2 supportive messages—often at the expense of their own constituencies.

3 377. “Patient advocacy organizations and professional societies like the Front
4 Groups ‘play a significant role in shaping health policy debates, setting national guidelines
5 for patient treatment, raising disease awareness, and educating the public.’”¹⁰¹ “Even small
6 organizations— with ‘their large numbers and credibility with policymakers and the public’—
7 have ‘extensive influence in specific disease areas.’ Larger organizations with extensive
8 funding and outreach capabilities ‘likely have a substantial effect on policies relevant to their
9 industry sponsors.’”¹⁰² Indeed, the U.S. Senate’s report, *Fueling an Epidemic: Exposing the*
10 *Financial Ties Between Opioid Manufacturers and Third Party Advocacy Groups*, which arose
11 out of a 2017 Senate investigation and, drawing on disclosures from Purdue and other opioid
12 manufacturers, “provides the first comprehensive snapshot of the financial connections
13 between opioid manufacturers and advocacy groups and professional societies operating in the
14 area of opioids policy,”¹⁰³ and found that the Manufacturer Defendants gave millions of dollars
15 in contributions to various Front Groups.¹⁰⁴

16 378. The Manufacturer Defendants also “made substantial payments to individual
17 group executives, staff members, board members, and advisory board members” affiliated with
18 the Front Groups subject to the Senate Committee’s study.¹⁰⁵

19 379. As the Senate *Fueling an Epidemic* Report found, the Front Groups “amplified
20 or issued messages that reinforce industry efforts to promote opioid prescription and use,
21 including guidelines and policies minimizing the risk of addiction and promoting opioids
22 for chronic pain.”¹⁰⁶ They also “lobbied to change laws directed at curbing opioid use, strongly
23 criticized landmark CDC guidelines on opioid prescribing, and challenged legal efforts to hold
24

25
26 ¹⁰¹ *Id.* at 2.

¹⁰² *Id.*

¹⁰³ *Id.* at 1.

¹⁰⁴ *Id.* at 1, 3.

¹⁰⁵ *Id.* at 10.

¹⁰⁶ *Id.* at 12.

1 physicians and industry executives responsible for over prescription and misbranding.”¹⁰⁷

2 380. The Manufacturer Defendants took an active role in guiding, reviewing, and
3 approving many of the false and misleading statements issued by the Front Groups, ensuring
4 that Manufacturer Defendants were consistently in control of their content. By funding,
5 directing, editing, approving, and distributing these materials, Manufacturer Defendants
6 exercised control over and adopted their false and deceptive messages and acted in concert with
7 the Front Groups and through the Front groups, with each other to deceptively promote the use
8 of opioids for the treatment of chronic pain.

9 *i. American Pain Foundation*

10
11 381. The most prominent of the Front Groups was the American Pain Foundation
12 (“APF”). While APF held itself out as an independent patient advocacy organization, in reality
13 it received 90% of its funding in 2010 from the drug and medical-device industry, including
14 from defendants Purdue, Endo, and other manufacturers. APF received more than \$10 million
15 in funding from opioid manufacturers from 2007 until it closed its doors in May 2012. By 2011,
16 APF was entirely dependent on incoming grants from Defendants Purdue, Endo, and others to
17 avoid using its line of credit. Endo was APF’s largest donor and provided more than half of its
18 \$10 million in funding from 2007 to 2012.

19 382. For example, APF published a guide sponsored by Purdue and another
20 opioid manufacturer titled *Treatment Options: A Guide for People Living with Pain* and
21 distributed 17,200 copies of this guide in one year alone, according to its 2007 annual report.
22 This guide, which is still available online within the state of Nevada, contains multiple
23 misrepresentations regarding opioid use which are discussed below.

24 383. APF also developed the National Initiative on Pain Control (“NIPC”), which ran
25 a facially unaffiliated website, www.painknowledge.com. NIPC promoted itself as an education
26 initiative led by its expert leadership team, including purported experts in the pain management
27

28 ¹⁰⁷ *Id.*

1 field. NIPC published unaccredited prescriber education programs (accredited programs are
2 reviewed by a third party and must meet certain requirements of independence from
3 pharmaceutical companies), including a series of “dinner dialogues.” But it was Endo that
4 substantially controlled NIPC, by funding NIPC projects, developing, specifying, and
5 reviewing its content, and distributing NIPC materials. Endo’s control of NIPC was such that
6 Endo listed it as one of its “professional education initiative[s]” in a plan Endo submitted to the
7 FDA. Yet, Endo’s involvement in NIPC was nowhere disclosed on the website pages
8 describing NIPC or *www.painknowledge.org*. Endo estimated it would reach 60,000 prescribers
9 through NIPC.

10 384. APF was often called upon to provide “patient representatives” for the
11 Manufacturer Defendants’ promotional activities, including for Purdue’s “Partners Against
12 Pain” and Janssen’s “Let’s Talk Pain.” Although APF presented itself as a patient advocacy
13 organization, it functioned largely as an advocate for the interests of the Manufacturer
14 Defendants, not patients. As Purdue told APF in 2001, the basis of a grant to the organization
15 was Purdue’s desire to strategically align its investments in nonprofit organizations that share
16 its business interests.

17 385. In practice, APF operated in close collaboration with Manufacturer Defendants,
18 submitting grant proposals seeking to fund activities and publications suggested by
19 Manufacturer Defendants and assisting in marketing projects for Manufacturer Defendants.

20 386. This alignment of interests was expressed most forcefully in the fact that Purdue
21 hired APF to provide consulting services on its marketing initiatives. Purdue and APF entered
22 into a “Master Consulting Services” Agreement on September 14, 2011. That agreement gave
23 Purdue substantial rights to control APF’s work related to a specific promotional project.
24 Moreover, based on the assignment of particular Purdue “contacts” for each project and APF’s
25 periodic reporting on their progress, the agreement enabled Purdue to be regularly aware of the
26 misrepresentations APF was disseminating regarding the use of opioids to treat chronic pain in
27 connection with that project. The agreement gave Purdue—but not APF—the right to end the
28

1 project (and, thus, APF's funding) for any reason. Even for projects not produced during the
2 terms of this Agreement, the Agreement demonstrates APF's lack of independence and APF's
3 willingness to harness itself to Purdue's control and commercial interests, which would have
4 carried across all of APF's work.

5 387. APF's Board of Directors was largely comprised of doctors who were on the
6 Manufacturer Defendants' payrolls, either as consultants or speakers at medical events. The
7 close relationship between APF and the Manufacturer Defendants demonstrates APF's clear
8 lack of independence in its finances, management, and mission, and its willingness to allow
9 Manufacturer Defendants to control its activities and messages. This close relationship also
10 supports a reasonable inference that each Manufacturer Defendant that worked with it was able
11 to exercise editorial control over its publications—even when Manufacturer Defendants'
12 messages contradicted APF's internal conclusions. For example, a roundtable convened by
13 APF and funded by Endo also acknowledged the lack of evidence to support chronic opioid
14 therapy. APF's formal summary of the meeting notes concluded that: "[An] important barrier[]
15 to appropriate opioid management [is] the lack of confirmatory data about the long-term safety
16 and efficacy of opioids in non-cancer chronic pain, amid cumulative clinical evidence."

17 388. In May 2012, the U.S. Senate Finance Committee began looking into APF to
18 determine the links, financial and otherwise, between the organization and the manufacturers
19 of opioid painkillers. Within days of being targeted by the Senate investigation, APF's board
20 voted to dissolve the organization "due to irreparable economic circumstances." APF then
21 "cease[d] to exist, effective immediately." Without support from Manufacturer Defendants, to
22 whom APF could no longer be helpful, APF was no longer financially viable.

23 *ii. American Academy of Pain Medicine and the American Pain Society*

24 389. The American Academy of Pain Medicine ("AAPM") and the American Pain
25 Society ("APS") are professional medical societies, each of which received substantial funding
26 from Defendants from 2009 to 2013. In 1997, AAPM issued a "consensus" statement that
27 endorsed opioids to treat chronic pain and claimed that the risk that patients would become
28

1 addicted to opioids was low.¹⁰⁸ The Chair of the committee that issued the statement, Dr. J.
2 David Haddox, was at the time a paid speaker for Purdue. The sole consultant to the committee
3 was Dr. Russell Portenoy, who was also a spokesperson for Purdue. The consensus statement,
4 which also formed the foundation of the 1998 Model Guidelines for Use of Controlled
5 Substances for the Treatment of Pain issued by the Federation of State Medical Boards (see
6 below), was published on the AAPM's website.

7 390. Since 1998, the Federation of State Medical Boards has been developing
8 treatment guidelines for the use of opioids for the treatment of pain. The 1998 version, Model
9 Guidelines for the Use of Controlled Substances for the Treatment of Pain ("1998 Guidelines")
10 was produced "in collaboration with pharmaceutical companies."

11 391. AAPM's corporate council includes Purdue, Depomed, Teva and other
12 pharmaceutical companies. AAPM's past presidents include Haddox (1998), Dr. Scott
13 Fishman (2005), Dr. Perry G. Fine (2011), and Dr. Lynn R. Webster (2013), all of whose
14 connections to the opioid manufacturers are well-documented as set forth elsewhere in this
15 Complaint.

16 392. Fishman, who also served as a KOL for Manufacturer Defendants, stated that
17 he would place the organization "at the forefront" of teaching that "the risks of addiction are . . .
18 small and can be managed."¹⁰⁹

19 393. AAPM received over \$2.2 million in funding since 2009 from opioid
20 manufacturers. AAPM maintained a corporate relations council, whose members paid \$25,000
21 per year (on top of other funding) to participate. The benefits included allowing members to
22 present educational programs at off-site dinner symposia in connection with AAPM's marquee
23

24
25 ¹⁰⁸ The Use of Opioids for the Treatment of Chronic Pain, *APS & AAPM (1997)*,
26 <http://www.stgeorgeutah.com/wp-content/uploads/2016/05/OPIOIDES.DOLORCRONICO.pdf>
(as viewed August 18, 2017).

27 ¹⁰⁹ Interview by Paula Moyer with Scott M. Fishman, M.D., Professor of Anesthesiology and Pain Medicine,
28 Chief of the Division of Pain Medicine, Univ. of Cal., Davis (2005), available at
<http://www.medscape.org/viewarticle/500829>.

1 event – its annual meeting held in Palm Springs, California, or other resort locations.

2 394. AAPM describes the annual event as an “exclusive venue” for offering CMEs
3 to doctors. Membership in the corporate relations council also allows drug company executives
4 and marketing staff to meet with AAPM executive committee members in small settings.
5 Manufacturer Defendant Purdue, Endo, and Cephalon were members of the council and
6 presented deceptive programs to doctors who attended this annual event. The conferences
7 sponsored by AAPM heavily emphasized CME sessions on opioids – 37 out of roughly 40 at
8 one conference alone.

9 395. AAPM’s staff understood that they and their industry funders were engaged in
10 a common task. Defendants were able to influence AAPM through both their significant and
11 regular funding and the leadership of pro-opioid KOLs within the organization.

12 396. With the assistance, prompting, involvement, and funding of Manufacturer
13 Defendants, AAPM and APS issued their own treatment guidelines in 2009 (“2009
14 Guidelines”), and continued to recommend the use of opioids to treat chronic pain. Fourteen of
15 the 21 panel members who drafted the 2009 Guidelines, including KOL Dr. Fine, received
16 support from Defendants Endo and Purdue. Of these individuals, six received support from
17 Purdue, eight from Teva, and nine from Endo.

18 397. One panel member, Dr. Joel Saper, Clinical Professor of Neurology at Michigan
19 State University and founder of the Michigan Headache & Neurological Institute, resigned
20 from the panel because of his concerns that the 2009 Guidelines were influenced by
21 contributions that drug companies, including Purdue, Endo, and Teva, made to the sponsoring
22 organizations and committee members.

23 398. Dr. Gilbert Fanciullo, now retired as a professor at Dartmouth College’s Geisel
24 School of Medicine, who served on the AAPM/APS Guidelines panel, has since described them
25 as “skewed” by drug companies and “biased in many important respects,” including the high
26 presumptive maximum dose, lack of suggested mandatory urine toxicology testing, and claims
27 of a low risk of addiction.
28

1 399. The 2009 Guidelines have been a particularly effective channel of deception.
2 They have influenced not only treating physicians, but also the scientific literature on opioids;
3 they were reprinted in the *Journal of Pain*, have been cited hundreds of times in academic
4 literature, were disseminated during the relevant time period, and were and are available online.
5 Treatment guidelines are especially influential with primary care physicians and family doctors
6 to whom Manufacturer Defendants promoted opioids, whose lack of specialized training in
7 pain management and opioids makes them more reliant on, and less able to evaluate, these
8 types of guidelines. For that reason, the CDC has recognized that treatment guidelines can
9 “change prescribing practices.”¹¹⁰

10 400. The 2009 Guidelines are relied upon by doctors, especially general practitioners
11 and family doctors who have no specific training in treating chronic pain, and upon information
12 and belief, the 2009 Guidelines were created just for that purpose.

13 401. The Manufacturer Defendants widely cited and promoted the 2009 Guidelines
14 without disclosing the lack of evidence to support their conclusions, their involvement in the
15 development of the 2009 Guidelines, or their financial backing of the authors of the 2009
16 Guidelines.

17 iii. *The Federation of State Medical Boards*
18

19 402. The Federation of State Medical Boards (“FSMB”) is a trade organization
20 representing the various state medical boards in the United States. The state boards that
21 comprise the FSMB membership have the power to license doctors, investigate complaints,
22 and discipline physicians.

23 403. The FSMB finances opioid- and pain-specific programs through grants from
24 Manufacturer Defendants.

25 404. Since 1998, the FSMB has been developing treatment guidelines for the use of
26 opioids for the treatment of pain. The 1998 version, Model Guidelines for the Use of Controlled
27

28 ¹¹⁰ 2016 CDC Guideline at 2.

1 Substances for the Treatment of Pain (“1998 Guidelines”) was produced “in collaboration with
2 pharmaceutical companies.” The 1998 Guidelines that the pharmaceutical companies helped
3 author taught not that opioids could be appropriate in only limited cases after other treatments
4 had failed, but that opioids were “essential” for treatment of chronic pain, including as a first
5 prescription option.

6 405. A 2004 iteration of the 1998 Guidelines and the 2007 book, *Responsible Opioid*
7 *Prescribing*, also made the same claims as the 1998 Guidelines. These guidelines were posted
8 online and were available to and intended to reach physicians nationwide, including in Nevada.

9 406. *Responsible Opioid Prescribing* was backed largely by drug manufacturers,
10 including Purdue and Endo. The publication also received support from the American Pain
11 Foundation and the American Academy of Pain Medicine. The publication was written by Dr.
12 Fishman, and Dr. Fine served on the Board of Advisors. In all, 163,131 copies of *Responsible*
13 *Opioid Prescribing* were distributed to state medical boards (and through the boards, to
14 practicing doctors). The FSMB website describes the book as “the leading continuing medical
15 education (CME) activity for prescribers of opioid medications.” Nevada doctors could read
16 the book to obtain CME credit. This publication asserted that opioid therapy to relieve pain and
17 improve function is a legitimate medical practice for acute and chronic pain of both cancer and
18 non-cancer origins; that pain is under-treated, and that patients should not be denied opioid
19 medications except in light of clear evidence that such medications are harmful to the patient.¹¹¹

20 407. The Manufacturer Defendants relied on the 1998 Guidelines to convey the
21 alarming message that “under-treatment of pain” would result in official discipline, but no
22 discipline would result if opioids were prescribed as part of an ongoing patient relationship and
23 prescription decisions were documented. FSMB turned doctors’ fear of discipline on its head:
24 doctors, who used to believe that they would be disciplined if their patients became addicted
25 to opioids, were taught instead that they would be punished if they failed to prescribe opioids
26 to their patients with chronic pain.

27
28 ¹¹¹ Scott M. Fishman, *Responsible Opioid Prescribing: A Physician’s Guide* 8-9 (Waterford Life Sciences 2007).

iv. *The Alliance for Patient Access*

408. Founded in 2006, the Alliance for Patient Access (“APA”) is a self-described patient advocacy and health professional organization that styles itself as “a national network of physicians dedicated to ensuring patient access to approved therapies and appropriate clinical care.”¹¹² It is run by Woodberry Associates LLC, a lobbying firm that was also established in 2006.¹¹³ As of June 2017, the APA listed 30 “Associate Members and Financial Supporters.” The list includes Endo, Mallinckrodt, and Purdue.

409. APA’s board members have also directly received substantial funding from pharmaceutical companies.¹¹⁴ For instance, board vice president Dr. Srinivas Nalamachu, who practices in Kansas, received more than \$800,000 from 2013 through 2015 from pharmaceutical companies—nearly all of it from manufacturers of opioids or drugs that treat opioids’ side effects, including from Defendants Endo and Purdue. Other board members include Dr. Robert A. Yapundich from North Carolina, who received \$215,000 from 2013 through 2015 from pharmaceutical companies, including payments by Defendant Mallinckrodt; Dr. Jack D. Schim from California, who received more than \$240,000 between 2013 and 2015 from pharmaceutical companies, including Defendants Endo and Mallinckrodt; Dr. Howard Hoffberg from Maryland, who received \$153,000 between 2013 and 2015 from pharmaceutical companies, including Defendants Endo, Purdue, and Mallinckrodt; and Dr. Robin K. Dore from California, who received \$700,000 between 2013 and 2015 from pharmaceutical companies.

