



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: OPIOID LITIGATION**

**CIVIL ACTION NO. 22-C-9000 NAS**

**THIS DOCUMENT APPLIES TO:**

A.D.A., AS  
NEXT FRIEND OF L.R.A.,  
a minor child under the age of 18,  
Plaintiff,

v.  
JOHNSON & JOHNSON, et al.,  
Defendants.

Civil Action No. 21-C-110 MSH

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TRAVIS BLANKENSHIP,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD Z.D.B.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-5 MSH

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SCOTT OTWELL,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD R.G.O.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-20 MSH

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TAMMY BOSWELL,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD(REN) B.E.B. AND S.F.B.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-21 MSH

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TIMOTHY LAMBERT,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD M.D.L.; AND T.J.L.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-22 MSH

KELLY MANGUS,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD(REN) L.C.M.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-23 MSH

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STACEY HARRIS,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD N.M.B.  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-24 MSH

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CYNTHIA WOOLWINE,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD(REN) E.G.W.; AND B.D.W.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-25 MSH

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ANGELA WHITED,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILDREN C.D.W. AND C.G.W.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-26 MSH

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FLORETTA ADKINS,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD M.J.A.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-27 MSH

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DIANNA BROOKS,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD W.A.R.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-28 MSH

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JACQUELINE ADAMS,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILDREN S.D.L. AND H.G.L.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-29 MSH

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STACEY ANDERSON,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD(REN) A.L.A. AND T.L.A.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-30 MSH

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THOMAS PAYNTER,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD(REN) Z.N.B.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-31 MSH

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PATRICIA FULLER,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD A.J.F.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-32 MSH

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DONNA JOHNSON,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD L.M.J.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-33 MSH

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BRANDY SWIFT,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILDREN S.R.S., M.K.S.; AND J.A.S.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-34 MSH

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STACY STACEY,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD T.K.L.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-35 MSH

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ROGER JOHNSON,  
NEXT FRIEND AND GUARDIAN OF  
MINOR CHILD S.A.J.,  
Plaintiff,

v.  
MCKESSON CORPORATION, et al.,  
Defendants.

Civil Action No. 22-C-36 MSH

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A.N.C. AS NEXT FRIEND OF  
J.J.S., a minor child under the age of 18,  
Plaintiff,

v.  
JOHNSON & JOHNSON, et al.,  
Defendants.

Civil Action No. 22-C-73 MSH

**ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**

Now pending before the Court are motions to dismiss the above-captioned cases in their entirety. The Court has considered Defendants’ motions to dismiss, Plaintiffs’ oppositions, Defendants’ replies, and argument of counsel presented on March 24, 2023.<sup>1</sup> The Court has reviewed Defendants’ proposed Order<sup>2</sup> expanding on the Court’s April 17, 2023, Order granting Defendants’ motions to dismiss (“April 17 Order”).<sup>3</sup> The Court has also reviewed the objections filed by Plaintiffs represented by attorneys New, Thompson, *et al.* (“New/Thompson Plaintiffs”),<sup>4</sup> the objections filed by Plaintiffs represented by attorneys Goodwin, diTrapano, *et al.*,<sup>5</sup> and Defendants’ response to Plaintiffs’ objections.<sup>6</sup> Because the Court finds Defendants’ proposed Order accurately interprets, expands, and expounds on the Court’s April 17 Order, the Court adopts Defendants’ proposed Order, noting the objections and exceptions of Plaintiffs.

The complaints in the above-captioned 20 cases assert claims brought by the guardians of individuals (“the Minors”) who allegedly suffer from the effects of Neonatal Abstinence Syndrome (“NAS”) purportedly caused by exposure to opioids during their birth mothers’ pregnancies.<sup>7</sup> *See*

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<sup>1</sup> A list of the motions to dismiss to which this Order applies, including their Transaction ID Numbers, is attached as Appendix A.

<sup>2</sup> *See* Trans. ID Nos. 70032924 and 70035278 (Kanawha Cnty. Cir. Ct. May 17, 2023).

<sup>3</sup> *See In re: Opioid Litig.*, Civil Action No. 22-C-9000 NAS, Ord. Regarding Rulings on Mots. to Dismiss, Trans. ID No. 69834672 (Kanawha Cnty. Cir. Ct. Apr. 17, 2023).

<sup>4</sup> *See* Trans. ID No. 70062931 (Kanawha Cnty. Cir. Ct. May 22, 2023). The Court warns counsel for the New/Thompson Plaintiffs that disrespectful language including but not limited to describing the Court’s April 17, 2023, Order as “abhorrent” is highly inappropriate, unacceptable, and contrary to the concept and obligation of civility in the practice of law. *See* Rule 7.0(c) of the Rules of Admission to the Practice of Law and Preamble [5] of the Rules of Professional Conduct.

<sup>5</sup> *See* Trans. ID No. 70065082 (Kanawha Cnty. Cir. Ct. May 23, 2023).

<sup>6</sup> *See* Trans. ID No. 70081824 (Kanawha Cnty. Cir. Ct. May 24, 2023).

<sup>7</sup> According to the complaints, Plaintiffs are the natural or legal guardians of individuals allegedly suffering from the effects of NAS. Most of those individuals are minors as of the date of this Order, *See* Finding Nos. 3, 5, *infra*, and for convenience this Order refers to those individuals collectively as “Minors.”

Finding Nos. 1–13, *infra*. Defendants named in one or more of the complaints are the West Virginia Board of Pharmacy (the “WVBOP”), Distributor Defendants, Pharmacy Defendants, Manufacturer Defendants, and McKinsey & Company, Inc. (“McKinsey”) (collectively, “Defendants”).<sup>8</sup>

Plaintiffs in the majority of these cases, Civil Action Numbers 22-C-5 MSH and 22-C-20 MSH through 22-C-36 MSH, bring seven claims: (I) fraud; (II) negligence and gross negligence;

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<sup>8</sup> The Distributor Defendants named in one or more complaints are AmerisourceBergen Corporation, AmerisourceBergen Drug Corporation, Cardinal Health, Inc., McKesson Corporation, Anda, Inc., H. D. Smith, LLC, H. D. Smith Holdings, LLC, and H. D. Smith Holding Company.

