

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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Apr 15 2023 02:50 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME 11

Robert T. Eglet, Esq.
Robert M. Adams, Esq.
Cassandra S.M. Cummings, Esq.
Richard K. Hy, Esq.
EGET ADAMS
400 S. 7th Street, 4th Floor
Las Vegas, NV 89101
Tel: (702) 450-5400
Fax: (702) 450-5451
Email: eservice@egletlaw.com

Bill Bradley, Esq.
Mark C. Wenzel, Esq.
**BRADLEY, DRENDEL &
JEANNEY**
6900 S. McCarren Blvd., Suite 2000
Reno, NV 89509
Tel: (775) 335-9999
Email: office@bdjlaw.com

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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 11** upon each of the parties by electronic service through the E-Flex rules of service.

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

ONE NEVADA AGREEMENT ON ALLOCATION OF OPIOID RECOVERIES

WHEREAS, the people of the State of Nevada and its communities have been harmed by the misfeasance, nonfeasance, and malfeasance of certain individuals and entities, including licit and illicit opioid distribution, that has created an opioid epidemic both nationally and within the State of Nevada;

WHEREAS, on January 24, 2019, the Honorable Steve Sisolak, Governor of the State of Nevada, in consultation with the Honorable Aaron D. Ford, Attorney General of the State of Nevada, entered a Declaration of Findings Pursuant to NRS 228.1111(1)(a), declaring that the State of Nevada is combating the opioid epidemic;

WHEREAS, the State of Nevada through its elected representatives and counsel, including the Honorable Aaron D. Ford, Attorney General of the State of Nevada, and certain Local Governments, through their elected representatives and counsel, are separately engaged in opioid-related litigation seeking to hold various entities and individuals accountable for the opioid epidemic in the State of Nevada based on their misconduct relating to the unlawful manufacture, marketing, promotion, distribution, and/or dispensing of prescription opioids;

WHEREAS, the State of Nevada and its Local Governments share a common desire to remediate and alleviate the impacts of the opioid epidemic throughout the State of Nevada;

THEREFORE, the State of Nevada and its Local Governments, desire, subject to formal approval effectuating this One Nevada Agreement on Allocation of Opioid Recoveries (“Agreement”) relating to the resolution or partial resolution of opioid-related litigation and the allocation and use of the proceeds of any Recoveries as described; and

NOW THEREFORE, the Parties agree and desire to be bound as follows:

A. Definitions

As used in this Agreement:

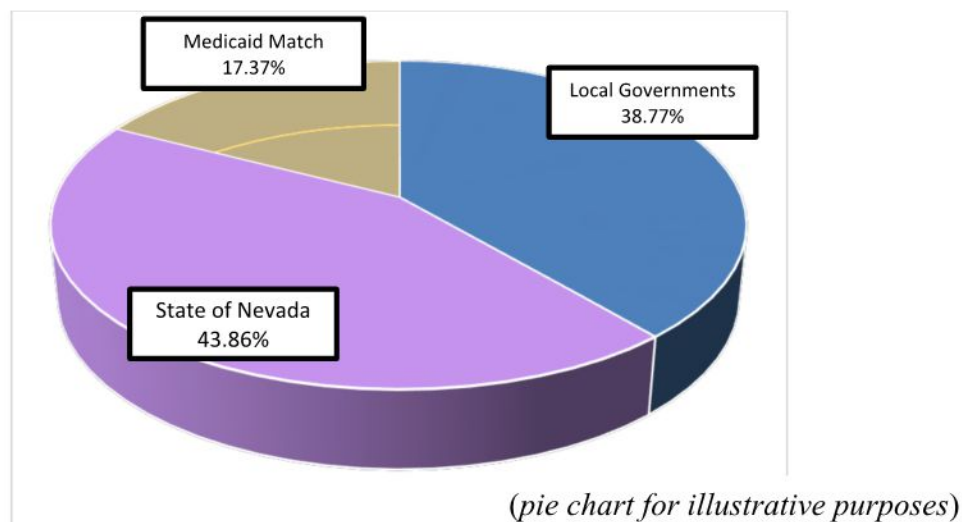
1. The "State" or "State of Nevada" shall mean the State of Nevada acting through its Attorney General.
2. "Local Governments" shall mean the Local Governments listed in **Exhibit A**, attached.
3. "Litigating Counties" shall mean the following Nevada Counties: Carson City, Churchill, Clark, Douglas, Esmeralda, Humboldt, Lincoln, Lyon, Mineral, Nye, Washoe, and White Pine;
4. "Non-Litigating Counties" shall mean the following Nevada Counties: Elko, Eureka, Lander, Pershing, and Storey;
5. "Litigating Cities and Districts" shall mean the Cities and Districts listed in **Exhibit B**, attached;
6. "Counsel" shall mean the contingency fee retained attorneys to the State of Nevada and each of the Litigating Counties and Litigating Cities and Districts for their respective opioid-related litigation.
7. "The Parties" shall mean the State of Nevada and the Local Governments.
8. "Defendant" or "Defendants" shall mean one or more entities and/or individuals responsible for the opioid epidemic in the State of Nevada based upon various theories and causes of action asserted in pending opioid-related litigation by the State of Nevada, the Litigating Counties, and the Litigating Cities and Districts as listed in **Exhibit C**, attached.
9. "Lead Litigator Costs" shall mean the costs incurred to date for opioid-related litigation by the State of Nevada, the Litigating Counties, and the Litigating Cities

and Districts against the Defendants of at the time of any Recovery. Costs do not include attorney fees or contingency fees for Counsel.

10. "Federal Government CMS Medicaid Costs" shall mean 22.52% of any Recovery after deduction of the Lead Litigator Costs that may be asserted, and only if determined to be recoverable, against the State of Nevada's Federal Government Centers for Medicaid Services costs for claims, otherwise commonly known as the federal share of Medicaid claims payments.
11. "Negotiating Committee" shall mean Counsel for the State of Nevada, the Nevada Attorney General or his designees as required by NRS chapter 228.1113, et seq., and Counsel for the Litigating Counties, and the Litigating Cities and Districts (collectively, "Members") in their respective opioid-related litigation.
12. "Recovery" or "Recoveries" shall mean monetary amounts obtained through the negotiated resolution of legal or equitable claims against any Defendant in any opioid-related litigation listed in **Exhibit C**, and shall include any Recoveries against any Defendant through bankruptcy proceedings related to the opioid-related litigation in **Exhibit C** to the extent the bankruptcy court allows for use of this Agreement to allocate Recoveries.
13. "Approved Purposes" shall mean only uses to remediate the harms, impact, and risks caused by the opioid epidemic to the State of Nevada and its residents, and are consistent with those uses required by Senate Bill 390 (SB 390) as enrolled by the 81st (2021) Nevada Legislative Session and signed into law by the Nevada Governor, or uses that are listed as an approved use for abatement purposes in any plan approved by a bankruptcy court that are not otherwise inconsistent with SB 390.

B. Allocation of Recoveries

1. With the exception of up to 8% for administrative costs, or unless otherwise limited by Court Order, all Recoveries must be used for Approved Purposes.
2. Any Recovery, after deduction of Lead Litigator Costs, unless otherwise limited by Court Order, and the Federal Government CMS Medicaid Costs, if and only if applicable, shall be divided into percentages and allocated within these percentages as follows:



- 1) **"State of Nevada Allocation"**: 43.86% to the State of Nevada;
- 2) **"Local Governments Allocation"**: 38.77% to the Local Governments to be allocated by percentage of claims data for the Local Governments as outlined in **Exhibit D**, attached; and
- 3) **"Medicaid Match Allocation"**: 17.37% representing what is referred to as the Medicaid Match which amount shall be allocated among the Counties as follows: **a)** 65% to Clark County, **b)** 14% to Washoe County, and **c)** 21% to the remaining Litigating and Non-Litigating Counties by population, as outlined in **Exhibit E**, attached.

3. Unless otherwise directed by court order, the State of Nevada shall receive and divide and allocate any Recoveries described in Paragraph 2.
4. The State of Nevada and Local Governments shall exercise due diligence to complete a release against any Defendant, if necessary, as a result of a Recovery pursuant to this Agreement.
5. The State of Nevada and Local Governments shall make every reasonable effort to coordinate any related press releases and/or press interaction concerning any settlement or other disposition under this Agreement.
6. The State of Nevada and Local Governments are, after deduction of Lead Litigator Costs unless otherwise limited by Court Order, and the Federal Government CMS Medicaid Costs, if and only if applicable, from any Recovery, each responsible for any remaining costs of that Party's litigation from that Party's share of the Recovery after allocation.
7. The State of Nevada and Local Governments are each responsible, unless otherwise directed by court order, for payment of any attorney fees for the use of their Counsel in maintaining their respective opioid-related litigation from their share of the Recoveries after allocation pursuant to the terms of their respective contingency fee agreements. However, in the event Counsel is eligible to apply for attorney fees or costs from a national fund created by one or more Defendants in connection with a Recovery, Counsel will refund any amount recovered from said national fund proportionate to the amount of attorney fees paid under each respective contingency fee agreement.
8. Additionally, a fee adjustment of 25% shall be deducted from the share of each of the allocation amounts to the Non-Litigating Counties described in Paragraph 2 of

this Agreement. The total amount of the fee adjustment deducted pursuant to this paragraph shall then be allocated to the Litigating Counties by total percentage of claims data for those Litigating Counties as outlined in **Exhibit F**, attached.

9. In the event a Local Government merges, dissolves, ceases to exist, opioid-related litigation is dismissed with prejudice including the exhaustion of any and all appeals related to the Court's order of dismissal, or is excluded from a specific recovery for any reason, the allocation percentage for that Local Government shall be reallocated as follows:
 - a. If a Local Government excluded under this paragraph is a Litigating City or District, then that Litigating City or District's allocated share shall be added to the share of the County in which the Litigating City or District is located in addition to the County's allocated share.
 - b. If a Local Government excluded under this paragraph is a County, then that County's allocated share shall be added to the State's share minus the allocated shares of any Litigating City or District located within the excluded County that would otherwise be entitled to receive their shares.
10. Funds received by the State of Nevada or Local Governments, which are obtained from entities or individuals not listed on **Exhibit C**, or from sources unrelated to a Recovery, i.e., via grant, bequest, gift or the like, are excluded from this Agreement.
11. The State of Nevada's share of Recoveries, after deduction of any remaining costs and attorney fees, shall be deposited in the Fund for Resilient Nevada through Senate Bill 390 (2021).

12. Nothing in this Agreement alters or intends to alter or change the right of the State of Nevada or any Local Governments to pursue its own claims against any Defendant through that Parties' separate opioid-related litigation. Rather, the intent of this Agreement is to join all Parties to seek and negotiate binding global settlement or settlements and to obtain Recoveries with one or more Defendants in the State of Nevada or Local Governments opioid-related litigation for the benefit of all Parties to this Agreement.

C. Waiver of Conflict of Interest. Consistent with the intent of this Agreement, the Parties agree that there is no conflict of interest in Counsel representing the Parties to this Agreement, but to the extent Counsel's representation may constitute a conflict of interest, the Parties waive any potential conflict of interest.

D. Reporting. Accountability - Prior to July 1st of each year, or as otherwise required by any Court Order, each of the Local Governments shall provide information to the State, to the attention of Mark J. Krueger, Chief Deputy Attorney General at mkrueger@ag.nv.gov, about how they intend to expend, and how they did expend, their allocated shares of any Recovery/Recoveries to ensure such Recoveries are being used for Approved Purposes only. Local Governments shall respond and provide documents to any reasonable requests from the State for data or information about the use of the Recoveries, including Local Government or third-party programs, services, or infrastructure receiving the Recoveries.

E. Miscellaneous

1. **Construction.** With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the Parties are required to interpret or construe any such term or condition, no consideration shall

be given to the issue of which Party actually prepared, drafted or requested any term or condition thereof.

2. **Severability Clause.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.
3. **Entire Agreement.** This Agreement, contains the entire agreement between the Parties and supersedes and cancels all previous negotiations and agreements, if any.
4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of Nevada.
5. **Amendments.** Any and all amendments to this Agreement must be in writing which must be signed by all Parties and must be approved by their respective Commissions, Councils, or Boards.
6. **Signature in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. This Agreement and any amendments thereto, to the extent signed and delivered by means of a facsimile machine or electronic scan (including in the form of an Adobe Acrobat PDF file format), shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof.
7. **Legal Advice.** The Parties acknowledge that they have been advised to have this Agreement reviewed by their respective Deputy Attorney Generals, District Attorneys, and City Attorneys (collectively "Government Attorneys") and the

Government Attorneys have had the opportunity to participate in the negotiation of this Agreement.

F. Acknowledgment of Agreement and Binding Authority

This Agreement has been collaboratively drafted to maintain all individual claims and causes of action in each Parties' opioid-related litigations while allowing the State and its Local Governments to cooperate in exploring all possible means of obtaining a Recovery/Recoveries against the Defendants. This Agreement is jointly entered into by the State of Nevada and Local Governments, is approved by the Parties' respective Commissions, Councils, and Boards, and provides binding authority from each Party to the Agreement regarding the resolution through the Negotiating Committee and allocation of any Recovery. However, other than those settlements or other disposition in this Agreement, nothing in this Agreement binds any party to any specific outcome of each Parties' opioid-related litigation.

We, the undersigned, hereby agree to be bound by this Agreement, which shall have an effective date of August 9, 2021.

Executed this 12th day of August, 2021.

STATE OF NEVADA

By: 
NEVADA ATTORNEY GENERAL

Dated: 8/23/21

CHURCHILL COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

Government Attorneys have had the opportunity to participate in the negotiation of this Agreement.

F. Acknowledgment of Agreement and Binding Authority

This Agreement has been collaboratively drafted to maintain all individual claims and causes of action in each Parties' opioid-related litigations while allowing the State and its Local Governments to cooperate in exploring all possible means of obtaining a Recovery/Recoveries against the Defendants. This Agreement is jointly entered into by the State of Nevada and Local Governments, is approved by the Parties' respective Commissions, Councils, and Boards, and provides binding authority from each Party to the Agreement regarding the resolution through the Negotiating Committee and allocation of any Recovery. However, other than those settlements or other disposition in this Agreement, nothing in this Agreement binds any party to any specific outcome of each Parties' opioid-related litigation.

We, the undersigned, hereby agree to be bound by this Agreement, which shall have an effective date of August 9, 2021.

Executed this _____ day of _____, 2021.

STATE OF NEVADA

By: _____
NEVADA ATTORNEY GENERAL

Dated: _____

CHURCHILL COUNTY

By: 1626 [Signature]
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 7/21/21

CLARK COUNTY

By: *Nordyn Kerkpatrick* Dated: *August 3, 2021*
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

DOUGLAS COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ELKO COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ESMERALDA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

EUREKA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT


HUMBOLDT COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CLARK COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

DOUGLAS COUNTY

By:  Dated: 8/5/21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ELKO COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ESMERALDA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

EUREKA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

HUMBOLDT COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CLARK COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

DOUGLAS COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

ELKO COUNTY

By:  _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: August 4, 2021

ESMERALDA COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

EUREKA COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

HUMBOLDT COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CLARK COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

DOUGLAS COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

ELKO COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

ESMERALDA COUNTY

By:  _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8-24-21

EUREKA COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

HUMBOLDT COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CLARK COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

DOUGLAS COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ELKO COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ESMERALDA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

EUREKA COUNTY

By:  Dated: 8-6-2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

HUMBOLDT COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CLARK COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

DOUGLAS COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ELKO COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

ESMERALDA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

EUREKA COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

HUMBOLDT COUNTY

By: Ron Currie Dated: 8/9/21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LANDER COUNTY

By: 
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: August 12, 2021

LINCOLN COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

LYON COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

MINERAL COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

PERSHING COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

STOREY COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

LANDER COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LINCOLN COUNTY

By: Beverly Foster Dated: 08/02/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LYON COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

MINERAL COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

PERSHING COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

STOREY COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LANDER COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LINCOLN COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LYON COUNTY

By: *Vicki D. Keller* Dated: *8/5/2021*
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

MINERAL COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

PERSHING COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

STOREY COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LANDER COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT


LINCOLN COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LYON COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

MINERAL COUNTY

By:  _____ Dated: 8-4-21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

PERSHING COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

STOREY COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LANDER COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

LINCOLN COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

LYON COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

MINERAL COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

PERSHING COUNTY

By:  _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8/18/2021

STOREY COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

LANDER COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LINCOLN COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

LYON COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

MINERAL COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

PERSHING COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

STOREY COUNTY

By: _____ Dated: Aug 3, 2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WASHOE COUNTY

By: 
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 7/27/21

WHITE PINE COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

BOULDER CITY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

NYE COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CARSON CITY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF HENDERSON

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

WASHOE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WHITE PINE COUNTY

By: Richard Hume Dated: 8-16-21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

BOULDER CITY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NYE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CARSON CITY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF HENDERSON

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WASHOE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WHITE PINE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

BOULDER CITY

E-SIGNED by Kiernan McManus
on 2021-08-23 23:02:43 GMT
By: _____ Dated: August 23, 2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NYE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CARSON CITY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF HENDERSON

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WASHOE COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

WHITE PINE COUNTY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

BOULDER CITY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

NYE COUNTY

By: Frank Cenbury
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8/3/2021

CARSON CITY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF HENDERSON

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

WASHOE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WHITE PINE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

BOULDER CITY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NYE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CARSON CITY

By: Don Bagwell Mayor Dated: 8/5/21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF HENDERSON

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WASHOE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

WHITE PINE COUNTY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

BOULDER CITY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NYE COUNTY

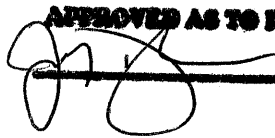
By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CARSON CITY


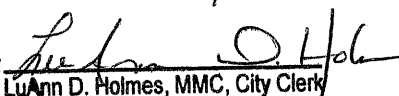
By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF HENDERSON

By:  _____ Dated: 8/3/21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

APPROVED AS TO FORM
 7/21/2021
Date

CITY OF LAS VEGAS

By:  Dated: 7/21/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT
Attest By: 
LuAnn D. Holmes, MMC, City Clerk

CITY OF MESQUITE

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF NORTH LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF RENO

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF WEST WENDOVER

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF FERNLEY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF LAS VEGAS

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF MESQUITE

By: Alley S. Thomas
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8-11-2021

CITY OF NORTH LAS VEGAS

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF RENO

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF WEST WENDOVER

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF FERNLEY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF LAS VEGAS


By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF MESQUITE


By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF NORTH LAS VEGAS

By:  _____ Dated: 8/4/2021
REPRESENTATIVE FOR
THE LOCAL GOVERNMENT
Ryann Juden, City Manager

Attest:

Marie E. Pursell, CMC
Acting City Clerk

Approved as to form:



City Attorney

CITY OF RENO

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF WEST WENDOVER

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF FERNLEY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF MESQUITE

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF NORTH LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF RENO

By:  _____ Dated: 8/10/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF WEST WENDOVER

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF FERNLEY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF HENDERSON

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF MESQUITE

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF NORTH LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF RENO

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF WEST WENDOVER

By:  _____ Dated: 7/20/21
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF MESQUITE

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF NORTH LAS VEGAS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF RENO

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF WEST WENDOVER

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF FERNLEY

By:  _____ Dated: 8/4/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF ELY

By: 
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8/12/21

CITY OF SPARKS

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

NORTHERN LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CENTRAL LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF ELY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF SPARKS

By:  _____ Dated: 8/10/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NORTHERN LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CENTRAL LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

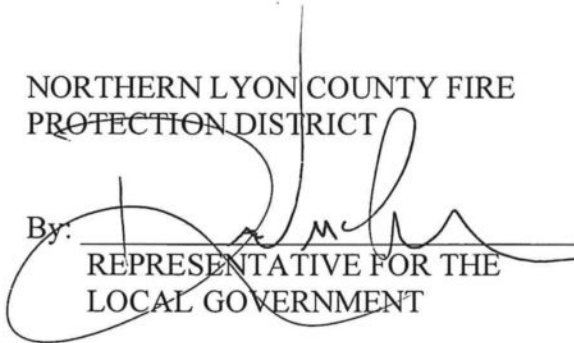
CITY OF ELY

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF SPARKS

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

NORTHERN LYON COUNTY FIRE
PROTECTION DISTRICT

By:  _____ Dated: 9/5/2021
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CENTRAL LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____ Dated: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

CITY OF ELY

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CITY OF SPARKS

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

NORTHERN LYON COUNTY FIRE
PROTECTION DISTRICT

By: _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: _____

CENTRAL LYON COUNTY FIRE
PROTECTION DISTRICT

By:  _____
REPRESENTATIVE FOR THE
LOCAL GOVERNMENT

Dated: 8/12/21

EXHIBIT A

LOCAL GOVERNMENT	COURT	CASE NO.
Carson City	1 st Judicial District Court	20TRT00471B
Clark County	8 th Judicial District Court	A-17-765828-C <i>Transferred to MDL</i>
Churchill County	10 th Judicial District Court	20-10DC-0805
Douglas County	9 th Judicial District Court	2020CV00139
Elko County		
Esmeralda County	5 th Judicial District Court	CV20-5117
Eureka County		
Humboldt County	6 th Judicial District Court	CV0022306
Lander County		
Lincoln County	7 th Judicial District Court	CV0702620
Lyon County	3 rd Judicial District Court	20-CV-00795
Nye County	MDL	1:18-op-46238-DAP
Northern Lyon County Fire Protection District	3 rd Judicial District Court	20-CV-00795
Central Lyon County Fire Protection District	3 rd Judicial District Court	20-CV-00795
Mineral County	11 th Judicial District Court	21CV-TT12-2020-0104
Pershing County		
Storey County		
Washoe County	2 nd Judicial District Court	CV20-01142
White Pine County	7 th Judicial District Court	CV-2007076
City of West Wendover	4 th Judicial District Court	DC-CV-20-70

EXHIBIT A

City of Fernley	3 rd Judicial District Court	20-CV-00796
City of Sparks	2 nd Judicial District Court	CV20-01152
City of Ely	7 th Judicial District Court	CV-2007077
City of Las Vegas	8 th Judicial District Court	A-19-800697-B
City of North Las Vegas	8 th Judicial District Court	A-19-800699-B
City of Henderson	8 th Judicial District Court	A-19-800695-B
City of Reno	2 nd Judicial District Court	CV18-01895
City of Mesquite	U.S District Court, District of Nevada	2:19-cv-01058 <i>Transferred to MDL</i>
Boulder City	U.S District Court, District of Nevada	2:19-cv-01057 <i>Transferred to MDL</i>

EXHIBIT B

LITIGATING CITIES AND DISTRICTS	COURT	CASE NO.
City of West Wendover	4 th Judicial District Court	DC-CV-20-70
City of Fernley	3 rd Judicial District Court	20-CV-00796
City of Sparks	2 nd Judicial District Court	CV20-01152
City of Ely	7 th Judicial District Court	CV-2007077
City of Las Vegas	8 th Judicial District Court	A-19-800697-B
City of North Las Vegas	8 th Judicial District Court	A-19-800699-B
City of Henderson	8 th Judicial District Court	A-19-800695-B
City of Reno	2 nd Judicial District Court	CV18-01895
City of Mesquite	U.S District Court, District of Nevada	2:19-cv-01058 <i>Transferred to MDL</i>
Boulder City	U.S District Court, District of Nevada	2:19-cv-01057 <i>Transferred to MDL</i>
Northern Lyon County Fire Protection District	3 rd Judicial District Court	20-CV-00795
Central Lyon County Fire Protection District	3 rd Judicial District Court	20-CV-00795

EXHIBIT C

DEFENDANTS
A&H KATSCHKE LTD dba MEADOW VALLEY PHARMACY
ACTAVIS INC f/k/a WATSON PHARMACEUTICALS INC
ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC
ACTAVIS PHARMA, INC.
ACTAVIS, LLC
ADAM KATSCHKE
AIDA B MAXAM
ALEC BURLAKOFF
ALEJANDRO JIMINEZ INCERA
ALLERGAN FINANCE, LLC (fka ACTAVIS, INC. fka WATSON PHARMACEUTICALS, INC.)
ALLERGAN INC
ALLERGAN PLC f/k/a ACTAVIS PLC
ALLERGAN USA INC
AMERICAN DRUG STORES
AMERISOURCEBERGEN DRUG CORPORATION
ANDA PHARMACEUTICALS, INC.
ANDA, INC
BAILY STORES LLC dba PROFESSIONAL PHARMACY
BEACON COMPANY
BEVERLY SACKLER
BOB TUCKER, INC. dba BOB TUCKER'S UNITED DRUG
C&R PHARMACY d/b/a KEN'S PHARMACY f/k/a LAM'S PHARMACY
CARDINAL HEALTH 105, INC.
CARDINAL HEALTH 108 LLC D/B/A METRO MEDICAL SUPPLY
CARDINAL HEALTH 108, LLC
CARDINAL HEALTH 110, LLC
CARDINAL HEALTH 200, LLC
CARDINAL HEALTH 414, LLC
CARDINAL HEALTH 6 INC
CARDINAL HEALTH INC.
CARDINAL HEALTH PHARMACY SERVICES, LLC
CARDINAL HEALTH TECHNOLOGIES
CARDIOLOGY PC
CEPHALON, INC.
CVS HEALTH CORP.
CVS INDIANA
CVS PHARMACY, INC.

