E-FILED | 8/18/2020 1:30 PM
CC-40-2020-C-131
Putnam County Circuit Clerk
William Mullins

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

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

Plaintiff,

v. **CIVIL ACTION NO. _____**
JUDGE: _____

CVS HEALTH CORPORATION, a Delaware corporation,
CVS PHARMACY, INC., a Rhode Island corporation,
CVS INDIANA, LLC, a Indiana corporation,
CVS RX SERVICES, INC., a New York corporation, and
CVS TN DISTRIBUTION LLC, a Delaware corporation,

Defendants.

COMPLAINT

Plaintiff, the State of West Virginia, by its Attorney General, Patrick Morrisey, sues CVS Health Corporation, CVS Pharmacy, Inc., CVS Indiana, LLC, CVS Rx Services, Inc., and CVS TN Distribution LLC (hereinafter "CVS" or "Defendants") and alleges as follows:

I. Introduction

1. The State of West Virginia is suffering from a devastating opioid crisis created in part by the Defendant. Opioids may kill as many as 500,000 people in the United States over the next ten years.

2. Opioids are powerful narcotic painkillers that include non-synthetic, partially synthetic, and fully-synthetic derivatives of the opium poppy. Use of prescription opioids can cause addiction, overdose, and deaths.

3. Opioid addiction has destroyed the lives of tens of thousands of West Virginians and caused immense pain and suffering for families throughout West Virginia.

4. The long-term use of opioids is particularly dangerous because patients develop tolerance to the drugs over time, requiring higher doses to achieve any effect. Patients also quickly become dependent on opioids and will experience often-severe withdrawal symptoms if they stop using the drugs. That makes it very hard for patients to discontinue using opioids after even relatively short periods. The risks of addiction and overdose increase with dose and duration of use. At high doses, opioids depress the respiratory system, eventually causing the user to stop breathing, which can make opioids fatal. It is the interaction of tolerance, dependence, and addiction that makes the use of opioids for chronic pain so lethal.

5. Opioid related deaths may be underreported by as much as 20%, the opioid epidemic is deadlier than the AIDS epidemic at its peak, and West Virginia suffered from the highest opioid mortality rate in the country in 2016.[1]

6. In 2017, over 1,000 West Virginia citizens died as the result of a drug overdose. Eighty-six percent (86%) of these overdose deaths involved an opioid. This is threefold higher than the national rate of 14.6 deaths per 100,000 people.[2]

7. In 2017, West Virginia providers wrote 81.3 opioid prescriptions for every 100 people compared to the national average U.S. rate of 58.76 prescriptions.[3]

8. As millions became addicted to opioids, "pill mills," often styled as "pain clinics," sprouted nationwide and rogue prescribers stepped in to supply prescriptions for non-medical use. These pill mills, typically under the auspices of licensed medical professionals, issue high volumes

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[1] Christopher Ingraham, CDC Releases Grim New Opioid Overdose Figures: Talking About More Than an Exponential Increase Washington Post, Dec. 12, 2017, https://wapo.st/2POdL3m.

[2] *See* Caity Coyne, Number of Fatal Drug Overdoses in 2017 Surpasses 1,000 Mark in West Virginia, Charleston Gazette-Mail, Aug. 30, 2018, https://bit.ly/2yLcxim; *see also*, Christopher Ingram, Drugs are Killing so Many People in West Virginia that the State Can't Keep Up With the Funerals, The Washington Post, Mar. 7, 2017, https://wapo.st/2GI9rk2; Christopher Ingram, Fentanyl Use Drive Drug Overdose Deaths to a Record High in 2017, CDC Estimates, The Washington Post, Aug. 15, 2018, https://wapo.st/2Ozn8b7; *see also* West Virginia Opioid Summary, National Institute on Drug Abuse, March 2019. https://bit.ly/2MzDsGn.

[3] *See* West Virginia Opioid Summary, National Institute on Drug Abuse, March 2019. https://bit.ly/2MzDsGn.

of opioid prescriptions under the guise of medical treatment. Prescription opioid pill mills and rogue prescribers cannot channel opioids for illicit use without at least the tacit support and willful blindness of the Defendants, if not their knowing support.

9. As reported in a special issue of the West Virginia Medical Journal, West Virginia has the third highest non-heroin opioid pain reliever ("OPR") treatment rate in the United States.[4]

10. In addition to the number of deaths caused by OPRs such as oxycodone and hydromorphone, there has been an increase in overdose deaths caused by heroin, which dealers cut with fentanyl, an opioid 100 times stronger than morphine.[5]

11. Studies show a direct correlation between OPRs and heroin addiction with 4 out of 5 heroin users reporting their opioid use began with OPRs.[6]

12. Children are especially vulnerable to the opioid epidemic. West Virginia's rate of Neonatal Abstinence Syndrome ("NAS") is five times the national average. This has resulted in thousands of children being placed in foster care.[7] In 2017, the overall incidence rate of NAS was 50.6 cases per 1,000 live births for West Virginia residents. The highest incidence rate of NAS was 106.6 cases per 1,000 live births (10.66%) in Lincoln County.

13. In 2007, the cost for treating a NAS baby was approximately $36,000; cost for a healthy baby was approximately $3,600.[8]

14. Between 2006 and 2016, children entering the West Virginia foster care system due to parental addiction rose 124%. About 70% of referrals to Child Protective Services in 2017 had

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[4] Khalid M. Hasan, MD. & Omar K. Hasan, MD, Opiate Addiction and Prescription Drug Abuse: A Pragmatic Approach, West Virginia Medical Journal, Special Ed., Vol. 106, No. 4, p. 84.
[5] Dennis Thompson, Drug OD Deaths Nearly Tripled Since 1999, CDC Says, Feb. 24, 2017, CBS News, https://cbsn.ws/2J4n90u.
[6] Andrew Kolodny, et al., The Prescription Opioid and Heroin Crisis: A Public Health Approach to an Epidemic of Addiction, Annu. Rev. Public Health 2015, p. 560 (Jan. 12, 2015), https://bit.ly/2J5A9Tp.
[7] Proposed Opioid Response Plan for the State of West Virginia, Jan. 10, 2018, p. 20, https://bit.ly/2Oyu48a.
[8] Michael L. Stitely, MD, et al., Prevalence of Drug Use in Pregnant West Virginia Patients, West Virginia Medical Journal, Special Ed., Vol. 106, No. 4, p. 48.

a substance abuse component according to the statistics from the Centralized Intake Unit of the West Virginia Bureau for Children and Families. The state court Child Abuse and Neglect (CAN) database indicates that about 80% of referrals from family court and circuit court judges have a substance abuse factor.

15. The State of West Virginia has sustained and continues to suffer massive losses as a result of this opioid epidemic through loss of lives, babies born addicted to opioids, adults unable to work, treatment costs, emergency personnel costs, law enforcement expenses, naloxone costs, medical examiner expenses, foster care expenses, self-funded state insurance costs, and lost tax revenues, among many other costs.