The Pharmacy Defendants named in one or more complaints are Rite Aid of West Virginia, Inc., Rite Aid of Maryland, Inc., CVS Indiana, L.L.C., CVS Rx Services, Inc., CVS TN Distribution, L.L.C., West Virginia CVS Pharmacy, L.L.C., Walgreens Boots Alliance, Inc., Walgreen Eastern Co., Walgreen Co., Wal-Mart, Inc., f/d/a/ Walmart Stores, Inc. (“Walmart Inc.”), The Kroger Co., K-Mart Corporation, Trivillian’s Pharmacy, LLC, Adkins Pharmacy, Alum Creek Pharmacy, Inc., Beckley Pharmacy, Inc., Black Diamond Pharmacy, LLC, Bluewells Family Pharmacy, Brown Bailey and Blankenship d/b/a Town Pharmacy Care, Bypass Pharmacy, Inc., Colony Drug, LLC, Crab Orchard Pharmacy, Inc., Cumberland Health Services, Inc. d/b/a Iaeger Pharmacy, Dennis’ Pharmacy, Family Discount Pharmacy, Flat Iron Drug Store, Inc., Four Seasons Pharmacy, Inc., Good Family Pharmacy, Inc., Hickman’s Pharmacy, Inc., Lincoln Primary Care Center Pharmacy, Loop Pharmacy, LLC, Peterstown Pharmacy, LLC, Professional Pharmacy, Inc. d/b/a Carriage Drive Pharmacy, Rhonda’s Pharmacy, LLC, Riverside Pharmacy, Inc. Welch Pharmacy, Inc. d/b/a Citizens Drug Store, Western Greenbriar Pharmacy, and Westside Pharmacy, Inc. d/b/a Renegade Pharmacy.

The Manufacturer Defendants named in one or more complaints are Indivior, Inc., Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis Pharma, Inc., Actavis LLC, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Noramco, LLC incorrectly named as Noramco, Inc., SK Capital Partners LP, SK Capital Management IV, LP, Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc., Par Pharmaceutical Companies, Inc., Qualitest Pharmaceuticals, Inc., Allergan Finance LLC (f/k/a Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.), Allergan USA, Inc., Allergan Sales, LLC, Hikma Pharmaceuticals, PLC, Hikma Pharmaceuticals USA Inc., KVK-Tech, Inc., Sun Pharmaceutical Industries Limited, Sun Pharmaceutical Industries, Inc., Amneal Pharmaceuticals of New York, LLC, Amneal Pharmaceuticals, LLC, Able Laboratories, Inc., Abbvie Inc., Ranbaxy Laboratories, Ltd., Ranbaxy Laboratories, Inc., Ranbaxy USA, Inc., Akorn Operating Company LLC, Akorn, Inc. n/k/a Akorn Operating Company LLC, Hi-Tech Pharmacal Co., LLC, Aurobindo Pharma USA, Inc., and Aurolife Pharma LLC.

The McKinsey entities named in one or more complaints are McKinsey & Company, Inc., McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.

(III) civil conspiracy; (IV) injunctive and equitable relief for medical monitoring and continuing treatment; (V) products liability; (VI) state law violations (as to the WVBOP); and (VII) punitive damages.<sup>9</sup>

The Plaintiff in Civil Action Number 21-C-110 MSH brings six claims: (I) public nuisance; (II) negligence and recklessness (as to Johnson & Johnson Defendants); (III) negligence and recklessness (as to McKinsey); (IV) negligent and intentional misrepresentation (as to Johnson & Johnson Defendants and McKinsey); (V) civil conspiracy (as to Johnson & Johnson Defendants and McKinsey); and (VI) malicious and intentional conduct (as to the WVBOP).<sup>10</sup>

The Plaintiff in Civil Action Number 22-C-73 MSH brings seven claims: (I) public nuisance; (II) negligence, gross negligence, and recklessness; (III) negligence and recklessness (as to McKinsey); (IV) negligent and intentional misrepresentation (as to Manufacturing Defendants and McKinsey); (V) civil conspiracy; (VI) malicious and intentional conduct (as to the WVBOP); and (VII) state law violations (as to the WVBOP).<sup>11</sup>

Rule 12(b)(6) of the West Virginia Rules of Civil Procedure requires that a complaint be dismissed if it “fail[s] to state a claim upon which relief can be granted.” “A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits.” *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 776 (1995). Thus, a court must grant a Rule 12(b)(6) motion to dismiss and dismiss a claim when “the claim is not authorized by the laws of West Virginia.” *Id.*

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<sup>9</sup> See, e.g., *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 304–444.

<sup>10</sup> See *A.D.A.* Compl. – Trans. ID No. 68754509 ¶¶ 51–105.

<sup>11</sup> See *A.N.C.* Compl. – Trans. ID No. 68741817 ¶¶ 79–147.

For the reasons previously summarized in the Court's April 17 Order, and addressed in more detail below, the Court hereby **GRANTS** the motions to dismiss and **ORDERS** that all the above-captioned complaints are hereby **DISMISSED** with prejudice as to all Defendants. The Court concludes:

- (1) Plaintiffs cannot establish that they have standing to bring public nuisance claims;
- (2) Plaintiffs failed to comply with the West Virginia Medical Professional Liability Act ("MPLA"), necessitating dismissal of Plaintiffs' claims against the Pharmacy Defendants;
- (3) As a matter of law, Plaintiffs cannot establish that Defendants owed the Minors a duty of care;
- (4) The allegations in Plaintiffs' complaints establish that, as a matter of law, Defendants' alleged conduct is necessarily too remote from the Minors' alleged injuries to establish proximate causation;
- (5) The allegations in Plaintiffs' complaints establish that, as a matter of law, the birth mothers of the Minors are necessarily the sole proximate cause of the alleged injuries;
- (6) Defendant Indivior is independently entitled to dismissal as a matter of law;
- (7) Plaintiffs' causes of action pertaining to fraud, civil conspiracy, medical monitoring, and punitive damages should accordingly also be dismissed; and
- (8) The WVBOP is entitled to dismissal under the public duty doctrine and based upon qualified immunity.

#### **FINDINGS OF FACT**

In resolving a motion to dismiss, courts "construe the complaint in the light most favorable to the plaintiff, taking all allegations as true." *Sedlock v. Moyle*, 222 W. Va. 547, 550 (2008). The



Court therefore accepts the allegations of the complaints as true for purposes of resolving the motions to dismiss. The following summarizes Plaintiffs' pertinent allegations.

**I. Findings as to Plaintiffs**

1. Plaintiffs and the Minors are private parties.<sup>12</sup>
2. Plaintiffs are suing as the next friends or guardians of the Minors.
3. Some Plaintiffs are the legal guardians of the Minors, now responsible for raising the Minors.<sup>13</sup>
4. Other Plaintiffs are the birth mothers themselves who took opioids while pregnant with the Minors on whose behalf they bring claims.<sup>14</sup>
5. Certain of the Minors are no longer minors.<sup>15</sup>

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<sup>12</sup> See, e.g., *A.D.A.* Compl. – Trans. ID No. 68754509 ¶ 1; *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 1, 15–16; *Paynter* Compl. – Trans. ID No. 68376136 ¶¶ 1, 12–13; *A.N.C.* Compl. – Trans. ID No. 68741817 ¶¶ 1–2.

<sup>13</sup> See, e.g., *A.D.A.* Compl. – Trans. ID No. 68754509 at 1; *Blankenship* Compl. – Trans. ID No. 68373471 ¶ 16; *Otwell* Compl. – Trans. ID No. 68375917 ¶ 14; *Boswell* Compl. – Trans. ID No. 68374613 ¶ 13; *Lambert* Compl. – Trans. ID No. 68375765 ¶ 13; *Brooks* Compl. – Trans. ID No. 68374958 ¶ 13; *Adams* Compl. – Trans. ID No. 68374155 ¶ 12; *Paynter* Compl. – Transaction ID No. 68376136 ¶ 13; *Fuller* Compl. – Trans. ID No. 68375100 ¶ 13; *Johnson* Compl. – Trans. ID No. 68375675 ¶ 13; *Johnson* Compl. – Trans. ID No. 68375719 ¶ 14.

