

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

BOONE COUNTY  
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**STATE OF WEST VIRGINIA**  
*ex rel. PATRICK MORRISEY,*  
Attorney General,

Plaintiff,

v.

Civil Action No.: 16-C-202

**LARRY'S DRIVE-IN PHARMACY,**  
a West Virginia Corporation,

Defendant.

**COMPLAINT**

For its Complaint, the State of West Virginia, by and through its Attorney General, Patrick Morrissey, states the following:

**INTRODUCTION**

1. This action is intended to help curb the epidemic of prescription-drug abuse and the costs it imposes on the State of West Virginia and on West Virginia citizens and residents.

2. The financial toll on West Virginia is stark, but the cost in dollars and cents pales in comparison to the human cost of the devastation wrought on West Virginia's people, families, and communities.

3. In addition to the cost imposed on West Virginia individuals, West Virginia hospitals, schools, courts, social-service agencies, jails, and prisons are similarly drowning in the fallout caused by the opioid epidemic that is fueled, in part, by the actions of the Defendant.

4. Defendant Larry's Drive-In Pharmacy, a small, retail pharmacy in rural Madison, West Virginia, has provided nearly 10 million doses of opioids to a sparse community over an eleven year period.

5. Upon information and belief, Larry's is one of at least eleven retail pharmacies in Boone County, four of which are in the town of Madison and two of which are in nearby Danville.

6. At least three national chain retail pharmacies have locations in Boone County.

7. Upon information and belief, Larry's filled more opioid prescriptions than any other retail pharmacy in the area and provided a significantly excessive number of doses when compared with other retail pharmacies in the area.

8. With this many pharmacies in the surrounding area, Larry's knew or should have known that the extraordinary number of highly addictive controlled substances it was supplying to the residents of Madison and of Boone County was suspicious.

9. Indeed, the sheer volume of opioid doses Larry's provided to the citizens and residents of sparsely populated Madison and Boone County, standing alone, demonstrates that Larry's is illegally fueling the opioid crisis.

10. Upon information and belief, Larry's has only minimal sales of items other than prescription medications and Class II, III, and IV narcotics.

11. For these reasons and those that follow, the Attorney General brings this action for violations of the West Virginia Consumer Credit and Protection Act, *see* W. Va. Code §§ 46-1-101 *et seq.*, and the West Virginia Controlled Substances Act, *see id.* §§ 60A-1-101 *et seq.*

12. The Attorney General also brings claims for common-law negligence, intentional torts, creation of a public nuisance, and unjust enrichment.

13. The Attorney General affirmatively expresses that the State is not seeking any relief in this action for the federal or state share of funding for the State Medicaid Program.

Claims for damages for any federal monies or state matching monies expended by the State are hereby expressly disavowed.

#### THE PARTIES

14. The State of West Virginia, through its Attorney General, Patrick Morrissey, is authorized by the West Virginia Constitution, the common law, and various provisions of the West Virginia Code to bring this action on behalf of the State of West Virginia and its citizens.

15. Under West Virginia Code § 60A-5-501(c), the Attorney General has the duty and the authority to assist in the enforcement of the Uniform Controlled Substances Act and to cooperate with agencies and other governmental entities as relates to controlled substances.

16. Moreover, under West Virginia Code §§ 46A-7-101 *et seq.* and West Virginia Code §§ 47-18-1 *et seq.*, the Attorney General has the authority to sue for violations of the West Virginia Consumer Protection Act and the West Virginia Antitrust Act to recover civil penalties and to seek other remedies for violations of said statutes.

17. Defendant, Larry's Drive in Pharmacy, Inc., is a West Virginia corporation with its principal office in Madison, West Virginia and is operated as a retail pharmacy.

18. Upon information and belief, Larry's has filled several times more opioid orders than neighboring retail pharmacies in Madison and in Boone County.

19. Upon information and belief, Larry's supplied several times the number of opioid pills as neighboring retail pharmacies in Madison and in Boone County.

20. Larry's does substantial business in the State of West Virginia, and thus has substantial contacts to the State.

21. According to the U.S. Census, Boone County had a population of 24,629 in 2010.

22. According to the U.S. Census, Boone County had an adult population of 19,119 in 2010.

23. Upon information and belief, there are a total of eleven retail pharmacies in Boone County.

24. According to the U.S. Census, Madison, West Virginia had a population of 3,076 in 2010.

25. According to the U.S. Census, Madison, West Virginia had an adult population of 2,375 in 2010.

26. Upon information and belief, there are at total of four retail pharmacies in Madison, West Virginia.

27. From 2006–2016, Larry’s distributed 7,728,660 doses of Hydrocodone and 1,928,700 doses of Oxycodone for a total of 9,657,360 doses of Hydrocodone and Oxycodone during the eleven-year period.

28. In other words, from 2006–2016, Larry’s distributed enough doses to provide approximately 392 doses of Oxycodone or Hydrocodone to every man woman, and child in Boone County, West Virginia or 3,139 doses of Oxycodone or Hydrocodone to every man woman, and child in Madison, West Virginia.