410. Among its activities, APA issued a “white paper” titled “Prescription Pain

¹¹² *About AfPA*, The Alliance for Patient Access, <http://allianceforpatientaccess.org/about-afpa> (last visited Apr. 25, 2018). References herein to APA include two affiliated groups: the Global Alliance for Patient Access and the Institute for Patient Access.

¹¹³ Mary Chris Jaklevic, *Alliance for Patient Access Uses Journalists and Politicians to Push Big Pharma’s Agenda*, Health News Review (Oct. 2, 2017), <https://www.healthnewsreview.org/2017/10/non-profit-alliance-patient-access-uses-journalists-politicians-push-big-pharmas-agenda/> (hereinafter “Jaklevic, *Non-Profit Alliance for Patient Access*”).

¹¹⁴ All information concerning pharmaceutical company payments to doctors in this paragraph is from ProPublica’s Dollars for Docs database, <https://projects.propublica.org/docdollars/>.

Medication: Preserving Patient Access While Curbing Abuse.”¹¹⁵ Among other things, the white paper criticizes prescription monitoring programs, purporting to express concern that they are burdensome, not user friendly, and of questionable efficacy:

Prescription monitoring programs that are difficult to use and cumbersome can place substantial burdens on physicians and their staff, ultimately leading many to stop prescribing pain medications altogether. This forces patients to seek pain relief medications elsewhere, which may be much less convenient and familiar and may even be dangerous or illegal.

* * *

In some states, physicians who fail to consult prescription monitoring databases before prescribing pain medications for their patients are subject to fines; those who repeatedly fail to consult the databases face loss of their professional licensure. Such penalties seem excessive and may inadvertently target older physicians in rural areas who may not be facile with computers and may not have the requisite office staff. Moreover, threatening and fining physicians in an attempt to induce compliance with prescription monitoring programs represents a system based on punishment as opposed to incentives. . . .

We cannot merely assume that these programs will reduce prescription pain medication use and abuse.¹¹⁶

411. The white paper also purports to express concern about policies that have been enacted in response to the prevalence of pill mills:

Although well intentioned, many of the policies designed to address this problem have made it difficult for legitimate pain management centers to operate. For instance, in some states, [pain management centers] must be owned by physicians or professional corporations, must have a Board certified medical director, may need to pay for annual inspections, and are subject to increased record keeping and reporting requirements. . . . [I]t is not even certain that the regulations are helping prevent

¹¹⁵ Pain Therapy Access Physicians Working Group, *Prescription Pain Medication: Preserving Patient Access While Curbing Abuse*, Institute for Patient Access (Dec. 2013), http://1yh21u3cjptv3xjder1dco9mx5s.wpengine.netdna-cdn.com/wp-content/uploads/2013/12/PT_White-Paper_Finala.pdf.

¹¹⁶ *Id.* at 4-5.

abuses.¹¹⁷

412. In addition, in an echo of earlier industry efforts to push back against what they termed “opiophobia,” the white paper laments the stigma associated with prescribing and taking pain medication:

Both pain patients and physicians can face negative perceptions and outright stigma. When patients with chronic pain can’t get their prescriptions for pain medication filled at a pharmacy, they may feel like they are doing something wrong – or even criminal. . . . Physicians can face similar stigma from peers. Physicians in non- pain specialty areas often look down on those who specialize in pain management – a situation fueled by the numerous regulations and fines that surround prescription pain medications.¹¹⁸

413. In conclusion, the white paper states that “[p]rescription pain medications, and specifically the opioids, can provide substantial relief for people who are recovering from surgery, afflicted by chronic painful diseases, or experiencing pain associated with other conditions that does not adequately respond to over-the-counter drugs.”¹¹⁹

414. The APA also issues “Patient Access Champion” financial awards to members of Congress, including 50 such awards in 2015. The awards were funded by a \$7.8 million donation from unnamed donors. While the awards are ostensibly given for protecting patients’ access to Medicare and are thus touted by their recipients as demonstrating a commitment to protecting the rights of senior citizens and the middle class, they appear to be given to provide cover to and reward members of Congress who have supported the APA’s agenda.¹²⁰

415. The APA also lobbies Congress directly. In 2015, the APA signed onto a letter supporting legislation proposed to limit the ability of the DEA to police pill mills by enforcing the “suspicious orders” provision of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 USC §801 *et seq.* (“CSA” or “Controlled Substances Act”). The AAPM is also

¹¹⁷ *Id.* at 5-6.

¹¹⁸ *Id.* at 6.

¹¹⁹ *Id.* at 7.

¹²⁰ Jaklevic, *Non-profit Alliance for Patient Access*, *supra*.

a signatory to this letter. An internal U.S. Department of Justice (“DOJ”) memo stated that the proposed bill “could actually result in increased diversion, abuse, and public health and safety consequences”¹²¹ and, according to DEA chief administrative law judge John J. Mulrooney (“Mulrooney”), the law would make it “all but logically impossible” to prosecute manufacturers and distributors, like the defendants here, in the federal courts.¹²² The bill passed both houses of Congress and was signed into law in 2016.

v. *The U.S. Pain Foundation*

416. The U.S. Pain Foundation (“USPF”) was another Front Group with systematic connections and interpersonal relationships with the Manufacturer Defendants. The USPF was one of the largest recipients of contributions from the Manufacturer Defendants, collecting more than \$3 million in payments between 2012 and 2017 from Purdue, and others.¹²³ The USPF was also a critical component of the Manufacturer Defendants’ lobbying efforts to reduce the limits on over-prescription. The USPF advertises its ties to the Manufacturer Defendants, listing opioid manufacturers like Pfizer, Teva, Depomed, Endo, Purdue, McNeil (i.e. Janssen), and Mallinckrodt as “Platinum,” “Gold,” and “Basic” corporate members.¹²⁴ Industry Front Groups like the American Academy of Pain Management, the American Academy of Pain Medicine, the American Pain Society, and PhRMA are also members of varying levels in the USPF.

vi. *American Geriatrics Society*

¹²¹ Bill Whitaker, *Ex-DEA Agent: Opioid Crisis Fueled by Drug Industry and Congress*, CBS News (Oct. 17, 2017), <https://www.cbsnews.com/news/ex-dea-agent-opioid-crisis-fueled-bydrug-industry-and-congress/>.

¹²² John J. Mulrooney, II & Katherine E. Legel, *Current Navigation Points in Drug Diversion Law: Hidden Rocks in Shallow, Murky, Drug-Infested Waters*, 101 Marquette L. Rev., 333, 346 (2017).

¹²³ Fueling an Epidemic, *supra*.

¹²⁴ *Id.* at 12; Transparency, U.S. Pain Foundation, <https://uspainfoundation.org/transparency/> (last visited on March 9, 2018).

1 417. The American Geriatrics Society (“AGS”) was another Front Group with
2 systematic connections and interpersonal relationships with the Manufacturer Defendants. The
3 AGS was a large recipient of contributions from the Manufacturer Defendants, including Endo
4 and Purdue. AGS contracted with Endo and Purdue to disseminate guidelines regarding the use
5 of opioids for chronic pain in 2002 (*The Management of Persistent Pain in Older Persons*,
6 hereinafter “2002 AGS Guidelines”) and 2009 (*Pharmacological Management of Persistent*
7 *Pain in Older Persons*,¹²⁵ hereinafter “2009 AGS Guidelines”). According to news reports,
8 AGS has received at least \$344,000 in funding from opioid manufacturers since 2009.¹²⁶ AGS’s
9 complicity in the common purpose with the Manufacturer Defendants is evidenced by the fact
10 that AGS internal discussions in August 2009 reveal that it did not want to receive upfront
11 funding from drug companies, which would suggest drug company influence, but would
12 instead, accept commercial support to disseminate pro-opioid publications.

13 418. The 2009 AGS Guidelines recommended that “[a]ll patients with moderate to
14 severe pain . . . should be considered for opioid therapy.” The panel made “strong
15 recommendations” in this regard despite “low quality of evidence” and concluded that the risk
16 of addiction is manageable for patients, even with a prior history of drug abuse.¹²⁷ These
17 Guidelines further stated that “the risks [of addiction] are exceedingly low in older patients with
18 no current or past history of substance abuse.” These recommendations and statements are not
19 supported by any study or other reliable scientific evidence. Nevertheless, they have been cited
20 as many as 1,833 times in Google Scholar (which allows users to search scholarly publications
21 that would be have been relied on by researchers and prescribers) since their 2009 publication
22 and as recently as this year.

23 419. Representatives of the Manufacturer Defendants, often during informal meetings
24

25
26 ¹²⁵ *Pharmacological Management of Persistent Pain in Older Persons*, 57 J. Am. Geriatrics Soc’y 1331, 1339,
1342 (2009), available at [https://www.nhqualitycampaign.org/files/AmericanGeriatricSociety-](https://www.nhqualitycampaign.org/files/AmericanGeriatricSociety-PainGuidelines2009.pdf)
PainGuidelines2009.pdf (last visited Apr. 25, 2018).

27 ¹²⁶ John Fauber & Ellen Gabler, “Narcotic Painkiller Use Booming Among Elderly,” *Milwaukee J. Sentinel*, May
28 30, 2012, <https://medpagetoday.com/geriatrics/painmanagement/32967>.

¹²⁷ 2009 AGS Guidelines at 1342.

at conferences, suggested activities, lobbying efforts and publications for AGS to pursue. AGS then submitted grant proposals seeking to fund these activities and publications, knowing that drug companies would support projects conceived as a result of these communications.

420. Members of the AGS Board of Directors were doctors on the Manufacturer Defendants' payrolls, either as consultants or speakers at medical events. As described below, many of the KOLs also served in leadership positions within the AGS.

b. The Manufacturer Defendants Paid Key Opinion Leaders to Deceptively Promote Opioid Use.

421. To falsely promote their opioids, the Manufacturer Defendants paid and cultivated a select circle of doctors who were chosen and sponsored by the Manufacturer Defendants for their supportive messages. As set forth below, pro-opioid doctors have been at the hub of the Manufacturer Defendants' well-funded, pervasive marketing scheme since its inception and were used to create the grave misperception that science and respected medical professionals favored the broader use of opioids. These doctors include Dr. Russell Portenoy, Dr. Lynn Webster, Dr. Perry Fine, and Dr. Scott Fishman, as set forth below.

422. Although these KOLs were funded by the Manufacturer Defendants, the KOLs were used extensively to present the appearance that unbiased and reliable medical research supporting the broad use of opioid therapy for chronic pain had been conducted and was being reported on by independent medical professionals.

423. As the Manufacturer Defendants' false marketing scheme picked up steam, these pro-opioid KOLs wrote, consulted on, edited, and lent their names to books and articles, and gave speeches and CMEs supportive of opioid therapy for chronic pain. They served on committees that developed treatment guidelines that strongly encouraged the use of opioids to treat chronic pain and they were placed on boards of pro-opioid advocacy groups and professional societies that develop, select, and present CMEs.

424. Through use of their KOLs and strategic placement of these KOLs throughout

every critical distribution channel of information within the medical community, the Manufacturer Defendants were able to exert control of each of these modalities through which doctors receive their information.

425. In return for their pro-opioid advocacy, the Manufacturer Defendants' KOLs received money, prestige, recognition, research funding, and avenues to publish. For example, Dr. Webster and Dr. Fine have received funding from Endo and Purdue.

426. The Manufacturer Defendants carefully vetted their KOLs to ensure that they were likely to remain on-message and supportive of the Manufacturer Defendants' agenda. The Manufacturer Defendants also kept close tabs on the content of the materials published by these KOLs. And, of course, the Manufacturer Defendants kept these KOLs well-funded to enable them to push the Manufacturer Defendants' deceptive message out to the medical community.

427. Once the Manufacturer Defendants identified and funded KOLs and those KOLs began to publish "scientific" papers supporting the Manufacturer Defendants' false position that opioids were safe and effective for treatment of chronic pain, the Manufacturer Defendants poured significant funds and resources into a marketing machine that widely cited and promoted their KOLs and studies or articles by their KOLs to drive prescription of opioids for chronic pain. The Manufacturer Defendants cited to, distributed, and marketed these studies and articles by their KOLs as if they were independent medical literature so that it would be well-received by the medical community. These studies and articles were available to and were intended to reach doctors in Nevada. By contrast, the Manufacturer Defendants did not support, acknowledge, or disseminate the truly independent publications of doctors critical of the use of chronic opioid therapy.¹²⁸

428. In their promotion of the use of opioids to treat chronic pain, the Manufacturer Defendants' KOLs knew that their statements were false and misleading, or they recklessly disregarded the truth in doing so, but they continued to publish their misstatements to benefit

¹²⁸ See, e.g., Volkow & McLellan, *supra*; see also Matthew Miller, *et al.*, *Prescription Opioid Duration of Action and the Risk of Unintentional Overdose Among Patients Receiving Opioid Therapy*, JAMA Intern Med 2015; 175(4): 608-615.

1 themselves and the Manufacturer Defendants.

2 i. Dr. Russell Portenoy

3
4 429. In 1986, Dr. Russell Portenoy, who later became Chairman of the Department
5 of Pain Medicine and Palliative Care at Beth Israel Medical Center in New York while at the
6 same time serving as a top spokesperson for drug companies, published an article reporting
7 that “[f]ew substantial gains in employment or social function could be attributed to the
8 institution of opioid therapy.”¹²⁹

9 430. Writing in 1994, Dr. Portenoy described the prevailing attitudes regarding the
10 dangers of long-term use of opioids:

11 *The traditional approach to chronic non-malignant pain does*
12 *not accept the long-term administration of opioid drugs. This*
13 *perspective has been justified by the perceived likelihood of*
14 *tolerance, which would attenuate any beneficial effects over*
15 *time, and the potential for side effects, worsening disability, and*
16 *addiction. According to conventional thinking, the initial*
17 *response to an opioid drug may appear favorable, with partial*
18 *analgesia and salutary mood changes, but adverse effects*
19 *inevitably occur thereafter. It is assumed that the motivation to*
20 *improve function will cease as mental clouding occurs and the*
21 *belief takes hold that the drug can, by itself, return the patient to*
22 *a normal life. Serious management problems are anticipated,*
23 *including difficulty in discontinuing a problematic therapy and*
24 *the development of drug seeking behavior induced by the desire*
25 *to maintain analgesic effects, avoid withdrawal, and perpetuate*
26 *reinforcing psychic effects. There is an implicit assumption that*
27 *little separates these outcomes from the highly aberrant*
28 *behaviors associated with addiction.*¹³⁰

According to Dr. Portenoy, the foregoing problems could constitute “compelling reasons to
reject long-term opioid administration as a therapeutic strategy in all but the most desperate

¹²⁹ R. Portenoy & K. Foley, *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 cases*, 25(2) Pain 171 (1986).

¹³⁰ Russell K. Portenoy, *Opioid Therapy for Chronic Nonmalignant Pain: Current Status*, 1 Progress in Pain Res. & Mgmt., 247-287 (H.L. Fields and J.C. Liebeskind eds., 1994) (emphasis added).

1 cases of chronic nonmalignant pain.”¹³¹

2 431. Despite having taken this position on long-term opioid treatment, Dr. Portenoy
3 soon became a spokesperson for Purdue and other Manufacturer Defendants, promoting the use
4 of prescription opioids and minimizing their risks. A respected leader in the field of pain
5 treatment, Dr. Portenoy was highly influential. Dr. Andrew Kolodny, co-founder of Physicians
6 for Responsible Opioid Prescribing, described him “lecturing around the country as a religious-
7 like figure. The megaphone for Portenoy is Purdue, which flies in people to resorts to hear him
8 speak. It was a compelling message: ‘Docs have been letting patients suffer; nobody really gets
9 addicted; it’s been studied.’”¹³²

10 432. As one organizer of CME seminars who worked with Portenoy and Purdue
11 pointed out, “had Portenoy not had Purdue’s money behind him, he would have published some
12 papers, made some speeches, and his influence would have been minor. With Purdue’s millions
13 behind him, his message, which dovetailed with their marketing plans, was hugely
14 magnified.”¹³³ Dr. Portenoy’s publications and other materials were available to and were
15 intended to reach doctors in Nevada.

16 433. Dr. Portenoy was also a critical component of the Manufacturer Defendants’
17 control over their Front Groups. Specifically, Dr. Portenoy sat as a Director on the board of the
18 APF. He was also the President of the APS.

19 434. In recent years, some of the Manufacturer Defendants’ KOLs have conceded
20 that many of their past claims in support of opioid use lacked evidence or support in the
21 scientific literature.¹³⁴ Dr. Portenoy has now admitted that he minimized the risks of opioids,
22 and that he “gave innumerable lectures in the late 1980s and ‘90s about addiction that weren’t
23 true.”¹³⁵ He mused, “Did I teach about pain management, specifically about opioid therapy, in
24

25 ¹³¹ *Id.*

26 ¹³² Sam Quinones, *Dreamland: The True Tale of America’s Opiate Epidemic* 314 (Bloomsbury Press 2015).

