

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO,

Appellant,

vs.

TEVA PHARMACEUTICALS USA,
INC.; 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.;
ACTAVIS PHARMACY, INC. F/K/A
WATSON PHARMA, INC.; AND
ACTAVIS LLC,

Respondents.

Supreme Court No. 85412

District Court Case No.
CV18-01895

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APPELLANT'S APPENDIX VOLUME 1

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of April 2023, I served a true and correct copy of the foregoing **APPELLANT'S APPENDIX VOLUME 1** upon each of the parties by electronic service through the E-Flex rules of service.

By: /s/ Jennifer Lopez
An Employee of EGLET ADAMS

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23
24 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
25 **THE STATE OF NEVADA IN AND FOR THE**
26 **COUNTY OF WASHOE**

27 CITY OF RENO,

28 Plaintiff,

29 v.

30 PURDUE PHARMA, L.P.; PURDUE
31 PHARMA, INC.; THE PURDUE
32 FREDERICK COMPANY, INC. d/b/a THE
33 PURDUE FREDERICK COMPANY, INC.;
34 PURDUE PHARMACEUTICALS, L.P.;
35 TEVA PHARMACEUTICALS USA, INC.;
36 McKESSON CORPORATION;
37 AMERISOURCEBERGEN DRUG
38 CORPORATION; CARDINAL HEALTH,
39 INC.; CARDINAL HEALTH 6 INC.;
40 CARDINAL HEALTH TECHNOLOGIES
41 LLC; CARDINAL HEALTH 108 LLC d/b/a

) Case No.:

) Dept No.:

COMPLAINT

1 METRO MEDICAL SUPPLY; ABBVIE,)
2 INC.; ABBVIE US, LLC; DEPOMED, INC.;)
3 DAIICHI SANKYO, INC.; CEPHALON,)
4 INC.; JOHNSON & JOHNSON; JANSSEN)
5 PHARMACEUTICALS, INC.; JANSSEN)
6 PHARMACEUTICA, INC. n/k/a JANSSEN)
7 PHARMACEUTICALS, INC.; ORTHO-)
8 MCNEIL-JANSSEN PHARMACEUTICALS,)
9 INC. n/k/a JANSSEN PHARMACEUTICALS,)
10 INC.; ENDO HEALTH SOLUTIONS INC.;)
11 ENDO PHARMACEUTICALS, INC.;)
12 ALLERGAN PLC f/k/a ACTAVIS PLC;)
13 ACTAVIS, INC. f/k/a WATSON)
14 PHARMACEUTICALS, INC.; WATSON)
15 LABORATORIES, INC.; INSYS)
16 THERAPEUTICS, INC., MALLINCKRODT,)
17 LLC; MALLINCKRODT BRAND)
18 PHARMACEUTICALS INC.; and)
19 MALLINCKRODT US HOLDINGS, INC.;)
20 ACTAVIS LLC; AND ACTAVIS PHARMA,)
21 INC. f/k/a WATSON PHARMA, INC.;)
22 ROBERT GENE RAND, M.D. AND RAND)
23 FAMILY CARE, LLC; DOES 1 through 100;)
24 ROE CORPORATIONS 1 through 100; and)
25 ZOE PHARMACIES 1 through 100, inclusive,)
26)
27 Defendants.)
28)

18 Plaintiff City of Reno, by and through the undersigned attorneys, files this Complaint
19 against the named Defendants seeking to recover its damages as a result of the opioid epidemic
20 Defendants caused, and alleges as follows:
21

22 INTRODUCTION

23 1. Opioid addiction and overdose in the United States as a result of prescription
24 opioid use has reached epidemic levels over the past decade.

25 2. The abuse of opioids is a widespread problem in the State of Nevada as well as the
26 City of Reno specifically.

27 3. Nevada ranked as the sixth highest state for the number of milligrams of opioids
28 distributed per adult, in 2016.

1 4. In 2016, Nevadans were prescribed opioids at a rate of 87 prescriptions per 100
2 residents.

3 5. In that same year, the rate of overdose deaths in Nevada exceeded the national
4 average.

5 6. Nevada has had the fourth highest drug overdose mortality rate in the United States.

6 7. The dramatic increase in prescription opioid use over the last two decades, and the
7 resultant public-health crisis, is no accident.

8 8. The crisis was precipitated by Defendants, who, through deceptive means, and
9 using one of the biggest pharmaceutical marketing campaigns in history, carefully engineered and
10 continue to support a dramatic shift in the culture of prescribing opioids by falsely portraying both
11 the risks of addiction and abuse and the safety and benefits of long-term use.

12 9. Defendant drug companies named herein, manufacture, market, and sell
13 prescription opioids (hereinafter “opioids”), including brand-name drugs like Oxycontin, Vicodin
14 and Percocet, as well as generics like oxycodone and hydrodone, which are powerful narcotic
15 painkillers.

16 10. Historically, because they were considered too addictive and debilitating for the
17 treatment of chronic pain (like back pain, migraines and arthritis), opioids were used only to treat
18 short-term acute pain or for palliative (end-of-life) care.

19 11. Defendants’ goal was simple: to dramatically increase sales by convincing doctors
20 that it was safe and efficacious to prescribe opioids to treat not only the kind of severe and short-
21 term pain associated with surgery or cancer, but also for a seemingly unlimited array of less severe,
22 longer-term pain, such as back pain, headaches and arthritis.

23 12. Defendants knew that their opioid products were addictive, subject to abuse, and
24 not safe or efficacious for long-term use.

25 13. Defendants’ nefarious plan worked and they dramatically increased their sales and
26 reaped billions upon billions of dollars of profit at the expense of millions of people who are now
27 addicted and the thousands who have died as a result.

28 14. While Americans represent only 4.6% of the world’s population, they consume
over 80% of the world’s opioids.

1 15. Since 1999, the amount of prescription opioids sold in the U.S. has nearly
2 quadrupled. In 2010, 254 million prescriptions were filled in the U.S. – enough to medicate every
3 adult in America around the clock for a month. In that year, 20% of all doctors’ visits resulted in
4 the prescription of an opioid (nearly double the rate in 2000).

5 16. By 2014, nearly two million Americans either abused or were dependent upon
6 opioids.

7 17. On March 22, 2016, the Food and Drug Administration (FDA) recognized opioid
8 abuse as a “public health crisis” that has a “profound impact on individuals, families and
9 communities across our country.”

10 18. The Centers for Disease Control (CDC) reports that overdoses from prescription
11 opioids are a driving factor in the 15-year increase in opioid overdose deaths.

12 19. From 2000 to 2015, more than half a million people died from drug overdoses
13 (including prescription opioids and heroin). The most recent figures from the CDC suggest that
14 175 Americans die every day from an opioid overdose (prescription and heroin).

15 20. Many addicts, finding painkillers too expensive or too difficult to obtain, have
16 turned to heroin. According to the American Society of Addiction Medicine, four out of five
17 people who try heroin today started with prescription painkillers.

18 21. County and city governments and the services they provide their citizens have been
19 strained to the breaking point by this public health crisis.

20 22. Defendant drug companies should never place their desire for profits above the
21 health and well-being of their customers or the communities where those customers live, because
22 they know prescribing doctors and other health-care providers rely on their statements in making
23 treatment decisions, and drug companies must tell the truth when marketing their drugs and ensure
24 that their marketing claims are supported by science and medical evidence.

25 23. Defendants broke these simple rules and helped unleash a healthcare crisis that has
26 had far-reaching financial, social, and deadly consequences in the City of Reno and throughout
27 Nevada.
28

1 24. Defendants falsely touted the benefits of long-term opioid use, including the
2 supposed ability of opioids to improve function and quality of life, even though there was no
3 “good evidence” to support their claims.

4 25. Defendants disseminated these common messages to reverse the popular and
5 medical understanding of opioids.

6 26. As a result of the drug companies’ marketing campaign, opioids are now the most
7 prescribed class of drugs generating over \$11 billion in revenue for drug companies in 2014 alone.

8 27. As a result of the drug companies’ marketing campaign, the fatalities continued to
9 mount while the living continue to suffer.

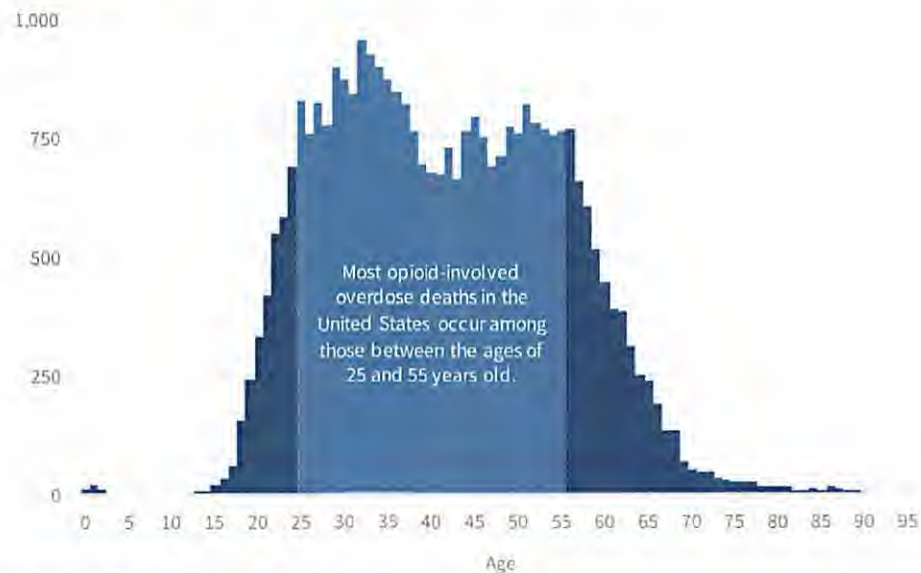
10 28. In 2017, a record number of drug overdoses claimed the lives of about 72,000
11 Americans, a 10.2 percent increase from 2016. According to the CDC the death toll from drug
12 overdoses was higher than the peak yearly death totals from H.I.V., gun deaths, or car crashes.
13 The increase of deaths related to drug overdoses was linked to two major factors: (i) a growing
14 number of Americans are using opioids, and (ii) drugs are becoming deadlier.

15 29. This trend of increased opioid abuse has been well documented in the last several
16 years. In 2015, over 33,000 Americans died of a drug overdose involving opioids with studies
17 suggesting that these fatalities are statistically underreported. And in 2016, 2.1 million Americans
18 had opioid use disorders, according to a government survey, but that figure could be as high as 4
19 million.

20 30. Most opioid related deaths occur among those between the ages of approximately
21 25 and 55 years old. Studies have shown that the overall fatality rate was 10.3 deaths per 100,000
22 population, and in the 25 to 55 year old age group, fatality rates were much higher, ranging from
23 16.1 to 22.0 deaths per 100,000 population.

24 31. In 2015, the estimated economic impact of the opioid crisis was \$504 billion, or
25 2.8 % of our U.S.’s gross domestic product that same year. Previous estimates of the economic
26 cost of the opioid crisis greatly understate it by undervaluing the most important component of
27 the loss—fatalities resulting from overdoses.

Figure 2. Opioid-involved Overdose Deaths by Age in 2015
(Number of deaths)



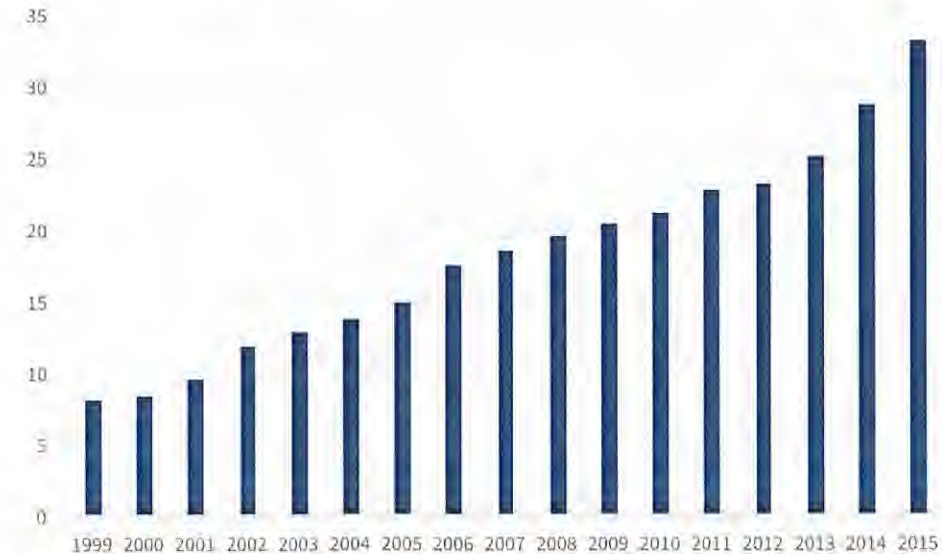
Source: CDC Wonder database, multiple cause of death files

32. In addition to the cost of fatalities each year, opioid misuse among the living imposes important costs as well. It is estimated that prescription opioid misuse increases healthcare and substance abuse treatment costs in the United States by \$29.4 billion, increases criminal justice costs by \$7.8 billion, and reduces productivity among those who do not die of overdose by \$20.8 billion (in 2015 \$). The total nonfatal cost of \$58.0 billion divided by the 1.9 million individuals with a prescription opioid disorder in 2013 results in an average cost of approximately \$30,000.¹ And when patients can no longer afford or legitimately obtain opioids, they often turn to the street to buy prescription opioids or even heroin, fueling the secondary drug market.

33. Further compounding issue is that this problem is worsening at an alarming rate. According to a report published by the White House Council of Economic Advisors (CEA), opioid-involved overdose deaths have doubled in the past ten years and quadrupled in the past sixteen.

¹ Florence, C., Zhou, C., Luo, F. and Xu, L. 2016. "The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013." *Medical Care*, 54(10): 901-906.

Figure 1. Opioid-involved Overdose Deaths, 1999–2015
(Thousands of Deaths)



Source: CDC Wonder database, multiple cause of death files

34. The crisis that Defendants caused has directly impacted the City of Reno as it bears the financial brunt of this epidemic as it unfolds in our community.

35. Apart from the toll on human life, the crisis has financially strained the services the City of Reno provides its residents and employees. Human services, social services, court services, law enforcement services, the office of the coroner/medical examiner and health services, including hospital, emergency and ambulatory services, have all been severely impacted by the crisis. For example, as a direct and foreseeable consequence of Defendants' egregious conduct, the City of Reno paid, and continues to pay, a significant amount for health care costs that stem from prescription opioid dependency. These costs include unnecessary and excessive opioid prescriptions, substance abuse treatment services, ambulatory services, emergency department services, and inpatient hospital services, among others. Defendants' conduct also caused the City of Reno to incur substantial economic, administrative and social costs relating to opioid addiction and abuse, including criminal justice costs, victimization costs, child protective services costs, lost productivity costs, and education and prevention program costs among others.

1 36. After creating a public health crisis, Defendants have not pulled their opioid
2 products from the market, acknowledged the very real dangers of addiction and abuse even if the
3 opioids are taken as prescribed, or acknowledged that opioids are inappropriate for long-term pain
4 management. Instead, Defendants have taken the position that their opioid products are not
5 dangerous and continue to sell these dangerous and addictive drugs, thereby continuing to fuel
6 the crisis.

7 37. As a result, physicians, pharmacists and patients are not able to appropriately and
8 adequately evaluate the relevant risks associated with opioids use, particularly the risks to patients
9 who have been and are being exposed to, unnecessarily, including but not limited to the risk of
10 severe and disabling addiction, actual addiction, the consequences of addiction, and other adverse
11 medical conditions. Additionally, the rising numbers of persons addicted to opioids have led to a
12 dramatic increase of social problems, including drug abuse and diversion and the commission of
13 criminal acts to obtain opioids. Consequently, public health and safety have been significantly
14 and negatively impacted due to the misrepresentations and omissions by Defendants regarding
15 the appropriate uses and risks of opioids, ultimately leading to widespread inappropriate use of
16 the drug.

17 38. As a result of Defendants' misconduct, physicians, pharmacists and patients have
18 not been provided with accurate information about the appropriate uses, risks and safety of these
19 drugs, thus causing the crisis before us as well as giving rise to this lawsuit.

20 39. Plaintiff files this Complaint naming the drug companies herein as Defendants and
21 placing the industry on notice that the City of Reno is taking action to abate the public nuisance
22 that plagues our community.

23 40. By its Complaint, the City of Reno seeks to recover from Defendants its damages
24 as a result of the opioid public-health crisis Defendants caused. Namely, this action is brought by
25 this Plaintiff pursuant to constitutional, statutory, common law and/or equitable authority for
26 purposes of, *inter alia*:

- 27 a. recovering restitution and reimbursement for all the costs the City of Reno
28 has incurred in paying excessive and unnecessary prescription costs related
 to opioids;

- b. recovering restitution and reimbursement for all the costs expended by the City of Reno for health care services and programs associated with the diagnosis and treatment of adverse health consequences of opioids use, including but not limited to, addiction;
- c. recovering restitution and reimbursement for all the costs consumers have incurred in excessive and unnecessary prescription costs related to opioids;
- d. disgorgement;
- e. recovering damages for all costs incurred and likely to be incurred in an effort to combat the abuse and diversion of opioids in the City of Reno;
- f. recovering damages incurred as costs associated with the harm done to the public health and safety.

41. However, Plaintiff does not bring claims, as part of this action, for products liability nor does the City seek compensatory damages for death, physical injury to person, emotional distress, or physical damage to property.

PARTIES AND JURISDICTION

A. Plaintiff, City of Reno.

42. Plaintiff, City of Reno ("Reno" or "Plaintiff"), is a municipality organized under the laws of the State of Nevada.

43. Plaintiff provides a wide range of services on behalf of its residents, including services for families and children, public health, public assistance, law enforcement, and emergency care.

44. Plaintiff has all the powers possible for a municipality to have under the constitution of the State of Nevada, the laws of the State of Nevada, and its city charter.

45. Plaintiff has standing to bring this litigation to provide for the orderly government of Reno and to address matters of local concern including the public health, safety, prosperity, security, comfort, convenience and general welfare of its citizens.

46. Reno declares that the unlawful distribution of prescription opiates, by the Defendants named herein, has created a serious public health crisis of opioid abuse, addiction, morbidity and mortality and is a public nuisance.

1 47. Plaintiff is authorized by law to abate any nuisance and prosecute in any court of
2 competent jurisdiction, any person who creates, continues, contributes to, or suffers such nuisance
3 to exist and prevent injury and annoyance from such nuisance.

4 **B. Defendants, Drug Manufacturers.**

5 48. Defendant PURDUE PHARMA L.P. is a limited partnership organized under the
6 laws of Delaware, and registered and authorized to do business in the State of Nevada, under the
7 laws thereof. At all times relevant herein, PURDUE PHARMA L.P. takes and took advantage of
8 the legislative, regulatory and tax schemes of the State of Nevada to own, maintain and defend
9 drug patents. PURDUE PHARMA INC. is a corporation organized under the laws of both
10 Delaware and New York, with its principal place of business in Stamford, Connecticut, and THE
11 PURDUE FREDERICK COMPANY, INC. is a Delaware corporation with its principal place of
12 business in Stamford, Connecticut. Defendant PURDUE PHARMACEUTICALS, L.P., (“Purdue
13 Pharmaceuticals”) is and was a limited partnership organized under the laws of the State of
14 Delaware. At all times relevant hereto, the foregoing, (collectively, “PURDUE”) are and were
15 in the business of designing, testing, manufacturing, labeling, advertising, promoting, marketing,
16 selling and/or distributing OxyContin and have done so to and within the State of Nevada. At all
17 times relevant herein, PURDUE hired “Detailers” in Reno, Nevada, to make personal contact with
18 physicians and clinics to advocate for the purchase and use of opioid medications which were
19 contrary to known safety concerns and sound medical advice.

20 49. Defendant ABBVIE, INC. is a corporation organized under the laws of the state
21 of Delaware. ABBVIE, INC. is the surviving corporation which embodies the specialty drugs
22 arm which was formerly a part of Abbot Laboratories, prior to a 2013 split. Abbot Laboratories
23 was the father, originator and disseminator of the aggressive, deceptive and fraudulent marketing
24 program which lies at the heart of the opioid crisis.

25 50. Defendant ABBVIE US, LLC is an LLC organized under the laws of Delaware,
26 and at all relevant times herein was registered and authorized to do business within the State of
27 Nevada. ABBVIE US, LLC conducts drug research, manufactures drugs, and distributes drugs.
28 ABBVIE US, LLC is a wholly-owned subsidiary of ABBVIE, INC., and ABBVIE, INC. and its
subsidiaries continue to patent, manufacture and sell opioids into and within Reno, Nevada. At

1 all times relevant herein, ABBVIE, INC. and ABBVIE US, LLC take and took advantage of the
2 legislative, regulatory and tax schemes of the State of Nevada to own, maintain and defend drug
3 patents. Defendant ABBVIE, INC. also hires lobbyists specifically to lobby the Nevada State
4 Legislature to strengthen laws protecting their profits, and to weaken laws protecting the health
5 and welfare of Nevada citizens, including the citizens of Reno.

6 51. Defendant DEPOMED, INC. is a corporation organized under the laws of the State
7 of California and headquartered in Newark, California. At all times relevant herein, DEPOMED
8 INC. was and is engaged in the manufacturing, distribution and the sale of opioid drugs into and
9 within Washoe County, Nevada. At all times relevant herein, DEPOMED INC. hired "Detailers"
10 in Washoe County, Nevada, to make personal contact with physicians and clinics to advocate for
11 the purchase and use of opioid medications which were contrary to known safety concerns and
12 sound medical advice.

13 52. Defendant DAIICHI SANKYO, INC. is a corporation organized under the laws of
14 the State of Delaware and headquartered in Basking Ridge, New Jersey. At all times relevant
15 herein, DAIICHI SANKYO, INC. was and is engaged in the manufacturing, distribution and the
16 sale of opioid drugs into and within Washoe County, Nevada. At all times relevant herein,
17 DAIICHI SANKYO INC. was and is registered and authorized to do business within the State of
18 Nevada. At all times relevant herein, DAIICHI SANKYO, INC. hired "Detailers" in Washoe
19 County, Nevada, to make personal contact with physicians and clinics to advocate for the purchase
20 and use of opioid medications which were contrary to known safety concerns and sound medical
21 advice. A known deceptive marketing practice for opioids, is the labeling of them as "abuse-
22 deterrent." In 2017, DAIICHI SANKYO, INC. released their own line of "abuse deterrent"
23 Oxycodone formulations for sale.

24 53. Defendant TEVA PHARMACEUTICALS USA, INC., is a Delaware corporation
25 with its principal place of business located in North Wales, Pennsylvania. Teva USA is a wholly
26 owned subsidiary of TEVA PHARMACEUTICALS INDUSTRIES LTD., an Israeli Corporation.
27 TEVA develops, makes, manufactures, and distributes generic opioid medications worldwide,
28 including within Washoe County, Nevada.

1 54. Defendant CEPHALON, INC., is Delaware corporation with its principal place of
2 business located in Frazer, Pennsylvania. In 2011, Teva Ltd. acquired CEPHALON, INC.

3 55. Defendant JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania
4 corporation with its principal place of business in Titusville, New Jersey, and is a wholly owned
5 subsidiary of JOHNSON & JOHNSON, a New Jersey corporation with its principal place of
6 business in New Brunswick, New Jersey. JANSSEN PHARMACEUTICALS, INC., was
7 formerly known as ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., which in turn
8 was formerly known as Janssen Pharmaceutica Inc. Defendant ORTHO-MCNEIL-JANSSEN
9 PHARMACEUTICALS, INC., now known as JANSSEN PHARMACEUTICALS, INC., is a
10 Pennsylvania corporation with its principal place of business in Titusville, New Jersey. Janssen
11 Pharmaceutica, Inc., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania
12 corporation with its principal place of business in Titusville, New Jersey. Johnson & Johnson is
13 the only company that owns more than 10% of Janssen Pharmaceuticals, Inc.'s stock, and it
14 corresponds with the FDA regarding Janssen's products.

15 56. Upon information and belief, Johnson & Johnson controls the sale and
16 development of Janssen Pharmaceutical's drugs, and Janssen Pharmaceuticals, Inc.'s profits inure
17 to JOHNSON & JOHNSON's benefit. (JANSSEN PHARMACEUTICALS, INC., ORTHO-
18 MCNEIL-JANSSEN PHARMACEUTICALS, INC., JANSSEN PHARMACEUTICA, INC.,
19 AND JOHNSON & JOHNSON collectively are referred to herein as "Janssen.")

20 57. Defendant ENDO HEALTH SOLUTIONS INC., is a Delaware corporation with
21 its principal place of business located in Malvern, Pennsylvania. ENDO PHARMACEUTICALS,
22 INC., is a wholly-owned subsidiary of Endo Health Solutions Inc., and is a Delaware corporation
23 with its principal place of business in Malvern, Pennsylvania. (Endo Health Solutions Inc., and
24 Endo Pharmaceuticals, Inc., collectively are referred to herein as "Endo.").

25 58. Defendant ALLERGAN PLC is a public limited company incorporated in Ireland
26 with its principal place of business in Dublin, Ireland formerly known as ACTAVIS PLC. Prior
27 to that, WATSON PHARMACEUTICALS, INC., acquired ACTAVIS, INC. in October 2012;
28 the combined company changed its name to ACTAVIS, INC., in January 2013 and then to
ACTAVIS PLC in October 2013.

1 59. Defendant WATSON LABORATORIES, INC. is, and was at all times relevant
2 herein, a Nevada corporation with its principal place of business in Corona, California, and is a
3 wholly owned subsidiary of ALLERGAN PLC (f/k/a ACTAVIS, INC., f/k/a WATSON
4 PHARMACEUTICALS, INC.). At all times relevant herein, Watson Laboratories, Inc. takes and
5 took advantage of the legislative, regulatory and tax schemes of the State of Nevada to own,
6 maintain and defend drug patents. ACTAVIS PHARMA, INC. (f/k/a ACTAVIS, INC.), is a
7 Delaware corporation with its principal place of business in New Jersey, and was formerly known
8 as WATSON PHARMA, INC. ACTAVIS LLC is a Delaware limited liability company with its
9 principal place of business in Parsippany, New Jersey.

10 60. Defendant INSYS THERAPEUTICS, INC., is, and was at all times relevant herein,
11 a Delaware corporation with its principal place of business located in Chandler, Arizona. At all
12 times relevant herein, Defendant INSYS THERAPEUTICS, INC. was in the business of
13 designing, testing, manufacturing, labeling, advertising, promoting, marketing, selling and/or
14 distributing Subsys, a transmucosal immediate-release formulation of fentanyl, packed in a single-
15 dose spray device intended for oral sublingual administration, and has done so to and within in
16 the State of Nevada. At all times relevant herein, INSYS THERAPEUTICS, INC. hired "Detailers"
17 in Washoe County, Nevada to make personal contact with physicians and clinics to advocate for
18 the purchase and use of opioid medications which were contrary to known safety concerns and
19 sound medical advice. At all times relevant herein, INSYS THERAPEUTICS, INC., used
20 deceptive tactics to gain authorization for Subsys prescriptions from health insurance providers
21 for off-label, high dosage uses.

22 61. Defendant MALLINCKRODT LLC is a Delaware corporation with its principal
23 place of business in Hazelwood, Missouri. Defendant MALLINCKRODT BRAND
24 PHARMACEUTICALS INC. is a Delaware corporation with its principal place of business in
25 Hazelwood, Missouri. Defendant MALLINCKRODT US HOLDINGS, INC. is a Nevada
26 corporation with its principal place of business in Hazelwood, Missouri. At all times relevant
27 herein, Mallinckrodt US Holdings, Inc. takes and took advantage of legislative, regulatory and
28 tax schemes in Nevada for the purpose of holding, protecting and defending Mallinckrodt assets
related to their pharmaceutical business.

1 62. Defendants Mallinckrodt LLC, Mallinckrodt Brand Pharmaceuticals Inc., and
2 Mallinckrodt US Holdings, Inc. (collectively "MALLINCKRODT") operate in the United States
3 under the name Mallinckrodt Pharmaceuticals, with its United States headquarters located in
4 Hazelwood, Missouri. At all times relevant herein, Defendant MALLINCKRODT was in the
5 business of designing, testing, manufacturing, labeling, advertising, promoting, marketing, selling,
6 and/or distributing opioid products known as Exalgo, Roxicodone, and Xartemis XR, and has
7 done so to and within the State of Nevada.

8 63. That at all times relevant herein, PURDUE PHARMA, L.P.; PURDUE PHARMA,
9 INC.; THE PURDUE FREDERICK COMPANY, INC. dba THE PURDUE FREDERICK
10 COMPANY, INC.; PURDUE PHARMACEUTICALS, L.P.; ABBVIE INC.; ABBVIE USA
11 LLC; DEPOMED, INC.; DAIICHI SANKYO, INC.; TEVA PHARMACEUTICALS USA, INC.;
12 TEVA PHARMACEUTICALS INDUSTRIES LTD; CEPHALON, INC.; JOHNSON &
13 JOHNSON; JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC.
14 n/k/a JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN
15 PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; ENDO HEALTH
16 SOLUTIONS INC.; ENDO PHARMACEUTICALS, INC.; ALLERGAN PLC f/k/a ACTAVIS
17 PLC; ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC.; WATSON
18 LABORATORIES, INC.; ACTAVIS LLC; ACTAVIS PHARMA, INC. f/k/a WATSON
19 PHARMA, INC., INSYS THERAPEUTICS, INC.; MALLINCKRODT, LLC;
20 MALLINCKRODT BRAND PHARMACEUTICALS INC.; and MALLINCKRODT US
21 HOLDINGS, INC., (collectively "Defendant Manufacturers" or "Defendants") were, and
22 currently are, regularly engaged in business in Washoe County. More specifically, Defendants
23 were, and currently are, in the business of designing, testing, manufacturing, labeling, advertising,
24 promoting, marketing, and/or selling opioids throughout Washoe County.

25 **C. Defendants, Wholesale Distributors.**

26 64. Defendant, AMERISOURCEBERGEN DRUG CORPORATION, is, and at all
27 times pertinent hereto, was, a foreign corporation authorized to do business in the County of
28 Washoe, State of Nevada. Upon information and belief, and at all times relevant hereto,

1 AMERISOURCEBERGEN DRUG CORPORATION's principal place of business is located in
2 Chesterbrook, Pennsylvania, operating distribution centers in Ohio.

3 65. Defendant, CARDINAL HEALTH, INC. is, and at all times pertinent hereto, was,
4 a foreign corporation with multiple wholly-owned subsidiaries incorporated under the laws of the
5 State of Nevada and/or authorized to do business in said state, and conducting business in the
6 County of Washoe, State of Nevada.

7 66. Upon information and belief, and at all times relevant hereto, CARDINAL
8 HEALTH, INC.'s principal office is located in Dublin, Ohio, operating distribution centers in
9 Ohio. CARDINAL HEALTH 6 INC. is a Nevada Domestic Corporation. CARDINAL HEALTH
10 TECHNOLOGIES LLC is a Nevada Domestic LLC. At all times relevant herein, CARDINAL
11 HEALTH TECHNOLOGIES LLC takes and took advantage of the legislative, regulatory and tax
12 schemes of the State of Nevada to own, maintain and defend patents, including those relating to
13 drug labeling, coding and distribution.

14 67. CARDINAL HEALTH 108 LLC d/b/a Metro Medical Supply is a foreign limited
15 liability company incorporated under the laws of the state of Delaware and headquartered in
16 Dublin, Ohio, and registered and authorized to conduct business within the State of Nevada.
17 CARDINAL HEALTH 108 LLC d/b/a Metro Medical Supply operates a drug distribution center
18 within the physical confines of the Washoe County, specifically at 6640 Echo Ave, Ste J, Reno,
19 Nevada 89506.

20 68. Defendant, McKESSON CORPORATION, is, and at all times pertinent hereto,
21 was, foreign corporation authorized to do business in the County of Washoe, State of Nevada.
22 Upon information and belief, and at all times relevant hereto, McKESSON CORPORATION's
23 principal place of business is located in San Francisco, California, operating distribution centers
24 in Ohio. At all times relevant herein, McKESSON CORPORATION takes and took advantage
25 of the legislative, regulatory and tax schemes of the State of Nevada to own, maintain and defend
26 patents, including those relating to drug labeling, coding and distribution.

27 69. AMERISOURCEBERGEN DRUG CORPORATION, CARDINAL HEALTH,
28 INC., CARDINAL HEALTH 6 INC.; and CARDINAL HEALTH TECHNOLOGIES LLC;
(collectively "Defendant Distributors" or "Defendants") distributed opioids or facilitated the

1 distribution of opioids into Reno. The United States Drug Enforcement Administration has found
2 it necessary to levy disciplinary action against these and each of these including large fines and
3 suspension or permanent cancellation of their licenses for distribution of controlled substances,
4 based on dangerous and abusive distribution practices as detailed herein and below.

5 70. Defendant Distributors purchased opioids from manufacturers, including the
6 named Defendants herein, and distributed them to pharmacies throughout Reno, and the State of
7 Nevada.