29. In addition to Oxycodone and Hydrocodone, Larry’s distributed high quantities of several other scheduled narcotics to West Virginia citizens and residents.

30. Upon information and belief, Larry’s made substantial profits from providing opioids to the citizens and residents of Madison, West Virginia.

#### **JURISDICTION & VENUE**

31. This Court has subject matter jurisdiction under Article VIII, Section 6 of the West Virginia Constitution and under West Virginia Code § 51–2–2.

32. This Court has personal jurisdiction over the Defendant under West Virginia Code § 56–3–33.

33. Under West Virginia Code § 46A–7–114 and West Virginia Code § 47–18–15, venue is appropriate in Boone County, West Virginia.

### FACTS

34. Larry's was on notice that a prescription drug abuse epidemic existed in West Virginia and, specifically, in Madison and in Boone County.

35. According to the Centers for Disease Control, West Virginia has ten of the top thirty counties for prescription overdose deaths in the country, including the top four counties in the country.

36. According to a study from the Trust for America's Health and the Robert Wood Johnson Foundation, which study focused on overdose statistics from 2009–2013, West Virginia had the highest overdose rate in the country.

37. Boone County, West Virginia has the third highest incidents of prescription overdose deaths in the country, behind only Wyoming and McDowell Counties, with Mingo County having the fourth highest incidents of prescription drug overdose deaths in the country.

38. In 1999, the national average for drug overdose deaths was 6.90 per 100,000.

39. In 1999, the State of West Virginia was below the national average for drug overdose deaths at only 4.40 per 100,000.

40. In 2014, the national average for drug overdose deaths was 15.60 deaths per 100,000.

41. By 2014, the State of West Virginia was significantly above the national average of drug overdose deaths with 34.90 per 100,000.

42. That same year, Boone County, West Virginia had a prescription overdose death rate of 43.1 per 100,000.

43. Larry's knew, or should have known, that West Virginia had an exceedingly high rate of illegal use and diversion of prescription opioids.

44. Larry's was on notice that the controlled substances it provided are susceptible to diversion for illegal purposes and have been contributing to the skyrocketing overdose death rate in West Virginia.

45. Larry's was on notice that West Virginia law required that it, *inter alia*, provide effective controls and procedures to guard against diversion of controlled substances, under 15 C.S.R. § 2-4.21 and 2-4.4 and the West Virginia Controlled Substances Act, *see* W. Va. Code §§ 60A-1-101 *et seq.*

46. Larry's provided millions of doses of highly addictive controlled pain killers to the citizens and residents of Madison and of Boone County, West Virginia.

47. Larry's failed to adopt any affirmative efforts to ensure the prescriptions it filled were for lawful purposes and that they were not being diverted to illegal use.

48. Rather than outline each of suspicious prescriptions that Larry's blindly filled, Plaintiff will demonstrate, by example, the level of disregard Larry's had for the detrimental effects of its negligent, intentional, and/or reckless proliferation of highly addictive opioid-based prescription painkillers:

- According to the U.S. Census, Madison, West Virginia had a population of 3,076 in 2010.
- According to the U.S. Census, Boone County had a population of 24,629 in 2010.
- From 2006-2016, Larry's provided 7,728,660 doses of Hydrocodone.

- From 2006–2016, Larry’s provided 1,928,700 doses of Oxycodone.
- From 2006–2016, Larry’s provided 9,657,360 doses of Oxycodone and Hydrocodone.
- Larry’s provided an excessive number of highly addictive controlled substances to citizens and residents of Madison, West Virginia, when the population of the community and the number of neighboring pharmacies is taken into consideration.
- Larry’s provided an excessive number of highly addictive controlled substances to citizens and residents of Boone County, when the population of the community and the number of neighboring pharmacies is taken into consideration.
- According to the Centers for Disease Control and Prevention (“CDC”), from 2003–2012, the percentage of adults over the age of twenty who used a prescription opioid analgesic rose from 5 percent to 6.9 percent in the United States.
- According to the CDC, while the individuals receiving the prescription for opioid analgesics may change, the average remained at 6.9 percent of the population from 2003–2012.
- According to the U.S. Census, 23.4 percent of the Madison, West Virginia population was under the age of 18 in 2014, leaving 2,357 adults in Madison, West Virginia.
- According to the U.S. Census, 22.4 percent of the Boone County population was under the age of 18 in 2014, leaving 19,119 adults in Boone County.