27 ¹³³ *Id.* at 136.

28 ¹³⁴ See, e.g., John Fauber, *Painkiller Boom Fueled by Networking*, Journal Sentinel (Feb. 18, 2012),
<http://archive.jsonline.com/watchdog/watchdogreports/painkiller-boom-fueled-by-networking-dp3p2rn-139609053.html/> (reporting that a key Endo KOL acknowledged that opioid marketing went too far).

¹³⁵ Thomas Catan & Evan Perez, *A Pain-Drug Champion Has Second Thoughts*, The Wall Street Journal

a way that reflects misinformation? Well, against the standards of 2012, I guess I did”¹³⁶

435. In a 2011 interview released by Physicians for Responsible Opioid Prescribing, Portenoy stated that his earlier work purposefully relied on evidence that was not “real” and left real evidence behind:

I gave so many lectures to primary care audiences in which the Porter and Jick article was just one piece of data that I would then cite, and I would cite six, seven, maybe ten different avenues of thought or avenues of evidence, *none of which represented real evidence*, and yet what I was trying to do was to create a narrative so that the primary care audience would look at this information in [total] and feel more comfortable about opioids in a way they hadn’t before. *In essence this was education to destigmatize [opioids], and because the primary goal was to destigmatize, we often left evidence behind.*¹³⁷

436. Several years earlier, when interviewed by journalist Barry Meier for his 2003 book, *Pain Killer*, Dr. Portenoy was more direct: “It was pseudoscience. I guess I’m going to always have to live with that one.”¹³⁸

ii. Dr. Lynn Webster

437. Another KOL, Dr. Lynn Webster, was the co-founder and Chief Medical Director of the Lifetree Clinical Research & Pain Clinic in Salt Lake City, Utah. Dr. Webster was President of AAPM in 2013 and remains a current board member. He is a Senior Editor of *Pain Medicine*, the same journal that published Endo’s special advertising supplements touting Opana ER. Dr. Webster was the author of numerous CMEs sponsored by Endo and Purdue. At the same time, Dr. Webster was receiving significant funding from Defendants (including nearly \$2 million from Cephalon alone).

¹³⁶ <https://www.wsj.com/articles/SB10001424127887324478304578173342657044604>. (Last updated Dec. 17, 2012 11:36 AM).

¹³⁷ *Id.*

¹³⁸ ¹⁴³ Harrison Jacobs, *This 1-Paragraph Letter May Have Launched the Opioid Epidemic*, AOL (May 26, 2016), <https://www.aol.com/article/2016/05/26/letter-may-have-launched-opioid-epidemic/21384408/>; Andrew Kolodny, *Opioids for Chronic Pain: Addiction is NOT Rare*, YouTube (Oct. 30, 2011), <https://www.youtube.com/watch?v=DgyuBWN9D4w&feature=youtu.be>.

¹³⁸ Meier, *supra*, at 277.

1 438. Dr. Webster created and promoted the *Opioid Risk Tool*, a five question, one-
2 minute screening tool relying on patient self-reports that purportedly allows doctors to manage
3 the risk that their patients will become addicted to or abuse opioids. The claimed ability to pre-
4 sort patients likely to become addicted is an important tool in giving doctors confidence to
5 prescribe opioids long-term, and for this reason, references to screening appear in various
6 industry-supported guidelines. Versions of Dr. Webster's *Opioid Risk Tool* ("ORT") appear
7 on, or are linked to, websites run by Endo and Purdue. In 2011, Dr. Webster presented, via
8 webinar, a program sponsored by Purdue titled, *Managing Patient's Opioid Use: Balancing the*
9 *Need and the Risk*. Dr. Webster recommended use of risk screening tools, urine testing, and
10 patient agreements to prevent "overuse of prescriptions" and "overdose deaths." This webinar
11 was available to and was intended to reach doctors in Nevada.¹³⁹

12 439. Dr. Webster was himself tied to numerous overdose deaths. He and the Lifetree
13 Clinic were investigated by the DEA for overprescribing opioids after twenty patients died
14 from overdoses. In keeping with the Manufacturer Defendants' promotional messages, Dr.
15 Webster apparently believed the solution to patients' tolerance or addictive behaviors was more
16 opioids, and he prescribed staggering quantities of pills.

17 440. At an AAPM annual meeting held February 22 through 25, 2006, Cephalon
18 sponsored a presentation by Webster and others titled, "Open-label study of fentanyl
19 effervescent buccal tablets in patients with chronic pain and breakthrough pain: Interim safety
20 results." The presentation's agenda description states: "Most patients with chronic pain
21 experience episodes of breakthrough pain, yet no currently available pharmacologic agent is
22 ideal for its treatment." The presentation purports to cover a study analyzing the safety of a new
23 form of fentanyl buccal tablets in the chronic pain setting and promises to show the "[i]nterim
24 results of this study suggest that [fentanyl effervescent buccal tablets are] safe and well-
25 tolerated in patients with chronic pain and [breakthrough pain]."

26
27 ¹³⁹ See Emerging Solutions in Pain, *Managing Patient's Opioid Use: Balancing the Need and the Risk*,
28 [http://www.emergingsolutionsinpain.com/ce-education/opioid-](http://www.emergingsolutionsinpain.com/ce-education/opioid-management?option=com_continued&view=frontmatter&Itemid=303&course=209)
[management?option=com_continued&view=frontmatter&Itemid=303&course=209](http://www.emergingsolutionsinpain.com/ce-education/opioid-management?option=com_continued&view=frontmatter&Itemid=303&course=209) (last visited Aug. 22, 2017).

1 iii. Dr. Perry Fine

2 441. Dr. Perry Fine's ties to the Manufacturer Defendants have been well-documented.
3 He has authored articles and testified in court cases and before state and federal committees,
4 and he, too, has argued against legislation restricting high-dose opioid prescription for non-
5 cancer patients. He has served on Purdue's advisory board, participated in CME activities for
6 Endo, along with serving in these capacities for several other drug companies. He co-chaired the
7 APS-AAPM Opioid Guideline Panel, served as treasurer of the AAPM from 2007 to 2010 and
8 as president of that group from 2011 to 2013, and was also on the board of directors of APF.¹⁴⁰

9 442. Multiple videos feature Fine delivering educational talks about prescription
10 opioids. He even testified at trial that the 1,500 pills a month prescribed to celebrity Anna
11 Nicole Smith for pain did not make her an addict before her death.

12 443. He has also acknowledged having failed to disclose numerous conflicts of
13 interest.

14
15 For example, Dr. Fine failed to fully disclose payments received as required by his employer,
16 the University of Utah.—

17 444. Dr. Fine and Dr. Portenoy co-wrote *A Clinical Guide to Opioid Analgesia*, in
18 which they downplayed the risks of opioid treatment, such as respiratory depression and
19 addiction:

20 At clinically appropriate doses, . . . respiratory rate typically does
21 not decline. Tolerance to the respiratory effects usually develops
 quickly, and doses can be steadily increased without risk.

22 Overall, the literature provides evidence that the outcomes of
23 drug abuse and addiction are rare among patients who receive
24 opioids for a short period (i.e., for acute pain) and among those
25 with no history of abuse who receive long-term therapy for
 medical indications.¹⁴¹

26
27 ¹⁴⁰ Scott M. Fishman, MD, *Incomplete Financial Disclosures in a Letter on Reducing Opioid Abuse and Diversion*,
306 (13) JAMA 1445 (Sept. 20, 2011), [https://jamanetwork.com/journals/jama/article-](https://jamanetwork.com/journals/jama/article-abstract/1104464?redirect=true)
28 abstract/1104464?redirect=true. (hereinafter, "Fishman").

¹⁴¹ Perry G. Fine, MD & Russell K. Portenoy, MD, *A Clinical Guide to Opioid Analgesia* 20 and 34, McGraw-Hill

445. Multiple videos feature Dr. Fine delivering educational talks about the drugs. In one video from 2011 titled “Optimizing Opioid Therapy,” he sets forth a “Guideline for Chronic Opioid Therapy” discussing “opioid rotation” (switching from one opioid to another) not only for cancer patients, but for non-cancer patients, and suggests it may take four or five switches over a person’s “lifetime” to manage pain.¹⁴² He states that the “goal is to improve effectiveness which is different from efficacy and safety.” Rather, for chronic pain patients, effectiveness “is a balance of therapeutic good and adverse events *over the course of years.*” The program assumes that opioids are appropriate treatment over a “protracted period of time,” even over a patient’s entire “lifetime.” Fine even suggests that opioids can be used to treat sleep apnea. He further states that the associated risks of addiction and abuse can be managed by doctors and evaluated with “tools,” but leaves that for “a whole other lecture.”¹⁴³ Dr. Fine’s articles and educational talks were available to and were intended to reach doctors in Nevada.

iv. Dr. Scott Fishman

446. Dr. Scott Fishman is a physician whose ties to the opioid drug industry are legion. He has served as an APF board member and as president of the AAPM, and has participated yearly in numerous CME activities for which he received “market rate honoraria.” As discussed below, he has authored publications, including the seminal guides on opioid prescribing, which were funded by the Manufacturer Defendants. He has also worked to oppose legislation requiring doctors and others to consult pain specialists before prescribing high doses of opioids to non-cancer patients. He has himself acknowledged his failure to disclose all potential conflicts of interest in a letter in the *Journal of the American Medical Association* titled “Incomplete Financial Disclosures in a Letter on Reducing Opioid Abuse and Diversion.”¹⁴⁴

Companies (2004), at 20, 34. <http://www.thblack.com/links/RSD/OpioidHandbook.pdf>.

¹⁴² Perry A. Fine, *Safe and Effective Opioid Rotation*, YouTube (Nov. 8, 2012), https://www.youtube.com/watch?v=_G3II9yqgXI.

¹⁴³ *Id.*

¹⁴⁴ Scott M. Fishman, *Incomplete Financial Disclosures in a Letter on Reducing Opioid Abuse and Diversion*, 306(13) JAMA 1445 (2011); Tracy Weber & Charles Ornstein, *Two Leaders in Pain Treatment Have Long Ties to*

447. Dr. Fishman authored a physician's guide on the use of opioids to treat chronic pain titled *Responsible Opioid Prescribing* in 2007, which promoted the notion that long-term opioid treatment was a viable and safe option for treating chronic pain.

448. In 2012, Dr. Fishman updated the guide and continued emphasizing the "catastrophic" "under-treatment" of pain and the "crisis" such under-treatment created:

Given the magnitude of the problems related to opioid analgesics, it can be tempting to resort to draconian solutions: clinicians may simply stop prescribing opioids, or legislation intended to improve pharmacovigilance may inadvertently curtail patient access to care. As we work to reduce diversion and misuse of prescription opioids, it's critical to remember that the problem of unrelieved pain remains as urgent as ever.¹⁴⁵

449. The updated guide still assures that "[o]pioid therapy to relieve pain and improve function is legitimate medical practice for acute and chronic pain of both cancer and noncancer origins."¹⁴⁶ Nevada doctors could read the guide to obtain CME credit.

450. In another guide by Dr. Fishman, he continues to downplay the risk of addiction: "I believe clinicians must be very careful with the label 'addict.' I draw a distinction between a 'chemical coper' and an addict."¹⁴⁷ The guide also continues to present symptoms of addiction as symptoms of "pseudoaddiction." These physician's guides were available to and were intended to reach doctors in Nevada.

c. The Manufacturer Defendants Disseminated Their Misrepresentations Through Continuing Medical Education Programs.

451. Now that the Manufacturer Defendants had both a group of physician promoters and had built a false body of "literature," Manufacturer Defendants needed to make sure their

¹⁴⁵ *Drug Industry*, ProPublica (Dec. 23, 2011, 2:14 PM), <https://www.propublica.org/article/two-leaders-in-pain-treatment-have-long-ties-to-drug-industry>.

¹⁴⁶ Scott M. Fishman, *Responsible Opioid Prescribing: A Guide for Michigan Clinicians*, 10-11 (Waterford Life Sciences 2d ed. 2012).

¹⁴⁷ *Id.*

¹⁴⁸ Scott M. Fishman, *Listening to Pain: A Clinician's Guide to Improving Pain Management Through Better Communication* 45 (Oxford University Press 2012).

1 false marketing message was widely distributed.

2 452. One way the Manufacturer Defendants aggressively distributed their false
3 message was through thousands of Continuing Medical Education courses (“CMEs”).

4 453. A CME is a professional education program provided to doctors. Doctors are
5 required to attend a certain number and, often, type of CME programs each year as a condition
6 of their licensure. These programs are delivered in person, often in connection with
7 professional organizations’ conferences, and online, or through written publications. Doctors
8 rely on CMEs not only to satisfy licensing requirements, but also to get information on new
9 developments in medicine or to deepen their knowledge in specific areas of practice. Because
10 CMEs typically are taught by KOLs who are highly respected in their fields, and are thought to
11 reflect these physicians’ medical expertise, they can be especially influential with doctors.

12 454. The countless doctors and other health care professionals who participate in
13 accredited CMEs constitute an enormously important audience for the Manufacturer
14 Defendants’ opioid reeducation effort. As one target, Manufacturer Defendants aimed to reach
15 general practitioners, whose broad area of practice and lack of expertise and specialized
16 training in pain management made them particularly dependent upon CMEs and, as a result,
17 especially susceptible to the Manufacturer Defendants’ deceptions.

18 455. The Manufacturer Defendants sponsored CMEs that were delivered thousands
19 of times, promoting chronic opioid therapy and supporting and disseminating the deceptive and
20 biased messages described in this Complaint. These CMEs, while often generically titled to
21 relate to the treatment of chronic pain, focus on opioids to the exclusion of alternative
22 treatments, inflate the benefits of opioids, and frequently omit or downplay their risks and
23 adverse effects. In order to conduct such CMEs in the State of Nevada, the Manufacturer
24 Defendants had to make the same misrepresentations regarding their opioid products to the
25 State agencies. Because of these misrepresentations and deceptive marketing, these CMEs
26 were available to and were intended to reach doctors in Nevada.

27 456. *Responsible Opioid Prescribing* was sponsored by Purdue, Endo, and Teva. The
28

FSMB website described it as the “leading continuing medical education (CME) activity for prescribers of opioid medications.” Endo sales representatives distributed copies of *Responsible Opioid Prescribing* with a special introductory letter from Dr. Scott Fishman.

457. In all, more than 163,000 copies of *Responsible Opioid Prescribing* were distributed nationally.

458. The American Medical Association (“AMA”) recognized the impropriety that pharmaceutical company-funded CMEs creates; stating that support from drug companies with a financial interest in the content being promoted “creates conditions in which external interests could influence the availability and/or content” of the programs and urges that “[w]hen possible, CME[s] should be provided without such support or the participation of individuals who have financial interests in the education subject matter.”¹⁴⁸

459. Physicians, including those who practice or practiced in Nevada, attended or reviewed CMEs sponsored by the Manufacturer Defendants during the relevant time period and were misled by them.

460. By sponsoring CME programs put on by Front Groups like APF, AAPM, and others, the Manufacturer Defendants could expect instructors to deliver messages favorable to them, as these organizations were dependent on the Manufacturer Defendants for other projects. The sponsoring organizations honored this principle by hiring pro-opioid KOLs to give talks that supported chronic opioid therapy. Manufacturer Defendant-driven content in these CMEs had a direct and immediate effect on Nevada prescribers’ views on opioids. Producers of CMEs and the Manufacturer Defendants both measure the effects of CMEs on prescribers’ views on opioids and their absorption of specific messages, confirming the strategic marketing purpose in supporting them.

d. The Manufacturer Defendants Used “Branded” Advertising to Promote Their Products to Doctors and Consumers.

¹⁴⁸ Opinion 9.0115, *Financial Relationships with Industry in CME*, Am. Med. Ass’n (Nov. 2011), at 1.

461. The Manufacturer Defendants engaged in widespread advertising campaigns touting the benefits of their branded drugs, including within the state of Nevada. The Manufacturer Defendants published print advertisements in a broad array of medical journals, ranging from those aimed at specialists, such as the *Journal of Pain* and *Clinical Journal of Pain*, to journals with wider medical audiences, such as the *Journal of the American Medical Association*. The Manufacturer Defendants collectively spent more than \$14 million on the medical journal advertising of opioids in 2011, nearly triple what they spent in 2001. The 2011 total includes \$8.3 million by Purdue and \$1.1 million by Endo.

462. The Manufacturer Defendants also targeted Nevada consumers in their advertising. They knew that physicians are more likely to prescribe a drug if a patient specifically requests it.¹⁴⁹ They also knew that this willingness to acquiesce to such patient requests holds true even for opioids and for conditions for which they are not approved.¹⁵⁰ Endo's research, for example, also found that such communications resulted in greater patient "brand loyalty," with longer durations of Opana ER therapy and fewer discontinuations. The Manufacturer Defendants increasingly took their opioid sales campaigns directly to consumers, including through patient-focused "education and support" materials in the form of pamphlets, videos, or other publications that patients could view in their physician's office.

e. The Manufacturer Defendants Used "Unbranded" Advertising to Promote Opioid Use for Chronic Pain Without FDA Review.