EXHIBIT C

CVS RX SERVICES INC
CVS TN DISTRIBUTION LLC
DAVID A. SACKLER
DEPOMED, INC
DEREK BRADDIX, APRN
DEVENDRA I. PATEL
DEVENDRA I. PATEL
ECONOMY DRUG
ECONOMY DRUG INC
ENDO HEALTH SOLUTIONS INC.
ENDO INTERNATIONAL PLC
ENDO PHARMACEUTICALS, INC.
GARY C RIDENOUR A PROFESSIONAL CORPORATION dba HIGH DESERT CLINIC
GARY C RIDENOUR dba HIGH DESERT CLINIC
GARY C. RIDENOUR MD
HOLPER OUT-PATIENTS MEDICAL CENTER, LTD
HORACE PAUL GUERRA IV
ILENE SACKLER LEFCOURT
INCERA LLC
INCERA-IUVENTUS MEDICAL GROUP PC
INSYS THERAPEUTICS, INC.
JANSSEN PHARMACEUTICA INC. n/k/a JANSSEN PHARMACEUTICALS, INC.
JANSSEN PHARMACEUTICALS, INC.
JOHN KAPOOR
JOHNSON & JOHNSON
JOLLY'S DRUG STORE LLC dba JOLLY'S DRUG STORE
JONATHAN D. SACKLER
JOSEPH A ROWAN
KATHE A. SACKLER
KROGER LIMITED PARTNERSHIP II D/B/A PEYTON'S NORTHERN
LONGS DRUG STORE CALIFORNIA LLC
MALLINCKRODT BRAND PHARMACEUTICALS INC
MALLINCKRODT LLC
MALLINCKRODT PLC
MALLINCKRODT US HOLDINGS, INC.
MASTERS PHARMACEUTICAL, LLC. f/k/a MASTERS PHARMACEUTICAL INC
MCKESSON CORPORATION
MICHAEL BABICH

EXHIBIT C

MORTIMER D.A. SACKLER
NORAMCO, INC.
OMNICARE DISTRIBUTION CENTER LLC
ORTHOMCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC
P.F. LABORATORIES, INC.
PAR PHARMACEUTICAL COMPANIES.
PAR PHARMACEUTICAL, INC.
PATEL NORTH EASTERN NEVADA
PATEL NORTHEASTERN NEVADA CARDIOLOGY PC
PLP ASSOCIATES HOLDINGS L.P.
PURDUE HOLDINGS, L.P.
PURDUE PHARMA L.P.
PURDUE PHARMA, INC.
PURDUE PHARMACEUTICALS LP
RAND FAMILY CARE LLC
REX DRUG CO. dba REX DRUG
RICHARD M SIMON
RICHARD S. SACKLER
RITE AID CORPORATION
RITE AID OF MARYLAND, INC. D/B/A RITE AID MID-ATLANTIC CUSTOMER SUPPORT CENTER, INC.
ROBERT D. HARVEY
ROBERT GENE RAND
ROSEBAY MEDICAL COMPANY L.P.
SAFEWAY INC. dba SAFEWAY PHARMACY #2255
SCOLARI'S FOOD & DRUG COMPANY aka SCOLARI'S PHARMACY #23
SCOLARI'S WAREHOUSE MARKETS, INC.
SHOUPING LI
SMITH'S FOOD & DRUG CENTERS, INC. D/B/A PEYTON'S PHOENIX
SPECGX LLC
STEVEN A HOLPER MD PROFESSIONAL CORPORATION;
STEVEN A. HOLPER
SUNRISE LEE
TEVA PHARMACEUTICAL INDUSTRIES, LTD.
TEVA PHARMACEUTICALS USA.
THE KROGER CO
THE PILL BOX LLC dba THE PILL BOX

EXHIBIT C

THE PURDUE FREDERICK COMPANY, INC. d/b/a THE PURDUE FREDERICK COMPANY INC.
THE PURDUE FREDERICK COMPANY, INC.
THERESA SACKLER
THRIFTY PAYLESS, INC
WALGREEN CO.
WALGREEN EASTERN CO., INC
WALGREENS BOOTS ALLIANCE, INC.;
WALMART INC.
WATSON LABORATORIES, INC.
WATSON PHARMACEUTICALS, INC. n/k/a ACTAVIS, INC.

EXHIBIT D

LOCAL GOVERNMENTS ALLOCATION (38.77%)	
Government Entity	Percentage
CARSON CITY	1.075935%
CHURCHILL COUNTY	0.326145%
CLARK COUNTY	66.975937%
DOUGLAS COUNTY	1.045568%
ELKO COUNTY	0.637853%
ESMERALDA COUNTY	0.047413%
EUREKA COUNTY	0.143721%
HUMBOLDT COUNTY	1.000680%
LANDER COUNTY	0.548128%
LINCOLN COUNTY	0.198633%
LYON COUNTY	0.685710%
MINERAL COUNTY	0.734928%
NYE COUNTY	1.026687%
PERSHING COUNTY	0.514733%
STOREY COUNTY	0.130572%
WASHOE COUNTY	6.841995%
WHITE PINE COUNTY	1.235851%
BOULDER CITY	0.214114%
ELY CITY	0.009582%
FERNLEY CITY	0.020925%
HENDERSON CITY	3.333451%
LAS VEGAS CITY	6.835696%
MESQUITE CITY	0.212146%
NORTH LAS VEGAS CITY	3.512749%
RENO CITY	1.963939%
SPARKS CITY	0.615879%
WEST WENDOVER CITY	0.081671%
CENTRAL LYON FIRE PROTECTION DISTRICT	0.021854%
NORTH LYON FIRE PROTECTION DISTRICT	0.007505%

EXHIBIT E

MEDICAID MATCH ALLOCATION (17.37%) (65:14:21 - Population)	
Government Entity	Percentage
CARSON CITY	3.434222%
CHURCHILL COUNTY	1.529849%
CLARK COUNTY	65%
DOUGLAS COUNTY	3.003624%
ELKO COUNTY	3.241494%
ESMERALDA COUNTY	0.053617%
EUREKA COUNTY	0.124616%
HUMBOLDT COUNTY	1.033718%
LANDER COUNTY	0.339762%
LINCOLN COUNTY	0.318327%
LYON COUNTY	3.532121%
MINERAL COUNTY	0.276686%
NYE COUNTY	2.857327%
PERSHING COUNTY	0.413033%
STOREY COUNTY	0.253224%
WASHOE COUNTY	14%
WHITE PINE COUNTY	0.588380%

EXHIBIT F

LITIGATING COUNTIES ALLOCATION	
Government Entity	Percentage
CARSON CITY	1.325117%
CHURCHILL COUNTY	0.401679%
CLARK COUNTY	82.487271%
DOUGLAS COUNTY	1.287717%
ESMERALDA COUNTY	0.058394%
HUMBOLDT COUNTY	1.232434%
LINCOLN COUNTY	0.244635%
LYON COUNTY	0.844517%
MINERAL COUNTY	0.905134%
NYE COUNTY	1.264463%
WASHOE COUNTY	8.426571%
WHITE PINE COUNTY	1.522068%

1 **4105**

2 Pat Lundvall
3 NSBN 3761
4 Amanda C. Yen
5 NSBN 9726
6 McDONALD CARANO LLP
7 100 West Liberty Street, Tenth Floor
8 Reno, Nevada 89501
9 Telephone: (775) 788-2000
10 lundvall@mcdonaldcarano.com
11 ayen@mcdonaldcarano.com

12 Michael C. Minahan
13 (pro hac vice pending)
14 Skadden, Arps, Slate, Meagher & Flom LLP
15 525 University Avenue, Suite 1400
16 Palo Alto, CA 94301
17 Telephone: (650) 470-4500
18 Michael.Minahan@skadden.com

19 Thomas E. Fox (pro hac vice pending)
20 Skadden, Arps, Slate, Meagher & Flom LLP
21 One Manhattan West
22 New York, New York 10001
23 Telephone: (212) 735-2165
24 Thomas.Fox@skadden.com

25 *Attorneys for Defendants*
26 *Endo Health Solutions Inc. and Endo Pharmaceuticals Inc.*

27 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

28 **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

**DEFENDANTS' SUPPLEMENTAL
BRIEF IN SUPPORT OF
DEFENDANTS' MOTIONS TO
DISMISS PLAINTIFF'S
COMPLAINT**

INTRODUCTION

The Nevada Supreme Court has “direct[ed]” this Court to determine “whether the [City’s] action falls under the statutory definition of a ‘matter of local concern.’” *Endo Health Sols., Inc. v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 492 P.3d 565, 567 (Nev. 2021) (en banc). To make that determination, this Court must “strictly apply” the statutory definition set forth in NRS 268.003. *Id.* at 571. As set forth below, this lawsuit does not satisfy that statutory definition for three reasons and must therefore be dismissed.

First, the City’s lawsuit fails to satisfy NRS 268.003(1)(a) because the “matter” underlying this lawsuit – an alleged opioid crisis – “ha[s] a significant effect or impact on areas located” outside the City. As the Nevada Supreme Court noted, the City alleges that opioid addiction has had a “widespread effect . . . on the entire country as a whole, the State of Nevada, and the City of Reno.” *Endo*, 492 P.3d at 567 (“This lawsuit is not unique, as governmental entities throughout the country, including the State of Nevada itself and other cities throughout the state, have filed lawsuits alleging similar claims.”). This alone requires dismissal of the City’s claims.

Second, the subject of this lawsuit is not a “matter of local concern” because it involves “business activities that are subject to substantial regulation by a federal or state agency.” NRS 268.003(1)(c)(2). The challenged conduct of the Manufacturer Defendants is extensively regulated by the federal Food and Drug Administration (“FDA”), the federal Drug Enforcement Administration (“DEA”), and the Nevada Board of Pharmacy, as Plaintiff’s own Complaint makes clear. The Distributor Defendants are likewise subject to extensive regulation, both by the DEA and the Nevada Board of Pharmacy.

Finally, the lawsuit also fails to satisfy the criteria for a “matter of local concern” because it implicates “[a] state interest that requires statewide uniformity of regulation.” NRS 268.003(1)(c)(1). Nevada regulates pharmaceutical matters at the state-wide level, and allowing cities to impose their own regulation by means of litigation would create inconsistent requirements within the State.

For these and other reasons discussed below, the City’s lawsuit does not “fall[] under the statutory definition of a ‘matter of local concern,’” *Endo*, 492 P.3d at 567, and should be dismissed.

PROCEDURAL BACKGROUND

In March 2019, Defendants moved to dismiss the First Amended Complaint (“FAC”) as *ultra vires* under NRS 268.001 *et seq.* These statutes embody Nevada’s “modified version of Dillon’s Rule,” under which the City’s powers are limited “to those expressly granted to it, those necessarily implied from an express grant of power, [and] those ‘necessary or proper to address matters of local concern.’” *Endo*, 492 P.3d at 567. Defendants argued in their motions that no grant of power authorized the City’s lawsuit, and that the suit did not fall within the strict statutory definition of a “matter of local concern.” This Court denied Defendants’ motions, holding that: (1) NRS 268.001 *et seq.* does not “limit[] the City’s ability to litigate”; and (2) even if it did, the City “states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety and welfare, including the concomitant stress placed on its police, fire, and social services.” Feb. 14, 2020 Omnibus Order at 7.

The Nevada Supreme Court unanimously reversed this Court’s denial of Defendants’ motions. The high court held that the modified Dillon’s Rule “applies to a city’s power to bring lawsuits,” that this Court’s “conclusion to the contrary was erroneous,” *Endo*, 492 P.3d at 570, and that “the City has not pointed to any express power or one implied from an express power that grants it the authority to bring the underlying lawsuit,” *id.* at 570. That conclusion, the Supreme Court explained, leaves the “matter of local concern” statute as the sole remaining grant of power potentially capable of authorizing the City’s lawsuit: “[i]f the lawsuit does not meet that definition, then the City does not have authority to maintain the underlying action.” *Id.* at 571. The Supreme Court remanded the matter to this Court to determine whether “the underlying action falls under the statutory definition of a ‘matter of local concern.’” *Id.* at 567.

The Supreme Court provided clear guidance on how to address this remaining question, explaining that this Court erroneously applied “its own definition of” a “matter of local concern,” rather than the definition set forth in NRS 268.003. *Id.* at 571. According to the Supreme Court, it was erroneous to reason that “Reno states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety and welfare, including the concomitant stress placed on its police, fire, and social services.” *Id.* The Court thus remanded the case with instructions

1 to “strictly apply the statutory definition of ‘matter of local concern’ as set forth in NRS 268.003 to
2 determine if the City’s lawsuit meets that definition.” *Id.*¹

3 **REGULATORY BACKGROUND**

4 The manufacture, prescription, dispensing and distribution of opioid medications are
5 regulated extensively by multiple federal and state agencies:

6 ***Manufacturing.*** Under the Food, Drug, and Cosmetic Act, a prescription opioid medication
7 may only be marketed or sold once the FDA has approved the drug as safe and effective for its
8 intended use. 21 U.S.C. § 355(a)-(d). The FDA also regulates marketing of prescription opioid
9 medications. *See generally* 21 C.F.R. Parts 201-203, 310, 312, 314 *et seq.* And because many
10 prescription opioids are Schedule II controlled substances under the Controlled Substances Act
11 (“CSA”), the manufacture of those medicines is subject to annual “production quotas,” set by the
12 DEA based on “the estimated medical, scientific, research, and industrial needs of the United States.”
13 21 U.S.C. § 826(a); *see also* 21 C.F.R. §§ 1303.11, 1303.21.

14 ***Prescribing.*** Under the CSA, “no controlled substance in schedule II . . . may be dispensed
15 without the written prescription of a practitioner.” 21 U.S.C. § 829(a). In order to prescribe opioids,
16 the practitioner must be registered with the DEA, *see id.* § 822(a)(2) (requiring registration by
17 “[e]very person who dispenses . . . any controlled substance”); *id.* § 802(10) (defining “dispense” to
18 include “the prescribing and administering of a controlled substance”), and must be licensed by the
19 relevant State authority, *see* NRS 453.226 (setting requirements for a “practitioner” to satisfy prior
20 to issuing a controlled substance prescription); NRS 639.0125 (defining “practitioner” as certain
21 types of healthcare providers who hold a license to practice issued by the relevant State authority).
22 A prescription for opioids “must be issued for a legitimate medical purpose by an individual
23 practitioner acting in the usual course of his professional practice.” 21 C.F.R. § 1306.04(a). “The
24
25

26 ¹ After this Court issued its motion to dismiss order, and before the Supreme Court issued its decision
27 on Defendants’ writ petition, the City filed a Second Amended Complaint (“SAC”). For purposes
28 of this motion, there are no material differences between the SAC and the FAC, and Defendants cite
to both Complaints herein.

1 responsibility for the proper prescribing and dispensing of controlled substances is upon the
2 prescribing practitioner” *Id.*; *see also* NRS 639.23911.

3 ***Dispensing.*** In addition to the responsibilities placed on the prescribing practitioner, federal
4 law provides that “a corresponding responsibility rests with the pharmacist who fills the
5 prescription.” 21 C.F.R. § 1306.04(a). Prescriptions issued other than in the usual course of
6 professional treatment are not considered legitimate prescriptions, “and the person knowingly filling
7 such a purported prescription . . . shall be subject to the penalties provided for violations of the
8 provisions of law relating to controlled substances.” *Id.* Pharmacies and pharmacists are also subject
9 to comprehensive regulation by the Nevada State Board of Pharmacy. *See* NRS 639.070(1) (“The
10 Board may: (a) Adopt such regulations, not inconsistent with the laws of this State, as are necessary
11 for the protection of the public, appertaining to the practice of pharmacy and the lawful performance
12 of its duties.”); *see also* NAC 639.010 *et seq.*

13 ***Distributing.*** The CSA requires all wholesale distributors of controlled substances to obtain
14 a registration from the DEA annually. 21 U.S.C. § 822(a)(1). In deciding whether to register an
15 applicant, the DEA considers whether the applicant maintains “effective control against diversion of
16 particular controlled substances into other than legitimate medical, scientific, and industrial
17 channels.” *Id.* § 823(b). “Diversion” is the transfer of a legally prescribed controlled substance from
18 the person for whom it was prescribed to another person for any illicit use.

19 The CSA requires registered distributors to report “every sale, delivery or other disposal” of
20 prescription opioids. 21 U.S.C. § 827(d)(1). The DEA’s registration regulations further provide that
21 distributors “shall design and operate a system to disclose to the registrant suspicious orders of
22 controlled substances” and “inform [the DEA] of suspicious orders when discovered by the
23 registrant.” 21 C.F.R. § 1301.74(b) (defining “suspicious orders” as “orders of unusual size, orders
24 deviating substantially from a normal pattern, and orders of unusual frequency”). And the
25 regulations also detail the precise security measures that distributors must take to safeguard
26 controlled substances while those medicines are in their possession. *See generally id.* §§ 1301.71,
27 1301.72.

28 In addition, Nevada law mandates that distributors “establish and maintain effective controls

1 and procedures to prevent or guard against theft and misuse of controlled substances.” NAC 453.400.
2 The Nevada Board of Pharmacy is authorized to “[e]xamine and register, upon application,
3 pharmacists and other persons who dispense *or distribute* medications whom it deems qualified.”
4 NRS 639.070(1)(h) (emphasis added). “The Board shall ensure the safe and efficient operation of
5 wholesalers and the integrity and propriety of transactions involving the purchase and sale of
6 prescription drugs by wholesalers” NRS 639.540(1). The Board is also entitled to “[i]nspect [a
7 wholesaler’s] facility and any motor vehicles it uses to transport prescription drugs” and to
8 “[e]xamine [a wholesaler’s] records and procedures for the operation of the facility, during normal
9 business hours.” NAC 639.607(1).

10 ARGUMENT

11 NRS 268.003(1) defines a “matter of local concern” as one that:

12 (a) Primarily affects or impacts areas located in the incorporated city, or persons
13 who reside, work, visit or are otherwise present in areas located in the city, *and* does
14 not have a significant effect or impact on areas located in other cities or counties;

15 (b) Is not within the exclusive jurisdiction of another governmental entity; *and*

16 (c) Does not concern:

17 (1) A state interest that requires statewide uniformity of regulation;

18 (2) The regulation of business activities that are subject to substantial
19 regulation by a federal or state agency; or

20 (3) Any other federal or state interest that is committed by the
21 Constitution, statutes or regulations of the United States or this State to federal
or state regulation that preempts local regulation.

22 NRS 268.003(1) (emphases added). In order to demonstrate that this lawsuit involves a “matter of
23 local concern,” the City must therefore satisfy all three subdivisions: (a), (b), and (c). *Cf. State Dep’t*
24 *of Emp., Training & Rehab., Emp. Sec. Div. v. Reliable Health Care Servs. of S. Nev., Inc.*, 115 Nev.
25 253, 257-58, 983 P.2d 414, 417 (1999) (holding that a party must satisfy all three criteria of NRS
26 612.085, which has three statutory requisites conjoined by “and”). Under subdivision (c), if the
27 “matter” concerns the subject of any of the three discrete subparts, the “matter” is *not* one of local
28 concern. *Cf. Anderson v. State*, 109 Nev. 1129, 1134, 865 P.2d 318, 321 (1993) (disjunctive “or”

1 requires “one or the other, but not necessarily both”).

2 As set forth below, the City’s lawsuit does not address a “matter of local concern” as defined
3 by NRS 268.003(1) for several reasons. First, the City cannot show that Defendants’ alleged
4 wrongdoing “[p]rimarily affects or impacts” persons or areas within the City, and “does not have a
5 significant effect or impact on areas located in other cities or counties.” NRS 268.003(1)(a). Second,
6 this lawsuit seeks to “regulat[e]” “business activities that are subject to substantial regulation by a
7 federal or state agency.” NRS 268.003(1)(c)(2). And third, the City’s claims implicate “[a] state
8 interest that requires statewide uniformity of regulation.” NRS 268.003(1)(c)(1).

9 **I. THE CITY’S SUIT FAILS TO SATISFY THE LOCAL “IMPACT” REQUIREMENT**
10 **OF NRS 268.003(1)(A)**

11 Plaintiff’s lawsuit does not satisfy subsection (a) of NRS 268.003(1) because the City cannot
12 show that the alleged wrongdoing: (i) “[p]rimarily affects or impacts” persons or areas within the
13 City; and (ii) “does not have a significant effect or impact on areas located in other cities or counties.”
14 NRS 268.003(1)(a). To the contrary, the City alleges that “[t]he abuse of opioids is a widespread
15 problem” that “has had far-reaching financial, social, and deadly consequences . . . throughout
16 Nevada” and “across our country.” FAC ¶¶ 2, 17, 23; *accord* SAC ¶¶ 2, 17, 23.

17 According to the City, Defendants’ alleged wrongdoing was statewide and nationwide in
18 scope, with no unique nexus to the City; the City alleges that “Defendants employed . . . the same
19 marketing plans and strategies and deployed the same messages in Nevada as they did nationwide,”
20 and “ensured . . . marketing consistency” through “nationally coordinated advertising.” FAC ¶¶ 101,
21 102; *accord* SAC ¶¶ 220, 221; *see also, e.g.*, FAC ¶ 67 (“Distributors purchased opioids from
22 manufacturers . . . and distributed them to pharmacies throughout . . . the State of Nevada.”); *accord*
23 SAC ¶ 65. The Nevada Supreme Court observed that the City “cited the widespread effect that opioid
24 addiction has brought on the entire country as a whole, the State of Nevada, and the City of Reno.”
25 *Endo*, 492 P.3d at 567; *see also id.* (“In its prayer for relief, the City [seeks] ‘to stop [d]efendants’
26 promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future.”).
27 This Court similarly stated that “there can be no doubt that the opioid epidemic reaches every corner
28 of the nation.” Feb. 14, 2020 Omnibus Order at 4.

1 The high court also recognized that the City’s “lawsuit is not unique, as governmental entities
2 throughout the country, including the State of Nevada itself and other cities throughout the state,
3 have filed lawsuits alleging similar claims.” *Endo*, 492 P.3d at 567; *see also id.* at 568 (“cities
4 throughout Nevada have filed” lawsuits “similar” to this one). In fact, in August 2021, the Nevada
5 Attorney General announced that Nevada had “finalized an intrastate allocation agreement with all
6 of the state’s counties and litigating cities, which will provide a mechanism for the allocation of any
7 opioid-related settlement funds in the state.”² This “One Nevada” agreement—which the City of
8 Reno signed—states in its recitals that “the State of Nevada and its Local Governments share a
9 common desire to remediate and alleviate the impacts of the opioid epidemic throughout the State of
10 Nevada,” and references “an opioid epidemic both nationally and within the State of Nevada.”³
11 Under Nevada law, these recitals represent “conclusive” presumptions against the City. *See*
12 NRS 47.240(2).⁴

13 In short, the City’s own allegations, the Supreme Court’s observations and the existence of
14 other opioid lawsuits throughout the State make clear that the City’s suit does not satisfy the local
15 “impact” requirement of NRS 268.003(1)(a). For this reason alone, the City’s suit does not address
16 a “matter of local concern.”