- Based on CDC statistics, Larry's should expect 162 (6.9 percent) of the residents of Madison, West Virginia, to use a prescription opioid analgesic during any particular month.
- Based on CDC statistics, Larry's should expect 1,319 (6.9 percent) of the residents of Boone County, West Virginia, to use a prescription opioid analgesic during any particular month.
- In 2006, Larry's provided 818,000 doses of Hydrocodone and 88,600 doses of Oxycodone, for a total of 906,600 doses of the two medications.
- In 2007 Larry's provided 688,000 doses of Hydrocodone and 121,000 doses of Oxycodone, for a total of 809,000 doses of the two medications.
- In 2008, Larry's provided 960,600 doses of Hydrocodone and 201,800 doses of Oxycodone, for a total of 1,162,400 doses of the two medications.
- In 2009, Larry's provided 748,820 doses of Hydrocodone and 120,100 doses of Oxycodone, for a total of 868,920 doses of the two medications.
- In 2010, Larry's provided 924,440 doses of Hydrocodone and 191,200 doses of Oxycodone, for a total of 1,115,640 doses of the two medications.
- In 2011, Larry's provided 910,600 doses of Hydrocodone and 219,600 doses of Oxycodone, for a total of 1,130,200 doses of the two medications.
- In 2012, Larry's provided 871,440 doses of Hydrocodone and 271,900 doses of Oxycodone, for a total of 1,143,340 doses of the two medications.
- In 2013, Larry's provided 776,100 doses of Hydrocodone and 274,800 doses of Oxycodone, for a total of 1,050,900 doses of the two medications.

- In 2014, Larry's provided 531,500 doses of Hydrocodone and 209,300 doses of Oxycodone, for a total of 740,800 doses of the two medications.
- In 2015, Larry's provided 327,500 doses of Hydrocodone and 155,700 doses of Oxycodone, for a total of 483,200 doses of the two medications.
- In 2016, Larry's provided 171,700 doses of Hydrocodone and 74,700 doses of Oxycodone, for a total of 246,400 doses of the two medications.

49. Based on CDC estimates of anticipated opioid use, Larry's supplied enough highly addictive prescription pain medication prescriptions to provide each Madison, West Virginia anticipated user with an average of 59,613 doses of Hydrocodone and Oxycodone between 2006 and 2016, or an estimated 5,419 doses per year.

50. If Larry's supplied an equal portion of the anticipated customers as the other three retail pharmacies in Madison, it would have provided an average of 238,452 doses of Hydrocodone and Oxycodone to its portion of patients between 2006 and 2016, or an estimated average of 21,677.5 doses per anticipated patient per year or an average of 1,806.5 doses per month.

51. Based on CDC estimates of anticipated opioid use, Larry's fulfilled enough highly addictive prescription pain medication prescriptions to provide each Boone County user with an average of 7,321 doses of Hydrocodone and Oxycodone between 2006 and 2016, or an estimated 665 doses per year.

52. If Larry's supplied an equal portion of the anticipated customers as the other ten retail pharmacies in Boone County, it would have provided an average of 80,531 doses of Hydrocodone and Oxycodone to its portion of patients between 2006 and 2016, or an estimated average of 7,321 doses per anticipated patient per year or 610 doses per month.

53. Based on the sheer numbers distributed by Larry's, it either supplied a higher percentage of the opioids than the other retail pharmacies in Madison or Boone County or it filled prescriptions for customers who travelled to Madison to patronize Larry's.

54. Under either scenario, Larry's is under an obligation to ensure the prescriptions it fills were properly ordered by a physician for a diagnosed medical condition, that the dose and number of pills were reasonable under the circumstances, and that the customers filling the prescriptions were not diverting the opioids to an illegal purpose.

55. Larry's undertook no efforts to determine whether the volume of prescription painkillers it was providing was excessive and whether any of the prescriptions it filled qualified as suspicious that, if so, should have been refused.

56. Larry's knew or should have known that it was supplying opioid medications in excess of the legitimate needs of Madison and Boone County.

57. Larry's knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers it provided were being diverted to illegal use.

58. Larry's had a legal duty to ensure it was not filling suspicious prescriptions.

59. The sheer volume of highly addictive opioid pain medications it provided from 2006–2016 was suspicious on its face.

60. Larry's made substantial profits from the medicine it provided.

61. Larry's knowingly filled suspicious prescriptions from 2006–2016.

62. Larry's negligently filled suspicious prescriptions from 2006–2016.

63. Larry's intentionally, and with reckless disregard, filled suspicious prescriptions from 2006–2016.

64. Larry's intentional provision of excessive prescription pain killers to a small community showed a reckless disregard to the safety of Madison and Boone County residents.

65. Larry's abrogated its responsibility to monitor and report suspicious prescriptions from 2006–2016.

66. Larry's willfully ignored the substantial number of prescriptions for highly addictive prescription pain killers it was fulfilling, even though the rate of abuse was well documented.

67. Larry's knew or should have known that West Virginia was facing an epidemic of abuse of prescription pain killers.

68. Larry's knew or should have known that substantial amounts of opioid pain killers were being diverted to feed the epidemic of prescription drug abuse in West Virginia.

69. Larry's provided prescription drugs that it knew or should have known would contribute to the well-publicized prescription drug abuse problem in West Virginia.

70. Larry's knew or should have known it was aggravating the epidemic of prescription drug abuse in West Virginia.

71. Larry's continued providing large quantities of prescription drugs known for their addictive qualities and likelihood of abuse.

72. Larry's provided substantial amounts of other highly addictive prescription medication that it knew or should have known was being diverted to illegal use, including, but not limited to, buprenorphine, fentanyl, codeine, hydromorphone, oxymorphone, morphine, and methadone.