16. The State of West Virginia brings this civil action to hold the Defendants accountable for unconscionably helping to create the State of West Virginia's opioid public health and financial crisis. The Defendants reaped billions of dollars in revenues while causing immense harm to the State of West Virginia and its citizens, and now they should pay for their role in the crisis and act to remediate the problem.

II. Parties

A. Plaintiff

17. The Plaintiff, the State of West Virginia ex rel. Patrick Morrisey, Attorney General, is charged with enforcing the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101, *et seq.* ("WVCCPA"). Pursuant to W. Va. Code § 46A-7-108, the Attorney General is authorized to bring a civil action for violations of the WVCCPA and for other appropriate relief. The Attorney General has all common law powers except those restricted by statute. Syl. pt. 3, *State ex rel. Discover Financial Services, Inc., et al. v. Nibert*, 744 S.E.2d 625, 231 W. Va. 227 (2013).

B. Defendants

18. CVS Health Corporation is a Delaware corporation with its principal place of business in Woonsocket, Rhode Island.

19. CVS Pharmacy, Inc. is a Rhode Island corporation with its principal place of business in Woonsocket, Rhode Island. CVS Pharmacy, Inc. is a subsidiary of CVS Health Corporation. CVS Pharmacy, Inc. is registered to do business in West Virginia.

20. CVS Indiana, LLC is an Indiana corporation and a subsidiary of CVS Pharmacy, Inc. Between at least 2006 and 2014, CVS Indiana, LLC was licensed by the West Virginia Board of Pharmacy as a wholesale distributor and distributed opioids to CVS pharmacies in West Virginia.

21. CVS Rx Services, Inc. is a New York corporation and a subsidiary of CVS Pharmacy, Inc. Between at least 2006 and 2014, CVS Rx Services, Inc. was licensed by the West Virginia Board of Pharmacy as a whole sale distributor and distributed opioids to CVS pharmacies in West Virginia.

22. CVS TN Distribution LLC is a Tennessee corporation and a subsidiary of CVS Pharmacy, Inc. Between at least 2006 and 2014, CVS TN Distribution LLC was licensed by the West Virginia Board of Pharmacy as a wholesale distributor and distributed opioids to CVS pharmacies in West Virginia.

23. Defendants are herein collectively referred to as "CVS."

24. CVS has 9,900 retail pharmacies in the United States with 50 locations in 35 West Virginia cities and 23 counties.

25. In 2005, CVS filled over 366 million prescriptions which was 14% of the market. Sales from its retail pharmacies comprised 94% of CVS's consolidated net sales and 91% of its consolidated profit in 2004.

26. During 2019, CVS filled 1.4 billion prescriptions which is approximately 26.6% of the total retail pharmacy prescriptions in the United States.

III. State Court Jurisdiction

27. The causes of action asserted and the remedies sought in this Complaint are based exclusively on West Virginia statutory or common law.

28. In this Complaint, the State references federal statutes, regulations, or actions, but does so only to establish CVS's knowledge or to explain how CVS's conduct has not been approved by federal regulatory agencies.

29. The mere reference to federal activities in the State's causes of action is not enough to confer federal jurisdiction. *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 813 (1986).

30. The federal Controlled Substances Act ("CSA") does not create a private right of action, *Welch v. Atmore Community Hospital*, 704 Fed. Appx. 813, 817 (11th Cir. 2017), and it does not confer federal question subject matter jurisdiction by the mere regulation of a class of drugs. *Allen v. Endo Pharmaceuticals, Inc.*, 2018 WL 7352753 at *3 (M.D. Ga. 2018).

31. Removal to federal court is not warranted for causes of action sounding in state law concerning drug distribution activities where the claims do not necessarily raise or actually dispute a substantial federal issue that is capable of being resolved in federal court without disrupting the federal-state balance. *Gunn v. Minton*, 568 U.S. 251, 258 (2013). *See also, e.g., Mobile County Bd. of Health v. Richard Sackler*, 1:19-01007-KD-B, 2020 WL 223618 (S.D. Al. 2020) (remanded); *New Mexico ex rel. Balderas v. Purdue Pharma, L.P.*, 323 F. Supp. 3d 1242 (D. Nm.

2018) (remanded); *Delaware ex rel. Denn v. Purdue Pharma, L.P.*, 1:18-383-RGA, 2018 WL 192363 (D. Del. 2018) (remanded); *West Virginia ex rel. Morrisey v. McKesson Corp.*, No. 16-1773, 2017 WL 357307 (S.D. W. Va. 2017) (remanded).

32. This Complaint does not confer diversity jurisdiction upon federal courts pursuant to 28 U.S.C. § 1332, as the State is not a citizen of any state and this action is not subject to the jurisdictional provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Federal question subject matter jurisdiction under 28 U.S.C. § 1331 is not invoked by this Complaint. Nowhere does the State plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in the allegations of this Complaint do not implicate any substantial federal issues and do not turn on the necessary interpretation of federal law. There is no federal issue important to the federal system, as a whole as set forth in *Gunn v. Minton*, 568 U.S. 251, 258 (2013).

IV. Jurisdiction

33. As a court of general jurisdiction, the circuit court is authorized to hear this matter, based on the WVCCPA and nuisance claims, the amount at issue, and the relief sought pursuant to W. Va. Code § 56-3-33.

V. Venue

34. Venue is proper in Putnam County pursuant to W. Va. Code § 46A-7-114.

VI. Factual Allegations

35. CVS played a dual role in fostering the opioid epidemic by operating pharmacies dispensing opioids to the public and as a wholesale distributor taking orders from and shipping orders to its own pharmacies. Acting as a distributor, CVS filled suspicious orders of prescription opioids of unusual size, orders deviating substantially from a normal pattern and orders of unusual

frequency from its own pharmacies. CVS shipped and distributed these drugs in West Virginia and failed to report or stop shipments of suspicious orders. Moreover, CVS, upon information and belief, failed to report or act to stop diversion that was evident to it and supplied far more opioids to their pharmacies than could have served a legitimate market for these drugs.

36. This Complaint does not assert claims related to CVS's role in dispensing opioids, however the dispensing and claims data from its retail pharmacies were important tools that CVS should have used in its role as a distributor to detect suspicious orders and prevent diversion of opioids.

37. CVS had unique knowledge typically unavailable to wholesale drug distributors because it had dispensing and claims data from its pharmacies throughout West Virginia and across the country to alert it to suspicious orders and the diversion of opioids. CVS used its nationwide data to investigate and monitor patients and prescribers.[9] "Analyses of aggregated data like ours can also target patterns of abuse by both prescribers and patients. Given the growing use of controlled substances and the resulting illness and deaths, more innovative use of transparent data is only prudent."[10] In spite of these aspirations, CVS failed to adequately review its data to assist with its distribution due diligence responsibilities.