463. The Manufacturer Defendants also aggressively promoted opioids in Nevada through "unbranded advertising" to generally tout the benefits of opioids without specifically naming a particular brand-name opioid drug. Instead, unbranded advertising is usually framed as "disease awareness"—encouraging consumers to "talk to your doctor" about a certain health

¹⁴⁹ In one study, for example, nearly 20% of sciatica patients requesting oxycodone received a prescription for it, compared with 1% of those making no specific request. J.B. McKinlay et al., *Effects of Patient Medication Requests on Physician Prescribing Behavior, Results of a Factorial Experiment* 52(2) Med. Care 294-99 (April 2014).

¹⁵⁰ *Id.*

1 condition without promoting a specific product and, therefore, without providing balanced
2 disclosures about the product's limits and risks. In contrast, a pharmaceutical company's
3 "branded" advertisement that identifies a specific medication and its indication (i.e., the
4 condition which the drug is approved to treat) must also include possible side effects and
5 contraindications—what the FDA Guidance on pharmaceutical advertising refers to as "fair
6 balance." Branded advertising is also subject to FDA review for consistency with the drug's
7 FDA-approved label. Through unbranded materials, the Marketing Defendants expanded the
8 overall acceptance of and demand for chronic opioid therapy without the restrictions imposed
9 by regulations on branded advertising.

10 464. By funding, directing, reviewing, editing, and distributing this unbranded
11 advertising, the Manufacturer Defendants controlled the deceptive messages disseminated by
12 these third parties and acted in concert with them to falsely and misleadingly promote opioids
13 for the treatment of chronic pain. Much as Defendants controlled the distribution of their "core
14 messages" via their own "detailers" (an industry term for sales representatives) and speaker
15 programs, the Manufacturer Defendants similarly controlled the distribution of these messages
16 in scientific publications, treatment guidelines, CME programs, and medical conferences and
17 seminars. To this end, the Manufacturer Defendants used third-party public relations firms to
18 help control those messages when they originated from third-parties.

19 465. The Manufacturer Defendants marketed opioids in Nevada through third-party,
20 unbranded advertising to avoid regulatory scrutiny because that advertising is not submitted to,
21 and typically is not reviewed by, the FDA. The Manufacturer Defendants also used third-party,
22 unbranded advertising to give the false appearance that the deceptive messages came from an
23 independent and objective source. Like the tobacco companies, the Manufacturer Defendants
24 used third parties that they funded, directed, and controlled to carry out and conceal their
25 scheme to deceive doctors and patients about the risks and benefits of long-term opioid use for
26 chronic pain.

27 466. Many of the Manufacturer Defendants utilized unbranded websites to promote
28

opioid use without promoting a specific branded drug, such as Purdue’s pain-management website, *www.inthefaceofpain.com*. The website contained testimonials from several dozen “advocates,” including health care providers, urging more pain treatment. The website presented the advocates as neutral and unbiased, but an investigation by the New York Attorney General later revealed that Purdue paid the advocates hundreds of thousands of dollars and never publicly disclosed those payments.

f. The Manufacturer Defendants Funded, Edited, and Distributed Publications that Supported Their Misrepresentations.

467. The Manufacturer Defendants created a body of false, misleading, and unsupported medical and popular literature about opioids that (a) understated the risks and overstated the benefits of long-term use; (b) appeared to be the result of independent, objective research; and (c) was likely to shape the perceptions of prescribers, patients, and payors. This literature served marketing goals rather than treatment goals and was intended to persuade doctors and consumers that the benefits of long-term opioid use outweighed the risks.

468. To accomplish their goal, the Manufacturer Defendants—sometimes through third- party consultants and/or Front Groups—commissioned, edited, and arranged for the placement of favorable articles in academic journals, including journals distributed in Nevada.

469. The Manufacturer Defendants’ plans for these materials did not originate in the departments with the organizations that were responsible for research, development, or any other area that would have specialized knowledge about the drugs and their effects on patients; rather, they originated in the Manufacturer Defendants’ marketing departments.

470. The Manufacturer Defendants made sure that favorable articles were disseminated and cited widely in the medical literature, even when the Manufacturer Defendants knew that the articles distorted the significance or meaning of the underlying study, as with the Porter & Jick letter. The Manufacturer Defendants also frequently relied on

1 unpublished data or posters, neither of which are subject to peer review, but were presented as
2 valid scientific evidence. Posters are preliminary, unpublished, non-peer reviewed reports that
3 are intended to be turned into peer-reviewed academic papers, but sometimes do not.

4 471. The Manufacturer Defendants published or commissioned deceptive review
5 articles, letters to the editor, commentaries, case-study reports, and newsletters aimed
6 at discrediting or suppressing negative information that contradicted their claims or raised
7 concerns about chronic opioid therapy. These publications were available to and were intended
8 to reach doctors in Nevada.

9 g. The Manufacturer Defendants Used Detailing to Directly Disseminate Their
10 Misrepresentations to Prescribers.
11

12 472. The Manufacturer Defendants' sales representatives executed carefully crafted
13 marketing tactics, developed at the highest rungs of their corporate ladders, to reach targeted
14 doctors in Nevada with centrally orchestrated messages. The Manufacturer Defendants' sales
15 representatives also distributed third-party marketing material to their target audience that was
16 deceptive.

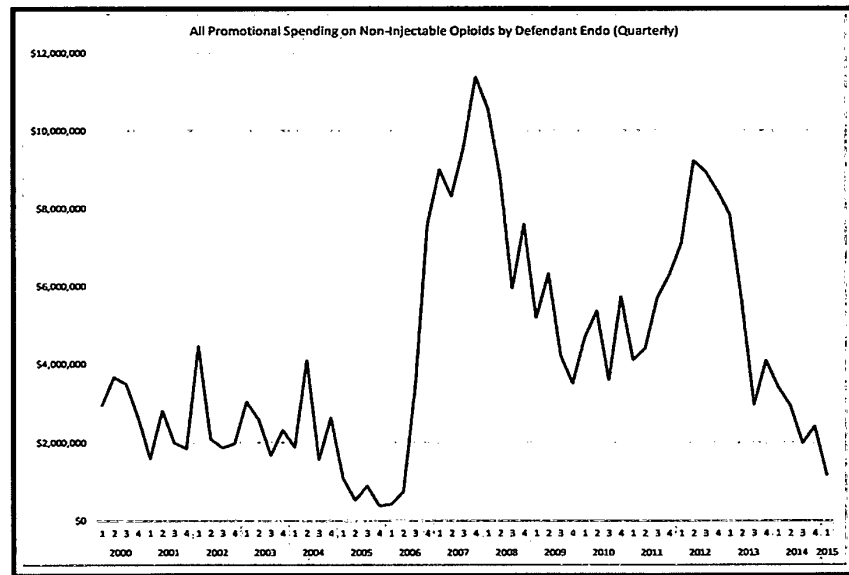
17 473. Each Manufacturer Defendant promoted opioids through sales representatives
18 (also called "detailers") and, upon information and belief, small group speaker programs to
19 reach out to individual prescribers. By establishing close relationships with doctors, the
20 Manufacturer Defendants were able to disseminate their misrepresentations in targeted, one-on-
21 one settings that allowed them to promote their opioids and to allay individual prescribers'
22 concerns about prescribing opioids for chronic pain.

23 474. In accordance with common industry practice, the Manufacturer Defendants
24 purchase and closely analyze prescription sales data from IMS Health (now IQVIA), a
25 healthcare data collection, management and analytics corporation started by Arthur Sackler.
26 This data allows them to track precisely the rates of initial and renewal prescribing by individual
27 doctors, which allows them to target and tailor their appeals. Sales representatives visited
28

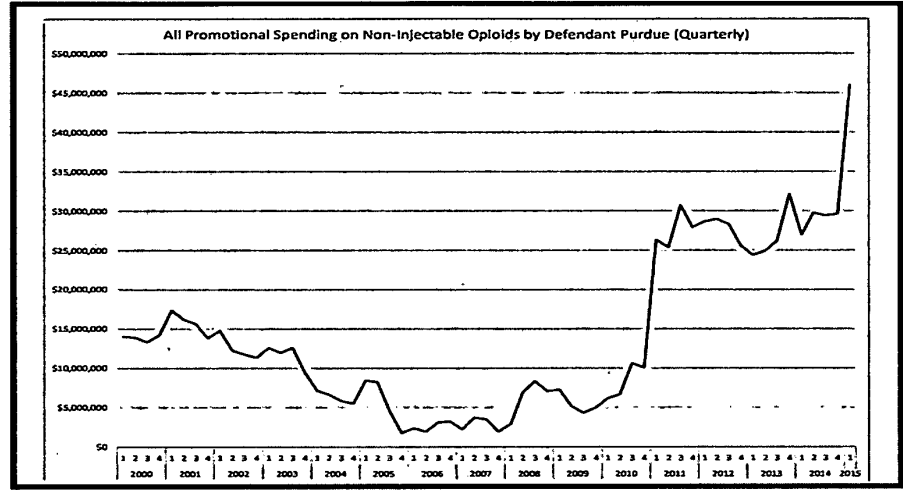
hundreds of thousands of doctors, including doctors in Nevada, and disseminated the misinformation and materials described above.

475. Manufacturer Defendants devoted and continue to devote massive resources to direct sales contacts with doctors. In 2014 alone, Manufacturer Defendants spent \$166 million on detailing branded opioids to doctors. This amount is twice as much as Manufacturer Defendants spent on detailing in 2000. The amount includes \$108 million spent by Purdue, \$13 million by Teva, and \$10 million by Endo.

476. Endo's quarterly spending went from the \$2 million to \$4 million range in 2000-2004 to more than \$10 million following the launch of Opana ER in mid-2006 (and more than \$38 million for the year in 2007) and more than \$8 million coinciding with the launch of a reformulated version in 2012 (and nearly \$34 million for the year):



477. Purdue's quarterly spending notably decreased from 2000 to 2007, as Purdue came under investigation, but then spiked to above \$25 million in 2011 (for a total of \$110 million that year), and continues to rise, as shown below:



h. Manufacturer Defendants Used Speakers' Bureaus and Programs to Spread Their Deceptive Messages.

478. In addition to making sales calls, Manufacturer Defendants' detailers also identified doctors to serve, for payment, on their speakers' bureaus and to attend programs with speakers and meals paid for by the Manufacturer Defendants. These speaker programs and associated speaker trainings serve three purposes: they provide an incentive to doctors to prescribe, or increase their prescriptions of, a particular drug; they qualify and/or vet doctors to be selected for a forum in which the Manufacturer Defendants can further market directly to the speaker himself or herself; and they provide an opportunity for Manufacturer Defendants to market to the speaker's peers. The Manufacturer Defendants grade their speakers, and make the offer of future opportunities contingent upon, speaking performance, post-program sales, and product usage. Purdue, Endo, and Mallinckrodt each made thousands of payments to physicians nationwide, for activities including participating on speakers' bureaus, providing consulting services, and other services.

1 **3. The Manufacturer Defendants Targeted Vulnerable Populations.**

2
3 479. The Manufacturer Defendants specifically targeted their marketing at two
4 vulnerable populations—the elderly and veterans.

5 480. Elderly patients taking opioids have been found to be exposed to elevated
6 fracture risks, a greater risk for hospitalizations, and increased vulnerability to adverse drug
7 effects and interactions, such as respiratory depression, which occur more frequently in elderly
8 patients.

9 481. The Manufacturer Defendants promoted the notion—without adequate
10 scientific foundation—that the elderly are particularly unlikely to become addicted to opioids.
11 The AAPM’s and APS 2009 Guidelines, for example, which Purdue and Endo publicized,
12 described the risk of addiction as “*exceedingly low* in older patients with no current or
13 past history of substance abuse.” (emphasis added). As another example, an Endo-sponsored
14 CME put on by NIPC, *Persistent Pain in the Older Adult*, taught that prescribing opioids to
15 older patients carried “possibly less potential for abuse than in younger patients.” Contrary to
16 these assertions, however, a 2010 study examining overdoses among long-term opioid users
17 found that patients 65 or older were among those with the largest number of serious
18 overdoses.¹⁵¹

19 482. Similarly, Endo targeted marketing of Opana ER towards patients over 55 years
20 old. Such documents show Endo treated Medicare Part D patients among the “most valuable
21 customer segments.” However, in 2013, one pharmaceutical benefits management company
22 recommended against the use of Opana ER for elderly patients and unequivocally concluded:
23 “[f]or patients 65 and older these medications are not safe, so consult your doctor.”

24 483. According to a study published in the 2013 *Journal of American Medicine*,
25 veterans returning from Iraq and Afghanistan who were prescribed opioids have a higher
26

27
28 ¹⁵¹ Kate M. Dunn, PhD et al., *Opioid Prescriptions for Chronic Pain and Overdose*, Ann Intern Med. 2010 Jan. 19;
152(2):85-92, <https://www.ncbi.nlm.nih.gov/pubmed/20083827>.

1 incidence of adverse clinical outcomes, such as overdoses and self-inflicted and accidental
2 injuries. A 2008 survey showed that prescription drug misuse among military personnel
3 doubled from 2002 to 2005, and then nearly tripled again over the next three years.¹⁵² Veterans
4 are twice as likely as non-veterans to die from an opioid overdose.¹⁵³

5 484. Yet, the Manufacturer Defendants deliberately targeted veterans with deceptive
6 marketing. For example, a 2009 publication sponsored by Purdue and Endo was written as a
7 personal narrative of one veteran but was in fact another vehicle for opioid promotion. Called
8 *Exit Wounds*, the publication describes opioids as “underused” and the “gold standard of pain
9 medications” while failing to disclose significant risks of opioid use, including the risks of fatal
10 interactions with benzodiazepines. *Exit Wounds* was distributed within Nevada. According to
11 a VA Office of Inspector General Report, 92.6% of veterans who were prescribed opioid drugs
12 were also prescribed benzodiazepines, despite the increased danger of respiratory depression
13 from the two drugs together.

14 485. Opioid prescriptions have dramatically increased for veterans and the elderly.
15 Since 2007, prescriptions for the elderly have grown at twice the rate of prescriptions for adults
16 between the ages of 40 and 59. And in 2009, military doctors wrote 3.8 million prescriptions for
17 narcotic pain pills—four times as many as they did in 2001.

18 **4. The Manufacturer Defendants’ Scheme Succeeded, Creating a Public Health**
19 **Epidemic.**

20
21 a. Manufacturer Defendants Dramatically Expanded Opioid Prescribing and Use.
22

23 486. The Manufacturer Defendants necessarily expected a return on the enormous
24 investment they made in their deceptive marketing scheme, and worked to measure and expand
25

26 ¹⁵² National Institute on Drug Abuse, *Substance Abuse in the Military*, Revised March 2013,
27 <https://www.drugabuse.gov/publications/drugfacts/substance-abuse-in-military>.

28 ¹⁵³ Barbara Goldberg, “Opioid abuse crisis takes heavy toll on U.S. veterans,” *Reuters*, November 10, 2017,
<https://www.reuters.com/article/us-usa-veterans-opioids/opioid-abuse-crisis-takes-heavy-toll-on-u-s-veterans-idUSKBN1DA1B2>.

1 their success. Their own documents show that they knew they were influencing prescribers and
2 increasing prescriptions. Studies also show that in doing so, they fueled an epidemic of
3 addiction and abuse.

4 487. Endo, for example directed the majority of its marketing budget to sales
5 representatives—with good results: 84% of its prescriptions were from the doctors they
6 detailed. Moreover, as of 2008, cancer and post-operative pain accounted for only 10% of Opana
7 ER's uses; virtually all of Endo's opioid sales—and profits—were from a market that did not
8 exist ten years earlier. Internal emails from Endo staff attributed increases in Opana ER sales
9 to the aggressiveness and persistence of sales representatives.

10 488. Upon information and belief, each of the Manufacturer Defendants tracked the
11 impact of their marketing efforts to measure their impact in changing doctors' perceptions and
12 prescribing of their drugs. They purchased prescribing and survey data that allowed them to
13 closely monitor these trends, and they did actively monitor them. For instance, they monitored
14 doctors' prescribing before and after detailing visits, at various levels of detailing intensity, and
15 before and after speaker programs. Manufacturer Defendants continued and, in many cases,
16 expanded and refined their aggressive and deceptive marketing for one reason: it worked. As
17 described in this Complaint, both in specific instances and more generally, Manufacturer
18 Defendants' marketing changed prescribers' willingness to prescribe opioids, led them to
19 prescribe more of their opioids, and persuaded them to continue prescribing opioids or to switch
20 to supposedly "safer" abuse-deterrent ("ADF") opioids.