19 ² *See* Nevada Attorney General’s Office, *Attorney General Ford, Nevada Leaders Announce One*
20 *Nevada Agreement for the Fair Allocation of Opioid Settlement Funds* (Aug. 24, 2021),
21 https://ag.nv.gov/News/PR/2021/Attorney_General_Ford,_Nevada_Leaders_Announce_One_Nevada_Agreement_for_the_Fair_Allocation_of_Opioid_Settlement_Funds/.

22 ³ *One Nevada Agreement on Allocation of Opioid Recoveries* (Aug. 9, 2021),
23 [https://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2021/One%20Nevada%20A](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2021/One%20Nevada%20Agreement%20on%20Opioid%20Recoveries%20-%20Approved.pdf)
24 [greement%20on%20Opioid%20Recoveries%20-%20Approved.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2021/One%20Nevada%20Agreement%20on%20Opioid%20Recoveries%20-%20Approved.pdf) (the “One Nevada
25 Agreement”), at pp. 1, 13. The One Nevada agreement, along with the Attorney General’s related
26 press release, are publicly available and subject to judicial notice pursuant to NRS 47.130 and 47.150.
27 *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (per
28 curiam).

⁴ The City may argue that its lawsuit addresses a “matter of local concern” because it has suffered
“different” damages from other cities and counties in the State. But that argument has already been
rejected by the Supreme Court. *Endo*, 492 P.3d at 571 (rejecting assertion that a matter is one of
local concern merely “by virtue of the impact the alleged conduct has had” on a city’s ability to
provide law enforcement and social services to the city).

1 **II. THE CITY’S LAWSUIT FAILS TO SATISFY THE “NO SUBSTANTIAL**
2 **REGULATION” REQUIREMENT OF NRS 268.003(1)(C)(2)**

3 The City’s lawsuit also fails to satisfy NRS 268.003(1)(c)(2) because it seeks to “regulat[e]”
4 “business activities that are subject to substantial regulation by a federal or state agency.”
5 NRS 268.003(1)(c)(2).

6 The “business activities” the FAC puts at issue are the manufacture, distribution and
7 “promotion and marketing of” prescription opioid medications. FAC, Prayer for Relief ¶ 8; *accord*
8 SAC, Prayer for Relief ¶ 8. These activities are comprehensively regulated by federal laws and
9 federal agencies, as the City itself recognized in the FAC. *See* FAC ¶ 92 (alleging that “opioids have
10 been regulated as controlled substances by the [DEA] . . . since 1970”); *accord* SAC ¶ 90; *see also*
11 FAC ¶¶ 94, 136 (alleging that Defendants’ marketing “statements were . . . contrary to
12 pronouncements by and guidance from federal agencies such as the [FDA] and Centers for Disease
13 Control and Prevention”); *accord* SAC ¶¶ 159, 210; *see generally* 21 C.F.R. Parts 201-203, 310, 312,
14 314 *et seq.* (FDA regulations regarding the manufacture, marketing, distribution, and sale of
15 prescription opioid medications).

16 For example, the City describes alleged efforts by pharmaceutical manufacturers to market
17 “their own opioid products as safe, effective, and appropriate for long-term use to treat common pain
18 conditions.” SAC ¶ 91; *see also* FAC ¶ 93. And the City seeks injunctive relief “to stop Defendants’
19 promotion and marketing of opioids for inappropriate uses in Nevada.” SAC, Prayer for Relief ¶ 8;
20 *accord* FAC, Prayer for Relief ¶ 8. But because prescription opioids may only be sold after the FDA
21 has determined that they are safe and effective, *see* p. 4, *supra*, the City’s requested relief necessarily
22 would regulate a business activity that is subject to substantial regulation by a federal agency.

23 Similarly, distributors are comprehensively regulated by the DEA and the Board of
24 Pharmacy. *See* pp. 2, 5-6, *supra*. The City’s claims against distributors are premised on distributors’
25 alleged shipment of “suspicious orders.” SAC ¶ 94; *accord* FAC ¶ 141. But wholesale distributors’
26 obligations regarding “suspicious orders” (a term of art created by federal regulations), and
27 maintenance of controls against diversion more generally, derive from federal and State law. *See*,
28 *e.g.*, 40 NRS Ch. 453 (Nevada Uniform Controlled Substances Act). The City’s claims thus

effectively seek to establish new rules for how distributors should identify and respond to suspicious orders even though they are already subject to regulation on these matters.

In short, both Nevada and federal law comprehensively regulate the manufacture, distribution, prescribing and dispensing of controlled substances. Because this suit unquestionably “concern[s] . . . [t]he regulation of business activities that are subject to substantial regulation by a federal or state agency,” NRS 268.003(1)(c)(2), it does not involve a “matter of local concern.” For this reason, too, the City’s claims should be dismissed.

III. THE CITY’S SUIT IS NOT A MATTER OF LOCAL CONCERN BECAUSE IT IMPLICATES A STATE INTEREST REQUIRING “STATEWIDE UNIFORMITY”

Finally, this matter also fails to satisfy the criteria for a “matter of local concern” because it implicates “[a] state interest that requires statewide uniformity of regulation.” NRS 268.003(1)(c)(1).

The Nevada Legislature has declared that “the practice of pharmacy”—including “activities associated with manufacturing, compounding, labeling, dispensing and distributing of a drug”—is “subject to protection and regulation by the State.” NRS 639.213, 639.0124(1). To that end, Nevada law requires pharmaceutical manufacturers to “[a]dopt a written marketing code of conduct” “based on applicable legal standards”; to train “appropriate employees” on and “monitor compliance with” that code of conduct; to “investigat[e] instances of noncompliance”; and to annually submit materials to the State Board of Pharmacy demonstrating compliance with these requirements. NRS 639.570(1)-(2). Similarly, as discussed above, the Board of Pharmacy comprehensively regulates the distribution and dispensing of controlled substances in the State. *See pp. 5-6, supra.* The State’s ability to “protect[] and regulat[e]” these activities would be undermined if cities and counties could impose new or different standards of conduct on companies that manufacture, market, or distribute controlled substances, or otherwise engage in the “practice of pharmacy,” as the City attempts to do through this lawsuit.⁵

⁵ Indeed, by signing the “One Nevada” agreement—which explicitly articulates a “common desire to remediate and alleviate the impacts of the opioid epidemic throughout the State of Nevada”—the City itself acknowledged the need for a coordinated, uniform statewide solution to the opioid abuse crisis. One Nevada Agreement at 1.

1 In short, the City's lawsuit concerns "[a] state interest that requires statewide uniformity of
2 regulation." NRS 268.003(1)(c)(1). For this reason, too, it should be dismissed.

3 **CONCLUSION**

4 For the foregoing reasons, the City's lawsuit does not address a "matter of local concern" as
5 defined in NRS 268.003(1), and should therefore be dismissed.

6 **AFFIRMATION**

7 The undersigned affirm that the preceding document does not contain personal information
8 as described in WDCR 10(7).

9 DATED this 29th day of November, 2021.

10 McDONALD CARANO LLP

OLSON, CANNON, GORMLEY, ANGULO &
STOBERSKI

11 By: /s/ Pat Lundvall

By: /s/ Max E. Corrick

12 Pat Lundvall
13 NSBN 3761
14 Amanda C. Yen
15 NSBN 9726
16 McDONALD CARANO LLP
17 100 West Liberty Street, Tenth Floor
18 Reno, Nevada 89501
19 Telephone: (775) 788-2000
20 lundvall@mcdonaldcarano.com
21 ayen@mcdonaldcarano.com

Max E. Corrick, II
NSBN 6609
OLSON CANNON GORMLEY
& STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendants

22 Michael C. Minahan
23 (*pro hac vice* pending)
24 Skadden, Arps, Slate, Meagher & Flom LLP
25 525 University Avenue, Suite 1400
26 Palo Alto, CA 94301
27 Telephone: (650) 470-4500
28 Michael.Minahan@skadden.com

Donna Welch, P.C.*
Martin L. Roth, P.C.*
Timothy Knapp*
Zac Ciullo*
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

Thomas E. Fox (*pro hac vice* pending)
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Telephone: (212) 735-2165
Thomas.Fox@skadden.com

Jennifer G. Levy, P.C.*
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004

**pro hac vice*

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

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

MORRIS LAW GROUP

By: /s/ Rosa Solis-Rainey
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, Nevada 89106
Telephone: (702) 474-9400
sm@morrislawgroup.com
rsr@morrislawgroup.com

COVINGTON & BURLING LLP
Nathan E. Shafroth (pro hac vice)
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
Telephone: (415) 591-6000
nshafroth@cov.com

*Attorneys for Defendant McKesson
Corporation*

HYMANSON & HYMANSON PLLC

By: /s/ Philip M. Hymanson
Philip M. Hymanson, Esq.
NSBN 2253
HYMANSON & HYMANSON PLLC
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-3300
Phil@HymansonLawNV.com

Steven A. Reed (to be admitted pro hac vice)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
steven.reed@morganlewis.com

Brian M. Ercole (to be admitted pro hac vice)
MORGAN, LEWIS & BOCKIUS LLP
200 South Biscayne Blvd., Suite 5300
Miami, FL 33131
Telephone: (305) 415-3000
Facsimile: (305) 415-3001
brian.ercole@morganlewis.com

Collie F. James, IV (to be admitted pro hac
vice)
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626
Telephone: (714) 830- 0600
Facsimile: (714) 830- 0700
collie.james@morganlewis.com

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

LEWIS ROCA ROTHGERBER CHRISTIE
LLP

By: /s/ Christopher J. Jorgensen, Esq.

Christopher J. Jorgensen, Esq.
Nevada Bar No. 5382
Dan Polsenberg, Esq.
Nevada Bar No. 2376
Abraham G. Smith, Esq.
Nevada Bar No. 13250
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169

*Attorneys for Defendants, Cardinal
Health*

SEMENZA KIRCHER RICKARD

By: /s/ Jarrod L. Rickard

Lawrence J. Semenza, III, Esq. Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
Jarrod L. Rickard, Esq., Bar No. 10203
10161 Park Run Dr., Ste. 150
Las Vegas, Nevada 89145

REED SMITH LLP

Steven J. Boranian, Esq. (pro hac vice)
Rachel Weil, Esq. (pro hac vice)
Sarah Johansen, Esq. (pro hac vice)
101 Second Street, Suite 1800
San Francisco, California 94105

*Attorneys for Defendant AmerisourceBergen
Drug Corporation*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and
3 that on this date, a true and correct copy of the **DEFENDANTS' SUPPLEMENTAL BRIEF IN**
4 **SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT** was
5 electronically served via the Court's electronic filing system to the following parties associated with
6 this case. For the following parties not registered with the court's electronic filing system, then a true
7 and correct copy of the above-named document was served via U.S. mail:

8 Robert T. Eglet
9 Robert Adams
10 Richard K. Hy
11 Cassandra S.M. Cummings
12 Eglet Prince
13 400 S. 7th Street, 4th Floor
14 Las Vegas, Nevada 89101

15 Bill Bradley
16 Bradley, Drendel & Jeanney
17 6900 S. McCarran Blvd., Suite 2000
18 Reno, Nevada 89509

19 *Attorneys for Plaintiff City of Reno*

20 Rand Family Care, LLC
21 c/o Robert Gene Rand, M.D.
22 3901 Klein Blvd.
23 Lompoc, California 93436

Steve Morris
Rosa Solis-Rainey
Morris Law Group
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106

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

Attorneys for Defendant McKesson Corporation

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

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

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

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

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

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

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

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

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

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

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

*Attorneys for Defendant
AmerisourceBergen Drug Corporation*

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

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

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

Attorneys for Defendant Mallinckrodt LLC

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

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

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

1 Max E. Corrick II
2 Olson Cannon Gormley &
3 Stoberski
4 9950 W. Cheyenne Avenue
5 Las Vegas, Nevada 89129

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

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Dated: November 29, 2021.

11 /s/ Beau Nelson

12 An employee of McDonald Carano LLP
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Attorney General Ford Announces Nevada Will Join Two Opioid Settlements, Receive Funding from Multiple Sources

January 4, 2022

Carson City, NV– Today, Nevada Attorney General Aaron D. Ford announced that Nevada will receive almost \$285.2 million for the fight against the opioid epidemic from a multitude of sources, including a federal grant and settlements with an opioid manufacturer and distributors.

"The funds that our state will receive going forward will help us save lives and mitigate the harms done to our residents because of the ongoing opioid epidemic," said **AG Ford**. "Our team has worked diligently to get Nevada the resources we must have to help Nevadans in need in one of the epidemic's hardest-hit states, and to obtain justice from many opioid manufacturers and distributors. While no settlement will bring back those lost to opioids, these funds will be used to prevent further loss of life and help heal Nevada's families."

The money will come from three sources: a multistate settlement with the three largest opioid distributors; an agreement with opioid manufacturer Johnson & Johnson and its U.S.-based Janssen Pharmaceutical Companies; and a grant from the U.S. Department of Justice to increase rural counties' access to mitigation and health programs.

Earlier this year, the state, along with all Nevada counties, and cities that currently have active litigation against opioid companies, came to an agreement on the intrastate allocation of funds from opioid-related recoveries. This One Nevada Agreement on Allocation of Opioid Recoveries provides a framework for how funds from any Nevada opioid-related settlement will be allocated among the state and various local governmental entities and used to remediate the harms, impact and risks caused by the opioid epidemic in the state.

In early 2021, Gov. Sisolak signed Senate Bill 390 (S.B. 390) into law, creating the Fund for Resilient Nevada, which directs state opioid recoveries to fund evidence-based programs through the Nevada Department of Health and Human Services. S.B. 390 requires the state to create a State Needs Assessment which identifies the critical needs for attacking the impacts and effects of opioids throughout the entire state, and a State Plan for prioritizing funding for the needs identified in said assessment. S.B. 390 also creates a mechanism for the state, counties and cities to work together in developing county needs assessments and county plans that complement the State Needs Assessment and State Plan, therefore maximizing the use of the money from recoveries.

Further information on the sources of funding are below.

Agreement with Three Largest Opioid Distributors

Nevada will participate in a \$26 billion opioid settlement with the three largest opioid distributors – AmerisourceBergen, Cardinal Health and McKesson – that will bring much-needed resources to Nevada. The Attorney General is optimistic that the Nevada local governments through the One Nevada Agreement will join with the State in the settlement, which will result in Nevada receiving \$231,679,409 over a period of 18 years under the settlement.

"Entering into this settlement means that Nevada will start receiving funds as early as the first quarter of 2022 to begin funding programs to fight the opioids epidemic throughout the entire state," said **AG Ford**. "There is no question that the opioid epidemic has devastated Nevada and money is needed now to address comprehensive statewide remediation."

Attorney General Ford decided to join the multistate settlement with the three major distributors in order to ensure what is best for Nevada and its residents. The reasons to join in this settlement include:

due to the severity of the opioid epidemic, money is needed now to address comprehensive statewide remediation;

the Purdue bankruptcy confirmation order was overturned, which means that money due Nevada from the bankruptcy will be delayed; and

litigation risks based upon court decisions in other states.

Moreover, the evidence obtained through discovery demonstrates that the strongest claims in the lawsuit remain against opioid manufacturers and pharmacies. This settlement with the three major opioid distributors holds them accountable though a monetary payment and strict injunctive terms for their actions in creating and fueling the opioids epidemic.

The agreement will require the distributors to establish a centralized independent clearinghouse to provide regulators with aggregated data and analytics about where opioids are going and how often; use data-driven systems to detect suspicious opioid orders from pharmacies; and report companies to state regulators when they show signs of diversion, among other important terms.

Johnson & Johnson Agreement

Nevada will settle with Johnson & Johnson and its U.S.-based Janssen Pharmaceutical Companies to resolve the companies' role in the state's opioid epidemic. Similar to the agreement with the distributors, the Attorney General is optimistic that the Nevada local governments, through the One Nevada Agreement, will join with the State in the settlement, which will result in Nevada receiving \$53,508,792, 95% of which is payable by the end of 2022. This is a much faster timeframe than most of the settlements between other states and Johnson & Johnson, many of which are payable over a period of nine years.

"By settling under a separate deal, Nevada will receive the injunctive benefits that other states received under the nationwide settlement, but also will receive the money sooner, which has more value to help Nevada at an even quicker rate," said **AG Ford**. "We can use the money to get meaningful help to Nevadans right now rather than a decade from now."

In a lawsuit filed by Office of the Attorney General, Nevada alleges that the manufacturers, distributors, pharmacies and individuals created an ecosystem of addiction with deadly consequences to the state and its residents for their own profit. The claims are outlined in the second amended complaint, but the settlements with the distributors and one manufacturer will only release claims against the three major distributors and that manufacturer. Nevada will continue to pursue its claims against several other opioid manufacturers and pharmacy defendants.

COSSAP Grant

Nevada has received a \$5.75 million grant from the Department of Justice for the Comprehensive Opioid, Stimulant and Substance Abuse Site-based Program (COSSAP) grant, a collaboration between the Nevada Office of the Attorney General, State Department of Health and Human Services, Northern Regional Behavioral Health Coordinator and seven subaward sites.

The funding will be used primarily in rural and frontier Nevada to either establish or expand the Mobile Outreach Safety Teams (MOST) and Forensic Assessment Services Triage Teams (FASTT) in counties where the subaward sites are located. MOST serves as a jail and hospital diversion program, while FASTT provides assessment and case management for high-risk individuals and those with mental health and other disorders. The funding will also be used by the counties' community coalitions to continue naloxone distribution and drug take-back days.

"The opioid epidemic does not end at county lines, and many rural and frontier counties must combat this crisis with few services," said AG Ford. "When speaking with rural and frontier law enforcement and community leaders, I often hear how mental health and addiction continue to wreck families and affect public safety. I am proud that our Office obtained this grant so that we can better support mental health services and ease the burden on the criminal justice system across Nevada."

This grant is designed to provide resources to those in rural and frontier counties in the state, many of whom have limited access to health care and mental health facilities. The subaward sites and their county locations are as follows:

Partnership Carson City (Carson City),

Churchill Community Coalition (Churchill County),

Partnership Douglas County (Douglas County),

Healthy Communities Coalition (Lyon County),

Community Chest, Inc. (Storey County),

Nye Community Coalition (Nye and Lincoln Counties).

APP01451

Select Language ▼



1 **4105**

2 ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402

3 ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551

4 CASSANDRA S.M. CUMMINGS, ESQ.
Nevada Bar No. 11944

5 RICHARD K. HY, ESQ.
Nevada Bar No. 12406

6 **EGLET ADAMS**
400 S. 7th Street, 4th Floor

7 Las Vegas, NV 89101
Tel.: (702) 450-5400

8 Fax: (702) 450-5451

9 E-Mail: eservice@egletlaw.com

10 -and-

11 BILL BRADLEY, ESQ.
Nevada Bar No. 1365

12 **BRADLEY, DRENDEL & JEANNEY**
6900 S. McCarran Blvd., Suite 2000
13 Reno, Nevada 89509

14 Telephone: (775) 335-9999

Email: office@bdjlaw.com

15 *Attorneys for Plaintiff, the City of Reno*

16
17 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
18 **THE STATE OF NEVADA IN AND FOR THE**
COUNTY OF WASHOE

19 CITY OF RENO,

20 Plaintiff,

21 v.

22 PURDUE PHARMA, L.P.; PURDUE
23 PHARMA, INC.; THE PURDUE
24 FREDERICK COMPANY, INC. d/b/a THE
PURDUE FREDERICK COMPANY, INC.;
25 PURDUE PHARMACEUTICALS, L.P.;
TEVA PHARMACEUTICALS USA, INC.;
26 McKESSON CORPORATION;
27 AMERISOURCEBERGEN DRUG
CORPORATION; CARDINAL HEALTH,
28 INC.; CARDINAL HEALTH 6 INC.;
CARDINAL HEALTH TECHNOLOGIES
LLC; CARDINAL HEALTH 108 LLC d/b/a

) Case No.: CV18-01895

) Dept. No.: 8

) **PLAINTIFF CITY OF RENO'S**
) **SUPPLEMENTAL BRIEFING IN**
) **OPPOSITION TO DEFENDANTS'**
) **MOTIONS TO DISMISS PLAINTIFF'S**
) **COMPLAINT**

METRO MEDICAL SUPPLY; DEPOMED,)
INC.; CEPHALON, INC.; JOHNSON &)
JOHNSON; JANSSEN)
PHARMACEUTICALS, INC.; JANSSEN)
PHARMACEUTICA, INC. n/k/a JANSSEN)
PHARMACEUTICALS, INC.; ORTHO-)
MCNEIL-JANSSEN PHARMACEUTICALS,)
INC. n/k/a JANSSEN PHARMACEUTICALS,))
INC.; ENDO HEALTH SOLUTIONS INC.;)
ENDO PHARMACEUTICALS, INC.;)
ALLERGAN USA, INC.; ALLERGAN)
FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a)
WATSON PHARMACEUTICALS, INC.;)
WATSON LABORATORIES, INC.;)
ACTAVIS PHARMA, INC f/k/a WATSON)
PHARMA, INC.; ACTAVIS LLC; INSYS)
THERAPEUTICS, INC., MALLINCKRODT,)
LLC; MALLINCKRODT BRAND)
PHARMACEUTICALS INC.; and)
MALLINCKRODT US HOLDINGS, INC.;)
ROBERT GENE RAND, M.D. AND RAND)
FAMILY CARE, LLC; DOES 1 through 100;)
ROE CORPORATIONS 1 through 100; and)
ZOE PHARMACIES 1 through 100, inclusive,))
Defendants.)

I. INTRODUCTION

The City of Reno filed a lawsuit against opioid manufacturers, distributors, retail pharmacies, local pharmacies, and local doctors, all of which are alleged to have contributed to the rise of the opioid epidemic within the City.¹ This Court is being asked, once again, to evaluate whether the City’s litigation addresses matters of local concern. While the opioid epidemic is far reaching, there is no question that the harms the City of Reno has suffered and the damages it has incurred as a result of the epidemic are unique to the City. Defendants’ claims that the distinctions in harm and damages are not sufficient to meet the definition of “matter of local concern,” are incorrect. Only the City of Reno can recover damages to its residents, its agencies, and its

¹ Recently, the State of Nevada agreed to join the global settlement with the Distributor Defendants consisting of AmerisourceBergen Drug Corporation, all of the Cardinal entities, and McKesson Corporation.

1 programs. The City’s litigation involves a “matter of local concern” as that term is defined in
2 NRS 268.003(1) and, thus, the Defendants’ Motions to Dismiss should be denied.

3 II. THE NEVADA SUPREME COURT’S OPINION

4 This Court is well aware of the facts and procedural history related to this issue.
5 Accordingly, the City of Reno will not restate that here. It is necessary, however, to clarify a
6 crucial point in the Nevada Supreme Court’s opinion regarding the Dillon’s Rule analysis.
7 Defendants incorrectly suggest that the Nevada Supreme Court ruled that it was erroneous for this
8 Court to rely upon the damages and local impact the opioid epidemic has had on the City of Reno
9 as a basis for finding that the City is litigating a matter of local concern. Specifically, Defendants
10 argue: “According to the Supreme Court, it was erroneous to reason that ‘Reno states a cognizable
11 local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety
12 and welfare, including the concomitant stress placed on its police, fire, and social services.’” *See*
13 Defendants’ Supplemental Briefing at 3:25-28 (internal citation omitted). Additionally, in
14 footnote 4 of Defendants’ brief, they state, “[t]he City may argue that its lawsuit addresses a
15 ‘matter of local concern’ because it has suffered ‘different’ damages from other cities and counties
16 in the State. But that argument has already been rejected by the Supreme Court.” *See id.* at 8:25-
17 26, n. 4.

18 Defendants mischaracterize the Nevada Supreme Court’s ruling, which actually states
19 that this Court may consider damages and local impact so long as it applies the statutory test:

20 The district court concluded that the City’s lawsuit was a matter of local
21 concern but did so based upon its own definition of that term, not NRS
22 268.003’s definition. The district court reasoned that ‘Reno states a
23 cognizable local concern by virtue of the impact the alleged conduct has
24 had on its citizens’ health, safety and welfare, including the concomitant
25 stress placed on its police, fire, and social services.’ We conclude that
26 this was erroneous. The district court was required to strictly apply the
27 statutory definition of ‘matter of local concern’ as set forth in NRS
28 268.003 to determine if the City’s lawsuit meets that definition.