38. Moreover, when such prescribers were identified, CVS did not alert authorities in West Virginia or the Drug Enforcement Administration (DEA). CVS failed to implement any monitoring and reporting system related to controlled substances it purchased from third-party distributors. Not only did it fail to monitor, but on the off-chance it would discover a suspicious order shipped from a third-party distributor, CVS directed employees not to notify the DEA:

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[9] Betses, M., & Brennan, T. (2013). Abusive prescribing of controlled substances—A pharmacy view. *New England Journal of Medicine, 369,* 989–991.
[10] *Id.* at 991.

> "[controlled substance] orders that are placed to an Outside Vendor that we identify as an order deviating from the normal size, frequency, and/or buying pattern and deemed to not be for a legitimate purposes or are at risk of being diverted are not required to be reported to the DEA."[11]

39. CVS was among the top ten (10) distributors of opioids in West Virginia.[12]

40. Between 2006 and 2014, CVS distributed opioids equivalent to 730,553,417.18 milligrams of morphine ("MME") or, stated another way, the equivalent of 48,703,561 10 mg. oxycodone pills, to its 35 retail pharmacies in West Virginia.[13]

41. Although CVS was among the top ten distributors to West Virginia, its "self-distribution" was not enough to fulfill the opioid demand at its retail pharmacy stores.

42. Between 2006 and 2014, CVS's West Virginia pharmacies ordered additional opioids totaling 1,677,490,465 MMEs[14], the equivalent of 111,832,697 10 mg. oxycodone pills, from a third-party distributor.[15]

43. CVS knew exactly how many opioids it was distributing to its West Virginia retail pharmacies and how many opioids each of those pharmacies were ordering from other major distributors.

44. The information available to CVS through its distribution centers and retail stores put it on notice that it was exceeding legitimate market demand. Rather than report suspicious orders and stop diversion, CVS continued to sell, ship and profit from these highly dangerous

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[11] Craig Schiavo Dep. (Jan. 17, 2019), at 257:9-258:1. See also Schiavo Ex. 16 at CVS MDLT1-000078060-78069 at 78068.
[12] DEA ARCOS 2006-2012.
[13] Morphine milligram equivalence or MME is the standard value given to an opioid based on its potency in comparison to morphine. For example, a 10 mg. oxycodone tablet is the equivalent of 15 mg. of morphine.
[14] DEA ARCOS 2006-2014.
[15] DEA ARCOS 2006-2014.

drugs. CVS never reported a single suspicious order from its distribution centers related to any opioids distributed in West Virginia.[16]

A. CVS Was Required To Monitor For And Report Suspicious Orders, And Not To Ship Those Orders Unless Due Diligence Disproved The Suspicions.

45. CVS was required by law to monitor, report and refuse to ship suspicious orders of controlled substances, unless and until due diligence dispelled the suspicion.

46. CVS was required by law to prevent oversupply and diversion into the illicit drug market. Distributors of controlled substances possess specialized and sophisticated knowledge, skills, information, and understanding of both the market for scheduled prescription narcotics and of the risks and dangers of the diversion of prescription narcotics when the distribution chain is not properly controlled.

47. CVS was registered as a wholesale distributor with the West Virginia Board of Pharmacy from 2003 through 2017.

48. The West Virginia Uniform Controlled Substances Act (WVCSA) requires that distributors' operations be consistent with the public interest and also requires registrants to have established and maintained effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels. W. Va. Code § 60A-3-303(a).

49. The requirements under WVCSA independently parallel and incorporate the requirements of the federal Controlled Substances Act (CSA). *See* W.Va. C.S.R. § 15-2-3. CVS was required to "maint[ain] . . . effective controls against diversion" and to "design and operate a system to disclose . . . suspicious orders of controlled substances." 21 U.S.C § 823(a)-(b); 21

[16] Mark Nicastro Dep. (Dec. 6, 2018), at 206:3-209:9, CVS-MDLT1-000000409-0000420 at 417; CVS-MDLT1-000000421-00000422.

C.F.R. § 1301.74; W. Va. Code § 60A-3-303(a)(1); W. Va. C.S.R. § 15-2-5.3. This includes the requirements to monitor, detect, report, investigate and refuse to fill suspicious orders. *See* 21 U.S.C. § 823; 21 C.F.R. § 1301.74; W. Va. C.S.R. § 15-2-5.3.

50. Distributors are not entitled to be passive observers, but rather "shall inform the Field Division Office of the (Drug Enforcement) Administration in his area of suspicious orders *when discovered* by the registrant." 21 C.F.R. § 1301.74(b) (emphasis added). Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency. *Id.* Other red flags may include, for example, "[o]rdering the same controlled substance from multiple distributors."

51. Distributors are required to know their customer and the communities they serve. CVS was in a unique position to comply with this requirement as it, essentially, distributed narcotics to itself.

52. The DEA previously testified that:

a. DEA registrants are required to block all suspicious orders of prescription opioids.[17]

b. Shipping a suspicious order is a per se violation of federal law.[18]

c. If a wholesale distributor blocks a suspicious order, they should terminate all future sales to that same customer until they can rule out that diversion is occurring.[19]

d. After the fact reporting of suspicious orders has never been in compliance with federal law.[20]

53. To comply with the law, companies that distribute opioids must know their customers and the communities they serve. Each distributor must "perform due diligence on its

[17] Prevosnick Dep. Vol. II, 770:6 to &&1:20, April 18, 2019 (DEA 30(b)(6) designee).
[18] *Id.* at 632:7 to 633:2.
[19] *Id.* at 628:24 to 629:15.
[20] *Id.* at 673:7 to 674:13, 679:20 to 680.8.

customers" on an "ongoing [basis] throughout the course of distributor's relations with its customer." *Masters Pharms., Inc.*, 80 Fed. Reg. 55,418, 55,477 (DEA Sept. 15, 2015), *petition for review denied*, 861 F.3d 206 (D.C. Cir. 2017). The distributor cannot ignore information that raises serious doubt as to the legality of a potential or existing customer's business practices. *Southwood Pharms., Inc.*, 72 Fed. Reg. 36,487, 36,498 (DEA July 3, 2007).

54. Due diligence efforts must be thorough: "the investigation must dispel all red flags indicative that a customer is engaged in diversion to render the order non-suspicious and exempt it from the requirement that the distributor 'inform' the [DEA] about the order. Put another way, if, even after investigating the order, there is any remaining basis to suspect that a customer is engaged in diversion, the order must be deemed suspicious and the Agency must be informed."[21] Indeed, the DEA may revoke a distributor's certificate of registration as a vendor of controlled substances if the distributor identifies orders as suspicious and then ships them "without performing adequate due diligence."[22]

55. In sum, CVS had several requirements with respect to preventing diversion. CVS was required to set up a system designed to detect and reject suspicious orders. CVS was required to recognize red flags signaling illegal conduct and to use the information available to it to identify, report, and not fill suspicious orders. This included reviewing its own data, relying on its observations of its own pharmacies, and following up on reports or concerns of potential diversion.