<sup>14</sup> See, e.g., *Mangus* Compl. – Trans. ID No. 68590517 ¶ 5; *Harris* Compl. – Trans. ID No. 68375268 ¶ 7; *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 6; *Whited* Compl. – Trans. ID No. 68376283 ¶ 8; *Adkins* Compl. – Trans. ID No. 68374292 ¶¶ 2–3; *Anderson* Compl. – Trans. ID No. 68374371 ¶ 6; *Swift* Compl. – Trans. ID No. 68376246 ¶ 6; *Stacey* Compl. – Trans. ID No. 68376161 ¶ 6; *A.N.C.* Compl. – Trans. ID No. 68741817 ¶ 21.

<sup>15</sup> *Anderson* Compl. – Trans. ID No. 68374371 ¶ 12 (A.L.A.); *Adkins* Compl. – Trans. ID No. 68374292 ¶ 10 (M.J.A.); *Lambert* Compl. – Trans. ID No. 68375765 ¶ 12 (T.J.L.); *Swift* Compl. – Trans. ID No. 68376246 ¶ 1 (J.A.S.); *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 1 (B.D.W.).

6. The birth mothers were generally prescribed opioid medications by one or more treating physicians, usually for specific injuries,<sup>16</sup> for chronic pain,<sup>17</sup> or for medical procedures,<sup>18</sup> based upon the treating provider's independent medical judgment.
7. The birth mothers consistently filled their prescriptions for opioid medications,<sup>19</sup> sometimes from multiple prescribers.<sup>20</sup>

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<sup>16</sup> *E.g.*, *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 6–7; *Boswell* Compl. – Trans. ID No. 68374613 ¶ 4; *Lambert* Compl. – Trans. ID No. 68375765 ¶ 4; *Mangus* Compl. – Trans. ID No. 68590517 ¶¶ 3–4; *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 4; *Adkins* Compl. – Trans. ID No. 68374292 ¶ 3; *Brooks* Compl. – Trans. ID No. 68374958 ¶ 5; *Fuller* Compl. – Trans. ID No. 68375100 ¶¶ 5–6; *Johnson* Compl. – Trans. ID No. 68375675 ¶¶ 5–6; *Johnson* Compl. – Trans. ID No. 68375719 ¶¶ 4–6.

<sup>17</sup> *E.g.*, *A.D.A.* Compl. – Trans. ID No. 68754509 ¶ 14; *Otwell* Compl. – Trans. ID No. 68375917 ¶ 5; *Harris* Compl. – Trans. ID No. 68375268 ¶¶ 5–6; *Whited* Compl. – Trans. ID No. 68376283 ¶ 6; *Adams* Compl. – Trans. ID No. 68374155 ¶¶ 4–5; *Anderson* Compl. – Trans. ID No. 68374371 ¶¶ 4–5; *Swift* Compl. – Trans. ID No. 68376246 ¶ 4; *Stacey* Compl. – Trans. ID No. 68376161 ¶¶ 4–5.

<sup>18</sup> *See, e.g.*, *Paynter* Compl. – Trans. ID No. 68376136 ¶¶ 5–6.

<sup>19</sup> *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 8–9; *Otwell* Compl. – Trans. ID No. 68375917 ¶ 6; *Boswell* Compl. – Trans. ID No. 68374613 ¶ 5; *Lambert* Compl. – Trans. ID No. 68375765 ¶ 5; *Mangus* Compl. – Trans. ID No. 68590517 ¶ 4; *Harris* Compl. – Trans. ID No. 68375268 ¶ 6; *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 5; *Whited* Compl. – Trans. ID No. 68376283 ¶¶ 7–8; *Brooks* Compl. – Trans. ID No. 68374958 ¶¶ 6–7; *Adams* Compl. – Trans. ID No. 68374155 ¶¶ 4–5; *Anderson* Compl. – Trans. ID No. 68374371 ¶¶ 4–5; *Paynter* Compl. – Trans. ID No. 68376136 ¶¶ 5–6; *Fuller* Compl. – Trans. ID No. 68375100 ¶¶ 5–6; *Johnson* Compl. – Trans. ID No. 68375675 ¶¶ 5–6; *Swift* Compl. – Trans. ID No. 68376246 ¶ 5; *Stacey* Compl. – Trans. ID No. 68376161 ¶¶ 4–6; *Johnson* Compl. – Trans. ID No. 68375719 ¶¶ 4–6.

<sup>20</sup> *E.g.*, *Otwell* Compl. – Trans. ID No. 68375917 ¶ 5; *Mangus* Compl. – Trans. ID No. 68590517 ¶¶ 3–4; *Harris* Compl. – Trans. ID No. 68375268 ¶¶ 5–6; *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 4–5; *Whited* Compl. – Trans. ID No. 68376283 ¶ 6; *Fuller* Compl. – Trans. ID No. 68375100 ¶¶ 5–6; *Johnson* Compl. – Trans. ID No. 68375675 ¶¶ 5–6; *Swift* Compl. – Trans. ID No. 68376246 ¶ 4; *Stacey* Compl. – Trans. ID No. 68376161 ¶¶ 4–5.

8. Some birth mothers also obtained opioids through the diversion of opioids from prescriptions written for others and, in certain cases, from criminal drug dealers.<sup>21</sup>
9. Many birth mothers were addicted to opioids prior to becoming pregnant.<sup>22</sup>
10. The birth mothers continued to obtain and use opioids during their pregnancies,<sup>23</sup> both through prescriptions written by doctors for the birth mothers and through the diversion of opioids from prescriptions written for others.<sup>24</sup>
11. Some of the birth mothers also used or switched to opioid use disorder medicines such as methadone, Suboxone, Subutex, or generic buprenorphine during their pregnancies.<sup>25</sup>

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<sup>21</sup> *E.g.*, *A.D.A. Compl.* – Trans. ID No. 68754509 ¶ 14; *A.N.C. Compl.* – Trans. ID No. 68741817 ¶ 21.

<sup>22</sup> *E.g.*, *Blankenship Compl.* – Trans. ID No. 68373471 ¶ 8; *Otwell Compl.* – Trans. ID No. 68375917 ¶ 6; *Boswell Compl.* – Trans. ID No. 68374613 ¶ 5; *Lambert Compl.* – Trans. ID No. 68375765 ¶ 5; *Mangus Compl.* – Trans. ID No. 68590517 ¶ 4; *Harris Compl.* – Trans. ID No. 68375268 ¶ 6; *Woolwine Compl.* – Trans. ID No. 68376364 ¶ 5; *Whited Compl.* – Trans. ID No. 68376283 ¶ 7; *Adkins Compl.* – Trans. ID No. 68374292 ¶ 5; *Brooks Compl.* – Trans. ID No. 68374958 ¶ 6; *Adams Compl.* – Trans. ID No. 68374155 ¶ 5; *Anderson Compl.* – Trans. ID No. 68374371 ¶ 5; *Paynter Compl.* – Trans. ID No. 68376136 ¶ 6; *Fuller Compl.* – Trans. ID No. 68375100 ¶ 6; *Johnson Compl.* – Trans. ID No. 68375675 ¶ 6; *Swift Compl.* – Trans. ID No. 68376246 ¶ 5; *Stacey Compl.* – Trans. ID No. 68376161 ¶ 5; *Johnson Compl.* – Trans. ID No. 68375719 ¶ 6.