Endo Health Sols. Inc. v. Second Jud. Dist. Ct., 492 P.3d 565, 571 (2021).

Contrary to Defendants’ arguments, the Supreme Court did not reject the City’s
argument that the City’s unique harms and resultant damages are a matter of local concern.
Instead, the Supreme Court ruled that the District Court is “required to strictly apply the

1 statutory definition of ‘matter of local concern’ as set forth in NRS 268.003 to determine if the
2 City’s lawsuit meets that definition.” *Endo Health Sols. Inc. v. Second Jud. Dist. Ct.*, 492 P.3d
3 565, 571 (2021). In other words, this Court may fully consider the City’s unique harms and
4 damages when determining whether the City has alleged a matter of local concern but must do
5 so following the definition contained in NRS 268.003. As set forth below, the City’s litigation
6 satisfies the requirements for a “matter of local concern” and, thus, the City has the authority
7 to maintain the litigation.

8 **III. RENO’S LITIGATION IS A MATTER OF LOCAL CONCERN**

9 A “matter of local concern” is defined as any matter that:

- 10 (a) Primarily affects or impacts areas located in the incorporated city, or
11 persons who reside, work, visit or are otherwise present in areas located
12 in the city, and does not have a significant effect or impact on areas
13 located in other cities or counties;
14 (b) Is not within the exclusive jurisdiction of another governmental entity;
15 and
16 (c) Does not concern:
17 (1) A state interest that requires statewide uniformity of regulation;
18 (2) The regulation of business activities that are subject to
19 substantial regulation by a federal or state agency; or
20 (3) Any other federal or state interest that is committed by the
21 Constitution, statutes or regulations of the United States or this
22 State to federal or state regulation that preempts local regulation.

23 NRS 268.003(1).

24 While the opioid epidemic cannot be said to have only impacted any single area across
25 the country, its impact varies from city to city, county to county, and state to state. The City of
26 Reno has never claimed that it is the only jurisdiction impacted by Defendants’ marketing and
27 sale of opioids. However, the City of Reno is the only jurisdiction to suffer the unique damages
28 it has suffered as a result of the epidemic. No other jurisdiction can claim to have been affected
by the opioid epidemic the same way the City has been impacted.

Looking at NRS Chapter 268 as a whole, the Legislature clearly intended to permit cities
to take the action necessary to protect their inhabitants and to promote the public health, safety,
and welfare of those residing within the City. It is therefore appropriate to “examine the statute
in the context of the entire statutory scheme, reason, and public policy to effect a construction
that reflects the Legislature’s intent.” *Richardson Constr., Inc. v. Clark County Sch. Dist.*, 123

1 Nev. 61, 64, 156 P.3d 21, 23 (2007). The City of Reno seeks to protect its residents from harms
2 caused by opioids and that includes protecting City residents from harms caused by the opioid
3 epidemic and assisting those who have been harmed. Defendants’ myopic reading of the statute
4 entirely overlooks the City’s interests in protecting and assisting its residents.

5 **A. The Opioid Epidemic’s Impact on the City of Reno is Unique to Reno.**

6 The first subsection of NRS 268.003(1) requires that the matter of concern “primarily
7 affect[] or impact[] the areas located in the incorporated city,” or the people residing therein,
8 and does not have a significant impact on other cities or counties. NRS 268.003(1)(a). The
9 Court’s analysis pursuant to this subsection should not end simply because the opioid epidemic
10 has impacted communities across the country. The City is aware of data demonstrating that
11 Endo Pharmaceuticals’ detailers made several marketing calls regarding opioid products to Dr.
12 Robert Rand, a Defendant in this case who is currently serving 10 years in prison for involuntary
13 manslaughter of a patient and unlawful distribution of oxycodone.² Dr. Rand operated a “pill
14 mill” out of the Jones West Ford dealership (now known as Corwin Ford Reno). This is just
15 one example of Defendants’ activities in the City of Reno that uniquely impact the City. The
16 damages the City of Reno has suffered are different that the damages suffered in any other city,
17 county, or the State. Addiction, drug abuse, opioid-related deaths, and opioid-related crimes
18 within the City of Reno primarily affect the City, its residents, and its local programs. The City
19 makes its own decisions regarding how to handle the effects of the opioid epidemic, which has
20 required the use of City resources, City agencies, and City programs.

21 No two cities have been impacted by the opioid epidemic in the same way and cities
22 will not have the same damages. The impact of the opioid epidemic varies in type (i.e., some
23 areas may have a greater rate of opioid-related crime while others may see a rise in opioid-
24 related deaths), volume (i.e., the number of prescriptions written, the number of arrests, the
25 number of deaths), approach, and cost.

26 Similarly, the State of Nevada has suffered different damages than Reno has suffered.
27 This is evident from the different causes of action, claims, and defendants in both cases. The
28

² This data has been produced in the State litigation and is marked highly confidential in that litigation. Should the Court desire to view the data, the City will work with Endo’s counsel to arrange for a viewing.

1 City is alleging tort and nuisance claims which are unique to the City. The State of Nevada's
2 lawsuit, on the other hand, alleges public nuisance; violations of Nevada's Deceptive Trade
3 Practices Act; violations of Nevada's Racketeering Act; violations of Nevada's False Claims
4 Act; negligence; negligence per se; and violations of the 2007 consent judgment between the
5 State of Nevada and Purdue. Moreover, the State seeks damages vastly different from those the
6 City is seeking including an injunction to cease deceptive practices; future abatement costs;
7 fines and penalties related to the alleged violations of the Deceptive Trade Practices and False
8 Claims Act; damages related to Medicaid claims; and punitive damages. Meanwhile, the City
9 is seeking past damages related to the costs the City has incurred in addressing the harm done
10 to the public health and safety within the City.

11 The One Nevada Agreement on Allocation of Opioid Recoveries ("Agreement") was
12 the result of hundreds of hours of work between the State and local governments to collectively
13 advance their respective interests in potential settlements. This Agreement does not change the
14 unique nature of each locality's damages, nor does it minimize the specific impact the opioid
15 epidemic has on the City of Reno. The Agreement only relates to scenarios in which money is
16 recovered, either through settlement with any Defendant(s) or through bankruptcy proceedings
17 for any Defendant, that is intended to cover the damages suffered by the State *and* the damages
18 incurred by individual local governments who are signatories to the Agreement.³ This is further
19 evidence that the State of Nevada cannot simply recover all funds and dictate who shall receive
20 the funding. Each local government eligible to receive funding pursuant to the Agreement was
21 an individual signatory to the Agreement after evaluation and review by their respective counsel
22 and boards, and each recipient of funds under the Agreement is required to use the funds to
23 remediate local harms caused by the opioid epidemic within the recipient's jurisdiction.⁴
24 Moreover, the recent settlements with the Distributor Defendants and Johnson & Johnson
25 announced on January 4, 2022, will only be successful if the local governments agree to join.
26 These agreements contemplate that each local government be treated individually and each local
27 government must consider the settlements individually- just as they considered the Agreement

28
³ See **Exhibit 1**, One Nevada Agreement, at pp. 3, paragraph 12.

⁴ See **Exhibit 1**, One Nevada Agreement, at pp. 3, paragraph 13.

1 individually. Indeed, the entire purpose of the Agreement is to recognize the differences in
2 damages the opioid epidemic has caused in each jurisdiction and to allow each jurisdiction to
3 remediate those damages as appropriate for their city or county and their residents.

4 No jurisdiction can claim it is the only jurisdiction to have been harmed by the opioid
5 epidemic. Every government – whether it be city, county, or State – can claim that it has
6 suffered its own unique harms as a result of the opioid epidemic. The City of Reno has been
7 uniquely impacted by the opioid epidemic as alleged in the City’s Complaint and, thus, the
8 litigation satisfies NRS 268.003(1)(a).⁵

9 **B. The City of Reno’s Litigation Does Not Concern any of the Three Areas Listed in**
10 **NRS 268.003(1)(c)**

11 The final piece of NRS 268.003(1) is found in subsection (c). There are three (3) subparts
12 to subsection (c), but Defendants only address the first two, which provide that an issue is not a
13 matter of local concern if it concerns: “(1) A state interest that requires statewide uniformity;” or
14 “(2) The regulation of business activities that are subject to substantial regulation by a federal or
15 state agency.” NRS 268.003(1)(c). The City’s litigation is not one that can be addressed through
16 uniform, statewide regulation, and the City is not attempting to regulate business activities, let
17 alone those subject to federal or state regulation. Accordingly, the State’s litigation satisfies the
18 third requirement to be categorized as a matter of local concern.

19 ***1. The City of Reno’s Litigation Does Not Concern A State Interest Requiring Uniform***
20 ***Regulation.***

21 The City of Reno is seeking to recover damages it suffered as a result of the opioid
22 epidemic. As detailed above, the City’s damages are unique to the City of Reno and cannot be
23 handled through statewide regulations. The City does not dispute that the State regulates the
24 practice of pharmacy within the State, but that narrow function does not negate or address the
25 opioid-related harms to the City’s residents and local resources. Moreover, the State’s regulation
26 of the practice of pharmacy is not at issue in the City’s litigation. The City of Reno is not seeking
27

28 ⁵ Defendants did not address NRS 268.003(1)(b), which provides that an issue may be one of local concern so long as it is “not within the exclusive jurisdiction of another governmental entity.” Accordingly, Defendants concede that the City’s litigation satisfies the second piece of the definition of “matter of local concern.”

1 to create any regulations or to enact any laws that would interfere with those created by the State
2 Legislature.

3 This fact is highlighted by the Agreement which provides each participating jurisdiction
4 with its own funds, the amount of which is based on its own damages, to remediate its own harms
5 caused by the opioid epidemic as it sees fit. The State and local governments recognize that the
6 opioids epidemic impacted each jurisdiction differently, and therefore there is not a single
7 uniform approach to handling opioid recoveries that would work for every jurisdiction.
8 Accordingly, it was necessary to provide each local government with the opportunity to use the
9 funds as needed to address their unique harms.

10 ***2. The City of Reno is Not Seeking to Regulate Business Activities.***

11 The City of Reno is also not seeking to regulate drug manufacturing, drug marketing, or
12 drug sales. Instead, the City is seeking to recover damages caused by Defendants when they
13 violated regulations related to opioid marketing and opioid sales. Defendants cite to a number of
14 federal and state regulations in their Supplemental Brief but fail to demonstrate how the City of
15 Reno's litigation would impede or interfere with any of those regulations. The City, however, is
16 not asking this Court to stop Defendants from manufacturing or marketing opioids within the
17 State of Nevada. To support their flawed argument, Defendants provide a partial citation when
18 they claim that the City is seeking an injunction against the Defendants. *See* Defendants'
19 Supplemental Brief at 9:18-20. The City's prayer for relief actually requests, "such other and
20 further extraordinary equitable, declaratory and/or injunctive relief **as permitted by law** as
21 necessary to assure that the Plaintiff has an effective remedy and to stop Defendants' promotion
22 and marketing of opioids for inappropriate uses in Nevada, currently and in the future." *See* City
23 of Reno's Second Amended Complaint, Prayer for Relief, ¶ 8 (emphasis added). The City is only
24 requesting injunctive relief to the extent it is legally permissible and if the Court believes that it
25 is appropriate. This simple, qualified request cannot be considered an attempt to regulate in a
26 space already covered by Federal and State laws.

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3. The City of Reno's litigation involves an issue critical to the public health and, thus, is a matter of local concern. *See* NRS 268.003(2).

Based on the foregoing, the City of Reno respectfully requests this Honorable Court issue an order finding that the City's litigation addresses a matter of local concern and, thus, the City has the authority to maintain the litigation.

AFFIRMATION

The undersigned declares under penalty of perjury under the law of the State of Nevada that the foregoing document does not contain the Social Security number or personal information of any person.

DATED this 13th day of January, 2022.

EGLET ADAMS

/s/ Robert T. Eglet

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

CASSANDRA S.M. CUMMINGS, ESQ.

Nevada Bar No. 11944

RICHARD K. HY, ESQ.

Nevada Bar No. 12406

400 S. 7th Street, 4th Floor

Las Vegas, NV 89101

Tel.: (702) 450-5400

Fax: (702) 450-5451

E-Mail eservice@egletlaw.com

-and-

BILL BRADLEY, ESQ.

Nevada Bar No. 1365

6900 S. McCarran Blvd., Suite 2000

Reno, Nevada 89509

Telephone: (775) 335-9999

Email: office@bdjlaw.com

Attorneys for Plaintiff, City of Reno

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET ADAMS, and that on January 13, 2022, I caused the foregoing document entitled **PLAINTIFF CITY OF RENO'S SUPPLEMENTAL BRIEFING IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Second Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and by U.S. regular mail as follows:

<p>Daniel F. Polsenberg J. Christopher Jorgensen LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Pkwy, Ste. 600 Las Vegas, Nevada 89169</p> <p><i>Attorneys for Cardinal Health, Inc., Cardinal Health 6, Inc.; Cardinal Health Technologies LLC; Cardinal Health 414 LLC; and Cardinal Health 200 LLC</i></p>	<p>Steve Morris Rosa Solis-Rainey MORRIS LAW GROUP 411 E. Bonneville Ave., Ste. 360 Las Vegas, NV 89101</p> <p>Nathan E. Shafroth (pro hac vice pending) COVINGTON & BURLING, LLP One Front Street San Francisco, CA 94111</p> <p><i>Attorneys for McKesson Corporation</i></p>
<p>Pat Lundvall Amanda C. Yen McDONALD CARANO LLP 100 W. Liberty Street, 10th Floor Reno, NV 89501</p> <p>Michael C. Minahan (pro hac vice pending) Skadden, Arps, Slate, Meagher & Flom LLP 525 University Avenue, Suite 1400 Palo Alto, CA 94301 Telephone: (650) 470-4500 Michael.Minahan@skadden.com</p> <p>Thomas E. Fox (pro hac vice pending) Skadden, Arps, Slate, Meagher & Flom LLP One Manhattan West New York, New York 10001 Telephone: (212) 735-2165 Thomas.Fox@skadden.com</p>	<p>Steven E. Guinn Ryan W. Leary LAXALT & NOMURA, LTD. 9790 Gateway Dr., Ste. 200 Reno, NV 89521</p> <p>Rocky Tsai ROPES & GRAY LLP Three Embarcadero Center San Francisco, CA 94111-4006</p> <p><i>Attorneys for Mallinckrodt LLC; Mallinckrodt US Holdings, Inc.</i></p>

<p>Max E. Corrick II OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI 9950 W. Cheyenne Ave Las Vegas, NV 89129</p> <p>Martin Louis Roth Donna Marie Welch Timothy William Knapp Erica Zolner KIRKLAND & ELLIS, LLP 300 N. LaSalle Chicago, Illinois 60654</p> <p>Jennifer Gardner Levy KIRKLAND & ELLIS, LLP 1301 Pennsylvania Ave., N.S. Washington, DC 20004</p> <p><i>Attorneys for Allergan USA, Inc. and Allergan Finance LLC fka Actavis Inc. fka Watson Pharmaceutic, Allergan USA, Inc.</i></p>	<p>Philip M. Hymanson HYMANSON & HYMANSON PLLC 8816 Spanish Ridge Avenue Las Vegas, Nevada 89148</p> <p>Steven A. Reed MORGAN, LEWIS & BOCKIUS LLP 1701 Market Street Philadelphia, Pennsylvania 19103</p> <p>Collie F. James, IV MORGAN, LEWIS & BOCKIUS LLP 600 Anton Blvd., Suite 1800 Costa Mesa, California 92626-7653</p> <p>Brian M. Ercole MORGAN, LEWIS & BOCKIUS LLP 200 South Biscayne Blvd., Suite 5300 Miami, Florida 33131</p> <p><i>Attorneys for Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc. fka Watson Pharma, Inc.</i></p>
<p>Lawrence Semenza III Christopher D. Kircher Jarrod Rickard Katie L. Cannata SEMENZA KIRCHER RICKARD 10161 Park Run Drive, Suite 150 Las Vegas, Nevada 89145</p> <p>REED SMITH LLP Steven J. Boranian, Esq. (pro hac vice) Rachel Weil, Esq. (pro hac vice) Sarah Johansen, Esq. (pro hac vice) 101 Second Street, Suite 1800 San Francisco, California 94105</p> <p><i>Attorneys for AmerisourceBergen Corporation</i></p>	<p>Rand Family Care, LLC c/o Robert Gene Rand, M.D. 3901 Klein Blvd. Lompoc, California 93436</p> <p>Robert Gene Rand, M.D. 3901 Klein Blvd. Lompoc, California 93436</p>

/s/ Makaela A. Otto
An Employee of EGLET ADAMS

1 **4105**

Pat Lundvall (NSBN 3761)
Tara U. Teegarden (NSBN 15344)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
plundvall@mcdonaldcarano.com
tteegarden@mcdonaldcarano.com

Michael C. Minahan (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Telephone: (650) 470-4500
Michael.Minahan@skadden.com

Thomas E. Fox (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Telephone: (212) 735-2165
Thomas.Fox@skadden.com

Jessica D. Miller (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: 202-371-7850
Jessica.Miller@skadden.com

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

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

**DEFENDANTS' SUPPLEMENTAL
REPLY BRIEF IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

INTRODUCTION

As explained in Defendants' opening brief, the City's lawsuit does not involve a "matter of

1 local concern” and therefore should be dismissed pursuant to the Nevada Supreme Court’s ruling in
2 *Endo Health Solutions Inc., et al. v. The Second Judicial District Court (Washoe), et al.* 137 Nev.
3 Adv. Op. 39, 492 P.3d 565, 571 (Nev. 2021) (en banc), because this lawsuit does not qualify as a
4 “matter of local concern” under NRS 268.003(1). The City’s opposition brief confirms that none of
5 NRS 268.003(1)’s three independent requirements has been satisfied in this case.

6 **First**, with respect to subdivision (a), the local impact requirement, the City does not argue
7 that Defendants’ alleged conduct has principally affected the City of Reno, as opposed to other
8 localities. Instead, the City contends that it has sustained different damages from those being claimed
9 by the State and other government plaintiffs. But the pertinent test is whether the complained-of
10 conduct in this action “[p]rimarily affects or impacts” the City “and does not have a significant effect
11 or impact on areas located in other cities or counties.” NRS 268.003(1)(a). And the answer to that
12 question is no, as the Supreme Court’s ruling makes clear: “This lawsuit is **not** unique, as
13 governmental entities throughout the country, including the State of Nevada itself and other cities
14 throughout the state, have filed lawsuits alleging similar claims.” *Endo*, 492 P.3d at 567 (emphasis
15 added).

16 **Second**, the underlying lawsuit is also not a matter of local concern under NRS
17 268.003(1)(c)(1) because it implicates a state interest requiring “statewide uniformity.” Although
18 the City argues that its lawsuit does not implicate the practice of pharmacy and its corresponding
19 regulatory regime, this case directly challenges Defendants’ marketing and/or selling of prescription
20 opioid medications, which are “subject to protection and regulation by the State.” NRS 639.213,
21 639.0124(1). And contrary to the City’s argument, the “One Nevada” Agreement entered into
22 between the State and its counties and other litigating cities for the purpose of allocating proceeds
23 from potential opioid-related settlements reflects the need for statewide uniformity rather than a
24 checkerboard of disparate approaches.

25 **Third**, the City also confirms that it is unable to satisfy the “no substantial regulation”
26 requirement of NRS 268.003(1)(c)(2), which forecloses lawsuits by cities that seek to regulate
27 business activities under the purview of federal or state agencies. The City reiterates that it *is* seeking
28 injunctive relief to enjoin Defendants’ promotion of prescription opioid medications, the effect of

1 which would be to regulate business activities (i.e., the marketing of prescription opioid medications)
2 that are highly regulated by the FDA and state agencies.

3 For all of these reasons, discussed in further detail below, the Court should find that the City’s
4 lawsuit does not satisfy NRS 268.003’s definition of a “matter of local concern” and dismiss it
5 outright.

6 **ARGUMENT**

7 The Nevada Supreme Court instructed this Court to “strictly apply” NRS 268.003’s definition
8 of a “matter of local concern,” explaining that “[i]f the lawsuit does not meet that definition, then the
9 City does not have authority to maintain the underlying action.” *Endo*, 492 P.3d at 571. Under that
10 definition, the City must first satisfy the local “impact” requirement—i.e., that Defendants’ alleged
11 conduct “[p]rimarily affects or impacts” the City or its residents “and does not have a significant
12 effect or impact” outside Reno. NRS 268.003(1)(a). In addition, the City must also establish that
13 the lawsuit “[d]oes not concern”: (1) “[a] state interest that requires statewide uniformity of
14 regulation”; or (2) “[t]he regulation of business activities that are subject to substantial regulation by
15 a federal or state agency.” NRS 268.003(c)(1)-(2). The City’s various arguments confirm that this
16 lawsuit falls short on all three of these independent requirements.

17 **I. THE CITY FAILS TO SATISFY THE LOCAL “IMPACT” REQUIREMENT OF NRS** 18 **268.003(1)(a).**

19 As explained in Defendants’ opening brief, the City’s lawsuit does not satisfy the local
20 “impact” requirement of NRS 268.003(1)(a) because its own allegations (i.e., that “[t]he abuse of
21 opioids is a widespread problem” with “far-reaching . . . consequences . . . throughout Nevada”) make clear that this lawsuit is a matter of statewide—indeed, national—concern. *See* Defs.’ Suppl.
22 Br. at 7-8. In response, the City concedes that the alleged conduct at issue in this case “has impacted
23 communities across the country,” but nevertheless argues that the impact of that alleged conduct on
24 the City of Reno has been “unique” because the City has sustained different damages from those
25 allegedly incurred by the State or other jurisdictions throughout the country. Pl.’s Suppl. Br. at 5.
26 This argument is both irrelevant and incorrect.

27 To qualify as a matter of local concern, the alleged wrongdoing must both (1) “[p]rimarily
28

1 affect[] or impact[]” persons or areas within the City; and (2) “not have a significant effect or impact
2 on areas located in *other* cities or counties.” NRS 268.003(1)(a) (emphases added). The City’s
3 lawsuit does not satisfy this requirement because it is premised on the purportedly “widespread effect
4 that opioid addiction has brought on the entire country as a whole, the State of Nevada, and the City
5 of Reno”—a reality that led the Supreme Court to conclude that “[t]his lawsuit is *not* unique.” *Endo*,
6 492 P.3d at 567 (emphasis added) (noting that “governmental entities throughout the country,
7 including the State of Nevada itself and other cities throughout the state, have filed lawsuits alleging
8 similar claims”). Although the City asserts that the Supreme Court “state[d] that this Court may
9 consider damages and local impact so long as it applies the statutory test,” Pl.’s Suppl. Br. at 3, the
10 Supreme Court “conclude[d] that [it] was erroneous” for this Court to “reason[] that ‘Reno states a
11 cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health,
12 safety, and welfare, including the concomitant stress placed on its police, fire, and social services,’”
13 *Endo*, 492 P.3d at 571. The only logical interpretation of that statement is that the nature of the
14 City’s alleged damages is not a proper consideration in applying the local “impact” requirement of
15 NRS 268.003(1)(a).