8 71. Defendant Distributors played an integral role in the chain of opioids being
9 distributed throughout Reno, and the State of Nevada.

10 **D. Defendants, Detailers.**

11 72. Defendants AIDA B MAXSAM; ALLISON FOSTER; and JAMES KUMLE;
12 (hereinafter "Detailers") are natural persons who are, and at all relevant times herein were,
13 residents of Washoe County, Nevada, who are or were engaged in specialty drug sales on behalf
14 of Defendant Manufacturers and Distributors PURDUE; DAIICHI SANKYO, INC.; and/or
15 DEPOMED.

16 73. Defendant Detailers were trained to, and did in fact, make personal contact with
17 physicians and clinics within Washoe County, Nevada for the purpose, and with the result, of
18 encouraging them to prescribe opioid medications in a manner inconsistent with known safety
19 concerns and contrary to sound medical practice.

20 **E. Defendants, Pharmacies.**

21 74. Defendant pharmacies (collectively "Defendant Pharmacies" or "Defendants")
22 sold opioids to residents of Reno giving rise to the opioid crisis.

23 75. Upon information and belief, Defendant Pharmacies played an integral role in the
24 chain of opioids being sold throughout Reno.

25 76. That the true names and the capacities, whether individual, agency, corporate,
26 associate or otherwise, of Defendant Pharmacies, are unknown to Plaintiff. Plaintiff will ask leave
27 of the Court to amend this Complaint to show the true names and capacities of these Defendants,
28 when they become known to Plaintiff.

1 **F. Defendants, Health Care Providers**

2 77. Defendant ROBERT GENE RAND, M.D. is, and was at all times relevant herein,
3 a resident of Washoe County, Nevada and was a licensed medical doctor in the State of Nevada.
4 Upon information and belief, and at all times relevant hereto, Defendant ROBERT GENE RAND,
5 M.D., conducted business and provided medical services as RAND FAMILY CARE, LLC, a
6 Nevada Domestic Limited Liability Company in Gardnerville, Nevada.

7 78. Defendants ROBERT GENE RAND, M.D. AND RAND FAMILY CARE, LLC
8 (collectively “Defendant Providers” or “RAND”) diverted and distributed addictive and
9 potentially lethal opioid medications, including, but not limited to, OxyContin, to residents of
10 Washoe County, Nevada (including the City of Reno), operating a “pill mill” out of a local car
11 dealership.

12 79. Defendant RAND prescribed an excessive amount of opioid medication in
13 reckless regard for his patients’ lives. For example, Defendant RAND prescribed approximately
14 23,645 pills of opioid medication to a single patient.² Unfortunately, this was not an isolated
15 incident.

16 80. Defendant RAND was investigated by the Board of Medical Examiners (“BME or
17 Board”). The Board discovered that Defendant RAND constantly, and on a regular basis, over-
18 prescribed opioid medication to his patients, increased opioid medication doses to patients
19 without appropriate medical examinations, and on a regular basis prescribed additional opioid
20 medication to patients who, due to one reason or another, needed extra medication.³

21 81. On November 20, 2018, Defendant RAND and several of his associates, and/or
22 individuals under his employment, pleaded guilty to various criminal counts in the United States
23
24
25
26

27 ² UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF NEVADA, *Reno Doctor Sentenced To 10 Years In Prison For*
28 *Involuntary Manslaughter Of Patient And Unlawful Distribution Of Large Quantities Of Prescription Drugs*
(November 20, 2017), available at [http:// www.justice.gov/usao-nv/pr/reno-doctor-sentenced-10-years-prison-involuntary-maslaughter-patient-and-unlawful](http://www.justice.gov/usao-nv/pr/reno-doctor-sentenced-10-years-prison-involuntary-maslaughter-patient-and-unlawful) (last visited on 2018-08-22).

³ *In the Matter of Charges and Complaint Against Robert Rand, M.D.*, No. 17-25704-1 (February 02, 2017),
available at http://www.medboard.nv.gov/Resources/Public/2017_Public_Filings/ (last visited on 2018-08-22).

1 District Court, District of Nevada for their involvement in illegal activities. Defendant RAND
2 was sentenced to ten (10) years in prison.⁴

3 82. Defendant RAND was able to over-prescribe copious amounts of opioid
4 medication due to the abundant supply from Defendant Manufacturers and Defendant Distributors.

5 **G. Defendants, Does, Roes and Zoes.**

6 83. That the true names and the capacities, whether individual, agency, corporate,
7 associate or otherwise, of Defendant DOES 1 through 100, inclusive, are unknown to Plaintiff.
8 Plaintiff will ask leave of the Court to amend this Complaint to show the true names and capacities
9 of these Defendants, when they become known to Plaintiff. Plaintiff believes each Defendant
10 named as DOE was responsible for the misconduct alleged herein.

11 84. That the true names and the capacities, whether individual, agency, corporate,
12 associate or otherwise, of Defendant ROE CORPORATIONS 1 through 100, are unknown to
13 Plaintiff. These Defendants include the manufacturer(s), distributor(s) and any third party that
14 may have developed, manufactured, produced, sold, altered or otherwise distributed the subject
15 drug, which caused Plaintiff's injuries as complained herein. Plaintiff will ask leave of the Court
16 to amend this Complaint to show the true names and capacities of these Defendants, when they
17 become known to Plaintiff. Plaintiff believes each Defendant named as ROE CORPORATION
18 was responsible for contributing to the misconduct alleged herein.

19 85. That the true names and the capacities, whether individual, agency, corporate,
20 associate or otherwise, of Defendant ZOE PHARMACIES 1 through 100, are unknown to
21 Plaintiff. These Defendants include the pharmacies or similarly situated retailers that may have
22 developed, manufactured, produced, sold, altered or otherwise distributed opioids which caused
23 Plaintiff's injuries as complained herein. Plaintiff will ask leave of the Court to amend this
24 Complaint to show the true names and capacities of these Defendants, when they become known
25 to Plaintiff. Plaintiff believes each Defendant named as ZOE PHARMACY was responsible for
26 contributing to the misconduct alleged herein.

27
28

⁴ *Reno Doctor Sentenced To 10 Years In Prison For Involuntary Manslaughter Of Patient And Unlawful Distribution Of Large Quantities Of Prescription Drugs*, *supra* note 2.

1 86. That Plaintiff is informed and believes, and based upon such information and belief,
2 alleges that each of the Defendants herein designated as DOES, ROES and/or ZOES are in some
3 manner responsible for the misconduct alleged herein.

4 87. Plaintiff is informed and believes and thereon alleges that at all relevant times
5 herein mentioned Defendants, and each of them, were the agents and/or servants and/or partners
6 and/or joint venture partners and/or employers and/or employees and/or contractors of the
7 remaining Defendants and were acting within the course and scope of such agency, employment,
8 partnership, contract or joint venture and with the knowledge and consent of the remaining
9 Defendants at the time of the event leading to the misconduct alleged herein.

10 **H. Jurisdiction & Venue.**

11 88. That exercise of the jurisdiction by this Court over each and every Defendant in
12 this action is appropriate because each and every Defendant has done, and continues to do,
13 business in the State of Nevada, and committed a tort in the State of Nevada. Additionally, this
14 Court has jurisdiction over the claims alleged herein as they arise under Nevada statutes and
15 Nevada common law.

16 89. Venue is proper in the Second Judicial District Court of Washoe County, Nevada
17 where part of the claims alleged herein occurred.

18 **GENERAL FACTUAL ALLEGATIONS**

19 **A. Opioids Generally**

20 90. Defendants design, manufacture, distribute, sell, market, and advertise
21 prescription opioids, including brand-name drugs like Oxycontin and Subsys, and generics like
22 oxycodone, which are powerful narcotic painkillers. Historically, because they were considered
23 too addictive and debilitating for the treatment of chronic pain (like back pain, migraines and
24 arthritis), opioids were used only to treat short-term acute pain cancer patients or for palliative
25 (end-of-life) care.

26 91. Due to the lack of evidence that opioids improved patients' ability to overcome
27 pain and function, coupled with evidence of greater pain complaints as patients developed
28 tolerance to opioids over time and the serious risk of addiction and other side effects, the use of

1 opioids for chronic pain was discouraged or prohibited. As a result, doctors generally did not
2 prescribe opioids for chronic pain.

3 92. In the 1970s and 1980s, studies were conducted that made clear the reasons to
4 avoid opioids. By way of example, the World Health Organization ("WHO") in 1986 published
5 an "analgesic ladder" for the treatment of cancer pain. The WHO recommended treatment with
6 over-the-counter or prescription acetaminophen or non-steroidal anti-inflammatory drugs
7 ("NSAIDs") first, then use of unscheduled or combination opioids, and then stronger (Schedule
8 II or III) opioids if pain persisted. The WHO ladder pertained only to the treatment of cancer pain,
9 and did not contemplate the use of narcotic opioids for chronic pain - because the use of opioids
10 for chronic pain was not considered appropriate medical practice at the time.

11 93. Due to concerns about their addictive qualities, opioids have been regulated as
12 controlled substances by the U.S. Drug Enforcement Administration ("DEA") since 1970. The
13 labels for scheduled opioid drugs carry black box warnings of potential addiction and "[s]erious,
14 life-threatening, or fatal respiratory depression," as a result of an excessive dose.

15 **B. Defendants' Fraudulent Marketing**

16 94. To take advantage of the lucrative market for chronic pain patients, Defendants
17 developed a well-funded marketing scheme based on deception. Defendants used both direct
18 marketing and unbranded advertising disseminated by purported independent third parties to
19 spread false and deceptive statements about the risks and benefits of long-term opioid use.

20 95. Yet these statements were not only unsupported by or contrary to the scientific
21 evidence, they were also contrary to pronouncements by and guidance from federal agencies such
22 as the Food and Drug Administration ("FDA") and Centers for Disease Control and Prevention
23 ("CDC") based on that evidence. They also targeted susceptible prescribers and vulnerable patient
24 populations, including the elderly and veterans.

25 96. Defendants also used kickback systems, prior authorization systems, and
26 incentives to encourage health care providers to prescribe the opioid medications.

27 **Direct Marketing Efforts**

28 97. Defendants' direct marketing of opioids generally proceeded on two tracks. First,
Defendants conducted, and continue to conduct, promotional campaigns extolling the purported

benefits of their branded drugs. Advertisements were branded to deceptively portray the benefits of opioids for chronic pain. For instance, Defendant Purdue commissioned series of ads in medical journals, called "Pain vignettes," for Oxycontin in 2012. These ads featured chronic pain patients and recommended opioids for each. One ad described a "54-year-old writer with osteoarthritis of the hands" and implied that Oxycontin would help the writer work more effectively. Purdue agreed in late 2015 and 2016 to halt these misleading representations in New York, but no similar order has been issued in Nevada. Defendant Mallinckrodt marketed its products, Exalgo and Xartemis as specially formulated to reduce abuse and published information on its website minimizing addiction risk as well as advocating access to opioids. Defendant Insys provided health care providers with false and misleading information in order to deceive such providers into believing the FDA had approved Subsys for more uses than the FDA had actually approved.

98. Second, Defendants promoted, and continue to promote, the use of opioids for chronic pain through "detailers" – sales representatives who visited individual doctors and medical staff in their offices – and small-group speaker programs. Defendants' detailing to doctors is effective. By establishing close relationships with prescribing physicians, Defendants' sales representatives are able to disseminate their misrepresentations in targeted, one-on-one settings that allowed them to differentiate their opioids and to address individual prescribers' concerns about prescribing opioids for chronic pain.

99. These direct techniques were also accompanied by kickbacks, prior authorization systems, and the use of other incentives to encourage health care providers, to prescribe the opioid medication for chronic pain.

100. Numerous studies indicate that marketing impacts prescribing habits, with face-to-face detailing having the greatest influence. Defendants devoted, and continue to devote, massive resources to direct sales contacts with doctors.

101. Defendants paid sham "speaker fees" to doctors to run educational events to discuss the use of their products, but the fees were actually intended to reward those doctors for prescribing Defendants' products and incentivize them to prescribe more of those products to patients. In fact, often times the speakers spoke at events with minimal to no attendance simply

1 to collect the fee. These kickbacks increased as the number of prescriptions written by the
2 speakers increased.

3 102. Upon information and belief and at all times relevant herein, Defendants ensured,
4 and continue to ensure, marketing consistency nationwide through national and regional sales
5 representative training; national training of local medical liaisons, the company employees who
6 respond to physician inquiries; centralized speaker training; single sets of visual aids, speaker
7 slide decks, and sales training materials; and nationally coordinated advertising. Upon
8 information and belief, Defendants' sales representatives and physician speakers were required
9 to adhere to prescribed talking points, sales messages, and slide decks, and supervisors rode along
10 with them periodically to both check on their performance and compliance.

11 103. Upon information and belief and at all times relevant herein, Defendants employed,
12 and continue to employ, the same marketing plans and strategies and deployed the same messages
13 in Nevada as they did nationwide.

14 104. As the opioid epidemic spread, many health care providers recognized the dangers
15 of opioid medication, including health risks and the risk of addiction. Others, however, continued
16 to prescribe such medication for off-label purposes without adequately warning patients of the
17 dangers associated with opioids.

18 105. Upon information and belief, Defendant Providers received financial incentives to
19 continue writing prescriptions for such opioid medication despite the dangers associated with
20 same.

21 106. Across the pharmaceutical industry, "core message" development is funded and
22 overseen on a national basis by corporate headquarters. This comprehensive approach ensures
23 that Defendants' messages are accurately and consistently delivered across marketing channels –
24 including detailing visits, speaker events, and advertising – and in each sales territory. Defendants
25 consider this high level of coordination and uniformity crucial to successfully marketing their
26 drugs.

27 **Unbranded/Third-Party Marketing by Defendants**

28 107. In addition to direct communications, Defendants utilized third-party marketing to
promote their line of prescription opiates. This "unbranded" marketing refers not to a specific

1 drug, but more generally to a disease state or treatment. For instance, these marketing materials
2 generally promoted opioid use but did not name a specific opioid. Through these unbranded
3 materials, Defendants presented information and instructions concerning opioids that were
4 generally contrary to, or at best, inconsistent with, information and instructions listed on
5 Defendants' branded marketing materials and drug labels and with Defendants' own knowledge
6 of the risks, benefits and advantages of opioids. An example of such unbranded marketing
7 techniques is Defendant Mallinckrodt's Collaborating and Acting Responsible to Ensure Safety
8 (C.A.R.E.S.) Alliance, which promoted a book "Defeat Chronic Pain Now!" minimizing the risk
9 of opioid addiction and emphasizing opioid therapy for regular use for moderate chronic pain.

10 108. Using "Key Opinion Leaders" (KOLs) and "Front Groups," Defendants
11 disseminated their false and misleading statements regarding the efficacy of opioids. These KOLs
12 and Front Groups were important elements of Defendants' marketing plans, because they
13 appeared independent and therefore outside of FDA oversight. However, Defendants did so
14 knowing that unbranded materials typically were not submitted or reviewed by the FDA. By
15 acting through third parties, Defendants were able both to avoid FDA scrutiny and to give the
16 false appearance that these messages reflected the views of independent third parties. Afterwards,
17 Defendants would cite to these sources as corroboration of their own statements.

18 109. Defendants worked, and continue to work, in concert with the Front Groups and
19 KOLs which they funded and directed to carry out a common scheme to deceptively market the
20 risks, benefits, and superiority of opioids to treat chronic pain. Although participants knew this
21 information was false and misleading, these misstatements were nevertheless disseminated to
22 Nevada prescribers and patients.

23 **Key Opinion Leaders (KOLs)**

24 110. Upon information and belief and at all times relevant herein, Defendants recruited,
25 as part of its unbranded marketing efforts, a cadre of doctors who were financially sponsored
26 because of their preference to aggressively treat chronic pain with opioids. KOLs were retained
27 by Defendants to influence their peers' medical practice, including but not limited to their
28 prescribing behavior. KOLs gave lectures, conducted clinical trials and occasionally made

1 presentations at regulatory meetings or hearings. KOLs were carefully vetted to ensure that they
2 were likely to remain on message and supportive of Defendant' agenda.

3 111. Defendants' financial support helped these doctors become respected industry
4 experts. Upon information and belief, these doctors repaid Defendants by extolling the benefits
5 of opioids to treat chronic pain as quid pro quo. Defendants would cite to these sources later on
6 as corroboration of their own false and misleading statements regarding opioids.

7 **Front Groups**

8 112. Defendants also entered into arrangements with seemingly unbiased and
9 independent patient and professional organizations to promote opioids for the treatment of chronic
10 pain. Under their direction and control, these "Front Groups" generated treatment guidelines,
11 unbranded materials, and programs that favored chronic opioid therapy. They also assisted
12 Defendants by refuting negative articles, by advocating against regulatory changes that would
13 limit opioid prescribing in accordance with the scientific evidence, and by conducting outreach
14 to vulnerable patient populations targeted by Defendants.

15 113. These Front Groups depended on Defendants for funding and, in some cases, for
16 survival. Defendants exercised significant control over programs and materials created by these
17 groups by collaborating on, editing, and approving their content, and by funding their
18 dissemination. In so doing, Defendants made sure that these Front Groups would generate only
19 favorable messages. Despite this, the Front Groups held themselves out as independent and
20 serving the needs of their members – whether patients suffering from pain or doctors treating
21 those patients.

22 114. While Defendants utilized many Front Groups, one of the most prominent of was
23 the American Pain Foundation ("APF"). APF received more than \$10 million in funding from
24 opioid manufacturers from 2007 until it closed its doors in May 2012. Upon information and
25 belief, Defendant Purdue was one of its primary financial backers.

26 115. APF issued education guides for patients, reporters, and policymakers that touted
27 the benefits of opioids for chronic pain and trivialized their risks, particularly the risk of addiction.
28 APF also launched a campaign to promote opioids for returning veterans, which has contributed
to high rates of addiction and other adverse outcomes – including death – among returning soldiers.

1 APF also engaged in a significant multimedia campaign – through radio, television and the
2 internet – to educate patients about their “right” to pain treatment, namely opioids. All of the
3 programs and materials were available nationally and were intended to reach Nevadans.

4 116. In or about May 2012, the U.S. Senate Finance Committee began investigating
5 APF to determine the relationship, financial and otherwise, between the organization and the
6 manufacturers of opioid analgesics. The investigation caused considerable damage to APF’s
7 credibility as an objective and neutral third party, and Purdue, upon information and belief,
8 stopped financially supporting the organization.

9 117. Within days of being targeted by Senate investigation, APF’s board voted to
10 dissolve the organization “due to irreparable economic circumstances.” APF “cease[d] to exist,
11 effective immediately.”

12 *Continuing Medical Education (CMEs)*

13 118. CMEs are ongoing professional education programs required for physicians.
14 Physicians must attend a certain number and, often, type of CME programs each year as a
15 condition of their licensure. These programs are delivered in person, often in connection with
16 professional organizations' conferences, and online, or through written publications. Doctors rely
17 on CMEs not only to satisfy licensing requirements, but to get information on new developments
18 in medicine or to deepen their knowledge in specific areas of practice. Because CMEs are
19 typically delivered by KOLs who are highly-respected in their fields and are thought to reflect
20 their medical expertise, they can be especially influential with doctors.

21 119. By utilizing CMEs, Defendants sought to reach general practitioners, whose broad
22 area of focus and lack of specialized training in pain management made them particularly
23 dependent upon CMEs and, as a result, especially susceptible to Defendants' deceptions.
24 Defendants sponsored CMEs promoted chronic opioid therapy.

25 120. These CMEs, while often generically titled to relate to the treatment of chronic
26 pain, focused on opioids to the exclusion of alternative treatments, inflated the benefits of opioids,
27 and frequently omitted or downplayed their risks and adverse effects.

28 121. Upon information and belief and at all times relevant herein, CMEs paid for or
sponsored by Defendants were intended to reach prescribing physicians in Nevada.

1 **Drug Manufacturer Defendants—Kickbacks to Encourage Prescriptions**

2 122. Upon information and belief, Defendants utilized a system of kickbacks to
3 encourage health care providers to write prescriptions for, and deliver, the opioid medications.
4 Kickbacks took the form of “speaker fees” paid to health care providers that spoke at programs
5 regarding the purported benefits and safety of using opioid medications to treat chronic pain. Such
6 speakers were recruited by Defendants based upon the number of prescriptions the providers
7 wrote for opioid medications. The more prescriptions written, the more times the speaker was
8 asked to appear at a program, and the more “speaker fees” were paid to the provider. Defendants’
9 employees were rewarded when their “speakers” increased the prescriptions they wrote. These
10 speaking programs did not result in other health care providers writing a significant number of
11 prescriptions for Defendants’ products, but the “speakers” continued to be paid to speak so long
12 as they increased their own prescriptions. Many of the speaker programs had few or no attendees
13 that would actually be able to write prescriptions for Defendants’ products. Upon information and
14 belief, Defendant Providers, benefitted from such programs.

15 **Prior Authorization Programs**

16 123. Upon information and belief, Defendants developed prior authorization programs
17 in order to gain authorization and approval from insurance companies to cover the costly opioid
18 products for off-label uses. These programs involved representatives from Defendants contacting
19 insurance companies and representing that they are from a health care provider’s office rather
20 than from the Defendant manufacturer or distributor; providing inaccurate diagnosis information
21 on the authorization requests; and drafting Letters of Medical Necessity for health care providers
22 to sign-off on for purposes of receiving authorization from health insurance providers. Upon
23 information and belief, Defendant Providers also participated in misleading the health insurance
24 providers to authorize the numerous prescriptions written for opioid medications, including, but
25 not limited to, Subsys.

26 **Medication Switch Programs**

27 124. Upon information and belief, Defendants encouraged and incentivized detailers
28 and sales people to convince health care providers to substitute stronger, more expensive opioid
medications for medications that patients were already prescribed. Detailers and sales people were

1 informed that they would receive higher pay and/or bonuses by convincing health care providers
2 to change prescriptions. These programs ignored any warnings that one opioid drug could not be
3 substituted on a one-for-one basis with another opioid medication. Each opioid medication is
4 unique in its dosing and has a different approved dosage level. Switch programs encouraged a
5 one-for-one substitution despite the differences in the original and substitute medication.

6 **Drug Manufacturer Defendants—Marketing Targeting the Elderly and Veterans**

7 125. In their pursuit of profit, Defendants targeted vulnerable segments of the
8 population suffering from chronic pain including veterans and the elderly.

9 126. Defendants' targeted marketing to the elderly and the absence of cautionary
10 language in their promotional materials creates a heightened risk of serious injury. Studies have
11 shown that elderly patients who used opioids had a significantly higher rate of death, heart attacks,
12 and strokes than users of NSAIDs. Additionally, elderly patients taking opioids have been found
13 to suffer elevated fracture risks, greater risk for hospitalizations, and increased vulnerability to
14 adverse drug effects and interactions, such as respiratory depression.

15 127. Defendants' efforts were successful. Since 2007, opioid prescriptions for the
16 elderly have grown at twice the rate of prescriptions for adults between the ages of 40 and 59.
17 Based on anecdotal evidence, many of these elderly patients started on opioids for chronic back
18 pain or arthritis.

19 128. Veterans are also suffering greatly from the effects of Defendants' targeted
20 marketing. Opioids are particularly dangerous to veterans. According to a study published in the
21 2013 Journal of American Medicine, veterans returning from Iraq and Afghanistan who were
22 prescribed opioids have a higher incidence of adverse clinical outcomes, like overdoses and self-
23 inflicted and accidental injuries, than the general U.S. population.

24 129. *Exit Wounds*, a 2009 publication sponsored by Defendant Purdue and distributed
25 by APF, written as a personal narrative of one veteran, describes opioids as "underused" and the
26 "gold standard of pain medications" and fails to disclose the risk of addiction, overdose, or injury.
27 It notes that opioid medications "increase a person's level of functioning" and that "[l]ong
28 experience with opioids shows that people who are not predisposed to addiction are unlikely to
become addicted to opioid pain medications."

1 130. *Exit Wounds* downplays and minimizes the risks from chronic opioid therapy and
2 does not disclose the risk that opioids may cause fatal interactions with benzodiazepines taken by
3 a significant number of veterans. It is not the unbiased narrative of a returning war veteran. It is
4 another form of marketing, sponsored by Defendant Purdue.

5 131. The deceptive nature of *Exit Wounds* is made obvious in comparing it to guidance
6 on opioids published by the U.S. Department of Veterans Affairs and the Department of Defense
7 in 2010 and 2011. The VA's Taking Opioids Responsibly describes opioids as "dangerous." It
8 cautions against taking extra doses and mentions the risk of overdose and the dangers of
9 interactions with alcohol.

10 **C. Defendants' Misrepresentations**

11 132. To convince prescribing physicians and prospective patients that opioids are safe,
12 Defendants deceptively concealed the risks of long-term opioid use, particularly the risk of
13 addiction, through a series of misrepresentations. Defendants manipulated their promotional
14 materials and the scientific literature to make it appear that these items were accurate, truthful,
15 and supported by objective evidence when they were not.

16 133. These misrepresentations regarding opioids include but are not limited to:

- 17 a. Starting patients on opioids was low-risk because most patients would not become
18 addicted, and because those who were at greatest risk of addiction could be readily
19 identified and managed;
- 20 b. Patients who displayed signs of addiction probably were not addicted and, in any
21 event, could easily be weaned from the drugs;
- 22 c. The use of higher opioid doses, which many patients need to sustain pain relief as
23 they develop tolerance to the drugs, do not pose special risks; and
- 24 d. Abuse-deterrent opioids both prevent abuse and overdose and are inherently less
25 addictive.

26 134. Upon information and belief, Defendants have not only failed to correct these
27 misrepresentations, they continue to make them today.

28 135. For example, Defendant Purdue misrepresented, and continues to misrepresent,
Oxycontin as providing 12 continuous hours of pain relief with one dose. However, studies have

1 shown, as well as Purdue's own internal research, that the effects of the drug wear off in or about
2 six (6) hours in one quarter of its patients and in or about ten (1) hours in one-half of its patients.

3 136. Defendants also misrepresented the benefits of chronic opioid therapy. For
4 example, Defendant Purdue falsely claimed that long-term opioid use improved patients' function
5 and quality of life in advertisements for Oxycontin in medical journals entitled, "Pain Vignettes"
6 which were case studies featuring patients with pain conditions persisting over several months
7 and recommending Oxycontin for them. These advertisements implied that Oxycontin improves
8 patients' function.

9 137. However, these claims find no support in the scientific literature. In 2008, the FDA
10 sent a warning letter to an opioid manufacturer, making it clear "that [the claim that] patients who
11 are treated with the drug experience an improvement in their overall function, social function, and
12 ability to perform daily activities . . . has not been demonstrated by substantial evidence or
13 substantial clinical experience." Most recently, the 2016 CDC Guideline approved by the FDA
14 concluded that "there is no good evidence that opioids improve pain or function with long-term
15 use, and . . . complete relief of pain is unlikely."

16 138. Upon information and belief and at all times relative herein, Defendants made
17 and/or disseminated deceptive statements related to opioids, including, but not limited to, in the
18 following ways:

- 19 a. Creating, sponsoring, and assisting in the distribution of patient education
20 materials distributed to Nevada consumers that contained deceptive statements;
- 21 b. Creating and disseminating advertisements that contained deceptive statements
22 concerning the ability of opioids to improve function long-term and concerning
23 the evidence supporting the efficacy of opioids long-term for the treatment of
24 chronic non-cancer pain;
- 25 c. Assisting in the distribution of guidelines that contained deceptive statements
26 concerning the use of opioids to treat chronic non-cancer pain and misrepresented
27 the risks of opioid addiction;
- 28

- 1 d. Developing and disseminating scientific studies that misleadingly concluded
2 opioids are safe and effective for the long-term treatment of chronic non-cancer
3 pain and that opioids improve quality of life, while concealing contrary data;
4 e. Targeting the elderly and veterans by assisting in the distribution of guidelines that
5 contained deceptive statements concerning the use of opioids to treat chronic non-
6 cancer pain and misrepresented the risks of opioid addiction in this population;
7 f. Exclusively disseminating misleading statements in education materials to Nevada
8 hospital doctors and staff while purportedly educating them on new pain standards;
9 and
10 g. Making deceptive statements concerning the use of opioids to treat chronic non-
11 cancer pain to Nevada prescribers through in-person detailing.

12 **D. Duty of Drug Distributors and Pharmacies as Gate Keepers**

13 139. In Nevada, opioids are a controlled substance and are categorized as "dangerous
14 drugs." Therefore, Defendant Distributors have a duty to exercise reasonable care under the
15 circumstances.

16 140. This involves a duty not to create a foreseeable risk of harm to others. Additionally,
17 one who engages in affirmative conduct-and thereafter realizes or should realize that such conduct
18 has created an unreasonable risk of harm to another-is under a duty to exercise reasonable care to
19 prevent the threatened harm.

20 141. All opioid distributors are required and have a duty to maintain effective controls
21 against opioid diversion. They are also required and have a duty to create and use a system to
22 identify and report downstream suspicious orders of controlled substances to law enforcement.
23 Suspicious orders include orders of unusual size, orders deviating substantially from the normal
24 pattern, and orders of unusual frequency.

25 142. To comply with these requirements, distributors must know their customers, report
26 suspicious orders, conduct due diligence, and terminate orders if there are indications of diversion.

27 143. Defendant Distributors each have an affirmative duty to act as a gatekeeper
28 guarding against the diversion of the highly addictive, dangerous opioid drugs.

1 144. Defendant Distributors each have a non-delegable duty to identify and track
2 suspicious orders of controlled substances.

3 145. In addition, Defendant Distributors must also stop shipment on any order which is
4 flagged as suspicious and only ship orders which were flagged as potentially suspicious if, after
5 conducting due diligence, the distributor can determine that the order is not likely to be diverted
6 into illegal channels.

7 146. Defendant Distributors have a duty to detect questionable and suspicious orders to
8 prevent the diversion of opioids into Reno, which include orders of unusual size, orders deviating
9 substantially from a normal pattern, and orders of an unusual frequency.

10 147. Defendant Distributors not only have a duty to detect and prevent diversion of
11 controlled prescription drugs, but undertake such efforts as responsible members of society.

12 148. In so doing, this is intended to reduce the widespread diversion of these drugs out
13 of legitimate channels into the illicit market, while at the same time providing the legitimate drug
14 industry with a unified approach to narcotic and dangerous drug control.

15 149. Notwithstanding this duty and obligation, the DEA has been required to take
16 administrative action against Defendant Distributors to force compliance. The United States
17 Department of Justice, Office of the Inspector General, Evaluation and Inspections Division,
18 reported that the DEA issued final decisions in 178 registrant actions between 2008 and 2012.
19 The Office of Administrative Law Judges issued a recommended decision in a total of 117
20 registrant actions before the DEA issued its final decision, including 76 actions involving orders
21 to show cause and 41 actions involving immediate suspension orders.⁵ Some of these actions
22 include the following:

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

26 (b) On November 28, 2007, the DEA issued an *Order to Show Cause and*
27 *Immediate Suspension Order* against the Cardinal Health Auburn, Washington
28 Distribution Center ("Auburn Facility") for failure to maintain effective controls against

⁵ *The Drug Enforcement Administration's Adjudication of Registrant Actions*, United States Department of Justice, Office of the Inspector General, Evaluation and Inspections Divisions, 1-2014-003 (May 2014).

1 diversion of hydrocodone;

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

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

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

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

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

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

21 (i) On December 23, 2016, Cardinal Health agreed to pay a \$44 million fine
22 to the DEA to resolve the civil penalty portion of the administrative action taken against
23 its Lakeland, Florida Distribution Center;

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

28 (k) On July 11, 2017, Mallinckrodt agreed to pay the DEA \$35 million to settle
allegations for the company's failure to report suspicious orders of opioids and allegations

1 of faulty record keeping. The investigation originally began in 2011 and federal
2 investigators reportedly found 44,000 violations potentially exposing Mallinckrodt to \$2.3
3 billion in fines.

4 150. Because Defendant Distributors handle such large volumes of controlled
5 substances, and are the first major line of defense in the movement of legal pharmaceutical
6 controlled substances from legitimate channels into the illicit market, it is incumbent on these
7 distributors to maintain effective controls to prevent diversion of controlled substances. Should a
8 distributor deviate from these checks and balances, the closed system collapses.

9 151. The sheer volume of prescription opioids distributed to pharmacies in Reno is
10 excessive for the medical need of the community and facially suspicious. Some red flags are so
11 obvious that no one who engages in the legitimate distribution of controlled substances can
12 reasonably claim ignorance of them.

13 152. Over the course of a decade, Defendant Distributors and Pharmacies failed to
14 detect suspicious orders of prescription opioids which Defendants knew or should have known
15 were likely to be delivered and/or diverted into Reno.

16 153. Defendants ignored the law, paid the fines, and continued to unlawfully fill
17 suspicious orders of unusual size, orders deviating substantially from a normal pattern and/or
18 orders of unusual frequency in Reno, and/or orders which Defendants knew or should have known
19 were likely to be delivered and/or diverted into Reno.