<sup>23</sup> *E.g.*, *A.D.A. Compl.* – Trans. ID No. 68754509 ¶ 13; *Blankenship Compl.* – Trans. ID No. 68373471 ¶ 10; *Boswell Compl.* – Trans. ID No. 68374613 ¶ 7; *Lambert Compl.* – Trans. ID No. 68375765 ¶ 6; *Mangus Compl.* – Trans. ID No. 68590517 ¶ 5; *Woolwine Compl.* – Trans. ID No. 68376364 ¶ 6; *Whited Compl.* – Trans. ID No. 68376283 ¶ 8; *Adkins Compl.* – Trans. ID No. 68374292 ¶¶ 1, 6; *Brooks Compl.* – Trans. ID No. 68374958 ¶ 7; *Adams Compl.* – Trans. ID No. 68374155 ¶¶ 5–7; *Paynter Compl.* – Trans. ID No. 68376136 ¶ 7; *Johnson Compl.* – Trans. ID No. 68375675 ¶ 7; *Swift Compl.* – Trans. ID No. 68376246 ¶ 6; *Stacey Compl.* – Trans. ID No. 68376161 ¶ 6; *Johnson Compl.* – Trans. ID No. 68375719 ¶ 7; *A.N.C. Compl.* – Trans. ID No. 68741817 ¶ 21.

<sup>24</sup> *A.D.A. Compl.* – Trans. ID No. 68754509 ¶ 14; *A.N.C. Compl.* – Trans. ID No. 68741817 ¶ 21.

<sup>25</sup> *E.g.*, *Blankenship Compl.* – Trans. ID No. 68373471 ¶¶ 9–10; *Otwell Compl.* – Trans. ID No. 68375917 ¶¶ 7–8; *Lambert Compl.* – Trans. ID No. 68375765 ¶¶ 5, 7; *Mangus Compl.* – Trans. (continued...)

12. Some of the birth mothers continued using opioids and/or opioid use disorder medicines through successive pregnancies.<sup>26</sup>
13. The Minors' NAS diagnoses resulted from their birth mothers' consumption of opioids during their pregnancies with the Minors and would not have occurred unless the birth mothers ingested opioids during pregnancy.<sup>27</sup>
14. Defendants' alleged conduct and the Minors' alleged injuries are separated by the actions of third parties, including: (1) doctors who conducted patient examinations and wrote prescriptions for patients;<sup>28</sup> (2) individuals who in some instances illegally diverted prescription medications to illicit channels;<sup>29</sup> and (3) the Minors' birth mothers who ingested opioids during their pregnancies.<sup>30</sup>

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ID No. 68590517 ¶¶ 6–7; *Harris* Compl. – Trans. ID No. 68375268 ¶¶ 6–7; *Woolwine* Compl. – Trans. ID No. 68376364 ¶ 6; *Adams* Compl. – Trans. ID No. 68374155 ¶ 6; *Anderson* Compl. – Trans. ID No. 68374371 ¶ 7; *Fuller* Compl. – Trans. ID No. 68375100 ¶¶ 7–8; *A.N.C.* Compl. – Trans. ID No. 68741817 ¶ 20.

<sup>26</sup> *Boswell* Compl. – Trans. ID No. 68374613 ¶¶ 1, 7 (2 pregnancies); *Lambert* Compl. – Trans. ID No. 68375765 ¶¶ 1, 6 (2 pregnancies); *Woolwine* Compl. – Trans. ID No. 68376364 ¶¶ 1, 4, 6 (2 pregnancies); *Whited* Compl. – Trans. ID No. 68376283 ¶¶ 1, 8 (2 pregnancies); *Adams* Compl. – Trans. ID No. 68374155 ¶¶ 1, 6 (2 pregnancies); *Anderson* Compl. – Trans. ID No. 68374371 ¶¶ 1, 6 (2 pregnancies); *Swift* Compl. – Trans. ID No. 68376246 ¶¶ 1, 6 (3 pregnancies).

<sup>27</sup> *A.D.A.* Compl. – Trans. ID No. 68754509 ¶¶ 1, 11, 13; *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 1–2, 15; *Boswell* Compl. – Trans. ID No. 68374613 ¶¶ 1–2, 12; *Lambert* Compl. – Trans. ID No. 68375765 ¶¶ 1–2, 12; *Mangus* Compl. – Trans. ID No. 68590517 ¶¶ 1–2, 11; *Woolwine* Compl. – Trans. ID No. 68376364 ¶¶ 1–2, 11; *Whited* Compl. – Trans. ID No. 68376283 ¶¶ 1–2, 13–14; *Adkins* Compl. – Trans. ID No. 68374292 ¶¶ 1, 10; *Brooks* Compl. – Trans. ID No. 68374958 ¶¶ 1–2, 12; *Adams* Compl. – Trans. ID No. 68374155 ¶¶ 1–2, 11; *Paynter* Compl. – Trans. ID No. 68376136 ¶¶ 1–2, 12; *Johnson* Compl. – Trans. ID No. 68375675 ¶¶ 1–2, 12; *Swift* Compl. – Trans. ID No. 68376246 ¶¶ 1–2, 11; *Stacey* Compl. – Trans. ID No. 68376161 ¶¶ 1–2, 11; *Johnson* Compl. – Trans. ID No. 68375719 ¶¶ 1–2, 13; *A.N.C.* Compl. – Trans. ID No. 68741817 ¶¶ 1, 18.

<sup>28</sup> See, e.g., *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 5–7.

<sup>29</sup> See, e.g., *A.N.C.* Compl. – Trans. ID No. 68741817 ¶ 21.

<sup>30</sup> See, e.g., *Blankenship* Compl. – Trans. ID No. 68373471 ¶¶ 9–10.