16 In any event, there is nothing “unique” about the City’s alleged damages, as the various
17 examples highlighted by the City illustrate. For example, although the City highlights the role of Dr.
18 Robert Rand, who supposedly operated a pill mill in the City of Reno, it does not explain how Dr.
19 Rand’s conduct affected the City in a unique fashion compared to any other doctor who ran a “pill
20 mill” in Nevada or anywhere else across the country. Indeed, the City’s Second Amended Complaint
21 (“SAC”) expressly alleges that “‘pill mills,’ often styled as ‘pain clinics,’ *sprouted nationwide* and
22 rogue prescribers stepped in to supply prescriptions for non-medical use.” *See, e.g.*, SAC ¶ 95
23 (emphasis added). Similarly, although the City contends that “the State of Nevada has suffered
24 different damages than Reno has suffered,” Pl.’s Suppl. Br. at 5, even a cursory comparison of the
25 operative complaints in this case and the State’s case demonstrates that both lawsuits seek punitive
26 damages to “punish Defendants for their [allegedly] wrongful conduct *in Nevada*”; request
27 “restitution and reimbursement sufficient to cover all prescription costs”; demand “restitution and
28 reimbursement sufficient to cover all costs expended for health care services” related to opioids; and

1 request injunctive relief “to stop Defendants’ promotion and marketing of opioids for inappropriate
2 uses in *Nevada*.” Compare Prayer for Relief, SAC, *with* Prayer for Relief, Third Am. Compl., *Clark*
3 *County v. Purdue Pharma, L.P.*, No. A-17-765828-C (D. Ct. Clark Cnty. Nev.) (attached as Ex. A)
4 (emphases added). And other litigating cities in Nevada seek the same kind of relief as well. *See*,
5 *e.g.*, Prayer for Relief, First Am. Compl., *City of Las Vegas v. Purdue Pharma, L.P.*, No. A-19-
6 800697-B (D. Ct. Clark Cnty. Nev.) (attached as Ex. B); Prayer for Relief, Compl., *City of Sparks v.*
7 *Teva Pharms. USA, Inc.*, No. CV20-01152 (D. Ct. Washoe Cnty. Nev.) (attached as Ex. C); Prayer
8 for Relief, Compl., *Esmeralda County v. Purdue Pharma, L.P.*, No. CV20-5117 (D. Ct. Esmeralda
9 Cnty. Nev.) (attached as Ex. D). In short, the City’s characterization of its alleged damages cannot
10 be reconciled with its Prayer for Relief and confirms that there is nothing unique about the impact of
11 Defendants’ alleged conduct in Reno.

12 Although the City argues that the “One Nevada” Agreement supports its position regarding
13 “unique” damages and impact, *see* Pl.’s Suppl. Br. at 6, it does the exact opposite. According to the
14 City, “the entire purpose of the Agreement is to recognize the differences in damages . . . in each
15 jurisdiction and to allow each jurisdiction to remediate those damages as appropriate.” *Id.* at 7. But
16 the fact that the Agreement purports to allow each signatory locale to remediate its own damages
17 shows (at most) that the *amount* of relief being claimed by each signatory locale may vary. That
18 does not change the fact that each government plaintiff is seeking the same *kind* of relief. Notably,
19 the “One Nevada” Agreement expressly represents that “the State of Nevada and its Local
20 Governments share a *common* desire to remediate and alleviate the impacts of the opioid epidemic
21 *throughout the State of Nevada*.”¹ Accordingly, the “One Nevada” Agreement further demonstrates
22 why the underlying lawsuit does not satisfy the local “impact” requirement of NRS 268.003(1)(a).

23 **II. THE CITY’S LAWSUIT IS NOT A MATTER OF LOCAL CONCERN BECAUSE IT**
24 **IMPLICATES A STATE INTEREST REQUIRING “STATEWIDE UNIFORMITY.”**

25 Defendants also argued in their opening brief that the City’s lawsuit fails to satisfy the
26

27 ¹ One Nevada Agreement at 1 (emphases added). By signing and becoming a party to the “One Nevada”
28 Agreement, the City has agreed to be bound by the various recitals contained within it. *See* NRS 47.240(2).

1 definition of a “matter of local concern” under NRS 268.003(1)(c)(1) because it implicates the
2 practice of pharmacy, which requires “statewide uniformity of regulation.” Defs.’ Suppl. Br. at 10-
3 11. In response, the City concedes that “the State regulates the practice of pharmacy,” but
4 nevertheless argues that such regulation “is not at issue in the City’s litigation.” Pl.’s Suppl. Br. at
5 7. However, the City’s lawsuit is premised on a purported “public health crisis” allegedly created as
6 a result of Defendants’ allegedly misleading marketing of prescription opioid medications in Reno
7 and throughout the State. *See, e.g.*, SAC ¶ 36 (“After creating a public health crisis, Defendants have
8 not pulled their opioid products from the market”); *id.* ¶ 37 (“Consequently, public health and
9 safety have been significantly and negatively impacted due to the misrepresentations and omissions
10 by Defendants regarding the appropriate uses and risks of opioids”). These are the very sorts
11 of pharmaceutical activities that are “subject to protection and regulation by the State.” NRS
12 639.213, 639.0124(1) (listing such activities as “manufacturing, compounding, labeling, dispensing
13 and distributing of a drug, including the receipt, handling and storage of prescriptions”). Allowing
14 the City’s lawsuit to proceed would undermine that “protection and regulation” by imposing
15 municipal standards pharmaceutical marketing, selling and dispensing on Defendants, without any
16 regard for the statewide regulatory regime.

17 Once again, and contrary to the City’s argument, the “One Nevada” Agreement supports
18 Defendants’ position, not the City’s. The City asserts that the Agreement shows that Defendants’
19 alleged conduct “impacted each jurisdiction differently, and therefore there is not a single uniform
20 approach to handling opioid recoveries that would work for every jurisdiction.” Pl.’s Suppl. Br. at
21 8. But Plaintiff again fundamentally misstates the import of the Agreement, which is to achieve a
22 uniform, statewide solution. *See* One Nevada Agreement at 1, 13 (stating that “the State of Nevada
23 and its Local Governments share a common desire to remediate and alleviate the impacts of the
24 opioid epidemic throughout the State of Nevada”). Any other approach would frustrate the
25 Legislature’s declaration that the practice of pharmacy “affect[s] public safety and welfare . . . and
26 is therefore subject to protection and regulation *by the State*.” NRS § 639.213 (emphasis added). In
27 short, the City’s lawsuit does not qualify as a matter of local concern under NRS 268.003(1)(c)(1)
28 because it implicates a state interest requiring statewide uniformity.

1 **III. THE CITY’S LAWSUIT FAILS TO SATISFY THE “NO SUBSTANTIAL**
2 **REGULATION” REQUIREMENT OF NRS 268.003(1)(C)(2).**

3 The City’s lawsuit is also not a “matter of local concern” because it seeks to regulate business
4 activities (i.e., the manufacture, distribution and marketing of prescription opioid medications) that
5 are highly regulated by federal and state agencies. *See* Defs.’ Suppl. Br. at 9-10. In response,
6 Plaintiff argues that it is seeking damages allegedly caused by Defendants’ conduct rather than
7 attempting to regulate the marketing or sale of prescription opioid medications. *See* Pl.’s Suppl. Br.
8 at 8. But Plaintiff’s argument is belied by its Prayer for Relief, which not only seeks damages, but
9 also requests “equitable, declaratory and/or injunctive relief” so as “to assure that the Plaintiff has an
10 effective remedy and to **stop** Defendants’ promotion and marketing of opioids for inappropriate uses
11 **in Nevada**, currently and in the future.” SAC, Prayer for Relief, ¶ 8 (emphases added). That request
12 necessarily “concern[s]” “[t]he regulation of business activities” (i.e., pharmaceutical marketing) that
13 are subject to the oversight of the FDA and state agencies. Pl.’s Suppl. Br. at 9. Although the City
14 insists that it is only seeking relief “**as permitted by law**,” *id.* at 8 (emphasis in Pl.’s Suppl. Br.)
15 (quoting SAC, Prayer for Relief, ¶ 8), that qualifier does not make its proposal any less sweeping,
16 much less take this lawsuit outside the ambit of federal and state pharmaceutical regulations.

17 In short, because the City’s lawsuit seeks to regulate the marketing of prescription opioid
18 medications, it does not constitute a “matter of local concern” under NRS 268.003(1)(c)(2) either.

19 **IV. CONCLUSION**

20 For the foregoing reasons, as well as those set forth in Defendants’ opening brief, Plaintiff’s
21 lawsuit does not address a “matter of local concern” as defined in NRS 268.003(1) and should
22 therefore be dismissed.

23 ...

24 ...

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AFFIRMATION

The undersigned affirm that the preceding document does not contain personal information as described in WDCR 10(7).

Dated this 14th day of February, 2022.

McDONALD CARANO LLP

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI

By: /s/ Pat Lundvall

By: /s/ Max E. Corrick, III

Pat Lundvall (NSBN 3761)
Tara U. Teegarden (NSBN 15344)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
plundvall@mcdonaldcarano.com
tteegarden@mcdonaldcarano.com

Max E. Corrick, II
NSBN 6609
OLSON CANNON GORMLEY
& STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendants

Michael C. Minahan (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Telephone: (650) 470-4500
Michael.Minahan@skadden.com

Donna Welch, P.C.*
Martin L. Roth, P.C.*
Timothy Knapp*
Zac Ciullo*
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

Thomas E. Fox (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Telephone: (212) 735-2165
Thomas.Fox@skadden.com

Jennifer G. Levy, P.C. (*pro hac vice*)
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004

Jessica D. Miller (*pro hac vice*)
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: 202-371-7850
Jessica.Miller@skadden.com

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

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

1 SEMENZA KIRCHER RICKARD

HYMANSON & HYMANSON PLLC

2 By: /s/ Jarrod L. Rickard

By: /s/ Philip M. Hymanson

3 Lawrence J. Semenza, III, Esq.

Philip M. Hymanson, Esq.

4 NSBN 7174

NSBN 2253

5 Christopher D. Kircher, Esq.

HYMANSON & HYMANSON PLLC

6 NSBN 11176

8816 Spanish Ridge Avenue

7 Jarrod L. Rickard, Esq.

Las Vegas, Nevada 89148

8 NSBN 10203

Telephone: (702) 629-3300

9 10161 Park Run Dr., Ste. 150

Phil@HymansonLawNV.com

10 Las Vegas, Nevada 89145

11 REED SMITH LLP

Steven A. Reed (to be admitted pro hac vice)

12 Steven J. Boranian, Esq. (pro hac vice)

MORGAN, LEWIS & BOCKIUS LLP

13 Rachel Weil, Esq. (pro hac vice)

1701 Market Street

14 Sarah Johansen, Esq. (pro hac vice)

Philadelphia, PA 19103

15 101 Second Street, Suite 1800

Telephone: (215) 963-5000

16 San Francisco, California 94105

Facsimile: (215) 963-5001

steven.reed@morganlewis.com

17 *Attorneys for Defendant*

Brian M. Ercole (to be admitted pro hac vice)

18 *AmerisourceBergen Drug Corporation*

MORGAN, LEWIS & BOCKIUS LLP

200 South Biscayne Blvd., Suite 5300

Miami, FL 33131

Telephone: (305) 415-3000

Facsimile: (305) 415-3001

brian.ercole@morganlewis.com

Collie F. James, IV (to be admitted pro hac vice)

MORGAN, LEWIS & BOCKIUS LLP

600 Anton Boulevard, Suite 1800

Costa Mesa, CA 92626

Telephone: (714) 830- 0600

Facsimile: (714) 830- 0700

collie.james@morganlewis.com

Attorneys for Defendants Teva

Pharmaceuticals USA, Inc., Cephalon, Inc.,

Actavis LLC, Actavis Pharma, Inc. f/k/a

Watson Pharma, Inc., and Watson

Laboratories, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and
3 that on this date, a true and correct copy of the **DEFENDANTS' SUPPLEMENTAL REPLY**
4 **BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S**
5 **COMPLAINT** was electronically served via the Court's electronic filing system to the following
6 parties associated with this case. For the following parties not registered with the court's electronic
7 filing system, then a true and correct copy of the above-named document was served via U.S. mail:

8 Robert T. Eglet
9 Robert Adams
10 Richard K. Hy
11 Cassandra S.M. Cummings
12 Eglet Prince
13 400 S. 7th Street, 4th Floor
14 Las Vegas, Nevada 89101

Steve Morris
Rosa Solis-Rainey
Morris Law Group
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106

12 Bill Bradley
13 Bradley, Drendel & Jeanney
14 6900 S. McCarran Blvd., Suite 2000
15 Reno, Nevada 89509

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

16 *Attorneys for Plaintiff City of Reno*

*Attorneys for Defendant McKesson
Corporation*

17 Rand Family Care, LLC
18 c/o Robert Gene Rand, M.D.
19 3901 Klein Blvd.
20 Lompoc, California 93436

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

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

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

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

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

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

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

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

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

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

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

*Attorneys for Defendant
AmerisourceBergen Drug Corporation*

1 Steven E. Guinn
2 Ryan W. Leary
3 Laxalt & Nomura, LTD.
4 9790 Gateway Dr., Suite 200
5 Reno, Nevada 89521

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

10 *Attorneys for Defendant Mallinckrodt LLC*

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

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

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

12 Max E. Corrick II
13 Olson Cannon Gormley &
14 Stoberski
15 9950 W. Cheyenne Avenue
16 Las Vegas, Nevada 89129

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

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Dated: February 14, 2022.

22 /s/ Beau Nelson

23 An employee of McDonald Carano LLP
24
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26
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LIST OF EXHIBITS

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1 Code #4185

2 SUNSHINE LITIGATION SERVICES
3 151 Country Estates Circle
4 Reno, Nevada 89511
5 775-323-3411

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

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE BARRY L. BRESLOW, DISTRICT JUDGE

9 -oOo-

10 CITY OF RENO,

11 Plaintiff,

Case No. CV18-01895

12 vs.

Dept. 8

13 PURDUE PHARMA, L.P., et al,

14 Defendant.
15 _____/

16 TRANSCRIPT OF PROCEEDINGS

17 VIA ZOOM VIDEOCONFERENCING

18 HEARING ON MOTION TO DISMISS

19 August 2, 2022

20 Reno, Nevada

21
22
23
24 REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

25 Job No. 833908

1
2 **APPEARANCES:**
3 **(All Parties Appearing Remotely)**

4 **For the City of Reno:**

5 **EGLET ADAMS**
6 **BY: ROBERT T. EGLET, ESQ.**
7 **200 S. 7th Street, 4th Floor**
8 **Las Vegas, Nevada 89101**
9 **702-450-5400**
10 **Fax 702-450-5451**
11 **Eservice@egletlaw.com**

12 **And:**

13 **BRADLEY, DRENDEL & JEANNEY**
14 **BY: MARK C. WENZEL, ESQ.**
15 **6900 S. McCarran Blvd., Ste. 2000**
16 **Reno, Nevada 89509**
17 **775-335-9999**
18 **Fax 775-335-9993**
19 **Mwenzel@bdjlaw.com**

20 **For Endo Health Solutions and Endo Pharmaceuticals:**

21 **MCDONALD CARANO LLP**
22 **BY: PAT LUNDVALL, ESQ.**
23 **2300 West Sahara Ave., Ste. 1200**
24 **Las Vegas, Nevada 89102**
25 **702-873-4100**
Plundvall@mcdonaldcarano.com

For Allergan Finance and Allergan USA:

OLSON CANNON GORMLEY & STOBERSKI
BY: MAX E. CORRICK, II, ESQ.
9950 West Cheyenne Ave
Las Vegas, Nevada 89129
702-384-4012

1 TUESDAY, AUGUST 2, 2022, RENO, NEVADA, 1:18 P.M.

2 -o0o-

3 THE COURT: Good afternoon everyone. Let's get started.

4 We're on the record remotely in case number Civil
5 18-01895, Plaintiff, City of Reno. Lead Defendant identified in
6 the caption, Purdue Pharma, L.P., of course, and others.

7 We are here for the Court to entertain argument with
8 respect to the directive from the Nevada Supreme Court as a result
9 of its en banc decision last year in the Endo Health Solutions
10 versus Second Judicial District Court writ, and the resulting
11 direction of the Court, for this Court to make a determination
12 whether City of Reno's action falls under the statutory definition
13 of a matter of local concern.

14 The Court has received since that time, and several
15 months ago actually, a supplemental motion to dismiss from the
16 Defense, responded to by Plaintiff, replied to by Defense, which
17 then begat this hearing.

18 In a moment I'll ask you, starting with Mr. Eglet on
19 behalf of plaintiff and Mr. Wenzel on behalf of plaintiff to
20 identify yourselves for the record. And then defense counsel, I'm
21 aware, because when I sat down I heard some chatter, there are
22 others in attendance that are representing interested parties and
23 others that are just interested in the proceedings and the goings
24 on; but for those of you that have been brought in as panelists,
25 if you would please now identify yourself for the record and who

1 you represent.

2 Mr. Eglet.

3 MR. EGLET: Thank you, Your Honor, and good afternoon.

4 Robert Eglet on behalf of the City of Reno.

5 THE COURT: Thank you.

6 Mr. Wenzel.

7 MR. WENZEL: Mark Wenzel on behalf of the City of Reno.

8 THE COURT: Thank you, Mr. Wenzel.

9 Ms. Lundvall.

10 MS. LUNDVALL: Good afternoon, Your Honor.

11 Pat Lundvall from the McDonald Carano. And my clients
12 today are Endo Health Solutions and Endo Pharmaceuticals.

13 THE COURT: Thank you.

14 And Mr. Corrick.

15 MR. CORRICK: Good afternoon Your Honor. Max Corrick on
16 behalf of the Allergan parties, that's Allergan Finance and
17 Allergan USA.

18 THE COURT: Thank you very much. Let me note this as
19 well. I did receive today a proposed order from Plaintiffs. I'm
20 going to assume that that was provided to the group, not just the
21 Court, but if that's not right please let me know.

22 So Ms. Lundvall, I believe it's your motion. So at this
23 time please proceed to argue what you think the Court should do
24 and why the Court should do it.

25 MS. LUNDVALL: Thank you, Your Honor.

1 As I introduced myself, my name is Pat Lundvall and I'm
2 here technically on behalf of two named parties, but I present
3 then on behalf of all of the moving parties found within the joint
4 motion to dismiss.

5 Those moving parties manufacture, they promote and they
6 market FDA prescription medications for distribution through
7 licensed physicians and pharmacies across the nation, including
8 the state of Nevada.

9 It is the abuse of those business activities that the
10 plaintiffs allege has caused an opioid crisis. And as the
11 plaintiffs further allege, that opioid crisis has hit all corners
12 of our nation, but specifically it has hit and impacted and
13 affected all corners of our state.

14 Undisputably, all of the business activities that they
15 allege have been abused are highly regulated, not only by the FDA,
16 and the DEA, but also by the State of Nevada through the State
17 Board of Pharmacy.

18 And further, as the plaintiffs allege, all in Nevada are
19 entitled to a uniform protection against those abuses.

20 And with those three allegations and that summary, I
21 could stop with my argument, because that fits and demonstrates
22 that in fact the plaintiffs cannot meet the definition of a matter
23 of local concern that was set forth by our legislature.

24 But I'm not going to be glib and I'm not going to take
25 anything for granted. And so, therefore, I'm going to give a more

1 robust and a bit more pedantic, I guess, presentation as to how we
2 got there, and specifically then the language of the statute that
3 the Court then is to strictly apply.

4 As you know, we're limited to a single issue and a writ
5 of mandate expressly, and if I can quote here, is that this Court
6 is supposed to reconsider the motion to dismiss, and in so doing,
7 apply the definition of a matter of local concern that is set
8 forth in NRS 268.003 to the City's claims in this case.

9 That writ issued after the Nevada Supreme Court found
10 that Nevada's legislative scheme or our version of Dillon's Rule,
11 it does apply to litigation. And they also found that there was
12 no express or implied power which had been delegated to the City
13 of Reno to be able to advance its case.

14 And, therefore, against the framework of Nevada's
15 statute that was enacted in 2015, the sole means or the sole
16 method by which that they could maintain their suit is that they
17 could meet the specific statutory definition that was designed to
18 evaluate whether or not this subject of the City's suit is
19 actually -- and I'm going to quote because it is a defined term --
20 a matter of local concern.

21 While our legislature has authorized municipalities like
22 the City of Reno greater power to address those purely local
23 issues, it gave a very specific definition as to what may
24 constitute a matter of local concern.

25 The definition is detailed, it is precise, and it is

1 specific. And per the Nevada Supreme Court it is to be strictly
2 applied.

3 If the conduct or the subject matter of this case being
4 examined does not fit within that specific detailed and precise
5 definition, and per the Nevada Supreme Court, this Court is
6 obligated to grant our motion to dismiss.

7 Now the Court has already addressed this issue once
8 before.

9 During the first argument before this Court the City
10 advanced a single argument to suggest that its case was a matter
11 of local concern.

12 And I'm going to quote their argument so as not to be
13 accused of misstating it.

14 And this is directly from the briefs to the Court the
15 first time.

16 Quote, "There is no concern more local than that of the
17 injuries caused to a local government by a third party. Even if
18 Dillon's Rule could be applied to determine whether a local
19 government has standing to bring a lawsuit for its damages, Reno
20 still has standing in this matter because the opioid crisis impact
21 on the City is a matter of local concern."

22 Now before the Nevada Supreme Court, the City advanced
23 that exact same argument. And, once again, I'm going to quote
24 their argument so as not to be accused of misconstruing it or
25 misstating it.

1 They argued before the Nevada Supreme Court, quote,
2 "Matters of local concern include damages the City has suffered as
3 a result of the opioid epidemic, because those damages impact the
4 City programs and functions implemented to benefit the citizens of
5 Reno and the City itself."

6 The Nevada Supreme Court rejected that argument.

7 They rejected that argument.

8 In so doing, the Nevada Supreme Court parroted the
9 City's argument, and then it went on to expressly reject it as
10 erroneous. And instead, it directed this Court to apply the
11 strict definition as it is found within the statute.

12 So in the supplemental briefing one would have expected
13 to see a different argument coming from the City, but they did
14 not. They are advancing the exact same argument that they did
15 before that was found by the Nevada Supreme Court to be clearly
16 erroneous.

17 It's the exact same argument that was presented to you
18 the first time. It's the exact same argument they presented to
19 the Nevada Supreme Court, and it's the exact same argument that
20 the Nevada Supreme Court said was erroneous.

21 So let me walk you instead then through the definition
22 that you are to examine.

23 And as a preliminary matter I would like to observe that
24 after close to 34-some-odd years of practicing in this state,
25 rarely, I think, has our legislature or our Nevada Supreme Court

1 given a more clear roadmap for this Court to follow.

2 And rarely has a litigant like the City of Reno, as well
3 as all the other cities and counties who brought these separate
4 lawsuits made this Court's job easier in deciding against the
5 City.

6 When you look at admissions from the City's three
7 complaints, the original complaint, the First Amended Complaint
8 and now the Second Amended Complaint, when you look at the
9 multiple complaints that have been filed by other municipalities
10 and other counties by these same attorneys, when you look at the
11 concessions found within their briefs, when you look at the
12 previous observations that had been made by the Nevada Supreme
13 Court, and in fact even observations then that were made by you in
14 your original decision, and then you couple that then with the
15 recitals that are found in the One Nevada Agreement that we
16 brought to the Court's attention and for which the Court is
17 entitled to look at in determining, then, this motion to dismiss,
18 all of those coupled together, even though individually each one
19 could easily demonstrate, that in fact the City cannot meet the
20 specific statutory definitions that you're being asked to apply.

21 The statute is plainly written and it requires only a
22 review of the language itself.

23 And the way I look at the statute is it's really a
24 simple mathematical formula. And it's mathematical in this regard
25 because the Nevada legislature coupled all of the requirements

1 with the words "and."

2 So in other words, the requirements of Subsection A have
3 to be coupled with the requirements of Subsection B, coupled with
4 the requirements of Subsection C. All of those have to be
5 demonstrated by the City of Reno before it may conclude or before
6 this Court may conclude that the subject matter of the case before
7 you is a matter of local concern.

8 When you total all of those requirements up that have
9 all been coupled by the word "and," there are actually six
10 requirements. Subsection A has two requirements, Subsection B a
11 single one, and then Subsection 3 has three separate requirements.
12 And you couple them all together and all six factors or all six
13 requirements have to be met.

14 In our papers we illustrated that three of those,
15 undisputably, based upon the allegations and the concessions that
16 have been made by the City, cannot be met; and, therefore, this
17 lawsuit cannot beat the statutory definition of a matter of local
18 concern.

19 If I can ask for the Court's indulgence, what I would
20 like to do is to share my screen and to put up the actual language
21 of the statute.

22 When you're examining and being required to look at and
23 apply that plain language, I think it's a helpful tool to have
24 that actual language in front of you.