20 154. Defendant Pharmacies must exercise reasonable care under the circumstances.
21 This involves a duty not to create a foreseeable risk of harm to others. Additionally, one who
22 engages in affirmative conduct, and thereafter realizes or should realize that such conduct has
23 created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to
24 prevent the threatened harm.

25 155. Like Defendant Distributors, Defendant Pharmacies also serve as gatekeepers in
26 keeping drugs from entering the illicit market. As the "last line of defense," they are meant to be
27 the drug experts in the healthcare delivery system and as such have considerable duties and
28 responsibility in the oversight of patient care. They cannot blindly fill prescriptions written by a
doctor if the prescription is not for a legitimate medical purpose.

1 156. Therefore, Defendant Pharmacies are required to ensure that prescriptions for
2 controlled substances are valid, and that they are issued for a legitimate medical purpose by
3 practitioners acting in their usual course. But by filling prescriptions of questionable or suspicious
4 origin the Defendant Pharmacies have subsequently breached that duty.

5 157. Upon information and belief and at all times relevant herein, questionable or
6 suspicious prescriptions issued by Defendant Pharmacies include: (1) prescriptions written by a
7 doctor who writes significantly more prescriptions (or in larger quantities) for controlled
8 substances compared to other practitioners in the area; (2) prescriptions which should last for a
9 month in legitimate use, but are being refilled on a shorter basis; (3) prescriptions for antagonistic
10 drugs, such as depressants and stimulants, at the same time; (4) prescriptions with quantities or
11 dosages that differ from usual medical usage; (5) prescriptions that do not comply with standard
12 abbreviations and/or contain no abbreviations; (6) photocopied prescriptions; and/or (7)
13 prescriptions containing different handwritings.

14 158. In addition to having common law duties, Defendant Pharmacies have a statutory
15 duty under state law to track and report certain information to the Nevada State Board of
16 Pharmacy. The Nevada State Board of Pharmacy has been licensing and regulating the practices
17 of pharmaceutical wholesalers in Nevada since 1967.

18 159. State law requires that statements of prior sales ("pedigrees") must be in
19 "electronic form, if the transaction occurs on or after January 1, 2007 and also when one of two
20 things is true: (1) the selling wholesaler is not an authorized distributor for the manufacturer of
21 the drug, or (2) the selling wholesaler bought the drug from another wholesaler.

22 160. In addition, the mandatory data to be reported must include, but is not limited to
23 as follows: (a) name, address, telephone number, and Nevada license number of the wholesaler
24 making the pedigree; (b) name and title of person certifying the pedigree's accuracy; (c) invoice
25 number and date for the transaction of which the pedigree is part; (d) purchase order number and
26 date for the transaction of which the pedigree is part; (e) order number and date (if one) for the
27 transaction of which the pedigree is part; (f) the business name, address, and telephone number
28 of each preceding seller of the drug; (g) the business name, address, and telephone number of the
customer to whom the reporting wholesaler sold the drug; (h) the date of each preceding or

1 subsequent sale; (i) name of the drug; (j) strength of the drug; (k) size of the container; and/or
2 (l) number of containers.

3 161. Because Defendant Pharmacies handle such large volumes of controlled
4 substances, and are a last line of defense in the movement of legal pharmaceutical controlled
5 substances from legitimate channels into the illicit market, it is incumbent on these Defendants to
6 maintain effective controls to prevent diversion of controlled substances. Should Defendants
7 deviate from these checks and balances, the closed system collapses.

8 162. The sheer volume of prescription opioids distributed to pharmacies in Reno is
9 excessive for the medical need of the community and facially suspicious. Some red flags are so
10 obvious that no one who engages in the legitimate distribution of controlled substances can
11 reasonably claim ignorance of them.

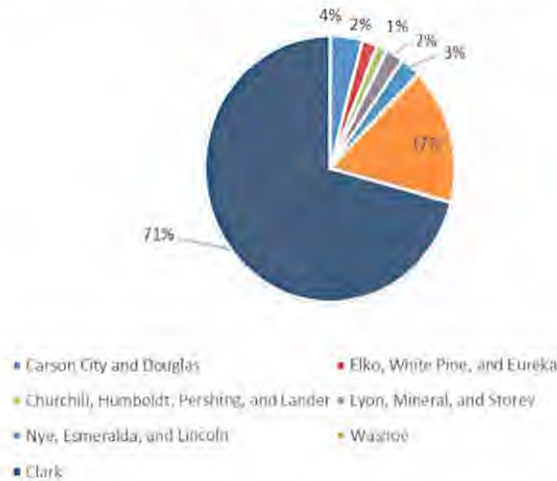
12 163. Over the course of a decade, Defendant Pharmacies failed to detect suspicious
13 orders of prescription opioids which Defendants knew or should have known were likely to be
14 delivered and/or diverted into Reno.

15 164. Yet, Defendants ignored the law, paid the fines, and continued to unlawfully fill
16 suspicious orders of unusual size, orders deviating substantially from a normal pattern and/or
17 orders of unusual frequency in Reno, and/or orders which Defendants knew or should have known
18 were likely to be delivered and/or diverted into Reno.

19 **D. Opioid Addiction in Nevada**

20 165. In Nevada, the opioid epidemic is widespread, not localized to any particular city
21 or county. In 2016, Nevada was ranked as the sixth highest state for the number of milligrams of
22 opioids distributed per adult according to a study by the DEA. From 2009 to 2013, hospitals
23 across the State had patients presenting to emergency rooms for heroin or opioid dependence,
24 abuse, or poisoning. Of those visits, 17% occurred in Washoe County.

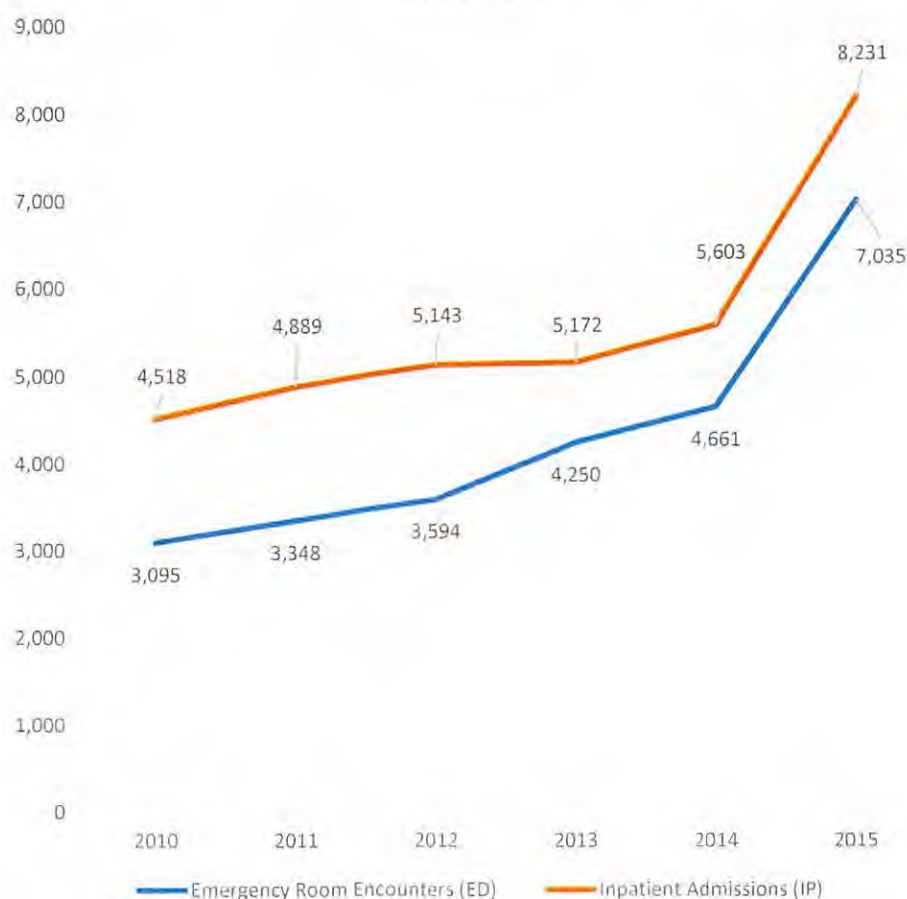
Heroin or Opioid Dependence, Abuse, or Poisoning Among Hospital Emergency Department Visitors for Nevada Residents in 2009-2013 by Region



166. According to data from the Nevada Division of Public and Behavioral Health, the total number of opioid-related hospitalizations in Nevada nearly doubled from 2010 to 2015. In 2010, the number of opioid-related emergency room hospitalizations in Nevada totaled about 4,518 patients. By comparison, that number rose steeply to about 8,231 visits in a mere five years. Similarly, in 2010, the number of opioid-related inpatient admissions statewide totaled 3,095 hospitalizations. However, in a span of only five years, that number exponentially increased to 7,035 visits in 2015. From 2010 to 2015, over 26% of opioid-related emergency room hospitalizations in Nevada were among patients aged 55 years and older. Over 36% of opioid-related inpatient admissions in the State were among that same age group.

167. Opioid-induced hospitalizations and emergency room visits are a significant area of health expenditure. For instance in 2012, over \$40 million was billed for opioid-induced hospitalizations and over \$7 million for similar emergency room visits in Southern Nevada alone.

Opioid-Related Hospitalizations, Nevada Residents,
2010-2015



168. In addition to hospitalizations, the total number of opioid-related deaths continues to mount. According to the Centers for Disease Control, nearly half of all U.S. opioid overdose deaths involve a prescription opioid. In 2015, more than 15,000 people in the U.S. died from overdoses involving prescription opioids.

169. Nevada has the fourth highest drug overdose mortality rate in the United States. From 2010 to 2015, approximately 2,800 deaths in Nevada have been attributed to opioid-related overdose. It is estimated that 55% of those deaths were caused by natural and semi-synthetic opioids.



E. The Consequences of Defendants' Fraudulent Scheme

170. Through direct promotional marketing, in conjunction with third-party Front Groups and KOLs, Defendants accomplished exactly what they set out to do: change the institutional and public perception of the risk-benefit assessments and standard of care for treating patients with chronic pain. As a result, Nevada doctors began prescribing opioids long-term to treat chronic pain - something most would never have considered prior to Defendants' extensive marketing campaign.

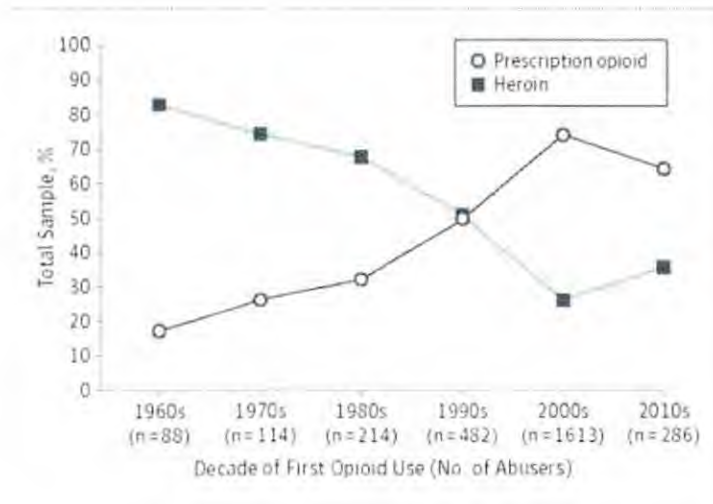
171. But for the misleading information disseminated by Defendants, prescribing physicians would not, in most instances, have prescribed opioids as medically necessary or reasonably required to address chronic pain. The impact of Defendants' fraudulent marketing on doctors' prescribing and patients' use of opioids is evidenced by the increase in opioid prescribing nationally in concert with Defendants' marketing, and the consequences of opioid over-prescription - including addiction, overdose, and death.

F. Prescription Opioids Fueling Secondary Market of Illegal Drugs

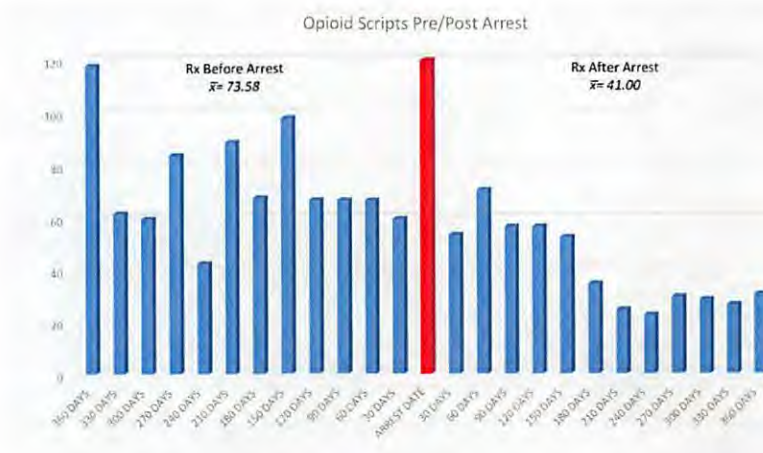
172. Defendants' successful efforts in expanding the market for opioids to new patients and chronic conditions has created an abundance of drugs available for criminal use and fueled a new wave of addiction and abuse. Defendants' behavior supplies both ends of the secondary market for opioids - producing both the inventory of narcotics to sell and the addicts to buy them. It has been estimated that the majority of the opioids that are abused come, directly or indirectly, through doctors' prescriptions. Because heroin is cheaper than prescription painkillers, many prescription opioid addicts migrate to heroin. Thus, prescription drug abuse is fueling the rise of heroin usage in Nevada.

173. As a result, self-reported heroin use nearly doubled in the U.S. between 2007 and 2012, from 373,000 to 669,000 individuals and, in 2010, more than 3,000 people in the U.S. died

from heroin overdoses, also nearly double the rate in 2006; nearly 80% of those who used heroin in the past year previously abused prescription opioids.



174. Between 2011 to 2015, the Reno Police Department arrested approximately 735 individuals related to heroin use. Of those arrested, 53% were prescribed opioids. While records indicate that aggregate opioid prescriptions for those arrested decreased following their arrests, opioid addiction and illegal heroin use persist.



1 175. While the use of opioids continues to take an enormous toll on Reno and its
2 residents, pharmaceutical companies reap blockbuster profits.

3 176. In 2014 alone, opioids generated \$11 billion in revenue for drug companies,
4 Defendants experienced a material increase in sales, revenue, and profits from their fraudulent
5 advertising and other unlawful and unfair conduct as described above.

6 177. Defendants should be held accountable for their misrepresentations and the harms
7 caused to Reno as well as its residents thus giving rise to this lawsuit.

8 **FIRST CAUSE OF ACTION**

9 *(Public Nuisance Against All Defendants)*

10 178. Plaintiff repeats and reiterates the allegations previously set forth herein.

11 179. This action is brought by the City for violations of statutory provisions concerning
12 public nuisance under NRS 202 *et seq.* Nevada law provides that a where a controlled substance,
13 including but not limited to opioids, is “unlawfully sold, served, stored, kept, manufactured, used
14 or given away” constitutes a public nuisance.

15 180. The public nuisance created by Defendants’ actions is substantial and
16 unreasonable. It has caused, and continues to cause, significant harm to the community. The rates
17 of opioid use resulting from Defendants’ deceptive marketing efforts have caused harm to the
18 community

19 181. As a result of Defendants’ conduct, Plaintiff has incurred substantial costs
20 including but not limited to law enforcement action opioid-related to drug crimes, for addiction
21 treatment, and other services necessary for the treatment of people addicted to prescription opioids.

22 182. Defendants, and each of them, have contributed to, and/or assisted in creating and
23 maintaining a condition that is harmful to the health of Reno citizens, “renders a considerable
24 number of persons insecure in life” and/or interferes with the comfortable enjoyment of life in
25 violation of Nevada law.

26 183. Defendants knew or should have known that their marketing of opioid use would
27 create a public nuisance.

28 184. Defendants’ actions were, and continue to be, a substantial factor in opioids
becoming widely available and widely used. Defendants’ actions were, and continue to be, a

1 substantial factor in prescribing physicians and prospective patients not accurately assessing and
2 weighing the risks and benefits of opioids for chronic pain. Without Defendants' actions, opioid
3 use would not have become so widespread, and the enormous public health hazard of opioid
4 overuse, abuse, and addiction that now exists would have been averted.

5 185. The health and safety of the citizens of Reno, including those who use, have used
6 or will use opioids, as well as those affected by users of opioids, is a matter of great public interest
7 and of legitimate concern.

8 186. Defendants' conduct has affected and continues to affect a considerable number
9 of people within the physical boundaries of Reno and is likely to continue to cause significant
10 harm to people who take opioids, their families, and the community at large.

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

15 188. Defendants created an absolute nuisance. Defendants' actions created and
16 expanded the abuse of opioids, which are dangerously addictive, and the ensuing associated
17 plague of prescription opioid and heroin addiction. Defendants knew the dangers to public health
18 and safety that diversion of opioids would create in Reno, however, Defendants intentionally
19 and/or unlawfully failed to maintain effective controls against diversion through proper
20 monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants intentionally
21 and/or unlawfully distributed opioids without reporting or refusing to fill suspicious orders or
22 taking other measures to maintain effective controls against diversion. Defendants intentionally
23 and/or unlawfully continued to ship and failed to halt suspicious orders of opioids. Such actions
24 were inherently dangerous.

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

1 190. Defendants' actions also created a qualified nuisance. Defendants acted recklessly,
2 negligently and/or carelessly, in breach of their duties to maintain effective controls against
3 diversion, thereby creating an unreasonable risk of harm.

4 191. Defendants acted with actual malice because Defendants acted with a conscious
5 disregard for the rights and safety of other persons, and said actions have a great probability of
6 causing substantial harm.

7 192. The damages available to the Plaintiff include, *inter alia*, recoupment of
8 governmental costs, flowing from an "ongoing and persistent" public nuisance which the
9 government seeks to abate.

10 193. Defendants' conduct is ongoing and persistent, and the Plaintiff seeks all damages
11 flowing from Defendants' conduct. Plaintiff further seeks to abate the nuisance and harm created
12 by Defendants' conduct.

13 194. As a direct result of Defendants' conduct, Reno has suffered actual injury and
14 damages including, but not limited to, significant expenses for police, emergency, health,
15 prosecution, corrections and other services. Reno here seeks recovery for its own harm.

16 195. Reno has sustained specific and special injuries because its damages include, *inter*
17 *alia*, health services, law enforcement expenditures, costs related to opioid addiction treatment
18 and overdose prevention, and related costs.

19 196. Reno further seeks to abate the nuisance created by the Defendants' unreasonable,
20 unlawful, intentional, ongoing, continuing, and persistent interference with a right common to the
21 public.

22 197. The public nuisance created by Defendants' actions is substantial and
23 unreasonable – it has caused and continues to cause significant harm to the community, and the
24 harm inflicted outweighs any offsetting benefit. The staggering rates of prescription opioid abuse
25 and heroin use resulting from Defendants' abdication of their gate-keeping duties has caused harm
26 to the entire community that includes, but is not limited to:

- 27 a. The high rates of use have led to unnecessary opioid abuse, addiction, overdose,
28 injuries, and deaths.

- 1 b. Nor have children escaped the opioid epidemic unscathed. Easy access to
2 prescription opioids has made opioids a recreational drug of choice among
3 teenagers; opioid use among teenagers is only outpaced by marijuana use. Even
4 infants have been born addicted to opioids due to prenatal exposure, causing severe
5 withdrawal symptoms and lasting developmental impacts.
- 6 c. Even those City residents who have never taken opioids have suffered from the
7 public nuisance arising from Defendants' abdication of their gate-keeper duties.
8 Many have endured both the emotional and financial costs of caring for loved ones
9 addicted to or injured by opioids, and the loss of companionship, wages, or other
10 support from family members who have used, abused, become addicted to,
11 overdosed on, or been killed by opioids.
- 12 d. The opioid epidemic has increased health care costs.
- 13 e. Employers have lost the value of productive and healthy employees.
- 14 f. Defendants' failure to maintain effective controls against diversion of dangerously
15 addictive prescription opioids for non-medical use and abuses has created an
16 abundance of drugs available for criminal use and fueled a new wave of addiction,
17 abuse, and injury.
- 18 g. Defendants' dereliction of duties resulted in a diverted supply of narcotics to sell,
19 and the ensuing demand of addicts to buy them. Increased supply, due to
20 Defendants' conduct, led to more addiction, with many addicts turning from
21 prescription opioids to heroin. People addicted to opioids frequently require
22 increasing levels of opioids, and many turned to heroin as a foreseeable result.
- 23 h. The diversion of opioids into the secondary, criminal market and the increase in
24 the number of individuals who abuse or are addicted to opioids has increased the
25 demands on health care services and law enforcement in the City.
- 26 i. The significant unreasonable interference with the public rights caused by
27 Defendants' conduct has taxed the human, medical, public health, law enforcement,
28 and financial resources of the City.

1 j. Defendants' interference with the comfortable enjoyment of life in the City is
2 unreasonable because there is little social utility to opioid diversion and abuse, and
3 any potential value is outweighed by the gravity of the harm inflicted by
4 Defendants' actions.

5 198. Plaintiff seeks all legal and equitable relief as allowed by law, including *inter alia*
6 abatement, compensatory damages, and punitive damages from the Defendant Wholesale
7 Distributors for the creation of a public nuisance, attorney fees and costs, and pre- and post-
8 judgment interest.

9 199. The continued tortious conduct by the Defendants causes a repeated or continuous
10 injury. The damages have not occurred all at once but have increased as time progresses. The tort
11 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
12 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

18 202. That Plaintiff's general, special and punitive damages are in amounts in excess of
19 \$15,000.00.

20 **SECOND CAUSE OF ACTION**

21 *(Common Law Public Nuisance against all Defendants)*

22 203. Plaintiff repeats and reiterates the allegations previously set forth herein.

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

26 205. The public nuisance created by Defendants' actions is substantial and
27 unreasonable. It has caused and continues to cause significant harm to the community and the
28 harm inflicted outweighs any offsetting benefit. The staggering rates of opioid use resulting from
Defendants' marketing efforts have caused harm to the community.

1 206. Defendants, and each of them, knew or should have known that their promotion of
2 opioid use would create a public nuisance.

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

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

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

10 210. The health and safety of those individuals in Reno, including those who use, have
11 used or will use opioids, as well as those affected by users of opioids, is a matter of great public
12 interest and of legitimate concern.

13 211. The public nuisance created, perpetuated, and maintained by Defendants can be
14 abated and further reoccurrence of such harm and inconvenience can be prevented.

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

18 213. That at all times hereinafter mentioned, upon information and belief, the above-
19 described culpable conduct by Defendants was a proximate cause of injuries sustained by Plaintiff.

20 214. That as a result of the aforesaid occurrence, Plaintiff has suffered extensive
21 monetary and pecuniary losses and other compensatory damages were also incurred and paid,
22 including necessary medical, hospital, and concomitant expenses.

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

27 216. Defendants created an absolute nuisance. Defendants' actions created and
28 expanded the abuse of opioids, which are dangerously addictive, and the ensuing associated
plague of prescription opioid and heroin addiction. Defendants knew the dangers to public health

1 and safety that diversion of opioids would create in Reno, however, Defendants intentionally
2 and/or unlawfully failed to maintain effective controls against diversion through proper
3 monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants intentionally
4 and/or unlawfully distributed opioids without reporting or refusing to fill suspicious orders or
5 taking other measures to maintain effective controls against diversion. Defendants intentionally
6 and/or unlawfully continued to ship and failed to halt suspicious orders of opioids. Such actions
7 were inherently dangerous.

8 217. Defendants knew the prescription opioids have a high likelihood of being diverted.
9 It was foreseeable to Defendants that where Defendants distributed prescription opioids without
10 maintain effective controls against diversion, including monitoring, reporting, and refusing
11 shipment of suspicious orders, that the opioids would be diverted, and create an opioid abuse
12 nuisance in Reno.

13 218. Defendants' actions also created a qualified nuisance. Defendants acted recklessly,
14 negligently and/or carelessly, in breach of their duties to maintain effective controls against
15 diversion, thereby creating an unreasonable risk of harm.

16 219. Defendants acted with actual malice because Defendants acted with a conscious
17 disregard for the rights and safety of other persons, and said actions have a great probability of
18 causing substantial harm.

19 220. The damages available to the Plaintiff include, *inter alia*, recoupment of
20 governmental costs, flowing from an "ongoing and persistent" public nuisance which the
21 government seeks to abate. Defendants' conduct is ongoing and persistent, and the Plaintiff seeks
22 all damages flowing from Defendants' conduct. Plaintiff further seeks to abate the nuisance and
23 harm created by Defendants' conduct.

24 221. As a direct result of Defendants' conduct, the City has suffered actual injury and
25 damages including, but not limited to, significant expenses for police, emergency, health,
26 prosecution, corrections and other services. The City here seeks recovery for its own harm.

27 222. The City has sustained specific and special injuries because its damages include,
28 *inter alia*, health services, law enforcement expenditures, costs related to opioid addiction
treatment and overdose prevention, and related costs.

1 223. The City further seeks to abate the nuisance created by the Defendants'
2 unreasonable, unlawful, intentional, ongoing, continuing, and persistent interference with a right
3 common to the public.

4 224. The public nuisance created by Defendants' actions is substantial and
5 unreasonable – it has caused and continues to cause significant harm to the community, and the
6 harm inflicted outweighs any offsetting benefit. The staggering rates of prescription opioid abuse
7 and heroin use resulting from Defendants' abdication of their gate-keeping duties has caused harm
8 to the entire community that includes, but is not limited to:

- 9 a. The high rates of use have led to unnecessary opioid abuse, addiction, overdose,
10 injuries, and deaths.
- 11 b. Nor have children escaped the opioid epidemic unscathed. Easy access to
12 prescription opioids has made opioids a recreational drug of choice among Reno
13 teenagers; opioid use among teenagers is only outpaced by marijuana use. Even
14 infants have been born addicted to opioids due to prenatal exposure, causing severe
15 withdrawal symptoms and lasting developmental impacts.
- 16 c. Even those City residents who have never taken opioids have suffered from the
17 public nuisance arising from Defendants' abdication of their gate-keeper duties.
18 Many have endured both the emotional and financial costs of caring for loved ones
19 addicted to or injured by opioids, and the loss of companionship, wages, or other
20 support from family members who have used, abused, become addicted to,
21 overdosed on, or been killed by opioids.
- 22 d. The opioid epidemic has increased health care costs.
- 23 e. Employers have lost the value of productive and healthy employees.
- 24 f. Defendants' failure to maintain effective controls against diversion of dangerously
25 addictive prescription opioids for non-medical use and abuses has created an
26 abundance of drugs available for criminal use and fueled a new wave of addiction,
27 abuse, and injury.
- 28 g. Defendants' dereliction of duties resulted in a diverted supply of narcotics to sell,
 and the ensuing demand of addicts to buy them. Increased supply, due to

1 Defendants' conduct, led to more addiction, with many addicts turning from
2 prescription opioids to heroin. People addicted to opioids frequently require
3 increasing levels of opioids, and many turned to heroin as a foreseeable result.

4 h. The diversion of opioids into the secondary, criminal market and the increase in
5 the number of individuals who abuse or are addicted to opioids has increased the
6 demands on health care services and law enforcement in the City.

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

10 j. Defendants' interference with the comfortable enjoyment of life in Reno is
11 unreasonable because there is little social utility to opioid diversion and abuse, and
12 any potential value is outweighed by the gravity of the harm inflicted by
13 Defendants' actions.

14 225. Plaintiff seeks all legal and equitable relief as allowed by law, including *inter alia*
15 abatement, compensatory damages, and punitive damages from the Defendant Wholesale
16 Distributors for the creation of a public nuisance, attorney fees and costs, and pre- and post-
17 judgment interest.

18 226. The continued tortious conduct by the Defendants causes a repeated or continuous
19 injury. The damages have not occurred all at once but have increased as time progresses. The tort
20 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
21 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

27 229. That Plaintiff's general, special and punitive damages are in amounts in excess of
28 \$15,000.00.

1 **THIRD CAUSE OF ACTION**

2 *(Negligent Misrepresentation against all Defendants)*

3 230. Plaintiff repeats and reiterates the allegations previously set forth herein.

4 231. Defendants had a duty to exercise reasonable care in the marketing of opioids.

5 232. Defendants were aware of the potentially dangerous situation involving opioids.

6 233. Defendants marketed opioids in an improper manner by:

7 a. overstating the benefits of chronic opioid therapy, promising improvement in
8 patients' function and quality of life, and failing to disclose the lack of evidence
9 supporting long-term use;

10 b. trivializing or obscuring opioids' serious risks and adverse outcomes, including
11 the risk of addiction, overdose, and death;

12 c. overstating opioids' superiority compared with other treatments, such as other
13 non-opioid analgesics, physical therapy, and other alternatives;

14 d. mischaracterizing the difficulty of withdrawal from opioids and the prevalence of
15 withdrawal symptoms; and

16 e. marketing opioids for indications and benefits that were outside of the opioids'
17 labels and not supported by substantial evidence.

18 234. It was Defendants' marketing — and not any medical breakthrough — that
19 rationalized prescribing opioids for chronic pain and opened the floodgates of opioid use and
20 abuse. The result has been catastrophic.

21 235. Defendants disseminated many of their false, misleading, imbalanced, and
22 unsupported statements indirectly, through KOLs and Front Groups, and in unbranded marketing
23 materials. These KOLs and Front Groups were important elements of Defendants' marketing
24 plans, which specifically contemplated their use, because they seemed independent and therefore
25 outside FDA oversight. Through unbranded materials, Defendants, with their own knowledge of
26 the risks, benefits and advantages of opioids, presented information and instructions concerning
27 opioids generally that were contrary to, or at best, inconsistent with information and instructions
28 listed on Defendants' branded marketing materials and drug labels. Defendants did so knowing
that unbranded materials typically are not submitted to or reviewed by the FDA.

1 236. Defendants also marketed opioids through the following vehicles: (a) KOLs, who
2 could be counted upon to write favorable journal articles and deliver supportive CMEs; (b) a body
3 of biased and unsupported scientific literature; (c) treatment guidelines; (d) CMEs; (e) unbranded
4 patient education materials; and (f) Front Group patient-advocacy and professional organizations,
5 which exercised their influence both directly and through Defendant-controlled KOLs who served
6 in leadership roles in those organizations.

7 237. Defendants knew or should have known that opioids were unreasonably dangerous
8 and could cause addiction.

9 238. Defendants' marketing was a factor in physicians, patients, and others to prescribe
10 or purchase opioids.

11 239. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered
12 and continues to suffer injury, including but not limited to incurring excessive costs related to
13 diagnosis, treatment, and cure of addiction to opioids, bearing the massive costs of these illnesses
14 and conditions by having to provide necessary resources for care, treatment facilities, and law
15 enforcement services for its residents and using City resources in relation to opioid use and abuse.

16 240. However, Defendants continued to design manufacture, market, distribute and sell
17 opioids so as to maximize sales and profits at the expense of the health and safety of the public,
18 in conscious disregard of the foreseeable harm caused by the opioid drug.

19 241. Defendants' conduct exhibits such an entire want of care as to establish that their
20 actions were a result of fraud, ill will, recklessness, or willful and intentional disregard of
21 Plaintiff's rights, and, therefore, Plaintiff is entitled to punitive damages.

22 242. The continued tortious conduct by the Defendants causes a repeated or continuous
23 injury. The damages have not occurred all at once but have increased as time progresses. The tort
24 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
25 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

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

FOURTH CAUSE OF ACTION

(Negligence against Defendant Distributors, Defendant Pharmacies, & Defendant Providers)

246. Plaintiff incorporates the allegations within all prior paragraphs within this Complaint as if they were fully set forth herein.

247. Defendant Distributors and Pharmacies owed a non-delegable duty to exercise reasonable care in the distribution and/or sale of opioids.

248. Defendants Distributors and Pharmacies further owe a non-delegable duty to Plaintiff to conform their behavior to the legal standard of reasonable conduct under the circumstances, in the light of the apparent risks.

249. Defendant Distributors and Pharmacies breached this duty by failing to take any action to prevent or reduce the distribution of the opioids.

250. Defendant Providers owed a duty to exercise reasonable care in the prescription of opioids.

251. Defendant Providers further owe a duty to Plaintiff to conform their behavior to the legal standard of reasonable conduct under the circumstances, in light of the apparent risks, and in light of Defendant Providers' knowledge as it relates to the inherent dangers in the use of opioids.

252. Defendant Providers breached this duty by, not only failing to recognize the risk of writing increased numbers of prescriptions for opioids, but by actively disregarding the dangers associated with opioid use, particularly for off-label purposes and in dosages far exceeding those recommended.

253. Defendant Providers further breached their duty by providing false information to health insurance providers in order to obtain authorization and coverage for the opioid prescriptions.

1 254. As a proximate result, Defendant Distributors and Pharmacies, as well as
2 Defendant Providers, and their agents have caused Plaintiff to incur significant damages,
3 including but not limited to costs related to diagnosis, treatment, and cure of addiction or risk of
4 addiction to opioids. Reno has borne the massive costs of these illnesses and conditions by having
5 to provide necessary medical care, facilities, and services for treatment of City residents.