73. Larry's knew or should have known these medications were being diverted for illegal use.

74. Larry's had a legal duty to investigate and prevent the misuse of the highly addictive prescriptions medications with which it was flooding Madison, Boone County, and the State of West Virginia.

75. Larry's knew or should have known that many of the controlled substances that it was providing were being obtained often through fraudulent prescriptions from physicians who were prescribing controlled substances for illegitimate medical purposes.

76. Larry's received substantial profits for the controlled substances it provided to the citizens and residents of West Virginia, particularly Madison and Boone County.

77. Larry's had little regard for the havoc it was wreaking on the State and the sparsely populated area it served.

78. Larry's acted negligently by failing to identify and prevent the filling of suspicious prescriptions.

79. Larry's acted negligently by failing to identify and prevent the filling of suspicious prescriptions.

80. Larry's actions in failing to identify and prevent the filling of suspicious prescriptions were intentional, oppressive, and with a malicious disregard for the damage it was causing.

81. As a proximate result of the acts and omissions of Larry's, Plaintiff has incurred, and will continue to incur, substantial losses, costs, and damages.

82. Larry's actions involve a continuing or repeated injury through a series of continuing acts.

83. While the examples listed in this Complaint refer to events dating back to 2006, upon information and belief, Larry's had a continuing practice of supplying substantial quantities of highly addictive controlled substances to sparsely populated areas for decades.

84. Larry's continued supplying suspicious orders through 2016. Thus, the last occurrence in these continuing torts occurred in 2016.

85. Plaintiff affirmatively states that the continuing tort doctrine applies to all the averments in this Complaint.

## CAUSES OF ACTION

### COUNT I

#### VIOLATION OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT

86. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1–85 of this Complaint.

87. Under West Virginia Code § 60A–5–501(c), the Attorney General is vested with the duty and authority to assist in the enforcement of the provisions of the Uniform Controlled Substances Act.

88. Under West Virginia Code §§ 46A–7–101 *et seq.*, the Attorney General has investigatory powers and the authority to sue for violations of the West Virginia Consumer and Credit Protection Act (“WVCCPA”), including the right to seek civil penalties and other remedies.

89. Under West Virginia Code § 46A–7–111(2), Larry's is liable to Plaintiff for civil penalties for each violation of the WVCCPA, as determined by the Court.

90. Larry's engaged in a course of repeated and willful violations of the WVCCPA.

91. The Attorney General requests that the Court assess civil penalties against Larry's of five thousand dollars (\$5,000) for each violation.

92. Plaintiff is entitled to receive its costs and attorneys' fees for prosecuting this action under West Virginia Code § 46A-5-104.

93. The determination of civil penalties is a determination to be made by the Court and is in addition to any amount of damages awarded by the jury.

94. Upon information and belief, Larry's is one of the largest distributors of Class II narcotics and one of the most profitable retail pharmacies in the nation.

95. Upon information and belief, Larry's receives substantial profits from the sale of its controlled pain killers to the citizens and residents of Madison, Boone County, and West Virginia.

96. Larry's was in the position to develop and implement a system of detecting and stopping the filling of prescription medicine that appeared suspicious.

97. Larry's failure to do so violates the West Virginia Consumer Credit and Protection Act.

COUNT II  
UNFAIR METHODS OF COMPETITION AND/OR  
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

98. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1-97 of this Complaint.

99. WVCCPA prohibits the use of unfair methods and/or competition or unfair or deceptive acts or practices in any trade or commerce.

100. The Attorney General is specifically charged with the administration of this provision and may act *sua sponte* as the agent and legal representative of the State in civil proceedings to enforce the WVCCPA.

101. Violations of statutes and regulations that are enacted to protect the public or in the exercise of the State's police power constitute unfair or deceptive acts or practices.

102. Regulations promulgated pursuant to the West Virginia Uniform Controlled Substances Act, *see* W.Va. Code § 60A-3-301(18), provide, *inter alia*, for Larry's to provide effective controls and procedures to guard against theft and diversion of controlled substances. *See* 15 C.S.R. §§ 2-4.2.1; *id.* § 3.1.1.

103. Larry's is required to ensure that any prescription filled is for a legitimate medical purpose.

104. Larry's made no attempts to ensure the prescriptions it filled were for legitimate medical purposes.

105. Each violation of the mandatory duties in the West Virginia Uniform Controlled Substances Act and its corresponding regulations is an unfair or deceptive act or practice in the conduct of trade or commerce, as set forth in the WVCCPA.

106. Larry's repeated violations are willful, wanton, and with reckless disregard to rights of Plaintiff.

107. Plaintiff is entitled to civil penalties under West Virginia Code § 46A-7-111(2) for each violation.

108. Plaintiff is entitled to receive its costs and attorneys' fees for prosecuting this action under West Virginia Code § 46A-5-104.

COUNT III  
INJUNCTIVE RELIEF FOR VIOLATIONS OF THE WEST VIRGINIA  
CONTROLLED SUBSTANCES ACT

109. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1-108 of this Complaint.

110. West Virginia Code § 60A-5-501(c) provides: "All prosecuting attorneys and the attorney general, or any of their assistants, shall assist in the enforcement of all provisions of

this act and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.”