25 May I do so?

1 THE COURT: Well, thank you. I'm going to politely
2 decline. I have everything I need here on another screen. I'm
3 generally familiar with the law, issues, the statute and the
4 Supreme Court's ruling, so no, thank you, but you may proceed.

5 MS. LUNDVALL: All right. Thank you, Your Honor, then.

6 Let me start with Subsection 1(a). And under Subsection
7 1(a) there are two requirements. Those two requirements requires
8 the City to demonstrate that the matter that's at issue primarily
9 impacts the City and does not have a significant impact in other
10 cities or counties of our state.

11 And I want to begin my analysis by noting that the City
12 didn't even pretend, didn't even attempt to argue that the opioid
13 crisis or the opioid epidemic primarily impacts the City. And in
14 fact, they could not, with a straight face, advance that argument.
15 And they don't. They just simply ignore it.

16 Ignoring that particular issue concedes that they cannot
17 demonstrate it.

18 But then when you go on to the second factor then that
19 is found in Subsection 1(a), whether or not that it has a
20 significant impact on areas located outside the City, all you have
21 to do is to look at the allegations of their complaint.

22 The operative complaint at this point in time, which is
23 the Second Amended Complaint, when you look at paragraphs 2, 17,
24 33, 65, 220 and 221, they all assert that the wrongdoing that's at
25 issue in this case is statewide and nationwide and it has no

1 unique nexus to the City of Reno.

2 The Nevada Supreme Court in its written decision made a
3 number of different observations that I believe provide the
4 roadmap for this Court in the task before it.

5 The Nevada Supreme Court in its opinion observed that
6 the City had cited the widespread effect that the opioid addiction
7 crisis had brought upon the entire country as a whole and the
8 entire State of Nevada.

9 They also observed that there was no doubt that the
10 opioid crisis reaches every corner of our nation.

11 They also observed that the City's prayer for relief in
12 their operative complaint had requested statewide relief.

13 And then they went on to observe that the City's suit
14 was not unique as government agencies throughout the country,
15 including the State of Nevada, they too have filed similar cases
16 alleging identical wrongs.

17 And, in fact, to quote this Court, you, in your original
18 decision, you too made that same observation.

19 And I'm going to quote here: "There can be no doubt
20 that the opioid epidemic reaches every corner of the nation."

21 Further, we brought to the Court's attention that Nevada
22 has 16 counties, 19 municipalities. And of those 35 cities and
23 counties, 24 have brought separate lawsuits in separate
24 jurisdictions.

25 All of these lawsuits have been filed against these

1 manufacturer defendants or their corporate affiliates.

2 There is some deviation in the other categories of
3 defendants that have been named in those suits but the allegations
4 are all the same.

5 Those allegations all concern the business activities of
6 manufacturing, marketing or distribution of lawful opioid
7 prescription medication. All of these suits seek the exact same
8 prospective, injunctive and declaratory relief.

9 All of these suits ask for statewide punitive damages.
10 And all of these suits ask for medical monitoring across our
11 entire state.

12 All of these suits expressly acknowledge that the
13 harmful conduct that they want to examine has not been limited to
14 their city or their county, but in fact infects an entire nation
15 as well as the entire State of Nevada.

16 And they all know as well that there's no unique
17 nexus to their specific city or their specific county.

18 In addition, we brought to the Court's attention in the
19 One Nevada Agreement that Nevada cities and counties and the State
20 itself have entered into, so as to provide then for the
21 distribution then of any of the recoveries that are enjoyed, so to
22 speak, by the state and/or any of the individual cities and
23 counties, and how that those are supposed to be divided among all
24 of the cities, all of the counties in the entire State of Nevada.

25 The recitals under that One Nevada Agreement are

1 conclusive against the City of Reno. And that's because of an
2 evidence code that is somewhat unique to the State of Nevada that
3 we brought to your attention.

4 If you look at NRS 47.240, what you'll see there is that
5 if you are a party to a lawsuit and there's a recital in the
6 agreement that you have signed or that you are a signator to, you
7 are conclusively bound to those recitals.

8 There are two recitals that I think are important to
9 point out from to the Court from that One Nevada Agreement that
10 the City of Reno then signed on to. And it's -- I'm going to
11 state the two recitals that I believe that are at issue.

12 Quote, "The State of Nevada and its local government
13 share a common desire to remediate and alleviate the impacts of
14 the opioid epidemic throughout the State of Nevada."

15 And they go on to reference that the opioid epidemic
16 both nationally and within the State of Nevada has had its
17 impacts.

18 And finally, on this particular subsection, when you
19 look at the City's supplemental briefing in this case, they make
20 the concession that the alleged conduct at issue in this case has
21 impacted communities across the country.

22 By making that concession, what they acknowledge is that
23 the impacts and the effects have affected others than simply the
24 City of Reno. And by doing so, they concede that it cannot be a
25 matter of local concern.

1 Now, as I pointed out, they did not even address the
2 issue about whether or not that the conduct at issue primarily
3 impacts the City. They didn't even touch that argument.

4 But they also, you know, in essence, they ignore the
5 second phrase of that subsection which requires a "does not have a
6 significant impact" on areas located in other cities or counties.
7 In other words, that the City of Reno is not entitled to bring a
8 lawsuit that has impacts, significant impacts on other cities, on
9 other counties.

10 And so to suggest that the conduct that's at issue
11 either primarily impacts the City of Reno or does not
12 significantly impact other cities and counties cannot be met by
13 the City's allegations in this case.

14 For these reasons, under Subsection A, the City's suit
15 cannot fit the definition of a matter of local concern that's been
16 given to us by our legislature.

17 There was a second ground by which then that we advanced
18 in our supplemental briefing, and that was the subsection that is
19 found at Subsection C(2). It's the second factor that
20 undisputably the City cannot demonstrate.

21 And that factor then analyzes whether or not that
22 there's substantial regulation by a federal or state agency of the
23 allegedly wrongful conduct that's at issue in this case.

24 The business activities that are described in the Second
25 Amended Complaint include the manufacture, the distribution, the

1 promotion and the marketing of prescription opioid medications.

2 Our papers detailed where in the original Complaint, the
3 First Amended Complaint and in the Second Amended Complaint that
4 those business activities then were defined.

5 Those complaints, as well as all the other similar
6 complaints that have been filed in Nevada, they expressly
7 acknowledge that those business activities are subjected to
8 substantial regulation by federal agencies, specifically the FDA
9 and the DEA, as well as the State agency, which is the State Board
10 of Pharmacy.

11 At pages two through six we detail then that regulatory
12 framework both at the federal level as well as the State level.

13 We laid out in detail the substantial regulation of
14 those business activities, and notably the City did not address
15 that issue at all. They did not offer any argument against that
16 as well.

17 Moreover, how could they? Because this Court, as well
18 as the Nevada Supreme Court -- and if the Court will indulge me,
19 I'm going to quote from your original decision -- you identified,
20 quote, "That the manufacture, distribution, sales in the
21 prescribing and dispensing of opioids is subject to substantial
22 regulation by a federal or state agency," closed quote.

23 So, in short, you've got both Nevada as well as federal
24 law comprehensively regulating then the business activities that
25 they allege that we abused so as to cause the opioid crisis.

1 And because this suit concerns the regulation of those
2 business activities, it cannot be a matter of local concern as
3 defined by the statute.

4 Last, let me turn to the Subsection C(1), which is the
5 last section that we briefed then in our supplemental papers, and
6 it is the subsection that requires the Court to examine whether
7 the State has an interest in the uniformity of regulation of the
8 business activities that are at issue.

9 And, undisputably, the City cannot demonstrate that
10 either.

11 In our moving papers we identified where the legislature
12 and the statutes have declared -- and I'm going to quote here from
13 the legislature: "The practice of pharmacy, including activities
14 associated with manufacturing, compounding, labeling, dispensing,
15 and distributing of a drug is subject to protection and regulation
16 by the State."

17 You can find those declarations then of public policy at
18 NRS 639.213 and .0124(1).

19 There's no question that the City's lawsuit directly
20 challenges the defendant's marketing and/or selling of
21 prescription opioid medications.

22 Those medications are subject to protection and
23 regulation by the State of Nevada under the statutes that I just
24 cited.

25 That statute seeks to ensure the uniformity of

1 protection for all Nevada residents, and therefore, under
2 Subsection C(1), it implicates a state interest that requires
3 statewide uniformity and regulation.

4 The City could not be more specific in their prayer for
5 relief that they were requesting a statewide application of their
6 injunctive and the declaratory relief.

7 And I'm going to quote here then from their prayer.
8 They want this Court then to stop defendant's promotion and
9 marketing of opioids for inappropriate uses in Nevada currently
10 and in the future.

11 When you look at the One Nevada Agreement, they can have
12 a -- they have additional recitals then directed to that same
13 issue.

14 And so when you think about it, what they are
15 suggesting, which we don't agree, that those who live in the City
16 of Reno or that live in the City of Las Vegas, or the City of Elko
17 or Ely or Wendover, or any county across our state, they're all
18 entitled to the same uniform application of the State's business
19 interest in the regulation of those prescription medication.

20 And so let me say this, is that after City continues
21 with its exclusive focus, not on the language or not on the
22 definitions of the statute, but it wants to focus on the damage
23 argument, what it does is it continues to conflate the scope of
24 relief with the matter or the subject matter of the case to be
25 regulated or to be examined in litigation.

1 And if this Court or any court were to examine and find
2 their damage argument to be dispositive, what happens is you
3 render meaningless all the rest of the statute, and the specific
4 definition that is found within the statute that the Court must
5 conclude and must find and must make specific findings upon in
6 order to deem it a matter of local concern.

7 But as this Court is well aware, basic statutory
8 principles do not allow you to render any section, let alone
9 entire sections then, of a statute meaningless in its
10 interpretation.

11 So in summary, our analysis is simple. The City can't
12 meet at least three of the six requirements found under the
13 specific definition of what a matter of local concern is. And
14 without meeting all six of those requirements, and undisputably
15 not being able to meet three of those requirements, the Court
16 could not make a finding that it is a matter of local concern and,
17 therefore, must grant our motion to dismiss.

18 With that, I would pass the argument then to Mr. Eglet.

19 THE COURT: Thank you. Well-stated.

20 I'm trying to think of a question or two that popped up
21 along the way, but I think I've -- you touched on it later.

22 And not that this is directly on four with what you just
23 stated to the Court, your view on what the law is and how the
24 Court should apply it, but is the analysis exactly the same, if
25 the State of Nevada had not brought its own action?

1 MS. LUNDVALL: Yes. If the State of Nevada had not
2 brought its own action, the analysis is exactly the same.

3 THE COURT: And so cities and counties that may want to
4 pursue relief for perceived harm, out of luck?

5 MS. LUNDVALL: If in fact that the State had not
6 exercised its power to bring the same lawsuit, the same lawsuit
7 that it has, and they were not participatory with any of the MDL
8 litigation that's ongoing, as the Court knows, you know, that some
9 of the cases are in the MDL, that case, because of the allegations
10 and the removal then that was made to federal court, then, yes.

11 And it's one of these issues whereby, if you look at
12 this outside the context then of this litigation, what our Nevada
13 legislature did is that they said we're going to empower cities
14 and counties to do more than what Dillon's Rule allowed them to do
15 before 2015, but we're going to give them some pretty narrow
16 fences and some pretty narrow boundaries, so that they don't try
17 to claim or they try to contend that this is something that is a
18 local issue.

19 In fact, we're going to give them a very specific
20 definition, and only if they meet that definition may they
21 regulate, may they create an ordinance or may they litigate then
22 within the confines then of that definition.

23 And so on one hand, what the legislature gave in the
24 grant of additional power, it also then clearly defined the scope
25 of that power to be exercised.

1 And unless they fit within the confines of that scope,
2 then they do not have to power then to, either/or, create an
3 ordinance or can take any other type of regulatory action, or to
4 litigate then within those confines.

5 THE COURT: Well, and you touched on that, and you saw a
6 focus of the Court's first order denying the motion to dismiss was
7 the ability of a political entity like the City of Reno to advance
8 litigation, as compared to taking other actions that Dillon's Rule
9 was designed to preclude, but -- okay. I understand the movant's
10 position.

11 Ms. Lundvall, well argued, well explained. Thank you
12 very much.

13 Mr. Eglet, you may respond, sir.

14 MR. EGLET: Thank you, Your Honor, and good afternoon.

15 Your Honor, I will begin by addressing Defendant's
16 misrepresentation of the Supreme Court's ruling on the writ.

17 Defendants argue that the Supreme Court ruled that the
18 City of Reno cannot satisfy the matter of local concern test based
19 on the different damages suffered by the City, the State and other
20 local governments around the State.

21 That is not what the Supreme Court's ruling said.

22 The Supreme Court did not state whether or not the
23 difference in damages can be the basis to find that the opiate
24 lawsuit is a matter of local concern. It ruled that the Court must
25 strictly apply the statutory definition of matter of local concern

1 as set forth in NRS 28 -- or 268.003 to determine whether the City
2 of Reno's lawsuits -- lawsuit meets the definition.

3 Rather than prohibiting the City's arguments regarding
4 its unique harms and resultant damages, the Supreme Court directed
5 this Court to issue its ruling regarding local concern following
6 the definition contained in NRS 268.003(1).

7 Had the Supreme Court determined damages are not
8 sufficient to show that the opioid crisis is a matter of local
9 concern, it would have ruled that the City's case does not meet
10 the definition of local concern as alleged, rather than sending
11 the case back to this Court with instructions to issue an order
12 following the definition.

13 Of course, the City of Reno cannot claim that it is the
14 only city to have been harmed by the opiate epidemic. This is
15 nationwide. And we would look -- we would not be taken seriously
16 if we claimed Reno alone has been harmed.

17 The City of Reno is, however, the only local government
18 to suffer the unique harms that Reno has suffered. No other
19 jurisdiction can claim to have been affected by the opiate
20 epidemic the same way the City of Reno has been affected, just as
21 the City of Reno cannot claim that its damages are the same as
22 those suffered by any other city, county or state.

23 An important thing to keep in mind is that NRS
24 268.003(2)(a), states that the term "matter of local concern"
25 includes matters affecting public health, safety and welfare for

1 the City.

2 This section does not expand the definition of "matter
3 of local concern" contained in NRS 268.003(1), but it does provide
4 insight into the types of issues the legislature considers to be
5 matters of local concern.

6 There is no question that the opiate epidemic is a
7 public health crisis and thus fits into the types of issues the
8 legislature views as matters of local concern.

9 Turning to the three-part definition in NRS 268.003(1),
10 in order to determine that, the City's litigation raises an issue
11 of local -- the City's litigation raises an issue of local
12 concern, this Court must find that the litigation regarding the
13 opiate epidemic within the City of Reno primarily affects or
14 impacts areas in the City of Reno or persons who reside in the
15 City, and does not have a significant effect or impact on areas
16 located -- other cities or counties.

17 And, in fact, the opiate litigation in Reno doesn't have
18 any effect or impact on areas outside of Reno.

19 That the issue of the opiate epidemic is not within the
20 exclusive jurisdiction of another government entity, this section
21 is not -- this section isn't disputed at issue here. Defendants
22 didn't even address that in their brief.

23 That the matter does not concern -- and I'm going
24 through the statute, as you probably know, piece by piece right
25 now -- that the matter does not concern, one, a state interest

1 requiring statewide uniformity of regulation; two, the regulation
2 of business activities subject to substantial regulation by a
3 federal or state agency, or any other federal or state interest
4 committed by the constitution, statutes or regulations through
5 either the United States or the State of Nevada that preempts
6 local regulations.

7 Defendants have not argued that this section applies
8 here. Defendants continue to believe that the existence of the
9 State's lawsuit means that the opiate epidemic cannot be a matter
10 of local concern.

11 This was their argument in the Clark County case and has
12 been their argument here.

13 But this interpretation is too narrow. It does not
14 allow for the differences in the agencies impacted by the damages
15 incurred.

16 To your question to Defense counsel regarding the
17 analysis, if the analysis would be the same because we do not
18 believe the defendants would have focused so heavily on this
19 argument, State's lawsuit is not the same as the City's lawsuit.

20 Defendant's counsel mentioned the cases in the MDL.
21 Those are only in the MDL as the result of the fast track
22 procedure for removal.

23 There is a stay on hearings on motions to remand within
24 the MDL, so we can't even do anything to try to get that case
25 back.

1 These suits are different from the State's lawsuit as
2 well. NRS 268 modified Dillon's Rule to give cities more power.

3 THE COURT: Let me interrupt. Sorry.

4 One of the cases I think that was earlier brought, if
5 I'm remembering right, was brought in front of Judge Williams in
6 Clark County.

7 MR. EGLET: Right.

8 THE COURT: And I think that was removed and then
9 directed to Cleveland as part of the MDL, and it's sort of in
10 purgatory there, or --

11 MR. EGLET: It is.

12 THE COURT: You know, I don't mean to be flip about it,
13 but its action is not really progressing, right? And so --

14 MR. EGLET: It's not at this point, Your Honor, but the
15 reason for that is we immediately filed -- what happened in that
16 procedurally is we amended our complaint to add a defendant,
17 without realizing or knowing that that defendant had contracts
18 with the federal government regarding the opiate -- right,
19 regarding the opiate situation. And, therefore, under those
20 circumstances it becomes a federal question, and that's why they
21 removed it to federal court.

22 We immediately dismissed them from the case and filed a
23 motion to remand, but Judge Dawson just didn't -- just sat on it
24 and didn't do anything. And so it was sent off to federal court
25 in front of Judge Polster in Cleveland. And, like I said, he's

1 entered a stay on all of these cases and won't even accept
2 anybody's motions for remand.

3 On the motions for remand that have been -- other
4 motions, and there's been multiple of them on cases we filed for
5 local governments where they have been remanded, where they have
6 been removed to federal court, we immediately filed our motion for
7 remand, and those cases were returned back to State court,
8 including this case, by the way, as the Court may recall, was
9 removed to federal court and we immediately got it remanded back.

10 So, again, just picking up where I was, Defendants
11 continue to believe that the existence of the State's lawsuit
12 means that the opiate epidemic cannot be a matter of local concern
13 is just not correct.

14 Their interpretation is too narrow and does not allow
15 for the differences in the agencies of different local governments
16 in our state, and I would surmise that that's the same in every
17 state, and the impact on those agencies and what the damages, past
18 damages that have been caused to those agencies.

19 Defendant is focused on the label for the damages the
20 State and City are seeking, such as punitive or abatement, and
21 ignore that the actual damages themselves look vastly different
22 for the State versus the City.

23 For example, there are different agencies and programs
24 that may require funding, and the City is seeking to recover past
25 damages caused by Defendants' actions that are unique to the City

1 of Reno.

2 The City is not trying to make law. The City is seeking
3 to make -- seeking to be made whole and to get -- and it cannot do
4 that if it is limited to litigating through the State.

5 Allegations in the complaint about the opioid epidemic
6 nationwide and statewide, the City has not stated that there is no
7 unique nexus to the City of Reno here.

8 The first piece of the matter of local concern test from
9 NRS 268.003(1) is that the matter must primarily affect or impact
10 the City of Reno and its residents, and not have a significant
11 impact or effect on areas located in other cities or counties.

12 The opiate-related deaths, the rise of opioid abuse
13 disorder, the increase in babies born addicted, the increase in
14 opiate-related crimes and the many other ways that the opiate
15 epidemic can be felt through the City of Reno are uniquely -- all
16 uniquely impact the City of Reno.

17 To say that opiate-related deaths or opiate abuse
18 disorder is happening statewide and thus the City of Reno has not
19 been uniquely impacted by those instances within its own city
20 lines diminishes what the City of Reno has experienced because of
21 this.

22 Each city, county and state, has been uniquely impacted
23 by the opiate epidemic and none can claim that the way it has
24 suffered is the same as how any other -- others has suffered.

25 Defendants look at this as a black and white issue,

1 arguing that because the opiate epidemic impacts the State, it
2 cannot be said to have primarily affected the City of Reno.

3 This is too narrow of a view. This is where the focus
4 should be on the damages incurred by the City of Reno and the
5 impact the epidemic has had on the City as well as its residents.

6 This is not a scenario wherein the opiate epidemic
7 significantly affected the state, and only tangential -- I cannot
8 say that word today -- tangentially impacted the City of Reno,
9 Your Honor.

10 The City has faced hits own damages, its agencies,
11 programs and residents have been significantly impacted by the
12 epidemic. These are damages the City can trace to the opiate
13 epidemic within city limits and not to actions outside of the
14 City.

15 In reply, Defendants take liberties, quite frankly, with
16 the requirements of NRS 268.003.

17 They argue that to qualify as a matter of local concern
18 the alleged wrongdoing must primarily impact the City.

19 We heard Ms. Lundvall repeatedly tell this Court that it
20 must be the defendant's conduct primarily impacts the City of Reno
21 in her arguments today.

22 There is nothing in the statute, nothing in the statute,
23 that states the wrongdoing or conduct must be the thing that
24 primarily impacts the City, which makes sense because the statute
25 is not written exclusively to address the City's litigation.

1 NRS 268 addresses the City's power and authority to take
2 action to address matters of local concern for the effective
3 operation of city government.

4 So the defendant's conduct does not have to primarily
5 affect or impact the City. A matter of local concern is something
6 that the City needs to address to allow for a more effective
7 operation of city governing.

8 In order to effectively operate the city government, it
9 must be able to remedy the harms caused by the opiate epidemic to
10 its various agencies: Law enforcement, health care facilities,
11 everything that's involved here.

12 Additionally, there is evidence of Defendant's conduct
13 within the City that resulted in harms the City seeks to address.
14 Just one example of this, is that Defendant's sales reps,
15 including Endo Pharmaceutical sales reps, had made numerous
16 marketing calls to Dr. Robert Rand, a Reno-based doctor who
17 operated a pill mill out of what was the Jones West Ford
18 dealership.

19 Defendants argue in reply that there were -- in reply,
20 that there were pill mill doctors everywhere.

21 But that does not take away the fact that the harm
22 caused by Endo's role in continuing to grow -- continuing the
23 growth of a pill mill within the City of Reno uniquely impacts the
24 City of Reno.

25 Dr. Rand is now serving 10 years in prison for

1 involuntary manslaughter of a patient in unlawful distribution of
2 oxycodone within the City of Reno in a patient who lived in the
3 City of Reno.

4 The harm caused by each of the defendants' actions in
5 this City of Reno is unique to the City itself.

6 Similarly, the State of Nevada suffered different harms
7 than the City of Reno.

8 And the State of Nevada's causes of action are different
9 from those asserted by the City of Reno.

10 The State is seeking -- and this is really important.
11 The State's case is only seeking forward-looking damages to fund
12 programs, hospitals, classes and other things necessarily to abate
13 the opiates problem.

14 They are not -- the State's action is not, and
15 Ms. Lundvall knows this, the State action is not seeking to
16 recover the past damages caused to all the government, the local
17 government agencies within each city and county in our state.

18 The State is not asking to recover any damages related
19 to those incurred by the City of Reno or any other local
20 government regarding their past damages.

21 Only the local government should be permitted to pursue
22 their unique damages, Your Honor, these past damages' cost to
23 them, which are in the billions and billions of dollars.

24 Defendants point to the One Nevada Agreement on
25 allocation of opiate recoveries as evidence that the opiate

1 epidemic is not a matter of local concern.

2 The One Nevada Agreement only addresses funds recovered
3 in settlements or through bankruptcy proceedings, not verdicts.

4 Your Honor, there is a difference between reaching a
5 settlement and engaging in litigation.

6 The recent settlements with the distributor's dependents
7 and Johnson and Johnson, depended on -- the reason is, that the
8 recent settlement with the distributors, Defendants and J & J,
9 depended on full participation of states and their local
10 governments over a certain size, regardless of whether they had
11 filed suit against the companies or not.

12 These particular settlements did not look at the
13 intricacies of any state or local governments' claims, damages and
14 abatement plans. It was a lump sum from the settling defendants
15 which was then distributed according to an apportionment plan
16 nationwide.

17 With regard to NRS 47.240 and the One Nevada Agreement,
18 the City does not dispute what's stated in the agreement. This
19 does not diminish the City of Reno's unique harm in damages caused
20 by the opiate epidemic.

21 In order to streamline this procedure, the Nevada
22 Attorney General's office met with all the counties and cities
23 statewide, regardless of whether they have separate litigation, to
24 reach an agreement, so that each of the counties and cities would
25 obtain a share of the funds.