21 489. This success would have come as no surprise. Drug company marketing
22 materially impacts doctors' prescribing behavior.¹⁵⁴ The effects of sales calls on prescribers'

23
24 ¹⁵⁴ See, e.g., P. Manchanda & P. Chintagunta, *Responsiveness of Physician Prescription Behavior to Salesforce*
25 *Effort: An Individual Level Analysis*, 15 (2-3) Mktg. Letters 129 (2004) (detailing has a positive impact on
26 prescriptions written); I. Larkin, *Restrictions on Pharmaceutical Detailing Reduced Off-Label Prescribing of*
27 *Antidepressants and Antipsychotics in Children*, 33(6) Health Affairs 1014 (2014) (finding academic medical centers
28 that restricted direct promotion by pharmaceutical sales representatives resulted in a 34% decline in on-label use of
promoted drugs); see also A. Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public*
Health Tragedy, 99(2) Am J. Pub. Health 221 (2009) (correlating an increase of OxyContin prescriptions from
670,000 annually in 1997 to 6.2 million in 2002 to a doubling of Purdue's sales force and trebling of annual sales
calls).

behavior is well documented in the literature, including a 2017 study that found that physicians ordered fewer promoted brand-name medications and prescribed more cost-effective generic versions if they worked in hospitals that instituted rules about when and how pharmaceutical sales representatives were allowed to detail prescribers.¹⁵⁵ The changes in prescribing behavior appeared strongest at hospitals that implemented the strictest detailing policies and included enforcement measures. Another study examined four practices, including visits by sales representatives, medical journal advertisements, direct-to-consumer advertising, and pricing, and found that sales representatives have the strongest effect on drug utilization. An additional study found that doctor meetings with sales representatives are related to changes in both prescribing practices and requests by physicians to add the drugs to hospitals' formularies.

490. Manufacturer Defendants spent millions of dollars to market their drugs to prescribers and patients nationwide, including in Nevada, and meticulously tracked their return on that investment. In one recent survey published by the AMA, even though nine in ten general practitioners reported prescription drug abuse to be a moderate to large problem in their communities, 88% of the respondents said they were confident in their prescribing skills, and nearly half were comfortable using opioids for chronic non-cancer pain.¹⁵⁶ These results are directly due to the Manufacturer Defendants' fraudulent marketing campaign and repeated misrepresentations.

491. Thus, both independent studies and Manufacturer Defendants' own tracking confirm that Manufacturer Defendants' deceptive marketing scheme dramatically increased their sales, including sales within Nevada.

b. Manufacturer Defendants' Deception in Expanding Their Market Created and Fueled the Opioid Epidemic.

¹⁵⁵ Larkin et al, *Association Between Academic Medical Center Pharmaceutical Detailing Policies and Physician Prescribing*, 317(17) J. of Am. Med. Assoc. 1785-1795 (May 2, 2017), <https://jamanetwork.com/journals/jama/fullarticle/2623607>, 305(13).

¹⁵⁶ Research Letter, Prescription Drug Abuse: A National Survey of Primary Care Physicians, JAMA Intern. Med. (Dec. 8, 2014), E1-E3.

492. Independent research demonstrates a close link between opioid prescriptions and opioid abuse. For example, a 2007 study found “a very strong correlation between therapeutic exposure to opioid analgesics, as measured by prescriptions filled, and their abuse.”¹⁵⁷ It has been estimated that 60% of the opioids that are abused come, directly or indirectly, through physicians’ prescriptions.¹⁵⁸

493. There is a parallel relationship between the availability of prescription opioid analgesics through legitimate pharmacy channels and the diversion and abuse of these drugs and associated adverse outcomes. The opioid epidemic is “directly related to the increasingly widespread misuse of powerful opioid pain medications.”¹⁵⁹

494. In a 2016 report, the CDC explained that “[o]pioid pain reliever prescribing has quadrupled since 1999 and has increased in parallel with [opioid] overdoses.”¹⁶⁰ Patients receiving opioid prescriptions for chronic pain account for the majority of overdoses.¹⁶¹ For these reasons, the CDC concluded that efforts to reign in the prescribing of opioids for chronic pain are critical “to reverse the epidemic of opioid drug overdose deaths and prevent opioid-related morbidity.”¹⁶²

495. The Manufacturer Defendants’ scheme was and continues to be resoundingly successful. Chronic opioid therapy—the prescribing of opioids long-term to treat chronic pain— has become a commonplace, and often first-line, treatment. The Manufacturer Defendants’ deceptive marketing caused prescribing not only of their opioids, but of opioids as a class, to skyrocket. According to the CDC, opioid prescriptions, as measured by number of prescriptions and morphine milligram equivalent (“MME”) per person, tripled from 1999 to

¹⁵⁷ Theodore J. Cicero et al., *Relationship Between Therapeutic Use and Abuse of Opioid Analgesics in Rural, Suburban, and Urban Locations in the United States*, 16.8 *Pharmacopidemiology and Drug Safety*, 827-40 (2007).

¹⁵⁸ Anna Lembke, M.D., *Why Doctors Prescribe Opioids to Known Opioid Abusers*, *New Eng. J. Med.* 2012; 367:1580-1581 (Oct. 25, 2012), <https://www.nejm.org/doi/full/10.1056/NEJMp1208498>.

¹⁵⁹ Robert M. Califf, M.D., et al., *A Proactive Response to Prescription Opioid Abuse*, *New Eng. J. Med.*, <http://www.nejm.org/doi/full/10.1056/NEJMs1601307>.

¹⁶⁰ Rose A. Rudd, et al., *Increases in Drug and Opioid Overdose Deaths – United States, 2000- 2014*, January 1, 2016, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm>.

¹⁶¹ Olfson, et al., *Service Use Preceding Opioid-Related Fatality*, *Am J. Psychiatry* 2018 Jun 1; 175(6):538-544.

¹⁶² Rudd et al., *supra*.

2015. The prescribing rate in Nevada rose during this time, from 87.7 prescriptions per 100 residents in 2006 to 100.3 in 2010.¹⁶³ Nevada's death rate from drug overdose grew dramatically in lockstep with Defendants' increasing sale and distribution of opioid drugs.¹⁶⁴ In 2015, more than 650,000 opioid prescriptions were dispensed in the U.S. every day on average. While previously a small minority of opioid sales, today between 80% and 90% of opioids dispensed (measured by weight) are for chronic pain. Approximately 20% of the population between the ages of 30 and 44, and nearly 30% of the population over 45, have used opioids. Opioids are the most common treatment for chronic pain, and 20% of office visits now include the prescription of an opioid.

E. Defendants Throughout the Supply Chain Deliberately Disregarded Their Duties to Maintain Effective Controls to Prevent Diversion and to Identify, Report, and Take Steps to Halt Suspicious Orders.

496. Through their systematic and deceptive marketing schemes, the Manufacturer Defendants created a vastly and dangerously larger market for opioids both in Nevada and nationwide. All of the Defendants, including the Distributor Defendants, compounded this harm by facilitating the supply of far more opioids than could have been justified to serve that market. The failure of the Defendants to maintain effective controls and to investigate, report, and take steps to halt orders that they knew or should have known were suspicious breached both their State statutory and common law duties.

497. For over a decade, as the Manufacturer Defendants increased the demand for opioids, all the Defendants, including the Distributor 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,

¹⁶³ CDC, U.S. State Prescribing Rates, 2006 and 2011 maps for Nevada, <https://www.cdc.gov/drugoverdose/maps/rxstate2015.html>.

¹⁶⁴ Haeyoun Park & Matthew Bloch, *How the Epidemic of Drug Overdose Deaths Ripples Across America*, N.Y. Times, Jan. 18, 2016, <https://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html>.

1 Defendants are not permitted to engage in a limitless expansion of their sales through the
 2 unlawful sales of regulated painkillers. Rather, as described below, Defendants are subject to
 3 various duties to report the quantity of Schedule II controlled substances in order to monitor
 4 such substances and prevent oversupply and diversion into the illicit market.

5 498. Both the Manufacturer Defendants and the Distributor Defendants have several
 6 responsibilities under Nevada law with respect to control of the supply chain of opioids. First,
 7 they must set up a system to prevent diversion, including excessive volume and other
 8 suspicious orders. That would include reviewing their own data, relying on their observations
 9 of prescribers and pharmacies, and following up on reports or concerns of potential diversion.
 10 All suspicious orders must be reported to relevant enforcement authorities and the Nevada
 11 Board of Pharmacy. Further, they must also stop shipment of any order which is flagged as
 12 suspicious and should only ship orders which were flagged as potentially suspicious if, after
 13 conducting due diligence, they can determine that the order is not likely to be diverted into
 14 illegal channels.

15 **1. All Defendants Have a Duty to Provide Effective Controls and Procedures to**
 16 **Guard Against Theft and Diversion, and to Report Suspicious Orders and Not to**
 17 **Ship Those Orders Unless Due Diligence Disproves Their Suspicions.**

18
 19 499. Multiple sources, including Nevada statutes and regulations, impose duties on
 20 the Manufacturer Defendants and the Distributor Defendants to provide effective controls and
 21 procedures to guard against theft and diversion of opioid drugs. Multiple sources also impose
 22 duties on all the Defendants to report suspicious orders and to not ship such orders unless due
 23 diligence disproves those suspicions.

24 500. Under the common law, all Defendants had a duty to exercise reasonable care
 25 in delivering dangerous narcotic substances. By flooding the State with more opioids than could
 26 be used for legitimate medical purposes, by failing to provide effective controls and procedures
 27 against theft and diversion, and by filling and failing to report orders that they knew or should
 28

1 have known were likely being diverted for illicit uses, Defendants breached that duty and both
2 created and failed to prevent a foreseeable risk of harm.

3 501. Each of the Defendants assumed a duty, when speaking publicly about opioids
4 and their efforts to combat diversion, to speak accurately and truthfully.

5 502. The Manufacturer Defendants and Distributor Defendants also had multiple
6 duties under Nevada statutes and regulations. Opioids are Schedule II controlled substances.
7 NAC § 453.520. As such, opioids are defined as substances that pose a high potential for abuse
8 that may lead to severe psychological or physical dependence. NRS § 453.176.

9 503. Under Nevada law, each of the Defendants was required to be registered through
10 the Nevada Board of Pharmacy. NAC § 453.110; NRS § 639.070.

11 504. The Nevada Board of Pharmacy governs the licensing of wholesale drug
12 distributors in this state. NRS § 639.070. *See also* NRS §§ 639.009; 639.0085; 639.012;
13 639.0155; 639.016; 639.233 (including manufacturers, repackagers, chain drug warehouses,
14 wholesale drug warehouses, and retail pharmacies within the scope of the Nevada wholesale
15 distributing regulations). Wholesalers and wholesale distributors are subject to additional
16 licensing requirements. NRS §§ 639.500 – 639.515.

17 505. As registrants, each of the Defendants was required to maintain effective
18 controls and procedures to guard against theft and diversion (*see* NAC §§ 453.400, 435.410;
19 NRS §§ 639.500 – 639.515, 639.585) and to operate in compliance with all applicable federal,
20 state and local laws and regulations. *See* NRS § 639.510. Defendants violated their obligations
21 and breached their duties under Nevada law.

22 506. Specifically, under Nevada law, it is “[u]nlawful to manufacture, engage in
23 wholesale distribution, compound, sell or dispense or permit to be manufactured, distributed at
24 wholesale, compounded, sold or dispensed, any drug, poison, medicine or chemical,” without
25 first complying with the regulations adopted by the Nevada Board of Pharmacy. NRS § 639.100.

26 507. Under Nevada law, each of the Defendants was required to provide effective
27 controls and procedures to guard against the theft and diversion of opioid drugs. *See* NAC §
28

1 453.400 (“[a]ll applicants and registrants shall establish and maintain effective controls and
2 procedures to prevent or guard against theft and misuse of controlled substances”).

3 508. In addition, the Nevada Board of Pharmacy has the power to regulate the
4 “means of recordkeeping and storage, handling, sanitation and security of drugs” including
5 those drugs “stored for the purpose of wholesale distribution.” NRS § 639.070.

6 509. The Nevada Controlled Substances Act and Administrative Code incorporate by
7 reference relevant federal laws and regulations. *See, e.g.*, NAC §§ 453.100; 453.120; 453.220;
8 453.410. In fact, wholesalers are defined by 21 CFR § 205.3(g) as an entity that “supplies or
9 distributes drugs, medicines or chemicals or devices or appliances that are restricted by federal
10 law.” NRS § 639.016. Additionally, it is grounds for suspension or revocation of a license or
11 registration to violate “any provision of the Federal Food, Drug and Cosmetic Act or any other
12 federal law or regulation relating to prescription drugs.” NRS § 639.210(11).

13 510. Under Nevada law, it is unlawful for a person who is licensed to engage in
14 wholesale distribution to fail to “deliver to another person a complete and accurate statement
15 of prior sales for a prescription drug, if such a statement is required, before selling or otherwise
16 transferring the drug to that person.” NRS § 639.550(1). Additionally, it is unlawful for a
17 wholesaler to fail to “acquire a complete and accurate statement of prior sales for a prescription
18 drug, if such a statement is required, before obtaining the drug from another person.” NRS §
19 639.550(2). Furthermore, Nevada law requires wholesalers, manufacturers, and their
20 employees to adopt and abide by a marketing code of conduct, enforce policies regarding
21 investigation into compliance and corrective actions, and submit and report certain information
22 to the Board. NRS § 639.570.

23 511. Both Manufacturer Defendants and Distributor Defendants have violated their
24 duties under the Nevada Controlled Substances Act and the Nevada Administrative Code. *See,*
25 *e.g.*, NRS §§ 639.100, 639.210, 639.550, 639.570; NAC §§ 453.110, 453.400, 435.410.

26 512. Defendants violated their duties as licensed wholesale distributors by selling
27 huge quantities of opioids that were diverted from their lawful, medical purpose, thus causing
28

1 an opioid and heroin addiction and overdose epidemic in this State.

2 513. A reasonable manufacturer or distributor of a Schedule II substance would be
3 on notice of suspicious orders such as orders of an unusual size, orders deviating substantially
4 from a normal pattern, and orders of unusual frequency. These criteria are disjunctive and are
5 not all-inclusive. For example, if an order deviates substantially from a normal pattern, the size
6 of the order does not matter, and the order should be reported as suspicious. Likewise, a
7 wholesale distributor need not wait for a normal pattern to develop over time before
8 determining whether a particular order is suspicious. The size of an order alone, whether or not
9 it deviates from a normal pattern, is enough to trigger the wholesale distributor's responsibility
10 to report the order as suspicious. The determination of whether an order is suspicious depends
11 not only on the ordering patterns of the particular customer but also on the patterns of the
12 wholesale distributor's customer base and the patterns throughout the relevant segment of the
13 wholesale distributor industry.

14 514. To be clear, the Manufacturer Defendants were required to comply with the
15 same licensing and permitting requirements as the Distributor Defendants. *See* NRS § 639.233
16 (requiring manufacturers and distributors to register with the Nevada Board of Pharmacy);
17 NRS § 639.570 (requiring manufacturers and distributors to adopt a marketing code of conduct
18 and requiring annual audits to monitor compliance); NRS § 639.288 (requiring manufacturers
19 and distributors to comply with state laws in handling, selling, possessing, or dealing such
20 drugs).

21 515. The same legal duties to prevent diversion and to monitor, report, and prevent
22 suspicious orders of prescription opioids that were incumbent upon the Distributor Defendants
23 were also legally required of the Manufacturer Defendants under Nevada law. *See, e.g.*, NAC
24 § 453.400; NRS §§ 639.233, 639.570. Like the Distributor Defendants, the Manufacturer
25 Defendants also breached these duties.

26 516. The Manufacturer Defendants had access to and possession of the information
27 necessary to monitor, report, and prevent suspicious orders and to prevent diversion. The
28

1 Manufacturer Defendants engaged in the practice of paying “chargebacks” to opioid
2 distributors. A chargeback is a payment made by a manufacturer to a distributor after the
3 distributor sells the manufacturer’s product at a price below a specified rate. After a distributor
4 sells a manufacturer’s product to a pharmacy, for example, the distributor requests a chargeback
5 from the manufacturer and, in exchange for the payment, the distributor identifies to the
6 manufacturer the product, volume and the pharmacy to which it sold the product. Thus, the
7 Manufacturer Defendants knew – just as the Distributor Defendants knew – the volume,
8 frequency, and pattern of opioid orders being placed and filled. The Manufacturer Defendants
9 built receipt of this information into the payment structure for the opioids provided to the opioid
10 distributors.

11 517. In sum, all Defendants have many responsibilities under Nevada law related to
12 controlling the supply chain of opioids. They must set up a system to prevent diversion,
13 including identifying excessive volume and other suspicious orders by reviewing their own
14 data, relying on their observations of prescribers and pharmacies, and following up on reports
15 or concerns of potential diversion. All suspicious orders or noncompliance with a marketing
16 code of conduct must be reported to relevant enforcement authorities.

17 518. State statutes and regulations reflect a standard of conduct and care below which
18 reasonably prudent manufacturers and distributors would not fall. Together, these laws and
19 industry guidelines make clear that Distributor and Manufacturer Defendants alike possess and
20 are expected to possess specialized and sophisticated knowledge, skill, information, and
21 understanding of both the market for scheduled prescription narcotics and of the risks and
22 dangers of the diversion of prescription narcotics when the supply chain is not properly
23 controlled.