111. West Virginia Code § 60A-5-503(a) gives this Court the authority to enjoin the Defendants from violations of the West Virginia Controlled Substances Act.

112. Larry’s is under an obligation to abide by the regulations promulgated pursuant to the West Virginia Controlled Substances Act.

113. Larry’s is required to obtain a controlled substances permit each year. 15 C.S.R. § 2-3.1.1.

114. Larry’s pharmacists may not dispense any prescription order which, in his or her judgment and/or professional opinion, contains any error, irregularity or ambiguity.

115. Larry’s is required to “provide effective controls and procedures to guard against theft and diversion of controlled substances.” 15 C.S.R. § 2-4.2.1.

116. Larry’s is required to “design and operate a system to disclose to the registrant suspicious orders of controlled substances.” 15 C.S.R. § 2-4.4.

117. Larry’s is also under an obligation to inform “the Office of the West Virginia Board of Pharmacy of suspicious orders when discovered.” 15 C.S.R. § 2-4.4.

118. Suspicious orders include any “orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” 15 C.S.R. § 2-4.4.

119. Although “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner,” Larry’s has “a corresponding responsibility” to make sure that “a prescription for a controlled substance [is] for a legitimate medical purpose.” 15 C.S.R. § 2-7.4.1.

120. For this reason, “[a]n order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Uniform Controlled Substances Act and the person knowingly filling such a purported prescription” is “subject to the penalties provided for violations of the provisions of law relating to controlled substances.” 15 C.S.R. § 2–7.4.1.

121. Larry’s failed to diligently identify and report suspicious prescriptions it received and continued to fill them.

122. Larry’s either blindly ignored suspicious prescriptions or failed to develop a system sufficient to adequately identify suspicious prescriptions as they were received.

123. Upon information and belief, Larry’s continues to fill significant quantities of prescriptions of highly addictive pain medication to sparsely populated areas where the population is insufficient to support the level of demand supplied by Larry’s.

124. Upon information and belief, Larry’s current system to identify, detect, report, and cease filling suspicious prescriptions is insufficient to fully protect the surrounding community.

125. Plaintiff has sustained substantial damages as the proximate result of the failure by Larry’s to comply with the CSA and its regulations.

126. Plaintiff will continue to suffer significant additional damages unless this Court issues an injunction preventing it from continuing to violate the law.

127. The claims for damages for past losses and future costs sustained by Plaintiff are insufficient to prevent future losses that will result from the failure of Larry’s to comply with West Virginia and United States laws and regulations as detailed herein.

128. Plaintiff is entitled to a temporary injunction to prevent Larry's from continuing to violate West Virginia and United States laws and regulations.

129. Plaintiff is entitled to a permanent injunction to prevent Larry's from continuing to violate West Virginia and United States laws and regulations.

COUNT IV  
NEGLIGENT VIOLATION OF LAW

130. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1–129 of this Complaint.

131. Larry's contributed to the epidemic prescription drug abuse problem in the State of West Virginia through repeated negligent violations of various provisions of the West Virginia Uniform Controlled Substances Act, to wit:

- Larry's negligently and improperly dispensed, and continues to dispense prescriptions, contrary to West Virginia Code § 60A–3–308;
- Larry's negligently engaged in prohibited acts, contrary to West Virginia Code §§ 60A–4–401 through 403;
- Larry's negligently abetted and continues to abet individuals in deceiving and attempting to deceive medical practitioners in order to obtain prescriptions, in violation of West Virginia Code § 60A–4–401;
- Larry's negligently failed to meet the requirements of West Virginia Code §§ 60A–8–1 *et seq*;
- Larry's negligently conspired to violate the West Virginia Uniform Controlled Substances Act.

132. Larry's is a distributor of controlled substance and must comply with both the laws of West Virginia and with industry customs and standards.

133. Industry standards require Larry's to:

- know its customers;
- know its customer base;
- know the population base served by a particular pharmacy or drug store;
- know the average prescriptions filled each day;
- know the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases;
- know the identification of the physicians and bogus pain clinics and centers for the alleged treatment of pain that are the pharmacy or drug stores' most frequent prescribers.

134. Larry's negligently failed to ensure its conduct conformed to industry standards.

135. Larry's negligently failed to ensure its conduct conformed to West Virginia law and regulations.

136. Larry's negligently failed to conform its conduct to United States law and regulations.

137. Larry's negligently turned a blind eye to the foregoing factors by regularly distributing large quantities of commonly abused, highly addictive controlled substances to a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and who reasonably can be expected to become addicted or to engage in illicit drug transactions.

138. Larry's negligent acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and have fueled a prescription drug abuse epidemic in West Virginia.

139. Larry's negligent acts and omissions supplied millions of doses of commonly abused, highly addictive controlled substances to individuals with no medical evidence supporting the prescriptions.

140. Larry's negligent acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

141. Larry's negligent violations of West Virginia law make it liable for all the damages which are sustained therefrom. *See* W.Va. Code § 55-7-9.