1 This process required hundreds of hours of collaboration
2 between the attorney general's office and the various local
3 governments.

4 And there are multiple various local governments who
5 have not brought any litigation. I can cite one off the top of my
6 heads, but there are multiple, and it's Elko. They have chosen
7 not to pursue any litigation in this case.

8 So, Your Honor, all of -- all the signatories to the One
9 Nevada Agreement were given the opportunity to comment and raise
10 their individual concerns so that their interests are represented.
11 But they're only represented with respect -- with respect to
12 forward-looking damages, abatement damages. Nothing regarding
13 their past damages.

14 Without the local government's individual concerns and
15 participation, the settlements would not have been completed
16 because the State cannot simply recover the funds and determine on
17 its own how they should be distributed.

18 The One Nevada Agreement provides that settlement funds
19 must be used for approved purposes, which only includes, only
20 includes remediation abatement; nothing for past damages and
21 injuries suffered by local governments, or the State, for that
22 matter. Approved purposes does not include past damages, which is
23 what the City of Reno's case is about.

24 Additionally, the J & J distributor settlement
25 agreements which were approved by the MDL judge, Judge Polster,

1 did take that the recipients of settlement funds must use those
2 funds only towards abatement strategies.

3 The One Nevada Agreement recognizes the differences
4 between the various cities and counties and provides them funds to
5 address their individual abatement needs.

6 In other words, the City of Reno cannot use the funds it
7 receives as a result of those settlements towards remedying past
8 damages it has suffered.

9 Neither the settlements nor the One Nevada Agreement
10 provide for past damages.

11 The damages the City is seeking through this lawsuit are
12 not covered by the One Nevada Agreement, Your Honor.

13 Ultimately, each of the cities and counties will be able
14 to use their funds to abate in these settlements their unique
15 damages and unique concerns regarding the impact the opiate
16 epidemic had on their communities. But none, none of them will be
17 able to use those funds to address their past damages.

18 The One Nevada Agreement has no impact on the City of
19 Reno opiates litigation and does not minimize the City of Reno's
20 unique harms and damages here.

21 When these cities and counties like the City of Reno
22 litigate their cases, that will be their opportunity to argue
23 regarding their past harms, the past impact on their agencies and
24 programs and their past damages.

25 Furthermore, the One Nevada Agreement does not speak to

1 any remaining litigation and does not apply to any verdicts, Your
2 Honor.

3 Any local government, including the City of Reno, that
4 moves forward with litigation against opiate companies will need
5 to try their cases in front of a jury and describe their specific
6 harms and ask to recover specific past damages incurred by those
7 legal governments.

8 Because the opiate epidemic has a unique impact on the
9 City of Reno and cannot be said to have the same impact on any
10 other city, county or state, the City's claims satisfy Subsection
11 A of NRS 268.003(1).

12 Because Subsection B is not in dispute, I will move on
13 to Subsection T -- C, which also has a three-part -- three
14 sub-parts; however, only the first two have been discussed in
15 Defendant's briefing.

16 A matter of local concern cannot, one, a state interest
17 that requires statewide uniformity of regulation or, two, seek to
18 regulate business activities subject to substantial regulation by
19 a federal or state agency.

20 First, the opiate epidemic is not one that requires
21 statewide uniformity of regulation. The City of Reno is not
22 attempting to create any regulations that conflict with statewide
23 statutes, rules or regulations.

24 The Defendant has repeatedly pointed out that the area
25 of opiate regulation is already covered by state and federal law.

1 In their reply, defendants argued that the City's
2 lawsuit cannot be a matter of local concern because it implicates
3 the practice of pharmacy.

4 The City includes allegations regarding Defendants'
5 numerous and repeated violations of both state and federal law,
6 but these allegations are not aimed at imposing new regulations or
7 interfering with already existing regulations.

8 Instead, these allegations show that there was a
9 standard of care in place and that defendants violated that
10 standard.

11 The City is not seeking to develop municipal standards
12 for marketing, selling and dispensing controlled substances. It
13 intends to show that the defendants violated the already-existing
14 standards, harmed the City, and now the City is seeking damages to
15 redress those harms.

16 The existence of state laws and regulations related to
17 the sale, distribution and dispensing of opiates does not negate
18 the harm the opiate epidemic has inflicted upon the City of Reno,
19 its residents and its resources.

20 Each governmental entity has different agencies and
21 programs that have been and continue to be impacted by the opiate
22 epidemic. There is not a one size fits all solution here.

23 This is highlighted by the One Nevada Agreement which
24 provides a percentage of recoveries to the local governments so
25 they can abate the opiate epidemic as necessary for their

1 communities.

2 The One Nevada Agreement did not require the State to
3 create programs for every local government or to dictate how the
4 local governments use their abatement funds.

5 The City of Reno has a unique -- has unique needs and
6 damages which can only be addressed through its own litigation.

7 Second, the City of Reno is not seeking to regulate
8 business activities, Your Honor.

9 The City is not asking this Court to regulate drug
10 manufacturing, drug marketing or drug sales in the city in any way
11 that conflicts or interferes with state or federal law.

12 I know I have repeated this several times already but
13 the City is seeking to recover damages caused by Defendant's
14 actions, including their violations of various regulations and
15 laws that they are expected to follow, damages that occurred
16 within the City of Reno.

17 And Defendant cites to a number of laws and regulations
18 but have not identified how the City of Reno's litigation would in
19 any way interfere with any of those laws and regulations.

20 With regard to the City's prayer for relief, in addition
21 to the damages it is seeking, the City is seeking, quote, "other
22 and further extraordinary equitable declaratory and/or injunctive
23 relief."

24 But what Ms. Lundvall always leaves out of her briefs
25 and her oral arguments is that that says "as permitted by law."

1 That is what's in the complaint, other and further extraordinary
2 equitable, declaratory and/or injunctive relief as permitted by
3 law as necessary to ensure that the City has an effective remedy,
4 and to stop Defendants' promotion and marketing of opiates for
5 inappropriate uses in Nevada, including currently and in the
6 future.

7 The key language here is "as permitted by law." In
8 other words, the City is not requesting that this Court make any
9 rulings that would interfere with or impede any laws or
10 regulations.

11 This request included in the State's entire prayer for
12 damages does not mean that the City's harms and the damages
13 resulting from the harm are not unique to the City of Reno.

14 The City satisfies Subsection C of NRS 268.003(1), as
15 well.

16 Your Honor, we have shown that the public health crisis
17 that is the opiate epidemic has had a unique impact on the City of
18 Reno that the City of Reno should be permitted to litigate, as it
19 is a matter of local concern.

20 The rest of the counties and cities can choose to pursue
21 their own opiate litigation to recover their own unique damages.

22 And the State of Nevada is not seeking to recover any
23 damages related to the City of Reno other than providing the City
24 of Reno out of these past settlements money to abate the problem.
25 But it doesn't address their past damages at all.

1 The One Nevada Agreement does not provide for the
2 recovery of past damages; only abatement funds. And, therefore,
3 it does not even address the types of damages the City is seeking
4 through this lawsuit.

5 This morning my office provided, as you mentioned, Your
6 Honor, the Court, with a proposed order that we believe follows
7 the Supreme Court's instruction to issue an order following the
8 definition of -- following the definition of matter of local
9 concern contained in NRS 268.003.

10 The City's proposed order sets forth the following
11 proposed findings: The Court finds that the City of Reno's
12 lawsuit is a matter of local concern as that term is defined in
13 NRS 268.003(1).

14 The Court finds that pursuant to NRS 268.003(1)(a), the
15 City of Reno alleges that the opiate epidemic has had a
16 significant impact on its residents, health, safety and welfare.
17 The harms the City alleges it has suffered primarily affect and
18 impact the City as well as the people who reside, work, visit, and
19 are otherwise present in the City.

20 Though the Court acknowledges that the opiate epidemic
21 is not contained to the City of Reno, the City of Reno's alleged
22 harms and damages have not been suffered by any other jurisdiction
23 and do not significantly impact any other jurisdiction.

24 Accordingly, the Court finds that the City's lawsuit
25 satisfies NRS 268.003(1)(a).

1 The parties do not dispute NRS 268.003(1)(b). As this
2 is not in dispute, the Court finds that the City's lawsuit is not
3 within the exclusive jurisdiction of another governmental entity
4 and, thus, satisfies this subsection of the definition of a matter
5 of local concern.

6 The Court further finds that the City's lawsuit does not
7 concern a state interest that requires statewide uniformity of
8 regulations.

9 The City's harms and damages are unique and cannot be
10 addressed the same as harms and damages alleged to result from the
11 opiate epidemic by any other jurisdiction. Thus the City's
12 lawsuit satisfies NRS 268.003(1)(c)(1).

13 The Court further finds that the City's lawsuit does not
14 concern the regulation of business activities that are subject to
15 substantial regulation by federal or state -- or state agency.

16 As alleged, the City of Reno is not seeking to impose
17 regulations upon the defendant's business activities that would
18 impose -- that would impose upon or interfere with any state or
19 federal regulations, thus satisfying NRS 268.003(1)(c).

20 The Court further finds that the parties did not dispute
21 NRS 268.003(1)(3)(c). As this provision is not in dispute, the
22 Court finds that the City's lawsuit does not concern any other
23 federal or state interest that is committed by the constitution,
24 statutes or regulations of the United States, or this state, to
25 federal or state regulation that preempts local regulation.

1 The Court further finds that the opiate epidemic is a
2 matter impacting the public health, safety and welfare in the City
3 of Reno and thus is included in the term of "matter of local
4 concern" as set forth in NRS 268.003(2)(a).

5 The City of Reno asks, Your Honor, that you issue an
6 order consistent with the City's proposed order and that you deny
7 the defendant's motion to dismiss regarding Dillon's Rule because
8 the impact the opiate epidemic has had and continues to have on
9 the City of Reno is unique to Reno and is a matter of local
10 concern.

11 Thank you, Your Honor.

12 THE COURT: Thank you. Well stated.

13 Ms. Lundvall, two things.

14 One is, I had this blocked out for an hour. We're a
15 little bit over. I don't want to rush anybody. This is important
16 that the Court is fully informed on the insights and arguments,
17 but I do ask you, please, to limit yourself to rebuttal.

18 And also, if you can respond to this question, the
19 definition of, quote, "a matter of local concern," unquote.

20 The use of the word "matter," a "matter." How do you --
21 what is your understanding of how this Court should interpret the
22 word "matter" of local concern. I mean, to use a pun, what's the
23 matter with "matter" here?

24 Why not look at it the way Mr. Eglet suggests, which is
25 where the effect as opposed to the approach you're suggesting to

1 the Court, which is more linear and more initially-based.

2 So if you could respond to -- you know, make some major
3 points here, if you would like, respond if you can or choose to,
4 to the Court's comment about their use of the word "matter," and
5 then I will have to take this under submission.

6 Ms. Lundvall.

7 MS. LUNDVALL: Thank you, Your Honor. And I will be
8 limiting my remarks then to the rebuttal that was made, to
9 rebuttal remarks.

10 If I could summarize the entirety of what was just
11 argued to you, it is the exact same thing that you heard the first
12 time.

13 The City argues that its damages are unique and,
14 therefore, it is a matter of local concern.

15 I was accused of misrepresenting the language from the
16 Nevada Supreme Court.

17 We don't have to contest orally as to who's right and
18 who's wrong. That decision is found within the four corners of
19 the document that was issued by the Nevada Supreme Court.

20 The Nevada Supreme Court parroted the argument that was
21 made by the City and it said that that argument, that definition,
22 that use, was erroneous.

23 So I don't know how to look at it as any other way than
24 the fact that this Nevada Supreme Court rejected the argument
25 being advanced by the City.

1 THE COURT: Well, let me stop you there because,
2 rhetorically, the one comment Mr. Eglet made was essentially,
3 Judge, if it was that clear, if it was that cut and dry, why would
4 we be here right now? Why would the Supreme Court have limited
5 their decision granting the writ and remanding it for further
6 proceedings if, really, they were just directing the Court to
7 issue an order granting the motion?

8 Obviously, they were -- Mr. Eglet's argument, as the
9 Court understands it -- asking this Court to do a deeper dive and
10 to determine, using, you know, applying the statute to the unique
11 circumstances here, whether a valid claim had been stated.

12 How would you respond to that?

13 MS. LUNDVALL: You know, there are two things that I
14 have had great respect across the last 10 years from our Nevada
15 Supreme Court.

16 Number one is that they have been adamant about the
17 application of the plain meaning of the statutes the legislative
18 has enacted. And whether we like it or not, that's what the
19 legislative enactment has been; and, therefore, the judiciary is
20 to apply the plain meaning of that statute.

21 They have been adamant in decision after decision after
22 decision.

23 Equally, the Nevada Supreme Court has stayed in its
24 lane. It has stayed in its lane and acted as an appellate court
25 in looking at the legal decisions that are before it, in

1 determining if those legal decisions have been rightly or wrongly
2 made.

3 And it does not venture in to making, in essence,
4 factual -- or doesn't review the record or doesn't review the
5 complaints that are before it so as to make, you know, to go the
6 next step then and to do the District Court's job.

7 And so to the extent that what the Nevada Supreme Court
8 did is it recognized that you have embraced the argument and
9 embraced the rule that had been advocated to you by the City of
10 Reno. You embraced the rule of law that they have suggested.

11 And the Nevada Supreme Court said that that embrace was
12 wrong. And, therefore, that the proper embrace was the specific
13 definition that was found within the statute. And, therefore,
14 directed the Court then to look at that specific definition and
15 look at the allegations and all of the other information that is
16 before the Court then, in determining if that definition applied;
17 because you've made no ruling based upon NRS 268.003. You didn't
18 analyze that, and so the Court gave an opportunity then by which
19 to do that. It stayed in its lane. And it gave the District
20 Court, you, that opportunity.

21 So to answer that question, that's why, in my opinion,
22 the Nevada Supreme Court did what it did.

23 Second, when you look at the argument once again that is
24 being made by the City, the City -- the Nevada Supreme Court said
25 that is an erroneous argument.

1 I don't know how to suggest to the Court that it is
2 anything other than the fact that that was rejected by the Nevada
3 Supreme Court.

4 So let's turn specifically then to the language that is
5 found within NRS 268.003, because it has the title of "Matter of
6 Local Concern."

7 Subsection 1 -- and they put it in quotes -- "Matter of
8 local concern," closed quote, "means any matter that," and then it
9 goes into the sub parts.

10 So what the Court has to do is to look at the matter of
11 the lawsuit. And what is the matter of the lawsuit?

12 Every single lawsuit analyzes the wrongful conduct
13 before you even -- can even step near whether or not the damages
14 or any type of affirmative relief results from a finding of
15 liability based upon that wrongful conduct.

16 Across the 24 lawsuits that have been filed by cities
17 and counties, and then the state is the 25th, each and every one
18 of those lawsuits are required to first analyze the business
19 activities that are at issue.

20 What are the business activities that are at issue?
21 That is the matter that is at issue.

22 That is the conduct that is at issue. That is what a
23 judge or a jury in every one of those 25 lawsuits is going to
24 first have to look at before you get to the issue of damages.

25 And the entire purpose underlying the narrow exception

1 by the legislature to empowering cities or counties to advance
2 these lawsuits is to ensure that we don't have a patchwork of
3 results that may exist across the State of Nevada.

4 I mean, for example, what if, after looking at the
5 business activities in this case, that a jury says no, there's
6 nothing wrongful, there's no liability found by these defendants.

7 But then when you go to City of Wendover, that they do
8 find that those business activities were wrongful.

9 And then what happens if you go down to Pahrump, and
10 maybe in Pahrump that they say no, nothing wrong with those
11 business activities.

12 What you end up with is the same business activities for
13 25 times that is going to be analyzed and reviewed, first, for a
14 determination of liability.

15 And is that liability the wrongful conduct of business
16 activities that are alleged in the complaint? That is the matter
17 that is under review.

18 And the only way that that matter can be a local concern
19 is to meet the factors, not the relief. The Court, our Nevada
20 Supreme Court has already said the relief is not the matter.

21 The matter is what is defined within the statute, and
22 the matter is the wrongful conduct that's at issue. And,
23 therefore, that's why that I think that the City continues to
24 conflate liability. And it simply makes this assumption that
25 liability is going to be found the same.

1 You know, if there's one thing that you learn as a young
2 lawyer, is that you can try the same case 10 times and you're not
3 going to get the same result 10 times over.

4 And what the fear is, if you allow or you empower cities
5 and counties to advance these separate lawsuits but examine the
6 same business activities is that you end up with disparate or
7 differing, you know, outcomes. And those differing outcomes then
8 demand different results, which gets me into my second point that
9 I wish to make.

10 The City doesn't want you to look at its prayer for
11 relief. It doesn't want you to look at the fact that it asks for
12 far, far more than, quote-unquote, "past damages."

13 When you look at their prayer for relief, it asks for
14 injunctive declaratory relief to stop the business activities of
15 promotion and marketing the prescription opioid medications in
16 Nevada for wrongful purposes.

17 So once again, let me look at that piece of it and to
18 say what happens if City of Reno then doesn't get that relief, but
19 City of Wendover does? Do only the counties within the city -- or
20 the citizens within the City of Wendover, are they the only ones
21 that are protected then under an injunction that says no,
22 Manufacturers, you can't either manufacture or promote or market
23 within the four corners of our county?

24 Push it down even farther than that. What if you live
25 both within the City of Las Vegas as well as within Clark County,

1 and Clark County wins, but City of Las Vegas loses, which
2 injunctive relief then may or may not prevail?

3 You have that conclusion. You have that adverse and
4 that disparate result. And that's what the purpose is in trying
5 to have that narrow definition underlying what is or may be a
6 matter of local concern, because it's those business activities
7 that are at issue in all 25 of these lawsuits, and why it is that,
8 in fact, that I think that the conflation of this is where the
9 confusion lies within the City of Reno, and I don't think that
10 it's unintentional.

11 They're trying to create that confusion in an effort to
12 try to make this case survive, so that they can try it 25
13 different times. But it's the potential for disparate relief that
14 cautions against allowing them by which to do so.

15 So take a look at their prayer for relief. Don't take
16 my word for it. Look at their prayer for relief, because it is
17 not limited to past damages. They ask in every single one of
18 these lawsuits, including the State of Nevada, for punitive
19 damages against each one of these defendants, and punitive damages
20 based upon statewide activity. Statewide action.

21 They don't say limit the punitive damages based upon
22 what happened within the confines of the City of Reno, or within
23 the confines of Washoe County, or within the confines of Storey
24 County. They say statewide punitive damages for the conduct
25 practice within our state.

1 In addition, they ask for statewide injunctive and
2 declaratory relief. Once again, my -- and I'm going to quote in
3 of the sense that they say that they want the Court to issue a
4 declaration to stop the promotion and marketing of prescription
5 opioid medications for improper uses.

6 In addition, they want medical monitoring. And they
7 don't limit their medical monitoring requests to only those within
8 the confines of the City of Reno.

9 And once again, when you look at the medical monitoring
10 aspect, let me underscore my point by saying if they win in Reno
11 but they lose in Storey County, does that mean that the folks in
12 Reno then get medical monitoring, but those in Storey County
13 don't? Or that those in Nye County aren't entitled to it, or
14 those in Churchill County aren't entitled to it?

15 That doesn't make any sense, to suggest that somehow
16 that there should be some kind of a narrow carve-out by an
17 individual city or an individual county.

18 And when you look at that potential impact and pushdown
19 as to what the potential is for the outcome, and the disparate
20 outcomes, it makes sense then when you look backwards that it
21 can't fit within the four corners then of the statute that was
22 given to us by the Nevada Supreme Court -- by our state
23 legislature.

24 If, in fact, the City were going to prevail, what they
25 would have to argue and cannot argue, because of all of the other

1 allegations that they have made in the other lawsuits, because of
2 all of the admission that they have made within their own
3 complaints, within all the concessions that they've made within
4 their own papers, and all the observations that have been made by
5 the Nevada Supreme Court and by this Court, they would have to
6 argue that the business activities that are declared to be
7 wrongful, primarily affected the City of Reno, and had no impact,
8 no substantial impact on any other locale in our state.

9 They haven't done that and they can't do that.

10 They would have had to argue that those business
11 activities are not regulated either by the State of Nevada or the
12 federal government. They can't do that and they haven't even
13 tried by which to do that.

14 Moreover, what they would have to say is that there is
15 no need for uniformity of application of the relief that they're
16 seeking statewide.

17 They would have to argue that only those in the City of
18 Reno are entitled to medical monitoring, only those in the City of
19 Reno are entitled to punitive damages, only those within the City
20 of Reno are entitled to an abatement order that declares that
21 these business activities must stop in the City of Reno.

22 They haven't made that argument and they can't make that
23 argument. And, therefore, without those arguments, you can
24 backdoor your way in to either looking at the requirements of the
25 statute affirmatively, or looking at them from a negative

1 standpoint, only to conclude that this case does not fit a matter
2 of local concern.

3 And, therefore, we would ask the Court then to grant our
4 motion to dismiss.

5 THE COURT: The matter is under submission. Thank you
6 for the very spirited argument from all sides.

7 Court will either write a comprehensive order as it
8 attempted to do a year ago in advance of its decision.

9 Alternatively, the Court may do a summary decision, and
10 directing the prevailing side to prepare an order consistent with
11 those portions of the briefing and argument that the Court found
12 persuasive, run it by the other side for form only, and submit it
13 for the Court's review and entry.

14 But I've got two excellent attorneys, very passionate
15 about their position, and the Court may -- it makes this Court's
16 job much more enjoyable and fulfilling, so thank you both for your
17 excellent work.

18 With that, I wish everyone a very pleasant afternoon and
19 the Court will be in recess.

20 MR. EGLET: Thank you, Your Honor.

21 MS. LUNDVALL: Thank you, Your Honor.

22 (The proceedings concluded at 2:50 p.m.)

23 -o0o-
24
25

1 STATE OF NEVADA)
) ss.
2 WASHOE COUNTY)

3
4
5 I, CONSTANCE S. EISENBERG, an Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in and for
7 the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department 8 of the above-entitled
9 Court on August 2, 2022, and took verbatim stenotype notes of the
10 proceedings had upon the matter captioned within, and thereafter
11 transcribed them into typewriting as herein appears;

12 That I am not a relative nor an employee of any of the
13 parties, nor am I financially or otherwise interested in this
14 action;

15 That the foregoing transcript, consisting of pages 1
16 through 51, is a full, true and correct transcription of my
17 stenotype notes of said proceedings.

18 DATED: At Reno, Nevada, this 30th day of October, 2022.
19
20

21 /s/Constance S. Eisenberg

22 _____
CONSTANCE S. EISENBERG
23 CCR #142, RMR, CRR
24
25

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

CITY OF RENO,

Plaintiff,

vs.

Case No.: CV18-01895

Dept. No.: 8

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, INC.;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.; JANSSEN
PHARMACEUTICA, INC. n/k/a
JANSSEN PHARMACEUTICALS, INC.;
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. n/k/a
JANSSEN PHARMACEUTICALS, INC.;
ENDO HEALTH SOLUTIONS
INC.; ENDO PHARMACEUTICALS,
INC.; ALLERGAN USA, INC.;
ALLERGAN FINANCE, LLC f/k/a
ACTAVIS, INC. f/k/a WATSON
PHARMACEUTICALS, INC.; WATSON
LABORATORIES, INC.;

**ORDER GRANTING DEFENDANTS'
RENEWED MOTION TO DISMISS**

Caption continued on next page

1 ACTAVIS PHARMA, INC. f/k/a
2 WATSON PHARMA, INC.; ACTAVIS
3 LLC; INSYS THERAPEUTICS, INC.;
4 MALLINCKRODT, LLC;
5 MALLINCKRODT BRAND
6 PHARMACEUTICALS INC.; and
7 MALLINCKRODT US HOLDINGS, INC.;
8 ROBERT GENE RAND, M.D. and RAND
9 FAMILY CARE, LLC; DOES 1 through
10 100; ROE CORPORATIONS 1 through
11 100; and ZOE PHARMACIES 1 through
12 100, inclusive,

Defendant(s).