24 519. Further, these laws and industry guidelines make clear that the Distributor
25 Defendants and Manufacturer Defendants alike have a duty and responsibility to exercise their
26 specialized and sophisticated knowledge, information, skill, and understanding to prevent the
27 oversupply of prescription opioids and minimize the risk of their diversion into an illicit market.
28

1 520. Since their inception, Distributor Defendants have continued to integrate
2 vertically by acquiring businesses that are related to the distribution of pharmaceutical products
3 and health care supplies. In addition to the actual distribution of pharmaceuticals, as
4 wholesalers, Distributor Defendants also offer their pharmacy, or dispensing, customers a broad
5 range of added services. For example, Distributor Defendants offer their pharmacies
6 sophisticated ordering systems and access to an inventory management system and distribution
7 facility that allows customers to reduce inventory carrying costs. Distributor Defendants are also
8 able to use the combined purchase volume of their customers to negotiate the cost of goods with
9 manufacturers and offer services that include software assistance and other database
10 management support. *See Fed. Trade Comm'n v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 41
11 (D.D.C. 1998) (granting the FTC's motion for preliminary injunction and holding that the
12 potential benefits to customers did not outweigh the potential anti-competitive effect of a
13 proposed merger between Cardinal Health, Inc. and Bergen Brunswig Corp.). As a result of
14 their acquisition of a diverse assortment of related businesses within the pharmaceutical
15 industry, as well as the assortment of additional services they offer, Distributor Defendants
16 have a unique insight into the ordering patterns and activities of their dispensing customers.

17 521. Manufacturer Defendants also have specialized and detailed knowledge of the
18 potential suspicious prescribing and dispensing of opioids through their regular visits to
19 doctors' offices and pharmacies, and from their purchase of data from commercial sources,
20 such as IMS Health (now IQVIA). Their extensive boots-on-the-ground sales forces allow
21 Manufacturer Defendants to observe the signs of suspicious prescribing and dispensing
22 discussed elsewhere in the Complaint—lines of seemingly healthy patients, out-of-state license
23 plates, and cash transactions, to name only a few. In addition, Manufacturer Defendants
24 regularly mined data, including, upon information and belief, chargeback data, that allowed
25 them to monitor the volume and type of prescribing of doctors, including sudden increases in
26 prescribing and unusually high dose prescribing that would have alerted them, independent of
27 their sales representatives, to suspicious prescribing. These information points gave
28

1 Manufacturer Defendants all the insight into prescribing and dispensing conduct they would
2 have needed to prevent diversion and fulfill their obligations under Nevada and related laws.

3 522. Defendants have a duty to, and are expected to, be vigilant in deciding whether
4 a prospective customer can be trusted to deliver controlled substances only for lawful purposes.

5 523. Each of the Defendants sold prescription opioids, including hydrocodone and/or
6 oxycodone, to retailers in Nevada.

7 524. Thus, each Defendant owes a duty under Nevada law to monitor and detect
8 suspicious orders of prescription opioids.

9 525. Each Defendant owes a duty under Nevada law to investigate and refuse
10 suspicious orders of prescription opioids.

11 526. Each Defendant owes a duty under Nevada law to report suspicious orders of
12 prescription opioids, including suspicious orders originating outside Nevada that would likely
13 result in distribution of Defendants' opioids into Nevada .

14 527. Each Defendant owes a duty under Nevada law to prevent the diversion of
15 prescription opioids into illicit markets in Nevada.

16 528. The foreseeable harm resulting from a breach of these duties is the diversion of
17 prescription opioids for nonmedical purposes.

18 529. The foreseeable harm resulting from the diversion of prescription opioids for
19 nonmedical purposes is abuse, addiction, morbidity and mortality in Nevada and the damages
20 caused thereby.

21 530. Defendants breached these duties by failing to: (a) control the supply chain;
22 (b) maintain effective controls, procedures and security to prevent diversion; (c) report
23 suspicious orders; and (d) halt shipments of opioids in quantities they knew or should have
24 known could not be justified and were indicative of serious overuse of opioids.

25 **2. Defendants Were Aware of and Have Acknowledged Their Obligations to**
26 **Prevent Diversion and to Report and Take Steps to Halt Suspicious Orders.**

27 531. The reason for the reporting rules is to create a "closed" system intended to
28

1 control the supply and reduce the diversion of these drugs out of legitimate channels into the
 2 illicit market, while at the same time providing the legitimate drug industry with a unified
 3 approach to narcotic and dangerous drug control. Both because distributors handle large
 4 volumes of controlled substances, and because they are uniquely positioned based on their
 5 knowledge of their customers and orders, distributors are supposed to act as the first line of
 6 defense in the movement of legal pharmaceutical controlled substances from legitimate
 7 channels into the illicit market. Because of this role, distributors' obligation to maintain
 8 effective controls to prevent diversion of controlled substances is critical. Should a distributor
 9 deviate from these checks and balances, the closed system of distribution, designed to prevent
 10 diversion, collapses as it did here.

11 532. Defendants were well aware they had an important role to play in this system,
 12 and also knew or should have known that their failure to comply with their obligations would
 13 have serious consequences.

14 533. Recently, Mallinckrodt, a prescription opioid manufacturer, admitted in a
 15 settlement with DEA that "[a]s a registrant under the CSA, Mallinckrodt had a responsibility
 16 to maintain effective controls against diversion, including a requirement that it review and
 17 monitor these sales and report suspicious orders to DEA." Mallinckrodt further stated that it
 18 "recognizes the importance of the prevention of diversion of the controlled substances they
 19 manufacture" and agreed that it would "design and operate a system that meets the
 20 requirements of 21 CFR 1301.74(b) . . . [such that it would] utilize all available transaction
 21 information to identify suspicious orders of any Mallinckrodt product." Mallinckrodt
 22 specifically agreed "to notify DEA of any diversion and/or suspicious circumstances involving
 23 any Mallinckrodt controlled substances that Mallinckrodt discovers."¹⁶⁵

24 534. Trade organizations to which Defendants belong have acknowledged that
 25 wholesale distributors have been responsible for reporting suspicious orders for more than 40
 26

27
 28 ¹⁶⁵ Administrative Memorandum of Agreement, available at <https://www.justice.gov/usao-edmi/press-release/file/986026/download>.

1 years. The Healthcare Distribution Management Association (“HDMA,” now known as the
2 Healthcare Distribution Alliance (“HDA”)), a trade association of pharmaceutical distributors
3 to which Distributor Defendants belong, has long taken the position that distributors have
4 responsibilities to “prevent diversion of controlled prescription drugs” not only because they
5 have statutory and regulatory obligations do so, but “as responsible members of society.”
6 Guidelines established by the HDA also explain that distributors, “[a]t the center of a
7 sophisticated supply chain . . . are uniquely situated to perform due diligence in order to help
8 support the security of the controlled substances they deliver to their customers.” The guidelines
9 set forth recommended steps in the “due diligence” process, and note in particular: If an order
10 meets or exceeds a distributor’s threshold, as defined in the distributor’s monitoring system, or
11 is otherwise characterized by the distributor as an order of interest, the distributor should not
12 ship to the customer, in fulfillment of that order, any units of the specific drug code product as
13 to which the order met or exceeded a threshold or as to which the order was otherwise
14 characterized as an order of interest.¹⁶⁶

15 535. The DEA also repeatedly reminded the Defendants of their obligations to report
16 and decline to fill suspicious orders. Responding to the proliferation of pharmacies operating
17 on the internet that arranged illicit sales of enormous volumes of opioids to drug dealers and
18 customers, the DEA began a major push to remind distributors of their obligations to prevent
19 these kinds of abuses and educate them on how to meet these obligations. Since 2007, the DEA
20 has hosted at least five conferences that provided registrants with updated information about
21 diversion trends and regulatory changes. Each of the Distributor Defendants attended at least
22 one of these conferences. The DEA has also briefed wholesalers regarding legal, regulatory,
23 and due diligence responsibilities since 2006. During these briefings, the DEA pointed out the
24 red flags wholesale distributors should look for to identify potential diversion

25 536. The DEA advised in a September 27, 2006 letter to every commercial entity
26

27 ¹⁶⁶ Healthcare Distribution Management Association (HDMA) Industry Compliance Guidelines: Reporting
28 Suspicious Orders and Preventing Diversion of Controlled Substances, filed in *Cardinal Health, Inc. v. Holder*, No.
12-5061 (D.C. Cir. Mar. 7, 2012), Doc. No. 1362415 (App’x B).

1 registered to distribute controlled substances that they are “one of the key components of the
2 distribution chain. If the closed system is to function properly . . . distributors must be vigilant
3 in deciding whether a prospective customer can be trusted to deliver controlled substances only
4 for lawful purposes. This responsibility is critical, as . . . the illegal distribution of controlled
5 substances has a substantial and detrimental effect on the health and general welfare of the
6 American people.”¹⁶⁷ The DEA’s September 27, 2006 letter also expressly reminded them that
7 registrants, in addition to reporting suspicious orders, have a “statutory responsibility to
8 exercise due diligence to avoid filling suspicious orders that might be diverted into other than
9 legitimate medical, scientific, and industrial channels.”¹⁶⁸ The same letter warns that “even just
10 one distributor that uses its DEA registration to facilitate diversion can cause enormous
11 harm.”¹⁶⁹

12 537. The DEA sent another letter to Defendants on December 27, 2007, reminding
13 them that, as registered manufacturers and distributors of controlled substances, they share, and
14 must each abide by, statutory and regulatory duties to “maintain effective controls against
15 diversion” and “design and operate a system to disclose to the registrant suspicious orders
16 of controlled substances.”¹⁷⁰ The DEA’s December 27, 2007 letter reiterated the obligation to
17 detect, report, and not fill suspicious orders and provided detailed guidance on what constitutes
18 a suspicious order and how to report (e.g., by specifically identifying an order as suspicious, not
19 merely transmitting data to the DEA). Finally, the letter references the Revocation of
20 Registration issued in *Southwood Pharmaceuticals, Inc.*, 72 Fed. Reg. 36,487-01 (July 3, 2007),
21 which discusses the obligation to report suspicious orders and “some criteria to use when
22

23 ¹⁶⁷ See Letter from Joseph T. Rannazzisi, Deputy Assistant Adm’r, Office of Diversion Control, Drug. Enf’t Admin.,
24 U.S. Dep’t of Justice, to Cardinal Health (Sept. 27, 2006) [hereinafter Rannazzisi Letter] (“This letter is being sent
25 to every commercial entity in the United States registered with the Drug Enforcement Agency (DEA) to distribute
26 controlled substances. The purpose of this letter is to reiterate the responsibilities of controlled substance distributors
in view of the prescription drug abuse problem our nation currently faces.”), filed in *Cardinal Health, Inc. v. Holder*,
No. 1:12-cv-00185-RBW (D.D.C. Feb. 10, 2012), ECF No. 14-51.

26 ¹⁶⁸ *Id.* at 2.

27 ¹⁶⁹ *Id.*

28 ¹⁷⁰ See Letter from Joseph T. Rannazzisi, Deputy Assistant Adm’r, Office of Diversion Control, Drug. Enf’t Admin.,
U.S. Dep’t of Justice, to Cardinal Health (Dec. 27, 2007), filed in *Cardinal Health, Inc. v. Holder*, No. 1:12-cv-
00185-RBW (D.D.C. Feb. 10, 2012), ECF No. 14-8.

determining whether an order is suspicious.”¹⁷¹

3. Defendants Worked Together to Inflate the Quotas of Opioids They Could Distribute.

538. Finding it impossible to legally achieve their ever-increasing sales ambitions, Defendants engaged in the common purpose of increasing the supply of opioids through deceptive means, thereby falsely increasing the quotas that governed the manufacture and distribution of their prescription opioids.

539. Wholesale distributors such as the Distributor Defendants had close financial relationships with both Manufacturer Defendants and customers, for whom they provide a broad range of value-added services that render them uniquely positioned to obtain information and control against diversion. These services often otherwise would not be provided by manufacturers to their dispensing customers and would be difficult and costly for the dispenser to reproduce. For example, “[w]holesalers have sophisticated ordering systems that allow customers to electronically order and confirm their purchases, as well as to confirm the availability and prices of wholesalers’ stock.” *Fed. Trade Comm’n v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 41 (D.D.C. 1998). Through their generic source programs, wholesalers are also able “to combine the purchase volumes of customers and negotiate the cost of goods with manufacturers.” Wholesalers typically also offer marketing programs, patient services, and other software to assist their dispensing customers.

540. Distributor Defendants had financial incentives from the Manufacturer Defendants to distribute higher volumes, and thus to refrain from reporting or declining to fill suspicious orders or using any effective controls to prevent diversion. Wholesale drug distributors acquire pharmaceuticals, including opioids, from manufacturers at an established wholesale acquisition cost. Discounts and rebates from this cost may be offered by manufacturers based on market share and volume. As a result, higher volumes may decrease

¹⁷¹ *Id.*

1 the cost per pill to distributors. Decreased cost per pill in turn, allows wholesale distributors to
2 offer more competitive prices, or alternatively, pocket the difference as additional profit. Either
3 way, the increased sales volumes result in increased profits.

4 541. The Manufacturer Defendants engaged in the practice of paying rebates and/or
5 chargebacks to the Distributor Defendants for sales of prescription opioids as a way to help
6 them boost sales and better target their marketing efforts. The *Washington Post* has described
7 the practice as industry-wide, and the HDA includes a “Contracts and Chargebacks Working
8 Group,” suggesting a standard practice. Further, in a recent settlement with the DEA,
9 Mallinckrodt acknowledged that “[a]s part of their business model Mallinckrodt collects
10 transaction information, referred to as chargeback data, from their direct customers
11 (distributors).” The transaction information contains data relating to the direct customer sales
12 of controlled substances to ‘downstream’ registrants,” meaning pharmacies or other
13 dispensaries, such as hospitals. Manufacturer Defendants buy data from pharmacies as well.
14 This exchange of information, upon information and belief, would have opened channels
15 providing for the exchange of information revealing suspicious orders as well.

16 542. The contractual relationships among the Defendants also include vault security
17 programs. Defendants are required to maintain certain security protocols and storage facilities
18 for the manufacture and distribution of their opioids. The manufacturers negotiated agreements
19 whereby the Manufacturer Defendants installed security vaults for the Distributor Defendants
20 in exchange for agreements to maintain minimum sales performance thresholds. These
21 agreements were used by the Defendants as a tool to violate their reporting and diversion duties
22 in order to reach the required sales requirements.

23 543. In addition, Defendants worked together to achieve their common purpose
24 through trade or other organizations, such as the Pain Care Forum (“PCF”) and the HDA.

25 544. The PCF has been described as a coalition of drug makers, trade groups and
26 dozens of non-profit organizations supported by industry funding, including the Front Groups
27 described in this Complaint. The PCF recently became a national news story when it was
28

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.

545. The Center for Public Integrity and The Associated Press obtained “internal documents shed[ding] new light on how drug makers and their allies shaped the national response to the ongoing wave of prescription opioid abuse.”¹⁷² Specifically, PCF members spent over \$740 million lobbying in the nation’s capital and in all 50 statehouses on an array of issues, including opioid-related measures.¹⁷³

546. Rather than abide by these public safety statutes, the Distributor 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 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.¹⁷⁴

547. The Defendants who stood to profit from expanded prescription opioid use are members of and/or participants in the PCF. In 2012, membership and participating organizations included Endo, Purdue, and Actavis.¹⁷⁵ Each of the Manufacturer Defendants worked together through the PCF. But, the Manufacturer Defendants were not alone. The

¹⁷² Matthew Perrone, *Pro-Painkiller echo chamber shaped policy amid drug epidemic*, The Center for Public Integrity, <https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echochamber-shaped-policy-amid-drug-epidemic>. (Last Updated Dec. 15, 2016, 9:09 AM) (emphasis added).

¹⁷³ *Id.*

¹⁷⁴ See Lenny Bernstein & Scott Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, Wash. Post, Oct. 22, 2016, https://www.washingtonpost.com/investigations/the-dea-slowed-enforcement-while-the-opioid-epidemic-grew-out-of-control/2016/10/22/aea2bf8e-7f71-11e6-8d13-d7c704ef9fd9_story.html; see also Lenny Bernstein & Scott Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, Wash. Post, Mar. 6, 2017, https://www.washingtonpost.com/investigations/us-senator-calls-for-investigation-of-dea-enforcement-slowdown/2017/03/06/5846ee60-028b-11e7-b1e9-a05d3c21f7cf_story.html; Eric Eyre, *DEA Agent: “We Had No Leadership” in WV Amid Flood of Pain Pills*, Charleston Gazette-Mail, Feb. 18, 2017, <http://www.wvgazettemail.com/news/20170218/dea-agent-we-had-no-leadership-in-wv-amid-flood-of-pain-pills->.

¹⁷⁵ Mallinckrodt became an active member of the PCF sometime after 2012.