142. Larry's negligent acts and omissions have proximately caused and substantially contributed to damage suffered by the State and its agencies, created conditions which contribute to the violation of West Virginia laws by others.

143. Larry's negligent acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards, and practices within Larry's own industry.

144. Upon information and belief, Larry's continues to negligently violate West Virginia laws and regulations, United States laws and regulations, and industry customs, standards and practices, which continue to proximately cause substantial damages to Plaintiff.

COUNT V  
INTENTIONAL ACTS AND OMISSIONS

145. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1-144 of this Complaint.

146. Larry's intentionally contributed to the epidemic prescription drug abuse problem in the State of West Virginia through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act and through reckless disregard to the safety and well-being to the citizens of West Virginia, to wit:

- Larry's intentionally and improperly dispensed, and continues to dispense prescriptions, contrary to West Virginia Code § 60A-3-308;
- Larry's intentionally engaged in prohibited acts, contrary to West Virginia Code §§ 60A-4-401 through 403;
- Larry's intentionally abetted and continues to abet individuals in deceiving and attempting to deceive medical practitioners in order to obtain prescriptions, in violation of West Virginia Code § 60A-4-401.
- Larry's intentionally failed to meet the requirements of West Virginia Code §§ 60A-8-1 *et seq.*
- Larry's intentionally conspired to violate the West Virginia Uniform Controlled Substances Act.

147. Larry's intentionally failed to ensure its conduct conformed to industry standards.

148. Larry's intentionally failed to ensure its conduct conformed to West Virginia law and regulations.

149. Larry's intentionally failed to ensure its conduct conformed to United States law and regulations.

150. Larry's intentionally turned a blind eye toward the foregoing industry standards outlined in Paragraph 133 by regularly distributing large quantities of commonly abused, highly addictive controlled substances to individuals who were abusing prescription medications, many of whom were addicted and who can reasonably be expected to become addicted or to engage in illicit drug transactions.

151. Larry's intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and the fueling of a prescription drug abuse epidemic in West Virginia.

152. Larry's intentional acts and omissions supplied millions of doses of commonly abused, highly addictive controlled substances that supported the demands of bogus pain clinics that did little more than provide prescriptions of highly addictive prescription pain killers to individuals with no medical evidence supporting the prescription.

153. Larry's intentional acts and omissions resulted in the filling of countless prescriptions that were primarily filled to divert the medication to illegal purposes.

154. Larry's intentional violations of West Virginia law make it liable for all the damages that are sustained therefrom. *See* W.Va. Code § 55-7-9.

155. Larry's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by the State and created conditions which contribute to the violation of West Virginia laws by others.

156. Larry's intentional acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards, and practices within Larry's own industry.

157. Upon information and belief, Larry's continues to intentionally violate West Virginia laws and regulations, United States laws and regulations, and Larry's industry customs, standards and practices, which continues to proximately cause substantial damages to Plaintiff.

COUNT VI  
PUBLIC NUISANCE

158. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1-157 of this Complaint.

159. Larry's, individually and acting through its employees and agents, has created and continues to perpetrate and maintain a public nuisance to the citizens of West Virginia through its massive distribution of highly addictive, commonly abused prescription pain killers.

160. Larry's failure to (1) put in place effective controls and procedures to guard against theft and diversion of controlled substances, (2) design adequately and operate a system to disclose suspicious prescriptions of controlled substances, and (3) inform the State of suspicious prescriptions when discovered by has created a public nuisance to the citizens of West Virginia.

161. Larry's knew or should have known its conduct would cause harm or inconvenience to the State of West Virginia in a multitude of ways.

162. As a direct and proximate result of the conduct of Larry's, as set forth herein, Larry's has negligently, intentionally, and/or unreasonably interfered with the right of West Virginia and West Virginia citizens to be free from unwarranted injuries; addictions; diseases and sicknesses; overdoses from prescription pain medication; and ongoing damage, harm, inconvenience.

163. The State of West Virginia and its residents have been exposed to the risk of addiction to prescription drugs, have become addicted, and/or have suffered other adverse consequences from the use of the addictive prescriptions drugs, and have been adversely affected by the addiction and abuse of others in their communities from highly addictive, prescription pain medication provided by Larry's.

164. Larry's actions have and will continue to cause the State, its agencies, and countless West Virginia citizens to suffer the same fate in the future if Larry's conduct continues.

165. As a direct result of Larry's conduct, as set forth herein, Larry's has negligently, intentionally, recklessly, maliciously, oppressively, and/or unreasonably interfered with the public's right to be free from unwarranted injury; disease or sickness; and criminal actions.

166. Larry's also causes ongoing damage, harm and/or inconvenience to the public health, the public safety, and the general welfare of the citizens of the State of West Virginia.

167. The health and safety of the citizens of West Virginia, including those who have used or will use prescription drugs, is a matter of great public interest and of legitimate concern to the State and its citizens.

168. The public nuisance created, perpetuated, and maintained by Larry's can be abated and further occurrence of such harm and inconvenience can be prevented.