6 255. Defendant Distributors and Pharmacies and Defendant Providers were negligent
7 in failing to monitor and guard against third-party misconduct and participated and enabled such
8 misconduct.

9 256. Defendant Distributors and Pharmacies were negligent in disclosing to Plaintiff
10 suspicious orders for opioids.

11 257. Defendant Providers were negligent in writing improper prescriptions for opioids.

12 258. Defendant Distributors and Pharmacies' and Defendant Providers' acts and
13 omissions imposed an unreasonable risk of harm to others separately and/or combined with other
14 Defendants.

15 259. A negligent violation of this trust poses distinctive and significant dangers to the
16 City and its residents from the diversion of opioids for non-legitimate medical purposes and
17 addiction to the same by consumers.

18 260. Defendant Distributors and Pharmacies and Defendant Providers were negligent
19 in not acquiring and utilizing special knowledge and special skills that relate to the dangerous
20 activity in order to prevent and/or ameliorate such distinctive and significant dangers.

21 261. Defendant Distributors and Pharmacies are required to exercise a high degree of
22 care and diligence to prevent injury to the public from the diversion of opioids during distribution.

23 262. Defendant Providers are required to exercise a high degree of care to prescribe
24 appropriate medications in appropriate dosages to avoid harm to patients and their communities.

25 263. Defendant Distributors and Pharmacies breached their duty to exercise the degree
26 of care, prudence, watchfulness, and vigilance commensurate to the dangers involved in the
27 transaction of its business.

28 264. Defendant Providers breached their duty to exercise the degree of care required to
protect their patients and their communities.

265. Defendant Distributors and Pharmacies are in exclusive control of the distribution management of opioids that it distributed and/or sold in Reno.

266. Defendant Providers were active in providing patients within Reno with the prescriptions for opioids that were supplied by the Defendant Distributors and Pharmacies.

267. Plaintiff is without fault and the injuries to the City and its residents would not have occurred in the ordinary course of events had Defendants used due care commensurate to the dangers involved in the distribution of opioids.

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

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

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

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

FIFTH CAUSE OF ACTION

(Unjust Enrichment against all Defendants)

272. Plaintiff has expended substantial amounts of money to fix or mitigate the societal harms caused by Defendants' conduct.

273. The expenditures by Plaintiff in providing healthcare services to people who use opioids have added to Defendants' wealth. These expenditures have helped sustain Defendants' businesses.

274. Plaintiff has conferred a benefit upon Defendants, by paying for what may be called Defendants' externalities - the costs of the harm caused by Defendants' negligent distribution and sales practices.

1 275. Defendants are aware of this obvious benefit, and that retention of this benefit is
2 unjust.

3 276. Defendants made substantial profits while fueling the prescription drug epidemic
4 into Reno.

5 277. Defendants continue to receive considerable profits from the distribution of
6 controlled substances into the City.

7 278. Defendants have been unjustly enriched by their negligent, malicious, oppressive,
8 illegal and unethical acts, omissions, and wrongdoing.

9 279. It would be inequitable to allow Defendants to retain benefit or financial advantage.

10 280. Plaintiff demands judgment against each Defendant for restitution, disgorgement,
11 and any other relief allowed in law or equity.

12 281. Plaintiff is without fault and the injuries to the City and its residents would not
13 have occurred in the ordinary course of events had Defendants used due care commensurate to
14 the dangers involved in the distribution of opioids.

15 282. The continued tortious conduct by the Defendants causes a repeated or continuous
16 injury. The damages have not occurred all at once but have increased as time progresses. The tort
17 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
18 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

24 285. That Plaintiff's general, special and punitive damages are in amounts in excess of
25 \$15,000.00.

26 **SIXTH CAUSE OF ACTION**

27 *(Punitive Damages against all Defendants)*

28 286. Plaintiff repeats and reiterates the allegations previously set forth herein.

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against the Defendants as follows:

1. General damages in an amount in excess of \$15,000.00;
2. Special damages in an amount in excess of \$15,000.00;
3. For punitive damages in such amount as will sufficiently punish Defendants for their wrongful conduct in Nevada as well as serve as an example to prevent a repetition of such conduct in Nevada in the future;
4. For a fund establishing a medical monitoring program due to the increased susceptibility to injuries and irreparable threat to the health of opioid users resulting from their exposure to opioids, which can only be mitigated or addressed

1 by the creation of a Court-supervised fund, financed by Defendants, and which
2 will:

- 3 a. Notify individuals who use or used opioids of the potential harm from
4 opioids;
- 5 b. Aid in the early diagnosis and treatment of resulting injuries through
6 ongoing testing and monitoring of opioid use;
- 7 c. Fund studies and research of the short and long term effects of opioids and
8 the possible cures and treatments for the detrimental effects of using
9 opioids;
- 10 d. Accumulate and analyze relevant medical and demographic information
11 from opioid users, including but not limited to the results of testing
12 performed on them;
- 13 e. Gather and forward to treating physicians information related to the
14 diagnosis and treatment of injuries which may result from using opioids.

- 15 5. For restitution and reimbursement sufficient to cover all prescription costs the City
16 has incurred related to opioids due to Defendants' wrongful conduct, with said
17 amount to be determined at trial;
- 18 6. For restitution and reimbursement sufficient to cover all costs expended for health
19 care services and programs associated with the diagnosis and treatment of adverse
20 health consequences of opioids use, including but not limited to addiction due to
21 Defendants' wrongful conduct, with said amount to be determined at trial;
- 22 7. For restitution and reimbursement for all prescription costs incurred by consumers
23 related to opioids;
- 24 8. For such other and further extraordinary equitable, declaratory and/or injunctive
25 relief as permitted by law as necessary to assure that the Plaintiff has an effective
26 remedy and to stop Defendants' promotion and marketing of opioids for
27 inappropriate uses in Nevada, currently and in the future;
- 28 9. For disgorgement;
10. Costs of suit, reasonable attorney fees, interest incurred herein; and

1 11. For such other and further relief as is just and proper.

2 DATED this 18th day of September, 2018.

3
4 **EGLET PRINCE**

5
6 
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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030 and 603A.040

The undersigned does hereby affirm that the preceding document, _____

Complaint

(Title of Document)

filed in case number: _____

☒

Document does not contain the personal information of any person.

- OR -

☐

Document contains the social security number of a person as required by:

☐

A specific state or federal law, to wit:

(State specific state or federal law)

- or -

☐

For the administration of a public program

- or -

☐

For an application for a federal or state grant

- or -

☐

Confidential Family Court Information Sheet
(NRS 123.130, NRS 125.230, and NRS 125B.055)

Date: September 18, 2018

(Signature)

Robert T. Eglet, Esq.

(Print Name)

City of Reno

(Attorney for)

ACOM

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Attorneys for Plaintiff, the City of Reno

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

CITY OF RENO,

Plaintiff,

v.

PURDUE PHARMA, L.P.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY, INC. d/b/a THE
PURDUE FREDERICK COMPANY, INC.;
PURDUE PHARMACEUTICALS, L.P.;
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; DEPOMED,

) Case No.: CV18-01895
) Division No.: 8

FIRST AMENDED COMPLAINT

1 INC.; CEPHALON, INC.; JOHNSON &)
JOHNSON; JANSSEN)
2 PHARMACEUTICALS, INC.; JANSSEN)
PHARMACEUTICA, INC. n/k/a JANSSEN)
3 PHARMACEUTICALS, INC.; ORTHO-)
MCNEIL-JANSSEN PHARMACEUTICALS,)
4 INC. n/k/a JANSSEN PHARMACEUTICALS,)
INC.; ENDO HEALTH SOLUTIONS INC.;)
5 ENDO PHARMACEUTICALS, INC.;)
6 ALLERGAN USA, INC.; ALLERGAN)
FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a)
7 WATSON PHARMACEUTICALS, INC.;)
WATSON LABORATORIES, INC.;)
8 ACTAVIS PHARMA, INC f/k/a WATSON)
9 PHARMA, INC.; ACTAVIS LLC; INSYS)
THERAPEUTICS, INC., MALLINCKRODT,)
10 LLC; MALLINCKRODT BRAND)
PHARMACEUTICALS INC.; and)
11 MALLINCKRODT US HOLDINGS, INC.;)
12 ROBERT GENE RAND, M.D. AND RAND)
FAMILY CARE, LLC; DOES 1 through 100;)
13 ROE CORPORATIONS 1 through 100; and)
ZOE PHARMACIES 1 through 100, inclusive,)
14)
15 Defendants.)
16)

17 Plaintiff City of Reno, by and through the undersigned attorneys, files this First Amended
18 Complaint against the named Defendants seeking to recover its damages as a result of the opioid
19 epidemic Defendants caused, and alleges as follows:

20 INTRODUCTION

21 1. Opioid addiction and overdose in the United States as a result of prescription
22 opioid use has reached epidemic levels over the past decade.

23 2. The abuse of opioids is a widespread problem in the State of Nevada as well as the
24 City of Reno specifically.

25 3. Nevada ranked as the sixth highest state for the number of milligrams of opioids
26 distributed per adult, in 2016.

27 4. In 2016, Nevadans were prescribed opioids at a rate of 87 prescriptions per 100
28 residents.

1 5. In that same year, the rate of overdose deaths in Nevada exceeded the national
2 average.

3 6. Nevada has had the fourth highest drug overdose mortality rate in the United States.

4 7. The dramatic increase in prescription opioid use over the last two decades, and the
5 resultant public-health crisis, is no accident.

6 8. The crisis was precipitated by Defendants, who, through deceptive means, and
7 using one of the biggest pharmaceutical marketing campaigns in history, carefully engineered and
8 continue to support a dramatic shift in the culture of prescribing opioids by falsely portraying both
9 the risks of addiction and abuse and the safety and benefits of long-term use.

10 9. Defendant drug companies named herein, manufacture, market, and sell
11 prescription opioids (hereinafter "opioids"), including brand-name drugs like Oxycontin, Vicodin
12 and Percocet, as well as generics like oxycodone and hydrodone, which are powerful narcotic
13 painkillers.

14 10. Historically, because they were considered too addictive and debilitating for the
15 treatment of chronic pain (like back pain, migraines and arthritis), opioids were used only to treat
16 short-term acute pain or for palliative (end-of-life) care.

17 11. Defendants' goal was simple: to dramatically increase sales by convincing doctors
18 that it was safe and efficacious to prescribe opioids to treat not only the kind of severe and short-
19 term pain associated with surgery or cancer, but also for a seemingly unlimited array of less severe,
20 longer-term pain, such as back pain, headaches and arthritis.

21 12. Defendants knew that their opioid products were addictive, subject to abuse, and
22 not safe or efficacious for long-term use.

23 13. Defendants' nefarious plan worked and they dramatically increased their sales and
24 reaped billions upon billions of dollars of profit at the expense of millions of people who are now
25 addicted and the thousands who have died as a result.

26 14. While Americans represent only 4.6% of the world's population, they consume
27 over 80% of the world's opioids.

28 15. Since 1999, the amount of prescription opioids sold in the U.S. has nearly
quadrupled. In 2010, 254 million prescriptions were filled in the U.S. – enough to medicate every

1 adult in America around the clock for a month. In that year, 20% of all doctors' visits resulted in
2 the prescription of an opioid (nearly double the rate in 2000).

3 16. By 2014, nearly two million Americans either abused or were dependent upon
4 opioids.

5 17. On March 22, 2016, the Food and Drug Administration (FDA) recognized opioid
6 abuse as a "public health crisis" that has a "profound impact on individuals, families and
7 communities across our country."

8 18. The Centers for Disease Control (CDC) reports that overdoses from prescription
9 opioids are a driving factor in the 15-year increase in opioid overdose deaths.

10 19. From 2000 to 2015, more than half a million people died from drug overdoses
11 (including prescription opioids and heroin). The most recent figures from the CDC suggest that
12 175 Americans die every day from an opioid overdose (prescription and heroin).

13 20. Many addicts, finding painkillers too expensive or too difficult to obtain, have
14 turned to heroin. According to the American Society of Addiction Medicine, four out of five
15 people who try heroin today started with prescription painkillers.

16 21. County and city governments and the services they provide their citizens have been
17 strained to the breaking point by this public health crisis.

18 22. Defendant drug companies should never place their desire for profits above the
19 health and well-being of their customers or the communities where those customers live, because
20 they know prescribing doctors and other health-care providers rely on their statements in making
21 treatment decisions, and drug companies must tell the truth when marketing their drugs and ensure
22 that their marketing claims are supported by science and medical evidence.

23 23. Defendants broke these simple rules and helped unleash a healthcare crisis that has
24 had far-reaching financial, social, and deadly consequences in the City of Reno and throughout
25 Nevada.

26 24. Defendants falsely touted the benefits of long-term opioid use, including the
27 supposed ability of opioids to improve function and quality of life, even though there was no
28 "good evidence" to support their claims.

1 25. Defendants disseminated these common messages to reverse the popular and
2 medical understanding of opioids.

3 26. As a result of the drug companies' marketing campaign, opioids are now the most
4 prescribed class of drugs generating over \$11 billion in revenue for drug companies in 2014 alone.

5 27. As a result of the drug companies' marketing campaign, the fatalities continued to
6 mount while the living continue to suffer.

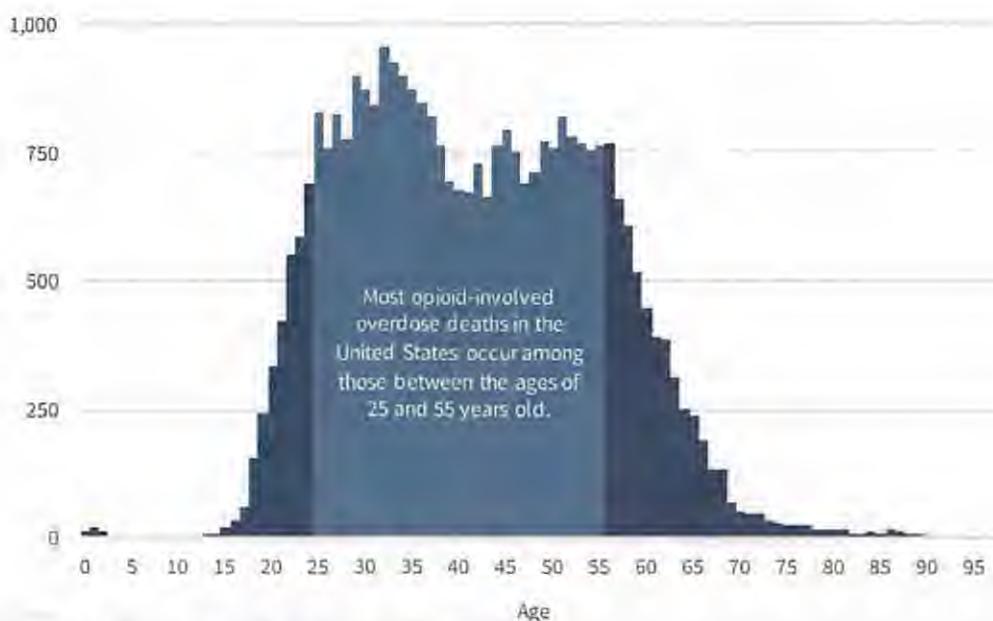
7 28. In 2017, a record number of drug overdoses claimed the lives of about 72,000
8 Americans, a 10.2 percent increase from 2016. According to the CDC the death toll from drug
9 overdoses was higher than the peak yearly death totals from H.I.V., gun deaths, or car crashes.
10 The increase of deaths related to drug overdoses was linked to two major factors: (i) a growing
11 number of Americans are using opioids, and (ii) drugs are becoming deadlier.

12 29. This trend of increased opioid abuse has been well documented in the last several
13 years. In 2015, over 33,000 Americans died of a drug overdose involving opioids with studies
14 suggesting that these fatalities are statistically underreported. And in 2016, 2.1 million Americans
15 had opioid use disorders, according to a government survey, but that figure could be as high as 4
16 million.

17 30. Most opioid related deaths occur among those between the ages of approximately
18 25 and 55 years old. Studies have shown that the overall fatality rate was 10.3 deaths per 100,000
19 population, and in the 25 to 55 year old age group, fatality rates were much higher, ranging from
20 16.1 to 22.0 deaths per 100,000 population.

21 31. In 2015, the estimated economic impact of the opioid crisis was \$504 billion, or
22 2.8 % of our U.S.'s gross domestic product that same year. Previous estimates of the economic
23 cost of the opioid crisis greatly understate it by undervaluing the most important component of
24 the loss—fatalities resulting from overdoses.

Figure 2. Opioid-involved Overdose Deaths by Age in 2015
(Number of deaths)



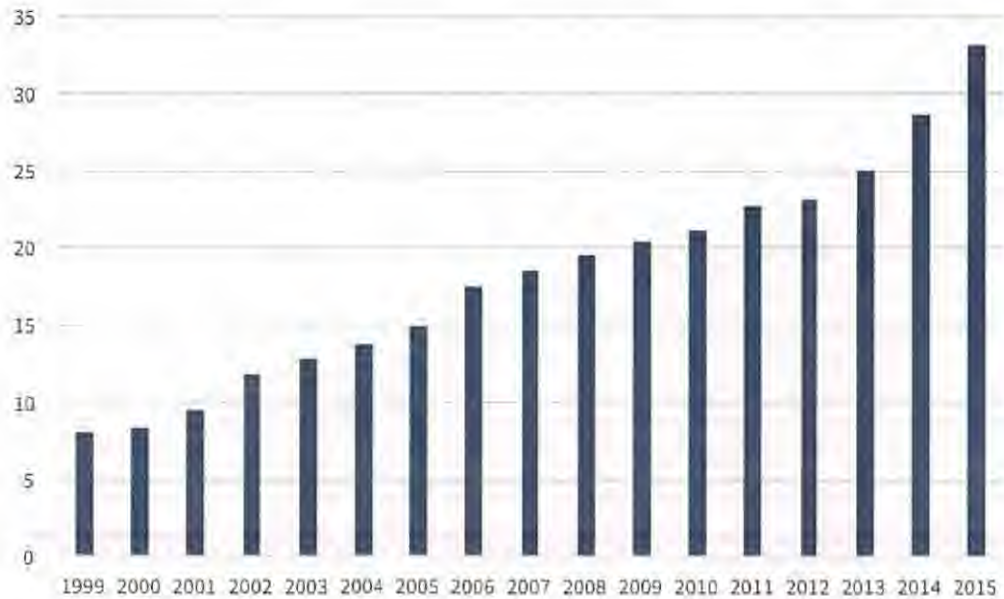
Source: CDC Wonder database, multiple cause of death files

32. In addition to the cost of fatalities each year, opioid misuse among the living imposes important costs as well. It is estimated that prescription opioid misuse increases healthcare and substance abuse treatment costs in the United States by \$29.4 billion, increases criminal justice costs by \$7.8 billion, and reduces productivity among those who do not die of overdose by \$20.8 billion (in 2015 \$). The total nonfatal cost of \$58.0 billion divided by the 1.9 million individuals with a prescription opioid disorder in 2013 results in an average cost of approximately \$30,000.¹ And when patients can no longer afford or legitimately obtain opioids, they often turn to the street to buy prescription opioids or even heroin, fueling the secondary drug market.

33. Further compounding issue is that this problem is worsening at an alarming rate. According to a report published by the White House Council of Economic Advisors (CEA), opioid-involved overdose deaths have doubled in the past ten years and quadrupled in the past sixteen.

¹ Florence, C., Zhou, C., Luo, F. and Xu, L. 2016. "The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013." *Medical Care*, 54(10): 901-906.

Figure 1. Opioid-involved Overdose Deaths, 1999-2015
(Thousands of Deaths)



Source: CDC Wonder database, multiple cause of death files

34. The crisis that Defendants caused has directly impacted the City of Reno as it bears the financial brunt of this epidemic as it unfolds in our community.

35. Apart from the toll on human life, the crisis has financially strained the services the City of Reno provides its residents and employees. Human services, social services, court services, law enforcement services, the office of the coroner/medical examiner and health services, including hospital, emergency and ambulatory services, have all been severely impacted by the crisis. For example, as a direct and foreseeable consequence of Defendants' egregious conduct, the City of Reno paid, and continues to pay, a significant amount for health care costs that stem from prescription opioid dependency. These costs include unnecessary and excessive opioid prescriptions, substance abuse treatment services, ambulatory services, emergency department services, and inpatient hospital services, among others. Defendants' conduct also caused the City of Reno to incur substantial economic, administrative and social costs relating to opioid addiction and abuse, including criminal justice costs, victimization costs, child protective services costs, lost productivity costs, and education and prevention program costs among others.

1 36. After creating a public health crisis, Defendants have not pulled their opioid
2 products from the market, acknowledged the very real dangers of addiction and abuse even if the
3 opioids are taken as prescribed, or acknowledged that opioids are inappropriate for long-term pain
4 management. Instead, Defendants have taken the position that their opioid products are not
5 dangerous and continue to sell these dangerous and addictive drugs, thereby continuing to fuel
6 the crisis.

7 37. As a result, physicians, pharmacists and patients are not able to appropriately and
8 adequately evaluate the relevant risks associated with opioids use, particularly the risks to patients
9 who have been and are being exposed to, unnecessarily, including but not limited to the risk of
10 severe and disabling addiction, actual addiction, the consequences of addiction, and other adverse
11 medical conditions. Additionally, the rising numbers of persons addicted to opioids have led to a
12 dramatic increase of social problems, including drug abuse and diversion and the commission of
13 criminal acts to obtain opioids. Consequently, public health and safety have been significantly
14 and negatively impacted due to the misrepresentations and omissions by Defendants regarding
15 the appropriate uses and risks of opioids, ultimately leading to widespread inappropriate use of
16 the drug.

17 38. As a result of Defendants' misconduct, physicians, pharmacists and patients have
18 not been provided with accurate information about the appropriate uses, risks and safety of these
19 drugs, thus causing the crisis before us as well as giving rise to this lawsuit.

20 39. Plaintiff files this Complaint naming the drug companies herein as Defendants and
21 placing the industry on notice that the City of Reno is taking action to abate the public nuisance
22 that plagues our community.

23 40. By its Complaint, the City of Reno seeks to recover from Defendants its damages
24 as a result of the opioid public-health crisis Defendants caused. Namely, this action is brought by
25 this Plaintiff pursuant to constitutional, statutory, common law and/or equitable authority for
26 purposes of, *inter alia*:

- 27 a. recovering restitution and reimbursement for all the costs the City of Reno
28 has incurred in paying excessive and unnecessary prescription costs related
 to opioids;

- b. recovering restitution and reimbursement for all the costs expended by the City of Reno for health care services and programs associated with the diagnosis and treatment of adverse health consequences of opioids use, including but not limited to, addiction;
- c. recovering restitution and reimbursement for all the costs consumers have incurred in excessive and unnecessary prescription costs related to opioids;
- d. disgorgement;
- e. recovering damages for all costs incurred and likely to be incurred in an effort to combat the abuse and diversion of opioids in the City of Reno;
- f. recovering damages incurred as costs associated with the harm done to the public health and safety.

41. However, Plaintiff does not bring claims, as part of this action, for products liability nor does the City seek compensatory damages for death, physical injury to person, emotional distress, or physical damage to property.

PARTIES AND JURISDICTION

A. Plaintiff, City of Reno.

42. Plaintiff, City of Reno ("Reno" or "Plaintiff"), is a municipality organized under the laws of the State of Nevada.

43. Plaintiff provides a wide range of services on behalf of its residents, including services for families and children, public health, public assistance, law enforcement, and emergency care.

44. Plaintiff has all the powers possible for a municipality to have under the constitution of the State of Nevada, the laws of the State of Nevada, and its city charter.

45. Plaintiff has standing to bring this litigation to provide for the orderly government of Reno and to address matters of local concern including the public health, safety, prosperity, security, comfort, convenience and general welfare of its citizens.

46. Reno declares that the unlawful distribution of prescription opiates, by the Defendants named herein, has created a serious public health crisis of opioid abuse, addiction, morbidity and mortality and is a public nuisance.

1 47. Plaintiff is authorized by law to abate any nuisance and prosecute in any court of
2 competent jurisdiction, any person who creates, continues, contributes to, or suffers such nuisance
3 to exist and prevent injury and annoyance from such nuisance.

4 **B. Defendants, Drug Manufacturers.**

5 48. Defendant PURDUE PHARMA L.P. is a limited partnership organized under the
6 laws of Delaware and registered, and authorized, to do business in the State of Nevada, under the
7 laws thereof. At all times relevant herein, PURDUE PHARMA L.P. takes and took advantage of
8 the legislative, regulatory and tax schemes of the State of Nevada to own, maintain and defend
9 drug patents. PURDUE PHARMA INC. is a corporation organized under the laws of both
10 Delaware and New York, with its principal place of business in Stamford, Connecticut, and THE
11 PURDUE FREDERICK COMPANY, INC. is a Delaware corporation with its principal place of
12 business in Stamford, Connecticut. Defendant PURDUE PHARMACEUTICALS, L.P. is and was
13 a limited partnership organized under the laws of the State of Delaware. At all times relevant
14 hereto, the foregoing, (collectively, "PURDUE") are and were in the business of designing, testing,
15 manufacturing, labeling, advertising, promoting, marketing, selling and/or distributing
16 OxyContin and have done so to and within the State of Nevada. At all times relevant herein,
17 PURDUE hired "Detailers" in Reno, Nevada, to make personal contact with physicians and
18 clinics to advocate for the purchase and use of opioid medications which were contrary to known
19 safety concerns and sound medical advice.

20 49. Defendant TEVA PHARMACEUTICALS USA, INC. ("TEVA"), is a Delaware
21 corporation with its principal place of business located in North Wales, Pennsylvania. Teva
22 develops, makes, manufactures, and distributes generic opioid medications worldwide, including
23 within Washoe County, Nevada.

24 50. Defendant DEPOMED, INC. is a corporation organized under the laws of the State
25 of California and headquartered in Newark, California. At all times relevant herein, DEPOMED
26 INC. was and is engaged in the manufacturing, distribution and the sale of opioid drugs into and
27 within Washoe County, Nevada. At all times relevant herein, DEPOMED INC. hired "Detailers"
28 in Washoe County, Nevada, to make personal contact with physicians and clinics to advocate for

1 the purchase and use of opioid medications which were contrary to known safety concerns and
2 sound medical advice.

3 51. Defendant CEPHALON, INC., is Delaware corporation with its principal place of
4 business located in Frazer, Pennsylvania. In 2011, Teva Ltd. acquired CEPHALON, INC.

5 52. Defendant JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania
6 corporation with its principal place of business in Titusville, New Jersey, and is a wholly owned
7 subsidiary of JOHNSON & JOHNSON, a New Jersey corporation with its principal place of
8 business in New Brunswick, New Jersey. JANSSEN PHARMACEUTICALS, INC., was
9 formerly known as ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., which in turn
10 was formerly known as Janssen Pharmaceutica Inc. Defendant ORTHO-MCNEIL-JANSSEN
11 PHARMACEUTICALS, INC., now known as JANSSEN PHARMACEUTICALS, INC., is a
12 Pennsylvania corporation with its principal place of business in Titusville, New Jersey. Janssen
13 Pharmaceutica, Inc., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania
14 corporation with its principal place of business in Titusville, New Jersey. Johnson & Johnson is
15 the only company that owns more than 10% of Janssen Pharmaceuticals, Inc.'s stock, and it
16 corresponds with the FDA regarding Janssen's products.

17 53. Upon information and belief, Johnson & Johnson controls the sale and
18 development of Janssen Pharmaceutical's drugs, and Janssen Pharmaceuticals, Inc.'s profits inure
19 to JOHNSON & JOHNSON's benefit. (JANSSEN PHARMACEUTICALS, INC., ORTHO-
20 MCNEIL-JANSSEN PHARMACEUTICALS, INC., JANSSEN PHARMACEUTICA, INC.,
21 AND JOHNSON & JOHNSON collectively are referred to herein as "JANSSEN.")

22 54. Defendant ENDO HEALTH SOLUTIONS INC. is a Delaware corporation with
23 its principal place of business located in Malvern, Pennsylvania. ENDO PHARMACEUTICALS,
24 INC., is a wholly-owned subsidiary of Endo Health Solutions Inc., and is a Delaware corporation
25 with its principal place of business in Malvern, Pennsylvania. (Endo Health Solutions Inc., and
26 Endo Pharmaceuticals, Inc., collectively are referred to herein as "ENDO").

27 55. Defendant ALLERGAN USA, INC. is a Delaware corporation with its principal
28 place of business in Pennsylvania. Defendant ALLERGAN FINANCE, LLC f/k/a Actavis Inc.

1 f/k/a Watson Pharmaceuticals, Inc. is a Nevada limited liability company. (ALLERGAN USA,
2 INC. and ALLERGAN FINANCE, LLC collectively are referred to herein as "ALLERGAN").

3 56. Defendant WATSON LABORATORIES, INC. is, and was at all times relevant
4 herein, a Nevada corporation with its principal place of business in Corona, California. At all
5 times relevant herein, Watson Laboratories, Inc. takes and took advantage of the legislative,
6 regulatory and tax schemes of the State of Nevada to own, maintain and defend drug patents.
7 ACTAVIS PHARMA, INC. f/k/a Watson Pharma Inc. is a Delaware corporation with its principal
8 place of business in New Jersey. ACTAVIS LLC is a Delaware limited liability company with
9 its principal place of business in Parsippany, New Jersey.

10 57. Defendant INSYS THERAPEUTICS, INC., is, and was at all times relevant herein,
11 a Delaware corporation with its principal place of business located in Chandler, Arizona. At all
12 times relevant herein, Defendant INSYS THERAPEUTICS, INC. was in the business of
13 designing, testing, manufacturing, labeling, advertising, promoting, marketing, selling and/or
14 distributing Subsys, a transmucosal immediate-release formulation of fentanyl, packed in a single-
15 dose spray device intended for oral sublingual administration, and has done so to and within in
16 the State of Nevada. At all times relevant herein, INSYS THERAPEUTICS, INC. hired "Detailers"
17 in Washoe County, Nevada to make personal contact with physicians and clinics to advocate for
18 the purchase and use of opioid medications which were contrary to known safety concerns and
19 sound medical advice. At all times relevant herein, INSYS THERAPEUTICS, INC., used
20 deceptive tactics to gain authorization for Subsys prescriptions from health insurance providers
21 for off-label, high dosage uses.

22 58. Defendant MALLINCKRODT LLC is a Delaware corporation with its principal
23 place of business in Hazelwood, Missouri. Defendant MALLINCKRODT BRAND
24 PHARMACEUTICALS INC. is a Delaware corporation with its principal place of business in
25 Hazelwood, Missouri. Defendant MALLINCKRODT US HOLDINGS, INC. is a Nevada
26 corporation with its principal place of business in Hazelwood, Missouri. At all times relevant
27 herein, Mallinckrodt US Holdings, Inc. takes and took advantage of legislative, regulatory and
28 tax schemes in Nevada for the purpose of holding, protecting and defending Mallinckrodt assets
related to their pharmaceutical business.

1 59. Defendants Mallinckrodt LLC, Mallinckrodt Brand Pharmaceuticals Inc., and
2 Mallinckrodt US Holdings, Inc. (collectively "MALLINCKRODT") operate in the United States
3 under the name Mallinckrodt Pharmaceuticals, with its United States headquarters located in
4 Hazelwood, Missouri. At all times relevant herein, Defendant MALLINCKRODT was in the
5 business of designing, testing, manufacturing, labeling, advertising, promoting, marketing, selling,
6 and/or distributing opioid products known as Exalgo, Roxicodone, and Xartemis XR, and has
7 done so to and within the State of Nevada.

8 60. That at all times relevant herein, PURDUE PHARMA, L.P.; PURDUE PHARMA,
9 INC.; THE PURDUE FREDERICK COMPANY, INC. dba THE PURDUE FREDERICK
10 COMPANY, INC.; PURDUE PHARMACEUTICALS, L.P.; DEPOMED, INC.; TEVA
11 PHARMACEUTICALS USA, INC.; TEVA PHARMACEUTICALS INDUSTRIES LTD;
12 CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.;
13 JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.;
14 ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN
15 PHARMACEUTICALS, INC.; ENDO HEALTH SOLUTIONS INC.; ENDO
16 PHARMACEUTICALS, INC.; ALLERGAN USA, INC.; ALLERGAN FINANCE LLC f/k/a
17 ACTAVIS INC. f/k/a WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES,
18 INC.; ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC.; ACTAVIS LLC; INSYS
19 THERAPEUTICS, INC.; MALLINCKRODT, LLC; MALLINCKRODT BRAND
20 PHARMACEUTICALS INC.; and MALLINCKRODT US HOLDINGS, INC., (collectively
21 "Defendant Manufacturers" or "Defendants") were, and currently are, regularly engaged in
22 business in Washoe County. More specifically, Defendants were, and currently are, in the
23 business of designing, testing, manufacturing, labeling, advertising, promoting, marketing, and/or
24 selling opioids throughout Washoe County.