56. The law requires that all suspicious conduct must be reported to appropriate enforcement authorities. It also prohibits the fulfillment or shipment of any suspicious order unless

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[21] *Masters Pharmaceuticals, Inc.*, Decision and Order, 80 Fed. Reg. 55418-01 at *55477 (DEA Sept. 15, 2015).

[22] *Masters Pharmaceuticals*, 861 F.3d at 212. The *Decision and Order* was a final order entered by the DEA revoking Masters Pharmaceutical's certificate of registration, without which Masters Pharmaceutical could not sell controlled substances. In *Masters Pharmaceutical*, the D.C. Circuit Court of Appeals denied a petition for review, leaving intact the DEA's analysis and conclusion in the *Decision and Order*.

the distributor has conducted an adequate investigation and determined that the order is not likely to be diverted into illegal channels.[23] Reasonably prudent distributors would not fail to meet these requirements, and CVS's failure to exercise appropriate controls foreseeably harms the public health and welfare.

57. Each failure by CVS to abide by requirements of laws or rules enacted to protect the consuming public or to promote a public interest constitutes an unfair or deceptive act or practice and violates the WVCCPA, W. Va. Code § 46A-6-104, *see also Final Order, State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General vs. David McCuskey et al.*, Kanawha County Circuit Court, Civil Action No. 01-C-3041, Mar. 13, 2003. *See also Pabon v. Recko*, 122 F. Supp.2d 311, 314 (D. Conn 2000); *Lemelledo v. Beneficial Management Corp. of America,* 674 A.2d 582 (N.J. Super. Ct., App. Div. 1996); *Winston Realty Co., Inc. v. G.H.G., Inc.*, 331 S.E.2d 677 (N.C. 1985)

58. CVS never reported a single suspicious order to authorities in West Virginia or the DEA regarding its distribution of opioids in West Virginia.[24]

B. CVS Knew Its Obligations To Prevent Diversion And To Report And Take Steps To Halt Suspicious Orders From Its Retail Stores.

59. CVS, in its capacity as a wholesale drug distributor and as a mass merchant with pharmacies, has been active in various trade organizations for decades. The National Association of Chain Drug Stores ("NACDS") is one such organization. CVS serves on its board. The Healthcare Distribution Management Association ("HDMA"), now known as Healthcare

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[23] *See Southwood Pharm., Inc.*, 72 Fed. Reg. 36,487, 36,501 (Drug Enf't Admin. July 3, 2007) (applying federal requirements no less stringent than those of Ohio); *Masters Pharmaceutical, Inc. v. Drug Enforcement Administration*, 861 F.3d 206 (D.C. Cir. 2017) (same).

[24] Mark Nicastro Dep. (Dec. 6, 2018), at 206:3-209:9, CVS-MDLT1-000000409-0000420 at 417; CVS-MDLT1-000000421-00000422.

Distribution Alliance ("HDA"), is a national trade association representing distributors and has partnered with NACDS. CVS also was a member of the HDA.

60. In 2007 and 2008, the HDA began developing "industry compliance guidelines" ("ICG") that aimed to outline certain best practices for drug distributors. The HDA released the ICG in 2008 and emphasized that distributors were "[a]t the center of a sophisticated supply chain" and "uniquely situated to perform due diligence in order to help support the security of the controlled substances they deliver to their customers."[25]

61. CVS received repeated and detailed guidelines from the DEA concerning, for example, their obligations to know their customers and the communities they serve. Through presentations at industry conferences and on its website, the DEA provided detailed guidance to distributors on what to look for in assessing their customers' trustworthiness. As part of its development of the ICG, the HDA met with the DEA on at least three occasions.[26]

62. The guidelines, input, and communications from the DEA put CVS on notice of its requirements and obligations.

63. The DEA published "Suggested Questions a Distributor Should Ask Prior to Shipping Controlled Substances,"[27] which suggests that distributors examine, among other things, the ratio of controlled vs. non-controlled orders placed by the pharmacy; the methods of payment accepted; whether, why, and to what extent the pharmacy also orders from other distributors; and the ratio of controlled substances the distributor will be shipping relative to other suppliers.

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[25] HDA_MDL_000213058.
[26] HDA_MDL_00213212.
[27] U.S. Dept. of Justice DEA, Diversion Control Division website, Pharmaceutical Industry Conference (Oct 14 & 15, 2009), *Suggested Questions a Distributor should ask prior to shipping controlled substances*, Drug Enforcement Administration *available at* https://www.deadiversion.usdoj.gov/mtgs/pharm_industry/14th_pharm/levinl_ques.pdf; Richard Widup, Jr., Kathleen H. Dooley, Esq., *Pharmaceutical Production Diversion: Beyond the PDMA,* Purdue Pharma and McGuireWoods LLC, *available at* https://www.mcguirewoods.com/news-resources/publications/lifesciences/product_diversion_beyond_pdma.pdf.

64. The DEA has repeatedly informed distributors and dispensers, including CVS, about their legal obligations, including obligations that were so obvious that they required no clarification. For example, it is not an effective control against diversion to identify a suspicious order, ship it, and wait weeks to report it to law enforcement, potentially allowing those pills to be diverted and abused in the meantime.

65. The requirement to report suspicious orders at the time—not after the fact—has always been clear. As early as 1984, correspondence between the National Wholesale Druggists' Association ("NWDA"), now the HDA, and the DEA illustrates that the DEA provided clear guidance well before the opioid crisis was unleashed. For example, in one letter to the NWDA, DEA Section Chief Thomas Gitchel emphasized that "the submission of a monthly printout of after-the-fact sales will not relieve a registrant from the responsibility of reporting excessive or suspicious orders," noting "**DEA has interpreted 'orders' to mean prior to shipment.**" Consistent with that understanding, the NWDA's 1984 Guidelines repeated the same directive.[28]

66. In addition, in April 1987, the DEA sponsored a three-day "Controlled Substances Manufacturers and Wholesalers Seminar" that was attended by "over fifty security and regulatory compliance professionals representing forty-three major pharmaceutical manufacturers and wholesalers."[29] According to the executive summary of the event, Ronald Buzzeo held a session on "excessive order monitoring programs," wherein he explained:

> [A]ny system must be capable of both detecting individual orders which are suspicious, or orders which become suspicious over time due to frequency, quantity, or pattern. The NWDA system, for example, provides an excellent lookback, or trend system, but the ability to identify one time suspicious orders should not be overlooked as an element of the program." Another area at issue was whether DEA would take action against a registrant which reported an order and then shipped it. DEA pointed out that the

[28] CAH_MDL2804_01465723.
[29] US-DEA-00025657.