Distributor Defendants actively participated, and continue to participate in the PCF, at a minimum, through their trade organization, the HDA.¹⁷⁶ The Distributor Defendants participated directly in the PCF as well.

548. Additionally, the HDA led to the formation of interpersonal relationships and an organization among the Defendants. Although the entire HDA membership directory is private, the HDA website confirms that each of the Distributor Defendants and the Manufacturer Defendants, including Actavis, Endo, Purdue, and Mallinckrodt, were members of the HDA. The HDA and each of the Distributor Defendants eagerly sought the active membership and participation of the Manufacturer Defendants by advocating for the many benefits of members, including “strengthen[ing] . . . alliances.”¹⁷⁷

549. Beyond strengthening alliances, the benefits of HDA 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.”¹⁷⁸ Clearly, the HDA and the Defendants believed that membership in the HDA was an opportunity to create interpersonal and ongoing organizational relationships and “alliances” between the Manufacturer Defendants and Distributor Defendants.

550. The application for manufacturer membership in the HDA further indicates the level of connection among the Defendants and the level of insight that they had into each

¹⁷⁶ PAIN CARE FORUM 2012 Meetings Schedule, (last updated December 2011), <https://assets.documentcloud.org/documents/3108982/PAIN-CARE-FORUM-Meetings-Schedule-amp.pdf>. The Executive Committee of the HDA (formerly the HDMA) currently includes the Chief Executive Officer, Pharmaceutical Segment for Cardinal Health, Inc., the Group President, Pharmaceutical Distribution and Strategic Global Source for AmerisourceBergen Corporation, and the President, U.S. Pharmaceutical for McKesson Corporation. *Executive Committee, Healthcare Distribution Alliance*, <https://www.healthcaredistribution.org/about/executive-committee> (last accessed Apr. 25, 2018).
¹⁷⁷ *Manufacturer Membership, Healthcare Distribution Alliance*, <https://healthcaredistribution.org/about/membership/manufacturer> (last accessed Apr. 25, 2018).
¹⁷⁸ *Id.*

other's businesses.¹⁷⁹ For example, 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.

551. The HDA application also requests that the manufacturer identify its current distribution information, including the facility name and contact information. Manufacturer members were also asked to identify their "most recent year end net sales" through wholesale distributors, including the Distributor Defendants AmerisourceBergen, Anda, Inc., Cardinal Health, McKesson, and their subsidiaries.

552. The closed meetings of the HDA's councils, committees, task forces and working groups provided the Manufacturer Defendants and Distributor Defendants with the opportunity to work closely together, confidentially, to develop and further the common purpose and interests of the enterprise.

553. 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."¹⁸⁰ The conferences also gave the Manufacturer Defendants and Distributor Defendants "unmatched opportunities to network with [their] peers and trading partners at all levels of the healthcare distribution industry."¹⁸¹ The HDA and its conferences were and continue to be significant opportunities for the Manufacturer Defendants and Distributor Defendants to interact at a high-level of leadership. It is clear that the Manufacturer Defendants have embraced this opportunity by attending and sponsoring these events.¹⁸²

¹⁷⁹ *Manufacturer Membership Application*, Healthcare Distribution Alliance, <https://www.healthcaredistribution.org/~media/pdfs/membership/manufacturer-membership-application.ashx?la=en>.

¹⁸⁰ *Business and Leadership Conference – Information for Manufacturers*, Healthcare Distribution Alliance, <https://www.healthcaredistribution.org/events/2015-business-and-leadership-conference/blc-for-manufacturers>.

¹⁸¹ *Id.*

¹⁸² *2015 Distribution Management Conference and Expo*, Healthcare Distribution Alliance, <https://www.healthcaredistribution.org/events/2015-distribution-management-conference>.

554. After becoming members of HDA, Defendants were eligible to participate on councils, committees, task forces and working groups, including:

1. Industry Relations Council: "This council, composed of distributor and manufacturer members, provides leadership on pharmaceutical distribution and supply chain issues."
2. 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 distributor and manufacturer members.
3. 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 distributor and manufacturer members.
4. 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 manufacturer members.
5. 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 in this group includes manufacturer and distributor members.

555. The Distributor Defendants and Manufacturer Defendants also participated, through the HDA, in webinars and other meetings designed to exchange detailed information regarding their prescription opioid sales, including purchase orders, acknowledgements, ship

1 notices, and invoices.¹⁸³ For example, on April 27, 2011, the HDA offered a webinar to
 2 “accurately and effectively exchange business transactions between distributors and
 3 manufacturers....” The Manufacturer Defendants used this information to gather high-level
 4 data regarding overall distribution and direct the Distributor Defendants on how to most
 5 effectively sell prescription opioids.

6 556. Taken together, the interaction and length of the relationships between and
 7 among the Manufacturer Defendants and Distributor Defendants reflects a deep level of
 8 interaction and cooperation between two groups in a tightly-knit industry. The Manufacturer
 9 Defendants and Distributor Defendants were not two separate groups operating in isolation or
 10 two groups forced to work together in a closed system. Defendants operated together as a united
 11 entity, working together on multiple fronts, to engage in the unlawful sale of prescription
 12 opioids in the state of Nevada and nationwide.

13 557. The HDA and the PCF are but two examples of these overlapping relationships
 14 and concerted joint efforts to accomplish common goals and demonstrates that the leaders of
 15 each of the Defendants were in communication and cooperating with each other during the
 16 relevant time period.

17 558. Publications and guidelines issued by the HDA confirm that the Defendants
 18 utilized their membership in the HDA to form agreements. Specifically, in the fall of 2008, the
 19 HDA published the *Industry Compliance Guidelines: Reporting Suspicious Orders and*
 20 *Preventing Diversion of Controlled Substances* (the “Industry Compliance Guidelines”) *regarding diversion*. As the HDA (then the HDMA) explained in an amicus brief, the Industry
 21 Compliance Guidelines were the result of “[a] committee of HDMA members contribut[ing]
 22 to the development of this publication” beginning in late 2007.¹⁸⁴

24 559. This statement by the HDA and the Industry Compliance Guidelines themselves
 25

26 ¹⁸³ *Webinar Leveraging EDI: Order-to-Cash Transactions CD Box Set*, Healthcare Distribution Alliance, (Apr. 27,
 27 2011), <https://www.healthcaredistribution.org/resources/webinar-leveraging-edi>.

28 ¹⁸⁴ See Amicus Curiae Brief of Healthcare Distribution Management Association in Support of Appellant Cardinal
 Health, Inc., *Cardinal Health, Inc. v. United States Dept. of Justice*, No. 12- 5061 (D.C. Cir. May 9, 2012), 2012 WL
 1637016, at *5.

1 support the allegation that Defendants utilized the HDA to form agreements about their
2 approach to their duties under controlled substances laws. As John M. Gray, President/CEO of
3 the HDA stated in April 2014, it is “difficult to find the right balance between proactive anti-
4 diversion efforts while not inadvertently limiting access to appropriately prescribed and
5 dispensed medications.” Here, it is apparent that all of the Defendants, working together, found
6 the same balance – an overwhelming pattern and practice of failing to identify, report or halt
7 suspicious orders and failure to prevent diversion, all the while obscuring naked profit motives
8 with opaque concerns about drug “access.”

9 560. The Defendants’ scheme involved a decision-making structure driven by the
10 Manufacturer Defendants and corroborated by the Distributor Defendants. The Manufacturer
11 Defendants worked together to control the state and federal government’s response to the
12 manufacture and distribution of prescription opioids by increasing production quotas through
13 a systematic refusal to maintain effective controls against diversion, and to identify, report or
14 halt suspicious orders or report them to any appropriate agencies.

15 561. The Defendants worked together to control the flow of information and
16 influence state and federal governments to pass legislation that supported the use of opioids
17 and limited the authority of law enforcement to rein in illicit or inappropriate prescribing and
18 distribution. The Marketing and Distributor Defendants did this through their participation in
19 the PCF and HDA.

20 562. The Defendants also worked together to ensure that the Aggregate Production
21 Quotas, Individual Quotas, and Procurement Quotas allowed by the DEA remained artificially
22 high and ensured that suspicious orders were not reported to the DEA in order to ensure that
23 the DEA had no basis for refusing to increase or decrease the production quotas for prescription
24 opioids due to diversion of suspicious orders.

25 563. The Defendants also had reciprocal obligations to report suspicious orders of
26 other parties if they became aware of them. Defendants were thus collectively responsible for
27 each other’s compliance with their reporting obligations.
28

1 564. Defendants thus knew that their own conduct could be reported by other
2 distributors or manufacturers and that their failure to report suspicious orders they filled could
3 be brought to the DEA's attention. As a result, Defendants had an incentive to communicate
4 with each other about the reporting of suspicious orders to ensure the continued appearance of
5 consistency in their dealings with DEA.

6 565. The desired appearance of consistency was achieved. As described below, none
7 of the Defendants reported suspicious orders as required by law, and the flow of opioids
8 continued unimpeded.

9 **4. Defendants Kept Careful Track of Prescribing Data and Knew About Diversion**
10 **and Suspicious Orders and Prescribers.**

11
12 566. The data that reveals and/or confirms the identity of each wrongful opioid
13 distributor is hidden from public view in the DEA's confidential ARCOS database. The data
14 necessary to identify with specificity the transactions that were suspicious is in possession of
15 the Distributor and Marketing Defendants but has not been disclosed to the public.

16 567. Publicly available information confirms that the Manufacturer Defendants and
17 Distributor Defendants funneled far more opioids into communities across the United States
18 than could have been expected to serve legitimate medical use and ignored other red flags of
19 suspicious orders. This information, along with the information known only to the
20 Manufacturer Defendants and Distributor Defendants, would have alerted them to likely signs
21 of diversion and potentially suspicious orders of opioids.

22 568. This information includes the following facts:

- 23 1. Distributors and manufacturers have access to detailed transaction-level
24 data on the sale and distribution of opioids, which can be broken down
25 by zip code, prescriber, and pharmacy and includes the volume of
26 opioids, dose, and the distribution of other controlled and non-controlled
substances;
- 27 2. Manufacturers make use of that data to target their marketing and, for
28 that purpose, regularly monitor the activity of doctors and pharmacies;

3. Manufacturers and distributors regularly visit pharmacies and doctors to promote and provide their products and services, which allows them to observe red flags of diversion, as described elsewhere in this Complaint;
4. Distributor Defendants together account for approximately 90% of all revenues from prescription drug distribution in the United States, and each plays such a large part in the distribution of opioids that its own volume provides a ready vehicle for measuring the overall flow of opioids into a pharmacy or geographic area; and
5. Manufacturer Defendants purchased chargeback data (in return for discounts to Distributor Defendants) that allowed them to monitor the combined flow of opioids into a pharmacy or geographic area.

569. The conclusion that Defendants were on notice of the problems of abuse and diversion follows inescapably from the fact that they flooded communities with opioids in quantities that they knew or should have known exceeded any legitimate market for opioids – even the artificially wider market for chronic pain.

570. At all relevant times, the Defendants were in possession of national, regional, state, and local prescriber-and patient-level data that allowed them to track prescribing patterns over time. They obtained this information from data companies, including but not limited to: IMS Health, QuintilesIMS, IQVIA, Pharmaceutical Data Services, Source Healthcare Analytics, NDS Health Information Services, Verispan, Quintiles, SDI Health, ArcLight, Scriptline, Wolters Kluwer, and/or PRA Health Science, and all of their predecessors or successors in interest (the “Data Vendors”).

571. 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 Defendants identify suspicious orders or customers who were likely to divert prescription opioids.¹⁸⁵ The “know your customer” questionnaires informed the

¹⁸⁵ *Suggested Questions a Distributor Should Ask Prior to Shipping Controlled Substances*, Drug Enforcement Admin. Div., 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 McGuireWoods LLC (Oct. 2010), <https://www.mcguirewoods.com/news->

Defendants of the number of pills that the pharmacies sold, how many non-controlled substances were 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.

572. Defendants purchased nationwide, regional, state, and local prescriber- and patient- level data from the Data Vendors that allowed them to track prescribing trends, identify suspicious orders, identify patients who were doctor shopping, identify pill mills, etc. The Data Vendors' information purchased by the Defendants allowed them to view, analyze, compute, and track their competitors' sales, and to compare and analyze market share information.¹⁸⁶

573. IMS Health, for example, provided Defendants with reports detailing prescriber behavior and the number of prescriptions written between competing products.¹⁸⁷

574. Similarly, Wolters Kluwer, an entity that eventually owned data mining companies that were created by McKesson (Source) and Cardinal Health (ArcLight), provided the Defendants with charts analyzing the weekly prescribing patterns of multiple physicians, organized by territory, regarding competing drugs, and analyzed the market share of those drugs.¹⁸⁸

575. This information allowed the Defendants to track and identify instances of overprescribing. In fact, one of the Data Vendors' experts testified that the Data Vendors' information could be used to track, identify, report and halt suspicious orders of controlled substances.¹⁸⁹

resources/publications/lifesciences/product_diversion_beyond_pdma.pdf.

¹⁸⁶ A Verispan representative testified that the Supply Chain Defendants use the prescribing information to "drive market share." *Sorrell v. IMS Health Inc.*, No. 10-779, 2011 WL 661712, *9-10 (Feb. 22, 2011).

¹⁸⁷ Paul Kallukaran & Jerry Kagan, *Data Mining at IMS HEALTH: How We Turned a Mountain of Data into a Few Information-Rich Molehills*, (accessed on February 15, 2018), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.198.349&rep=rep1&type=pdf>, Figure 2 at p.3.

¹⁸⁸ Joint Appendix in *Sorrell v. IMS Health Inc.*, No. 10-779, 2011 WL 705207, *467-471 (Feb. 22, 2011).

¹⁸⁹ In *Sorrell*, expert Eugene "Mick" Kolassa testified, on behalf of the Data Vendor, that "a firm that sells narcotic analgesics was able to use prescriber-identifiable information to identify physicians that seemed to be prescribing an inordinately high number of prescriptions for their product." *Id.*; see also Joint Appendix in *Sorrell v. IMS Health*,

1 576. Defendants were, therefore, collectively aware of the suspicious orders that
2 flowed daily from their manufacturing and distribution facilities because Defendants have made
3 it part of their collective business to know where those orders went and to whom.

4 577. Defendants refused to maintain effective controls to prevent diversion, and
5 refused to identify, investigate and report suspicious orders to the DEA or the Nevada Board
6 of Pharmacy when they became aware of the same, despite their actual knowledge of drug
7 diversion rings. For instance, as described in detail below, Defendants refused to identify
8 suspicious orders and diverted drugs despite the DEA issuing final decisions against the
9 Distributor Defendants in 178 registrant actions between 2008 and 2012¹⁹⁰ and 117
10 recommended decisions in registrant actions from The Office of Administrative Law Judges.
11 These numbers include seventy-six (76) actions involving orders to show cause and forty-one
12 (41) actions involving immediate suspension orders, all for failure to report suspicious
13 orders.¹⁹¹

14 578. In fact, Manufacturer and Distributor Defendants internalized illegal diversion
15 as an expected and foreseeable result of their business and incorporated those expectations into
16 their business planning.

17 579. Sales representatives were also aware that the prescription opioids they were
18 promoting were being diverted, often with lethal consequences. As a sales representative wrote
19 on a public forum:

20 Actions have consequences – so some patient gets Rx'd the
21 80mg OxyContin when they probably could have done okay on
22 the 20mg (but their doctor got “sold” on the 80mg) and their teen
23 son/daughter/child’s teen friend finds the pill bottle and takes out
24 a few 80’s... next they’re at a pill party with other teens and some
25 kid picks out a green pill from the bowl... they go to sleep and
26 don’t wake up (because they don’t understand respiratory
27 depression) Stupid decision for a teen to make...yes... but do they
28 really deserve to die?

No. 10-779, 2011 WL 687134, at *204 (Feb. 22, 2011).

¹⁹⁰ 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>.

¹⁹¹ *Id.*

1
2 580. Moreover, Defendants' sales incentives rewarded sales representatives who
3 happened to have pill mills within their territories, enticing those representatives to look the
4 other way even when their in-person visits to such clinics should have raised numerous red
5 flags. In one example, Dr. Rand, operated a pill mill in Reno, Nevada, an activity for which he
6 has been indicted, charged, and sentenced. Additionally, as discussed, *supra*, Dr. Steven
7 Holper in Clark County, Nevada, has been indicted on charges related to the excessive Subsys
8 prescriptions he has written to patients.

9 581. In another example, a Purdue sales manager informed her supervisors in 2009
10 about a suspected pill mill in Los Angeles, reporting over email that when she visited the clinic
11 with her sales representative, "it was packed with a line out the door, with people who looked
12 like gang members," and that she felt "very certain that this is an organized drug ring[.]"¹⁹² She
13 wrote, "This is clearly diversion. Shouldn't the DEA be contacted about this?" But her
14 supervisor at Purdue responded that while they were "considering all angles," it was "really up
15 to [the wholesaler] to make the report."¹⁹³ This pill mill was the source of 1.1 million pills
16 trafficked to Everett, Washington, a city of around 100,000 people. Purdue waited until after
17 the clinic was shut down in 2010 to inform the authorities. This was a pattern and practice in
18 the medical community of which Purdue was familiar and about which it did nothing.