25 **C. Defendants, Wholesale Distributors.**

26 61. Defendant, AMERISOURCEBERGEN DRUG CORPORATION, is, and at all
27 times pertinent hereto, was, a foreign corporation authorized to do business in the County of
28 Washoe, State of Nevada. Upon information and belief, and at all times relevant hereto,

1 AMERISOURCEBERGEN DRUG CORPORATION's principal place of business is located in
2 Chesterbrook, Pennsylvania, operating distribution centers in Ohio.

3 62. Defendant, CARDINAL HEALTH, INC. is, and at all times pertinent hereto, was,
4 a foreign corporation with multiple wholly-owned subsidiaries incorporated under the laws of the
5 State of Nevada and/or authorized to do business in said state, and conducting business in the
6 County of Washoe, State of Nevada.

7 63. Upon information and belief, and at all times relevant hereto, CARDINAL
8 HEALTH, INC.'s principal office is located in Dublin, Ohio, operating distribution centers in
9 Ohio. CARDINAL HEALTH 6 INC. is a Nevada Domestic Corporation. CARDINAL HEALTH
10 TECHNOLOGIES LLC is a Nevada Domestic LLC. At all times relevant herein, CARDINAL
11 HEALTH TECHNOLOGIES LLC takes and took advantage of the legislative, regulatory and tax
12 schemes of the State of Nevada to own, maintain and defend patents, including those relating to
13 drug labeling, coding and distribution.

14 64. CARDINAL HEALTH 108 LLC d/b/a Metro Medical Supply is a foreign limited
15 liability company incorporated under the laws of the state of Delaware and headquartered in
16 Dublin, Ohio, and registered and authorized to conduct business within the State of Nevada.
17 CARDINAL HEALTH 108 LLC d/b/a Metro Medical Supply operates a drug distribution center
18 within the physical confines of the Washoe County, specifically at 6640 Echo Ave, Ste J, Reno,
19 Nevada 89506.

20 65. Defendant, McKESSON CORPORATION, is, and at all times pertinent hereto,
21 was, foreign corporation authorized to do business in the County of Washoe, State of Nevada.
22 Upon information and belief, and at all times relevant hereto, McKESSON CORPORATION's
23 principal place of business is located in San Francisco, California, operating distribution centers
24 in Ohio. At all times relevant herein, McKESSON CORPORATION takes and took advantage
25 of the legislative, regulatory and tax schemes of the State of Nevada to own, maintain and defend
26 patents, including those relating to drug labeling, coding and distribution.

27 66. McKESSON CORPORATION, AMERISOURCEBERGEN DRUG
28 CORPORATION, CARDINAL HEALTH, INC., CARDINAL HEALTH 6 INC.; and
CARDINAL HEALTH TECHNOLOGIES LLC; CARDINAL HEALTH 108 LLC d/b/a Metro

1 Medical Supply (collectively “Defendant Distributors” or “Defendants”) distributed opioids or
2 facilitated the distribution of opioids into Reno. The United States Drug Enforcement
3 Administration has found it necessary to levy disciplinary action against these and each of these
4 including large fines and suspension or permanent cancellation of their licenses for distribution
5 of controlled substances, based on dangerous and abusive distribution practices as detailed herein
6 and below.

7 67. Defendant Distributors purchased opioids from manufacturers, including the
8 named Defendants herein, and distributed them to pharmacies throughout Reno, and the State of
9 Nevada.

10 68. Defendant Distributors played an integral role in the chain of opioids being
11 distributed throughout Reno, and the State of Nevada.

12 **D. Defendants, Detailers.**

13 69. Defendant Detailers (hereinafter “Detailers”) are natural persons, and at all
14 relevant times herein, were residents of Washoe County, Nevada and who are or were engaged in
15 specialty drug sales on behalf of Defendant Manufacturers and Distributors named herein.

16 70. Upon information and belief, Defendant Detailers played an integral role in the
17 chain of opioids being sold throughout Reno.

18 71. Defendant Detailers were trained to, and did in fact, make personal contact with
19 physicians and clinics within Washoe County, Nevada for the purpose, and with the result, of
20 encouraging them to prescribe opioid medications in a manner inconsistent with known safety
21 concerns and contrary to sound medical practice.

22 72. That the true names and the capacities, whether individual, agency, corporate,
23 associate or otherwise, of Defendant Detailers, are unknown to Plaintiff. Plaintiff will ask leave
24 of the Court to amend this Complaint to show the true names and capacities of these Defendants,
25 when they become known to Plaintiff.

26 **E. Defendants, Pharmacies.**

27 73. Defendant pharmacies (collectively “Defendant Pharmacies” or “Defendants”)
28 sold opioids to residents of Reno giving rise to the opioid crisis.

1 74. Upon information and belief, Defendant Pharmacies played an integral role in the
2 chain of opioids being sold throughout Reno.

3 75. That the true names and the capacities, whether individual, agency, corporate,
4 associate or otherwise, of Defendant Pharmacies, are unknown to Plaintiff. Plaintiff will ask leave
5 of the Court to amend this Complaint to show the true names and capacities of these Defendants,
6 when they become known to Plaintiff.

7 **F. Defendants, Health Care Providers**

8 76. Defendant ROBERT GENE RAND, M.D. is, and was at all times relevant herein,
9 a resident of Washoe County, Nevada and was a licensed medical doctor in the State of Nevada.
10 Upon information and belief, and at all times relevant hereto, Defendant ROBERT GENE RAND,
11 M.D., conducted business and provided medical services as RAND FAMILY CARE, LLC, a
12 Nevada Domestic Limited Liability Company in Gardnerville, Nevada.

13 77. Defendants ROBERT GENE RAND, M.D. AND RAND FAMILY CARE, LLC
14 (collectively “Defendant Providers” or “RAND”) diverted and distributed addictive and
15 potentially lethal opioid medications, including, but not limited to, OxyContin, to residents of
16 Washoe County, Nevada (including the City of Reno), operating a “pill mill” out of a local car
17 dealership.

18 78. Defendant RAND prescribed an excessive amount of opioid medication in
19 reckless regard for his patients’ lives. For example, Defendant RAND prescribed approximately
20 23,645 pills of opioid medication to a single patient.² Unfortunately, this was not an isolated
21 incident.

22 79. Defendant RAND was investigated by the Board of Medical Examiners (“BME or
23 Board”). The Board discovered that Defendant RAND constantly, and on a regular basis, over-
24 prescribed opioid medication to his patients, increased opioid medication doses to patients
25

26
27
28 ² UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF NEVADA, *Reno Doctor Sentenced To 10 Years In Prison For Involuntary Manslaughter Of Patient And Unlawful Distribution Of Large Quantities Of Prescription Drugs* (November 20, 2017), available at <http://www.justice.gov/usao-nv/pr/reno-doctor-sentenced-10-years-prison-involuntary-maslaughter-patient-and-unlawful> (last visited on 2018-08-22).

1 without appropriate medical examinations, and on a regular basis prescribed additional opioid
2 medication to patients who, due to one reason or another, needed extra medication.³

3 80. On November 20, 2018, Defendant RAND and several of his associates, and/or
4 individuals under his employment, pleaded guilty to various criminal counts in the United States
5 District Court, District of Nevada for their involvement in illegal activities. Defendant RAND
6 was sentenced to ten (10) years in prison.⁴

7 81. Defendant RAND was able to over-prescribe copious amounts of opioid
8 medication due to the abundant supply from Defendant Manufacturers and Defendant Distributors.

9 **G. Defendants, Does, Roes and Zoes.**

10 82. That the true names and the capacities, whether individual, agency, corporate,
11 associate or otherwise, of Defendant DOES 1 through 100, inclusive, are unknown to Plaintiff.
12 Plaintiff will ask leave of the Court to amend this Complaint to show the true names and capacities
13 of these Defendants, when they become known to Plaintiff. Plaintiff believes each Defendant
14 named as DOE was responsible for the misconduct alleged herein.

15 83. That the true names and the capacities, whether individual, agency, corporate,
16 associate or otherwise, of Defendant ROE CORPORATIONS 1 through 100, are unknown to
17 Plaintiff. These Defendants include the manufacturer(s), distributor(s) and any third party that
18 may have developed, manufactured, produced, sold, altered or otherwise distributed the subject
19 drug, which caused Plaintiff's injuries as complained herein. Plaintiff will ask leave of the Court
20 to amend this Complaint to show the true names and capacities of these Defendants, when they
21 become known to Plaintiff. Plaintiff believes each Defendant named as ROE CORPORATION
22 was responsible for contributing to the misconduct alleged herein.

23 84. That the true names and the capacities, whether individual, agency, corporate,
24 associate or otherwise, of Defendant ZOE PHARMACIES 1 through 100, are unknown to
25 Plaintiff. These Defendants include the pharmacies or similarly situated retailers that may have
26 developed, manufactured, produced, sold, altered or otherwise distributed opioids which caused
27

28 ³ *In the Matter of Charges and Complaint Against Robert Rand, M.D.*, No. 17-25704-1 (February 02, 2017),
available at http://www.medboard.nv.gov/Resources/Public/2017_Public_Filings/ (last visited on 2018-08-22).

⁴ *Reno Doctor Sentenced To 10 Years In Prison For Involuntary Manslaughter Of Patient And Unlawful Distribution Of Large Quantities Of Prescription Drugs*, *supra* note 2.

1 Plaintiff's injuries as complained herein. Plaintiff will ask leave of the Court to amend this
2 Complaint to show the true names and capacities of these Defendants, when they become known
3 to Plaintiff. Plaintiff believes each Defendant named as ZOE PHARMACY was responsible for
4 contributing to the misconduct alleged herein.

5 85. That Plaintiff is informed and believes, and based upon such information and belief,
6 alleges that each of the Defendants herein designated as DOES, ROES and/or ZOES are in some
7 manner responsible for the misconduct alleged herein.

8 86. Plaintiff is informed and believes and thereon alleges that at all relevant times
9 herein mentioned Defendants, and each of them, were the agents and/or servants and/or partners
10 and/or joint venture partners and/or employers and/or employees and/or contractors of the
11 remaining Defendants and were acting within the course and scope of such agency, employment,
12 partnership, contract or joint venture and with the knowledge and consent of the remaining
13 Defendants at the time of the event leading to the misconduct alleged herein.

14 **H. Jurisdiction & Venue.**

15 87. That exercise of the jurisdiction by this Court over each and every Defendant in
16 this action is appropriate because each and every Defendant has done, and continues to do,
17 business in the State of Nevada, and committed a tort in the State of Nevada. Additionally, this
18 Court has jurisdiction over the claims alleged herein as they arise under Nevada statutes and
19 Nevada common law.

20 88. Venue is proper in the Second Judicial District Court of Washoe County, Nevada
21 where part of the claims alleged herein occurred.

22 **GENERAL FACTUAL ALLEGATIONS**

23 **A. Opioids Generally**

24 89. Defendants design, manufacture, distribute, sell, market, and advertise
25 prescription opioids, including brand-name drugs like Oxycontin and Subsys, and generics like
26 oxycodone, which are powerful narcotic painkillers. Historically, because they were considered
27 too addictive and debilitating for the treatment of chronic pain (like back pain, migraines and
28 arthritis), opioids were used only to treat short-term acute pain cancer patients or for palliative
(end-of-life) care.

1 90. Due to the lack of evidence that opioids improved patients' ability to overcome
2 pain and function, coupled with evidence of greater pain complaints as patients developed
3 tolerance to opioids over time and the serious risk of addiction and other side effects, the use of
4 opioids for chronic pain was discouraged or prohibited. As a result, doctors generally did not
5 prescribe opioids for chronic pain.

6 91. In the 1970s and 1980s, studies were conducted that made clear the reasons to
7 avoid opioids. By way of example, the World Health Organization ("WHO") in 1986 published
8 an "analgesic ladder" for the treatment of cancer pain. The WHO recommended treatment with
9 over-the-counter or prescription acetaminophen or non-steroidal anti-inflammatory drugs
10 ("NSAIDs") first, then use of unscheduled or combination opioids, and then stronger (Schedule
11 II or III) opioids if pain persisted. The WHO ladder pertained only to the treatment of cancer pain,
12 and did not contemplate the use of narcotic opioids for chronic pain - because the use of opioids
13 for chronic pain was not considered appropriate medical practice at the time.

14 92. Due to concerns about their addictive qualities, opioids have been regulated as
15 controlled substances by the U.S. Drug Enforcement Administration ("DEA") since 1970. The
16 labels for scheduled opioid drugs carry black box warnings of potential addiction and "[s]erious,
17 life-threatening, or fatal respiratory depression," as a result of an excessive dose.

18 **B. Defendants' Fraudulent Marketing**

19 93. To take advantage of the lucrative market for chronic pain patients, Defendants
20 developed a well-funded marketing scheme based on deception. Defendants used both direct
21 marketing and unbranded advertising disseminated by purported independent third parties to
22 spread false and deceptive statements about the risks and benefits of long-term opioid use.

23 94. Yet these statements were not only unsupported by or contrary to the scientific
24 evidence, they were also contrary to pronouncements by and guidance from federal agencies such
25 as the Food and Drug Administration ("FDA") and Centers for Disease Control and Prevention
26 ("CDC") based on that evidence. They also targeted susceptible prescribers and vulnerable patient
27 populations, including the elderly and veterans.

28 95. Defendants also used kickback systems, prior authorization systems, and
incentives to encourage health care providers to prescribe the opioid medications.

1 **Direct Marketing Efforts**

2 96. Defendants' direct marketing of opioids generally proceeded on two tracks. First,
3 Defendants conducted, and continue to conduct, promotional campaigns extolling the purported
4 benefits of their branded drugs. Advertisements were branded to deceptively portray the benefits
5 of opioids for chronic pain. For instance, Defendant Purdue commissioned series of ads in
6 medical journals, called "Pain vignettes," for Oxycontin in 2012. These ads featured chronic pain
7 patients and recommended opioids for each. One ad described a "54-year-old writer with
8 osteoarthritis of the hands" and implied that Oxycontin would help the writer work more
9 effectively. Purdue agreed in late 2015 and 2016 to halt these misleading representations in New
10 York, but no similar order has been issued in Nevada. Defendant Mallinckrodt marketed its
11 products, Exalgo and Xartemis as specially formulated to reduce abuse and published information
12 on its website minimizing addition risk as well as advocating access to opioids. Defendant Insys
13 provided health care providers with false and misleading information in order to deceive such
14 providers into believing the FDA had approved Subsys for more uses than the FDA had actually
15 approved.

16 97. Second, Defendants promoted, and continue to promote, the use of opioids for
17 chronic pain through "detailers" – sales representatives who visited individual doctors and
18 medical staff in their offices – and small-group speaker programs. Defendants' detailing to
19 doctors is effective. By establishing close relationships with prescribing physicians, Defendants'
20 sales representatives are able to disseminate their misrepresentations in targeted, one-on-one
21 settings that allowed them to differentiate their opioids and to address individual prescribers'
22 concerns about prescribing opioids for chronic pain.

23 98. These direct techniques were also accompanied by kickbacks, prior authorization
24 systems, and the use of other incentives to encourage health care providers, to prescribe the opioid
25 medication for chronic pain.

26 99. Numerous studies indicate that marketing impacts prescribing habits, with face-
27 to-face detailing having the greatest influence. Defendants devoted, and continue to devote,
28 massive resources to direct sales contacts with doctors.

1 100. Defendants paid sham “speaker fees” to doctors to run educational events to
2 discuss the use of their products, but the fees were actually intended to reward those doctors for
3 prescribing Defendants’ products and incentivize them to prescribe more of those products to
4 patients. In fact, often times the speakers spoke at events with minimal to no attendance simply
5 to collect the fee. These kickbacks increased as the number of prescriptions written by the
6 speakers increased.

7 101. Upon information and belief and at all times relevant herein, Defendants ensured,
8 and continue to ensure, marketing consistency nationwide through national and regional sales
9 representative training; national training of local medical liaisons, the company employees who
10 respond to physician inquiries; centralized speaker training; single sets of visual aids, speaker
11 slide decks, and sales training materials; and nationally coordinated advertising. Upon
12 information and belief, Defendants’ sales representatives and physician speakers were required
13 to adhere to prescribed talking points, sales messages, and slide decks, and supervisors rode along
14 with them periodically to both check on their performance and compliance.

15 102. Upon information and belief and at all times relevant herein, Defendants employed,
16 and continue to employ, the same marketing plans and strategies and deployed the same messages
17 in Nevada as they did nationwide.

18 103. As the opioid epidemic spread, many health care providers recognized the dangers
19 of opioid medication, including health risks and the risk of addiction. Others, however, continued
20 to prescribe such medication for off-label purposes without adequately warning patients of the
21 dangers associated with opioids.

22 104. Upon information and belief, Defendant Providers received financial incentives to
23 continue writing prescriptions for such opioid medication despite the dangers associated with
24 same.

25 105. Across the pharmaceutical industry, “core message” development is funded and
26 overseen on a national basis by corporate headquarters. This comprehensive approach ensures
27 that Defendants’ messages are accurately and consistently delivered across marketing channels –
28 including detailing visits, speaker events, and advertising – and in each sales territory. Defendants

1 consider this high level of coordination and uniformity crucial to successfully marketing their
2 drugs.

3 **Unbranded/Third-Party Marketing by Defendants**

4 106. In addition to direct communications, Defendants utilized third-party marketing to
5 promote their line of prescription opiates. This “unbranded” marketing refers not to a specific
6 drug, but more generally to a disease state or treatment. For instance, these marketing materials
7 generally promoted opioid use but did not name a specific opioid. Through these unbranded
8 materials, Defendants presented information and instructions concerning opioids that were
9 generally contrary to, or at best, inconsistent with, information and instructions listed on
10 Defendants’ branded marketing materials and drug labels and with Defendants’ own knowledge
11 of the risks, benefits and advantages of opioids. An example of such unbranded marketing
12 techniques is Defendant Mallinckrodt’s Collaborating and Acting Responsible to Ensure Safety
13 (C.A.R.E.S.) Alliance, which promoted a book “Defeat Chronic Pain Now!” minimizing the risk
14 of opioid addiction and emphasizing opioid therapy for regular use for moderate chronic pain.

15 107. Using “Key Opinion Leaders” (KOLs) and “Front Groups,” Defendants
16 disseminated their false and misleading statements regarding the efficacy of opioids. These KOLs
17 and Front Groups were important elements of Defendants’ marketing plans, because they
18 appeared independent and therefore outside of FDA oversight. However, Defendants did so
19 knowing that unbranded materials typically were not submitted or reviewed by the FDA. By
20 acting through third parties, Defendants were able both to avoid FDA scrutiny and to give the
21 false appearance that these messages reflected the views of independent third parties. Afterwards,
22 Defendants would cite to these sources as corroboration of their own statements.

23 108. Defendants worked, and continue to work, in concert with the Front Groups and
24 KOLs which they funded and directed to carry out a common scheme to deceptively market the
25 risks, benefits, and superiority of opioids to treat chronic pain. Although participants knew this
26 information was false and misleading, these misstatements were nevertheless disseminated to
27 Nevada prescribers and patients.

28 **Key Opinion Leaders (KOLs)**

1 109. Upon information and belief and at all times relevant herein, Defendants recruited,
2 as part of its unbranded marketing efforts, a cadre of doctors who were financially sponsored
3 because of their preference to aggressively treat chronic pain with opioids. KOLs were retained
4 by Defendants to influence their peers' medical practice, including but not limited to their
5 prescribing behavior. KOLs gave lectures, conducted clinical trials and occasionally made
6 presentations at regulatory meetings or hearings. KOLs were carefully vetted to ensure that they
7 were likely to remain on message and supportive of Defendant's agenda.

8 110. Defendants' financial support helped these doctors become respected industry
9 experts. Upon information and belief, these doctors repaid Defendants by extolling the benefits
10 of opioids to treat chronic pain as quid pro quo. Defendants would cite to these sources later on
11 as corroboration of their own false and misleading statements regarding opioids.

12 **Front Groups**

13 111. Defendants also entered into arrangements with seemingly unbiased and
14 independent patient and professional organizations to promote opioids for the treatment of chronic
15 pain. Under their direction and control, these "Front Groups" generated treatment guidelines,
16 unbranded materials, and programs that favored chronic opioid therapy. They also assisted
17 Defendants by refuting negative articles, by advocating against regulatory changes that would
18 limit opioid prescribing in accordance with the scientific evidence, and by conducting outreach
19 to vulnerable patient populations targeted by Defendants.

20 112. These Front Groups depended on Defendants for funding and, in some cases, for
21 survival. Defendants exercised significant control over programs and materials created by these
22 groups by collaborating on, editing, and approving their content, and by funding their
23 dissemination. In so doing, Defendants made sure that these Front Groups would generate only
24 favorable messages. Despite this, the Front Groups held themselves out as independent and
25 serving the needs of their members – whether patients suffering from pain or doctors treating
26 those patients.

27 113. While Defendants utilized many Front Groups, one of the most prominent of was
28 the American Pain Foundation ("APF"). APF received more than \$10 million in funding from

1 opioid manufacturers from 2007 until it closed its doors in May 2012. Upon information and
2 belief, Defendant Purdue was one of its primary financial backers.

3 114. APF issued education guides for patients, reporters, and policymakers that touted
4 the benefits of opioids for chronic pain and trivialized their risks, particularly the risk of addiction.
5 APF also launched a campaign to promote opioids for returning veterans, which has contributed
6 to high rates of addiction and other adverse outcomes – including death – among returning soldiers.
7 APF also engaged in a significant multimedia campaign – through radio, television and the
8 internet – to educate patients about their “right” to pain treatment, namely opioids. All of the
9 programs and materials were available nationally and were intended to reach Nevadans.

10 115. In or about May 2012, the U.S. Senate Finance Committee began investigating
11 APF to determine the relationship, financial and otherwise, between the organization and the
12 manufacturers of opioid analgesics. The investigation caused considerable damage to APF’s
13 credibility as an objective and neutral third party, and Purdue, upon information and belief,
14 stopped financially supporting the organization.

15 116. Within days of being targeted by Senate investigation, APF’s board voted to
16 dissolve the organization “due to irreparable economic circumstances.” APF “cease[d] to exist,
17 effective immediately.”

18 **Continuing Medical Education (CMEs)**

19 117. CMEs are ongoing professional education programs required for physicians.
20 Physicians must attend a certain number and, often, type of CME programs each year as a
21 condition of their licensure. These programs are delivered in person, often in connection with
22 professional organizations’ conferences, and online, or through written publications. Doctors rely
23 on CMEs not only to satisfy licensing requirements, but to get information on new developments
24 in medicine or to deepen their knowledge in specific areas of practice. Because CMEs are
25 typically delivered by KOLs who are highly-respected in their fields and are thought to reflect
26 their medical expertise, they can be especially influential with doctors.

27 118. By utilizing CMEs, Defendants sought to reach general practitioners, whose broad
28 area of focus and lack of specialized training in pain management made them particularly

1 dependent upon CMEs and, as a result, especially susceptible to Defendants' deceptions.
2 Defendants sponsored CMEs promoted chronic opioid therapy.

3 119. These CMEs, while often generically titled to relate to the treatment of chronic
4 pain, focused on opioids to the exclusion of alternative treatments, inflated the benefits of opioids,
5 and frequently omitted or downplayed their risks and adverse effects.

6 120. Upon information and belief and at all times relevant herein, CMEs paid for or
7 sponsored by Defendants were intended to reach prescribing physicians in Nevada.

8 **Drug Manufacturer Defendants—Kickbacks to Encourage Prescriptions**

9 121. Upon information and belief, Defendants utilized a system of kickbacks to
10 encourage health care providers to write prescriptions for, and deliver, the opioid medications.
11 Kickbacks took the form of "speaker fees" paid to health care providers that spoke at programs
12 regarding the purported benefits and safety of using opioid medications to treat chronic pain. Such
13 speakers were recruited by Defendants based upon the number of prescriptions the providers
14 wrote for opioid medications. The more prescriptions written, the more times the speaker was
15 asked to appear at a program, and the more "speaker fees" were paid to the provider. Defendants'
16 employees were rewarded when their "speakers" increased the prescriptions they wrote. These
17 speaking programs did not result in other health care providers writing a significant number of
18 prescriptions for Defendants' products, but the "speakers" continued to be paid to speak so long
19 as they increased their own prescriptions. Many of the speaker programs had few or no attendees
20 that would actually be able to write prescriptions for Defendants' products. Upon information and
21 belief, Defendant Providers, benefitted from such programs.

22 **Prior Authorization Programs**

23 122. Upon information and belief, Defendants developed prior authorization programs
24 in order to gain authorization and approval from insurance companies to cover the costly opioid
25 products for off-label uses. These programs involved representatives from Defendants contacting
26 insurance companies and representing that they are from a health care provider's office rather
27 than from the Defendant manufacturer or distributor; providing inaccurate diagnosis information
28 on the authorization requests; and drafting Letters of Medical Necessity for health care providers
to sign-off on for purposes of receiving authorization from health insurance providers. Upon

1 information and belief, Defendant Providers also participated in misleading the health insurance
2 providers to authorize the numerous prescriptions written for opioid medications, including, but
3 not limited to, Subsys.

4 **Medication Switch Programs**

5 123. Upon information and belief, Defendants encouraged and incentivized detailers
6 and sales people to convince health care providers to substitute stronger, more expensive opioid
7 medications for medications that patients were already prescribed. Detailers and sales people were
8 informed that they would receive higher pay and/or bonuses by convincing health care providers
9 to change prescriptions. These programs ignored any warnings that one opioid drug could not be
10 substituted on a one-for-one basis with another opioid medication. Each opioid medication is
11 unique in its dosing and has a different approved dosage level. Switch programs encouraged a
12 one-for-one substitution despite the differences in the original and substitute medication.

13 **Drug Manufacturer Defendants—Marketing Targeting the Elderly and Veterans**

14 124. In their pursuit of profit, Defendants targeted vulnerable segments of the
15 population suffering from chronic pain including veterans and the elderly.

16 125. Defendants' targeted marketing to the elderly and the absence of cautionary
17 language in their promotional materials creates a heightened risk of serious injury. Studies have
18 shown that elderly patients who used opioids had a significantly higher rate of death, heart attacks,
19 and strokes than users of NSAIDs. Additionally, elderly patients taking opioids have been found
20 to suffer elevated fracture risks, greater risk for hospitalizations, and increased vulnerability to
21 adverse drug effects and interactions, such as respiratory depression.

22 126. Defendants' efforts were successful. Since 2007, opioid prescriptions for the
23 elderly have grown at twice the rate of prescriptions for adults between the ages of 40 and 59.
24 Based on anecdotal evidence, many of these elderly patients started on opioids for chronic back
25 pain or arthritis.

26 127. Veterans are also suffering greatly from the effects of Defendants' targeted
27 marketing. Opioids are particularly dangerous to veterans. According to a study published in the
28 2013 Journal of American Medicine, veterans returning from Iraq and Afghanistan who were

1 prescribed opioids have a higher incidence of adverse clinical outcomes, like overdoses and self-
2 inflicted and accidental injuries, than the general U.S. population.

3 128. *Exit Wounds*, a 2009 publication sponsored by Defendant Purdue and distributed
4 by APF, written as a personal narrative of one veteran, describes opioids as "underused" and the
5 "gold standard of pain medications" and fails to disclose the risk of addiction, overdose, or injury.
6 It notes that opioid medications "increase a person's level of functioning" and that "[l]ong
7 experience with opioids shows that people who are not predisposed to addiction are unlikely to
8 become addicted to opioid pain medications."

9 129. *Exit Wounds* downplays and minimizes the risks from chronic opioid therapy and
10 does not disclose the risk that opioids may cause fatal interactions with benzodiazepines taken by
11 a significant number of veterans. It is not the unbiased narrative of a returning war veteran. It is
12 another form of marketing, sponsored by Defendant Purdue.

13 130. The deceptive nature of *Exit Wounds* is made obvious in comparing it to guidance
14 on opioids published by the U.S. Department of Veterans Affairs and the Department of Defense
15 in 2010 and 2011. The VA's Taking Opioids Responsibly describes opioids as "dangerous." It
16 cautions against taking extra doses and mentions the risk of overdose and the dangers of
17 interactions with alcohol.

18 **C. Defendants' Misrepresentations**

19 131. To convince prescribing physicians and prospective patients that opioids are safe,
20 Defendants deceptively concealed the risks of long-term opioid use, particularly the risk of
21 addiction, through a series of misrepresentations. Defendants manipulated their promotional
22 materials and the scientific literature to make it appear that these items were accurate, truthful,
23 and supported by objective evidence when they were not.

24 132. These misrepresentations regarding opioids include but are not limited to:

- 25 a. Starting patients on opioids was low-risk because most patients would not become
26 addicted, and because those who were at greatest risk of addiction could be readily
27 identified and managed;
- 28 b. Patients who displayed signs of addiction probably were not addicted and, in any
event, could easily be weaned from the drugs;

- c. The use of higher opioid doses, which many patients need to sustain pain relief as they develop tolerance to the drugs, do not pose special risks; and
- d. Abuse-deterrent opioids both prevent abuse and overdose and are inherently less addictive.

133. Upon information and belief, Defendants have not only failed to correct these misrepresentations, they continue to make them today.

134. For example, Defendant Purdue misrepresented, and continues to misrepresent, Oxycontin as providing 12 continuous hours of pain relief with one dose. However, studies have shown, as well as Purdue's own internal research, that the effects of the drug wear off in or about six (6) hours in one quarter of its patients and in or about ten (1) hours in one-half of its patients.

135. Defendants also misrepresented the benefits of chronic opioid therapy. For example, Defendant Purdue falsely claimed that long-term opioid use improved patients' function and quality of life in advertisements for Oxycontin in medical journals entitled, "Pain Vignettes" which were case studies featuring patients with pain conditions persisting over several months and recommending Oxycontin for them. These advertisements implied that Oxycontin improves patients' function.

136. However, these claims find no support in the scientific literature. In 2008, the FDA sent a warning letter to an opioid manufacturer, making it clear "that [the claim that] patients who are treated with the drug experience an improvement in their overall function, social function, and ability to perform daily activities . . . has not been demonstrated by substantial evidence or substantial clinical experience." Most recently, the 2016 CDC Guideline approved by the FDA concluded that "there is no good evidence that opioids improve pain or function with long-term use, and . . . complete relief of pain is unlikely."

137. Upon information and belief and at all times relative herein, Defendants made and/or disseminated deceptive statements related to opioids, including, but not limited to, in the following ways:

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

- b. Creating and disseminating advertisements that contained deceptive statements concerning the ability of opioids to improve function long-term and concerning the evidence supporting the efficacy of opioids long-term for the treatment of chronic non-cancer pain;
- c. Assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction;
- d. Developing and disseminating scientific studies that misleadingly concluded opioids are safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improve quality of life, while concealing contrary data;
- e. Targeting the elderly and veterans by assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction in this population;
- f. Exclusively disseminating misleading statements in education materials to Nevada hospital doctors and staff while purportedly educating them on new pain standards; and
- g. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to Nevada prescribers through in-person detailing.

D. Duty of Drug Distributors and Pharmacies as Gate Keepers

138. In Nevada, opioids are a controlled substance and are categorized as "dangerous drugs." Therefore, Defendant Distributors have a duty to exercise reasonable care under the circumstances.

139. Under NAC 453.400, Distributors like McKesson must establish and maintain effective controls and procedures to prevent or guard against theft and misuse of controlled substances.

140. This involves a duty not to create a foreseeable risk of harm to others. Additionally, one who engages in affirmative conduct-and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another-is under a duty to exercise reasonable care to prevent the threatened harm.

1 141. All opioid distributors are required and have a duty to maintain effective controls
2 against opioid diversion. They are also required and have a duty to create and use a system to
3 identify and report downstream suspicious orders of controlled substances to law enforcement.
4 Suspicious orders include orders of unusual size, orders deviating substantially from the normal
5 pattern, and orders of unusual frequency.

6 142. To comply with these requirements, distributors must know their customers, report
7 suspicious orders, conduct due diligence, and terminate orders if there are indications of diversion.

8 143. Defendant Distributors each have an affirmative duty to act as a gatekeeper
9 guarding against the diversion of the highly addictive, dangerous opioid drugs.

10 144. Defendant Distributors each have a non-delegable duty to identify and track
11 suspicious orders of controlled substances.

12 145. In addition, Defendant Distributors must also stop shipment on any order which is
13 flagged as suspicious and only ship orders which were flagged as potentially suspicious if, after
14 conducting due diligence, the distributor can determine that the order is not likely to be diverted
15 into illegal channels.

16 146. Defendant Distributors have a duty to detect questionable and suspicious orders to
17 prevent the diversion of opioids into Reno, which include orders of unusual size, orders deviating
18 substantially from a normal pattern, and orders of an unusual frequency.

19 147. Defendant Distributors not only have a duty to detect and prevent diversion of
20 controlled prescription drugs, but undertake such efforts as responsible members of society.

21 148. In so doing, this is intended to reduce the widespread diversion of these drugs out
22 of legitimate channels into the illicit market, while at the same time providing the legitimate drug
23 industry with a unified approach to narcotic and dangerous drug control.