169. Larry's was on notice that an epidemic from prescription drug abuse existed and has existed during all relevant times for this Complaint as the result of:

- A large amount of media coverage of prescription drug abuse and its consequences by both national and local print, television, and radio media;
- Multiple documentary movies depicting the state of prescription drug abuse in West Virginia;
- Publications received from government sources as well as warnings and recommendations contained in trade and professional journals; and
- Changes in law and regulations that were designed specifically to address the growing problem of prescription drug abuse.

170. The widespread publicity contained many references and statistics concerning West Virginia's problems from prescription drug abuse, including, but not limited to, suffering the nation's highest per capita death rate from prescription drug overdose.

171. Notwithstanding the knowledge of this epidemic of prescription drug abuse in West Virginia, Larry's persisted in a pattern and practice of distributing controlled substances of kinds which were well known to be abused and diverted all while providing the controlled substances in a geographic area, and in such quantities and with such frequency, that Larry's knew or should have known that these substances were not being prescribed and consumed for legitimate medical purposes.

172. As a direct and proximate result of the above-described conduct, Larry's negligently, recklessly, maliciously, oppressively, intentionally, and/or acting with blind indifference to the facts, created and continue to propagate a public nuisance.

173. More particularly, the public nuisance created by Larry's injuriously and pervasively affects West Virginia communities and the State (particularly Madison and Boone County), endangers the public health and safety, and inconveniences the citizens of the State, including, but not limited to, the following ways:

- Areas in certain communities have become congested with persons who gather in large groups outside of "clinics, pharmacies and physician offices" that in fact are component parts of Pill Mills that exist only to prescribe and deliver drugs for illicit, non-medical purposes;
- Crimes and other dangerous activities have increased;
- Hospital services, especially those services provided by emergency rooms, are being consumed by persons with prescription drug abuse issues;
- Law enforcement and prosecutorial resources are being exhausted and consumed by having to address prescription drug abuse issues to the exclusion of other matters;

- Public resources are being unreasonably consumed in efforts to address the prescription-drug abuse epidemic, thereby eliminating available resources which could be used to benefit the public at large;
- Court dockets are congested by prescription-drug cases, as well as by crimes committed by addicts, thereby diminishing access to the courts by others;
- Jails and prisons suffer from overcrowding as a result of the epidemic level of prescription drug abuse and crimes committed to support addiction to prescription drugs.

174. As a direct result of the acts and/or omissions of Larry's in creating, perpetuating, and maintaining the public nuisance hereinabove described, the public nuisance described herein has damaged the health and safety of West Virginia citizens in the past will continue to do so in the future unless the nuisance is abated.

COUNT VII  
NEGLIGENCE

175. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1–174 of this Complaint.

176. Larry's has a duty to exercise reasonable care in the distribution of controlled substances.

177. Larry's has breached this duty by its conduct, as illustrated by the sampling of examples listed above.

178. As a proximate result, Larry's and its agents have caused the State to incur excessive costs related to diagnosis, treatment, and cure of addiction or risk of addiction to such controlled substances, and therefore the State has borne the massive costs of these illnesses and conditions by having to provide necessary medical care, facilities, and services for treatment of

citizens of West Virginia who are unable to afford or otherwise obtain such necessary medical care, facilities, and services.

179. Larry's was negligent in failing to monitor and guard against third-party misconduct, *e.g.*, the conduct of the Pill Mill physicians and staff as well as corrupt pharmacists and staff, and, in fact, by their actions Larry's participated and enabled such misconduct.

180. Larry's acts and omissions, as averred above, imposed an unreasonable risk of harm to others separately and/or as combined with the negligent and/or criminal acts of third parties.

181. Larry's is in a class of a limited number of parties that can legally distribute controlled substances, which places it in a position of great trust by the State.

182. The trust placed in Larry's by Plaintiff through the license to distribute controlled substances in West Virginia creates a duty on behalf of Larry's to prevent diversion of the medications it supplies to illegal purposes.

183. A negligent and/or intentional violation of this trust poses distinctive and significant dangers to the State and its citizens from the diversion of controlled substances for non-legitimate medical purposes and addiction to the same by consumers.

184. Larry's was negligent in not acquiring and utilizing special knowledge and special skills that relate to the dangerous activity in order to prevent and/or ameliorate such distinctive and significant dangers.

185. Controlled substances are dangerous commodities.

186. Larry's is required to exercise a high degree of care and diligence to prevent injury to the public from the diversion of controlled substances during distribution.

187. Larry's breached its duty to exercise the degree of care, prudence, watchfulness, and vigilance commensurate to the dangers involved in the transaction of its business.

188. The duty owed by Larry's to the State cannot be delegated to another party.

189. Larry's is in exclusive control of the management of the controlled substances it distributed to pharmacies and drug stores in West Virginia.

190. Plaintiff is without fault and the injuries to the State of West Virginia and its citizens would not have happened in the ordinary course of events had Larry's used due care commensurate to the dangers involved in the distribution of controlled substances.

