

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
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District Court Case No. Brown
CV18-01895 of Supreme Court

**PETITIONERS' APPENDIX
VOLUME XX**

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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

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12/7/2017	Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00001	PA00050
3/5/2019	Distributors' Joint Motion to Dismiss First Amended Complaint	III	PA00265	PA00386
5/28/2019	Distributors' Joint Reply in Support of Motion to Dismiss First Amended Complaint	X	PA01215	PA01285
10/4/2019	Distributors' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss	XVIII	PA02561	PA02566
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3/4/2019	Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	III	PA00227	PA00264

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1/7/2020	Transcript of Proceedings	XIX-XX	PA02603	PA02871
1/8/2020	Transcript of Proceedings	XXI	PA02872	PA03034

AFFIRMATION

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

Dated this 1st day of May, 2020.

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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 XX 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:

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In addition, in compliance with NRAP 21(a)(1) and Administrative Order 2020-05, a copy of this Petitioners' Appendix Volume XX 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

1 of conduct was -- it was a unified course of fraudulent
2 conduct, and relied entirely on that course of conduct for
3 the basis of the claim. That's why the Kearns case was
4 dismissed.

5 In Vess, the Court said, if there are allegations of
6 fraud, but fraud is not an element of the causes of action,
7 the Court can disregard or skip the Complaint of those
8 allegations that remain to determine whether a claim has been
9 asserted, Your Honor. And so those are the two cases they
10 relied on there.

11 So to the extent Your Honor finds that one or more of
12 Reno's claims sound in fraud, the Complaint provides specific
13 allegations and multiple examples of specific
14 misrepresentations attributed to each defendant.

15 Moreover, the facts and information manufacturers
16 claim Reno should have included, such as each and every
17 prescribing doctor who heard a false statement from
18 manufacturers in its Complaint are in manufacturers'
19 possession. So Reno would not have the information necessary
20 to provide such detail, if, in fact, it was required.

21 The Nevada Supreme Court case of Rocker v. KPMG
22 provides that a plaintiff should be permitted to conduct
23 early discovery in cases where a plaintiff is unable to plead
24 a fraud or mistake claim with appropriate detail because the

1 facts necessary are in the defendants' possession.

2 Related to -- and with respect to the Rocker
3 argument, only defendants know what was false about their
4 marketing. So until discovery is commenced and engaged in
5 this case, knowing they engaged in widespread marketing does
6 not mean we know or can know all of the information
7 defendants knew was false that they concealed. We don't know
8 how they plan to get the message out to everyone in Reno
9 until we've done discovery on this.

10 We know, on a national level, and we know from
11 information we have regarding other jurisdictions around the
12 country, that it was the same marketing plan everywhere. It
13 wasn't different in Reno than it was in Dayton, Ohio, or, you
14 know, Baton Rouge, Louisiana. It was all the same. But we
15 don't know the specific instances here until we've had the
16 opportunity to do discovery.

17 So the supplemental brief implicated everyone by and
18 through the inclusion of the ARCOS data, Your Honor.
19 Everyone. Because an enormous amount of drugs, just in the
20 six-year period that was released by the Sixth Circuit, an
21 enormous amount of opiates were not only distributed around
22 the country, but in Nevada it was an unbelievably enormous
23 amount. We were in the top four, Your Honor, in the country.

24 So related to this point in the manufacturers'

1 argument that Reno has to allege what facts influence the
2 prescribing doctors' state of mind with heightened details.
3 But NRCP 9 (b) states that an individual's knowledge, intent,
4 or state of mind need not be particularly alleged. You don't
5 have to state exactly what was in their state of mind.

6 At this point in the litigation, Reno's well-pleaded
7 allegations are more than sufficient to put manufacturers on
8 notice of the nature of Reno's claims.

9 And to give Your Honor some insight as to the type of
10 information available to defendants, yet kept from public,
11 Reno filed -- that's why we filed the supplement in September
12 of 2019. Unfortunately, because of the protective order
13 that's still in place, the Sixth Circuit did not strike down
14 the entire protective order. It did order Judge Polster to
15 go through an analysis on all of the documents on whether
16 they actually should be privileged or not. And some have
17 been released so far. But we're talking about millions and
18 millions and millions of documents. And it's trickling out.

19 So we weren't able, because of the protective order,
20 to attach those. We were only able to supply information
21 that has been released from the protective order. There's
22 millions of e-mails that have not -- that implicate every
23 single one of these manufacturers and distributors, Your
24 Honor. Every single one of them. But they haven't been

1 released.

2 Now, the State of Nevada's case, Judge Gonzalez has
3 put a protective order in place which is significantly
4 different than what Judge Polster's protective order is. And
5 we expect that we're going to -- when they respond to our
6 written discovery, which has started in the State's case,
7 then we would expect we're going to have those documents.

8 But until we conduct discovery, until we get the
9 documents, we gave what we had, which has been the protective
10 order by Judge Polster had been lifted on, and that's all we
11 could give Your Honor.

12 THE COURT: Okay.

13 MR. EGLET: But there's a lot more.

14 In this case, of course, you know, as I said, in June
15 of last year, after a series of motions and appeals from the
16 Washington Post and other media outlets, the Sixth Circuit
17 vacated the applicable protective order that kept the DEA
18 ARCOS data. Most of it was explicit just to the ARCOS data.
19 The ARCOS data -- they kept it from the public eye.

20 The ARCOS data tracks the sales of dangerous
21 prescription drugs. Once the protective order was vacated,
22 the ARCOS data from 2006 to 2012 was released to the public.
23 That data revealed that a shocking number of opiates were
24 shipped during that six-year period alone, and that Nevada

1 was in the top four recipients of opiates.

2 The data also provides the information regarding the
3 name of the drug manufacturer, the name of the drugs, the
4 potency of the drugs, the distributor, and the pharmacy
5 information.

6 We're in the process of analyzing all that ARCOS
7 data, tracking exactly what distributors sent what pills and
8 how many doses to each pharmacy, and what pharmacies in the
9 state.

10 The ARCOS data also revealed the identity of the
11 companies who shipped the majority of the opiates into
12 Nevada, many of which are named in this case as defendants.

13 Additionally, the Sixth Circuit vacated a number of
14 orders permitting documents to be filed under seal in the
15 MDL. And a number of the documents were unsealed -- not that
16 many so far, though -- after the Sixth Circuit order. It's
17 an ongoing process, demonstrating just how much the drug
18 companies knew about the epidemic, encouraged the increased
19 use of opiates in the interest of profits over human cost,
20 and their truly callous attitude to the damage they were
21 causing.

22 And so one of the clearest indications that wasn't
23 still under protective order that we could provide the Court
24 of this callous attitude comes from an e-mail exchange, dated

1 January of 2009, between Steve Cochrane, vice president of
2 purchasing for Key Source Medical, Inc., which is a chain
3 pharmacy, and Victor Borelli, the national account manager
4 for retail at Mallinckrodt.

5 In the first e-mail, Steve Cochrane writes --
6 quote -- "Keep 'em coming," explanation mark. "Flying out of
7 here. It's like people are addicted to these, or something.
8 Oh, wait. People are."

9 Mr. Borelli responds, "Just like Doritos. Keep
10 eating. We'll make more."

11 Reno also included other recently released documents
12 showing highly suspicious orders of opiates being proved in
13 as little as one minute.

14 Suspicious orders are required, first of all, to be
15 stopped, if they're suspicious and not shipped, and then
16 reported to the DEA, the suspicious order. And then the
17 distributors and the manufacturers -- they both have a duty
18 on that -- have a duty to investigate that suspicious order.
19 And until that investigation is complete, and the suspicious
20 order is found to be not suspicious, it's not supposed to be
21 shipped.

22 They systematically violated that around the country,
23 all the distributors, over and over and over for years and
24 years. And many are continuing to.

1 There are e-mails between salespeople stating that,
2 "The goal is to sell as much as possible, and to do whatever
3 is necessary to sell as much as possible." Whatever is
4 necessary.

5 Reno provided the Court with these documents to
6 demonstrate that these have been solely in the possession of
7 defendants. And even when produced in litigation, they were
8 kept under seal, so no other plaintiffs across the country
9 knew about them, and could not use them in any pleadings.

10 This is just a sample. Reno expects the defendants
11 have millions and millions of pages of documents, to which
12 Reno does not have access at this point, that would provide
13 the information defendants insist must be included in the
14 Complaint.

15 Accordingly, if Your Honor believes Reno needs to
16 provide more details in any aspect of its Complaint, it
17 requests the ability to conduct discovery under Rocker in
18 order to gain access to the information needed to add those
19 details.

20 Reno has alleged a viable and valid public nuisance
21 claim against the manufacturers. Reno's statutory nuisance
22 claim is adequately alleged in the Complaint. The mere fact
23 that Nevada's public nuisance statutes allow for criminal
24 charges does not immediately prohibit the City from asserting

1 a civil cause of action for statutory public nuisance.

2 NRS 202.453 defines "a public nuisance" as, "An act
3 or omission that annoys, injures, or endangers the health of
4 any considerable number of persons, or in any way renders a
5 considerable number of people insecure in life."

6 Nevada's public nuisance statutes do not include any
7 language preventing a civil cause of action. In fact, the
8 statutes imply that there is a right to a civil cause of
9 action.

10 Now, Mr. Lombardo talked about the Baldonado case,
11 Baldonado versus Wynn Las Vegas case. That, of course,
12 involved a table-game dealer sued by Wynn, alleging that the
13 tip-pooling and distribution policies violated Nevada's labor
14 statutes.

15 In its analysis, the Court said that labor statutes
16 do not explicitly create a private cause of action. The
17 Court considered whether the statutes implied a private cause
18 of action, which it notes is a question of legislative
19 intent.

20 The Court was guided by three factors that were
21 originally stated in a U.S. Supreme Court decision: whether
22 the plaintiffs are the class for whose benefit the statute
23 was enacted; two, whether the legislative history indicates
24 an intention to create or to deny a private remedy; and,

1 three, whether implying such remedy is consistent with the
2 underlying purposes of the legislative scheme.

3 Reno is within the class for whose benefit the
4 statute was enacted; the legislative history does not
5 indicate an intention to deny a civil cause of action; and
6 Reno's cause of action and request for relief are consistent
7 with the underlying purposes of the statute. So we meet all
8 three of these guidelines.

9 And, of course, the holding of the Legislature
10 indicated the Legislature entrusted labor laws enforcement to
11 the Labor Commissioner, and private causes of action could
12 not be implied. There's no enforcement procedure in the
13 Legislature, or by any state agency, to enforce what we're
14 trying to enforce here on behalf of the City of Reno. So
15 there is an implied right here, Your Honor, of a civil cause
16 of action.

17 The opiate epidemic has wreaked havoc on the public
18 health in Reno. Reno is seeking to recover damages it has
19 incurred as a result of the damage to the public health, and
20 to abate the future harm caused by the opiate epidemic.

21 Because an epidemic will not end in a single day. It
22 will take time, effort, and treatment to abate the epidemic
23 caused by defendants.

24 Additionally, the Coughlin case, cited by defendants,

1 did not discuss whether NRS 202.450 implies a right to a
2 civil cause of action; only whether it expressly provides for
3 a private cause of action. The Coughlin analysis does not
4 provide guidance as to whether there is an implied civil
5 right of action.

6 Reno's requested damages are available under the
7 public nuisance statute. Its damages are not limited to
8 criminal penalties.

9 Defendants claim that compensatory damages are not
10 available under the statute, but fail to provide any
11 authority to support that position.

12 Defendants also argue that Reno cannot recover its
13 damage due to the Economic Loss Doctrine, which does not
14 apply to bar Reno's damages on the nuisance claim, or any of
15 Reno's causes of action.

16 The Economic Loss Doctrine was designed to mark the
17 boundary between the expectancy interests associated with
18 contract law and the types of damages recoverable under tort
19 law.

20 Tort law is designed to secure the protection of all
21 citizens from the danger of physical harm, to their person or
22 property, and seek to enforce -- seeks to enforce standards
23 of conduct that are created and imposed by society.

24 Nevada's Economic Loss Doctrine does not apply to bar

1 tort recovery where the defendants had a duty imposed by law,
2 rather than by contract, and where the defendants'
3 intentional breach caused purely monetary harm to plaintiffs.

4 Reno has pled facts which, if proven, establish the
5 existence of a common law tort duty manufacturers owed to the
6 City.

7 Although the City is not asserting personal injury
8 claims on behalf of individual residents, the City's tort and
9 nuisance claims addressed Reno's costs incurred as a result
10 of the opiates that flooded the community, which include,
11 among others things, healthcare and rehabilitation costs.
12 These costs are unique to Reno and can only be recovered by
13 Reno.

14 Reno's common law public nuisance claim is
15 appropriate, and properly pled, as well. Common law claims
16 for public nuisance have been recognized in Nevada, and the
17 right to such a claim is not limited by a criminal statute on
18 the same issue.

19 Nevada's courts have not specifically defined the
20 scope of a public nuisance within the state, but the courts
21 in Nevada have regularly turned to the Restatement for
22 guidance.

23 Section 821, (b) (1) of the Restatements defines "a
24 public nuisance" as, "Unreasonable interference with a right

1 common to the public. 'A public right' is defined to include
2 conduct involving a significant interference with the public
3 health, public safety, or public peace. Public nuisances can
4 be the result of continuing conduct, as well as conduct that
5 has a permanent or long-lasting effect."

6 There is a long history of representative public
7 nuisance actions brought by governmental plaintiffs that have
8 been recognized for centuries, both here and in England.
9 Both Judge Williams, and Judge Gonzalez, in the Clark County
10 District Court, have denied defendants' motions to dismiss
11 this, as well as the statutory nuisance claim.

12 Other jurisdictions have recognized common law claims
13 for public nuisance wherein the public health was impacted,
14 such as where individuals practiced medicine without
15 appropriate licensing, or any license at all.

16 There are thousands of opiate cases around the nation
17 in which courts have denied motions to dismiss on public
18 nuisance causes of action.

19 Here, Reno has adequately pled that manufacturers
20 have significantly interfered with Reno's residents' right to
21 public health through their spread of opiate use in the city,
22 as well as public safety. Reno seeks redress for the
23 widespread public harm caused by the defendants' conduct.

24 In their reply, manufacturers argue that Reno has not

1 alleged an interference with a public right because the
2 manufacture of products are rarely, if ever, causes of
3 violation of the public's right.

4 Contrary to manufacturers' argument, Reno did not
5 pick and choose language from the Restatement to support its
6 allegations. The Restatement defines "a public right" as
7 interference with the public health.

8 Manufacturers cite to the Lead Industries case to
9 support an argument that there is no common law public right
10 to a certain standard of medical care. They claim that this
11 is the leading case in the country on nuisance law. It's
12 not. It's just their statement. But that is not what Reno
13 is alleging here, anyway.

14 By engaging in deceptive marketing, misleading entire
15 communities as to the safety of opiates for long-term use,
16 manufacturers deliberately caused an increase in opiate use,
17 which has caused substantial harm to individuals, as well as
18 to Reno's agencies.

19 Common law public nuisance claims are not limited to
20 interference with property rights.

21 Second, the Rhode Island court may have found that a
22 number of children suffering from lead poisoning was not
23 enough to establish a public right. But this case is not
24 analogous to one involving several individuals suffering from

1 lead poisoning. The opiate epidemic impacts everyone in the
2 community, not just those addicted. It impacts the families,
3 co-workers, friends, neighbors, church members, and everyone
4 else with a relationship with someone suffering from
5 addiction or dependence.

6 If you happen to be one of the rare few who has not
7 been impacted directly by the opiate epidemic, you have been
8 indirectly impacted, whether it be by an increase in crime --
9 because there has been, clearly, an increase of crime.

10 I'm a victim myself of that in Las Vegas, where three
11 kids, who went to the same high school my kids did, in Las
12 Vegas, Bishop Gorman High School, robbed my wife and I's
13 house, stole thousands of dollars' worth of various types of
14 merchandise to use to hock at pawnshops -- they caught them
15 all because they're on film hocking -- at pawnshops, to get
16 money to buy opiates.

17 All three of these kids had sports injuries in high
18 school, had a minor surgery to a knee or an ankle or
19 shoulder; after the surgery, were prescribed these opiates by
20 their physicians, because they were recommended by the
21 manufacturers. All three of them got addicted to opiates.

22 And this is a typical story in Nevada, and across the
23 country. All three of them got addicted to opiates, started
24 buying opiates on the street. When they couldn't get any

1 more prescriptions, started buying the pills. And then soon
2 discovered, like 80 percent of the now-heroin addicts in this
3 country who started on prescription opiates, that's how they
4 became heroin addicts: because they couldn't get the
5 prescription, they turned to heroin, and became heroin
6 addicts.

7 THE COURT: Well, let me make a comment here. Two
8 things.

9 First thing: It's not lost on the Court -- well, it
10 shouldn't be lost on anyone here that, unlike in Las Vegas,
11 the general-jurisdiction judges here in the North, as I think
12 everyone knows, handle both criminal justice and civil
13 justice matters. So in the Court's experience, I've handled
14 5,000 criminal justice matters in the last three years. And
15 it's -- the Court has had exposure to the impacts of opioids
16 on people's activities with respect to criminal justice.
17 That's the first comment.

18 The second comment is, if I'm going to allow a level
19 of editorializing or anecdotes from personal experience for a
20 motion like this, it's going to be equal on both sides.

21 MR. EGLET: Understood, Judge.

22 THE COURT: Normally, I'd probably shut that down,
23 make a comment that, "While interesting, it's not necessarily
24 informative to the Court's decision on the issues before it."

1 If I'm going to allow it, without objection, not
2 going to curb it, I'm going to let either side have a
3 similar --

4 MR. EGLET: Understood. Thank you, Your Honor.

5 THE COURT: Sure.

6 MR. EGLET: Anyway, so, if you are one of the rare
7 few that has not been impacted, you have been indirectly
8 impacted by an increase of crime, or your ability to enjoy
9 community parks because of drug use, or the increase in the
10 homeless population caused by the opiate epidemic, or the
11 increase in DUIs because of the opiate epidemic.