## II. Findings as to Defendants

15. Plaintiffs claim that the Manufacturer Defendants improperly marketed and misrepresented the benefits and risks of prescription opioids for the treatment of pain and failed to adhere to their alleged statutory, regulatory, and common-law obligations intended to help prevent the diversion of prescription opioids into illicit channels and illicit uses.<sup>31</sup>
16. Plaintiffs claim that the Distributor Defendants distributed large quantities of prescription opioids in West Virginia and failed to adhere to their alleged statutory, regulatory, and common-law obligations intended to help prevent the diversion of prescription opioids into illicit channels and illicit uses.<sup>32</sup>
17. Plaintiffs claim that the Pharmacy Defendants self-distributed and dispensed large quantities of prescription opioids in West Virginia and failed to adhere to their alleged statutory, regulatory, and common-law obligations intended to help prevent the diversion of prescription opioids into illicit channels and illicit uses. Plaintiffs further allege that, in some instances, the Pharmacy Defendants dispensed the prescription opioids that the birth mothers allegedly consumed before or during the Minors' gestations.<sup>33</sup>

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<sup>31</sup> See, e.g., *Id.* ¶¶ 235, 241, 309, 310; *A.N.C. Compl.* – Trans. ID No. 68741817 ¶¶ 57, 59, 98, 100. Plaintiffs define “Manufacturer Defendants” to include Noramco, but Noramco is a manufacturer of active pharmaceutical ingredients only. *Blankenship Compl.* – Trans. ID No. 68373471 ¶¶ 27, 32. The findings, conclusions, and relief granted in this Order apply equally to Noramco.

<sup>32</sup> See, e.g., *Blankenship Compl.* – Trans. ID No. 68373471 ¶¶ 155, 248; *A.N.C. Compl.* – Trans. ID No. 68741817 ¶¶ 64, 98, 100.

<sup>33</sup> See, e.g., *Blankenship Compl.* – Trans. ID No. 68373471 ¶¶ 14, 21–23, 382.

18. Plaintiffs allege that the WVBOP failed to perform sufficient investigations or otherwise take sufficient regulatory actions to prevent the diversion of prescription opioids into illicit channels and illicit uses.<sup>34</sup>
19. Plaintiffs allege that McKinsey performed consulting services for certain pharmaceutical manufacturers and, through these services, contributed to large quantities of prescription opioids in West Virginia,<sup>35</sup> including alleged marketing advice for targeting high prescribers<sup>36</sup> and allegedly recommending that Purdue (1) develop “rules for sales staff governing contact and frequency of sales visits”;<sup>37</sup> (2) “analyze the opioid prescribing patterns of individual physicians to identify those that had historically been the highest prescribers”;<sup>38</sup> and (3) incentivize sales staff with “bonuses which correlated directly with [prescription] numbers.”<sup>39</sup>

## **CONCLUSIONS OF LAW**

### **I. Public Nuisance—Lack of Standing**

“Ordinarily, a suit to abate a public nuisance cannot be maintained by an individual in his private capacity, as it is the duty of the proper public officials to vindicate the rights of the public.”

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<sup>34</sup> See, e.g., *Id.* ¶¶ 154, 432; *A.N.C. Compl. – Trans.* ID No. 68741817 ¶¶ 15, 55–56, 137–39, 143–45.

<sup>35</sup> See, e.g., *A.N.C. Compl. – Trans.* ID No. 68741817 ¶¶ 108–13.

<sup>36</sup> See, e.g., *Adams Compl. – Trans.* ID No. 68374155 ¶¶ 289–92, 303; *Adkins Compl. – Trans.* ID No. 68374292 ¶¶ 299, 304.

<sup>37</sup> See, e.g., *Adams Compl. – Trans.* ID No. 68374155 ¶ 282; *Adkins Compl. – Trans.* ID No. 68374292 ¶ 291.

<sup>38</sup> See, e.g., *Adams Compl. – Trans.* ID No. 68374155 ¶ 308; *Adkins Compl. – Trans.* ID No. 68374292 ¶ 317.

<sup>39</sup> See, e.g., *Adams Compl. – Trans.* ID No. 68374155 ¶ 282; *Adkins Compl. – Trans.* ID No. 68374292 ¶ 291.

*Callihan v. Surnaik Holdings. of W. Va., LLC*, No. 2:17-cv-04386, 2018 WL 6313012, at \*5 (S.D.W.Va. Dec. 3, 2018) (quoting *Hark v. Mountain Fork Lumber Co.*, 127 W. Va. 586, 596 (1945)). Plaintiffs acting in their “private capacity” lack standing to bring a public nuisance claim unless they can show “an injury different from that inflicted upon the public in general, ***not only in degree, but in character.***” *Callihan*, 2018 WL 6313012, at \*5 (quoting *Int’l Shoe Co. v. Heatwole*, 126 W. Va. 888, 30 S.E.2d 537, 540 (1944)) (emphasis added).

Under this legal standard, to maintain a public nuisance claim a private litigant must establish a “special injury . . . which cannot be fully compensated in an action at law.” *Hark*, 127 W. Va. at 596. This standing requirement applies to damages claims for public nuisance, such as those asserted here. *See Callihan*, 2018 WL 6313012, at \*5 (dismissing private plaintiffs’ damages claims for public nuisance, including claims for bodily injury and property damage, for failure to allege special injury); *Hark*, 127 W. Va. at 595–96 (applying special injury standard to public nuisance claim where private plaintiffs sought injunctive relief and damages); *Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 756, 767 (S.D.W.Va. 2009) (applying special injury standard to public nuisance claim in case where private plaintiffs sought compensatory and punitive damages, costs and fees, medical monitoring, abatement, and provision of alternative drinking water), *aff’d in relevant part*, 636 F.3d 88 (4th Cir. 2011); *Heatwole*, 30 S.E. 2d at 539–40 (applying special injury standard to public nuisance claim where private plaintiff claimed damages).<sup>40</sup>

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<sup>40</sup> *State ex rel. Surnaik Holdings of W. Va., LLC v. Bedell*, 247 W. Va. 41, 875 S.E.2d 179 (2022), is not to the contrary. That case involves questions of class certification for a class “center[ed] on geographic areas that were . . . exposed to identified levels of smoke particles . . . due to [] alleged negligence.” *Id.* at 185. The majority opinion does not analyze either public nuisance or special injury, and the concurrence mentions “nuisance” only in passing. *Id.* at 188.

Plaintiffs alleging public nuisance cannot satisfy this standing requirement. April 17 Order ¶ 1. They are private parties, not public officials, *See* Finding No. 1, *supra*, and cannot demonstrate the requisite “special injury”—that is, an injury “different from” an injury to the “public in general,” “not only in degree, but in character.” *Callihan*, 2018 WL 6313012, at \*5. A claim of “personal injury” or “physical harm” is insufficient to establish standing for a private party to assert a public nuisance claim where those alleged injuries are not different “in character” from the personal injuries suffered by others exposed to opioids. *Id.*

Here, the Minors’ claimed injuries necessarily arise from exposure to opioids and thus are not different “in character” from the injuries that might be suffered by “the public in general” from exposure to opioids, or that might be suffered by other infants exposed *in utero* to opioids. *Compare, e.g., A.N.C. Compl. – Trans. ID No. 68741817* ¶¶ 79, 88 (alleging that the public’s exposure to opioids has created “high rates of NAS, addiction, overdoses, dysfunction, and despair”); *with City of Huntington v. AmerisourceBergen Drug Corp.*, 609 F. Supp. 3d 408, 419–21 (S.D.W.Va. 2022) (summarizing harms suffered by West Virginia residents from exposure to opioids, including “drug overdose deaths,” “addict[ion] to opioids,” babies “born with neonatal abstinence syndrome,” and “sharply increased rates of infectious disease”).