24 149. Notwithstanding this duty and obligation, the DEA has been required to take
25 administrative action against Defendant Distributors to force compliance. The United States
26 Department of Justice, Office of the Inspector General, Evaluation and Inspections Division,
27 reported that the DEA issued final decisions in 178 registrant actions between 2008 and 2012.
28 The Office of Administrative Law Judges issued a recommended decision in a total of 117
registrant actions before the DEA issued its final decision, including 76 actions involving orders

1 to show cause and 41 actions involving immediate suspension orders.⁵ Some of these actions
2 include the following:

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

8 (b) On November 28, 2007, the DEA issued an *Order to Show Cause and*
9 *Immediate Suspension Order* against the Cardinal Health Auburn, Washington
10 Distribution Center ("Auburn Facility") for failure to maintain effective controls against
11 diversion of hydrocodone;

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

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

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

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

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

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

⁵ The Drug Enforcement Administration's Adjudication of Registrant Actions, United States Department of Justice, Office of the Inspector General, Evaluation and Inspections Divisions, I-2014-003 (May 2014).

1 (i) On December 23, 2016, Cardinal Health agreed to pay a \$44 million fine
2 to the DEA to resolve the civil penalty portion of the administrative action taken against
its Lakeland, Florida Distribution Center;

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

7 (k) On July 11, 2017, Mallinckrodt agreed to pay the DEA \$35 million to settle
8 allegations for the company's failure to report suspicious orders of opioids and allegations
9 of faulty record keeping. The investigation originally began in 2011 and federal
10 investigators reportedly found 44,000 violations potentially exposing Mallinckrodt to \$2.3
billion in fines.

11 150. Because Defendant Distributors handle such large volumes of controlled
12 substances, and are the first major line of defense in the movement of legal pharmaceutical
13 controlled substances from legitimate channels into the illicit market, it is incumbent on these
14 distributors to maintain effective controls to prevent diversion of controlled substances. Should a
15 distributor deviate from these checks and balances, the closed system collapses.

16 151. The sheer volume of prescription opioids distributed to pharmacies in Reno is
17 excessive for the medical need of the community and facially suspicious. Some red flags are so
18 obvious that no one who engages in the legitimate distribution of controlled substances can
19 reasonably claim ignorance of them.

20 152. Over the course of a decade, Defendant Distributors and Pharmacies failed to
21 detect suspicious orders of prescription opioids which Defendants knew or should have known
22 were likely to be delivered and/or diverted into Reno.

23 153. Defendants ignored the law, paid the fines, and continued to unlawfully fill
24 suspicious orders of unusual size, orders deviating substantially from a normal pattern and/or
25 orders of unusual frequency in Reno, and/or orders which Defendants knew or should have known
26 were likely to be delivered and/or diverted into Reno.

27 154. Defendant Pharmacies must exercise reasonable care under the circumstances.
28 This involves a duty not to create a foreseeable risk of harm to others. Additionally, one who
engages in affirmative conduct, and thereafter realizes or should realize that such conduct has

1 created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to
2 prevent the threatened harm.

3 155. Like Defendant Distributors, Defendant Pharmacies also serve as gatekeepers in
4 keeping drugs from entering the illicit market. As the “last line of defense,” they are meant to be
5 the drug experts in the healthcare delivery system and as such have considerable duties and
6 responsibility in the oversight of patient care. They cannot blindly fill prescriptions written by a
7 doctor if the prescription is not for a legitimate medical purpose.

8 156. Therefore, Defendant Pharmacies are required to ensure that prescriptions for
9 controlled substances are valid, and that they are issued for a legitimate medical purpose by
10 practitioners acting in their usual course. But by filling prescriptions of questionable or suspicious
11 origin the Defendant Pharmacies have subsequently breached that duty.

12 157. Upon information and belief and at all times relevant herein, questionable or
13 suspicious prescriptions issued by Defendant Pharmacies include: (1) prescriptions written by a
14 doctor who writes significantly more prescriptions (or in larger quantities) for controlled
15 substances compared to other practitioners in the area; (2) prescriptions which should last for a
16 month in legitimate use, but are being refilled on a shorter basis; (3) prescriptions for antagonistic
17 drugs, such as depressants and stimulants, at the same time; (4) prescriptions with quantities or
18 dosages that differ from usual medical usage; (5) prescriptions that do not comply with standard
19 abbreviations and/or contain no abbreviations; (6) photocopied prescriptions; and/or (7)
20 prescriptions containing different handwritings.

21 158. In addition to having common law duties, Defendant Pharmacies have a statutory
22 duty under state law to track and report certain information to the Nevada State Board of
23 Pharmacy. The Nevada State Board of Pharmacy has been licensing and regulating the practices
24 of pharmaceutical wholesalers in Nevada since 1967.

25 159. State law requires that statements of prior sales (“pedigrees”) must be in
26 “electronic form, if the transaction occurs on or after January 1, 2007 and also when one of two
27 things is true: (1) the selling wholesaler is not an authorized distributor for the manufacturer of
28 the drug, or (2) the selling wholesaler bought the drug from another wholesaler.

1 160. In addition, the mandatory data to be reported must include, but is not limited to
2 as follows: (a) name, address, telephone number, and Nevada license number of the wholesaler
3 making the pedigree; (b) name and title of person certifying the pedigree's accuracy; (c) invoice
4 number and date for the transaction of which the pedigree is part; (d) purchase order number and
5 date for the transaction of which the pedigree is part; (e) order number and date (if one) for the
6 transaction of which the pedigree is part; (f) the business name, address, and telephone number
7 of each preceding seller of the drug; (g) the business name, address, and telephone number of the
8 customer to whom the reporting wholesaler sold the drug; (h) the date of each preceding or
9 subsequent sale; (i) name of the drug; (j) strength of the drug; (k) size of the container; and/or
10 (l) number of containers.

11 161. Because Defendant Pharmacies handle such large volumes of controlled
12 substances, and are a last line of defense in the movement of legal pharmaceutical controlled
13 substances from legitimate channels into the illicit market, it is incumbent on these Defendants to
14 maintain effective controls to prevent diversion of controlled substances. Should Defendants
15 deviate from these checks and balances, the closed system collapses.

16 162. The sheer volume of prescription opioids distributed to pharmacies in Reno is
17 excessive for the medical need of the community and facially suspicious. Some red flags are so
18 obvious that no one who engages in the legitimate distribution of controlled substances can
19 reasonably claim ignorance of them.

20 163. Over the course of a decade, Defendant Pharmacies failed to detect suspicious
21 orders of prescription opioids which Defendants knew or should have known were likely to be
22 delivered and/or diverted into Reno.

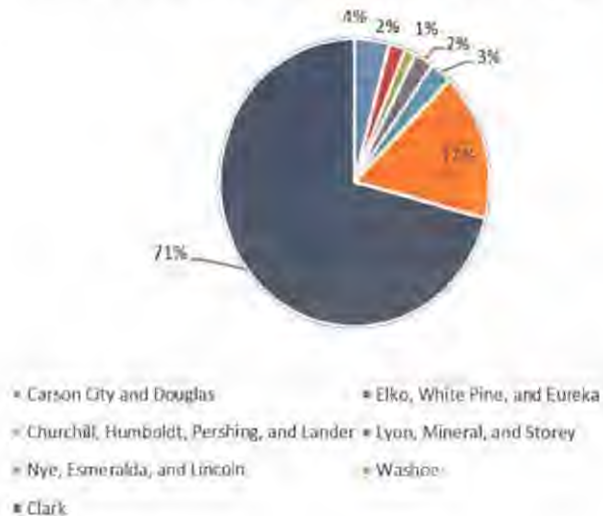
23 164. Yet, Defendants ignored the law, paid the fines, and continued to unlawfully fill
24 suspicious orders of unusual size, orders deviating substantially from a normal pattern and/or
25 orders of unusual frequency in Reno, and/or orders which Defendants knew or should have known
26 were likely to be delivered and/or diverted into Reno.

27 **E. Opioid Addiction in Nevada**

28 165. In 2016, Nevada was ranked as the sixth highest state for the number of milligrams
of opioids distributed per adult according to a study by the DEA. From 2009 to 2013, hospitals

1 across the State had patients presenting to emergency rooms for heroin or opioid dependence,
2 abuse, or poisoning. Of those visits, 17% occurred in Washoe County.

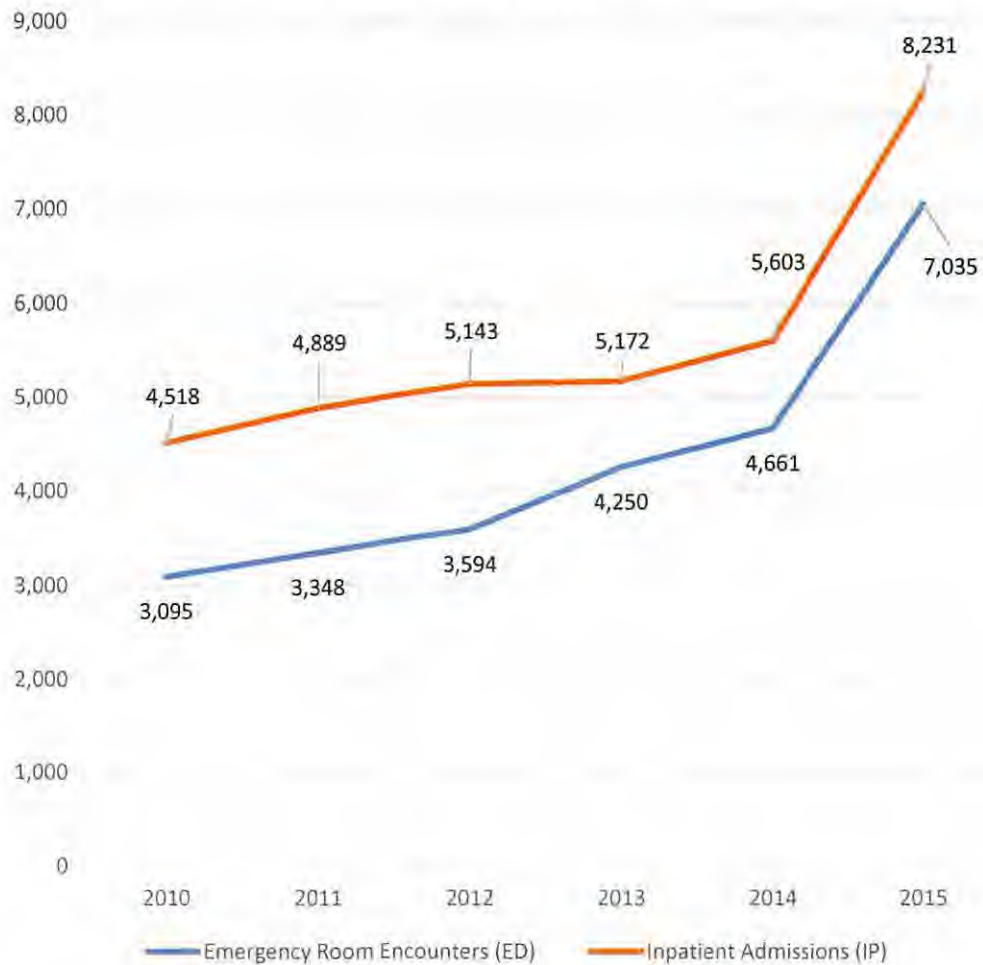
3 4 Heroin or Opioid Dependence, Abuse, or Poisoning 5 Among Hospital Emergency Department Visitors for 6 Nevada Residents in 2009-2013 by Region



166. According to data from the Nevada Division of Public and Behavioral Health, the total number of opioid-related hospitalizations in Nevada nearly doubled from 2010 to 2015. In 2010, the number of opioid-related emergency room hospitalizations in Nevada totaled about 4,518 patients. By comparison, that number rose steeply to about 8,231 visits in a mere five years. Similarly, in 2010, the number of opioid-related inpatient admissions statewide totaled 3,095 hospitalizations. However, in a span of only five years, that number exponentially increased to 7,035 visits in 2015. From 2010 to 2015, over 26% of opioid-related emergency room hospitalizations in Nevada were among patients aged 55 years and older. Over 36% of opioid-related inpatient admissions in the State were among that same age group.

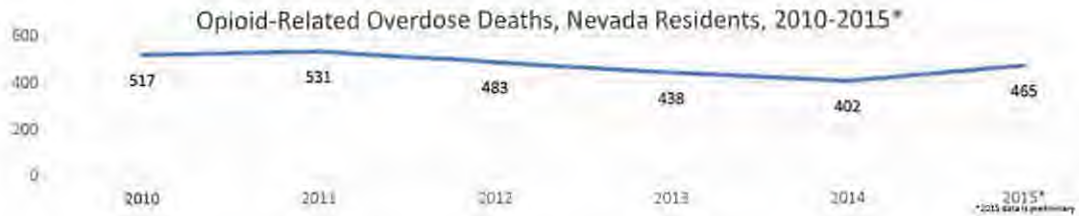
167. Opioid-induced hospitalizations and emergency room visits are a significant area of health expenditure. For instance in 2012, over \$40 million was billed for opioid-induced hospitalizations and over \$7 million for similar emergency room visits in Southern Nevada alone.

Opioid-Related Hospitalizations, Nevada Residents,
2010-2015



168. In addition to hospitalizations, the total number of opioid-related deaths continues to mount. According to the Centers for Disease Control, nearly half of all U.S. opioid overdose deaths involve a prescription opioid. In 2015, more than 15,000 people in the U.S. died from overdoses involving prescription opioids.

169. Nevada has the fourth highest drug overdose mortality rate in the United States. From 2010 to 2015, approximately 2,800 deaths in Nevada have been attributed to opioid-related overdose. It is estimated that 55% of those deaths were caused by natural and semi-synthetic opioids.



F. The Consequences of Defendants' Fraudulent Scheme

170. Through direct promotional marketing, in conjunction with third-party Front Groups and KOLs, Defendants accomplished exactly what they set out to do: change the institutional and public perception of the risk-benefit assessments and standard of care for treating patients with chronic pain. As a result, Nevada doctors began prescribing opioids long-term to treat chronic pain - something most would never have considered prior to Defendants' extensive marketing campaign.

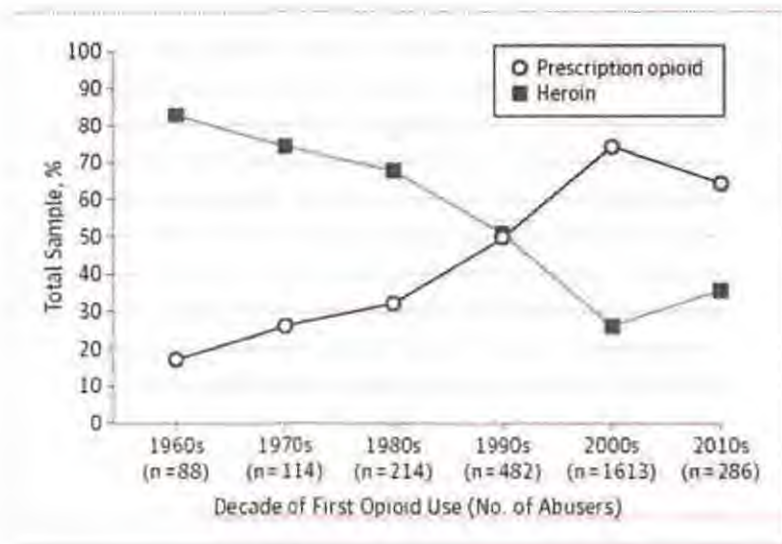
171. But for the misleading information disseminated by Defendants, prescribing physicians would not, in most instances, have prescribed opioids as medically necessary or reasonably required to address chronic pain. The impact of Defendants' fraudulent marketing on doctors' prescribing and patients' use of opioids is evidenced by the increase in opioid prescribing nationally in concert with Defendants' marketing, and the consequences of opioid over-prescription - including addiction, overdose, and death.

G. Prescription Opioids Fueling Secondary Market of Illegal Drugs

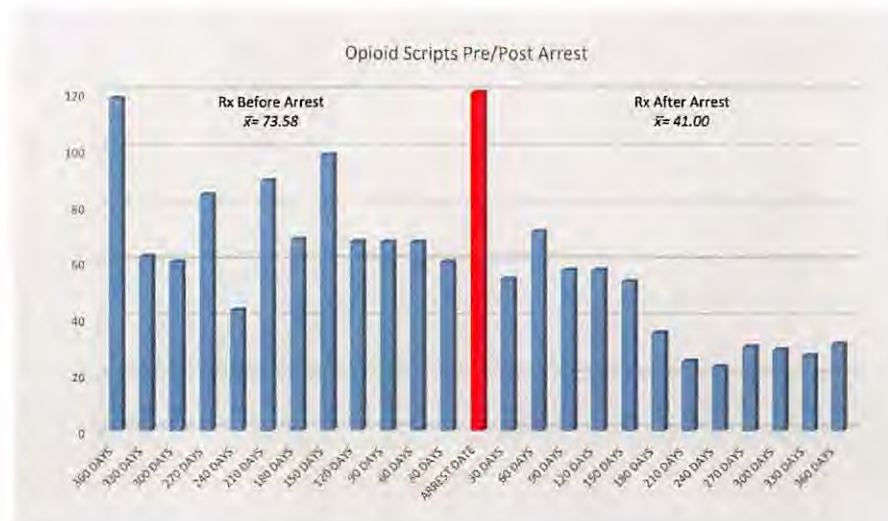
172. Defendants' successful efforts in expanding the market for opioids to new patients and chronic conditions has created an abundance of drugs available for criminal use and fueled a new wave of addiction and abuse. Defendants' behavior supplies both ends of the secondary market for opioids - producing both the inventory of narcotics to sell and the addicts to buy them. It has been estimated that the majority of the opioids that are abused come, directly or indirectly, through doctors' prescriptions. Because heroin is cheaper than prescription painkillers, many prescription opioid addicts migrate to heroin. Thus, prescription drug abuse is fueling the rise of heroin usage in Nevada.

173. As a result, self-reported heroin use nearly doubled in the U.S. between 2007 and 2012, from 373,000 to 669,000 individuals and, in 2010, more than 3,000 people in the U.S. died

from heroin overdoses, also nearly double the rate in 2006; nearly 80% of those who used heroin in the past year previously abused prescription opioids.



174. Between 2011 to 2015, the Reno Police Department arrested approximately 735 individuals related to heroin use. Of those arrested, 53% were prescribed opioids. While records indicate that aggregate opioid prescriptions for those arrested decreased following their arrests, opioid addiction and illegal heroin use persist.



1 175. While the use of opioids continues to take an enormous toll on Reno and its
2 residents, pharmaceutical companies reap blockbuster profits.

3 176. In 2014 alone, opioids generated \$11 billion in revenue for drug companies,
4 Defendants experienced a material increase in sales, revenue, and profits from their fraudulent
5 advertising and other unlawful and unfair conduct as described above.

6 177. Defendants should be held accountable for their misrepresentations and the harms
7 caused to Reno as well as its residents thus giving rise to this lawsuit.

8 **FIRST CAUSE OF ACTION**

9 *(Public Nuisance Against All Defendants)*

10 178. Plaintiff repeats and reiterates the allegations previously set forth herein.

11 179. This action is brought by the City for violations of statutory provisions concerning
12 public nuisance under NRS 202 *et seq.* Nevada law provides that a where a controlled substance,
13 including but not limited to opioids, is “unlawfully sold, served, stored, kept, manufactured, used
14 or given away” constitutes a public nuisance.

15 180. The public nuisance created by Defendants’ actions is substantial and
16 unreasonable. It has caused, and continues to cause, significant harm to the community. The rates
17 of opioid use resulting from Defendants’ deceptive marketing efforts have caused harm to the
18 community

19 181. As a result of Defendants’ conduct, Plaintiff has incurred substantial costs
20 including but not limited to law enforcement action opioid-related to drug crimes, for addiction
21 treatment, and other services necessary for the treatment of people addicted to prescription opioids.

22 182. Defendants, and each of them, have contributed to, and/or assisted in creating and
23 maintaining a condition that is harmful to the health of Reno citizens, “renders a considerable
24 number of persons insecure in life” and/or interferes with the comfortable enjoyment of life in
25 violation of Nevada law.

26 183. Defendants knew or should have known that their marketing of opioid use would
27 create a public nuisance.

28 184. Defendants’ actions were, and continue to be, a substantial factor in opioids
becoming widely available and widely used. Defendants’ actions were, and continue to be, a

1 substantial factor in prescribing physicians and prospective patients not accurately assessing and
2 weighing the risks and benefits of opioids for chronic pain. Without Defendants' actions, opioid
3 use would not have become so widespread, and the enormous public health hazard of opioid
4 overuse, abuse, and addiction that now exists would have been averted.

5 185. The health and safety of the citizens of Reno, including those who use, have used
6 or will use opioids, as well as those affected by users of opioids, is a matter of great public interest
7 and of legitimate concern.

8 186. Defendants' conduct has affected and continues to affect a considerable number
9 of people within the physical boundaries of Reno and is likely to continue to cause significant
10 harm to people who take opioids, their families, and the community at large.

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

15 188. Defendants created an absolute nuisance. Defendants' actions created and
16 expanded the abuse of opioids, which are dangerously addictive, and the ensuing associated
17 plague of prescription opioid and heroin addiction. Defendants knew the dangers to public health
18 and safety that diversion of opioids would create in Reno, however, Defendants intentionally
19 and/or unlawfully failed to maintain effective controls against diversion through proper
20 monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants intentionally
21 and/or unlawfully distributed opioids without reporting or refusing to fill suspicious orders or
22 taking other measures to maintain effective controls against diversion. Defendants intentionally
23 and/or unlawfully continued to ship and failed to halt suspicious orders of opioids. Such actions
24 were inherently dangerous.

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

1 190. Defendants' actions also created a qualified nuisance. Defendants acted recklessly,
2 negligently and/or carelessly, in breach of their duties to maintain effective controls against
3 diversion, thereby creating an unreasonable risk of harm.

4 191. Defendants acted with actual malice because Defendants acted with a conscious
5 disregard for the rights and safety of other persons, and said actions have a great probability of
6 causing substantial harm.

7 192. The damages available to the Plaintiff include, *inter alia*, recoupment of
8 governmental costs, flowing from an "ongoing and persistent" public nuisance which the
9 government seeks to abate.

10 193. Defendants' conduct is ongoing and persistent, and the Plaintiff seeks all damages
11 flowing from Defendants' conduct. Plaintiff further seeks to abate the nuisance and harm created
12 by Defendants' conduct.

13 194. As a direct result of Defendants' conduct, Reno has suffered actual injury and
14 damages including, but not limited to, significant expenses for police, emergency, health,
15 prosecution, corrections and other services. Reno here seeks recovery for its own harm.

16 195. Reno has sustained specific and special injuries because its damages include, *inter*
17 *alia*, health services, law enforcement expenditures, costs related to opioid addiction treatment
18 and overdose prevention, and related costs.

19 196. Reno further seeks to abate the nuisance created by the Defendants' unreasonable,
20 unlawful, intentional, ongoing, continuing, and persistent interference with a right common to the
21 public.

22 197. The public nuisance created by Defendants' actions is substantial and
23 unreasonable – it has caused and continues to cause significant harm to the community, and the
24 harm inflicted outweighs any offsetting benefit. The staggering rates of prescription opioid abuse
25 and heroin use resulting from Defendants' abdication of their gate-keeping duties has caused harm
26 to the entire community that includes, but is not limited to:

- 27 a. The high rates of use have led to unnecessary opioid abuse, addiction, overdose,
28 injuries, and deaths.

- b. Nor have children escaped the opioid epidemic unscathed. Easy access to prescription opioids has made opioids a recreational drug of choice among teenagers; opioid use among teenagers is only outpaced by marijuana use. Even infants have been born addicted to opioids due to prenatal exposure, causing severe withdrawal symptoms and lasting developmental impacts.
- c. Even those City residents who have never taken opioids have suffered from the public nuisance arising from Defendants' abdication of their gate-keeper duties. Many have endured both the emotional and financial costs of caring for loved ones addicted to or injured by opioids, and the loss of companionship, wages, or other support from family members who have used, abused, become addicted to, overdosed on, or been killed by opioids.
- d. The opioid epidemic has increased health care costs.
- e. Employers have lost the value of productive and healthy employees.
- f. Defendants' failure to maintain effective controls against diversion of dangerously addictive prescription opioids for non-medical use and abuses has created an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury.
- g. Defendants' dereliction of duties resulted in a diverted supply of narcotics to sell, and the ensuing demand of addicts to buy them. Increased supply, due to Defendants' conduct, led to more addiction, with many addicts turning from prescription opioids to heroin. People addicted to opioids frequently require increasing levels of opioids, and many turned to heroin as a foreseeable result.
- h. The diversion of opioids into the secondary, criminal market and the increase in the number of individuals who abuse or are addicted to opioids has increased the demands on health care services and law enforcement in the City.
- i. The significant unreasonable interference with the public rights caused by Defendants' conduct has taxed the human, medical, public health, law enforcement, and financial resources of the City.

1 j. Defendants' interference with the comfortable enjoyment of life in the City is
2 unreasonable because there is little social utility to opioid diversion and abuse, and
3 any potential value is outweighed by the gravity of the harm inflicted by
4 Defendants' actions.

5 198. Plaintiff seeks all legal and equitable relief as allowed by law, including *inter alia*
6 abatement, compensatory damages, and punitive damages from the Defendant Wholesale
7 Distributors for the creation of a public nuisance, attorney fees and costs, and pre- and post-
8 judgment interest.

9 199. The continued tortious conduct by the Defendants causes a repeated or continuous
10 injury. The damages have not occurred all at once but have increased as time progresses. The tort
11 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
12 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

18 202. That Plaintiff's general, special and punitive damages are in amounts in excess of
19 \$15,000.00.

20 **SECOND CAUSE OF ACTION**

21 *(Common Law Public Nuisance against all Defendants)*

22 203. Plaintiff repeats and reiterates the allegations previously set forth herein.

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

26 205. The public nuisance created by Defendants' actions is substantial and
27 unreasonable. It has caused and continues to cause significant harm to the community and the
28 harm inflicted outweighs any offsetting benefit. The staggering rates of opioid use resulting from
Defendants' marketing efforts have caused harm to the community.

1 206. Defendants, and each of them, knew or should have known that their promotion of
2 opioid use would create a public nuisance.

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

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

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

10 210. The health and safety of those individuals in Reno, including those who use, have
11 used or will use opioids, as well as those affected by users of opioids, is a matter of great public
12 interest and of legitimate concern.

13 211. The public nuisance created, perpetuated, and maintained by Defendants can be
14 abated and further reoccurrence of such harm and inconvenience can be prevented.

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

18 213. That at all times hereinafter mentioned, upon information and belief, the above-
19 described culpable conduct by Defendants was a proximate cause of injuries sustained by Plaintiff.

20 214. That as a result of the aforesaid occurrence, Plaintiff has suffered extensive
21 monetary and pecuniary losses and other compensatory damages were also incurred and paid,
22 including necessary medical, hospital, and concomitant expenses.

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

27 216. Defendants created an absolute nuisance. Defendants' actions created and
28 expanded the abuse of opioids, which are dangerously addictive, and the ensuing associated
plague of prescription opioid and heroin addiction. Defendants knew the dangers to public health

1 and safety that diversion of opioids would create in Reno, however, Defendants intentionally
2 and/or unlawfully failed to maintain effective controls against diversion through proper
3 monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants intentionally
4 and/or unlawfully distributed opioids without reporting or refusing to fill suspicious orders or
5 taking other measures to maintain effective controls against diversion. Defendants intentionally
6 and/or unlawfully continued to ship and failed to halt suspicious orders of opioids. Such actions
7 were inherently dangerous.

8 217. Defendants knew the prescription opioids have a high likelihood of being diverted.
9 It was foreseeable to Defendants that where Defendants distributed prescription opioids without
10 maintain effective controls against diversion, including monitoring, reporting, and refusing
11 shipment of suspicious orders, that the opioids would be diverted, and create an opioid abuse
12 nuisance in Reno.

13 218. Defendants' actions also created a qualified nuisance. Defendants acted recklessly,
14 negligently and/or carelessly, in breach of their duties to maintain effective controls against
15 diversion, thereby creating an unreasonable risk of harm.

16 219. Defendants acted with actual malice because Defendants acted with a conscious
17 disregard for the rights and safety of other persons, and said actions have a great probability of
18 causing substantial harm.

19 220. The damages available to the Plaintiff include, *inter alia*, recoupment of
20 governmental costs, flowing from an "ongoing and persistent" public nuisance which the
21 government seeks to abate. Defendants' conduct is ongoing and persistent, and the Plaintiff seeks
22 all damages flowing from Defendants' conduct. Plaintiff further seeks to abate the nuisance and
23 harm created by Defendants' conduct.

24 221. As a direct result of Defendants' conduct, the City has suffered actual injury and
25 damages including, but not limited to, significant expenses for police, emergency, health,
26 prosecution, corrections and other services. The City here seeks recovery for its own harm.

27 222. The City has sustained specific and special injuries because its damages include,
28 *inter alia*, health services, law enforcement expenditures, costs related to opioid addiction
treatment and overdose prevention, and related costs.

1 223. The City further seeks to abate the nuisance created by the Defendants'
2 unreasonable, unlawful, intentional, ongoing, continuing, and persistent interference with a right
3 common to the public.

4 224. The public nuisance created by Defendants' actions is substantial and
5 unreasonable – it has caused and continues to cause significant harm to the community, and the
6 harm inflicted outweighs any offsetting benefit. The staggering rates of prescription opioid abuse
7 and heroin use resulting from Defendants' abdication of their gate-keeping duties has caused harm
8 to the entire community that includes, but is not limited to:

- 9 a. The high rates of use have led to unnecessary opioid abuse, addiction, overdose,
10 injuries, and deaths.
- 11 b. Nor have children escaped the opioid epidemic unscathed. Easy access to
12 prescription opioids has made opioids a recreational drug of choice among Reno
13 teenagers; opioid use among teenagers is only outpaced by marijuana use. Even
14 infants have been born addicted to opioids due to prenatal exposure, causing severe
15 withdrawal symptoms and lasting developmental impacts.
- 16 c. Even those City residents who have never taken opioids have suffered from the
17 public nuisance arising from Defendants' abdication of their gate-keeper duties.
18 Many have endured both the emotional and financial costs of caring for loved ones
19 addicted to or injured by opioids, and the loss of companionship, wages, or other
20 support from family members who have used, abused, become addicted to,
21 overdosed on, or been killed by opioids.
- 22 d. The opioid epidemic has increased health care costs.
- 23 e. Employers have lost the value of productive and healthy employees.
- 24 f. Defendants' failure to maintain effective controls against diversion of dangerously
25 addictive prescription opioids for non-medical use and abuses has created an
26 abundance of drugs available for criminal use and fueled a new wave of addiction,
27 abuse, and injury.
- 28 g. Defendants' dereliction of duties resulted in a diverted supply of narcotics to sell,
 and the ensuing demand of addicts to buy them. Increased supply, due to

1 Defendants' conduct, led to more addiction, with many addicts turning from
2 prescription opioids to heroin. People addicted to opioids frequently require
3 increasing levels of opioids, and many turned to heroin as a foreseeable result.

4 h. The diversion of opioids into the secondary, criminal market and the increase in
5 the number of individuals who abuse or are addicted to opioids has increased the
6 demands on health care services and law enforcement in the City.

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

10 j. Defendants' interference with the comfortable enjoyment of life in Reno is
11 unreasonable because there is little social utility to opioid diversion and abuse, and
12 any potential value is outweighed by the gravity of the harm inflicted by
13 Defendants' actions.

14 225. Plaintiff seeks all legal and equitable relief as allowed by law, including *inter alia*
15 abatement, compensatory damages, and punitive damages from the Defendant Wholesale
16 Distributors for the creation of a public nuisance, attorney fees and costs, and pre- and post-
17 judgment interest.

18 226. The continued tortious conduct by the Defendants causes a repeated or continuous
19 injury. The damages have not occurred all at once but have increased as time progresses. The tort
20 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
21 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

27 229. That Plaintiff's general, special and punitive damages are in amounts in excess of
28 \$15,000.00.

1 **THIRD CAUSE OF ACTION**

2 *(Negligence against Defendant Manufacturers & Detailers)*

3 230. Plaintiff repeats and reiterates the allegations previously set forth herein.

4 231. Defendants had a duty to exercise reasonable care in the manufacture, marketing,
5 promotion, and/or sale of opioids.

6 232. In the course and furtherance of Defendants' business in Reno, Defendants
7 breached their duty by manufacturing, marketing, promoting, and/or selling opioids in an
8 improper manner.

9 233. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered
10 and continues to suffer injury, including but not limited to incurring excessive costs related to
11 diagnosis, treatment, and cure of addiction to opioids, bearing the massive costs of these illnesses
12 and conditions by having to provide necessary resources for care, treatment facilities, and law
13 enforcement services for its residents and using City resources in relation to opioid use and abuse.

14 234. However, Defendants continued to design manufacture, market, promote and sell
15 opioids so as to maximize sales and profits at the expense of the health and safety of the public,
16 in conscious disregard of the foreseeable harm caused by the opioid drug.