> company is still responsible under their registrations for acting in the public interest. Reporting the order does not in any way relieve the firm from the responsibility for the shipment.[30]

67. The DEA also advised in a September 27, 2006 letter to every commercial entity registered to distribute controlled substances that they are "one of the key components of the distribution chain. If the closed system is to function properly. . . distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes. This responsibility is critical, as . . . the illegal distribution of controlled substances has a substantial and detrimental effect on the health and general welfare of the American people." The DEA's September 27, 2006 letter also expressly reminded registrants that, in addition to reporting suspicious orders, they have a "statutory responsibility to exercise due diligence to avoid filling suspicious orders that might be diverted into other than legitimate medical, scientific, and industrial channels." The September 27, 2006 letter reminds distributors of the importance of their obligation to "be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes," and warns that "even just one distributor that uses its DEA registration to facilitate diversion can cause enormous harm."

68. The DEA sent another letter to distributors and manufacturers alike on December 27, 2007, reminding them that, as registered distributors of controlled substances, they share, and must each abide by, statutory and regulatory duties to "maintain effective controls against diversion" and "design and operate a system to disclose to the registrant suspicious orders of controlled substances." The DEA's December 27, 2007 letter reiterated the obligation to detect, report, and not fill suspicious orders and provided detailed guidance on what constitutes a suspicious order and how to report (*e.g.*, by specifically identifying an order as suspicious, not

[30] US-DEA-00025659.

merely transmitting data to the DEA). Finally, the December 27, 2007 letter references the Revocation of Registration issued in *Southwood Pharmaceuticals, Inc.*, 72 Fed. Reg. 36,487-01 (July 3, 2007), which discusses the obligation to report suspicious orders and "some criteria to use when determining whether an order is suspicious."

69. In September 2007, members of the NACDS, among others, attended a DEA conference at which the DEA reminded registrants that not only were they required to report suspicious orders, but also to halt shipments of suspicious orders.[31]

70. The DEA's regulatory actions against the three largest wholesale distributors further underscore the fact that distributors such as CVS were well aware of the legal requirements. There is a long history of enforcement actions against registrants for their compliance failures. For example, in 2007, the DEA issued an Order to Show Cause and Immediate Suspension Order against three of Cardinal Health's distribution centers and on December 23, 2016, Cardinal Health agreed to pay the United States $44 million to resolve allegations that it violated the CSA. Similarly, on May 2, 2008, McKesson entered into an Administrative Memorandum of Agreement ("AMA") with the DEA related to its failures in maintaining an adequate compliance program. Most recently, in January 2017, McKesson entered into an Administrative Memorandum Agreement ("AMA") with the DEA wherein it agreed to pay a $150 million civil penalty for, *inter alia*, failure to identify and report suspicious orders at several of its facilities.

71. During a 30(b)(6) deposition, the DEA's Unit Chief of Liaison was asked whether the DEA made it "clear to industry that the failure to prevent diversion was a threat to public safety and the public interest." In response, he testified:

> Yes, I think it's established in 823 [the Controlled Substances Act] where it's part of our -- part of the registrant that is applying to be a registrant understands that they have to maintain effective controls .

[31] CAH_MDL_PRIORPROD_DEA07_00877084; CAH_MDL_PRIORPROD_DEA07_01185382.

> . . they also know that these drugs themselves are scheduled controlled substances for a particular reason, because they're addictive, psychologically and physically they're addictive, so they know that these drugs have these properties within themselves. **So they would understand that these drugs are categorized or scheduled in that manner because they have the potential to hurt.**

72. Upon information and belief, CVS failed to adhere to the guidance documents, communications, and other statements issued by the DEA.

73. Each failure by CVS to abide by requirements of laws or rules enacted to protect the consuming public or to promote a public interest constitutes an unfair or deceptive act or practice and violates the WVCCPA, W. Va. Code § 46A-6-104; *see also Final Order, State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General vs. David McCuskey et al.*, Kanawha County Circuit Court, Civil Action No. 01-C-3041, Mar. 13, 2003. *See also Pabon v. Recko*, 122 F. Supp.2d 311, 314 (D. Conn 2000); *Lemelledo v. Beneficial Management Corp. of America*, 674 A.2d 582 (N.J. Super. Ct., App. Div. 1996); *Winston Realty Co., Inc. v. G.H.G., Inc.*, 331 S.E.2d 677 (N.C. 1985).

C. CVS Was Uniquely Positioned To Prevent Diversion.

74. As vertically-integrated pharmacies and distributors, CVS had access to additional information that would allow it to identify and prevent diversion, unlike third-party wholesale distributors. CVS possessed such detailed and valuable information regarding its retail stores' orders, prescriptions, prescribers, and customers that companies known as "data vendors" were willing to pay for it.

75. Illustrating the value of this information, CVS Caremark's Director of Managed Care Operations, Scott Tierney, testified that CVS's data vendors included IMS Health, Verispan, and Walters Kluwers and that CVS used the vendors for "analysis and aggregation of data" and "some consulting services." He also testified that CVS would provide the vendors with "prescriber

level data, drug level data, plan level data, [and] de-identified patient data." Joint Appendix in *Sorrell v. IMS Health Inc.*, No. 10-779, 2011 WL 687134 (U.S.) *245-46 (Feb. 22, 2011).

76. At the pharmacy level, CVS had information on customers with insurance coverage making cash payments. It could also identify customers filling prescriptions at multiple pharmacy branches or from different doctors, or patterns of unusual or suspicious prescribing from a particular medical provider.

77. Further, a customer's order data and the data of other similar customers provide detailed insight into the volume, frequency, dose, and type of controlled and non-controlled substances a pharmacy typically orders. This includes non-controlled substances and Schedule IV controlled substances (such as benzodiazepines), which are not reported to the DEA, but whose use with opioids can be a red flag of diversion. As with the other wholesalers, these data points gave CVS insight into prescribing and dispensing conduct that would have enabled it to play a valuable role in preventing diversion and fulfilling its obligations to guard against diversion.

78. CVS had complete access to all prescription opioid dispensing data related to its pharmacies in West Virginia, complete access to information revealing the doctors who prescribed the opioids dispensed in its pharmacies in and around the state, and complete access to information revealing the customers who filled or sought to fill prescriptions for opioids in its pharmacies in and around the state. It likewise had complete access to information revealing the opioid prescriptions dispensed by its pharmacies in and around the state. Further, CVS had complete access to information revealing the geographic location of out-of-state doctors whose prescriptions for opioids were being filled by its pharmacies in and around the State, including the size, frequency, dose, and combinations of prescriptions written by specific doctors and filled by its pharmacies in and around the state.

79. CVS knew the opioids it was supplying to its pharmacies were being diverted. Between 2010 and 2019, CVS paid civil penalties totaling $131,292,500.00 for various violations of the Controlled Substances Act. These violations included filling prescriptions written by a doctor without a valid registration number, filling prescriptions that were not issued for a legitimate medical purpose, filling forged prescriptions for addictive painkillers, filling invalid prescriptions, failing to monitor drug use patterns or use professional judgment when dispensing controlled substances, and failing to install equipment to allow pharmacists to check patients' prescription histories.[32]

D. CVS Failed to Maintain Effective Suspicious Order Monitoring System or to Complete Necessary Due Diligence.

i. CVS Lacked A Genuine Suspicious Order Monitoring System for Much of the Relevant Time.