Accordingly, the public nuisance claims asserted by certain Plaintiffs are dismissed because Plaintiffs cannot establish the requisite “special injury.” *See Callihan*, 2018 WL 6313012, at \*5 (applying West Virginia law to dismiss public nuisance claim for failure to allege special injury from toxic fumes allegedly caused by fire); *Rhodes*, 657 F. Supp. 2d at 768–71 (holding that plaintiffs failed to establish a “special injury” required for a public nuisance claim based on “mere contamination of their water supply”); *Curry v. Boone Timber Co.*, 87 W. Va. 429, 105 S.E. 263, 264 (1920) (“No evidence shows . . . that damage or injury can or likely will occur, or has occurred,



to any one or more of the several complainants peculiarly affecting them that will not equally affect every other owner of property along [the street in question].”).

Moreover, claims of public nuisance involving NAS have already been resolved through settlement of the public nuisance actions filed by the State of West Virginia and West Virginia cities and counties against the Manufacturer Defendants, Distributor Defendants, and Pharmacy Defendants. Those prior settlement agreements, which this Court approved, provide specifically for treatment and medical monitoring of infants born with NAS. *See* April 17 Order ¶ 2 (citing Order Adopting the West Virginia First Memorandum of Understanding, Trans. ID No. 68796699). This reinforces the importance of the “special injury” requirement for public nuisance claims—to prevent duplicative, repeated public nuisance claims asserted by private claimants who cannot establish an injury different in degree and character from other members of the public. *See Callihan*, 2018 WL 6313012, at \*5 (public nuisance claims cannot “[o]rdinarily . . . be maintained by an individual in his private capacity” because “it is the duty of the proper public officials to vindicate the rights of the public”).

## **II. West Virginia Medical Professional Liability Act**

Plaintiffs’ claims against the Pharmacy Defendants are barred because Plaintiffs failed to satisfy the jurisdictional pre-suit requirements of the West Virginia Medical Professional Liability Act, W. Va. Code § 55-7B-1 *et seq.* (“MPLA”). April 17 Order ¶ 3. The MPLA provides that “no person may file a medical professional liability action against any health care provider without complying with” certain pre-suit requirements, including notice to the provider and a screening certificate of merit by a qualified expert. *Id.* § 55-7B-6.

Plaintiffs’ claims against the Pharmacy Defendants triggered the MPLA’s pre-suit requirements. First, the Pharmacy Defendants are “health care provider[s]” as defined by the MPLA. That term includes both “pharmacist[s]” and “health care facilit[ies],” which are expressly

defined to include “pharmac[ies].” *Id.* § 55-7B-2(f), (g); *See also Bowles v. CVS Pharmacy*, No. 1:19-CV-154, 2019 WL 7556265, at \*5–6 (N.D.W.Va. Dec. 20, 2019); *State of West Virginia ex rel. Morrissey v. Judy’s Drug Store, Inc.*, No. 16-C-54, at 7 (W. Va. Cir. Ct. Hardy Cnty. Nov. 8, 2019) (Order Certifying Questions)).

Second, Plaintiffs’ suits are “medical professional liability action[s]” as defined by the MPLA. The term “medical professional liability” broadly means “any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient,” as well as “other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided, all in the context of rendering health care services.” W. Va. Code § 55-7B-2(i).

Plaintiffs’ claims against the Pharmacy Defendants meet every part of this definition. To begin with, they seek to hold the Pharmacy Defendants liable for damages resulting from personal injury. *E.g.*, *Blankenship* Compl. – Trans. ID No. 68373471 ¶ 442; *Id.* at 85 (prayer for relief).

In addition, Plaintiffs’ claims are also “based on health care services.” The term “health care” expressly encompasses all acts done in furtherance of medical care, including administrative actions such as the process used for the employment, credentialing, and supervision of health care providers, and alleged corporate negligence such as failure to document, report, train, or supervise. *See* W. Va. Code § 55-7B-2(e); *State ex rel. W. Va. Univ. Hosps., Inc. v. Scott*, 246 W. Va. 184, 193 (2021). Plaintiffs seek to hold the Pharmacy Defendants liable for dispensing medications prescribed by physicians for medical treatment, and they challenge the Pharmacy Defendants’ other alleged conduct related to dispensing. Even accepting Plaintiffs’ allegations that the Pharmacy Defendants violated controlled substances laws, Plaintiffs’ claims still fall within the

MPLA’s ambit. *See* W. Va. Code § 55-7B-5(d); *cf. State ex rel. Hope Clinic, PLLC v. McGraw*, 245 W. Va. 171, 174 (2021) (MPLA applies to claims that defendants “purposely prescribed and filled prescriptions for controlled substances in a concerted effort to addict [the patient] for monetary purposes” and that “pharmacies and pharmacists negligently dispensed prescriptions for controlled substances,” causing the patient “to become addicted to pain medications”).

Moreover, the MPLA applies to all of Plaintiffs’ claims against Pharmacy Defendants because the claims are at least “related to” the alleged torts otherwise covered by the MPLA, and the claims all arise “in the context of rendering health care services.” W. Va. Code § 55-7B-2(i).

Finally, Plaintiffs (and the Minors whose claims they press) are “person[s]” subject to the MPLA’s pre-suit requirements, whether or not they are also “patients.” *Id.*; *See also Id.* §§ 55-7B-6(a), 55-7B-9b; *Est. of Fout-Iser ex rel. Fout-Iser v. Hahn*, 220 W. Va. 673, 676–77 (2007) (applying the MPLA to medical malpractice claims brought on behalf of a stillborn child); *Boggs v. Camden-Clark Mem’l Hosp. Corp.*, 225 W. Va. 300, 316 n.27 (2010) (“[A] nonpatient may sue a healthcare provider under the requirements of the Medical Professional Liability Act, even though the healthcare provider did not render any services to the nonpatient.”); *Osborne v. United States*, 211 W. Va. 667, 674 (2002) (claims brought by accident victims against doctor who negligently prescribed pain medication to third party); *State ex rel. W. Va. Univ. Hosps., Inc. v. Nelson*, 245 W. Va. 150, 152, 156 (2021) (claims of woman killed by recipient of allegedly negligent psychiatric treatment). While this Court has held that the statute does not cover government entities seeking relief in their sovereign capacity, *See Findings of Fact & Conclusions of Law on Ord. Denying Pharmacy Defs.’ Mot. to Dismiss Compls. and Am. Compls.*, Trans. ID No. 67895252 (Kanawha Cnty. Cir. Ct. Aug. 3, 2022), Plaintiffs here are private parties.

When the MPLA applies, a plaintiff's failure to comply with its pre-suit requirements is a jurisdictional bar to suit. W. Va. Code § 55-7B-6(a); Syl. Pts. 2, 5, *State ex rel. PrimeCare Med. of W. Va., Inc. v. Faircloth*, 242 W. Va. 335, 345 (2019); Syl. Pt. 3, *State ex rel. Hope Clinic*, 245 W. Va. 171, 179 (2021); Syl. Pt. 7, *Tanner v. Raybuck*, 246 W. Va. 361, 368 (2022). It is undisputed that Plaintiffs did not comply with the pre-suit requirements of the MPLA—namely, the notice and certificate of merit provisions. Therefore, all counts against the Pharmacy Defendants are dismissed.