12 I just tried a case last month in Las Vegas involving
13 a DUI woman, who ran into my client's car, with three people
14 in there, injuring all three of them, who was on Oxycodone,
15 and was under the influence, and injured three people
16 significantly.

17 And the drug enforcement officer, the expert in drug
18 recognition, testified that: Yeah, there's been an increase
19 in DUIs not just across the country, but specifically in
20 Nevada, that's primarily driven by opiates.

21 This case does not support the dismissal of Reno's
22 public nuisance cause of action. Section 821 (b) of the
23 Restatement specifically states that a public nuisance may
24 exist where there is a significant interference with the

1 public health or public safety.

2 Cases in which an interference with the public health
3 have been found to be the basis for a public nuisance include
4 keeping diseased animals, defective sewers, and the
5 unlicensed practice of medicine.

6 This last one is particularly interesting, because
7 certainly not everyone in the community had an interaction
8 with the unlicensed doctor, but yet the mere threat of the
9 individual's unlicensed status to the public health was
10 enough to find a public nuisance.

11 Manufacturers engaged in deceptive marketing of
12 opiates, including in Reno, knowing it would result in a
13 flood of dangerous drugs into this community.

14 People in the community, exercising their public
15 right, came into contact with opiates that should have never
16 been provided. Many Reno citizens became addicted, and many
17 died, as a result.

18 And as I previously stated, it's not just the
19 individuals who are addicted who suffer from opiate epidemic;
20 it is everyone around them.

21 The manufacturers attempt to distinguish the opiate
22 epidemic from -- quote -- "the spread of smoke, dust, or
23 fumes over a considerable area" -- end quote. Which they
24 state is a classic example of a public nuisance which may

1 affect the health of so many persons to involve the public at
2 large.

3 This is not so distinct from the spread of opiate use
4 throughout a community. These drugs have spread as a direct
5 result of defendants' wrongdoing, including manufacturers'
6 deceptive marketing.

7 The use of opiates spread over a considerable area,
8 the entire city of Reno, and affected the health of so many
9 persons in the city, so as to involve the public at large.

10 It also affected the safety of so many persons in the
11 city to involve the public at large.

12 The increasing sales of opiates fall within a
13 traditional category of public nuisance, as defined in
14 Section 821 (b) (2) (a) of the Restatement, which defines "a
15 public nuisance" as including the significant interference
16 with the public health or public welfare. Plaintiffs -- or
17 safety.

18 Plaintiffs' argument regarding the purported failure
19 to allege an interference with a public right failed --
20 excuse me -- manufacturers' argument regarding the purported
21 failure to allege an interference with a public right failed
22 to take into account the language of the Restatement, which
23 Nevada tends to follow, Nevada's courts tend to follow.

24 It is not necessary for an entire community to be

1 affected by a public nuisance in order for a claim to exist,
2 so long as the nuisance will interfere with those that come
3 in contact with it in the exercise of a public right, or it
4 otherwise affects the interest of the community at large.

5 Reno's allegations set forth in its Complaint outline
6 the acts of the defendants that interfered with the public
7 health, such that it would constitute a public nuisance,
8 which include the ongoing deceptive marketing by defendants
9 designed to increase opiate use and defendants' profits.

10 Simply because a theory or claim may be novel or
11 unique or different, according to the defendants, does not
12 render it subject to dismissal. Defendants ask this Court to
13 dismiss the common law public nuisance claim because it is a
14 novel theory, according to them. But simply because a theory
15 is novel does not mean it cannot be pursued. Moreover,
16 Reno's nuisance causes of action are not really that novel.

17 The State has never explicitly limited nuisance
18 claims to property-based claims; thus, it is inaccurate to
19 claim that a cause of action involving anything other than
20 property is novel or new.

21 The defendants cite to the Jezowski versus Reno case
22 to support their position that nuisance claims can only
23 relate to injury to property. But the Jezowski court defined
24 "a nuisance" as "indecent or unlawful conduct causing injury

1 to the right of another, or to the public."

2 The Court went on to state that the issue of whether
3 something is a nuisance is a question of fact.

4 Finally, defendants fail to address the numerous
5 jurisdictions around the country that have already held the
6 governmental entity's public nuisance claims in opiate
7 litigation are not subject to dismissal.

8 Nevada courts have never rejected public nuisance
9 claims in the face of a vast interference with the public
10 health, and it would not be proper for this Court to do so
11 now, Your Honor.

12 Defendants repeatedly reference and attempt to rely
13 on two State cases -- New Haven, out of Connecticut, and a
14 case from North Dakota -- which are in the extreme small
15 minority of jurisdictions that granted motions to dismiss in
16 the opiate cases.

17 Neither New Haven or North Dakota is persuasive here.
18 The decisions are based on laws within those states, and have
19 no bearing here in Nevada.

20 Manufacturers owed a duty to the City of Reno, both
21 based upon common law, and derived from statutory
22 responsibilities.

23 Under Nevada law, all persons -- and "persons"
24 include businesses -- have a duty to act reasonably toward

1 others. Manufacturers owe Reno a duty of care to prevent the
2 reasonably foreseeable harm associated with excessive opiate
3 sales and use.

4 In the late 1990s, governmental entities across the
5 country filed lawsuits against gun manufacturers and sellers
6 arising out of the foreseeable harm they caused in
7 communities by creating a gun market, without any regard to
8 the likelihood of the damage they would cause.

9 This is, of course, prior to the federal legislation
10 passed giving gun manufacturers and suppliers and ammunition
11 manufacturers immunity.

12 Courts in Ohio and Massachusetts recognized that gun
13 manufacturers had a duty to communities -- to the
14 communities, based on the foreseeable harm caused by the sale
15 of guns.

16 Similarly, defendants created opiate medications,
17 which are dangerous drugs. They determined what type of
18 marketing should be conducted in order to profit from the
19 sale of their products. Disregarding the foreseeable harm
20 associated with the increased use of dangerous opiates,
21 defendants continued with a misleading marketing campaign.

22 What we have learned from the documents released over
23 the summer is that these companies knew the opiates were
24 addictive and dangerous, but continued to push the sale of

1 those drugs to increase profits.

2 The harms caused by the defendants were not only
3 foreseeable, they were foreseen.

4 Contrary to defendants' argument that there is no
5 requirement that a special relationship -- contrary to
6 defendants' argument, there is no requirement that a special
7 relationship exists between Reno and the defendants in order
8 to find that the defendants owed a duty of reasonable care to
9 Reno.

10 Reno's claims arise directly from the defendants' own
11 conduct, not the conduct of a third party; and, thus, a
12 special relationship is not necessary. Reno has adequately
13 alleged the existence of defendants' common law duty owed to
14 the City of Reno; thus, the motion to dismiss should be
15 denied.

16 Reno has adequately -- also adequately asserted a
17 claim for negligent misrepresentation. Reno received false
18 information from the defendants regarding the efficacy,
19 purpose, and addictive nature of opiate medications, thereby
20 adversely affecting Reno's ability to govern. Because Reno
21 is regularly engaged in the business of providing law
22 enforcement, health services, and other public services to
23 its residents, the misrepresentations made by defendants
24 influenced Reno's City business in a significant way.

1 As alleged in the Complaint, defendants'
2 misrepresentation caused an increase in the costs expended by
3 Reno for the citizens that relied upon -- and the doctors
4 that relied upon any such misinformation and/or were harmed
5 when the defendants concealed such important information.

6 Nevada courts have adopted the definition of
7 negligent misrepresentation in the Restatement Second of
8 Torts, which also recognizes the tort of negligent
9 misrepresentation by non-disclosure.

10 Reno has alleged various misrepresentations, as well
11 as manufacturers' intentional omissions of important
12 information regarding the use and efficacy of opiates.

13 THE COURT: To Reno, or to third parties? This goes
14 back to my initial question.

15 MR. EGLET: Right. To third parties --

16 THE COURT: This one is hard for the Court to
17 understand --

18 MR. EGLET: And I'm about to get to the third-party
19 issue. I'm almost there, Your Honor.

20 THE COURT: All right. Fine.

21 MR. EGLET: So defendants failed to disclose
22 important information regarding the safety and use of their
23 products, which they had a duty to disclose, knowing that it
24 may induce doctors and citizens and the City to behave in a

1 certain way, in a business transaction; i.e., in the City's
2 case, allowing ongoing separate promotion and sales of
3 opiates throughout the city.

4 Defendants' silence about material facts basic to the
5 transaction, when combined with manufacturers' duty to speak,
6 is the functional equivalent of a misrepresentation, or
7 supplying false information.

8 And, Your Honor, the fact that misrepresentations or
9 omissions may have been made to third parties is not a
10 sufficient basis for dismissal of a cause of action.

11 Nevada recognizes a theory of recovery based on false
12 statements to third parties, where those misrepresentations
13 denied Reno and its citizens of notice of the defendants'
14 potential liability and possible legal claims. Defendants'
15 wrongful concealment of important facts resulted in Reno's
16 inability to obtain vital information underlying its claims.

17 Reno and its citizens relied upon defendants, as
18 professionals in their industries, to not make
19 misrepresentations about dangerous products with the
20 potential to cause widespread harm throughout the community.

21 Additionally, the extent of defendants' deception was
22 such that they denied Reno and its residents the opportunity
23 to make informed decisions regarding the use of opiates for
24 treatment of chronic pain.

1 Reno's cause of action for negligent
2 misrepresentation includes sufficient allegations to put
3 defendants on notice of their potential for liability, and
4 dismissal is not appropriate.

5 Again, with respect to the negligent
6 misrepresentations, manufacturers made direct
7 misrepresentations to doctors. This included ads in medical
8 journals. And this is on paragraph 96 of the Complaint.

9 It also includes the use of detailers, who made
10 in-person -- which are the sales reps -- in-person visits to
11 doctors and medical staff. That's paragraph 97 of the
12 Complaint.

13 Kickbacks and other incentives were paid to
14 healthcare providers. That's paragraph 98 of the Complaint.

15 Doctors were also paid speaker fees to spread these
16 lies about "The opiates are safe" throughout the community.
17 That's paragraph 100.

18 And manufacturers also made indirect representations
19 through front groups and key opinion leaders, all of which
20 are devised to target doctors and medical staff and patients.

21 And the speaker fees, talking about the doctors'
22 speaker fees, were a sham, intended only to reward doctors
23 for prescribing more opiates.

24 And evidence of that has now been released, Your

1 Honor, by the Sixth Circuit, or by Judge Polster, based on
2 the Sixth Circuit's order. Some, as it is trickling out,
3 though, Your Honor.

4 And as I said, we've started -- I think we've just
5 now sent our initial request for information to defendants,
6 and they've served us in the State's case, as well, so we
7 expect, in the State's case, it's going to start coming out
8 in Nevada.

9 So defendants were unjustly enriched by their
10 improper marketing. In order to plead a cause of action for
11 unjust enrichment, Reno must allege that the City conferred a
12 benefit on the defendants, the defendants appreciated that
13 benefit, and defendants' retention of the benefit under the
14 circumstances was inequitable.

15 Court's indulgence, Your Honor.

16 THE COURT: Yes.

17 Do you need a moment? I'll put some white noise on.
18 Do you need to confer?

19 MR. EGLET: No. I'm good, Your Honor. I just need
20 to know where to put that note.

21 They keep me pretty organized, Your Honor.

22 So defendants were unjustly enriched by their
23 improper marketing. And I laid out the elements: that it
24 conferred a benefit on the defendants, the defendants

1 appreciated the benefit, the defendants' retention of the
2 benefit under the circumstances is inequitable.

3 Reno has alleged that it has conferred a benefit on
4 the defendants by paying for defendants' externalities, the
5 cost of harm caused by the defendants' wrongdoing, such as
6 costs arising out of healthcare services, addiction
7 treatment, increased law enforcement, drug courts, jails, on
8 and on, coroners, on and on and on it goes. First responder
9 calls, Narcan, everything.

10 The defendants were well-aware of the obvious benefit
11 it received from selling opiates, not only in the form of
12 profits, but also in avoiding paying the societal costs
13 caused by their aggressive and immoral sales techniques. The
14 defendants retained the benefits, despite knowing they were
15 unjust.

16 Any arguments by defendants that their conduct was
17 not unconscionable or inequitable are issues of fact not
18 appropriate for resolution at this stage.

19 Unjust enrichment claims have survived dismissal in
20 numerous opiate cases, including the Clark County case, Your
21 Honor.

22 Accepting all allegations as set forth in the
23 Complaint as true, and drawing every fair inference in favor
24 of the City, as the Court must do, Reno's claim for unjust

1 enrichment is properly alleged.

2 Finally, Your Honor, Reno's cause of action for
3 punitive damages should not be dismissed.

4 Out of an abundance of caution, Reno included
5 specific allegations for punitive damages in a separate cause
6 of action in the Complaint, which was also done to guarantee
7 the defendants were on notice of Reno's intent to seek such
8 damages. Nevada law does not expressly prohibit plaintiffs
9 from including a separate cause of action for punitive
10 damages.

11 Additionally, Reno's tort claims could be the basis
12 for punitive damages, particularly where Reno's Complaint is
13 replete with references to specific intentional misconduct
14 committed by defendants, all of which were expressly
15 incorporated into the tort causes of action.

16 Moreover, whether defendants' conduct rises to the
17 level of oppression, fraud, or malice, it's purely a factual
18 question which cannot be resolved at this stage. Reno
19 requests this cause of action, or at the very least, the
20 claim for punitive damages, not be dismissed.

21 If Your Honor believes that any areas of the
22 Complaint require additional facts or allegations, Reno
23 requests leave to amend the Complaint in lieu of dismissal.

24 Reno's Complaint contains sufficient facts and

1 allegations to put manufacturers on notice of the basis for
2 their liability, and, accordingly, Your Honor, the City of
3 Reno respectfully requests the manufacturers' joint motion to
4 dismiss be denied.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Who would like to respond on behalf of the
8 defendants?

9 MR. LOMBARDO: I will start, Your Honor.

10 THE COURT: Are we ready to go, or do you need a
11 moment to --

12 MR. LOMBARDO: I'm okay going, unless the Court would
13 like --

14 THE COURT: Move the lectern anywhere you want.

15 And while we're just changing advocates here, feel
16 free to stand up and stretch a little bit, if you'd like.

17 Some of you are sitting in the jury box. That's
18 often the Court's encouragement, when we're changing -- when
19 we transition from one witness to the next, "Feel free to
20 stand up and move about the cabin."

21 MR. EGLET: Your Honor, after the manufacturers have
22 completed their reply argument, before the distributors
23 start, could we have a short comfort break?

24 THE COURT: We'll take a break at that time, sure.

1 Absolutely.

2 All right. Please proceed.

3 MR. LOMBARDO: Thank you, Your Honor.

4 And I expect to be quite efficient on my rebuttal. I
5 tried to be comprehensive this morning. And I don't think
6 it's a good use of the Court's time for me simply to repeat
7 points that I think I've already addressed, even though
8 they're in anticipation and responsive to the City's points.
9 So I'm going to be specific and quick in addressing points
10 that the City made.

11 Mr. Eglet mentioned that the parties are not
12 identical in this case, and in the Nevada Attorney General's
13 case, for the State.

14 And if the Court would like a copy of the Nevada AG
15 Complaint, I have a VeloBound copy here.

16 Are the Complaints precisely identical? No, of
17 course not. The Attorney General is doing things slightly
18 different than the City of Reno is here.

19 There are minor differences in which corporate
20 affiliates are named. As you've seen, probably, there are a
21 number of corporate groups, where you have a number of
22 corporate affiliates that are named. They didn't make the
23 same decisions in each of those two cases.

24 But none of that really is of any moment, because the

1 point is that Reno has no authority to maintain this lawsuit,
2 because that authority has not been expressly granted by the
3 Legislature, and maintaining this lawsuit is not addressing a
4 matter of local concern. And that's true whether the
5 Attorney General has filed a lawsuit or not.

6 The Attorney General's lawsuit is interesting because
7 it highlights the separation of powers, the division of
8 responsibility that issues of statewide importance and issues
9 of local concern were structurally designed to be handled by
10 the different levels of state government. But whether the
11 cases are identical or not is really of no moment to the
12 question whether the City of Reno has authority to maintain
13 this case to address a matter of local concern, or under
14 Dillon's Rule.

15 Would Your Honor like a copy --

16 THE COURT: I don't need that. I can access that if
17 I --

18 MR. LOMBARDO: Terrific.

19 THE COURT: -- by other means, if I need to.

20 MR. LOMBARDO: Starting with the Dillon's Rule point
21 and the questions of authority. Plaintiffs' counsel
22 indicated that the letter from the Attorney General Office to
23 Mayor Schieve was just limited to the issue of deceptive
24 trade practices. And that's simply not the case. The letter

1 is written with much broader import.

2 And just as an example, on page 2, after discussing
3 the Deceptive Trade Practices Act claim, the Attorney General
4 and the Consumer Advocate wrote -- quote -- "Although there
5 may be other novel legal theories available to the City,
6 including public nuisance claims, the consequences of
7 asserting those actions has the potential to harm the
8 bi-partisan, multi-state investigation that is currently
9 underway" -- close quote.

10 And that's the multi-state investigation that the
11 Nevada AG was participating in, and that was its focus as a
12 coordinated statewide-level approach to dealing with the
13 opioid abuse crisis. So the letter is clearly much more
14 broadly written than that.

15 You asked a question of plaintiffs' counsel, and you
16 got a very important admission. The admission was that the
17 City would not have the power to regulate or tax the
18 marketing of opioid medications.

19 And the reason that admission is important is because
20 it's an admission, then, that addressing the opioid abuse
21 crisis and the marketing of opioid through an ordinance,
22 through regulation or legislation, is not addressing a matter
23 of local concern.

24 And so the only remaining point then that the City

1 must be hinging its argument on is that Dillon's Rule doesn't
2 preclude lawsuits. It only precludes legislation or
3 regulations.