19 582. As to Actavis, a Kadian prescriber guide discusses abuse potential of Kadian. It
20 is full of disclaimers that Actavis has not done any studies on the topic and that the guide is
21 "only intended to assist you in forming your own conclusion." However, the guide includes the
22 following statements: 1) "unique pharmaceutical formulation of KADIAN may offer some
23 protection from extraction of morphine sulfate for intravenous use by illicit users," and 2)
24 "KADIAN may be less likely to be abused by health care providers and illicit users" because
25 of "Slow onset of action," "Lower peak plasma morphine levels than equivalent doses of other
26

27 ¹⁹² Harriet Ryan et al., *More Than 1 million OxyContin Pills Ended Up in the Hands of Criminals and Addicts. What*
28 *the Drugmaker Knew*, LOS ANGELES TIMES (July 10, 2016), <http://www.latimes.com/projects/la-me-oxycotin-part2//>.

¹⁹³ *Id.*

1 formulations of morphine,” “Long duration of action,” and “Minimal fluctuations in peak to
2 trough plasma levels of morphine at steady state.” The guide is copyrighted by Actavis in 2007,
3 before Actavis officially purchased Kadian from Alpharma.

4 583. Defendants’ obligations to maintain effective controls against diversion and to
5 report suspicious prescribing ran head on into their marketing strategy. Defendants did identify
6 doctors who were their most prolific prescribers, not to report them, but to market to them. It
7 would make little sense to focus on marketing to doctors who may be engaged in improper
8 prescribing only to report them to law enforcement, nor to report those doctors who drove
9 Defendants’ sales.

10 584. Defendants purchased data from IMS Health (now IQVIA) or other proprietary
11 sources to identify doctors to target for marketing and to monitor their own and competitors’
12 sales. Marketing visits were focused on increasing, sustaining, or converting the prescriptions
13 of the biggest prescribers, particularly through aggressive, high frequency detailing visits.

14 585. For example, at a national sales meeting presentation in 2011, Actavis pressed
15 its sales representatives to focus on its high prescribers: “To meet and exceed our quota, we
16 must continue to get Kadian scripts from our loyalists. MCOs will continue to manage the pain
17 products more closely. We MUST have new patient starts or we will fall back into ‘the big
18 leak’. We need to fill the bucket faster than it leaks.” “The selling message should reflect the
19 opportunity and prescribing preferences of each account. High Kadian Writers / Protect and
20 Grow / Grow = New Patient Starts and Conversions.” In an example of how new patients plus
21 a high-volume physician can impact performance: “102% of quota was achieved by just one
22 high volume physician initiating Kadian on 2-3 new patients per week.”

23 586. This focus on marketing to the highest prescribers had two impacts. First, it
24 demonstrates that manufacturers were keenly aware of the doctors who were writing large
25 quantities of opioids. But instead of investigating or reporting those doctors, Defendants were
26 singularly focused on maintaining, capturing, or increasing their sales.

27 587. Whenever examples of opioid diversion and abuse have drawn media attention,
28

Purdue and other Manufacturer Defendants have consistently blamed “bad actors.” For example, in 2001, during a Congressional hearing, Purdue’s attorney Howard Udell answered pointed questions about how it was that Purdue could utilize IMS Health data to assess their marketing efforts but not notice a particularly egregious pill mill in Pennsylvania run by a doctor named Richard Paolino. Udell asserted that Purdue was “fooled” by the doctor: “The picture that is painted in the newspaper [of Dr. Paolino] is of a horrible, bad actor, someone who preyed upon this community, who caused untold suffering. And he fooled us all. He fooled law enforcement. He fooled the DEA. He fooled local law enforcement. He fooled us.”¹⁹⁴

588. But given the closeness with which Defendants monitored prescribing patterns through IMS Health data, it is highly improbable that they were “fooled.” In fact, a local pharmacist had noticed the volume of prescriptions coming from Paolino’s clinic and alerted authorities. Purdue had the prescribing data from the clinic and alerted no one. Indeed, a Purdue executive referred to Purdue’s tracking system and database as a “gold mine” and acknowledged that Purdue could identify highly suspicious volumes of prescriptions.¹⁹⁵

589. As discussed below, Endo knew that Opana ER was being widely abused. Yet, as the New York Attorney General investigation into Endo revealed, Endo sales representatives were not aware that they had a duty to report suspicious activity and were not trained on the company’s policies or duties to report suspicious activity. Worse, Endo paid bonuses to sales representatives for detailing prescribers who were subsequently arrested for illegal prescribing.

590. Sales representatives making in-person visits to such clinics were likewise not fooled. But as pill mills were lucrative for the manufacturers and individual sales representatives alike, Manufacturer Defendants and their employees turned a collective blind eye, allowing certain clinics to dispense staggering quantities of potent opioids and feigning surprise when the most egregious examples eventually made the nightly news.

¹⁹⁴ Meier, *supra*, at 179.

¹⁹⁵ Harriet Ryan et al., *More Than 1 million OxyContin Pills Ended Up in the Hands of Criminals and Addicts*, *supra*.

1 **5. Defendants Failed to Report Suspicious Orders or Otherwise Act to Prevent**
2 **Diversion.**

3 591. As discussed above, Defendants failed to report suspicious orders, prevent
4 diversion, or otherwise control the supply of opioids flowing into communities in Nevada and
5 across America. Despite the notice described above, and in disregard of their duties,
6 Defendants continued to pump massive quantities of opioids despite their obligations to control
7 the supply, prevent diversion, report, and take steps to halt suspicious orders.

8 592. Governmental agencies and regulators have confirmed (and in some cases,
9 Defendants have admitted) that Defendants did not meet their obligations and engaged in
10 especially blatant wrongdoing.

11 593. For example, on January 5, 2017, McKesson entered into an Administrative
12 Memorandum Agreement with the DEA wherein it agreed to pay a \$150 million civil penalty
13 for, inter alia, failure to identify and report suspicious orders at its facilities in Aurora, CO;
14 Aurora, IL; Delran, NJ; LaCrosse, WI; Lakeland FL; Landover, MD; La Vista, NE; Livonia,
15 MI; Methuen, MA; Santa Fe Springs, CA; Washington Courthouse, OH; and West Sacramento,
16 CA. McKesson admitted that, at various times during the period from January 1, 2009 through
17 the effective date of the Agreement (January 17, 2017) it “did not identify or report to [the]
18 DEA certain orders placed by certain pharmacies which should have been detected by
19 McKesson as suspicious based on the guidance contained in the DEA Letters.”

20 594. McKesson further admitted that, during this time period, it “failed to maintain
21 effective controls against diversion of particular controlled substances into other than legitimate
22 medical, scientific and industrial channels by sales to certain of its customers in violation of
23 the
24 CSA and the CSA’s implementing regulations, 21 CFR Part 1300 et seq., at the McKesson
25 Distribution Centers.” Due to these violations, McKesson agreed to a partial suspension of its
26 authority to distribute controlled substances from certain of its facilities some of which,
27 investigators found “were supplying pharmacies that sold to criminal drug rings.”
28

1 595. Additionally, Defendant CVS Pharmacy, Inc. owned and/or operated, more than
2 9,800 pharmacies in the United States. Collectively CVS pharmacies made Defendant CVS
3 Pharmacy, Inc. one of the largest customers of McKesson.

4 596. Using the economic leverage resulting from being one of its largest customers,
5 Defendant CVS Pharmacy, Inc. negligently and/or purposefully limited the ability of
6 McKesson to fulfill its regulatory and statutory responsibilities to prevent diversion and
7 monitor suspicious orders of controlled substances placed by CVS pharmacies.

8 597. Beginning in 2008, with the implementation of the McKesson Controlled
9 Substance Monitoring Program (CSMP), CVS represented to McKesson as follows:

- 10 • That it had a controlled substance monitoring program;
- 11 • That it possessed a dedicated Regulatory Control/Compliance resource that
- 12 was responsible for monitoring pharmacy purchases of controlled substances;
- 13 • That its pharmacy management regularly reviews pharmacy purchases of
- 14 controlled substances;
- 15 • That it possessed the process and tools used to monitor controlled substance
- 16 purchases made by individual pharmacies.

17 598. Specifically, CVS represented the existence of a more comprehensive “Viper”
18 regulatory program that it claimed the “DEA is very well aware of.” The Viper program was
19 further represented to be a monitoring program. Don Walker, Senior Vice President of
20 Distribution at McKesson, felt comfortable allowing opioid threshold increases by McKesson,
21 without CVS explanation, because of McKesson’s understanding that “CVS is also co-
22 managing on their side with Viper and their regulatory team.”

23 599. As a result of the misrepresentations made by CVS with respect to the existence
24 of a controlled substance monitoring program, McKesson gave its “proxy” to CVS
25 headquarters to perform due diligence investigations of potentially suspicious orders and
26 individual CVS pharmacies that were ordering excessive amounts of prescription opioids.
27 McKesson inquiries concerning suspicious orders and activities of individual CVS pharmacies
28 were made to Defendant CVS Pharmacy, Inc. and not to individual CVS pharmacies.

1 McKesson negligently relied upon the due diligence efforts and findings of CVS in its decisions
2 to ship opioids to CVS pharmacies. Additionally, prescription opioid thresholds for CVS
3 pharmacies were increased by McKesson without input or explanation from CVS, again relying
4 upon CVS representations of internal regulatory controls. McKesson stated in 2012 that “the
5 assumption is made that they have done their due diligence.”

6 600. Contrary to the representations of CVS, Viper was not a monitoring program.
7 CVS’s 30(b)(6) witness Mark Vernazza admitted at deposition that Viper “was not deemed an
8 SOM report.” Viper was no more than a theft report that provided no ability to evaluate specific
9 orders of controlled substances placed by CVS pharmacies to McKesson. In reality, CVS had
10 no policies, procedures or programs to monitor prescription opioid orders placed by its
11 pharmacies to McKesson or any other outside vendor until 2014.

12 601. When McKesson sought to fulfill its responsibilities, efforts to monitor CVS
13 pharmacies were resisted by CVS as early as 2008. In 2008 and 2010 CVS refused to provide
14 McKesson sales or dispensing information for individual stores in order to establish accurate
15 opioid thresholds. In March of 2012, Don Walker, the Senior Vice President of Distribution at
16 McKesson and Tom McDonald, Director of Regulatory Affairs, met with CVS. At that
17 meeting, CVS was requested to provide information with regard to “cash sales ratio per store.”
18 Don Walker of McKesson acknowledged that this was “important information” to have to
19 identify diversion. CVS refused to provide this information. Mr. Walker described this as a
20 “business decision” on the part of CVS.

21 602. At the same meeting described above, McKesson requested that CVS provide it
22 with “mechanisms for the review of prescribing doctors”. Mr. Walker testified that this
23 information was requested in an attempt to “improve our abilities to monitor all of our retail
24 national account pharmacies”. McKesson did not have such information relating to CVS at
25 this point in time. According to Mr. Walker, the DEA, as early as 2006, had identified
26 prescribing doctors as a focus of monitoring. CVS again refused to provide this information.

27 603. At the March 2012 meeting described above, McKesson additionally requested
28

1 that CVS provide them with “the ratio of prescriptions per doctor.” Prior to 2012, McKesson
2 had not been provided such information. CVS again refused to provide such information.

3 604. At the March 2012 meeting described above, McKesson requested that CVS
4 provide them with a “rate of growth of each store, year over year.” McKesson had no such
5 information prior to this meeting and CVS refused to provide it at that time. Again, CVS
6 indicated that such information was “proprietary.”

7 605. As a result of its misrepresentations, affirmative acceptance, and refusals outlined
8 above, although CVS knew the importance of the data and responsibility for the monitoring of
9 prescription opioid orders distributed from McKesson to CVS Pharmacies throughout the
10 United States including Nevada and Plaintiff’s communities specifically, CVS failed to make
11 reasonable efforts to maintain effective controls against diversion of controlled substances and
12 to monitor suspicious orders of controlled substances placed by CVS pharmacies to McKesson.

13 606. Similarly, in 2017, the Department of Justice fined Mallinckrodt \$35 million for
14 failure to report suspicious orders of controlled substances, including opioids, and for violating
15 recordkeeping requirements. The government alleged that “Mallinckrodt failed to design and
16 implement an effective system to detect and report ‘suspicious orders’ for controlled
17 substances—orders that are unusual in their frequency, size, or other patterns . . . [and]
18 Mallinckrodt supplied distributors, and the distributors then supplied various U.S. pharmacies
19 and pain clinics, an increasingly excessive quantity of oxycodone pills without notifying DEA
20 of these suspicious orders.”

21 607. On December 23, 2016, Cardinal Health agreed to pay the United States \$44
22 million to resolve allegations that it violated the Controlled Substances Act in Maryland,
23 Florida and New York by failing to report suspicious orders of controlled substances, including
24 oxycodone, to the DEA. In the settlement agreement, Cardinal Health admitted, accepted, and
25 acknowledged that it had violated the CSA between January 1, 2009 and May 14, 2012 by
26 failing to:

- 27 a. “timely identify suspicious orders of controlled substances and
28 inform the DEA of those orders, as required by 21 CFR
§1301.74(b)”;

- b. “maintain effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels, as required by 21 CFR §1301.74, including the failure to make records and reports required by the CSA or DEA’s regulations for which a penalty may be imposed under 21 USC §842(a)(5)”; and
- c. “execute, fill, cancel, correct, file with the DEA, and otherwise handle DEA ‘Form 222’ order forms and their electronic equivalent for Schedule II controlled substances, as required by 21 USC §828 and 21 CFR Part 1305.”

608. In 2012, the State of West Virginia sued AmerisourceBergen and Cardinal Health, as well as several smaller wholesalers, for numerous causes of action, including violations of the CSA, consumer credit and protection, and antitrust laws as well as for the creation of a public nuisance. Unsealed court records from that case demonstrate that AmerisourceBergen, along with McKesson and Cardinal Health, together shipped 423 million pain pills to West Virginia between 2007 and 2012. AmerisourceBergen itself shipped 80.3 million hydrocodone pills and 38.4 million oxycodone pills during that time period. These quantities alone are sufficient to show that the Defendants failed to control the supply chain or to report and take steps to halt suspicious orders. In 2016, AmerisourceBergen agreed to settle the West Virginia lawsuit for \$16 million to the state; Cardinal Health settled for \$20 million.

609. Upon information and belief, AmeriSourceBergen, Cardinal Health, and McKesson, are three (3) of the largest distributors in the State of Nevada, resulting in excessive shipments of opioids into Nevada’s communities.

610. Thus, it is the various governmental agencies who have alleged or found—and the Defendants themselves who have admitted—that the Defendants, acting in disregard of their duties, pumped massive quantities of opioids into communities around the country despite their obligations to control the supply, prevent diversions, and report and take steps to halt suspicious orders.

611. The sheer volume of prescription opioids distributed to pharmacies in the State

of Nevada is excessive for the medical need of the community and facially suspicious.¹⁹⁶ Some red flags are so obvious that no one who engages in the legitimate distribution of controlled substances can reasonably claim ignorance of them.¹⁹⁷

612. The State is of the information and belief that the Defendants failed to report “suspicious orders” originating from Nevada to the DEA, the Nevada Department of Public Safety, and/or the Nevada Board of Pharmacy as they were required to do under Nevada law.

613. The Defendants unlawfully filled suspicious orders of unusual size, orders deviating substantially from a normal pattern and/or orders of unusual frequency in Nevada.

614. The Defendants illegally promoted the sale of dangerous and harmful drugs, in violation of the Nevada Controlled Substances Act, §§ 453.005 to 453.730, by supplying suspicious orders for opiates to retail pharmacies, hospitals, and other health care facilities throughout the State of Nevada that the Defendants knew were suspicious, including orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

615. The laws at issue here, and cited above, are public safety laws.

616. The Defendants breached their duty to maintain effective controls against diversion of prescription opiates into other than legitimate medical, scientific, and industrial channels.

617. The Distributor Defendants’ violations of public safety statutes constitute prima facie evidence of negligence under Nevada law.

618. The Distributor Defendants breached their duty to exercise due diligence to avoid filling suspicious orders that might be diverted into channels other than legitimate medical, scientific and industrial channels.¹⁹⁸

619. The Defendants breached their duty to monitor, detect, investigate, refuse and

¹⁹⁶ *Masters Pharmaceuticals, Inc.*, 80 Fed. Reg. 55,418-02 (Sept. 15, 2015) (1.47 million dosage units of oxycodone to Nevada customers in 2009, 2.8 million dosage units of oxycodone. To Nevada customers in 2010, and 192,000 doses to Nevada customers in 2011.

¹⁹⁷ *Id.* (citing *Holiday CVS, L.L.C.; d/b/a CVS/Pharmacy Nos. 219 and 5195*, 77 Fed. Reg. 62,316, 62,322 (2012)).

¹⁹⁸ *See Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 206 (D.D.C. 2012).