### **III. Negligence—Duty**

To establish a claim for negligence under West Virginia law, it must be shown that the defendant's acts or omissions violated a duty owed to the plaintiff. April 17 Order ¶ 4; *See* Syl. Pt. 3, *Bradley v. Dye*, 247 W. Va. 100 (2022). “No action for negligence will lie without a duty broken.” Syl. Pt. 1, *Parsley v. Gen. Motors Acceptance Corp.*, 167 W. Va. 866 (1981). Accordingly, “the threshold question in all actions in negligence is whether a duty was owed.” *Strahin v. Cleavenger*, 216 W. Va. 175, 183 (2004).

Whether a plaintiff is owed a duty of care by a defendant is a determination that must be rendered by the court as a matter of law. April 17 Order ¶ 4; Syl. Pt. 5, *Bradley*, 247 W. Va. at 100; *See also Miller v. Whitworth*, 193 W. Va. 262, 265 (1995). Plaintiffs are not asserting a private right of action under the Controlled Substances Act (“CSA”) or the West Virginia

Controlled Substances Act (“WVCSA”), so their claims must be based on a common law duty. April 17 Order ¶ 5.<sup>41</sup>

“The ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if care is not exercised.” Syl. Pt. 3, *Sewell v. Gregory*, 179 W. Va. 585 (1988); April 17 Order ¶ 4. “Importantly, however, the existence of duty also involves policy considerations underlying the core issue of the scope of the legal system’s protection.” *Stevens v. MTR Gaming Grp., Inc.*, 237 W. Va. 531, 535 (2016) (quotation omitted). “We are therefore bound to evaluate such pertinent factors as ‘the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant.’” *Id.* (quotation omitted).

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<sup>41</sup> Plaintiffs expressly concede this point in 18 of the 20 cases at issue. See Pls.’ Combined Response to Defs. AmerisourceBergen Corp., Cardinal Health, Inc., and McKesson Corp.’s Mot. to Dismiss Pls.’ Complaints; H. D. Smith, LLC, H. D. Smith Holdings, LLC, and H. D. Smith Holding Co.’s Joinder in the Mot.; Notice of Joinder in Mot. to Dismiss of Defs. H. D. Smith, LLC, H. D. Smith Holdings, LLC, and H. D. Smith Holdings Co.; Peterstown Pharmacy, LLC’s Joinder in the Mots. to Dismiss; and Anda, Inc.’s Mot. to Dismiss, Civil Action No. 22-C-9000 NAS, Trans. ID No. 68830762 at 17 (Kanawha Cnty. Cir. Ct. Jan. 9, 2023) (“Plaintiffs are not attempting to assert a private cause of action under either the Federal or West Virginia Controlled Substances Act.”) (“Combined Opp.”).

In *A.N.C. v. Johnson & Johnson, et al.*, 22-C-73 MSH, and *A.D.A. v. Johnson & Johnson, et al.*, 22-C-110 MSH, Plaintiffs seek through West Virginia Code Section 55-7-9 to impose civil liability on Defendants based on statutes including the WVCSA. See *A.N.C.*, Pls.’ Response Mem. in Opp. to Mot. of AmerisourceBergen Corp., AmerisourceBergan [sic] Drug Corp., Cardinal Health, Inc., and McKesson Corp. to Dismiss Compl. at 16–19, Trans. ID No. 69269496 (Mar. 3, 2023); *A.N.C.*, Pls.’ Response in Opp. to Def. Janssen’s Mot. to Dismiss at 14–15, Trans. ID No. 69268708 (incorporating by reference arguments raised in opposition to Distributor Defendants’ motions to dismiss); *A.D.A.*, Pls.’ Response in Opp. to Def. Janssen’s Mot. to Dismiss at 14–15, Trans. ID No. 69268389 (Mar. 3, 2023) (same). However, under Section 55-7-9, a violation of a statute can give rise to a tort action only if the allegedly violated statute confers a private cause of action. See *Arbaugh v. Bd. of Educ., Cnty. of Pendleton*, 214 W. Va. 677, 681 (2003). The *A.N.C.* plaintiff fails the four-part test imposed by *Hurley v. Allied Chem. Corp.*, 164 W. Va. 268, 278 (1980), to determine whether a statute creates an implied cause of action. Moreover, because the *A.N.C.* plaintiff alleges only regulatory violations and not statutory violations, Section 55-7-9 does not apply by its own terms because it provides a remedy only for “a violation of any statute,” not regulatory violations.

The Court has previously held that manufacturers and distributors of prescription opioids and pharmacies that self-distribute and dispense prescription opioids owed certain duties of care to government entities in the State of West Virginia. But the question presented here is different. Here, private plaintiffs assert personal injury claims and allege that manufacturers, distributors, and pharmacies (along with the WVBOP and McKinsey, a consulting firm) owed them a duty of care. That stretches the concept of due care too far, and would allow any private party in this State—no matter how far removed from any Defendant or its alleged conduct, and irrespective of the intervening conduct of numerous other actors, including the birth mothers—to claim that entities associated with the supply of prescription opioids (or active pharmaceutical ingredients) owed that party a duty of care in their activities. Even assuming that any Defendant in these cases owed a duty of care to *some* entity, Plaintiffs have not properly alleged that such a duty ran *from* Defendants *to* these private Plaintiffs. See *Stevens*, 237 W. Va. at 538 (manufacturers of video lottery terminals and the casinos featuring those terminals did not owe a duty of care to individual gamblers to prevent compulsive gambling).<sup>42</sup>

Plaintiffs allege two primary ways through which the Minors suffered injuries from their birth mothers' ingestion of opioids during their pregnancies. First, Plaintiffs allege that the Minors' birth mothers were prescribed opioids by their doctors. See, e.g., Finding Nos. 6, 10, *supra*. Any "duty" to reduce the exposure of birth mothers or the Minors to alleged harms associated with the medical use of prescription opioids therefore involved a duty owed by doctors

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<sup>42</sup> This is particularly true where some Defendants had no control over the conduct performed by others, as explained in *City of Charleston v. Joint Commission*. 473 F. Supp. 3d 596, 621–22 (S.D.W.Va. 2020) (finding that defendants owed no legal duty to plaintiffs and emphasizing that defendants "had no control or responsibility over the manufacturing or distributing of opioids" and plaintiffs were not even the intended recipients of the pain management standards at issue).