4 And that's an important point, and it's a point that
5 the City has not supported with citation to authorities. And
6 in particular, the City has not cited any case from Nevada or
7 any other state where the Court refused to apply Dillon's
8 Rule -- I'm sorry -- where the Court -- yes -- where the
9 Court refused to apply Dillon's Rule because the local
10 government was asserting the right to bring a lawsuit, as
11 opposed to acting legislatively.

12 And we have sought a case, the Premium Standard case,
13 where, under Dillon's Rule, the Missouri Supreme Court held
14 that a township could not bring a public nuisance lawsuit
15 because it had not been authorized, it had not received
16 authority to bring such a lawsuit.

17 And, again, the Nevada Supreme Court's articulation
18 of Dillon's Rule and the statutory articulation of Dillon's
19 Rule draw no distinction whatsoever between whether a city is
20 acting legislatively through ordinances or through
21 litigation. All acts beyond the scope of powers granted are
22 void. That's Ronow. All acts. Not all legislative acts.
23 And the statute, likewise, precludes the exercise of all
24 powers not granted, not merely legislative powers.

1 Plaintiffs' counsel argued that only Reno can seek
2 these damages. It's been harmed. It would be unfortunate,
3 as a matter of policy, if it weren't able to proceed in this
4 case.

5 Respectfully, that's an argument that has nothing to
6 do with the language of the statute of whether this is a
7 matter of local concern. And that's an argument that the
8 City needs to address to the State Legislature.

9 If it believes that it should have this power, that
10 hasn't been granted, and it's over a matter of statewide
11 concern or national concern, it can address that argument to
12 the Legislature and ask for that authority. But it doesn't
13 have it now.

14 There were a few points about the pleading questions,
15 fraud pleading, and the like. And, respectfully, there's
16 been no substantial distinguishing facts between this case
17 and Kearns and Anchor Gaming.

18 There was no discussion of how the allegations in
19 this case line up with the allegations that the plaintiffs
20 made in Kearns and Anchor Gaming. The Court has seen or will
21 see that the allegations in this Complaint match up neatly
22 and on all-fours with the allegations in Kearns and Anchor
23 Gaming; that is, the plaintiffs in all three of these cases
24 allege a unified course of fraudulent conduct, and rely on

1 that conduct entirely for their claim.

2 The claim against the manufacturer defendants here,
3 to step back and ask "What is it?" it's about deceptive
4 marketing of opioid medications. And the allegations of the
5 Complaint are very clear in alleging that the manufacturer
6 defendants did so fraudulently, that they knew about the
7 risks of opioids, they knew their statements were false, and
8 they intended to induce reliance based on those false
9 statements. Those assertions are in the First Amended
10 Complaint. They line up perfectly with Kearns and Anchor
11 Gaming. Rule 9 (b) applies to those allegations.

12 I want to just quickly -- it's probably not
13 necessary, but I want to clear up a point that the Court
14 raised earlier during Mr. Guinn's comments.

15 There was some sort of seeming intention between the
16 point I was making about fraud pleading and the point that
17 Mr. Guinn was making about punitive damages.

18 THE COURT: Well, I thought it seemed a little
19 inconsistent, so.

20 MR. LOMBARDO: Fair enough. And I just want to make
21 perfectly clear that the manufacturer defendants' position is
22 that the First Amended Complaint, the City's allegations in
23 the First Amended Complaint assert a unified course of
24 fraudulent conduct. There's no question that they make that

1 assertion, and, hence, they trigger Rule 9 (b). And they
2 must be alleged with particularity that Rule 9 (b) requires.
3 They don't satisfy the pleading requirements of Rule 9 (b),
4 and, as a result, the First Amended Complaint does not
5 adequately plead either a cause of action, which is
6 necessarily grounded in fraud, and sounds in fraud, nor a
7 basis for punitive damages. So it doesn't succeed by either
8 measure.

9 THE COURT: Okay.

10 MR. LOMBARDO: I heard plaintiffs' counsel say that,
11 even if the fraud pleading standard applies, the First
12 Amended Complaint provides specific representations to
13 support the fraud claim.

14 During my remarks earlier, I said that plaintiffs'
15 counsel will stand up --

16 THE COURT: Let me make this easier for you. If it
17 comes down to -- taking into account all the other issues you
18 put before the Court, if it comes down to -- if the Court
19 finds the case survives, and that there is an essentially
20 unified course of fraudulent conduct alleged, it's very
21 likely that I would find the allegations don't meet Rule 9.
22 However, the likely result in that scenario would be either
23 to give the opportunity to the plaintiff to amend, or,
24 alternatively, four to six months to attempt to uncover

1 additional facts which might satisfy it.

2 So if the Court reaches a conclusion that this really
3 sounds in fraud, even if the fraud claim is not named, it's
4 very likely the Court would find that the level of the
5 factual allegations in the Amended Complaint do not meet the
6 heightened pleading standard.

7 MR. LOMBARDO: I'll move on then. Thank you.

8 There was a comment made that only the defendants
9 know what's false in their marketing. And it's not clear to
10 me how the City alleges false and misleading marketing,
11 deceptive marketing, if the City has no basis to allege what
12 is false in the defendants' marketing, and why it is false.

13 Plaintiffs' counsel argued -- I'm moving now to the
14 statutory public nuisance claim -- argued that it implies a
15 private right of action. It does so under the principles of
16 Baldonado, because the statute does not deny a private cause
17 of action. And that's just not the standard. The standard
18 is the flip of that.

19 THE COURT: Well, the argument to the Court here
20 sounds a little broad, because that argument might apply in
21 many different contexts, with many different statutes.

22 On the other hand, we're all dealing with -- you have
23 used the word "novel," a novel factual scenario here. So the
24 Court has to make a determination whether, implied on the

1 factual allegations here, do we -- does the Court decide by
2 the absence of a direct authorization to bring a private
3 right of action, is that fact alone enough to defeat the
4 opportunity for statutory nuisance claim?

5 And the defense says: Absolutely, or else you could
6 imply one in every criminal statute, or otherwise.

7 And the State says -- excuse me -- the City
8 says: Don't do that here. Right?

9 MR. LOMBARDO: Respectfully, not just the defense,
10 Your Honor. Baldonado and Neville themselves begin with the
11 presumption that, if the statute does not expressly authorize
12 a private right of action, then that is a very strong
13 indication that there is no private right of action.

14 And then, if you look to define the legislative
15 intent, you can look at legislative history. We've seen or
16 heard no legislative history. You can look at the language
17 of the statute for some legislative intent that the
18 Legislature intended to imply a private right of action.

19 In Neville, that evidence existed, because there was
20 the right to recover attorney's fees in a private case.

21 In Baldonado, that evidence did not exist, and the
22 going-in presumption that no private right of action exists
23 is what determined the outcome in Baldonado.

24 Plaintiffs' counsel mentioned the Coughlin case,

1 which I neglected to mention in my opening remarks. It's a
2 Federal District Court case here in Nevada. But it's a
3 decision that asks the very question that we're discussing,
4 which is: Is there evidence that the Legislature intended to
5 create a private right of action under the --

6 THE COURT: Is that the Judge Pro case?

7 MR. LOMBARDO: Yes.

8 THE COURT: Okay. I know that case.

9 MR. LOMBARDO: I won't -- I'll resist the temptation
10 to respond with stories from my own personal experience, and
11 respect that that information is not particularly useful to
12 analyzing the issues that are before the Court today.

13 What we also heard is, these cases are everywhere.
14 They're all over the country. The suggestion is that, in
15 some sense, this Court is going to step out if it doesn't bow
16 to the suggestion that it should allow the case to go
17 forward.

18 And the reality is, there are decisions on both sides
19 of these issues all over the country. Counting up wins and
20 losses is really not especially useful to the Court. I know
21 the Court will consider what reasoning is most persuasive and
22 most in line with Nevada legal principles.

23 But the Court in the City of New Haven case --

24 THE COURT: I read that decision. The judge there is

1 a very -- he's a very good writer. He's a deep thinker. He
2 made some interesting observations. Whether they translate
3 to what is before the Court here, I'm still deciding.

4 MR. LOMBARDO: Right.

5 THE COURT: What would you like me to know?

6 Let me tell you something you might find interesting.

7 Hand me the gavel.

8 Sixty years ago my grandfather was a judge in
9 Connecticut. This is his gavel. We still use it here in
10 Nevada now.

11 MR. LOMBARDO: Great.

12 THE COURT: Connecticut judges are near and dear to
13 my heart. That does not mean that the Court is going to
14 necessarily follow the decision of the judge there merely
15 because I have a gavel that came from somebody he probably
16 worked with. No. Does it mean I will or will not? To be
17 determined.

18 But, anyway, what were you going to say?

19 MR. LOMBARDO: Looks like that one was liberally
20 used.

21 So the judge there, I think, made a very compelling
22 principle. It was a case brought by 37 Connecticut cities,
23 as you know, seeking to recover money for their public
24 services.

1 And the judge observed that these lawsuits are part
2 of a mixed crowd of cases assembling on courthouse lawns
3 across the country. Some of them are brought by individuals,
4 some by cities, some by states, some by the federal
5 government, some are civil actions, like this one, some
6 invoke regulatory powers, some are criminal. But merely
7 because these cases exist somewhere else doesn't relieve the
8 cities of their burdens here.

9 The cities can't just join the swelling course
10 calling for justice and shrug off the ordinary civil burdens
11 that apply to civil plaintiffs.

12 And the Court goes on to say, "It might be tempting
13 to wink at this whole thing and add to the pressure on
14 parties who are presumed to have lots of money, and possible
15 moral responsibility. Maybe it would make them pay up and
16 ease straining municipal fiscs across the country, but it's
17 bad law. If the courts are to be governed by principles, and
18 not passion, then the ordinary legal principles must apply
19 just as much in hard cases as in easy ones."

20 That's the only point I wanted to make in response to
21 plaintiffs' remarks.

22 THE COURT: Thank you very much.

23 Mr. Guinn, final thoughts.

24 MR. GUINN: Thank you, Your Honor.

1 I'll be even more brief than Mr. Lombardo was. He
2 covered several points I was going to address.

3 I do want to address the chart Mr. Eglet led off with
4 and showed the Court.

5 The apparent purpose of that was to better illustrate
6 the supply chain of opioids. And I think all it did was add
7 a few more links in the causal chain.

8 He talked about advertising --

9 THE COURT: Well, he added a different chain; right?

10 MR. GUINN: The chain branched off, created a new
11 chain that reconnected to the original chain, as I recall.

12 So when we're talking about causation, it's not
13 complicated. It's the more links in a causal chain there
14 are, the more remote the injury is, the connection is,
15 between the plaintiff and the original wrong.

16 Mr. Eglet -- and this is all pled in the Complaint.
17 We're not, you know, guessing at this. Talked about front
18 groups, key opinion leaders, continuing medical education,
19 direct marketing. All those things further blur the
20 connection between the manufacturers originally and the
21 original -- and the harm that the City is now complaining of.

22 Mr. Lombardo touched on this, but let me just follow
23 up a little bit. On the negligent misrepresentation claim,
24 Mr. Eglet referenced seminars, reading materials,

1 advertising. He never explained how any of that information
2 was, number one, deceptive or fraudulent or misleading. He
3 never cited a single statement. And he never directly
4 responded to the Court's question about who those
5 representations were made to.

6 In this case, it would have had to have been made to
7 the City in order to plead an actionable negligent
8 misrepresentation claim.

9 This broad idea that everything the manufacturers did
10 was irresponsible or misleading or fraudulent does not
11 satisfy even the most minimal pleading standards in the State
12 of Nevada. If there's a false statement, if there's a
13 misrepresentation, tell us what it is, where it is, who made
14 it, and who heard it, and we'll go from there. That is what
15 the standard is. Not just for fraud, but for negligent
16 misrepresentation.

17 Mr. Eglet talked about the Special Relationship
18 Doctrine. I commented on that earlier today. And it said --
19 and I have this in quotes -- "that there was false
20 information regarding the efficacy and purpose of opioids."

21 Fine. What was that false information? Tell us what
22 the statement is.

23 The advertising is not secret. It's not subject to a
24 protective order. There's been a lot of discovery done in

1 the MDL on the national level. There's all kinds of
2 information in possession of the plaintiffs that, if they
3 found a false statement, tell us what it is, put it in the
4 Complaint, and we'll respond to it appropriately.

5 If it rises to the level of fraud, as the Court said
6 earlier, we would expect the Court to hold Mr. Eglet to the
7 fraud leading standard of particularity.

8 Towards the end of his argument, Mr. Eglet mentioned
9 misrepresentations and the silence about material facts and
10 non-disclosure and wrongful concealment of material facts.

11 Again, in a broad brush, that's a good starting
12 point. But it doesn't tell us what the claim is with respect
13 to any individual defendant in this case. There are multiple
14 defendants, did multiple things, good, bad, and otherwise,
15 and we need to know what they are, and they need to be in the
16 First Amended Complaint for us to intelligently respond.

17 We're not holding the plaintiff to the standard of
18 proof at trial. That's not what we're asking the Court to
19 do. We're asking the Court to give us the notice, the short
20 and plain statement, the notice pleading that is required in
21 the State of Nevada. And just painting with a broad brush,
22 and saying, "These defendants are bad, they were deceptive,
23 they were fraudulent, they were misleading, they withheld
24 information" doesn't cut the muster in the State of Nevada.

1 The Court will hear now the motion of the
2 manufacturers -- excuse me -- the distributors seeking
3 dismissal of the case.

4 Who will argue on behalf of the --

5 MR. POLSENBERG: Well, Your Honor, before we do that,
6 if we could take up our motion to strike the supplemental
7 brief.

8 THE COURT: Yes.

9 MR. POLSENBERG: I'll be brief.

10 There is such a thing as a supplemental brief. I
11 mean, I do appeals. And it's in Federal Rule 26 and State
12 Rule 26.

13 And when you file a supplemental brief, you file
14 something, and you say, "Here's the issue it refers to. This
15 is the supplemental authority that goes to our point."

16 It's not a chance to raise arguments that you didn't
17 raise before, especially in a circumstance like this, where
18 we pointed out in our reply to their supplement -- their
19 first supplemental brief that they had not raised the issue.
20 And they still didn't raise it.

21 There were a couple of times today when you talked
22 about this case being different, or the unique circumstances
23 of this case. And I think that's what we're looking at here.

24 Here is a party that comes in and tries to raise an

1 issue that they didn't raise, that they didn't argue. They
2 apparently figured it out on the weekend before the argument,
3 giving us less than a judicial day, and they come in, and one
4 of the things they argue for, in the alternative -- I mean,
5 it's funny. How do you argue in a supplement brief for
6 relief specific to that brief?

7 So what this really should have been is a motion.
8 And it would have worked better if it were in enough time for
9 us to do something about this.

10 So what do we do about this? Clearly, this is a
11 violation. The local rule doesn't provide for a surreply or
12 for a supplemental brief. You, through leave of Court,
13 allowed some of this additional briefing, but not this brief.
14 So it's a violation. What do we do?

15 We have suggested we strike it, because this was at
16 issue. If you come into a Supreme Court argument the day of
17 the argument with a new argument, the Court will ignore it.
18 If you try to raise a new argument that wasn't in your
19 briefing, the Court will ignore it.

20 So we would move to strike. And that's appropriate
21 under the rules.

22 Our alternative relief -- we also ask for alternative
23 relief, as they did, but we at least made a motion -- is that
24 you should not let them argue today because they've raised

1 this too late. Allow us to file a response to their
2 supplemental brief on this issue.

3 There are two issues, actually. There's control, and
4 there's also the additional citations that they made to their
5 Complaint. And I think they should not be allowed to argue
6 this new issue that they raised today. We should be able to
7 argue it because we did raise it in the motion, and we did
8 raise it in the reply. I think that's an appropriate --
9 either way is an appropriate way to handle the circumstance.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 Respond to what you just heard, Mr. Eglet.

13 MR. EGLET: Well, it was a mistake. There's no
14 doubt. I'm not going to try to claim it wasn't. You know, I
15 was in trial for nearly the entire month of December, all the
16 way up until the day before Christmas Eve, had a bunch of
17 family in town. I didn't get the opportunity to really start
18 preparing for this argument today and tomorrow until last
19 Friday, Friday and the weekend.

20 On Friday I discovered this cut-and-paste error,
21 which is what it is, it is a cut-and-paste error. So we
22 decided to file a supplement, and that's what we did.

23 And I spoke to Mr. Polsenberg and a couple other
24 lawyers regarding this issue first thing this morning. And

1 we offered to, if they wanted to, we would continue the
2 entire hearing, allow them to file a responsive pleading to
3 it. The other alternative --

4 THE COURT: And pay for them for their time to come
5 back, for their travel expense.

6 MR. EGLET: We would, we would pay for that.

7 And the other option we said is, well, we can go
8 ahead and go forward with the argument, with the
9 understanding that we would be able to make the arguments
10 regarding the control issue we briefed, and they would be
11 able to make whatever arguments they wished on the control
12 issue this morning. But they would have the opportunity,
13 after today's argument, to file a response to our supplement,
14 as long as that response only dealt with the issues raised in
15 our supplement, they don't go outside of that and argue
16 anything else that we're going to be arguing today. If they
17 did that, then we would just simply say that we should have a
18 chance to respond to that, as well.

19 It was a mistake. But it was a mistake they knew was
20 a mistake, because we made these arguments in both the Clark
21 County case, and we made them -- we responded to their
22 control arguments in both the Clark County case, and gave the
23 citations, as well as the State's case.

24 The State's case for the distributor was just argued

1 last month, on December 2nd. We argued that case. The next
2 day I started this trial that I was telling the Court about.

3 So they knew that those were in our briefs. They
4 knew it was a cut-and-paste. In fact, they pointed that out,
5 "This is a cut-and-paste job." And it was an error by my
6 office that I didn't catch until Friday, and I thought that
7 the only thing to do was appropriate.