80. CVS distribution centers, in tandem with outside vendors, supplied opioids to CVS pharmacy stores until 2014.

81. Before 2009, CVS lacked any meaningful suspicious order monitoring ("SOM"). Instead, CVS relied on gut instincts of Pickers and Packers of the drugs in the distribution center to identify "really big" orders that they believed were simply too large.[33] This was not an effective SOM system.

82. Moreover, CVS lacked a training program to train its Pickers and Packers how to identify unusual orders of size, frequency, or pattern. In a deposition, a CVS employee testified that CVS did not have any written policies, procedures, or protocols with respect to the Pickers'

[32] https://violationtracker.goodjobsfirst.org/prog.php?parent=cvs-health&page=1.
[33] *See* Deposition testimony of CVS employee Sherri Hinkle (January 25, 2019), *In re: National Prescription Opiate Litigation*, 1:17-MD-2804 at 75:8.

and Packers' obligations. And, there were no formal job requirements to be employed as a Picker and Packer.[34]

83. CVS did not even begin to design its SOM program until 2007.[35] Then, with the help of an outside consultant, CVS began work on a Standard Operating Procedure Manual ["SOP"] that was intended to cover all facets of DEA controlled substances compliance, including suspicious order monitoring.[36] However, by November, 2007 neither the final manual nor the suspicious order monitoring ("SOM") section was complete. Internal documents from that time acknowledge that CVS was "still in the process of writing the Suspicious Order Monitoring Section of the SOP."[37] Similarly, during the same deposition described above, CVS's corporate representative has testified that he did not "believe that there was a suspicious order monitoring policy put into place as of that date."[38]

84. Drafts of the SOP Manual, meanwhile, show CVS understood, or should have understood, that the lack of a suspicious order monitoring policy was unacceptable. The draft manual provides that: "CVS is responsible for ensuring compliance with DEA regulatory requirements, and that responsibility cannot be abdicated or transferred to anyone else."[39] Despite this acknowledgement, when the first version of the SOP manual was finally issued in December 2007, the SOM section still remained incomplete.[40] As of April 2009, it remained so.[41]

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[34] *See* Deposition testimony of CVS employee Sherri Hinkle, Hinkle dated January 25, 2019 at 75:8 Vernazza Dep. Tr. 197:1-9; 198:3-199:2.
[35] Expert Report of Whitelaw, MDL 2804, filed at Doc. 1999-25.
[36] Expert Report of Whitelaw, MDL 2804, filed at Doc. 1999-25 *See* CVS-MDLT1-000109199; CVS-MDLT1-000025204 at CVS-MDLT1-000025206 ["2007 DEA SOP"].
[37] *See also* Email from A.L. Brown to A. Brumfield, et al., New RX DEA SOP (Nov. 27, 2007), CVS-MDLT1-000025204.
[38] Vernazza Dep. Tr. 214:22-215:10; Vernazza Dep. Tr. 221:5-13.
[39] CVS-MDLT1-000025206 at 207.
[40] *See* RX-01(2009).
[41] *See* Email from A. Propatier to W. McDaniels, et al., Updated DEA SOP (Apr. 3, 2009) (A. Propatier was formerly A.L. Brown), CVS-MDLT1-000066574; Vernazza Dep. Tr. 235:14-23.

85. As John Mortelliti, CVS's Director of Loss Prevention, wrote in November 2009, this had become "a big issue with CVS and the DEA," and he was "trying to get a rough draft SOM SOP" before a DEA meeting.[42] Ultimately, CVS did not incorporate the final missing section until the end of August 2010, and even then, evidently did so only because of the need to respond to an apparent promise to provide it to the DEA.[43]

86. In a September 2010 e-mail, Mr. Mortelliti circulated an August 27, 2010 document titled "Suspicious Order Monitoring for PSE/Control Drugs: Summary of Key Concepts & Procedures," which he described as "final approved speaking points for the DEA" should DEA agents question suspicious order monitoring at a CVS facility. In the correspondence, he asked that the recipients "be sure [their team] understands [the material] before presenting so it doesn't look like a prop instead of a tool."[44]

87. As of November 2011, CVS had a "CVS DEA compliance coordinator" in name only. A former CVS employee who held the position at that time has said that this was only "for reference in SOPs," not her real job. For "personnel purposes," she was never considered the CVS DEA compliance coordinator. Moreover, she had nothing to do with suspicious order monitoring, other than "updating the SOP with what was provided for the program."[45]

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[42] *See* Email from J. Mortelliti to C. Knight, RE: November 10, 2009 (Nov. 5, 2009), CVS-MDLT1-000087889.
[43] *See* RX-01(2010); *See also* Email from A. Propatier to A. Lamoureux, DEA SOP 08-25-10.doc (Aug. 26, 2010), CVS-MDLT1- 000088956; Email from J. Mortelliti to F. Devlin, et al., RE: DEA SOP (Aug. 23, 2010) (referencing Mr. Devlin's earlier email to him stating "we promised this to DEA by Wednesday."), CVS-MDLT1-000089188.
[44] Email from J. Mortelliti to P. Hinkle et al. (Sept. 1, 2010) (CVS-MDLT1-0000075299-75312,).
[45] *Id.*

ii. CVS Failed to Remedy Fatal Flaws in the System it Slowly Developed.

88. In 2009, CVS began using a computer algorithm that flagged potentially suspicious orders needing additional investigation. The automated program was delivered by an outside vendor to CVS in December of 2008.[46]

89. CVS called the output of the flagged orders an Item Review Report ("IRR").

90. IRRs were the primary SOM process. As CVS's corporate representative explained in the MDL on behalf of the company, "for the most part," if an order was not flagged as suspicious under the IRR system, there would be no due diligence of that order.[47] Yet, CVS neglected to provide written instructions for how to perform that critical review until February 29, 2012. Further, the IRR system was deficient and failed to meet CVS's obligations as a distributor in many respects.

91. CVS also learned in 2010 that its SOM algorithm was not working properly because it monitored by drug, not active ingredient, meaning that changes in a drug's description or name caused historical data, necessary for valid calculations, to be lost.[48]

92. CVS's SOMS algorithm also failed to consider outside vendors orders, meaning that CVS's SOM system would not track how many opioids CVS was ordering from third party distributors when evaluating whether to distribute opioids to one of its pharmacies. CVS knew this was a problem, as a "[s]tore may order a little from both the OV [outside vendor] and DC [CVS distribution center] to stay under [the] radar."[49] It also knew that waiting to consider outside vendor data until later in the process meant CVS "may ship a potentially reportable suspicious

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[46] Expert Report of Whitelaw, MDL 2804, filed at Doc. 1999-25.
[47] Vernazza Dep. Tr. 392:20-393:7.
[48] CVS-MDLT1-29864-29866
Mortelliti Depo., 129:11 – 131:11, Ex, 16; Vernazza Depo., pp. 400 – 455.
[49] MDL Doc #: 2208-10.

order from [its] DC."[50] Stores, including one that had a "68,000 hydrocodone pill loss," could also place telephone orders to outside vendors, into which there was "no visibility . . . until a later time."[51] This deficiency is particularly glaring because CVS had full access to the orders its pharmacies placed to outside vendors.