17 235. Defendants' conduct exhibits such an entire want of care as to establish that their
18 actions were a result of fraud, ill will, recklessness, or willful and intentional disregard of
19 Plaintiff's rights, and, therefore, Plaintiff is entitled to punitive damages.

20 236. The continued tortious conduct by the Defendants causes a repeated or continuous
21 injury. The damages have not occurred all at once but have increased as time progresses. The tort
22 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
23 wrongdoing has not ceased. The public nuisance remains unabated.

24 237. Therefore, Plaintiff's claims are subject to equitable tolling, stemming from
25 Defendants' wrongful concealment and from Plaintiff's inability to obtain vital information
26 underlying its claims. That Plaintiff has been required to prosecute this action and is entitled to
27 attorneys' fees and costs as provided by Nevada statute.

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

1 **FOURTH CAUSE OF ACTION**

2 *(Negligent Misrepresentation against all Defendants)*

3 239. Plaintiff repeats and reiterates the allegations previously set forth herein.

4 240. Defendants had a duty to exercise reasonable care in the marketing of opioids.

5 241. Defendants were aware of the potentially dangerous situation involving opioids.

6 242. In the course and furtherance of Defendants' business in Reno, Defendants
7 marketed opioids in an improper manner by:

- 8 a. overstating the benefits of chronic opioid therapy, promising improvement in
9 patients' function and quality of life, and failing to disclose the lack of evidence
10 supporting long-term use;
- 11 b. trivializing or obscuring opioids' serious risks and adverse outcomes, including
12 the risk of addiction, overdose, and death;
- 13 c. overstating opioids' superiority compared with other treatments, such as other
14 non-opioid analgesics, physical therapy, and other alternatives;
- 15 d. mischaracterizing the difficulty of withdrawal from opioids and the prevalence of
16 withdrawal symptoms; and
- 17 e. marketing opioids for indications and benefits that were outside of the opioids'
18 labels and not supported by substantial evidence.

19 243. It was Defendants' marketing — and not any medical breakthrough — that
20 rationalized prescribing opioids for chronic pain and opened the floodgates of opioid use and
21 abuse. The result has been catastrophic.

22 244. Defendants disseminated many of their false, misleading, imbalanced, and
23 unsupported statements indirectly, through KOLs and Front Groups, and in unbranded marketing
24 materials. These KOLs and Front Groups were important elements of Defendants' marketing
25 plans, which specifically contemplated their use, because they seemed independent and therefore
26 outside FDA oversight. Through unbranded materials, Defendants, with their own knowledge of
27 the risks, benefits and advantages of opioids, presented information and instructions concerning
28 opioids generally that were contrary to, or at best, inconsistent with information and instructions

1 listed on Defendants' branded marketing materials and drug labels. Defendants did so knowing
2 that unbranded materials typically are not submitted to or reviewed by the FDA.

3 245. Defendants also marketed opioids through the following vehicles: (a) KOLs, who
4 could be counted upon to write favorable journal articles and deliver supportive CMEs; (b) a body
5 of biased and unsupported scientific literature; (c) treatment guidelines; (d) CMEs; (e) unbranded
6 patient education materials; and (f) Front Group patient-advocacy and professional organizations,
7 which exercised their influence both directly and through Defendant-controlled KOLs who served
8 in leadership roles in those organizations.

9 246. Defendants knew or should have known that opioids were unreasonably dangerous
10 and could cause addiction.

11 247. Defendants' marketing was a factor in physicians, patients, and others to prescribe
12 or purchase opioids.

13 248. Defendants made these false representations and concealed facts with knowledge
14 of the falsity of their representations. These Defendants' false representations and concealed facts
15 were material to the conduct and actions at issue.

16 249. Defendants intended and had reason to expect under the operative circumstances
17 that the Plaintiff would be deceived by Defendants' statements, concealments, and conduct as
18 alleged herein and that Plaintiff would act or fail to act in reasonable reliance thereon.

19 250. Plaintiff did rightfully, reasonably, and justifiably rely upon Defendants'
20 representations and/or concealments both directly and indirectly. Defendants knew or should
21 have known Plaintiff was directly and proximately injured as a result of this reliance, Plaintiff's
22 injuries were directly and proximately caused by this reliance.

23 251. As a result of these representations and/or omissions, Plaintiff proceeded under
24 the misapprehension that the opioid crisis was simply the result of conduct by persons other than
25 Defendants and as a consequence, these Defendants prevented Plaintiff from a more timely and
26 effective response to the opioid crisis.

27 252. By reason of its reliance on Defendants' misrepresentations and omissions of
28 material fact, Plaintiff suffered damages.

1 253. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered
2 and continues to suffer injury, including but not limited to incurring excessive costs related to
3 diagnosis, treatment, and cure of addiction to opioids, bearing the massive costs of these illnesses
4 and conditions by having to provide necessary resources for care, treatment facilities, and law
5 enforcement services for its residents and using City resources in relation to opioid use and abuse.

6 254. However, Defendants continued to design manufacture, market, distribute and sell
7 opioids so as to maximize sales and profits at the expense of the health and safety of the public,
8 in conscious disregard of the foreseeable harm caused by the opioid drug.

9 255. Defendants' conduct exhibits such an entire want of care as to establish that their
10 actions were a result of fraud, ill will, recklessness, or willful and intentional disregard of
11 Plaintiff's rights, and, therefore, Plaintiff is entitled to punitive damages.

12 256. The continued tortious conduct by the Defendants causes a repeated or continuous
13 injury. The damages have not occurred all at once but have increased as time progresses. The tort
14 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
15 wrongdoing has not ceased. The public nuisance remains unabated.

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

19 258. Should the court finds that Plaintiff must state these or any other allegations with
20 more particularity, plaintiff is currently unable to do so because the required information is in the
21 possession of Defendants or third parties, and Plaintiff should therefore be allowed an opportunity
22 to conduct discovery and amend its complaint to conform with NRCP 9(b)

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

25 260. That Plaintiff's general, special and punitive damages are in amounts in excess of
26 \$15,000.00.

1 **FIFTH CAUSE OF ACTION**

2 *(Negligence against Defendant Distributors, Defendant Pharmacies, & Defendant Providers)*

3 261. Plaintiff incorporates the allegations within all prior paragraphs within this
4 Complaint as if they were fully set forth herein.

5 262. Defendant Distributors and Pharmacies owed a non-delegable duty to exercise
6 reasonable care in the distribution and/or sale of opioids.

7 263. Defendants Distributors and Pharmacies further owe a non-delegable duty to
8 Plaintiff to conform their behavior to the legal standard of reasonable conduct under the
9 circumstances, in the light of the apparent risks.

10 264. Defendant Distributors and Pharmacies breached this duty by failing to take any
11 action to prevent or reduce the distribution of the opioids.

12 265. Defendant Providers owed a duty to exercise reasonable care in the prescription of
13 opioids.

14 266. Defendant Providers further owe a duty to Plaintiff to conform their behavior to
15 the legal standard of reasonable conduct under the circumstances, in light of the apparent risks,
16 and in light of Defendant Providers' knowledge as it relates to the inherent dangers in the use of
17 opioids.

18 267. Defendant Providers breached this duty by, not only failing to recognize the risk
19 of writing increased numbers of prescriptions for opioids, but by actively disregarding the dangers
20 associated with opioid use, particularly for off-label purposes and in dosages far exceeding those
21 recommended.

22 268. Defendant Providers further breached their duty by providing false information to
23 health insurance providers in order to obtain authorization and coverage for the opioid
24 prescriptions.

25 269. As a proximate result, Defendant Distributors and Pharmacies, as well as
26 Defendant Providers, and their agents have caused Plaintiff to incur significant damages,
27 including but not limited to costs related to diagnosis, treatment, and cure of addiction or risk of
28 addiction to opioids. Reno has borne the massive costs of these illnesses and conditions by having
to provide necessary medical care, facilities, and services for treatment of City residents.

1 270. Defendant Distributors and Pharmacies and Defendant Providers were negligent
2 in failing to monitor and guard against third-party misconduct and participated and enabled such
3 misconduct.

4 271. Defendant Distributors and Pharmacies were negligent in disclosing to Plaintiff
5 suspicious orders for opioids.

6 272. Defendant Providers were negligent in writing improper prescriptions for opioids.

7 273. Defendant Distributors and Pharmacies' and Defendant Providers' acts and
8 omissions imposed an unreasonable risk of harm to others separately and/or combined with other
9 Defendants.

10 274. A negligent violation of this trust poses distinctive and significant dangers to the
11 City and its residents from the diversion of opioids for non-legitimate medical purposes and
12 addiction to the same by consumers.

13 275. Defendant Distributors and Pharmacies and Defendant Providers were negligent
14 in not acquiring and utilizing special knowledge and special skills that relate to the dangerous
15 activity in order to prevent and/or ameliorate such distinctive and significant dangers.

16 276. Defendant Distributors and Pharmacies are required to exercise a high degree of
17 care and diligence to prevent injury to the public from the diversion of opioids during distribution.

18 277. Defendant Providers are required to exercise a high degree of care to prescribe
19 appropriate medications in appropriate dosages to avoid harm to patients and their communities.

20 278. Defendant Distributors and Pharmacies breached their duty to exercise the degree
21 of care, prudence, watchfulness, and vigilance commensurate to the dangers involved in the
22 transaction of its business.

23 279. Defendant Providers breached their duty to exercise the degree of care required to
24 protect their patients and their communities.

25 280. Defendant Distributors and Pharmacies are in exclusive control of the distribution
26 management of opioids that it distributed and/or sold in Reno.

27 281. Defendant Providers were active in providing patients within Reno with the
28 prescriptions for opioids that were supplied by the Defendant Distributors and Pharmacies.

1 282. Plaintiff is without fault and the injuries to the City and its residents would not
2 have occurred in the ordinary course of events had Defendants used due care commensurate to
3 the dangers involved in the distribution of opioids.

4 283. The continued tortious conduct by the Defendants causes a repeated or continuous
5 injury. The damages have not occurred all at once but have increased as time progresses. The tort
6 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
7 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

13 286. That Plaintiff's general, special and punitive damages are in amounts in excess of
14 \$15,000.00.

15 **SIXTH CAUSE OF ACTION**

16 *(Unjust Enrichment against all Defendants)*

17
18 287. Plaintiff repeats and reiterates the allegations previously set forth herein.

19 288. Plaintiff has expended substantial amounts of money to fix or mitigate the societal
20 harms caused by Defendants' conduct.

21 289. The expenditures by Plaintiff in providing healthcare services to people who use
22 opioids have added to Defendants' wealth. These expenditures have helped sustain Defendants'
23 businesses.

24 290. Plaintiff has conferred a benefit upon Defendants, by paying for what may be
25 called Defendants' externalities - the costs of the harm caused by Defendants' negligent
26 distribution and sales practices.

27 291. Defendants are aware of this obvious benefit, and that retention of this benefit is
28 unjust.

1 292. Defendants made substantial profits while fueling the prescription drug epidemic
2 into Reno.

3 293. Defendants continue to receive considerable profits from the distribution of
4 controlled substances into the City.

5 294. Defendants have been unjustly enriched by their negligent, malicious, oppressive,
6 illegal and unethical acts, omissions, and wrongdoing.

7 295. It would be inequitable to allow Defendants to retain benefit or financial advantage.

8 296. Plaintiff demands judgment against each Defendant for restitution, disgorgement,
9 and any other relief allowed in law or equity.

10 297. Plaintiff is without fault and the injuries to the City and its residents would not
11 have occurred in the ordinary course of events had Defendants used due care commensurate to
12 the dangers involved in the distribution of opioids.

13 298. The continued tortious conduct by the Defendants causes a repeated or continuous
14 injury. The damages have not occurred all at once but have increased as time progresses. The tort
15 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
16 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

22 301. That Plaintiff's general, special and punitive damages are in amounts in excess of
23 \$15,000.00.

24 **SEVENTH CAUSE OF ACTION**

25 *(Punitive Damages against all Defendants)*

26 302. Plaintiff repeats and reiterates the allegations previously set forth herein.

27 303. The acts, conduct and omissions of Defendants, as alleged throughout this
28 complaint, were willful, malicious, oppressive and/or were done with conscious disregard of the

1 rights and safety of Plaintiff and for the primary purpose of increasing Defendants' profits from
2 the sale and distribution of the subject drug.

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

6 305. The continued tortious conduct by the Defendants causes a repeated or continuous
7 injury. The damages have not occurred all at once but have increased as time progresses. The tort
8 is not completed nor have all the damages been incurred until the wrongdoing ceases. The
9 wrongdoing has not ceased. The public nuisance remains unabated.

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

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

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

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, the Plaintiff prays for judgment against the Defendants as follows:

- 20 1. General damages in an amount in excess of \$15,000.00;
- 21 2. Special damages in an amount in excess of \$15,000.00;
- 22 3. For punitive damages in such amount as will sufficiently punish Defendants for
23 their wrongful conduct in Nevada as well as serve as an example to prevent a
24 repetition of such conduct in Nevada in the future;
- 25 4. For a fund establishing a medical monitoring program due to the increased
26 susceptibility to injuries and irreparable threat to the health of opioid users
27 resulting from their exposure to opioids, which can only be mitigated or addressed
28 by the creation of a Court-supervised fund, financed by Defendants, and which
will:

- a. Notify individuals who use or used opioids of the potential harm from opioids;
 - b. Aid in the early diagnosis and treatment of resulting injuries through ongoing testing and monitoring of opioid use;
 - c. Fund studies and research of the short and long term effects of opioids and the possible cures and treatments for the detrimental effects of using opioids;
 - d. Accumulate and analyze relevant medical and demographic information from opioid users, including but not limited to the results of testing performed on them;
 - e. Gather and forward to treating physicians information related to the diagnosis and treatment of injuries which may result from using opioids.
5. For restitution and reimbursement sufficient to cover all prescription costs the City has incurred related to opioids due to Defendants' wrongful conduct, with said amount to be determined at trial;
6. For restitution and reimbursement sufficient to cover all costs expended for health care services and programs associated with the diagnosis and treatment of adverse health consequences of opioids use, including but not limited to addiction due to Defendants' wrongful conduct, with said amount to be determined at trial;
7. For restitution and reimbursement for all prescription costs incurred by consumers related to opioids;
8. For such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the Plaintiff has an effective remedy and to stop Defendants' promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future;
9. For disgorgement;
10. Costs of suit, reasonable attorney fees, interest incurred herein; and

1 11. For such other and further relief as is just and proper.

2 DATED this 3RD day of December, 2018.

3
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1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION
4 Pursuant to NRS 239B.030 and 603A.040

5 The undersigned does hereby affirm that the preceding document, _____

6 First Amended Complaint

7 (Title of Document)

8 filed in case number: CV18-01895

9 ☒

Document does not contain the personal information of any person.

10 - OR -

11 ☐

Document contains the social security number of a person as required by:

12 ☐

A specific state or federal law, to wit:

13 _____
14 (State specific state or federal law)

15 - or -

16 ☐

For the administration of a public program

17 - or -

18 ☐

For an application for a federal or state grant

19 - or -

20 ☐

Confidential Family Court Information Sheet
(NRS 123.130, NRS 125.230, and NRS 125B.055)

21 Date: December 03, 2018

22 
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Plaintiff,

vs.

PURDUE PHARMA, L.P. et al.,

Defendants.

Case No.: CV18-01895
Dept. No.: 8

**MANUFACTURER DEFENDANTS'
JOINT MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Oral Argument Requested

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INTRODUCTION

The City of Reno (the “City”) seeks to hold manufacturers of certain FDA-approved opioid medications (“Manufacturer Defendants”¹) liable for the entire spectrum of public costs arising from the abuse and illegal trafficking of opioids in the City. The City’s claims fail in their entirety for a multitude of independent reasons.

First, the City lacks authority to bring this suit. Under settled Nevada law, the City’s authority to act is limited to matters of local, not statewide, concern. Yet the City’s own allegations, and the scope of the opioid abuse crisis, plainly reveal that the issues raised are statewide (indeed, nationwide) in nature. Moreover, the Nevada Attorney General, who alone is vested with authority to pursue litigation involving matters of statewide concern, has already brought suit seeking recovery for Nevada’s opioid abuse crisis. The City’s duplicative claims here not only exceed its limited grant of authority, but also impermissibly encroach upon the Attorney General’s exclusive authority to regulate a matter of statewide concern. For this reason alone, all of the City’s claims must be dismissed.

Second, the City’s attempt to recoup governmental costs purportedly incurred because of the opioid crisis is barred by the municipal cost recovery rule. Under that rule, public expenditures made in the performance of governmental functions are not recoverable as a matter of law.

Third, the First Amended Complaint (“FAC”) is replete with fatal pleading deficiencies. Rather than pleading a factual basis for each of its claims against the 30 named Defendants (as is required under Nevada law), the City repeatedly makes conclusory assertions against “Defendants”

¹ “Manufacturer Defendants” refers to Purdue Pharma L.P.; Purdue Pharma Inc.; The Purdue Frederick Company Inc.; Purdue Pharmaceuticals, L.P.; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan USA, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Insys Therapeutics, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Mallinckrodt LLC; Endo Pharmaceuticals Inc.; and Endo Health Solutions Inc. The FAC originally also named Mallinckrodt Brand Pharmaceuticals Inc. and Mallinckrodt US Holdings, Inc. as Defendants, but on March 4, 2019, the City voluntarily dismissed without prejudice all claims against these entities.

1 collectively. The City’s improper group pleading fails to satisfy even the most basic of pleading
2 standards and falls far short of providing the particularity required under NRCP 9(b) for allegations
3 of fraud like those asserted here.

4 Recently, at the pleading stage, another court dismissed substantially similar opioid-related
5 lawsuits brought by cities. *City of New Haven v. Purdue Pharma, L.P.*, 2019 WL 423990 (Conn.
6 Super. Ct. Jan. 8, 2019). Like the City here, the cities there sought to recover money allegedly spent
7 on emergency response services and other municipal expenses. Faced with a motion to dismiss, the
8 *New Haven* court dismissed the cities’ claims, concluding that “these matters are ordinary civil
9 damages cases and face the ordinary civil rules about who can sue for what.” *Id.* at *1. The cities
10 could not, held the court, “shrug off the burdens of being . . . ordinary civil plaintiffs” under
11 controlling (Connecticut) law to “join the swelling chorus calling for justice” in the “mixed crowd
12 of [opioid] cases assembling on courthouse lawns across the country.” *Id.* at *7-8. As that court
13 observed, “[i]f the courts are to be governed by principles and not passion, [controlling legal rules]
14 must apply just as much in hard cases as in easy ones.” *Id.* at *8.

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Here too, the “ordinary civil rules about who can sue for what” doom the City’s claims. The Court should dismiss the FAC in its entirety as against the Manufacturer Defendants.²

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² Clark County District Judge Timothy Williams denied a motion to dismiss Clark County’s similar opioid-related case (filed by the same private plaintiff’s counsel), *Clark County v. Purdue Pharma L.P. et al.*, No. A-17-765828-C (Clark Cty. Dist. Ct.), on February 27, 2019. (A written order was not available at the time of this filing.) The Manufacturer Defendants respectfully submit that that nonbinding decision is contrary to the clear legal principles discussed herein.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE CITY LACKS STANDING BECAUSE ITS CLAIMS EXCEED ITS LIMITED**
3 **SCOPE OF AUTHORITY TO ACT ON MATTERS OF LOCAL CONCERN AND**
4 **USURP THE ATTORNEY GENERAL’S EXCLUSIVE ROLE AS THE STATE’S**
5 **CHIEF LEGAL OFFICER**

6 Cities are political subdivisions of the State whose powers are limited to those conferred by
7 the Legislature. *See* NRS 268.001(6). Under well-established Nevada law, cities may *only* “address
8 matters of local concern.” *See id.* To be a “matter of local concern,” the matter must, among other
9 things, (1) “[p]rimarily affect[] or impact[] areas located in the incorporated city,” (2) “not have a
10 significant effect or impact on areas located in other cities or counties,” *and* (3) “not concern . . .
11 [t]he regulation of business activities that are subject to substantial regulation by a federal or state
12 agency.” NRS 268.003(1).

13 This fundamental limitation on the City’s authority forecloses its claims. The “matter” the
14 City seeks to regulate—the opioid abuse crisis—is anything but a “matter of local concern.” As the
15 City itself alleges, “[t]he abuse of opioids is a widespread problem in the State of Nevada” (FAC ¶ 2)
16 and “has a profound impact on . . . communities *across our country*” (*id.* ¶ 17 (internal quotation
17 marks omitted) (emphasis added)). Moreover, the Manufacturer Defendants’ promotion of opioid
18 medications is extensively regulated by federal agencies (*see* NRS 268.003(1)(c)(2); FAC ¶¶ 92, 94)
19 and—as the City argued in moving to remand this case to state court—its negligence and nuisance
20 claims “rel[y] upon . . . Nevada’s classification of opioids as ‘dangerous drugs.’”³ Because the City
21 seeks to address matters beyond the limited scope of its authority, all of the City’s claims should be
22 dismissed.

23 That the City seeks to recover its own (as opposed to statewide) monetary expenses does not
24 transform the opioid abuse crisis into a matter of local concern. The City alleges that its expenses
25 flow from the Manufacturer Defendants’ “marketing campaign[]” that “falsely portray[ed] both the
26 risks of addiction and abuse and the safety and benefits of long-term [opioid] use.” FAC ¶ 8. There

27 ³ Motion to Remand, *City of Reno v. Purdue Pharma L.P. et al.*, No. 3:18-cv-454 (D. Nev.),
28 Dkt. No. 5 at 9–10.

1 is nothing “local” about this purported conduct or its alleged impact. The City expressly alleges that
2 “Defendants employed . . . the same marketing plans and strategies and deployed the same messages
3 in Nevada as they did nationwide” (*id.* ¶ 102), which has “unleash[ed] a healthcare crisis that has had
4 far-reaching . . . consequences . . . throughout Nevada” (*id.* ¶ 23). Indeed, Clark County (represented
5 by the same private attorneys as the City here) has filed a similar lawsuit against many of the same
6 Manufacturer Defendants in an overlapping attempt to address the statewide opioid abuse crisis. *See*
7 *Clark Cty. v. Purdue Pharma L.P. et al.*, No. A-17-765828-C (Clark Cty. Dist. Ct.). It is thus clear
8 that the opioid abuse crisis—the “matter” that this lawsuit was brought to address—has “a significant
9 effect or impact on areas” outside the City and does not “[p]rimarily affect[] or impact[] areas located
10 in” the City. NRS 268.003(1).

11 If a matter of statewide concern could be transformed into a matter of local concern simply
12 by characterizing the relief sought as city-specific, then Nevada’s “local concern” statute would be
13 meaningless, since each city and county could sue for the same business activities resulting in a
14 patchwork of differing results across the state. By conflating the scope of relief with the “matter” to
15 be regulated, cities thus could routinely expand their authority to act beyond matters of local concern.
16 The Legislature could not have intended this outcome—the statute refers to the “matter” to be
17 regulated, not the scope of relief sought.

18 Yet even if the scope of relief were dispositive (it is not), that still would not save the City’s
19 claims here. In addition to monetary relief, the City seeks abatement of the purported nuisance (FAC
20 ¶ 193) and injunctive relief (*id.* Prayer for Relief ¶ 8), conduct-based remedies whose impacts would
21 necessarily reach beyond the City given the scope of alleged wrongdoing, the conduct to be enjoined,
22 and the harm to be abated. Notably, in its Prayer for Relief, the City seeks to enjoin “Defendants’
23 promotion and marketing of opioids for inappropriate uses *in Nevada*[.]” *Id.* (emphasis added).

24 The City’s claims not only exceed the limited scope of its authority to act, they also encroach
25 upon the Attorney General’s exclusive authority to address matters of statewide concern. The
26 Attorney General, Nevada’s Chief Legal Officer, “*shall be* the legal adviser[] on all state matters
27 arising in the Executive Department of the State Government.” NRS 228.110 (emphasis added).
28 The Attorney General has already brought suit concerning this same subject matter—even naming

certain of the same defendants—seeking recovery of statewide damages allegedly caused by the opioid abuse crisis, *State v. Purdue Pharma L.P.*, Case No. A-18-1774437-B, and is reportedly preparing to file yet another lawsuit that could result in even greater overlap with this litigation.⁴ Allowing individual cities to bring individual suits aimed at statewide matters would not only result in wasteful and duplicative litigation (and risk inconsistent results) but would also usurp the Attorney General’s exclusive authority and impermissibly seek to regulate a matter of statewide concern on a city-by-city basis. *See, e.g.*, NRS 228.170 (the attorney general “shall commence [an] action” when in his or her opinion “it is necessary” “to protect and secure the interest of the State”); NRS 228.117(2), (3) (giving attorney general supervisory powers over all district attorneys of the State and authority to take “exclusive” charge of and conduct any prosecution when in his or her opinion it is necessary).

II. THE CITY’S CLAIMS FOR RECOUPMENT OF GOVERNMENT EXPENDITURES ARE BARRED BY THE MUNICIPAL COST RECOVERY RULE

The City’s claims for “recoupment of governmental costs” (FAC ¶ 192) fail under the municipal cost recovery rule. That rule, also known as the free public services doctrine, provides that public expenditures made in the performance of governmental functions are not recoverable. In the absence of an express statutory grant allowing such recovery, “the cost of public services for protection from . . . safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service.” *Flagstaff v. Atchison, Topeka & Santa Fe Ry. Co.*, 719 F.2d 322, 323 (9th Cir. 1983); *see also Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099 (Ill. 2004). Although Nevada courts have yet to address the doctrine, well-established Nevada legal principles like the firefighter’s rule—which precludes firefighters from recovering for certain injuries caused by a third party’s negligence in the performance of their official duties—support adoption of the doctrine. *See Moody v. Manny’s Auto Repair*, 110 Nev. 320, 871 P.2d 935 (1994)

⁴ *See* <https://www.reviewjournal.com/news/politics-and-government/nevada/nevada-ag-gets-ok-to-hire-law-firm-to-sue-opioid-makers-1586173/>.

(discussing Nevada’s Firefighter’s Rule); *Steelman v. Lind*, 97 Nev. 425, 428, 634 P.2d 666 (1981) (same).

Numerous states preclude government entities from suing to recover public service costs.⁵ The rule reflects principles of separation of powers and limited government. “[S]tate legislatures establish local governments to provide core services for the public and pay for these services by spreading the costs to all citizens through taxation.” *Walker Cty.*, 643 S.E.2d at 327 (quotations omitted). “[T]he question of whether the costs of providing the public service should be spread among all taxpayers or reallocated in some other manner necessarily implicates fiscal policy, and, therefore, falls within the special purview of the legislature, not [the courts].” *Id.* at 328.

The City seeks to hold the Manufacturer Defendants liable for various governmental costs (e.g., FAC ¶¶ 40, 192, 194) and asks the Court to require them to pay for the municipal costs of addressing *other* individuals’ criminal conduct (*see id.* ¶ 194 (seeking recovery for “prosecution, corrections and other services”)). That novel liability theory is contrary to law. *See Baker v. Smith & Wesson Corp.*, 2002 WL 31741522, at *5 (Del. Super. Ct. Nov. 27, 2002) (“[T]here remains an area where the people as a whole absorb the cost of such services—for example, the prevention and detection of crime. No one expects the rendering of a bill (other than a tax bill) if a policeman apprehends a thief.” (internal quotation marks omitted)).

Nor can the City cast those alleged governmental costs as damages for “public nuisance.” The reason is straightforward: “If such an exception were recognized, it would be the exception that swallows the rule, since many expenditures for public services could be re-characterized by skillful litigants as expenses incurred in abating a public nuisance.” *Walker Cty.*, 643 S.E.2d at 328. Such a “murky” and “ambiguous” exception would open “the litigation floodgates,” with public entities

⁵ *See, e.g., District of Columbia v. Air Fla., Inc.*, 750 F.2d 1077, 1080-81 (D.C. Cir. 1984); *City of Flagstaff*, 719 F.2d at 323-24; *State v. Black Hills Power, Inc.*, 354 P.3d 83, 85-87 (Wyo. 2015); *Town of Freetown v. New Bedford Wholesale Tire, Inc.*, 423 N.E.2d 997, 997-98 (Mass. 1981); *Walker Cty. v. Tri-State Crematory*, 643 S.E.2d 324, 327-28 (Ga. App. 2007); *Penelas v. Arms Tech., Inc.*, 1999 WL 1204353, at *2 (Fla. Cir. Ct. Dec. 13, 1999); *Bd. of Supervisors of Fairfax Cty. v. U.S. Home Corp.*, 1989 WL 646518, at *1-2 (Va. Cir. Ct. Aug. 14, 1989).

bringing suit for anything with even a remote impact on their budget. *Id.* at 328-29; *see also, e.g., Bd. of Supers. of Fairfax Cnty.*, 1989 WL 646518, at *2.

III. THE FAC SUFFERS FROM MULTIPLE PLEADING FAILURES

A. The FAC Is Replete With Improper Group Pleading

The FAC fails because it is permeated with undifferentiated allegations against “Defendants” generally. *See generally* FAC ¶¶ 89-308. There are 30 named defendants in this action, and the City complains of alleged conduct that spans decades (*e.g., id.* ¶¶ 7-8, 152), yet the City fails to differentiate between the Defendants, depriving Defendants of the ability to meaningfully defend themselves.

Courts consistently bar such group pleading, and this Court should do so here. *See Volcano Developers LLC v. Bonneville Mort.*, 2:11-cv-504-GMN-PAL, 2012 WL 28838, at *5 (D. Nev. Jan. 4, 2012) (granting motion to dismiss where plaintiffs “consistently fail to meaningfully distinguish between the parties in their factual allegations[,]” because “it is unreasonable for Plaintiffs to expect Defendants or this Court to guess which facts apply to which parties”); *McHenry v. Renne*, 84 F.3d 1172, 1174-75 (9th Cir. 1996) (dismissal proper where complaint failed to provide “any specification of which of the twenty named defendants or John Does is liable for which of the wrongs” and affirming district court’s conclusion that “[g]iven the number and diversity of named defendants and the breadth of allegations, claims which vaguely refer to ‘defendants’ . . . will not suffice”); *Boyer v. Becerra*, 2018 WL 2041995, at *7 (N.D. Cal. Apr. 30, 2018) (“Courts consistently conclude that a complaint which lumps together multiple defendants in one broad allegation fails to satisfy the notice requirement of Rule 8.” (alterations omitted)); *Tatone v. Suntrust Mortg., Inc.*, 2012 WL 763581, at *9 (D. Minn. Mar. 8, 2012) (“A complaint which lumps all defendants together and does not sufficiently allege who did what to whom, fails to state a claim for relief because it does not provide fair notice of the grounds for the claims made against a particular defendant.”); *Kelley v. Rambus, Inc.*, 2007 WL 3022544, at *1 (N.D. Cal. Oct. 15, 2007) (dismissing complaint where, in essence, it

1 “appear[ed] to be a statement that wrongdoing occurred, that all Defendants somehow were involved,
2 and that Plaintiffs therefore are entitled to damages”).⁶

3 **B. The City Fails to Plead Its Fraud Allegations With Sufficient Particularity**

4 As of March 1, NRCP 9(b) is identical to Fed. R. Civ. P. 9(b). The rule requires a plaintiff
5 to “state with particularity the circumstances constituting fraud.” NRCP 9(b); *see Rocker v. KPMG*
6 *LLP*, 122 Nev. 1185, 1192, 148 P.3d 703, 707 (2006), *abrogated on other grounds by Buzz Stew,*
7 *LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). Under this
8 heightened pleading standard, “[t]he circumstances that must be detailed include averments to the
9 time, the place, the identity of the parties involved, and the nature of the fraud.” *Brown v. Kellar*, 97
10 Nev. 582, 583-84, 636 P.2d 874 (1981).

11 This heightened pleading standard applies regardless of whether a claim requires proof of
12 fraud as an element. Even “where fraud is not a necessary element of a claim,” if a plaintiff “allege[s]
13 a unified course of fraudulent conduct and rel[ies] entirely on that course of conduct as the basis of
14 a claim,” then “the claim is said to be ‘grounded in fraud’ . . . and the pleading of that claim as a
15 whole must satisfy the particularity requirement of [federal] Rule 9(b).” *Vess v. Ciba-Geigy Corp.*
16 *USA*, 317 F.3d 1097, 1103-04 (9th Cir. 2003); *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th
17 Cir. 2009) (same); *accord In re Anchor Gaming Sec. Litig.*, 33 F. Supp. 2d 889, 893 (D. Nev. 1999)
18 (“[D]espite Plaintiffs’ careful attempt to avoid use of the term ‘fraud,’ the . . . Complaint nonetheless
19 clearly sounds in fraud” and “Defendants are entitled to the protections of [federal] Rule 9(b).”
20 (emphasis omitted)).