COUNT VIII  
UNJUST ENRICHMENT

191. Plaintiff incorporates, by reference, all allegations and averments in Paragraphs 1–190 of this Complaint.

192. Because of prescription drug abuse, the State has expended substantial amounts of money annually that it would not have otherwise expended on numerous services through various agencies, including, but not limited to: increased law enforcement, prosecutors and prosecutions, courts and court personnel, public-defender services, corrections and correctional facilities, probation and parole, public welfare and service agencies, as well as healthcare, medical services, and drug abuse education.

193. The State has lost revenue and incurred costs from workplace accidents, absenteeism, and decreased productivity from prescription drug abuse.

194. The State remains responsible for costs of prescriptions, health care, and other medically related costs, rehabilitation, work-related programs, workers' compensation, public insurance, law enforcement, prosecution costs, court related costs, public defender services,

correctional institutions, and probation and parole services, which costs have substantially increased as a result of Larry's acts and omissions.

195. The State will continue to incur these increased costs in the future as a result of Larry's conduct listed herein.

196. Larry's made substantial profits while fueling the prescription drug epidemic in West Virginia.

197. Larry's continues to receive considerable profits from the distribution of controlled substances in West Virginia.

198. Larry's was unjustly enriched by its negligent, intentional, malicious, oppressive, illegal, and unethical acts, omissions, and wrongdoing.

199. Larry's sales of prescription medications other than those listed herein were increased by Larry's negligent, intentional, malicious, oppressive, illegal, and unethical acts, omissions, and wrongdoing by its distribution of drugs which were diverted for purposes other than legitimate medical needs.

200. Larry's negligent, intentional, malicious, oppressive, illegal, and unethical acts, omissions, and wrongdoing entitle Plaintiff to disgorgement of the profits received by Larry's for all sales it made in West Virginia from 2006 to present.

201. Larry's negligent, intentional, malicious, oppressive, illegal, and unethical acts, omissions, and wrongdoing have unjustly enriched Larry's and are directly related to the damages, losses, and to the detriment of Plaintiff.

202. Larry's is liable to Plaintiff for all damages incurred as a result of Larry's negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing contained herein.

## PRAYER

**WHEREFORE**, Plaintiff prays that the Court grant the following relief:

1. Judgment in favor of Plaintiff;
2. A temporary restraining order preventing Larry's from continuing to violate West Virginia laws and regulations and United States laws and regulations relating to the distribution of controlled substances in the State; mandating Larry's to notify promptly the West Virginia Board of Pharmacy, Office of the Attorney General, and the West Virginia Department of Military Affairs and Public Safety of any and all suspicious prescriptions for controlled substances as received from parties who are located in West Virginia; forcing Larry's to submit its system for determining suspicious order to those West Virginia authorities for prior approval; and enjoining Larry's from distributing any controlled substance in West Virginia for any non-legitimate medical purpose;
3. A permanent restraining order preventing Larry's from continuing to violate West Virginia laws and regulations and United States laws and regulations relating to the distribution of controlled substances in the State; mandating Larry's to promptly notify the West Virginia Board of Pharmacy, Office of the Attorney General, and the West Virginia Department of Military Affairs and Public Safety of any and all suspicious prescriptions for controlled substances as received from parties who are located in West Virginia; forcing Larry's to submit its system for determining suspicious order to those West Virginia authorities for prior approval; and enjoining Larry's from distributing any controlled substance in West Virginia for any non-legitimate medical purpose;
4. Equitable relief, including, but not limited to restitution and disgorgement;
5. Order a jury trial on all issues so triable to determine costs, losses, and damages as a result of Larry's actions outlined in this Complaint, including, but not limited to:

- a. Losses sustained as the proximate result of both negligent and conscious violations of the West Virginia Uniform Controlled Substances Act and regulations;
  - b. Damages sustained as the proximate result of nuisances created by the prescription drug abuse epidemic in the State;
  - c. Damages and losses sustained as a proximate result of Larry's negligence in marketing, promoting, and distribution of controlled substances in West Virginia;
  - d. Damages and losses sustained as a proximate result of Larry's intentional actions in marketing, promoting, and distribution of controlled substances in West Virginia;
  - e. Disgorgement of profits from Larry's unjust enrichment;
  - f. Civil penalties of up to \$5,000 for each violation of the WVCCPA;
  - g. Civil penalties of up to \$5,000 for each unfair and deceptive act in trade in West Virginia;
  - h. Pre- and post-judgment interest;
6. Such other relief, fees and costs as shall be available under the WVCCPA;
  7. Punitive damages for Larry's willful, wanton, malicious, oppressive, and intentional actions as detailed herein;
  8. Attorneys' fees and costs;
  9. And such other relief as this Court deems just and fair.

**PLAINTIFF SEEKS A TRIAL BY JURY FOR ALL COUNTS SO TRIABLE**

**STATE OF WEST VIRGINIA**  
*ex rel.* **PATRICK MORRISEY,**  
Attorney General,



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Edward Mark Wenger (WVSB #13058)  
General Counsel  
Office of the Attorney General  
State Capitol Building 1, Room E-26  
Charleston, WV 25305  
Phone: (304) 558-2021 Fax: (304) 558-0140  
edward.m.wenger@wvago.gov