8 I don't think it would be fair and appropriate.
9 Because the law they cite with respect to, you know, the
10 issues are conceded, is not the law in Nevada. The law in
11 Nevada is --

12 THE COURT: Well, hold on. Now we're starting to
13 argue on the merits. Let's just talk about process here.

14 MR. EGLET: Process, look, I'm willing to --

15 THE COURT: Here's the way the Court is inclined to
16 approach this.

17 In a case like this, you know, I'm going to state the
18 obvious. I'm not loving the way that this was presented to
19 the Court, especially the filing of the supplement, the
20 request -- I mean, it is what it is.

21 So to the movants here, to the distributors, I guess
22 I would suggest you decide as among A and B.

23 A is that we proceed with the argument, the Court
24 makes no decision on this until you have 15 days from today

1 to file a written response to the surreply, which the Court
2 will consider. I will not allow plaintiffs to respond to
3 your reply, as long as it meets squarely the issues that are
4 newly raised. And I will not decide this until that time.
5 That is option one.

6 Option two is that we proceed with the hearing now.
7 Option two is we postpone the hearing, we come back after
8 you've had an opportunity to, at that time, have responded in
9 writing. And I'll allow those that are inconvenienced by
10 this to be reimbursed their reasonable travel expenses, and,
11 you know, for each -- up to, say, three counsel, up to three
12 hours of their legal time for being inconvenienced.

13 So I'll give you a moment to think about that, and
14 then you can tell me which one you'd like to do: Proceed,
15 with a written response within 15 days, the matter will be
16 submitted at that time; or come back, and we'll argue it
17 after, sometime in the next 30 days.

18 MR. POLSENBERG: Having talked with my co-counsel, I
19 know they'll want to know: Will we not argue, under option
20 one --

21 THE COURT: We'll argue now.

22 MR. POLSENBERG: Not argue control, though. Because
23 we said on page 3 -- intentional or not, this is an ambush.

24 THE COURT: See, that's the problem. That's why

1 really we should postpone this hearing, come back after
2 you've had an opportunity to respond, and we will argue as
3 though each side has briefed the issue, and control will be
4 heard.

5 MR. POLSENBERG: How about if we just skip control
6 today, and do the response to their brief?

7 MR. EGLET: We have to be able to argue.

8 THE COURT: Yeah, I agree.

9 MR. POLSENBERG: All right.

10 THE COURT: We have to argue. So take a few minutes.

11 MR. POLSENBERG: If I might have a few minutes.

12 THE COURT: Go ahead. I'll come back in about five
13 minutes.

14 MR. POLSENBERG: Thank you, Your Honor.

15 (Recess.)

16 THE COURT: All right. We're back on the record.

17 Have you had a chance to discuss among the
18 distributors how people would ask the Court to proceed?

19 MR. POLSENBERG: Yes. And thank you, Your Honor, for
20 that opportunity.

21 THE COURT: Sure.

22 MR. POLSENBERG: We will go with option one.

23 THE COURT: Which is to proceed, and you can have 15
24 days from today to file a brief in response to the surreply,

1 after which the matter will be submitted for me to make a
2 decision.

3 MR. POLSENBERG: Exactly right.

4 THE COURT: That's acceptable to the Court, as well.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE COURT: Please proceed.

7 MS. WEIL: Your Honor, with the Court's permission,
8 Miss Salgado and I are going to share this argument.

9 THE COURT: Permission granted.

10 MS. WEIL: Good afternoon.

11 Again, Your Honor, may it please the Court.

12 My name is Rachel Weil.

13 As I said, along with Suzanne Salgado, I will be
14 arguing on behalf of the defendant -- of the distributor
15 defendants.

16 THE COURT: Thank you.

17 MS. WEIL: I'm delighted to be in your beautiful
18 city. And I'm not blaming it for my cold, so I apologize in
19 advance for that.

20 THE COURT: All right.

21 MS. WEIL: With Your Honor's permission, I'm just
22 going to make a preparatory statement and set the stage; and
23 then Ms. Salgado will argue some of the over-arching issues,
24 including proximate causation and nuisance; and then I'll

1 finish up, if that's okay with Your Honor.

2 THE COURT: It is?

3 MS. WEIL: Now, Your Honor just heard arguments at
4 some length by the manufacturers, and the City has alleged
5 all of the same claims against the distributors, so might be
6 a good question: Why do we have to do this? Why do we have
7 to do this all again?

8 And I will tell Your Honor that, with the excellent
9 job that Mr. Lombardo and Mr. Guinn did, we will endeavor not
10 to repeat the exact same things that they said.

11 THE COURT: Of course, using Mr. Eglet's flow chart,
12 you're one step closer to the alleged harm, alleged against
13 the manufacturers.

14 MS. WEIL: Your Honor, we'll certainly talk about our
15 perception of that, as well.

16 THE COURT: Okay.

17 MS. WEIL: Why is our argument different from the
18 manufacturers'? And what that has to do with, as Your Honor
19 suggests, is how the distributors' role in the opioid supply
20 chain differs from the manufacturers' roles in the opioid
21 supply chain.

22 The easiest way to explain what distributors do is to
23 start out by explaining what they don't do. Distributors
24 don't develop opioid drugs. They don't work with the FDA to

1 get new drugs approved. They don't have any role in creating
2 warnings that accompany drugs, or modifying warnings that
3 accompany drugs. They don't manufacture the opioid drugs.

4 And most importantly for the purposes of the claims
5 in this lawsuit, they don't advertise drugs or market them to
6 doctors or to patients. And I think that's conceded. I
7 don't think the City is going to dispute that.

8 Distributors are essentially middlemen, Your Honor,
9 which means that they pick up drugs that the manufacturers
10 have already manufactured, and they take them to a warehouse,
11 where they keep them safe and secure under highly-regulated
12 conditions, and then they deliver them to retail pharmacies.
13 Then the retail pharmacies, in response to prescriptions,
14 dispense them to the public.

15 And that's -- excuse me, Your Honor. I'm sorry.

16 THE COURT: That's all right.

17 MS. WEIL: And that is what distributors do.

18 THE COURT: Hold on.

19 Do you want me to turn the air-conditioning off?
20 Because it was getting warm in here, so we directed the air
21 to come down a little bit.

22 MS. WEIL: No, I'm good. Thank you. I appreciate
23 that.

24 THE COURT: Keep it around 71 or so.

1 MS. WEIL: This is fine. This is just a cold.

2 THE COURT: Okay.

3 MS. WEIL: The City admits that this is what
4 distributors do, Your Honor.

5 Paragraph 67 of the Complaint states, in its
6 entirety, "Distributor defendants purchased opioids from
7 manufacturers, including the named defendants herein, and
8 distributed them to pharmacies throughout Reno and the State
9 of Nevada."

10 And then the paragraphs 86 through 130 of the
11 Complaint talk about other aspects of what distributors do
12 and talk about the distributors' role in the supply chain.

13 Now, as Your Honor is aware, the City's theory is
14 that the opioid manufacturers engaged in a deceptive
15 marketing campaign that effectively changed the standard of
16 care for the prescribing of opioid medications for long-term
17 and chronic pain.

18 And according to the City, the result was that the
19 doctors wrote more and more opioid prescriptions over the
20 years, and lots of opioids flooded into Nevada, and
21 everywhere else in the country.

22 But the City doesn't allege -- and it can't allege,
23 and it concedes that it can't allege -- that the distributors
24 were involved in a deceptive marketing campaign, because they

1 weren't. Because it's undisputed that distributors do not
2 market opioids to doctors or to patients.

3 Instead, Your Honor, the gist of the City's claims
4 against the distributors is that distributors shipped too
5 many opioids in response to what they call "suspicious
6 orders." It's true. It can't be disputed that over the
7 years distributors' shipments of opioids in Nevada and into
8 Nevada have increased and increased.

9 Why is that? Well, that's because Nevada doctors
10 wrote more and more prescriptions, which caused pharmacies to
11 place larger orders with the distributors, and distributors
12 filled them. And there was nothing suspicious about that.

13 And the Federal Drug Enforcement Agency, the DEA,
14 which is charged with regulating the distribution of
15 controlled substances, like opioids, obviously didn't think
16 it was suspicious, either, because between 1993 and 2015 the
17 DEA authorized a 39-fold increase in the number of opioids
18 that the manufacturers of opioids -- that the manufacturers
19 were allowed to produce. And that was based on the DEA's
20 determination that there was an increasing legitimate medical
21 need for the medications.

22 And so distributors shipped orders to the pharmacies
23 that ordered them to meet this new demand. And distributors
24 will talk about this a little bit later, as well. Miss

1 Salgado will address this in more detail in the causation
2 portion of the argument. But distributors' control over
3 opioids ends when they're shipped out.

4 Any criminal diversion, anything that happens down
5 the line that the City alleges resulted in its injuries
6 happened after distributors had relinquished control of the
7 opioids.

8 Now, why does that matter? It matters, as Your Honor
9 will hear, because, as a result of that, the City's claims
10 against the distributors fail as a matter of law.

11 Among other issues, it means that the City can't
12 prove the proximate causation element of any of the claims
13 against the distributors.

14 It is fatal to the City's ability to sustain -- to
15 satisfy the elements of its nuisance claim. It is totally
16 intertwined with the foreseeability argument in the
17 negligence claim. And it also means that the City can't
18 survive dismissal of its negligent misrepresentation claim or
19 its unjust enrichment claim.

20 So with the stage set, and against that backdrop,
21 Your Honor, Ms. Salgado will begin by explaining several of
22 the over-arching reasons why the six claims against the
23 distributors fail as a matter of Nevada law, and then I will
24 be back to talk to Your Honor again later.

1 THE COURT: Thank you very much.

2 MS. WEIL: Thank you.

3 THE COURT: Ms. Salgado.

4 MS. SALGADO: Thank you, Your Honor.

5 Good afternoon, Your Honor.

6 As Miss Weil said, she and I will be splitting the
7 arguments on behalf of the distributor defendants.

8 THE COURT: Excellent.

9 MS. SALGADO: As she said as well, many of the
10 arguments the distributors made are also made by the
11 manufacturers, and were made today in oral argument, and we
12 adopt these very-well-made arguments from the manufacturers,
13 and will endeavor to avoid repetition for the benefit of
14 everyone here.

15 As Miss Weil said, we'll focus instead on what makes
16 distributors different and the claims against distributors
17 and their unique position in the supply chain.

18 THE COURT: Okay. So what makes them different?

19 MS. SALGADO: Well, let's start with the Complaint
20 and see what the Complaint says about the distributors.

21 As Miss Weil said, there are fewer paragraphs
22 dedicated to distributor defendants, but I think it's a
23 little more glaring than that. There actually is one
24 16-paragraph section dedicated to distributors alone, out of

1 308 paragraphs. And that's striking.

2 What those paragraphs say -- the majority of those
3 paragraphs is 138 to 153, entitled, "Duty of distributor
4 defendants and pharmacies as gatekeepers."

5 The first sets of paragraphs describes the duties of
6 distributors, and only the last three of those paragraphs
7 actually allege that distributors did anything wrong.

8 What Miss Weil said and what they allege is that they
9 allege that distributors failed to report and stop suspicious
10 orders. That's it. There's nothing else that says what
11 orders, when, how they should have known they were
12 suspicious, given this 39-fold increase by the DEA from 1993
13 to 2015. But, instead, they just say too many opioids over
14 too much time, despite the fact that doctors were writing
15 those prescriptions.

16 What makes distributors different is that
17 distributors, unlike pharmacies -- excuse me -- unlike
18 manufacturers, do not have contact with doctors or patients,
19 and do not make advertising and marketing.

20 It's true, as Your Honor mentioned, that they sit one
21 step closer to the ultimate end-user in the supply chain.
22 But I think the same intervening causes that preclude
23 liability against manufacturers also preclude liability
24 against distributors, based on what happens after it leaves

1 the hands of distributors. And I'll get into that.

2 Before we get into the public nuisance and proximate
3 cause arguments, I'm going to briefly touch on the Statewide
4 Concern Doctrine, or Dillon's Rule, that was discussed at
5 length.

6 As I mentioned, I'm not going to repeat arguments
7 that were made, but I'd like to just add a couple of things
8 and a couple of notes.

9 The first is that, as we've discussed, it's
10 undisputed that Nevada has adopted Dillon's Rule, which was
11 codified in legislation that we've been discussing today.

12 One of the factors is that, "A matter of local
13 concern cannot concern the regulation of business activities
14 that are subject to substantial regulation by a federal or
15 state agency."

16 I think manufacturers largely covered this, but we're
17 focusing mostly on the regulation on them by the FDA, so I
18 just wanted to make the additional point that distributors,
19 too, are subject to extensive regulations; not by the FDA,
20 since we don't make products, and we don't market those
21 products, but by the DEA, which regulates distributors and
22 everyone in the supply chain: manufacturers, pharmacies,
23 doctors, and everyone else.

24 THE COURT: So how they would be moved, where they

1 would be stored, at what temperature, when they'll be
2 released to whomever buys them, and has a lawful right to
3 them?

4 MS. SALGADO: Precisely, Your Honor. And the
5 distributors' specific regulations, as Your Honor is alluding
6 to, often deal with that physical storage and movement of
7 them, to ensure that medications are moved safely.

8 What distributors' main job is, is to make sure that
9 medications are moved safely to their pharmacy and hospital
10 customers so that, when you, as a patient, go to your
11 pharmacy or end up in the hospital, the medications that you
12 need are there and ready for you, and have been moved there
13 safely, and you know what they are.

14 Distributors make sure that insulin is kept cold.
15 They make sure that medication is sent for next-day delivery,
16 if that's what is needed. It's really a logistics company.

17 THE COURT: Well, the vehicles have trackers on them
18 to make sure they're not going to places they're not supposed
19 to.

20 MS. SALGADO: Exactly.

21 THE COURT: It's temperature-regulated, and there's a
22 bunch of other things. I am aware of that, generally.

23 MS. SALGADO: As relevant to opioids, there's both
24 physical security of opioids and the distribution of them.

1 There's certain regulations that call for a certain thickness
2 of the wall of the vault that actually houses the opioid
3 medications that are stored in distribution centers.

4 And then, in addition to all of those regulations,
5 there's regulations that govern reporting suspicious orders
6 to the DEA, as well as reporting every movement of every
7 opioid medication throughout the supply chain. That means
8 that, when we purchase an opioid from a manufacturer, that
9 gets reported to the DEA. When we sell opioids to a
10 pharmacy, that gets reported to the DEA. They track all of
11 that information, and that's all part of the regulation on
12 distributors and manufacturers.

13 Now, I think the same logic applies that, given the
14 extensive regulatory framework, that this is not a matter of
15 local concern. And we adopt those arguments made by the
16 manufacturers.

17 The other issue that I wanted to note --

18 THE COURT: Wait. Let me make sure I understand
19 this.

20 Not a matter of local concern by virtue of the fact
21 that your client's business activities is regulated by the
22 DEA. End of analysis by the Court. I can stop right there,
23 check the box that says, "This case cannot be brought by the
24 City of Reno." And if somebody thinks otherwise, they better

1 convince two out of three Nevada Supreme Court Justices; is
2 that right?

3 MS. SALGADO: Well, the statute is clear that a
4 matter of local concern cannot concern the regulation of
5 business activities that are subject to substantial
6 regulation by a federal or state agency. That is the
7 statute. I think, to your point, it's not -- that's just one
8 of the issues that makes that not a matter of local concern.

9 THE COURT: You're saying, if I agree with the movant
10 here, it's game over, case dismissed as against -- well, for
11 purposes of this motion, as against the distributors; right?

12 MS. SALGADO: That's correct. If that is met, the
13 statute says that it cannot proceed. That is our opinion.

14 I think what you're getting to is, is this a
15 sufficient regulation of a business that is subject --

16 THE COURT: Well, I mean, is that what you read that
17 to mean? The DEA identifying how controlled substances
18 should be housed and moved and identified and logged in,
19 things like that, is the kind of regulation that Nevada
20 statute is referring to, and common law, Dillon's Rule
21 interpretation. Are we done? Like, are we done here?

22 I realize we're going to proceed with other issues.
23 Of course, as you're aware, the Court may not view it that
24 way. But if the Court does view it that way, the movant

1 believes this case is dismissed as to the distributors. As
2 to the manufacturers, I'm assuming, believe that the Court
3 views it that way, the case is dismissed as to the
4 manufacturers. Is that fair?

5 MS. SALGADO: That's fair. And just to elaborate why
6 this is, I think there's -- it makes sense, and there is
7 logic behind what the statute says, and what the Legislature
8 was doing when it codified this rule.

9 When there is extensive federal and Nevada law that
10 imposes comprehensive regulations, that means the Legislature
11 was intending to occupy that space, and it would not be
12 appropriate for a local government to act, in this case,
13 through litigation, or through legislation, to do something
14 that could be contrary to what a state or federal regulation
15 would require.

16 THE COURT: Let me again hit the pause button.

17 That may resonate -- well, it seems to the Court
18 that, if the relief requested here said, "If the City case
19 goes forward, and the City prevails, we want an order from
20 this Court to issue at some point that changes the manner in
21 which, the amount of which, the temperature at which,
22 delivery times at which controlled substances can be moved in
23 and about the City of Reno."

24 Now, that seems to the Court that would clearly be

1 well over the line of what the authority of a State District
2 Court could -- the kind of relief to give to the City of Reno
3 in lieu of the federal laws and regulations that will apply
4 here.

5 But that's, in the Court's estimation, not exactly
6 what the -- I realize, reading the Complaint, it seems like
7 the argument can be made that the City is asking for a level
8 of relief, by way of either mandatory injunction or
9 regulatory injunction, to change something with the way
10 opioids are delivered to and prescribed and used in this
11 community. And that gives the Court a little bit of pause.

12 But the financial impact to social services and the
13 like, is that also encompassed by Dillon's Rule, and preclude
14 the ability of the City go forward?

15 MS. SALGADO: Well, I think it's both things, the
16 injunctive relief and the punitive. Your Honor alluded to
17 the injunctive relief. They seek broad injunctive relief,
18 which to Your Honor's point could result in an injunction
19 that contradicts how a federal regulation would otherwise be
20 interpreted.