21 No matter the legal label the City attaches to its causes of action, all of the City’s claims
22 against the Manufacturer Defendants sound in fraud and thus its allegations of fraud must meet the
23 particularity standard. The City alleges that the Manufacturer Defendants used “deceptive means[]
24 and one of the biggest pharmaceutical marketing campaigns in history” to “carefully engineer[] . . .
25

26 ⁶ NRCP 8(a), which requires a “short and plain statement of the claim showing that the pleader
27 is entitled to relief,” is identical to Fed. R. Civ. P. 8(a)(2). “Federal cases interpreting the Federal
28 Rules of Civil Procedure ‘are strong persuasive authority[] because the Nevada Rules of Civil
Procedure are based in large part upon their federal counterparts.’” *Executive Mgmt. Ltd. v. Ticor*
Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations omitted).

1 the culture of prescribing opioids by falsely portraying both the risks of addiction and abuse and the
2 safety and benefits of long-term use.” FAC ¶ 8; *see also id.* ¶ 131 (“To convince prescribing
3 physicians and prospective patients that opioids are safe, [Manufacturer] Defendants deceptively
4 concealed the risks of long-term opioid use . . . through a series of misrepresentations.”). These
5 express allegations of fraud must be “state[d] with particularity[.]” NRCP 9(b). The City cannot
6 circumvent this requirement by pleading causes of action (like negligence) that do not require proof
7 of fraud. *Vess*, 317 F.3d at 1103-04; *Kearns*, 567 F.3d at 1125.

8 The FAC falls far short of satisfying the heightened pleading standard of NRCP 9(b). Despite
9 more than 300 paragraphs of general and conclusory assertions that the Manufacturer Defendants
10 engaged in a supposedly fraudulent campaign about the safety and efficacy of opioid medications,
11 the City has not pleaded any facts showing false or misleading marketing made anywhere in the City
12 as to any Manufacturer Defendant—much less with the requisite particularity. *Cf.* FAC ¶¶ 106-20
13 (no particularized details about allegedly misleading marketing scheme). For instance, the City does
14 not allege:

- 15 • *who* made and *who* received any alleged false statements or omissions in the City,
16 including any particular prescriber who purportedly prescribed any medically
inappropriate opioid;
- 17 • *what* supposedly false statements or omissions each (or any) Manufacturer Defendant
18 made to the City or to any prescriber in it;
- 19 • *where* or *when* any false statement or omission was made by any Manufacturer
Defendant; and
- 20 • *how* any false statement or omission by any Manufacturer Defendant affected any
21 prescription by a prescriber in the City, including why the unidentified prescriber(s)
22 prescribed the opioids in question, what conditions the opioids were prescribed to treat,
or whether the patient received a benefit from that prescription.

23 Instead, the City simply makes a series of conclusory assertions of false marketing by the
24 Manufacturer Defendants, as a whole, unconnected to any prescription, prescriber, or injury
25 anywhere in the City. The absence of these fundamental factual details warrants dismissal. *See*
26 NRCP 9(b); *In re Amerco Derivative Litig.*, 127 Nev. 196, 223, 252 P.3d 681, 700 (2011) (noting the
27 heightened pleading requirement of NRCP 9(b) for fraud claims); *see also Chicago v. Purdue*
28 *Pharma L.P.*, 2015 WL 2208423, at *14 (N.D. Ill. May 8, 2015) (dismissing similar fraud-based

claims where city failed to allege “the identities of doctors who, as a result of one or more of defendants’ alleged misrepresentations, prescribed opioids for chronic pain to a City-insured patient or worker’s compensation recipient whose claim for that prescription the City paid, or any other details about such claims”); *Chicago v. Purdue Pharma L.P.*, 211 F. Supp. 3d 1058, 1080 (N.D. Ill. 2016) (dismissing subsequent amended complaint for similar reasons); *Davenport v. Homecomings Financial, LLC*, 2014 WL 1318964, at *3 (March 31, 2014) (“Rather than identifying the time, place, and circumstances of Homecomings Financial’s alleged deceptions, [plaintiff] lumped Homecomings Financial together with the other defendants and baldly declared that it defrauded him. These conclusory averments do not satisfy the requirements of NRCP 9(b).”); *Kenny v. Trade Show Fabrications West, Inc.*, 2016 WL 697110, at *4 (D. Nev. Feb. 18, 2016) (dismissing claims for failure to satisfy federal Rule 9(b) where “[t]he complaint groups multiple defendants together and fails to detail which defendants made which fraudulent statements and what statements were made.”).

To the extent the City’s theory is that the Manufacturer Defendants improperly influenced prescribers, the City must allege facts detailing each of the following: (i) a prescriber received an alleged misrepresentation from a Manufacturer Defendant; (ii) in reliance on the alleged misrepresentation, (iii) the prescriber wrote a prescription for a specific opioid medication to treat a patient for chronic pain; (iv) the prescriber’s reliance was reasonable; (v) the prescription was ineffective or harmed the patient; and (vi) the City paid for the prescription. And to the extent the City’s theory is that the Manufacturer Defendants improperly influenced the City, the City must allege facts detailing each of the following: (i) a City health plan agent received an alleged misrepresentation from a Manufacturer Defendant; (ii) a prescriber wrote a prescription for a specific opioid medication to treat a patient for chronic pain; (iii) the prescription was ineffective or harmed the patient; (iv) in reliance on the alleged misrepresentation, (v) the City health plan agent approved the reimbursement of the prescription; and (vi) the City paid for the prescription. The FAC fails to plead any of these facts as to even a single alleged misrepresentation by a single Manufacturer Defendant. *Davenport v. GMAC Mortg.*, 2013 WL 5437119, at *3 (September 25, 2013) (quoting *Swartz v. KMPG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007) (discussing FRCP 9(b))). This failure demands dismissal.

IV. THE STATUTORY PUBLIC NUISANCE CLAIM FAILS (COUNT I)

A. The City Cannot Bring A Criminal Statutory Public Nuisance Claim

As an initial matter, the City’s civil claim for statutory public nuisance fails because NRS 202 *et. seq.* is a *criminal* statute—it does not create a cause of action for *civil* liability. The statute, which is part of “Title 15. Crimes and Punishments” of the Nevada Revised Statutes, states that “[a] public nuisance is a crime against the order and economy of the State[,]” and a defendant convicted of such a crime “shall be guilty of a misdemeanor.” NRS 202.450 and 202.470. While the statute does allow for abatement and civil penalties, they are only available as ancillary relief in “any proceeding for a violation of NRS 202.470”—that is, a criminal proceeding for a misdemeanor conviction. NRS 202.480.

The City cites no authority affording it a right to bring a civil action under a criminal statute. Indeed, “other than the criminal public nuisance statutes. . . , the only other nuisance cause of action recognized under Nevada law . . . is a civil cause of action for *private* nuisance [under] N.R.S. § 40.140.” *Coughlin v. Tailhook Ass’n, Inc.*, 818 F. Supp. 1366, 1372 (D. Nev. 1993) (holding NRS 202.450 is a criminal statute and does not create a civil cause of action for statutory public nuisance), *aff’d sub nom.*, 112 F.3d 1052 (9th Cir. 1997) (emphasis added). The City has not alleged a nuisance under NRS 40.140. Accordingly, the City’s statutory public nuisance claim fails as a matter of law.

B. The City Cannot Recover The Damages It Seeks

Even if NRS 202.450 provided for a civil cause of action for statutory public nuisance (it does not), the remedies the City seeks are not permitted under the statute. The City seeks, in addition to abatement of the alleged nuisance, to recover “compensatory damages, and punitive damages . . . attorney fees and costs, and pre- and post-judgment interest.”⁷ FAC ¶ 198. However, NRS 202 *et seq.* states that a defendant may be found guilty of a misdemeanor and be ordered to abate the public nuisance and/or “pay a civil penalty of not less than \$500 but not more than \$5,000” as a result of

⁷ The City’s statutory public nuisance action is against all Defendants, yet the City appears to only seek damages “from the Defendant Wholesale Distributors.” FAC ¶ 198. To the extent the City seeks any damages from the Manufacturer Defendants, those are not recoverable under NRS 202.480.

1 violating the statute. NRS 202.470 and 202.480. It is well settled that where “the statute’s express
2 provision of such remedies reflects the Legislature’s intent to provide only those specified remedies,
3 [courts] decline to engraft any additional remedies therein.” *Stockmeier v. Nev. Dept. of Corrections*,
4 124 Nev. 313, 317, 183 P.3d 133, 136 (2008); *see also Builders Ass’n of N. Nev. v. Reno*, 105 Nev.
5 368, 370, 776 P.2d 1234, 1235 (1989) (“If a statute expressly provides a remedy, courts should be
6 cautious in reading other remedies into the statute.”); *Richardson Const., Inc. v. Clark Cty. Sch. Dist.*,
7 123 Nev. 61, 65, 156 P.3d 21, 24 (2007) (“Because N.R.S. 338.1381 provides this express remedy,
8 we will not read any additional remedies into the statute.”). Without any statutory authority expressly
9 allowing the City to recover the damages it seeks, the statutory public nuisance claim is limited only
10 to the criminal penalties available under Chapter 202.

11 The City’s claim for damages is also barred by the economic loss doctrine. This doctrine
12 “precludes recovery of purely economic damages in tort, whereby Plaintiff’s claims sounding in
13 negligence and nuisance do not state a claim for which relief may be granted pursuant to Rule
14 12(b)(5) of the Nevada Rules of Civil Procedure.” *Sedona Condo., Homeowners Ass’n, Inc. v. Eagle*
15 *Real Estate Grp.*, 2008 WL 8177908, at *3 (Nev. Dist. Ct. Clark Cty. June 30, 2008); *see also*
16 *Calloway v. City of Reno*, 116 Nev. 250, 261, 993 P.2d 1259, 1266 (2000), *overruled on other*
17 *grounds by Olson v. Richard*, 120 Nev. 240, 89 P.3d 31 (2004). The doctrine “expresses the policy
18 that the need for useful commercial economic activity and the desire to make injured plaintiffs whole
19 is best balanced by allowing tort recovery only to those plaintiffs who have suffered personal injury
20 or property damage.” *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66, 75, 206
21 P.3d 81, 87 (2009). In barring tort liability for “pure financial harm,” the economic loss doctrine
22 avoids “incentives that are perverse” and “provides incentives . . . to engage in economic activity.”
23 *Id.* In accordance with these objectives, courts have dismissed nuisance claims where only economic
24 damages were alleged. *See, e.g., Sedona Condo.*, 2008 WL 8177908, at *3.

25 Here, the City does not allege it suffered personal injury or property damage. FAC ¶ 41
26 (“[N]or does the City seek compensatory damages for death, physical injury to person, emotional
27 distress, or physical damage to property.”). Rather, the City contends the Manufacturer Defendants
28 are liable for a compendium of pure economic losses, *e.g.*, “significant expenses for police,

1 emergency, health, prosecution, corrections and other services” (FAC ¶ 194), “law enforcement
2 expenditures, costs related to opioid addiction treatment and overdose prevention, and related costs”
3 (*id.* ¶ 195), and “all prescription costs the City has incurred related to opioids due to Defendants’
4 wrongful conduct,” *id.* Prayer for Relief ¶ 5. These economic damages are barred by the economic
5 loss doctrine. *See Terracon Consultants*, 125 Nev. at 74 (“Although the plaintiffs suffered financial
6 injury, namely, lost wages, benefits, and union dues, they . . . suffered no accompanying personal
7 injuries . . . that would permit them to recover in tort.”). The City’s statutory public nuisance claim
8 should thus be dismissed.

9 **V. THE COMMON-LAW PUBLIC NUISANCE CLAIM FAILS (COUNT II)**

10 At common law, “[a] public nuisance is an unreasonable interference with a right common to
11 the general public.” Restatement (Second) of Torts § 821B(1);⁸ *see Fogg v. Nevada C. O. Ry. Co.*,
12 10 Nev. 429, 23 P. 840, 843 (1890) (describing public nuisances as “an obstruction to the exercise
13 and enjoyment of a right common to the public”). The City has failed to plead the Manufacturer
14 Defendants interfered with a public right. Giving effect to that essential requirement of the common-
15 law tort of public nuisance is critical, lest the cause of action morph into the limitless, standardless,
16 all-purpose claim for retroactive regulation by litigation that the City suggests.

17 **A. The City Fails To Plead Interference With A Public Right**

18 The misconduct alleged in the FAC implicates only private rights, not public rights. The
19 Restatement explains this key distinction: “A public right is one common to all members of the
20 general public. It is collective in nature and *not like* the individual right that everyone has not to be
21 assaulted or defamed *or defrauded or negligently injured*.” Restatement (Second) of Torts § 821B
22 cmt. g (emphasis added). “[T]here is no common law public right to a certain standard of medical
23
24
25

26 ⁸ Courts applying Nevada law look to the Restatement in analyzing nuisance issues. *See Land*
27 *Baron Invs., Inc. v. Bonnie Springs Family Ltd. P’ship*, 131 Nev. Ad. Op. 69, 356 P.3d 511, 521
28 (2015) (relying on Restatement (Second) of Torts § 929(1)(c) (1979) regarding private nuisance);
Layton v. Yankee Caithness Joint Venture, L.P., 774 F. Supp. 576, 577, 580 (D. Nev. 1991) (quoting
Restatement (Second) of Torts §§ 821F, 822 (1979) in analyzing private nuisance claim).

1 care” *State v. Lead Industries Ass’n, Inc.*, 951 A.2d 428, 454 (R.I. 2008) (citing Donald G.
2 Gifford, Public Nuisance as a Mass Products Liability Tort, 71 U. Cin. L. Rev. 741, 815 (2003)).

3 The rights at issue here fall squarely into the Restatement’s latter category—individual,
4 private rights—as the City’s allegations all involve individuals allegedly defrauded through
5 misinformation and sustaining personal injuries from the use of a legal medication. Individual
6 consumers’ rights not to be misled or harmed by a lawful product are well established to be only
7 *individual* rights—not public rights. The “allegation that defendants have interfered with the ‘health,
8 safety, peace, comfort or convenience of the residents of the [s]tate’ standing alone does not
9 constitute an allegation of interference with a public right.” *Lead Indus.*, 951 A.2d at 453; *see also*
10 *Beretta*, 821 N.E.2d at 1116 (“We conclude that there is no authority for the unprecedented expansion
11 of the concept of public rights to encompass the right asserted by plaintiffs.”).

12 Expanding the traditional concept of a public right to enable the City to regulate opioid
13 medications through this lawsuit would also disregard the time-honored limits of public nuisance.
14 As the Restatement instructs:

15 [I]f there has been established a comprehensive set of legislative acts or
16 administrative regulations governing the details of a particular kind of conduct,
17 the courts are slow to declare an activity to be a public nuisance if it complies
18 with the regulations. . . . The variety and complexity of a problem and of the
19 interests involved and the feeling that the particular decision should be a part of
an overall plan prepared with a knowledge of matters not presented to the court
and of interests not represented before it, may also promote judicial restraint
and a readiness to leave the question to an administrative agency if there is one
capable of handling it appropriately.

20 Restatement (Second) of Torts § 821B cmt. f.

21 Here, federal and state laws and agencies extensively regulate the manufacture, promotion,
22 sale, and use of prescription opioid medications. Not only has the FDA extensively regulated this
23 area, but Nevada has authorized the State Board of Pharmacy to “adopt regulations . . . relating to
24 the registration and control of the dispensing of controlled substances,” NRS 453.221(1), and
25 requires physicians to comply with those regulations, NRS 453.385(1). The state has also
26 unambiguously permitted prescriptions of controlled substances for legitimate medical purposes, as
27 determined by a physician. NRS 453.381(1); *see also* NRS 639.23913, 639.2391, and 639.23911.
28 The Court should not permit the City to override, through a common-law public nuisance claim, the

carefully balanced regulatory efforts of other state and federal agencies better suited to addressing the medical issues presented by the FAC. *Cf.* NRS 268.003(1)(c)(2) (cities have no authority to regulate “business activities that are subject to substantial regulation by a federal or state agency”). Indeed, the Restatement cautions that “[i]f a defendant’s conduct in interfering with a public right does not come within one of the traditional categories of the common law crime of public nuisance or is not prohibited by a legislative act, the court is acting without an established recognized standard.” Restatement (Second) of Torts § 821B cmt. e.

B. The City’s Novel Theory Impermissibly Collapses Product Liability and Public Nuisance Law

The City’s novel theory of common-law public nuisance finds no support in the case law and would collapse the critical distinction between nuisance and products liability law. Nevada’s common law on nuisance is concerned with the misuse of, or interference with, land and real property. *See, e.g., Jezowski v. City of Reno*, 71 Nev. 233, 240-41, 286 P.2d 257, 260 (1955) (“In an early case this court defined a nuisance and confined it to such unreasonable, unwarrantable or unlawful use by a person of his own property, or his improper, indecent or unlawful conduct which operates as an obstruction or injury to the right of another or to the public”). Public nuisance cases in Nevada have accordingly concerned the pollution of land or water, or the misuse of private real property. *See, e.g., Diamond X Ranch LLC v. Atlantic Richfield Co.*, 2017 WL 4349223 (D. Nev. Sept. 29, 2017) (environmental contamination from acid mine drainage); *Bliss v. Grayson*, 24 Nev. 422, 56 P. 231 (1899) (dams built in waterway); *Jezowski*, 71 Nev. at 234 (municipal dump).

No Nevada case embraces the City’s view that common-law public nuisance can encompass harm caused by the marketing and sale of allegedly harmful products. Rather, the City’s claim stands far outside this legal tradition and does not remotely resemble the types of public nuisance claims permitted by Nevada courts. Its claim has nothing to do with the misuse of or interference with property. Instead, the City alleges that it has suffered economic damages for alleged expenses (*e.g.*, healthcare costs, criminal justice) arising from the marketing and sale of lawful products and injuries to consumers from those products. *See* FAC ¶¶ 214, 220-22. In other words, the City’s claim sounds

1 entirely in products liability, not nuisance. These are distinct bodies of law, and courts across the
2 nation have held that they must remain that way.

3 Indeed, in another opioid-related action, a court recently dismissed at the pleading stage a
4 materially identical public nuisance claim brought by the State of Delaware. *See State ex rel.*
5 *Jennings v. Purdue Pharma L.P.*, 2019 WL 446382 (Del. Super. Ct. Feb. 4, 2019). Citing case law
6 from around the country, the court explained that “[t]here is a clear national trend to limit public
7 nuisance to land use” and that “[o]ther jurisdictions . . . have refused to allow products-based public
8 nuisance claims.” *Id.* at *12. Noting that “[t]he State ha[d] not alleged a product liability claim,”
9 had “only . . . alleged a public nuisance claim,” and “ha[d] failed to allege a public right with which
10 Defendants have interfered,” the court dismissed the claim, holding that, “[i]n Delaware, public
11 nuisance claims have not been recognized for products.” *Id.* at *12-13. Numerous other decisions
12 are in accord.⁹

13 **VI. THE NEGLIGENCE CLAIM FAILS (COUNT III)**

14 The City’s negligence claim fails because the Manufacturer Defendants do not owe the City
15 a duty to protect it from misconduct by third parties.

16 “An indispensable predicate to tort liability founded upon negligence is the existence of a
17 duty of care owed by the alleged wrongdoer to the person injured.” *Mangeris v. Gordon*, 94 Nev.
18 400, 402, 580 P.2d 481, 483 (1978) (citation omitted). Whether a duty of care exists and the scope
19 of any such duty are questions of law for the Court. *See Sparks v. Alpha Tau Omega Fraternity, Inc.*,
20 127 Nev. 287, 296, 255 P.3d 238, 244 (2011).

21
22 ⁹ *See Lead Indus.*, 951 A.2d at 456 (“[P]ublic nuisance and products liability are two distinct
23 causes of action, each with rational boundaries that are not intended to overlap.”); *Camden Cty. Bd.*
24 *of Chosen Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 540 (3d Cir. 2001) (“[T]he courts
25 have enforced the boundary between the well-developed body of product liability law and public
26 nuisance law.”); *Ashley Cty Ark. v. Pfizer, Inc.*, 552 F.3d 659, 671-72 (2009) (same); *City of Perry*
27 *v. Procter & Gamble Co.*, 188 F. Supp. 3d 276, 291 (S.D.N.Y. 2016) (“The parties do not cite, and
28 the Court is not aware of, any cases applying Iowa law that recognize a nuisance claim arising out of
the sale or use of a product as opposed to the use of property.”); *Detroit Bd. of Educ. v. Celotex*
Corp., 493 N.W.2d 513, 520 (Mich. Ct. App. 1992) (“The law of nuisance is fraught with conditional
rules and exceptions that turn on the facts of individual cases, and the cases almost universally
concern the use or condition of property, not products.”).

1 Under settled Nevada law, “no duty is owed to control the dangerous conduct of another or
2 to warn others of the dangerous conduct” absent a “special relationship” between the defendant and
3 either the third party or the injured party. *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev.
4 818, 825, 221 P.3d 1276, 1280 (2009); *see also Eagle Trace Spe Corp. v. Eighth Judicial Dist. In &*
5 *For The County of Clark*, 2018 WL 3373132, at *2 (Nev. Ct. App. June 29, 2018) (unpublished
6 disposition) (“It is well established that there is generally no duty to control a third party’s dangerous
7 conduct.”). Here, the City expressly alleges that various third parties—distributors, pharmacies,
8 doctors, and others—“played an integral role in the chain of opioid[]” distribution. FAC ¶¶ 68, 74;
9 *see also id.* ¶¶ 67, 73, 76-80, 152-64, 261-86. Yet the City fails to plead any facts establishing a
10 special relationship between the Manufacturer Defendants and either the City or third-party
11 wrongdoers. *See Sparks*, 127 Nev. at 296-97, 255 P.3d at 244-45 (special relationships giving rise
12 to a duty of care include “innkeeper-guest, teacher-student [and] employer-employee,”
13 “restauranteur and his patrons,” “landowner-invitee, businessman-patron,” “school district-pupil,
14 hospital-patient, and carrier-passenger”) (internal quotation marks and citations omitted). Nor can
15 the City allege that the Manufacturer Defendants had a special relationship of control over these
16 parties. *See id.*, 127 Nev. at 297, 255 P.3d at 244-45 (describing “the element of control” as “[a]
17 crucial factor in establishing liability in the context of special relationships”); *Eagle Trace Spe Corp.*,
18 2018 WL 3373132, at *2 (landowner’s duty to protect invitee does not extend to injuries “occurring
19 outside of their premises”). To the contrary, the City alleges that “Defendant Distributors and
20 Pharmacies are in *exclusive control* of the distribution management of opioids that [they] distributed
21 and/or sold in Reno.” FAC ¶ 280 (emphasis added).

22 Because the City has failed to allege any facts from which to infer that the Manufacturer
23 Defendants owed it a duty of care, the negligence claim should be dismissed.

24 Finally, the negligence claim independently fails under the economic loss rule for the reasons
25 set forth in § IV(B), *supra*. *See Terracon Consultants*, 125 Nev. at 74, 206 P.3d at 87 (“[U]nless
26 there is personal injury or property damage, a plaintiff may not recover in negligence for economic
27 losses.” (footnote omitted)).
28

VII. THE NEGLIGENT MISREPRESENTATION CLAIM FAILS (COUNT IV)

Nevada has adopted the definition of negligent misrepresentation in § 552 of the Restatement (Second):

One who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others *in their business transactions*, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nevada, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978) (quoting Restatement (Second) of Torts § 552(1) (1977)) (emphasis added).

The City's negligent misrepresentation claim suffers from a fatal pleading deficiency: the City does not and cannot allege that it engaged in a "business transaction" with any Manufacturer Defendant. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) ("[T]his tort only applies to business transactions" and is inapplicable to conduct that "does not fit squarely within a business or commercial transaction."). The City instead makes the unremarkable allegation that Manufacturer Defendants' marketing of opioid medications took place "[i]n the course and furtherance of [Manufacturer] Defendants' business." FAC ¶ 242. But that is not sufficient; the City must allege facts showing it engaged in a business transaction with the Manufacturer Defendants. The City's failure to make such allegations defeats the claim. *See Barmettler*, 114 Nev. at 449, 956 P.2d at 1387 (employer not liable for allegedly breaching a workplace confidentiality policy because disclosures about employee were not "squarely" related to a business or commercial transaction).

Moreover, "liability . . . is limited to loss suffered (a) by the person . . . for whose benefit and guidance [the defendant] intends to supply the information . . . and (b) through reliance upon it in a transaction that [the defendant] intends the information to influence." Restatement (Second) of Torts § 552(2). The FAC principally alleges information provided to physicians, not the City. *E.g.*, FAC ¶¶ 97, 244-45. And while the City makes the conclusory assertion that it "rightfully, reasonably, and justifiably rel[ied] upon Defendants' representations and/or concealments both directly and indirectly"—without identifying a single purported "representation and/or concealment" to which the City was exposed (*id.* ¶ 250)—the City nowhere alleges that the Manufacturer

1 Defendants intended the information for the “benefit and guidance” of the City. These deficiencies
2 further doom the City’s negligent misrepresentation claim.

3 Finally, the claim independently fails under the economic loss rule for the reasons set forth
4 in § IV(B), *supra*. See *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 396, 302 P.3d 1148,
5 1150 (2013) (applying economic loss rule to bar negligent misrepresentation claim).

6 **VIII. THE UNJUST ENRICHMENT CLAIM FAILS (COUNT VI)**

7 To state a claim for unjust enrichment, the City must allege: (i) the City conferred a benefit
8 on Manufacturer Defendants; (ii) Manufacturer Defendants appreciated such a benefit; and (iii) there
9 is “acceptance and retention by the [Manufacturer Defendants] of such benefit under circumstances
10 such that it would be inequitable for [them] to retain the benefit without payment of the value
11 thereof.” See *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381, 283 P.3d 250, 257
12 (2012). The City fails to plead each of these elements.

13 Absent from the FAC is any allegation the City conferred a benefit on Manufacturer
14 Defendants or even had a relationship with Manufacturer Defendants by which it *could* do so. The
15 FAC contains no factual allegation that the City paid Manufacturer Defendants for a single
16 prescription opioid medication. The FAC also fails to allege the City and Manufacturer Defendants
17 engaged in even a single transaction or had any commercial relationship. Instead, the City relies
18 upon conclusory assertions that it paid for “excessive” and “unnecessary” opioid prescriptions, *see*
19 FAC ¶¶ 35, 40(a), while failing to identify to whom such payments were made, or the extent to which
20 such prescriptions were supposedly excessive or unnecessary. Absent factual allegations, the unjust
21 enrichment claim should be dismissed. See *Zalk-Josephs Co. v. Wes Cargo, Inc.*, 77 Nev. 441, 447,
22 366 P.2d 339, 342 (1961) (dismissing unjust enrichment claim that “[did] not involve any dealings
23 of any nature whatsoever” between plaintiff and defendant).

24 Nor has the City alleged the circumstances surrounding a single prescription it purportedly
25 reimbursed, or that it has stopped reimbursing for opioid prescriptions even after filing this lawsuit.
26 There is thus no factual basis to infer that the City did not receive exactly what it paid for, and courts
27 routinely dismiss similar complaints for failure to allege such facts. See, e.g., *Rivera v. Wyeth-Ayerst*
28 *Labs.*, 283 F.3d 315, 320 (5th Cir. 2002) (plaintiff who “paid for an effective pain killer, and . . .

received just that” got “the benefit of her bargain” and could not allege any injury); *Travelers Indem. Co. v. Cephalon, Inc.*, 32 F. Supp. 3d 538, 555-56 (E.D. Penn. 2014) (dismissing claims against pharmaceutical manufacturer for failure to allege cognizable injury).

The FAC instead relies on conclusory assertions that the City’s expenditures “helped sustain Defendants’ businesses,” and paid for Defendants’ alleged externalities. FAC ¶ 289-90. These theories are unsupported by any adequately alleged *facts* and are far too conclusory and speculative to survive a motion to dismiss. *See Nika v. State*, 124 Nev. 1272, 1290, 198 P.3d 839, 852 (2008) (affirming dismissal of speculative claim).

While the City claims Manufacturer Defendants “made substantial profits” (*see* FAC ¶¶ 292-93), it does not claim that such profits “in equity and good conscience belong[] to another.” *Unionamerica Mortg. & Equity Trust v. McDonald*, 97 Nev. 201, 212, 626 P.2d 1272, 1273 (1981). Manufacturer Defendants manufactured FDA-approved prescription opioids and provided physicians who were authorized by law to prescribe them with information relating to the products’ risks and benefits. Physicians then determined whether prescription opioids were appropriate for their patients. There is nothing inequitable or unconscionable about Manufacturer Defendants retaining payment for medications physicians prescribed. The City’s unjust enrichment claim must be dismissed.

IX. THE CITY’S PUNITIVE DAMAGES CLAIM AND ITS REQUEST FOR PUNITIVE, SPECIAL, AND EXEMPLARY DAMAGES AGAINST THE MANUFACTURER DEFENDANTS FAIL (COUNT VII)

The City’s negligence, negligent misrepresentation, and unjust enrichment claims include requests for “punitive damages” and “special . . . damages.” FAC ¶¶ 238, 255, 301. The City also purports to assert a separate claim for punitive damages in Count VII. No matter how framed, the City’s request for punitive damages should be dismissed and/or stricken.

First, Nevada does not recognize a stand-alone cause of action for punitive damages. *Thompson v. Progressive Ins. Co.*, Case No. 57657, 2013 WL 210597, at *2 n.3 (Nev. 2013) (holding that appellant could not pursue a claim for punitive damages since it is not a separate or independent cause of action). This is consistent with other jurisdictions. *See, e.g.*, The Law of Torts § 483,

Punitive damages and their bases, Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick (2d ed.) (“No cause of action exists for punitive damages as such.”).

Second, the City’s requests for “punitive” or “special” damages linked to its claims for negligence (Count III) (FAC ¶ 238), negligent misrepresentation (Count IV) (*id.* ¶ 255), and unjust enrichment (Count VI) (*id.* ¶ 301) should be stricken because Nevada law does not permit punitive damages for the types of conduct the City alleges.¹⁰ As the Nevada Supreme Court has confirmed, “[a] plaintiff is never entitled to punitive damages as a matter of right.” *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 612, 5 P.3d 1043, 1052 (2000) (quoting *Dillard Dept. Stores v. Beckwith*, 115 Nev. 372, 380, 989 P.3d 882, 887 (1999) (quotation omitted)). Instead, it must prove by clear and convincing evidence that the defendant engaged in “oppression, fraud or malice, express or implied.” NRS 42.005(1). The statute requires intentional, wrongful conduct that evinces a culpable state of mind; negligence, even gross negligence or recklessness, is insufficient. *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 742-43, 192 P.3d 243, 254-55 (2008) (“Since its language plainly requires evidence that a defendant acted with a culpable state of mind, we conclude that N.R.S. 42.001(1) denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence.”); *Ford v. Marshall*, 2013 WL 1092060, at ¶¶ 32-34 (January 7, 2013) (“Negligence claims exist for breaches of duty due to carelessness; if a mental state to cause injury existed, then the claim would be an intentional tort...Therefore, negligence-based claims alleged cannot, as a matter of law, support the ‘culpable state of mind’ necessary for punitive damages.”). The City’s claims for negligence and negligent misrepresentation (failure to exercise reasonable care in communicating allegedly false statements) and unjust enrichment (inequitable retention of a conferred benefit under the circumstances) do not involve willful, intentional, or knowing indifferent conduct, and, therefore, cannot support a claim for punitive damages.

Finally, the City has failed to allege facts showing oppression, fraud, or malice—the required “culpable state of mind”—by any of the Manufacturer Defendants. Indeed, most of the Manufacturer

¹⁰ The public nuisance counts (Counts I and II) expressly seek punitive damages only from other defendants. *See, e.g.*, FAC ¶¶ 198, 225.

1 Defendants are not even specifically mentioned in the FAC beyond a cursory paragraph identifying
2 them as defendants, with no factual allegations about these defendants to explain what they allegedly
3 did that could even rise to the level of oppression, fraud, or malice under the statute.

4 Instead, the City merely parrots the statutory language without any factual support. *See, e.g.,*
5 FAC ¶¶ 234-35, 254-55, 303-04. These conclusory assertions are insufficient to support punitive
6 damages. *See Elliott v. Prescott Co., LLC*, 2016 WL 2930701, at *2-3 (D. Nev. May 17, 2016)
7 (dismissing punitive damages claim based on Nevada law because complaint that alleged defendants
8 “acted with conscious disregard of his safety or rights” relied on conclusory allegations and did not
9 include sufficient facts to establish the requisite state of mind); *Desert Palace, Inc. v. Ace Am. Ins.*
10 *Co.*, 2011 WL 810235, at *5 (D. Nev. Mar. 2, 2011) (dismissing punitive damages claim where the
11 allegations did “little more than restate the common law elements of oppression, fraud, or malice by
12 providing synonyms for the terms and providing no additional factual allegations”).

13 CONCLUSION

14 For the foregoing reasons, the FAC should be dismissed with prejudice as against the
15 Manufacturer Defendants.
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AFFIRMATION

The undersigned affirms that the preceding document does not contain personal information as described in WDCR 8.

DATED this 4th day of March, 2019.

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and that on this date, I served the within **MANUFACTURER DEFENDANTS' JOINT MOTION TO DISMISS FIRST AMENDED COMPLAINT** on the parties in said case by regular mail and electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 4, 2019.

/s/ Beau Nelson
 An employee of McDonald Carano LLP