93. Recognizing the ineffectiveness and deficiencies within its SOM system, CVS hired new consultants in 2012 to troubleshoot its existing SOM systems for the purpose of either fixing the deficient system or developing a new SOM system.[52]

94. Still, as late as July 2013, internal e-mails reflect that CVS's primary tool for investigations used stale data that made any analysis, "for the most part, irrelevant and pointless."[53]

95. Not until mid to late 2014 did CVS fully implement the new SOM system.[54] That same year, CVS stopped distributing opioids at the wholesale level.

iii. CVS Failed to Perform Due Diligence.

96. All orders that appeared on the IRR should have been subjected to a thorough due diligence investigation, but only a very small percentage were subjected to appropriate due diligence investigation. From early/mid-2009 through March 2011, one employee, Henry "John" Mortelliti, "was taking the first pass through the IRR himself."[55] According to CVS's corporate witness, "Mr. Mortelliti's practice would have been to review the report on a daily basis and determine whether items on the report warranted further review and due diligence and conduct review and due diligence as he deemed appropriate."[56] At select times in 2012 and 2013, CVS had only one employee reviewing all potentially suspicious orders for every pharmacy in the

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[50] CVS-MDLT1-000103327-000103328, at 28.
[51] *Id.*
[52] Expert Report of Robert L. Hill, May 31, 2019, MDL-2804, Doc. 3122-2; CVS-MDLT1-000125136.
[53] CVS-MDLT1-78116.
[54] Baker Dep. Tr. 259:16–262:19; Ex. 27; Ex. 29.
[55] Vernazza Dep. Tr. 365:6-13, Ex. 385. *See also id.* at 368:9-14.
[56] Vernazza Dep. Tr. 371:15-23.

country.[57] The Suspicious Order Monitoring system would select certain orders based on a number of factors and "pend" the order. If an order was selected, the CVS SOM manager would review the orders and conduct an "in depth" dive on select orders. Even though the SOM program would identify between 200 and 500 suspicious orders a day, the CVS employee would only have time to do a "deep dive" on 5-6 orders per day. A single employee was responsible for reviewing for IRR one half of the country over a period covering twelve days ranging from June 14, 2012 to September 6, 2012, during which time CVS investigated a total of seven control substance orders.[58] As of November 21, 2013, CVS reported only 7 suspicious orders to the DEA across all of its distribution centers and pharmacies in the United States.[59] The first suspicious order CVS ever reported to the DEA was on February 29, 2012. CVS reported no suspicious orders in West Virginia.

E. CVS Failed to Maintain Effective Controls Against Diversion and Contributed to the Oversupply of Opioids into West Virginia.

97. According to data from the ARCOS database, between 2006 and 2014, CVS distributed the equivalent of 48,201,629 10mg oxycodone pills to its retail pharmacy locations in West Virginia, a state with a population of less than 2 million people. This volume of opioids, which does not include the additional opioids its pharmacies ordered from third-party distributors, should have raised a red flag with CVS that not all of the prescriptions being ordered could be for legitimate medical uses, and, as such, that many of the opioids CVS distributed to its retail stores were being diverted.

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[57] CVS-MDLT1-000076114-76117, at 76115.
[58] Burtner Dep. Tr. 340–371; 505; Ex. 500.
[59] *See*, e-mail from Mark Nicastro, CVS Distribution Center Manager in Indianapolis to DEA Agent Daniel Gillen on November 21, 2013 subject matter was closing meeting, Nicastro attaches a chart of all suspicious orders reported to the DEA, CVS-MDLT1-000000409-420.

98. For years, per capita opioid prescriptions in West Virginia far exceeded the national average and increased in ways that should have alerted CVS to potential diversion. Indeed, as a vertically-integrated, national retail pharmacy chain, CVS had the ability to detect diversion in ways third-party wholesale distributors could not by examining the dispensing data from its own retail pharmacy locations.

99. Given the volume and pattern of opioids it distributed in West Virginia, and its knowledge of the orders for opioids its pharmacies placed with other distributors, CVS knew that it was oversupplying opioids to its pharmacies in West Virginia and should have detected, reported, and rejected suspicious orders. Upon information and belief, it did not.

100. Despite its compliance obligations and requirements, CVS shipped far more opioids into West Virginia than could have been expected to serve legitimate uses. CVS ignored red flags of diversion, failed to investigate its retail pharmacies, failed to detect suspicious orders, and chose not to report or reject suspicious orders in violation of the laws and rules enacted to protect the public.

101. Violations of statutes enacted to protect the consuming public or to promote a public interest are unfair or deceptive acts or practices. *See Final Order, State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General vs. David McCuskey et al.*, Kanawha County Circuit Court, Civil Action No. 01-C-3041, Mar. 13, 2003. *See also Pabon v. Recko*, 122 F. Supp.2d 311, 314 (D. Conn 2000); *Lemelledo v. Beneficial Management Corp. of America,* 674 A.2d 582 (N.J. Super. Ct., App. Div. 1996); *Winston Realty Co., Inc. v. G.H.G., Inc.*, 331 S.E.2d 677 (N.C. 1985).

102. CVS's failure to abide by a requirement laws or rules enacted to protect the consuming public or to promote a public interest constitutes an unfair or deceptive act or practice and violates the WVCCPA, W. Va. Code § 46A-6-104.

103. CVS dramatically contributed to the oversupply of opioids into the State in violation of West Virginia law and shares in the responsibility for the current epidemic of opioid addiction and death.

F. CVS's Conduct Has Injured the State of West Virginia and Its Citizens.

104. Between 1999 and 2014, sales of opioids nearly quadrupled, according to the CDC. Nearly 259 million opioid prescriptions were written in the United States in 2012 alone. This equates to more than one opioid prescription for every American adult. Many tens of thousands of West Virginians are currently addicted to opioids.

105. Deaths from opioid overdoses do not fully capture the breadth of the harm suffered by West Virginia citizens. Opioid use results in thousands of hospitalizations and emergency room visits as well.

106. The opioid crisis also has impacted some of West Virginia's most vulnerable demographics, such as the elderly. The AARP reports that elderly Americans have faced a 500% increase in hospitalization rates related to opioids over the last twenty years. In 2015, "physicians prescribed opioid painkillers to almost one-third of all Medicare patients, or nearly 12 million people. In the same year, 2.7 million Americans over age 50 took painkillers in amounts—or for reasons—beyond what their physicians prescribed." Hospitalization rates due to opioid abuse has quintupled for those 65 and older in the past two decades.[60]

[60] *See* https://www.aarp.org/health/drugs-supplements/info-2017/opioid-drug-addiction-pain-pills.html.