21 The federal regulation requires distributors to
22 report suspicious orders. If Reno interprets suspicious
23 orders differently than Baton Rouge and Washington D. C., we
24 have a problem. This is a highly-regulated industry, and the

1 distributors don't make different decisions based on the
2 states that they distribute those medications to. It needs
3 to be the same standard across the United States. And
4 bringing these sorts of actions is dangerous, because it
5 could -- it could change what that regulation means. We do
6 not believe that's appropriate.

7 THE COURT: But even Dillon's Rule, if the Court
8 interprets it the way the defendants are asking the Court to,
9 just says the City couldn't bring this, it would be a State
10 action, if anyone. So we still have a little bit of the same
11 type of concern, I guess.

12 Okay. Please continue.

13 MS. SALGADO: I think, further, to add an additional
14 point, we've been talking about acting through litigation
15 versus legislation. And I want to address that point
16 quickly, Your Honor.

17 THE COURT: Yes.

18 MS. SALGADO: We just wanted to emphasize that the
19 plaintiffs do not cite any authority to make that distinction
20 of legislation versus litigation.

21 And in addition to the authority cited by
22 manufacturers, we've cited additional authority that I wanted
23 to point Your Honor to, that's in our briefs, which is the
24 City of Philadelphia versus Beretta. And in that case, as

1 well, they made the same finding as in another case cited by
2 manufacturers that a City cannot do by litigation what it
3 cannot do by ordinance.

4 There that involved regulating the gun industry and
5 distribution of a lawful product, similar to what we're
6 seeing here.

7 And there the Court said that, "Claims that the gun
8 industry's method for distributing guns are negligent" -- or
9 excuse me. They brought claims that the gun industry's
10 methods for distributing guns were negligent and a public
11 nuisance. But they noted that, "The Supreme Court has
12 recognized that judicial process can be viewed as an
13 extension of a government's regulatory power, and that the
14 City's instant action seeks to control the gun industry by
15 litigation, an end the City could not accomplish by passing
16 an ordinance."

17 We think that case is on all-fours with this, and
18 wanted to cite that additional authority so that Your Honor
19 understands this is not a novel application of Dillon's Rule.

20 THE COURT: Okay.

21 MS. SALGADO: Unless Your Honor has any further
22 questions on Dillon's Rule, I'm going to move to public --

23 THE COURT: Before you move off that, I may have just
24 one more. Please just give me a minute.

1 MS. SALGADO: Sure.

2 THE COURT: Well, you know, I didn't ask this of the
3 manufacturers because, you know, I've just been sort of
4 turning it over in my mind. But Dillon's Rule clearly
5 precludes a municipality from bringing an issue on behalf of
6 a state or seeking damages or relief for injury to the State
7 as a whole.

8 The movants suggest that, if the alleged harm,
9 however, is of statewide concern, as opposed to local
10 concern, the City is precluded from acting as its own
11 enforcer, its own plaintiff; is that right?

12 MS. SALGADO: Well, I believe the statute speaks to
13 that, and states that it must have a local impact, and that
14 means that there is -- quote -- "no significant impact on
15 other cities or counties within the state." So that's what
16 the statute says, yes, Your Honor.

17 I think --

18 THE COURT: Well, so, the State, and the State alone,
19 is the entity that can pursue relief, if any is to be gotten,
20 on behalf of the cities and counties and municipalities
21 within the four corners of its border.

22 MS. SALGADO: That's not, I think, what it states.
23 And I recognize the struggle with this issue, which is
24 difficult. And I think we have other arguments as to why we

1 believe --

2 THE COURT: And the reason, I guess, intellectually,
3 I'm wrestling with you, aside from the fact that you're from
4 another place, is -- I mean, the Legislature cannot
5 anticipate every act that a city or a county would want to
6 take on behalf of its citizens in an effort to ensure further
7 and protect the health, welfare, and peaceful existence of
8 those that live within its jurisdiction; right?

9 MS. SALGADO: Yeah.

10 THE COURT: So the argument from the plaintiff is
11 going to be: This is an example of where the Court has to --
12 or the Court should read into the changes in the common law
13 Dillon's Rule by virtue of the 2015 Legislature, read that as
14 expanding, and moving off of the theretofore fairly
15 conservative view of what governing bodies can do, and this
16 should be used as an example of being more progressive, and
17 not less so.

18 And how would the movants here respond to that?

19 MS. SALGADO: I think, Your Honor, looking at what
20 the statute actually says, and what the Legislature did --

21 THE COURT: There's two different presumptions in the
22 statute; right?

23 MS. SALGADO: Understood. And I think, to the
24 manufacturers' point, we don't get to the presumption that

1 has changed because this is not a matter of local concern.

2 And addressing Your Honor's point about the
3 Legislature being unable to foresee all the issues that would
4 come, a couple things to point out.

5 First, by 2015, according to the plaintiff, the
6 opioid epidemic was full-blown. And so if the Legislature
7 wanted to include something at that point, that was four
8 years ago, it could have put something in there, and it
9 didn't. So I think that actually supports the movant's
10 argument.

11 THE COURT: Okay.

12 MS. SALGADO: Second, I think that, given that -- the
13 point about a local county or city wanting to address
14 something within that affects it is understandable, and I
15 think giving them the freedom to do that is what the
16 Legislature did. But it said: Only in matters of local
17 concern. And the fact that it was so specific, I think,
18 speaks to the Legislature having made a very recent decision
19 on what those powers encompass.

20 THE COURT: But it uses terms like "health, welfare,"
21 and the other term. So --

22 MS. SALGADO: Right. But it also uses terms like it
23 cannot have a significant impact outside of the city or
24 county. And, again, this is an issue that was known to the

1 Legislature at the time. And I think, to the extent they
2 wanted to make some broad exception, they could have. And
3 the fact that they kept what is under -- what is, frankly, a
4 somewhat conservative doctrine, when places like Utah, which
5 plaintiffs have cited have gone otherwise, I think shows that
6 the Legislature knows what it was -- knew what it was doing
7 when it codified this rule, and when it made this specific
8 exception. And this case, we argue, does not fit within this
9 very narrow exception.

10 THE COURT: You're not limiting it to, again, passing
11 of laws, ordinances, things like that. You interpret it to
12 mean also bringing litigation on behalf of the people in your
13 jurisdiction.

14 MS. SALGADO: That's right, Your Honor. Otherwise, I
15 think it would -- you know, any county or city could just
16 circumvent Dillon's Rule by bringing a litigation to do what
17 it could not do by ordinance, which is exactly what the cases
18 we have cited, the manufacturers have cited, have said.

19 Recognizing that there's not a Nevada case on point,
20 we think the fact that a case hasn't been brought where
21 someone has tried to apply Dillon's Rule where it shouldn't,
22 shouldn't preclude this Court from following the logic of
23 those cases where that issue has arisen.

24 THE COURT: Again, just for everyone's -- so you can

1 clarify to the Court, this issue, the issue of Dillon's Rule
2 applicable to opioid-related litigation has not yet made its
3 way to the Nevada Supreme Court because, the one attempt to
4 do so, it was diverted to the MDL. Do I have that right?

5 MS. SALGADO: Yes.

6 THE COURT: So this might be the test case.

7 MS. SALGADO: One last point, talking about the
8 Nevada Supreme Court. While they haven't dealt with this
9 issue specifically, they have had cases involving Dillon's
10 Rule that do provide guidance here. They are in our brief,
11 but I wanted to call your attention to them.

12 One is the Douglas County Contractors case, where the
13 Nevada Supreme Court held that, "Extensive statutory or
14 regulatory framework provides compelling evidence that the
15 Legislature intended to exclusively occupy a particular
16 field."

17 And then in Lamb versus Mirin, the Nevada Supreme
18 Court held that, "Clear legislative intent to occupy the
19 field means that local control over the same subject ceases."

20 THE COURT: Well, do we have that here? Do we have
21 the legislative intent occupying the issues that are before
22 the Court?

23 MS. SALGADO: I think we do. I think we do with
24 regard to federal regulations, and with regard to Nevada's

1 extensive regulatory structure that, again, opioids are a
2 controlled substance, controlled because it's controlled by
3 the government, because these are substances that can be
4 abused, so they must be subject to extensive regulatory
5 rules. And that's what this case is dealing with.

6 THE COURT: Okay.

7 MS. SALGADO: I'll move on to public -- if that's
8 okay with Your Honor.

9 THE COURT: Yes.

10 MS. SALGADO: I'm going to start out with the issue
11 of control, which was the subject of our motion to strike,
12 and which we'll be arguing today.

13 I want to make clear that we reserve to make
14 additional points in response to the late Saturday night
15 submission by plaintiffs in our follow-up writing. Although
16 I'm prepared to address the argument here today, as well.

17 THE COURT: Please do.

18 MS. SALGADO: The City fails to allege distributors'
19 control of the nuisance at the time it caused a nuisance.
20 And that is the standard that applies here.

21 Despite that plaintiffs argue this is not a novel
22 concept, this is one that is recognized across jurisdictions
23 that have evaluated public nuisance claims.

24 We included a lengthy footnote, Footnote 7, in our

1 motion to dismiss, at page 11, where we cited cases across
2 the country that have recognized this prerequisite of public
3 nuisance.

4 Focusing for a moment on the Rhode Island Supreme
5 Court case regarding lead paint, I know plaintiffs have said
6 that that's not an authority on public nuisance. But I
7 encourage Your Honor to read the opinion. It, frankly, is
8 one of the most comprehensive opinions regarding public
9 nuisance, and is essentially a treatise looking back through
10 the history of public nuisance at common law; not just in
11 Rhode Island, but looking at authorities that determine --
12 that have determined what the common law understanding is of
13 public nuisance, that informed this Court.

14 Nevada has said that Nevada law, if -- excuse me --
15 common law is Nevada law in Nevada, unless it has been
16 abrogated. And so I think it is instructive and important to
17 rely on these cases. And the Rhode Island Supreme Court
18 case, in particular, is instructive.

19 In that case, they explained the history of public
20 nuisance law, and why control is a prerequisite. And it
21 makes sense why it is.

22 The principal remedy for public nuisance is
23 abatement, and absent control at the time of the injury,
24 cannot abate the nuisance.

1 Here distributors have no control over how end-users
2 use or misuse medications obtained pursuant to prescriptions,
3 long after they were filled by pharmacies, long after
4 distributors delivered them.

5 Now, the idea that this is not a requirement at
6 common law is one that plaintiffs have just included in their
7 supplemental submission, and, frankly, we don't think that
8 that moves the needle at all.

9 They've cited some out-of-court, out-of-state cases,
10 in particular from California. Now, while California does
11 follow the Restatement on some issues, California has made
12 clear that, with respect to control, it departs from those
13 courts that have followed the Restatement on the control
14 issue.

15 In the case that we cite elsewhere in our brief,
16 which is the ConAgra case, 227 California Reporter 3D499, the
17 California court was dealing with the issue of control, where
18 the defendants in that case brought up the same cases that we
19 brought up here, including the Rhode Island Supreme Court
20 case, the New Jersey case, and others -- excuse me, Your
21 Honor -- that describe how control is a requirement at common
22 law.

23 The California case said that California departs and
24 does not follow what those courts have done, which

1 acknowledge that those courts followed the Restatement in the
2 finding that control is a requirement.

3 California has a narrow exception for what they call
4 representative public nuisance claims, where the case only
5 seeks abatement, and not damages, and says in those cases
6 California has made an exception, and doesn't require
7 control.

8 That's not the case here. Reno does --

9 THE COURT: That's not the relief requested here.

10 MS. SALGADO: Exactly. Not the relief requested.

11 More important than that, Nevada has not carved out
12 that exception, and common law controls.

13 Now, with respect to control, the question is: What
14 is the nuisance? And how is it caused? The plaintiffs --
15 excuse me -- the plaintiffs, the City, claims that the
16 nuisance is the opioid epidemic in Reno, and they say that
17 the purported nuisance was created in part by the
18 distribution of opioid products.

19 So let's unpack how opioid distributors could have
20 had control over the instrumentality of the nuisance, based
21 on what they're saying the nuisance is.

22 There's two problems with the argument that they say
23 we had control. First, the pills that they say we
24 distributed, the pills themselves do not cause harm. They

1 cause harm, if at all, of course, only when they're used, or
2 at most cases, misused.

3 And there's no dispute that distributors do not
4 control pills when they are ingested, let alone when anyone
5 decides to misuse them, or uses enough to become addicted or
6 cause some sort of economic harm to the City.

7 But, second, even if we say pills -- the issue is
8 pills in the community at large, what they've said is, too
9 many pills in Reno, the numbers are just too high,
10 distributors don't control them at that point, either.

11 Again, the key question is: Who controlled the
12 instrumentality at the time of injury?

13 Again, distributors' role is that we buy from
14 manufacturers in bulk and sell to our pharmacy, hospital,
15 hospice customers. We deliver only to DEA-registered and
16 licensed entities.

17 Once a distributor delivers the medications, they
18 have no control over who they are dispensed to, and no
19 control over what a patient does with those medications,
20 whether that patient uses them as directed, gives it to
21 family and friends, sells it, or leaves it unprotected in a
22 medicine cabinet. In fact, privacy laws prohibit
23 distributors from even seeing who receives what medications
24 at the pharmacies they serve.

1 Now, I want to emphasize that point. I don't think
2 that that's abundantly clear. But distributors, because of
3 HIPAA laws, cannot see what happened to the medications they
4 give pharmacies once they've dropped off those medications.

5 THE COURT: Well, according to plaintiff, you can see
6 who is ordering, how much you're ordering, how much is being
7 ordered, and how it relates to prior orders; right?

8 MS. SALGADO: We can see the pharmacy is ordering.

9 THE COURT: Right.

10 MS. SALGADO: We cannot see who, what patient --

11 THE COURT: Right. I understand.

12 MS. SALGADO: Precisely. But, and then again, the
13 pharmacies --

14 THE COURT: Hold on.

15 MS. SALGADO: Go ahead.

16 THE COURT: We're both talking at the same time.

17 You can see how much of the product your clients are
18 ordering, with what regularity, and how it relates to prior
19 orders, both in amount, timing, percentage, things like that;
20 right?

21 MS. SALGADO: That's correct, Your Honor.

22 THE COURT: Those three paragraphs out of 16 total
23 paragraphs, out of 284 and a half total paragraphs, speak to
24 that, do they not?

1 MS. SALGADO: They say in general terms that we
2 failed to report suspicious orders. They don't say how many,
3 where, when, what. That's it. And, frankly, what a
4 suspicious order is, they don't say anything about it.

5 And for our purposes here, it's important to
6 understand the difference between a pharmacy order and what
7 the patients are ordering at the pharmacy counter.

8 The pharmacies order in bulk from distributors. It
9 wouldn't make sense if I were to go in to get a Penicillin
10 medication, and they have to order it from the distributor
11 every time. Instead, they place a bulk order before a
12 patient brings in the prescription.

13 THE COURT: To anticipate the needs of their --

14 MS. SALGADO: Exactly.

15 THE COURT: -- customers.

16 MS. SALGADO: Precisely. And that's the case with
17 controlled substances and non-controlled substances.
18 Although it's possible to order on an emergent basis, if
19 needed.

20 But what I'm saying is that distributors don't have a
21 window into what patients are -- why they're getting their
22 medications, when, and how much. All they see is the bulk
23 orders from their pharmacy, hospital, hospice customers.

24 Yes, those have gone up over time, but as Miss Weil

1 said, so did the DEA's quota on what is needed for legitimate
2 medical supply in the United States. That's the standard for
3 how the DEA sets its quota about how many opioids are
4 legitimately needed across the country. So it's not
5 suspicious. When orders match that DEA quota, it makes
6 sense.

7 Based on what the plaintiffs have alleged about the
8 medications -- or about the prescriptions going up every
9 year, you just can't get to the point to say that what
10 distributors did was unlawful.

11 But focusing here on control, while we can see what
12 pharmacies order, the key is control at the time of the
13 injury. And again, after a distributor has sent the
14 medications to a pharmacy, they don't have control over what
15 happens next.

16 And the only way harm can occur is, after
17 distribution, after pharmacies dispense the pills, and after
18 individual use or misuse. And only then do we get to the
19 harm, long after the distribution. So if the nuisance is the
20 pills in the community overall, defendants lack control over
21 the instrumentality.

22 THE COURT: Well, that suggests an interesting
23 question to the Court. You know, when does the harm occur?
24 And this is really a rhetorical question. If you want to

1 respond to it, you can, and the plaintiff or anyone else
2 addressing the Court. But when does the harm occur here?

3 Does it occur when somebody is taking the eleventh
4 pill, when they're only prescribed 10? Or when they take the
5 twenty-fifth pill that a physician prescribed? Because they
6 need 25 now, instead of 15, like they needed a month ago? I
7 mean, when does the harm occur?

8 Because you're saying they can't allege, or they
9 haven't, nor could they properly allege control by the
10 distributors at the time the harm occurred. So where on the
11 continuum does the harm occur for purposes of this motion? I
12 guess.

13 MS. SALGADO: Regardless of where exactly for misuse
14 it may occur, it's long after distributors have control of
15 the pills themselves. Distributors have it under lock and
16 key when they send it to the pharmacies. And pharmacies only
17 dispense --

18 THE COURT: Any moment in time after it's released
19 from your custody, care, and control, that's on somebody
20 else?

21 MS. SALGADO: I'm saying that the common law requires
22 that, if someone is to be able to abate a nuisance, they have
23 to have control when the harm occurred.

24 THE COURT: I understand.

1 MS. SALGADO: And since distributors do not have any
2 control, and are, in fact, prohibited from even seeing what
3 happens after they have distributed these bulk orders --

4 THE COURT: As a matter of law, they cannot be found
5 liable for public nuisance.

6 MS. SALGADO: Correct.

7 THE COURT: For that reason, the simple reason
8 that -- assuming Dillon's Rule doesn't -- isn't dispositive,
9 the second issue is, you don't have control under the law
10 such that the Court -- there could be no relief granted here
11 even if the factual allegations are accurate with respect to
12 the harm that occurred downstream.