ORDER GRANTING DEFENDANTS' RENEWED MOTION TO DISMISS

Before the Court is a renewed *Motion to Dismiss* (hereinafter, "*Motion*"), brought by Defendants by way of supplemental brief on November 29, 2021. Plaintiff filed a *Supplemental Briefing in Opposition to Defendants' Motion to Dismiss* on January 13, 2022, to which Defendants filed a *Reply Brief* on February 14, 2022. This matter was submitted to the Court on March 10, 2022. After a stipulated continuance, the Court entertained Oral Argument on August 2, 2022.

Having reviewed the pleadings, and relevant authorities, the Court **GRANTS** Defendants' *Motion* and finds as follows:

I. PROCEDURAL POSTURE

Among other relief requested, Plaintiff filed suit against Defendants "to recover... damages as a result of the opioid public-health crisis" on September 18, 2018.¹ Defendants thereafter filed several motions to dismiss.² After the matters were briefed and argued, this Court substantially denied Defendants' motions on February 14, 2020.

¹ Second Amended Complaint ("SAC") ¶ 40.

² The motions to dismiss that were before the court included: (1) Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint; (2) Distributors' Joint Motion to Dismiss First Amended Complaint; (3) Defendant Mallinckrodt LLC's Joinder to Manufacturer Defendants' Joint Motion to Dismiss and Motion to Dismiss First Amended Complaint; (4) Allergan USA, Inc.'s and Allergan Finance, LLC's Motion to Dismiss the Amended Complaint; (5) Endo Health

1 Defendants filed a writ petition with the Nevada Supreme Court on May 4, 2020.
2 Therein, Defendants argued this Court erred by failing to grant dismissal in total. After
3 extensive briefing, the Nevada Supreme Court issued a writ of mandamus on July 29,
4 2021, directing this Court to reconsider Defendants' *Motion* and more directly apply the
5 definition of a "matter of local concern" as set forth in NRS 268.003 to Plaintiff's claims.
6 Supplemental briefs in this Court followed.

7 **II. LEGAL STANDARD**

8 As dealt with extensively by this Court in its prior Order, Dillon's Rule started
9 as a common-law rule essentially defining and limiting the powers of local
10 governments to act. After a long history of judicial interpretation of Dillon's Rule –
11 occasionally resulting in uncertainty – the Nevada Legislature codified a modified
12 version of the Rule in 2015.³ The codification expanded the narrow approach of Dillon's
13 Rule by allowing local governments to act beyond just the powers expressly granted by
14 the state. Under Nevada's modified Dillon's Rule, it now must be presumed that the
15 governing body has the power to act "if there is any fair or reasonable doubt
16 concerning the existence of a power of the governing body to address a matter of local
17 concern."⁴ Importantly, a matter of local concern is any matter that:
18

- 19 (a) *Primarily affects or impacts areas located in the incorporated city, or*
20 *persons who reside, work, visit or otherwise present in areas located in the city,*
21 *and does not have a significant effect or impact on areas located in other cities*
22 *or counties;*
23 (b) Is not within the exclusive jurisdiction of another governmental entity; and
24 (c) Does not concern:
25 (1) A state interest that *requires statewide uniformity of regulation;*

26 Solutions, Inc., and Endo Pharmaceuticals, Inc.'s Motion to Dismiss First Amended Complaint;
27 (6) Motion to Dismiss of Defendants Watson Laboratories, Inc., Actavis LLC, and Actavis
28 Pharma, Inc.; and (7) Motion to Dismiss of Defendants Cephalon, Inc., and Teva
Pharmaceuticals USA, Inc..

³ See NRS 268.001.

⁴ See NRS 268.001(6)(b).

(2) The regulation of business activities that are subject to *substantial regulation by a federal or state agency*; or
(3) Any other federal or state interest that is committed by the Constitution, statutes, or regulations of the United State or this State to federal or state regulation that preempts local regulation.⁵

Emphasis added. To qualify as a matter of local concern, the requirements of subsections (a), (b), and (c) must be satisfied because of the Legislature's use of the conjunction "and" to combine the subsections.⁶ If the matter concerns any of the subparts of subsection (c) then the matter is not one of local concern.⁷ If the lawsuit does not meet the requirements of all three subsections, Plaintiff does not have the authority to maintain the underlying action.

III. ANALYSIS AND DISCUSSION

Having reviewed the matter anew considering the Nevada Supreme Court's directive, this Court is now convinced the alleged wrongdoing in Plaintiff's Complaint fails to meet the definition of local concern as contemplated by Nevada's modified Dillon's Rule. Plaintiff alleges Defendants were a substantial cause of the opioid epidemic and seek injunctive relief and compensatory damages. Plaintiff alleges the harm caused by Defendants stems, in part, from Defendants' promotion, distribution, and marketing of opioids in the State of Nevada. This conduct is not a matter of local concern because it does not satisfy all three of the subsections in NRS 268.003(1). The alleged wrongdoing fails to satisfy NRS 268.003(1)(a) because it does not primarily impact the City of Reno and it has a significant impact on other areas outside of the City of Reno. Additionally, Defendants' conduct concerns both a state interest that requires statewide uniformity and business activities that are subject to substantial

⁵ NRS 268.003(1).

⁶ *Cf. State Dept. of Emp., Training and Rehab., Emp. Sec. Div. v. Reliable Health Care Servs. of S. Nevada, Inc.*, 115 Nev. 253, 258 (1999) (finding that all the statutory commands that are conjoined by the conjunction "and" must be satisfied).

⁷ *Cf. Anderson v. State*, 109 Nev. 1129, 1134 (1993) (finding that the use of the disjunctive "or" requires "one or the other, but not necessarily both").

1 regulation by both federal and state agencies, either of which would make the matter
2 not a local concern pursuant to NRS 268.003(1)(c).

3
4 **A. The Alleged Wrongful Conduct Does Not Primarily Impact the City of**
5 **Reno and the Alleged Wrongful Conduct Does Have a Significant Impact on**
6 **Other Cities and Counties Across the Nation.**

7 Plaintiff's complaint does not satisfy NRS 268.003(1)(a) because the alleged
8 wrongful conduct does not primarily impact the City of Reno and has a significant
9 impact on areas outside of the City of Reno. Plaintiff alleges, in addition to within the
10 City of Reno, "[t]he abuse of opioids is a widespread problem in the State of Nevada."⁸
11 As this Court previously recognized, there is no doubt that the opioid crisis extends
12 beyond our state and reaches every corner of the nation.

13 Evidence that Plaintiff's claims are not unique under a modified Dillon's Rule
14 analysis can be easily found by looking at what is occurring nation and state-wide. It
15 was argued that, in Nevada alone, twenty-four (24) of the thirty-five (35) cities and
16 counties in Nevada (and the State of Nevada itself) have brought lawsuits that make
17 similar claims against the manufacturer Defendants named in this lawsuit or their
18 corporate affiliates. Plaintiff recognizes that the opioid epidemic "has had far-reaching
19 financial, social, and deadly consequences ... throughout Nevada" and "across our
20 country."⁹ The far-reaching nature of the opioid epidemic demonstrates how this
21 matter does have a significant impact on other areas in the State of Nevada and
22 throughout our nation.

23 Therefore, the alleged wrongful conduct in Plaintiff's lawsuit fails to satisfy the
24 first aspect of the definition of mater of local concern as defined in NRS 268.003(1)(a).
25 This reason alone would bar Plaintiff from maintaining the underlying action.
26

27
28 ⁸ SAC ¶ 2.

⁹ SAC ¶ 17, ¶ 23.

1 **B. The Alleged Wrongful Conduct Implicates Statewide Uniformity.**

2 Plaintiff's complaint does not satisfy NRS 268.003(1)(c)(1) because the relief
3 requested requires statewide uniformity in application. Plaintiff alleges that after
4 creating the public health, namely the opioid epidemic, Defendants negatively
5 impacted public health through misleading marketing regarding the appropriate use
6 and risks of opioids.¹⁰ Plaintiff seeks to "stop Defendants' promotion and marketing of
7 opioids for inappropriate uses in Nevada, currently and in the future[.]"¹¹ The practice
8 of Pharmacy, including manufacturing, labeling, and distributing of a drug, is subject
9 to the protection and regulation of the Nevada State Board of Pharmacy.¹² The request
10 for statewide relief implicates the need for statewide uniformity in application of the
11 requested relief because, *inter alia*, it falls under the purview of the Nevada State Board
12 of Pharmacy. Additionally, Plaintiff seeks statewide application of their injunctive and
13 the declaratory relief.
14

15 The alleged wrongful conduct in Plaintiff's lawsuit does concern a state interest
16 that implicates statewide uniformity. Therefore, under NRS 268.003(1)(c)(1), Plaintiff's
17 lawsuit does not constitute a "matter of local concern."
18

19 **C. The Alleged Wrongful Conduct is Substantially Regulated by Federal and
20 State Agencies.**

21 Plaintiff's complaint does not satisfy NRS 268.003(1)(c)(2) because the alleged
22 wrongful conduct are business activities subject to substantial regulation by the State of
23 Nevada and the Federal Government. Plaintiff alleges that Defendants' wrongdoing
24 stems from the manufacturing, distribution, and sales in the prescribing and dispensing
25
26

27 ¹⁰ SAC ¶ 36–37.

28 ¹¹ SAC, Prayer for Relief ¶ 8.

¹² See NRS 639.213, *see also* NRS 639.0124(1).

1 of opioids. Plaintiff seeks to “stop Defendants’ promotion and marketing of opioids for
2 inappropriate uses in Nevada, currently and in the future[.]”¹³

3 The entire field of opioid manufacturing, distribution and prescription is
4 substantially regulated by the federal government. The Federal Drug Administration
5 (hereinafter “FDA”) and the Drug Enforcement Agency (hereinafter “DEA”) are
6 substantially involved in the regulation of opioid medications. The FDA regulates
7 when and how a prescription opioid medication can be marketed or sold.¹⁴ The
8 manufacturing and prescribing of opioid medications implicates the DEA because
9 many opioid medications are Schedule II controlled substances under the Controlled
10 Substances Act. The Nevada State Board of Pharmacy is also substantially involved in
11 the regulation of opioid medications because the Nevada State Board of Pharmacy
12 regulates pharmacists and pharmacies to promote the protection of the public.¹⁵

13
14 The alleged wrongful conduct does concern business activities substantially
15 regulated by multiple federal agencies and a state agency. Therefore, under NRS
16 268.003(1)(c)(2), Plaintiff’s lawsuit does not constitute a “matter of local concern”
17 because it seeks to regulate the marketing of prescription opioid medications.

18 CONCLUSION

19 While the Court is cognizant of Plaintiff’s passionate argument that the financial
20 impact of the opioid epidemic on the City of Reno is unique – a position which
21 resonated with the Court in advance of entry of its initial Order – the higher court
22 decision leaves no doubt that this analysis was flawed.

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¹³ SAC, Prayer for Relief ¶ 8.

28 ¹⁴ 21 U.S.C. § 355(a)-(d).

¹⁵ NRS 639.070(1).

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Accordingly¹⁶, *Defendants' Motion to Dismiss* is GRANTED.

IT IS SO ORDERED.

DATED this 26th day of August, 2022.


BARRY L. BRESLOW
District Judge

¹⁶ There were other reasons argued by Defendants the Court also found persuasive, but the Court does not treat them separately based on the compelling analysis set forth above.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 26th day of August,
4 2022, I electronically filed the following with the Clerk of the Court by using the ECF system
5 which will send a notice of electronic filing to the following:

6 STEVEN BORANIAN, ESQ. for AMERISOURCEBERGEN DRUG CORPORATION

7 JAKE MILLER, ESQ. for ENDO HEALTH SOLUTIONS INC., ENDO
8 PHARMACEUTICALS, INC.

9 MAX CORRICK II, ESQ. for ALLERGAN FINANCE LLC FKA ACTAVIS INC FKA
10 WATSON PHARMACEUTIC, ALLERGAN USA, INC.

11 CHAD FEARS, ESQ. for PURDUE PHARMA, INC., PURDUE PHARMACEUTICALS,
12 L.P., THE PURDUE FREDERICK COMPANY, INC., PURDUE PHARMA, L.P.

13 RYAN LEARY, ESQ. for MALLINCKRODT US HOLDINGS, INC.

14 PHILIP HYMANSON, ESQ. for WATSON LABORATORIES, INC., CEPHALON, INC.,
15 ACTAVIS PHARMA, INC. F/K/A WATSON PHARMA, INC., TEVA
16 PHARMACEUTICALS USA, INC., ACTAVIS LLC

17 J. JORGENSEN, ESQ. for CARDINAL HEALTH 108 LLC D/B/A METRO MEDICAL
18 SUPPLY, CARDINAL HEALTH 6 INC., CARDINAL HEALTH, INC., CARDINAL
HEALTH TECHNOLOGIES LLC

19 STEVEN GUINN, ESQ. for MALLINCKRODT US HOLDINGS, INC.

20 JOHN LOMBARDO, ESQ. for ENDO HEALTH SOLUTIONS INC., ENDO
21 PHARMACEUTICALS, INC.

22 BILL BRADLEY, JR., ESQ. for CITY OF RENO

23 ROSA SOLIS-RAINEY, ESQ. for MCKESSON CORPORATION

24 MARK WENZEL, ESQ. for CITY OF RENO

25 ABRAHAM SMITH, ESQ. for CARDINAL HEALTH 108 LLC D/B/A METRO
26 MEDICAL SUPPLY, CARDINAL HEALTH 6 INC., CARDINAL HEALTH, INC.,
27 CARDINAL HEALTH TECHNOLOGIES LLC

28 SARAH JOHANSEN, ESQ. for AMERISOURCEBERGEN DRUG CORPORATION

DANIEL POLSENBERG, ESQ. for CARDINAL HEALTH 108 LLC D/B/A METRO
MEDICAL SUPPLY, CARDINAL HEALTH 6 INC., CARDINAL HEALTH, INC.,
CARDINAL HEALTH TECHNOLOGIES LLC

JEFFREY BENDAVID, ESQ. for JOHNSON & JOHNSON, JANSSEN
PHARMACEUTICALS, INC.

JOEL HENRIOD, ESQ. for CARDINAL HEALTH 108 LLC D/B/A METRO MEDICAL
SUPPLY, CARDINAL HEALTH 6 INC., CARDINAL HEALTH, INC., CARDINAL
HEALTH TECHNOLOGIES LLC

AMANDA YEN, ESQ. for ENDO HEALTH SOLUTIONS INC., ENDO
PHARMACEUTICALS, INC.

PATRICIA LUNDVALL, ESQ. for ENDO HEALTH SOLUTIONS INC., ENDO
PHARMACEUTICALS, INC.

STEVE MORRIS, ESQ. for MCKESSON CORPORATION

JARROD RICKARD, ESQ. for AMERISOURCEBERGEN DRUG CORPORATION

ROBERT ADAMS, ESQ. for CITY OF RENO


JUDICIAL ASSISTANT

1 ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
2 ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
3 CASSANDRA S.M. CUMMINGS, ESQ.
Nevada Bar No. 11944
4 RICHARD K. HY, ESQ.
Nevada Bar No. 12406
5 **EGLET ADAMS**
400 S. 7th Street, 4th Floor
6 Las Vegas, NV 89101
Tel.: (702) 450-5400
7 Fax: (702) 450-5451
E-Mail: eservice@egletlaw.com
8 -and-
9 BILL BRADLEY, ESQ.
Nevada Bar No. 1365
10 MARK C. WENZEL, ESQ.
Nevada Bar No. 5820
11 **BRADLEY, DRENDEL & JEANNEY**
6900 S. McCarran Blvd., Suite 2000
12 Reno, Nevada 89509
13 Telephone: (775) 335-9999
14 Email: office@bdjlaw.com
15 *Attorneys for Plaintiff, the City of Reno*

16
17 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
18 **THE STATE OF NEVADA IN AND FOR THE**
19 **COUNTY OF WASHOE**

20 CITY OF RENO,) Case No.: CV18-01895
21) Division No.: 8

22 Plaintiff,)

23 v.)

NOTICE OF APPEAL

24 PURDUE PHARMA, L.P.; PURDUE)
25 PHARMA, INC.; THE PURDUE)
26 FREDERICK COMPANY, INC. d/b/a THE)
27 PURDUE FREDERICK COMPANY, INC.;)
28 PURDUE PHARMACEUTICALS, L.P.;)
TEVA PHARMACEUTICALS USA, INC.;)
McKESSON CORPORATION;)
AMERISOURCEBERGEN DRUG)
CORPORATION; CARDINAL HEALTH,)
INC.; CARDINAL HEALTH 6 INC.;)

1 CARDINAL HEALTH TECHNOLOGIES)
2 LLC; CARDINAL HEALTH 108 LLC d/b/a)
3 METRO MEDICAL SUPPLY; DEPOMED,)
4 INC.; CEPHALON, INC.; JOHNSON &)
5 JOHNSON; JANSSEN)
6 PHARMACEUTICALS, INC.; JANSSEN)
7 PHARMACEUTICA, INC. n/k/a JANSSEN)
8 PHARMACEUTICALS, INC.; ORTHO-)
9 MCNEIL-JANSSEN PHARMACEUTICALS,)
10 INC. n/k/a JANSSEN PHARMACEUTICALS,)
11 INC.; ENDO HEALTH SOLUTIONS INC.;)
12 ENDO PHARMACEUTICALS, INC.;)
13 ALLERGAN USA, INC.; ALLERGAN)
14 FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a)
15 WATSON PHARMACEUTICALS, INC.;)
16 WATSON LABORATORIES, INC.;)
17 ACTAVIS PHARMA, INC f/k/a WATSON)
18 PHARMA, INC.; ACTAVIS LLC; INSYS)
19 THERAPEUTICS, INC., MALLINCKRODT,)
20 LLC; MALLINCKRODT BRAND)
21 PHARMACEUTICALS INC.; and)
22 MALLINCKRODT US HOLDINGS, INC.;)
23 ROBERT GENE RAND, M.D. AND RAND)
24 FAMILY CARE, LLC; DOES 1 through 100;)
25 ROE CORPORATIONS 1 through 100; and)
26 ZOE PHARMACIES 1 through 100, inclusive,)
27)
28 Defendants.)

NOTICE OF APPEAL

Notice is hereby given that the CITY OF RENO, Plaintiff above named, hereby appeals to the Supreme Court of Nevada from the Order Granting Defendants'¹ Renewed Motion to

¹ The motions to dismiss that were before the court included: (1) Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint; (2) Distributors' Joint Motion to Dismiss First Amended Complaint; (3) Defendant Mallinckrodt LLC's Joinder to Manufacturer Defendants' Joint Motion to Dismiss and Motion to Dismiss First Amended Complaint; (4) Allergan USA, Inc.'s and Allergan Finance, LLC's Motion to Dismiss the Amended Complaint; (5) Endo Health Solutions, Inc., and Endo Pharmaceuticals, Inc.'s Motion to Dismiss First Amended Complaint; (6) Motion to Dismiss of Defendants Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc.; and (7) Motion to Dismiss of Defendants Cephalon, Inc., and Teva Pharmaceuticals USA, Inc.

1 Dismiss the City of Reno's Second Amended Complaint entered in this action on the 26th day of
2 August, 2022.

3 DATED this 26th day of September, 2022.

4
5 /s/ Robert M. Adams, Esq.

6 ROBERT T. EGLET, ESQ.

7 Nevada Bar No. 3402

8 ROBERT M. ADAMS, ESQ.

9 Nevada Bar No. 6551

10 CASSANDRA S.M. CUMMINGS, ESQ.

11 Nevada Bar No. 11944

12 RICHARD K. HY, ESQ.

13 Nevada Bar No. 12406

14 **EGLET ADAMS**

15 400 S. 7th Street, 4th Floor

16 Las Vegas, NV 89101

17 Tel.: (702) 450-5400

18 Fax: (702) 450-5451

19 E-Mail: eservice@egletlaw.com

20 -and-

21 BILL BRADLEY, ESQ.

22 Nevada Bar No. 1365

23 MARK C. WENZEL, ESQ.

24 Nevada Bar No. 5820

25 **BRADLEY, DRENDEL & JEANNEY**

26 6900 S. McCarran Blvd., Suite 2000

27 Reno, Nevada 89509

28 Telephone: (775) 335-9999

E-Mail: office@bdjlaw.com

Attorneys for Plaintiff, City of Reno

1 ☐ Confidential Family Court Information Sheet

2
3 DATED this 26th day of September, 2022.

4 /s/ Robert M. Adams, Esq.
5 ROBERT T. EGLET, ESQ.
6 Nevada Bar No. 3402
7 ROBERT M. ADAMS, ESQ.
8 Nevada Bar No. 6551
9 CASSANDRA S.M. CUMMINGS, ESQ.
10 Nevada Bar No. 11944
11 RICHARD K. HY, ESQ.
12 Nevada Bar No. 12406
13 **EGLET ADAMS**
14 400 S. 7th Street, 4th Floor
15 Las Vegas, NV 89101
16 Tel.: (702) 450-5400
17 Fax: (702) 450-5451
18 E-Mail: eservice@egletlaw.com
19 -and-
20 BILL BRADLEY, ESQ.
21 Nevada Bar No. 1365
22 MARK C. WENZEL, ESQ.
23 Nevada Bar No. 5820
24 **BRADLEY, DRENDEL & JEANNEY**
25 6900 S. McCarran Blvd., Suite 2000
26 Reno, Nevada 89509
27 Telephone: (775) 335-9999
28 E-Mail: office@bdjlaw.com
 Attorneys for Plaintiff, City of Reno

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of EGLET ADAMS, and that on
3 September 26, 2022, I caused the foregoing **NOTICE OF APPEAL** to be served upon those
4 persons designated by the parties via the Court's electronic filing system to the following parties
5 associated with this case. For the following parties not registered with the court's electronic filing
6 system, then a true and correct copy of the above-named document was served via U.S. mail:

7
8 Philip M. Hymanson, Esq.
9 HYMANSON & HYMANSON PLLC
8816 Spanish Ridge Ave.

10 Las Vegas, NV 89148

11 -and

Steven A. Reed, Esq.

12 MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

13 Philadelphia, PA 19103

14 -and

Collie F. James, IV, Esq.

15 Adam D. Teitcher, Esq.

MORGAN LEWIS & BOCKIUS LLP

16 600 Anton Boulevard, Ste. 1800

17 Costa Mesa, CA 92626

-and

18 Brian M. Ercole, Esq.

MORGAN, LEWIS & BOCKIUS LLP

19 200 S. Biscayne Blvd., Ste. 5300

20 Miami, FL 33131

21 *Attorneys for Defendants Teva Pharmaceuticals*

USA, Inc., Cephalon, Inc., Watson Laboratories,

22 *Inc., Actavis Pharma, Inc. f/k/a Watson Pharma,*

Inc., and Actavis LLC

Max E. Corrick II

OLSON CANNON GORMLEY &

STOBERSKI

9950 W. Cheyenne Avenue

Las Vegas, Nevada 89129

-and

Jennifer Gardner Levy, Esq.

Martin Louis Roth, Esq.

Donna Marie Welch, Esq.

Timothy William Knapp, Esq.

Eric Zollner, Esq.

KIRKLAND & ELLIS, LLP

300 N. LaSalle

Chicago, IL 60654

-and

Zachary A. Ciullo, Esq.

Erica B. Zolner, Esq.

Maria Pellegrino Rivera, Esq.

KIRKLAND & ELLIS LLP

300 N. LaSalle

Chicago, IL 60654

Attorneys for Defendants Allergan Finance,

LLC f/k/a Actavis, Inc. f/k/a Watson

Pharmaceuticals, Inc. and Allergan USA, Inc.

Pat Lundvall, Esq.

Amanda C. Yen, Esq.

Tara U. Teegarden, Esq.

MCDONALD CARANO LLP

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

-and

28 . . .

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Jessica D. Miller, Esq.
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
1440 New York Avenue, N.W., Washington,
D.C. 20005
-and
Michael C. Minahan, Esq.
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
525 University Ave.,
Palo Alto, CA 94301
-and
Thomas E. Fox, Esq.
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
One Manhattan West, New York, NY 10001
Attorneys for Defendants
Endo Health Solutions Inc. and Endo
Pharmaceuticals Inc.

/s/ Jennifer Lopez
An Employee of EGLET ADAMS