107. CVS's actions alleged in this Complaint have caused numerous societal injuries to the State of West Virginia. CVS's conduct has contributed to deaths, drug addiction, personal injuries, child neglect, children placed in foster care, babies born addicted to opioids, criminal behavior, poverty, property damage, unemployment, and lost productivity, among others. The State of West Virginia is expending its resources to address these and other social problems resulting from the opioid crisis and will continue to expend resources addressing these problems.

108. CVS's actions alleged in this Complaint have caused numerous economic injuries to the State of West Virginia. CVS's conduct has caused economic losses for medical treatment, rehabilitation costs, hospital stays, emergency room visits, emergency personnel costs, law enforcement costs, substance abuse prevention costs, costs for displaced children, naloxone costs, medical examiner expenses, self-funded state insurance costs, and lost tax revenues, among others.

COUNT I
Violation of the West Virginia Consumer Credit and Protection Act

109. Plaintiff State of West Virginia adopts, realleges, and incorporates by reference paragraphs 1 through 108 of this Complaint as if fully set forth herein.

110. CVS distributed opioid products to the State of West Virginia and its governmental entities, businesses, and consumers within West Virginia.

111. CVS's distribution of opioid products in the State of West Virginia involves trade or commerce within the meaning of the WVCCPA.

112. CVS's actions, as detailed above, constitute unfair or deceptive acts or practices that are prohibited by the WVCCPA.

113. Violations of statutes enacted to protect the consuming public or to promote a public interest are unfair or deceptive acts or practices. *See Final Order, State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General vs. David McCuskey et al.*, Kanawha County

Circuit Court, Civil Action No. 01-C-3041, Mar. 13, 2003. *See also Pabon v. Recko*, 122 F. Supp.2d 311, 314 (D. Conn 2000); *Lemelledo v. Beneficial Management Corp. of America,* 674 A.2d 582 (N.J. Super. Ct., App. Div. 1996); *Winston Realty Co., Inc. v. G.H.G., Inc.,* 331 S.E.2d 677 (N.C. 1985).

114. Each occurrence of a failure to abide by laws and rules enacted to protect the consuming public or to promote a public interest constitutes an unfair or deceptive act or practice in violation of the WVCCPA, W. Va. Code § 46A-6-104.

115. CVS's unfair, deceptive, and unconscionable acts or practices, or the effects thereof, are continuing, will continue, and are likely to recur unless permanently restrained and enjoined.

116. Consequently, the State of West Virginia seeks all available relief under the WVCCPA, including but not limited to disgorgement, restitution, civil penalties, equitable relief, injunctive relief, and attorneys' fees and costs.

117. As part of its WVCCPA action, the State expressly does not raise claims nor seek any damages attributable to the Medicaid or Medicare programs or any other federal programs. Additionally, as part of its WVCCPA action, the State expressly does not raise claims or seek any damages for the State's workers' compensation program, nor does it raise claims or seek damages on behalf of any state agencies.

COUNT II
Common Law Public Nuisance

118. Plaintiff State of West Virginia adopts, realleges, and incorporates by reference paragraphs 1 through 108 of this Complaint as if fully set forth herein.

119. Through the actions described above, CVS has contributed to and/or assisted in creating and maintaining a condition that has interfered with the operation of the commercial

market, interfered with public health, and endangered the lives and health of West Virginia residents.

120. While CVS's degree of care is not relevant in a common law nuisance suit brought by the sovereign State, it behaved negligently, recklessly, or intentionally as set forth above.

121. Through the actions described above, CVS contributed to and/or assisted in creating and maintaining a condition that causes enormous public harm, endangers the life or health of West Virginia residents, and unreasonably interferes with or obstructs rights common to the public.

122. CVS expanded the market for prescription opioids by failing to implement effective controls and procedures to guard against diversion, including but not limited to failing to report their knowledge of suspicious orders to relevant authorities and shipping orders it knew were suspicious.

123. Opioid use, abuse, addiction, and overdose deaths increased dramatically in West Virginia as a result of CVS's conduct. The greater demand for emergency services, law enforcement, addiction treatment, and other social services places an unreasonable burden on governmental resources.

124. CVS's actions described above were a substantial factor in opioids becoming widely available, used, and abused.

125. CVS's actions significantly contributed to the widespread use of opioids and to the enormous public health hazards of opioid overuse, abuse, addiction, and death that now exists would have been averted. CVS's actions have and will continue to injure and harm the citizens and the State of West Virginia for many years to come.

126. While tort-based standards are not applicable to a public nuisance suit brought by the State, the public nuisance and associated financial and economic losses were foreseeable to

CVS, which knew or should have known that its unfair and deceptive business practices as described herein were creating a public nuisance.

127. While tort-based standards are not applicable to a public nuisance suit brought by the State, a reasonable person in CVS's position would foresee the widespread problems of opioid addiction and abuse that resulted from the drastic oversupply of opioids in this state.

128. CVS was on notice and aware of the broader use of opioids that were causing the kinds of harm described in this Complaint.

129. The health and safety of West Virginia residents, including those who use, have used, or will use opioids, as well as those affected by users of opioids, is a matter of great public interest and of legitimate concern to the State. West Virginians have a right to be free from conduct that endangers their health and safety and that interferes with the commercial marketplace. CVS's conduct interfered in the enjoyment of these public rights.

130. As part of its nuisance action, the State expressly does not raise any claim nor seek any damages attributable to the Medicaid or Medicare programs or any other federal programs. Additionally, as part of its nuisance action, the State expressly does not raise claims or seek any damages for the State's workers' compensation program, nor does it raise claims or seek damages on behalf of any state agencies.

Prayer for Relief

WHEREFORE, Plaintiff State of West Virginia prays for the following relief:

a. Judgment against the Defendants in favor of the State;

b. Temporary relief, a preliminary injunction and permanent injunction ordering the Defendants to comply with W. Va. Code § 46A-6-104 and to cease the unlawful conduct;

c. Equitable relief, including, but not limited to, restitution and disgorgement;

d. Civil penalties of up to $5,000.00 for each repeated and willful violation of W. Va. Code § 46A-6-104, pursuant to W. Va. Code § 46A-7-111(2);

e. Pre- and post-judgment interest;

f. Costs and reasonable attorneys' fees; and,

g. Such other relief, fees and costs as shall be available under the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.*;

h. An order abating the public nuisance and ordering any injunctive relief that the Court finds appropriate under law; and

i. An order awarding such other and further relief as the Court deems appropriate.

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

By Counsel

/s/ Ann L. Haight
ANN L. HAIGHT (WVSB No. 1527)
Deputy Attorney General
VAUGHN T. SIZEMORE (WVSB No. 8231)
Deputy Attorney General
MICHELLE L. BRADLEY (WVSB No. 10129)
Assistant Attorney General
ABBY G. CUNNINGHAM (WVSB No. 13388)
Assistant Attorney General
Consumer Protection Division
812 Quarrier Street, First Floor
Post Office Box 1789
Charleston, West Virginia 25326-1789
Telephone: 304-558-8986
Fax: 304-558-0184