13 MS. SALGADO: Precisely, Your Honor. And this
14 doctrine has been applied in similar circumstances. As we
15 said, the Lead Industries case involves lead being -- suing
16 those who had control originally of the paint. But when they
17 don't have control later, that was the basis for the Supreme
18 Court's ruling in Rhode Island that there was no control,
19 and, thus, no public nuisance liability.

20 The North Dakota case that was cited by the
21 manufacturers, again, one of the bases was a lack of control
22 in that case by a manufacturer after its product enters the
23 market. And in that case found that that was dispositive, as
24 well. And we argue the same logic applies here.

1 THE COURT: Okay.

2 MS. SALGADO: The next issue as to public nuisance
3 is, we contend that the City fails to plead interference with
4 a public right.

5 This is an issue that also was covered by the
6 manufacturers, so we'll just emphasize a few points, and add
7 a few others.

8 As the manufacturers explained, public rights are
9 rights to use common goods or resources. It's the right to
10 have access to things like water, land, and air. And so
11 public rights are at stake where, for example, a public road
12 or right-of-way is obstructed, or air and water is polluted,
13 or explosives or fireworks stored in the middle of the city.

14 THE COURT: Well, that's the easy case. Everyone can
15 see that. This is not the easy case. This is a case where
16 there's something new, some alleged harm, some public wrong
17 is being alleged by the plaintiffs here. So we all agree
18 this isn't the slime coming off the hill, this isn't somebody
19 putting cyanide in the water. This is different.

20 So the question is: Is it close enough to
21 interference with a public right to be free of this type of
22 an epidemic, as alleged? And I'm not taking sides here.

23 MS. SALGADO: Understood.

24 THE COURT: But we need to -- we -- it seems to the

1 Court that, in a case like this, you know, we have to ask
2 ourselves collectively: What's the goal here in a claim like
3 this? What is the law trying to do in imposing these
4 elements for claims like this?

5 And, so, yes, we can all agree that this doesn't look
6 like the cases that have typically been litigated, been
7 decided, made it up to appellate court, and had a decision
8 published. But what do we do with what is alleged here?

9 MS. SALGADO: Yes, Your Honor. I think I'll address
10 that by addressing the issue of public health, and how
11 plaintiffs say that, because this is an issue of public
12 health, it is --

13 THE COURT: That that's all you need.

14 MS. SALGADO: That that's a matter of public right.
15 We think that's incorrect.

16 THE COURT: Why?

17 MS. SALGADO: So the first issue is, they quote --
18 they miscite a portion from the Restatement that I would like
19 to point out to the Court.

20 Restatement 821 (b), Subsection (1), lists what a
21 public nuisance is, and those are the two elements we've been
22 talking about, which is interference with the public right,
23 and that that interference with the public right be
24 unreasonable.

1 So the argument today is about whether there's a
2 public right to begin with, whether there's an interference
3 with that public right. It's a separate question about
4 whether the interference is unreasonable.

5 Now, Subsection (2) of the Restatement contains a
6 list of circumstances where an interference with a public
7 right may be unreasonable. Included in that list is where an
8 interference with a public right involves a significant
9 interference with a public health, public safety, public
10 peace, et cetera.

11 This is something that plaintiffs have repeatedly
12 cited as supposed authority that the Restatement says that
13 interference with a public health -- excuse me -- the word
14 "public" here -- that interference with the public health
15 means interference with a public right. But that's simply
16 incorrect.

17 The portion of the Restatement that they're citing
18 speaks only to that second element. Once you've already
19 found a public right, when you're asking "Is the interference
20 unreasonable?" that's when you look to that portion of the
21 Restatement.

22 THE COURT: You're saying the Court shouldn't even
23 get there?

24 MS. SALGADO: Precisely. And that the Restatement,

1 that does not say what plaintiffs say it says, which is that
2 does not support the idea that interference with the public
3 health is de facto public nuisance, because that's not what
4 it says. And I think, logically, that doesn't make sense,
5 either.

6 We can all agree that there are some issues that
7 impact public health that are public nuisances. For example,
8 a contagious disease that could be spread, that's a classic
9 nuisance.

10 But if you think about what public health concerns
11 are, the CVC has a list of top 10 public health concerns.
12 And included on those are things like teen pregnancy and
13 obesity. Those are not public rights. You do not have a
14 public right that is implicated by those public health
15 issues.

16 And opioid abuse is on that list. And we contend
17 it's the same thing. It implicates individual rights of the
18 user or person affected. And the Restatement makes clear
19 that, no matter how many people are affected, that does not
20 convert what would be an aggregation of individual rights
21 into a public right.

22 And so, while this is a novel issue, and one that
23 impacts a lot of people, the Restatement makes clear that
24 courts are not to convert something that would otherwise be

1 an individual right just because it impacts lots and lots of
2 people. That's Restatement 821 (b), comment G.

3 And it says that, "Conduct does not become a public
4 nuisance merely because it interferes with individual rights
5 of a large number of persons." So we think that that is
6 important.

7 Further, this issue was dealt with again in the Rhode
8 Island Supreme Court case, which, as we said, is a lengthy
9 treatise on public nuisance law. That case is particularly
10 important on this issue because the Court expressly
11 recognized the difference between a public health crisis and
12 a public right.

13 And make no mistake. The lead poisoning issue was a
14 huge public health crisis. But there the Court said, "Just
15 because there's a public health crisis does not mean there's
16 a public right."

17 The Court went through a lot of facts to explain that
18 lead poisoning was a public health crisis, and explain all
19 the ways that the Legislature was dealing with it, all the
20 cases that had been brought. But the Court ultimately found
21 that, if you would look at the law and what is required, that
22 does not constitute a public right as to an individual. It
23 was a collection of individual rights. And that logic
24 applies with equal force here.

1 I'd also like to address the cases that plaintiffs
2 cite with regard to unlawful practice of medicine being found
3 to be a public nuisance.

4 They cite two out-of-state cases where that's an
5 issue, but those cases are distinguishable. Those cases
6 concerned the unlawful practice of medicine and the State's
7 ability to regulate the practice of medicine.

8 As one of those cases cited, the Compeer case, out of
9 New Mexico, the concern at issue was the prevention of the
10 spread of communicable disease through unskilled
11 practitioners. And that, again, is a classic nuisance
12 example. It has no bearing on whether there's a public right
13 here to be free from, in this case, the over-supply of a
14 lawful drug.

15 Now, building on this issue of what can be brought as
16 an issue in a public nuisance claim, I separately wanted to
17 address the issue of this being an expansion of what the
18 Nevada Supreme Court has recognized to be public nuisance.

19 Now, the history of Nevada cases, a tradition of
20 public nuisance law here is more limited, and common law
21 public nuisance cases are not found very often in Nevada law.

22 Where claims have been upheld, they've involved
23 interference with or misuse of property, public resources, or
24 public highways, as we've discussed.

1 But to your point, the question is: Okay. But what
2 about this new kind of case? Should we consider it?

3 And I would submit to Your Honor the cases that have
4 dealt with this issue and wrestled with it and given it the
5 most thoughtful analysis have found that it should not be a
6 cause of action. And we submit that that's the same here.

7 The City -- excuse me -- the trend across the
8 country, as the manufacturers discussed, is not to recognize
9 public nuisance claims when there's a lawful product at
10 issue.

11 I won't re-argue what the manufacturers already
12 stated about that opening the floodgates, but Your Honor can
13 understand why that would be a problem if all of those kinds
14 of cases could be public nuisance cases.

15 I would just direct Your Honor to a footnote,
16 Footnote 9, in our motion to dismiss, at page 13, where we
17 cited cases throughout the country that have refused to
18 recognize products-based public nuisance claims.

19 And, again, I think it's important to note that these
20 are states that follow the Restatement, like Nevada does, and
21 follow common law nuisance; and that those issues are
22 controlling, absent any abrogation of common law in Nevada.

23 Now, on, Your Honor, to the remedies that the
24 plaintiffs seek.

1 The City's public nuisance claims also fail because
2 the remedies they seek are not available. The manufacturers
3 covered this issue as to the statute, and made clear that the
4 statute limits recovery to penalties and injunctive relief.
5 And penalties of not more than \$5,000, I think is what it
6 states.

7 And I just want to address the point made by the
8 City, which is that the defendants don't cite to anything
9 limiting remedies to what is stated. But I submit the
10 statute is what is controlling, and the statute does limit
11 any remedies, again, to civil penalties of not more than
12 \$5,000 and injunctive relief. And it's the City that does
13 not submit any additional authority that the Court can award
14 remedies based on -- I'm not sure what, to be honest.

15 As to common law, the money damages that they seek
16 are also not available at common law.

17 Excuse me.

18 The money that they seek relates to past costs
19 incurred in treating addiction. Abatement is a perspective
20 remedy, and is limited to the costs of eliminating or
21 removing the conduct or condition that is interfering with
22 the public's right.

23 So it doesn't include paying to treat all
24 consequences of the alleged nuisance. It's just limited to

1 costs of removing the thing that is interfering or creating
2 the nuisance in the first place.

3 So here we submit that they cannot recover money
4 damages for past injury that they may have suffered, and that
5 abatement should be limited only to that which is the
6 over-supply of opioids.

7 Next, Your Honor, I have the statutory issue, which
8 is that this is not authorized by statute. But we adopt the
9 arguments made by the manufacturers here.

10 THE COURT: Okay.

11 If there are no further questions on public nuisance,
12 I'll move on to proximate cause.

13 THE COURT: Please do.

14 MS. SALGADO: There's no proximate cause for the
15 City's claims against the distributor defendants, for
16 multiple reasons, and I'll discuss these in turn.

17 The first is that the City seeks to recover costs for
18 providing healthcare services to its citizens, including the
19 cost of treatment for opioid addiction and overdose. And
20 citing its spending on these issues, the City alleges it's
21 been harmed.

22 These arg -- excuse me -- these alleged injuries that
23 the City claims it incurred are derivative injuries, and are
24 precluded as a matter of law.

1 Having an alleged injury does not mean you have a
2 direct injury. Every alleged financial claim that the
3 City -- excuse me -- financial harm that the City complains
4 of from payment of medically unnecessary prescriptions, to
5 increased law enforcement costs, to increased social services
6 costs are all derivative of the injuries suffered by users of
7 opioids.

8 Now, the issue is that a city or a third-party payor
9 of some sort of benefits cannot bring a case like this unless
10 it's a subrogation claim. The City does not purport to have
11 a subrogation claim here, and, indeed, it couldn't. Instead,
12 it seeks to abate the defenses that would be available, if
13 the actual individuals who were injured brought suit, and,
14 instead, aggregate them, and suggest that it's able to
15 recover for its injuries that are plainly derivative of those
16 of its citizens.

17 Now, the City --

18 THE COURT: What did the judge in Oklahoma say about
19 that? Didn't he, in his order, involve the State of Oklahoma
20 bringing a claim in the derivative for the expenses that it
21 incurred by virtue of what he found to be wrongful conduct?

22 MS. SALGADO: The judge in that case only awarded
23 forward-looking-perspective abatement damages, and so I'll
24 need to get back to Your Honor about whether those were

1 derivative. But it was a very limited ruling, only allowing
2 one year's worth of abatement damages, because the judge only
3 found that's what was proven by the State as to injuries it
4 would incur.

5 THE COURT: Okay.

6 MS. SALGADO: The issue is, the City doesn't argue
7 that there's no derivative injury rule in Nevada. And it
8 applies here.

9 As we've discussed, common law is the law of the
10 land, unless it has been abrogated. And it's a widely
11 recognized common law rule. There's no direct cause of
12 action in tort against one who injures the provider's
13 beneficiary.

14 Now, unable to argue that this rule has been
15 abrogated, the City conflates this requirement with direct
16 injury, with the requirement to plead foreseeability.

17 Now, those are two distinct concepts, both of which
18 must be pled by the plaintiff. But the issue of direct
19 injury is one that is plainly not met, and we think is a
20 threshold issue that plaintiffs cannot get around.

21 Moving on to the rest of the proximate cause --

22 THE COURT: I just want to talk about that for a
23 minute.

24 MS. SALGADO: Sure.

1 THE COURT: Direct injury versus derivative injury --

2 MS. SALGADO: Again, unless Your Honor has --

3 THE COURT: Well, no. I'm just trying to wrap my
4 head around that. Because when I first took a look at this,
5 it seemed clear what the issue was, but now -- the City says
6 there's an exception here, and the City's finances have been
7 impacted by the use of its people and resources, time,
8 energy, and injuries. That is, in effect, a direct injury to
9 the City, not to other people that we had to respond to;
10 "we," the City, had to respond to.

11 And you say that common law says: No, that doesn't
12 do it. That's somebody else's injury. If they have a claim,
13 they can bring it, if they think they were over-prescribed,
14 or the medicine didn't work like it was supposed to, or
15 otherwise. But that's not your claim. That's what you're
16 suggesting to the Court; right?

17 MS. SALGADO: That is, Your Honor. Unless there's a
18 subrogation claim that enables --

19 THE COURT: That's not what's alleged here.

20 MS. SALGADO: That's correct.

21 THE COURT: That's really not -- there's no scenario
22 where that could really be the case.

23 MS. SALGADO: Right. But I think that's important,
24 because if it's not the case that you could have a

1 subrogation claim, that the City could bring the claim and
2 stand in the shoes of those injured, then why should it be
3 able to avoid the defenses that would be made, if it did, and
4 if those injured actually did bring the suit?

5 There's a reason for this requirement, and that's
6 because, without it, you can avoid those defenses that would
7 be applicable. And Nevada has a long line of cases that
8 preclude an individual from recovering for these types of
9 injuries. So why is it that the City should then just be
10 able to obtain derivative injuries, when the individuals
11 themselves couldn't do so?

12 Again, we're one further step removed. We're talking
13 about a completely derivative injury. And this is an issue
14 that other cases have dealt with.

15 If you look at the Eleventh Circuit case we cited,
16 the United Food and Commercial Workers Union case, it did a
17 lengthy look at common law principles. This was an employee
18 health plan that sued tobacco manufacturers and distributors
19 to recover costs for tobacco-related illnesses.

20 Again, these are costs that the employee health plan
21 incurred similar to the costs that Reno is seeking that Reno
22 alleges it incurred.

23 Now, the health plan's costs went up when its
24 employees suffered more injuries due to the tobacco, but,

1 nonetheless, the Court upheld the grant of a motion to
2 dismiss because there was no proximate cause. There was no
3 direct cause of action against one who injures the provider's
4 beneficiary. And they cited multiple courts dismissing
5 similar actions in those circumstances for the Second
6 Circuit, Third Circuit, Fifth Circuit, Seventh Circuit, and
7 Ninth Circuit.

8 This is a well-established rule that has been applied
9 in similar cases. And just because there is an injury to the
10 provider of benefits, such as Reno, or, in this case, such as
11 the health plan, because it's a completely derivative injury,
12 it's precluded as a matter of law.

13 MS. SALGADO: Moving on -- unless Your Honor has
14 further questions.

15 THE COURT: I don't.

16 MS. SALGADO: Even putting aside that threshold
17 issue, the City has not and cannot plead proximate cause as
18 to the distributor defendants.

19 Stepping back again to distributors' role in the
20 supply chain is important when we talk about proximate cause.

21 Plaintiffs generally have two theories of liability
22 in their Complaint. Their first theory, which underlies the
23 bulk of their Complaint, as we've discussed, is their theory
24 against the manufacturer defendants.

1 Now, these are allegations by plaintiffs. And they
2 say that, in the '90s, there was a view that opioids should
3 be used for very few people, for short duration, and in
4 limited doses. And that's because the medical establishment
5 knew that opioids were addictive. Now, that is what doctors
6 believed. And prescribing habits were consistent with that.

7 Then they allege that the manufacturers came in and
8 created this multi-faceted, multi-pronged marketing campaign
9 to get the message across that opioids could and should be
10 used for chronic pain.

11 Again, these are the things plaintiffs referred to
12 earlier about the advertising, key opinion leaders,
13 continuing medical education. And the theory by plaintiffs
14 is that that's what changed how doctors understood opioids.
15 So new doctors were trained to use these drugs to treat pain
16 on a wide scale, and that more people should get them, and
17 get them for longer term and higher doses.

18 Plaintiffs allege -- excuse me -- the City alleges
19 that, as a result, the prescriptions and opioid use went up.
20 And that brings us again to the DEA even being convinced that
21 more opioids should be used, and increasing that quota every
22 year 39-fold.

23 Now, that whole theory of liability about marketing
24 and the change of the standard of care has nothing to do with

1 distributor defendants. We don't influence doctors to
2 prescribe, and we can't keep them from prescribing. Our role
3 is to fill those bulk orders we talked about from our
4 pharmacies, hospitals, and hospices.

5 Now, again, the Complaint only dedicates that
6 16-paragraph bloc to us, and those three paragraphs of
7 allegations against what distributors did. But distributors
8 are not part of the first theory. So what do they allege as
9 to distributors?

10 Excuse me, Your Honor.

11 Their second theory that relates to distributor
12 defendants is one of diversion. They accuse us of having
13 not -- excuse me -- of having not adequately prevented
14 diversion.

15 Now, what is diversion? It's the diversion -- it's
16 when a drug that has been legally prescribed, it's diverted
17 to an illegal use, or when it goes outside of the legal
18 supply chain. The diversion could include something like
19 someone stealing the truck that the distributor is using to
20 ship to its pharmacy. But that's not what is at issue here.

21 What is at issue is what happens after an end-user
22 gets a lawful prescription, misuses the drug, or gives it to
23 someone else who misuses it.

24 Now, they claim that distributors fail to detect and

1 report suspicious orders that they should have known were
2 likely to be diverted -- again, multiple steps down the
3 chain -- and that we should not have shipped those orders.
4 But, again, diversion requires the transfer of these legally
5 prescribed drugs from the pharmacies to another person for
6 misuse. So, in other words, it requires a subsequent
7 unlawful act that constitutes a superseding intervening
8 cause, such that distributors cannot be the proximate cause
9 of the resulting harm, if any, that occurs.

10 Even if a distributor failed to report or stop a
11 shipment of drugs, as the City alleges, no harm could occur
12 without the intervening acts of third parties.

13 We could send lots and lots of shipments to a
14 pharmacy, but they would just sit on the shelves and cause no
15 harm, unless a doctor prescribed them, the pharmacy dispensed
16 them, and then a user misused them.

17 Now, the City has no answer to that other than to say
18 there's no single cause, and distribution of opioids is one
19 of them. But we still have to be a legal cause. And I
20 submit that we cannot be based on these superseding
21 intervening causes. And their argument regarding a role in
22 the supply chain only proves our point.

23 The City fails to address the long line of precedent
24 in the Nevada courts that comes up in the alcohol sales

1 context. The Nevada Supreme Court has repeatedly reaffirmed
2 the common law rule that consuming an intoxicating substance
3 and not furnishing it is the proximate cause of the
4 third-party -- any third-party-related injuries.

5 The Nevada Supreme Court first adopted this rule in
6 the Ham case, in 1969, and has continued to apply and follow
7 this rule, expanding its application in multiple published
8 opinions in the Nevada Supreme Court.

9 Now, this --

10 THE COURT: Different than other states.

11 MS. SALGADO: Yes, Your Honor.

12 THE COURT: But that's the law here.

13 MS. SALGADO: That's the law here.

14 And as Your Honor has stated, regardless of what
15 other cases have found, this Court is bound by the laws in
16 this state. And here the Nevada Supreme Court has been
17 clear. And the logic underlying these decisions I would
18 argue applies with even more force to a case like this.

19 We discussed the role of distributors in the supply
20 chain, and how, again, they are prohibited by law from seeing
21 or knowing who the patients are that fill the prescriptions,
22 that place the bulk orders from the pharmacy -- excuse me --
23 from the distributor. And we certainly can't know whether
24 that person obtained the prescription legally, or whether a

1 legal prescription will be misused or used by someone else.

2 Now, in these tavern keeper cases that we see, there
3 are cases that have arisen where there are allegations where
4 the tavern keeper actually did have knowledge that someone
5 was going to go for a long drive after being drunk -- after
6 drinking at the bar, or that someone was underage, and the
7 tavern keeper knew that. Even in those cases the Nevada
8 Supreme Court has said it doesn't matter, because it's the
9 consuming of the beverage that is a superseding intervening
10 cause, and not the furnishing.

11 Here we can't -- we not only don't know what happens
12 to the prescription once it's out of our hands, we can't know
13 what happens to it. And it would not be appropriate to hold
14 a distributor liable of an opioid -- of distribution of
15 opioids, when furnishing an alcoholic beverage means there's
16 no liability.

17 And I would just like to point to the plaintiffs'
18 example. I think it was a personal example of his experience
19 of the driver being under the influence of Oxycodone. Which
20 is horrible. But I think this is an interesting example
21 because, if it were alcohol at issue there, the furnisher of
22 alcohol could not be held liable; but because it was driving
23 under the influence of a drug, arguably, here, under
24 plaintiffs' logic, they could hold a distributor or a

1 manufacturer liable, or the pharmacy, when that wouldn't be
2 the case for alcohol. And that logic just doesn't hold
3 water, Your Honor.

4 In other words, another way that we framed this, and
5 that other courts have looked at it, is that proximate cause
6 is absent because the connection between distributors'
7 alleged wrongful conduct and the expenditures, in this case,
8 of the City, is just too attenuated.

9 Now, the Court in Connecticut, as the manufacturers
10 explained, looked into this issue, and this -- and wrote its
11 opinion based on this proximate cause issue that we've been
12 discussing. And we would argue that is based on common law
13 principles that apply with equal force to this case here.

14 The Court went into great detail to explain the many
15 steps between the conduct of distributors and harm to the
16 cities there. And, again, those cause -- excuse me -- that
17 causal chain was just too long, and it's too remote, which is
18 the same issue that the Nevada Supreme Court has found with
19 regard to this issue, and too many superseding causes for
20 there to be proximate cause.

21 Now, I expect the City will say that, even if there
22 was intervening conduct, that was foreseeable. But what was
23 foreseeable? And to whom, and when? What order should have
24 been stopped and reported? And how did any particular

1 conduct by any defendant lead to any specific harm in Nevada?

2 We have none of that. We just don't know. So they
3 cannot say in the abstract that we should have foreseen this
4 cause, this harm that they claim happened to them after
5 multiple steps in the chain, when they can't even tell us
6 what orders we shouldn't have shipped, and anything that we
7 have should have done differently.

8 All they can say is that opioid prescriptions, and,
9 therefore, opioid distributions went up over time. But of
10 course it did, because, as we said, the DEA authorized it
11 based on legitimate medical need. And, again, that's not
12 suspicious. We think it's just common sense.

13 So with that, Your Honor, unless there are any other
14 questions, I'll turn it over to Miss Weil.

15 THE COURT: I have no further questions. Thank you.

16 MS. SALGADO: Thank you, Your Honor.

17 THE COURT: Mr. Eglet, do you wish you had objected
18 to Ms. Salgado's pro hac vice admission this morning?

19 MR. EGLET: No, not at all.

20 MR. POLSENBERG: Don't miss a great chance to offer a
21 compliment.

22 MR. EGLET: She did a fine job. I have no objection
23 as to her. I don't agree with what she said, but I have no
24 objection to her.

1 MS. SALGADO: I'm going to take no position.

2 THE COURT: Bad attempt at a little levity here.

3 Ms. Weil.

4 MS. WEIL: Thank you, Your Honor.

5 First of all, I wanted to correct something I said
6 earlier. I said something -- I had a note on my papers about
7 paragraphs 86 to 130. I couldn't read it. I still don't
8 know what I meant to say. But I think what I did say is that
9 they are related to distributors' conduct. And they do not.
10 They are preparatory factual allegations that relate
11 essentially to the manufacturer.

12 THE COURT: I understand.

13 MS. WEIL: Just for the record.

14 THE COURT: Thank you.

15 MS. WEIL: At this point, I'd like to turn to the
16 negligence claim.

17 Now, it's Horn Book law there are four elements to a
18 negligence claim. I think the case we cited is the Turner
19 versus Mandalay Sports. But it's all over the law.

20 The elements of a negligence claim in Nevada, there
21 has to be a duty of care that the defendant owes to the
22 plaintiff.

23 Now, that's important. There can't just be a duty
24 out there somewhere. The duty has to be running from the

1 defendant to the plaintiff. That means, in this case, the
2 distributors have to owe a duty of care to the City for
3 this -- and the City -- at this stage, the City has to plead
4 that adequately to sustain the negligence claim. The
5 distributors have to breach the duty. There has to be
6 causation, which Miss Salgado just talked about. And there
7 has to be damages.

8 So let's focus on duty. The gravamen of the City's
9 claim again the distributors, as this Court is aware, is that
10 the distributors failed to monitor and report suspicious
11 opioid orders.

12 Now, this is an obligation -- I'm going to avoid the
13 word "duty" -- this is an obligation that is embodied in the
14 federal Controlled Substances Acts, the federal CSA.
15 It is an obligation, a reporting obligation that runs from
16 distributors to the federal Drug Enforcement Agency.

17 In the Nevada CSA, there is no analogous reporting
18 obligation to any authority in Nevada. And that was somewhat
19 clumsy, but what I mean is, distributors don't have an
20 obligation to report suspicious orders to anyone in Nevada.
21 And so this is a federal statutory or regulatory obligation.

22 So, again, we kind of come up against a private right
23 of action question. I'm not going to spend a lot of time on
24 it, because I don't think the City disputes this. I think it

1 is well-established that there is no right, private right of
2 action that allows the City to enforce the provisions of the
3 federal Controlled Substances Act through a civil tort suit.

4 And we have a footnote in our brief about that law, a
5 string cite of cases that all say that. I don't think the
6 City seriously disputes it.

7 There's also no explicit private right of action, no
8 express private right of action to enforce any of the
9 provisions of the Nevada Controlled Substances Act.

10 And under the -- again we are back to Baldonado.
11 Under the Baldonado standard, there is also no basis for the
12 Nevada courts to find an implied private right of action to
13 enforce the provisions of these statutes. So what you're
14 faced with is an obligation that arises under a federal
15 regulation, a federal implementing regulation of the federal
16 CSA.

17 And Nevada courts have determined that you can't have
18 a common law negligence lawsuit based on a statutory
19 violation when there's no private right of action.
20 Once again, I don't think the City is arguing with me on
21 that. I think they've conceded it.

22 The case that -- one of the cases that says it is
23 Allstate Insurance versus Thorpe. It's a Nevada Supreme
24 Court case, in which medical providers were suing for

1 recovery under a prompt payment statute, which did not have a
2 private right of action. The Court said they couldn't do it.
3 And there are a couple of other cases in our papers, as well,
4 but, once again, I don't think this is a serious dispute.

5 So given that -- I'm losing my page -- because the
6 City can't base its negligence claim on a statutory
7 violation, the State -- the negligence claim fails, unless
8 there is a common law duty of care running from the City --
9 from the distributors to the City that allows the City to
10 pursue a negligence claim against the distributors.

11 The City says: Oh, well, there is. There's a common
12 law duty of reasonable care. The distributors are bound by a
13 common law duty of reasonable care.

14 Well, I'll talk about this a little more in a second.
15 Of course, everybody is bound by a common law duty of
16 reasonable care. But there's no common law duty of
17 reasonable care to report suspicious opioid orders.
18 The term "suspicious orders" doesn't even exist at common
19 law. That is a term that is defined in the federal statutes.
20 It doesn't exist in Nevada law. It doesn't exist at common
21 law. So there's no common law duty of care to do that to
22 report suspicious orders.

23 Do we have common law duties of care? Sure. We have
24 to make sure that we take good care of the merchandise and

1 that we, you know, abide by good business practices, or
2 whatever. But we don't have -- and there's no obligation
3 that we've breached any other common law duty of care.
4 There's no allegations. Excuse me. The allegation is that
5 we breached --

6 THE COURT: Failed to report.

7 MS. WEIL: Correct. And --

8 THE COURT: And --

9 MS. WEIL: I'm sorry. Didn't mean to interrupt.

10 THE COURT: No. Just to articulate it further,
11 common law duty to report suspicious orders, because the
12 failure to do so would lead to harm to the community.

13 MS. WEIL: Exactly. And there is no such common law
14 duty. There is no authority for it. The City does not
15 identify any authority for such a duty.

16 But this is what they say. They say: Well, it's a
17 duty -- there's a duty because the harm is foreseeable. They
18 say: We can bring a claim under the common law -- we can
19 bring this claim under a common law negligence theory,
20 because the harm we are complaining of was foreseeable to
21 you, distributors.

22 And what the paragraph -- what the Complaint says --
23 and we have been through this now in a bunch of contexts --
24 in hundreds and hundreds of paragraphs of the Complaint, and

1 in the brief, what the City actually says is that there were
2 too many opioids in Nevada. That's what the thrust of the
3 whole Complaint is, is that too many opioids were coming into
4 Nevada.

5 And it includes -- the Complaint includes paragraph
6 after paragraph of allegations about how the manufacturers'
7 marketing campaign changed the standard of care. And we have
8 talked about this over and over.

9 Now, we, as distributors, don't take a position as to
10 whether those allegations against the manufacturers are true.
11 But if that's the case, and if the medical standard of care
12 in the United States and in Nevada changed because of the
13 manufacturers' marketing campaign, that all of a sudden
14 doctors here, doctors in other parts of the country were
15 prescribing more and more opioids, and pharmacies were
16 ordering more and more opioids to meet the prescriptions,
17 then distributors were simply supplying what was ordered.

18 And that not only that, they were supplying, as we've
19 now said a bunch of times, what the DEA said they were
20 allowed to supply, under quotas established by the DEA, to
21 meet legitimate medical needs.

22 So the DEA is saying: This is a legitimate medical
23 need. And prescribers in Nevada are saying: This is a
24 legitimate medical need. Our patients need this.

1 Distributors don't have any part in the story. We
2 are supplying medications that are ordered, and that have
3 been determined by others to be in response to a legitimate
4 medical need.

5 Now, the opposition -- what I suspect is probably a
6 cut-and-paste error -- but the opposition says something to
7 the effect -- I think I have the page. Yeah, here it is.
8 Here it is. In the opposition -- and this is a quote from
9 the reply brief, but it's quoting the City's opposition at
10 page 18.

11 It says, "Distributors created opioid medications,
12 which are controlled substances classified as dangerous
13 drugs. They determined how these drugs would be introduced
14 into the market. They determined what type of marketing
15 should be conducted," and on and on.

16 This is the justification in the City's opposition
17 for why it was foreseeable to distributors that there would
18 be these effects down the road.

19 Well, obviously, those allegations -- that argument
20 has nothing whatever to do with distributors. That argument
21 that someone created the drug that decided how the drug would
22 be introduced --

23 THE COURT: That's not you.

24 MS. WEIL: It's not us. It's the manufacturers.

1 So the allegations that the City said made it
2 foreseeable to the distributors that there would be these
3 harms at the end of the road don't relate to distributors.
4 They relate to the manufacturers. It's undisputed that we
5 didn't do any of those things.

6 So even if those functions, those actions, rendered
7 the City's alleged harm foreseeable to the manufacturers --
8 and once again, that's not our argument to make or to
9 dispute -- they couldn't have rendered the harm foreseeable
10 to the distributors. They have nothing to do with the
11 distributors. And the City doesn't make any argument
12 otherwise.

13 So let's move on. Let's say the City's arguments
14 include the fact that it was foreseeable, and that's how they
15 can impose a common law duty, because the harm was
16 foreseeable.

17 The other thing that the City says is that we're
18 wrong when we say that there is no duty, because we didn't
19 have a duty to prevent the conduct of the third parties who
20 illegally divert opioids after they leave our control.

21 Now, you've heard this in several different contexts.
22 That in the absence of a special relationship with the City,
23 or perhaps with the third-party actors, we have no obligation
24 to control them. We have no obligation to prevent the harm

1 that they are creating. Without the opportunity for control,
2 without a special relationship, we don't have any duty to
3 prevent that harm.

4 And the City says: No, no, no, no, no. That's the
5 wrong argument. We're not saying that you should have
6 prevented the harm. We're saying it's your own conduct that
7 created this harm.

8 Well, Miss Salgado just did a very good job
9 explaining why that's not true. That if distributors do what
10 distributors do, and it stops there, what happens is that the
11 drugs, the opioids, sit in boxes in a warehouse, and then
12 they sit on a pharmacy shelf. If a doctor doesn't prescribe
13 the drug, if a patient doesn't fill a prescription, and then
14 if somewhere down the road there's not some sort of illegal
15 conduct or improper conduct that results in diversion of the
16 drug, there's no harm. If the distributors do only what the
17 distributors do, there is no harm. So it cannot be the case
18 that its distributors' conduct, without third-party actions,
19 that is responsible for the harm.

20 And the City's argument on that is actually that it
21 holds no water.

22 Finally, I want to go back to something I said
23 before. We're talking about duty here. And you can't just
24 say, you know: You're distributors. It's your duty to be

1 sure of anything. What you have to say: To sustain a
2 negligence claim, you have to allege a duty that runs from
3 the defendant to the plaintiff.

4 So the City has to allege that the common law
5 reporting duty that they say we breached ran to them. To the
6 extent that we have a duty to report suspicious opioid
7 orders, it does not run to the City. It runs exclusively to
8 the federal government. And more than that, it is a strictly
9 confidential set of data that is reported, and the City
10 doesn't even have access to it, and can't access to it, and
11 isn't allowed to have access to it. So basically --

12 THE COURT: Wait. Hold on. The City doesn't get the
13 data. But as I understand the City's argument, had the
14 reporting occurred as it was supposed to, suspicious orders
15 been properly flagged, somebody would have done something
16 that would have abated the level of opioids entering this
17 community and being misused, misprescribed, overly
18 prescribed, causing harm. You're saying that that legally
19 doesn't get them to where they want to be.

20 MS. WEIL: Well, it doesn't, Your Honor. This is
21 why. There's an enforcement mechanism built into the federal
22 regulatory scheme. When the reporting -- when distributors
23 discharge their reporting obligations, it is up to the
24 federal government to respond. And if there is -- if there

1 is a failure to report, it is the federal government's
2 obligation to remedy it. It's not a common law tort crime.
3 And so if this is a reporting obligation that does not run to
4 the City, there's no common law duty that runs to the City to
5 report suspicious orders, the City has no right to sue us, to
6 sue the distributors for failure to report suspicious opioid
7 orders. Which is what they're doing under the guise of a
8 common law negligence case.

9 This is an alleged statutory violation, and the
10 remedy is a statutory regulatory one, with which the United
11 States Government is charged, and with which the City of Reno
12 is not involved. And it's as simple as that, Your Honor.

13 THE COURT: Okay.

14 MS. WEIL: We have some comments in our papers about
15 the failure to allege breach, but I'm going to rely on our
16 papers for that.

17 So Mr. Guinn talked about the negligent
18 misrepresentation claim as it applied to the manufacturers.
19 I'm going to talk a little bit about the negligent
20 misrepresentation claim as it applies to the distributors.

21 THE COURT: Let me make a comment, before you move to
22 that subject.

23 The order of business this afternoon has to be this.
24 After the final arguments by Ms. Weil on the motion, we're

1 going to call it a day. It's been a long day. Many of you
2 may have traveled either this morning or last night, and
3 probably didn't get your best night's sleep. Then we will
4 start as soon as my criminal justice calendar is over
5 tomorrow morning, approximately 10:00 a.m.

6 For those of you that are interested, you can come on
7 in here anytime after 9:00 and sit in the back and watch how
8 justice is administered here in Department 8. But if you
9 would rather not, I understand completely. And there will be
10 a few-minute gap between the criminal justice calendar
11 ending, and we'll resume at that time with opposition from
12 the City to the distributors' motion to dismiss.

13 MR. EGLET: Your Honor, if I could just -- I'm sorry.
14 Are you saying we're going to start at 10:00, or sometime
15 after 9:00?

16 THE COURT: 10:00. Here's the answer. It's part
17 art, part science. The science is, we're starting at 10:00.
18 The art is, it's the Court's job to make sure we're done
19 shortly before 10:00, so we can have a few minutes to get
20 fresh air, start at 10:00.

21 MR. EGLET: Understood, Judge.

22 THE COURT: Like I said, if you're bored, or just
23 interested, you're welcome to come in and watch.

24 Please proceed.

1 MS. WEIL: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. WEIL: So we were talking about -- I was talking
4 about the negligent misrepresentation claim that the City has
5 alleged against the distributors.

6 And as I believe Mr. Guinn said, the elements of the
7 negligent misrepresentation claim, the key ones for this
8 purpose are a false or misleading statement made in the
9 context of a business transaction between the plaintiff and
10 the defendant, which is justifiably relied upon by the
11 plaintiff.

12 THE COURT: But didn't the plaintiff suggest to the
13 Court -- and, obviously, I brought it up a few times, so the
14 Court is a little bit struggling with this claim here. But
15 can it not be made to a third party? I mean, aren't there
16 exceptions to the general rule that have to be made to the
17 aggrieved party?

18 MS. WEIL: Well, I'll talk about it in a second. I
19 think the short answer is, I'm not sure, because the City
20 didn't cite any authorities for that proposition. But even
21 if the representations could be made to a third party, they
22 still have to be in the context of a business transaction in
23 which the plaintiff and the defendant are involved. And
24 that's Horn Book law. That's right in the negligent

1 misrepresentation elements all over Nevada law.

2 So that would be -- that's my threshold answer. I'll
3 talk about it a little more in a minute, if Your Honor would
4 permit.

5 THE COURT: Of course.

6 MS. WEIL: The first point is that, regardless of the
7 context, the City has not identified any false or misleading
8 statement by the distributors. They identified what they say
9 are false -- although, you know, the manufacturers have made
10 a good argument that this is not pled with specificity that
11 gives anyone notice of anything. But, regardless, the only
12 statements that are identified at all are statements by the
13 manufacturers.

14 The claim is pled, as most of the Complaint is, in
15 terms of defendants. But the allegation only relates to the
16 manufacturers. The allegations says -- and this is paragraph
17 8 of the Complaint, of the First Amended Complaint --
18 "Defendants, who, through deceptive means, and through one of
19 the biggest pharmaceutical marketing campaigns in history,
20 carefully engineered and continue to support a dramatic shift
21 in the culture of prescribing opioids by falsely portraying
22 both the risk of addiction and abuse, and the safety and
23 benefits of long-term use."

24 That's not us. So the allegation that -- the

1 threshold allegation of the First Amended Complaint that the
2 City says supports the notion that there were
3 misrepresentations about opioids is directed -- although it's
4 phrased in terms of "defendants," it addresses conduct that
5 the City says was on the part of the manufacturers. That's
6 all through the City's Complaint. I don't think the City can
7 dispute that.

8 Then the sections of the Complaint entitled,
9 "Defendants' fraudulent marketing, and defendants'
10 misrepresentations," once again they've described the
11 manufacturers' alleged advertising, marketing, and promotion
12 of opioids. They have nothing to do with anything the
13 distributors did. You know, that's right on the face of the
14 Complaint, Your Honor.

15 What we're doing here is talking about whether they
16 pled the claim on the face of this Complaint just -- you
17 wouldn't even have to go any further, because the threshold,
18 the very basic requirement, is that there be a false
19 representation of some sort by the defendant. And the City
20 has not pled that.

21 Now, the other issue is that there has -- it has to
22 be in the context of a business transaction. And if you look
23 at the -- there's a case that we've cited in our papers, Your
24 Honor. It's Barmettler versus Reno Air, Incorporated. And

1 another one, Bill Stremmel Motors. And these cases stand for
2 the proposition that, if the conduct does not fit squarely
3 within a business or commercial transaction, it is not the
4 subject -- it cannot be the subject of a negligent
5 misrepresentation claim.

6 Now, what the City says is, every time we failed to
7 stop a suspicious order, it's a business transaction. But
8 that's not true. We made our business transactions, the
9 distributors' business transactions -- and this is
10 undisputed; the City says it -- our business transactions are
11 with pharmacies. There's no allegation that we made any
12 representation or omission of information with respect to
13 anything involving our business transactions with anybody.

14 So even if our representations in the course of
15 business transactions with third parties could support the
16 claim, there's no allegation that we did. It's not even --
17 it's not in the Complaint anywhere.

18 And what the City says, it's pled misrepresentation
19 by nondisclosure by -- per the Restatement Second of Torts.

20 And I'm looking now at -- this is page 3 of the
21 opposition brief. Okay. This is their brief. And it says,
22 "A defendant may be liable for negligent misrepresentation by
23 nondisclosure if the defendant fails to disclose a fact to
24 the plaintiff that the defendant knows may induce the

1 plaintiff to behave in a certain way in a business
2 transaction."

3 There's no allegation of that.

4 And it says -- then it goes on to say that, "Silence
5 about material facts basic to the transaction, when combined
6 with a duty to speak, is the functional equivalent of a
7 misrepresentation."

8 No allegation of that.

9 So then it goes on and says -- and this addresses
10 Your Honor's point -- "Reno's negligent misrepresentation
11 claim can be based on misrepresentations made to third
12 parties."

13 And I've just told you what authority is cited for
14 that. There isn't any.

15 And then it goes on to say, "The negligent
16 misrepresentation claim can also be based on distributors'
17 concealment of facts from a third party, which resulted in
18 the City not having notice of the distributors' potential
19 liability and potential legal claims."

20 Well, it's a lovely argument, if it were true, and if
21 there were any opportunities to support it -- and if there
22 were any authorities to support it.

23 The City cites nothing. And I can only assume that,
24 given that, there is nothing. We've certainly found nothing

1 to support the notion that this sort of generic
2 misrepresentation that somehow disabuses the City of a level
3 of comfort about the absence of legal claims supports a
4 negligent misrepresentation claim. A negligent
5 misrepresentation claim is a specific thing. It requires an
6 affirmative misrepresentation or an omission in the context
7 of a business transaction.

8 I believe that the only authority for this
9 proposition talks about this is the business transaction
10 being between the plaintiff and the defendant.

11 Even if the City could have been misled by statements
12 we made in our business transactions with someone else,
13 that's not what they allege.

14 And so this claim is flat out not pled, Your Honor.
15 And that's what we're doing here today, is talking about
16 whether they've adequately pled a claim.

17 With respect to the negligent misrepresentation
18 claim, they have it. The only thing they pled, if they've
19 pled anything at all, they have pled misrepresentation by
20 someone else. They have not pled a thing with respect to the
21 distributors.

22 My last charge is to talk to Your Honor about the
23 unjust enrichment claim. Then I'll move on to that, if I
24 may.

1 THE COURT: You may.

2 MS. WEIL: I think Mr. Guinn also talked a bit about
3 the unjust enrichment claim.

4 Under Nevada law, unjust enrichment is an equitable
5 doctrine that provides a remedy when the defendant accepts
6 and retains the benefit that should belong to the plaintiff,
7 and appreciates that it received that benefit.

8 Once again, it's just not pled.

9 As a threshold matter, Your Honor, there is law in
10 Nevada that -- and these are District of Nevada cases, I'll
11 tell you -- that when the unjust enrichment claim is just
12 duplicative of other claims, that it's based on the same
13 conduct, it seeks the same remedies as other claims in the
14 Complaint, it can be dismissed just because it's duplicative.

15 We have two cases cited for that. One is United
16 States ex rel Benitez, and the other one is McFarland.
17 They're both District of Nevada cases, and they are both in
18 our papers.

19 So we would submit this claim doesn't even belong in
20 the Complaint. It doesn't do anything that everything else
21 doesn't do. And it is duplicative of everything else.

22 Now -- and the City, by the way, doesn't even dispute
23 that. But even --

24 THE COURT: Well, I'm not sure they agree exactly

1 with the way you phrased it.

2 MS. WEIL: Well, they didn't dispute it in their
3 papers.

4 Even if they do -- and you're probably right. They
5 will.

6 MR. ADAMS: We will.

7 MS. WEIL: Even if they do -- I'm not surprised.
8 They can't satisfy the elements of the claim. This Complaint
9 does not satisfy the elements of the claim.

10 The very threshold element of an unjust enrichment
11 claim is that the plaintiff conferred a benefit on the
12 defendant. And it's required -- the plaintiff is required to
13 allege that it conferred a benefit directly on the defendant.

14 Okay. And that's -- we have a number of cases -- a
15 couple of cases cited for that. One is the Union America
16 case. One is Tropicana Entertainment. And these are cases
17 where the claim was dismissed because it was not alleged that
18 a direct benefit was conferred by the plaintiff on the
19 defendant.

20 Certainly we had no business relationship with the
21 City.

22 THE COURT: Well, do you have to know the defendant
23 to be conferred on you?

24 MS. WEIL: You do. And that's an element that's

1 coming up down the road. You're right. One of the things --
2 the other key element of the Complaint -- of the claim is
3 that the defendant must -- I'm getting my parties mixed up.

4 THE COURT: Appreciate, or something like that.

5 MS. WEIL: The defendant must be aware of and
6 appreciate that the plaintiff has conferred a benefit on it.
7 And I'll get to that.

8 But as a very threshold, way at the top of the list
9 of things that knock this claim out of the Complaint is the
10 fact that there's no allegation that the City conferred any
11 benefit on the distributors. They can't allege that, Your
12 Honor. They had no business relationship with us. They paid
13 no money to us. They had no transactions with us. And so to
14 have directly conferred a benefit on us, there would have to
15 be one of those relationships. They don't allege that they
16 did. And we'll get to what they do say in the alternative.
17 Because they can't say that they did. They didn't.

18 So what they say instead -- and Mr. Guinn talked
19 about this a little bit -- they tried to circumvent this
20 element, and they say that they paid for externalities that
21 were caused by the distributors' conduct. And so that is how
22 they indirectly conferred a benefit, because they -- things
23 that the distributors did cost them money, and they paid the
24 money, and so that conferred an indirect benefit on the

1 distributors. And they call it "externalities."

2 Now, tracing a cost incurred by the City to the
3 distributors' activities does not mean that the City
4 conferred a benefit on the distributors in any fashion. And
5 it certainly doesn't mean that it directly conferred a
6 benefit on the distributors, as the law requires that it do.

7 There is no Nevada opinion -- and the plaintiffs have
8 cited none, if I'm not mistaken -- that a benefit -- that a
9 plaintiff can confer a benefit on a defendant by paying for
10 externalities it says were caused by conduct in which the
11 defendant engaged.

12 Now, even if there were, there are a couple problems.
13 And we'll get back to this in a second. But even if there
14 were law, and even if this were colorable, the City doesn't
15 connect these so-called externalities to the distributors.
16 They --

17 Siri is talking.

18 MR. EGLET: It's your iPad talking.

19 THE COURT: Please continue.

20 MS. WEIL: The Complaint alleges only that the
21 manufacturers, not the distributors, misrepresented the
22 benefits and risks of opioid medication. It doesn't allege
23 that distributors played any role in the prescribing of
24 opioids. And so externalities related to what happens to

1 people after they take opioids that were prescribed for them
2 is not adequately connected to the distributors, in any
3 event.

4 Now -- and this all -- it all does circle back around
5 to the causation point, because there's a causation element
6 here, too. And anything that the City -- injuries that the
7 City says it suffered are so far removed from any conduct by
8 distributors, that whether you call it "externalities" or
9 anything else, you can't connect the dots to lay that at the
10 feet of the distributors.

11 The City says: Now, we actually saved -- the reason
12 that we conferred a benefit on you is that we saved you money
13 by paying these externalities. But that's not true. They
14 didn't save us money. Because in order to have saved us
15 money by paying for these so-called externalities, these
16 would have to have been expenses that we would have paid, if
17 they didn't pay. And that's just not true.

18 We don't -- obviously private distributors do not
19 purchase services -- social services and other services,
20 addiction services, whatever -- for residents of the City of
21 Reno. And so the City didn't save us money by paying for
22 these so-called externalities.

23 THE COURT: Let me tell you what I understood when I
24 reviewed the City's response.

1 Admittedly, again, this claim might be a bit
2 troubling to the Court. Their actions conferred a benefit
3 because it allowed the distributors to continue doing your
4 thing -- right? -- uninterrupted, and increasing, over time,
5 to your net profit. I mean, that's the gist of what I was
6 getting here.

7 You're saying: That's sort of illegal. So what?

8 MS. WEIL: Well, you know, Your Honor, I'm not even
9 sure that's really what they're saying. In fact, I would
10 submit that that's not what they're saying.

11 What they're talking about in conferring a benefit on
12 distributors -- and I believe this is right in their
13 papers -- is not that distributors made profit off of their
14 businesses. What they're saying in their papers is that the
15 benefit they conferred in this unjust enrichment context was
16 in the form of payments it -- City -- made for services to
17 city residents that, I guess, otherwise the distributors,
18 they say they saved us money. That means they're suggesting
19 that we would have made those expenditures. That's how I
20 read those papers.

21 And the case they rely on is a case called "White
22 versus Smith and Wesson," and a couple of cases that are its
23 progeny, out of the District of Ohio.

24 A lot of problems with that. First of all, it's in

1 Ohio. It's not binding on this Court.

2 THE COURT: I went to school in Ohio.

3 MS. WEIL: Oh, I'm sorry. No criticism of Ohio, Your
4 Honor. I'm sure it's a lovely state.

5 THE COURT: Not lovely enough to keep me there. But,
6 okay.

7 MS. WEIL: This case is not binding on this Court.
8 Even if it were, the Ohio Supreme Court effectively overruled
9 it.

10 The White case was in 2000. And in 2005, in a case
11 called Johnson versus Microsoft, which we talked about in our
12 papers, the Ohio Supreme Court said that, "For a plaintiff to
13 confer a benefit on a defendant, an economic transaction must
14 exist between the parties."

15 And White has been criticized by other courts, as
16 well. The Eleventh Circuit has criticized it several times.

17 And one of the cases in the Eleventh Circuit was the
18 City of Miami versus Bank of America Corporation, which is a
19 2015 Eleventh Circuit case.

20 And it says, "White failed to cite to a single Ohio
21 state court case in its unjust enrichment analysis."

22 It's just flawed. It doesn't exist. It's a great
23 exercise of imagination. And as this is a novel context, and
24 as there aren't causes of action necessarily to support what

1 the City is trying to do, I get that what they're trying to
2 do is come up with something that circumvents the elements of
3 the claim.

4 At the motion to dismiss stage, that's exactly what
5 they're not allowed to do. They have to plead the elements
6 of the claim. And they don't plead it in this case.

7 And the other thing that they don't plead, Your
8 Honor, at least adequately -- well, there's two things. They
9 don't allege that distributors sought the benefit from the
10 City.

11 And so there's a case -- there's a District of Nevada
12 case in October of 2017 called "Cox versus PNC Bank. And
13 that dismissed an unjust enrichment claim, again, because the
14 defendant didn't request this so-called benefit.

15 THE COURT: You can't just get a gratuitous benefit
16 and call that good.

17 MS. WEIL: No. Unjust enrichment. They did not
18 request it.

19 And, finally, as Your Honor alluded to before, the
20 Complaint doesn't adequately allege that the distributors
21 were aware of and appreciated the benefit that was allegedly
22 conferred on them.

23 There's some vague allegation -- there's an
24 allegation in the Complaint that says, "Defendants are aware

1 of this obvious benefit." Well, obviously, that's entirely
2 conclusory.

3 There's a case called "Ocwen" -- I think is how you
4 say it -- O-c-w-e-n -- "Loan Servicing," a District of Nevada
5 case from June of 2017, that we cite in our papers, that says
6 that's not enough. There has to be some factual allegation
7 supporting the element -- this element of the claim, that the
8 distributor -- that the defendant appreciated that the
9 plaintiff conferred a benefit on it.

10 And so what do we have? No allegation of a direct
11 benefit to distributors. That's not -- I think that's not in
12 dispute. I could be wrong. We'll find out.

13 The so-called externalities are costs that they can't
14 connect through any proximate cause analysis to the
15 distributors. The distributors didn't ask the City to
16 provide the services. There's no allegation, no adequate
17 allegation that the distributors appreciated the benefit that
18 was allegedly conferred on them. And there's no argument
19 that the distributors would or could have provided the
20 services, if the City did not. There's no duty. They don't
21 have a duty to do that. They don't even have the ability to
22 do that. And so the notion that they were saved money, and
23 that's their unjust enrichment is just not supported by
24 anything in the facts of the law.

1 So, bottom line, the Complaint doesn't plead unjust
2 enrichment. And we submit, Your Honor, that this one is an
3 easy one, and this claim should be dismissed.

4 With the Court's permission, I will rest on our
5 papers with respect to the Economic Loss Doctrine. I think
6 the manufacturers did a really good job on that.

7 And the manufacturers -- there are two different
8 names for the same doctrine. The manufacturers call it the
9 Municipal Cost Recovery Rule. It's also called the Free
10 Public Services Doctrine. We call it the latter in our
11 papers, but it's the same argument, and we will adopt the
12 arguments that the manufacturers made on that.

13 So unless the Court has any questions, I will sit
14 down.

15 THE COURT: I don't. Thank you very much.

16 MS. WEIL: Thank you, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen, we'll call
18 it a day here in just a moment.

19 Excellent presentation of each side's respective
20 positions. Tomorrow morning, as close to 10:00 o'clock as we
21 can, we will resume with response from the plaintiffs to the
22 distributor's motions to dismiss.

23 Until then, we'll be in recess.

24 Thank you very much.

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(Recess.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

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4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the
8 above-entitled court on Tuesday, January 7, 2020, at the hour
9 of 9:00 a.m. of said day, and took verbatim stenotype notes
10 of the proceedings had upon the matter of CITY OF RENO,
11 Plaintiff, versus PURDUE PHARMA, et al., Defendants, Case No.
12 CV18-01895, and thereafter reduced to writing by means of
13 computer-assisted transcription as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 269, all inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19 Dated at Reno, Nevada, this 10th day of January,
20 2020.

21

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24

/s/ Isolde Zihn
Isolde Zihn, CCR #87