(as to the proper prescribing of opioids to women who are or may become pregnant) or by the birth mothers (as to the ingesting of prescription opioids in accordance with medical direction while pregnant), not Defendants. Second, to the extent Plaintiffs allege injuries caused by birth mothers' illicit ingestion of opioids, *See* Finding Nos. 8, 10, *supra*, that also cannot establish a breach of duty owed by Defendants to individual Minors or their birth mothers. Defendants do not owe a duty of care to prevent individuals from illicitly obtaining opioids through those individuals' own illegal conduct or through illegal conduct by third parties who divert opioids after they have left Defendants' or third parties' custody and control. *See, e.g., Miller*, 193 W. Va. at 266 (“[A] person usually has no duty to protect others from the criminal activity of a third party because the foreseeability of risk is slight, and because of the social and economic consequences of placing such a duty on a person.”). Although certain inapplicable “exceptions are recognized in which a person has an obligation to protect others from the criminal activity of a third party,” *Id.*, “the general proposition [is] that there is no duty to protect against deliberate criminal conduct of third parties,” *Strahin*, 216 W. Va. at 183–84.

Further, even assuming that Defendants owed a duty of care to individual Minors or their birth mothers, Plaintiffs cannot establish any injury that is proximately caused by any breach of such a duty. *See Wal-Mart Stores East, L.P. v. Ankrom*, 244 W. Va. 437, 448 (2020) (negligence claims require a showing of a duty owed to the plaintiff and injury “resulting proximately from the breach of that duty”). As discussed below, Plaintiffs' allegations of injury from birth mothers' ingestion of opioids cannot, as a matter of law, “result proximately” from the duties they allege were owed to the Minors or their birth mothers by Defendants. *See infra* pp. 19–23.

For these reasons, Plaintiffs cannot establish that Defendants owed them a duty of care. April 17 Order ¶ 6. This defeats Plaintiffs’ claims of negligence and any negligence-based claims of faulty product design and failure to warn.<sup>43</sup>

#### **IV. Proximate Causation**

Beyond the need to establish a duty owed by Defendants to Minors or birth mothers, which Plaintiffs cannot do, each of Plaintiffs’ claims sounds in tort and requires proof of proximate causation. *See Strahin*, 216 W. Va. at 183; *Stewart v. George*, 216 W. Va. 288, 292 (2004); *Wilkinson v. Duff*, 212 W. Va. 725, 730 (2002); *Metro v. Smith*, 146 W. Va. 983, 990 (1962); April 17 Order ¶ 7. Proximate cause is “that cause which, in actual sequence, unbroken by any independent cause, produced the wrong complained of, without which the wrong would not have occurred.” Syl. Pt. 3, *Webb v. Sessler*, 135 W. Va. 341 (1950); accord *Wal-Mart Stores East, L.P.*, 244 W. Va. at 450 (applying *Webb* standard). The Court concludes that, as a matter of law, Plaintiffs’ claims cannot establish proximate causation. April 17 Order ¶ 7.

##### **A. Remoteness**

Plaintiffs’ alleged injuries are too remote from Defendants’ conduct to establish proximate causation. April 17 Order ¶ 7. Under West Virginia law, “a remote [] cause of injury” is insufficient to support a finding of proximate causation. *Metro*, 146 W. Va. at 990.<sup>44</sup> While a

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<sup>43</sup> For the same reasons that Plaintiffs cannot maintain their claims for negligence, their claims of gross negligence are also barred. *See City of Charleston*, 473 F. Supp. 3d at 626 (the failure to establish elements of negligence “precludes any showing that defendants were grossly negligent”); *Wood v. Shrewsbury*, 117 W. Va. 569, 186 S.E. 294, 297 (1936) (where a plaintiff seeks to establish gross negligence, plaintiff must present “affirmative proof tending to magnify the negligence”).

<sup>44</sup> *See also Aikens v. Debow*, 208 W. Va. 486, 492 (2000) (“the doctrine of remoteness is a component of proximate cause”); *Emp. Teamsters-Loc. Nos. 175/505 Health & Welfare Tr. Fund* (continued...)



tortfeasor is “not relieved from liability” by “reasonably foreseeable” acts of third parties, *Anderson v. Moulder*, 183 W. Va. 77, 89 (1990), foreseeability alone is not sufficient to establish proximate causation under West Virginia law. Lack of remoteness is a separate and distinct element of proximate causation under West Virginia law, and if a defendant’s alleged conduct is too remote from the alleged harm, it cannot be a proximate cause of that harm as a matter of law, regardless of whether the harm was foreseeable. *See Metro*, 146 W. Va. at 990; *Webb*, 135 W. Va. at 348–49; *Aikens v. Debow*, 208 W. Va. 486, 492 (2000); *City of Huntington*, 609 F. Supp. 3d at 481; *City of Charleston v. Joint Comm’n*, 473 F. Supp. 3d 596, 631 (S.D.W.Va. 2020); *Emp. Teamsters-Loc. Nos. 175/505 Health & Welfare Tr. Fund v. Bristol Myers Squibb Co.*, 969 F. Supp. 2d 463, 472–75 (S.D.W.Va. 2013).

In *Webb*, the Supreme Court of Appeals affirmed the grant of a motion to dismiss, holding that the alleged negligence of various defendants was “remote as distinguished from proximate, and, therefore, not actionable” because “remote causes of the injury . . . do not constitute actionable negligence.” 135 W. Va. at 348–49. Likewise, in *City of Charleston*, West Virginia municipalities alleged that an organization that accredited public and private health care organizations had collaborated with opioid manufacturers to “misrepresent[] the addictive qualities of opioids and foster[] dangerous pain control practices.” 473 F. Supp. 3d at 606 (internal quotations and citation omitted). That court, on a motion to dismiss, held that proximate causation was absent because “defendants’ actions are too attenuated and influenced by too many intervening causes, including

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*v. Bristol Myers Squibb Co.*, 969 F. Supp. 2d 463, 475 (S.D.W.Va. 2013) (“the proximate causation analysis is about carefully drawing a line so as to distinguish the direct consequences in a close causal chain from more attenuated effects influenced by too many intervening causes”); *S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918) (the law “does not attribute remote consequences to a defendant”).

the criminal actions of third parties, to stand as the proximate cause of plaintiffs' injuries." *Id.* at 631; *See also Emp. Teamsters-Loc.*, 969 F. Supp. 2d at 475.

Plaintiffs argue that the Minors' alleged injuries were foreseeable and, therefore, that proximate causation is established. This argument misses the mark. The Court concludes that Defendants' conduct as alleged by Plaintiffs is, as a matter of law, too attenuated and remote from the alleged injuries to establish proximate causation, even if those injuries were foreseeable. April 17 Order ¶ 7. Defendants' alleged conduct (described above in the Findings) is necessarily multiple steps removed from Plaintiffs' claimed injuries, which Plaintiffs admit occurred only after (1) physicians prescribed opioids to birth mothers while they were pregnant with the allegedly injured Minors; (2) in some cases, third parties provided illegally obtained opioids to those birth mothers; and (3) birth mothers ingested medically prescribed opioids and/or illegally obtained opioids during their pregnancies with the Minors. April 17 Order ¶ 8.

As alleged by Plaintiffs, the numerous independent actions of multiple actors over whom Defendants had no control defeat proximate causation as a matter of law because these actions render Defendants' conduct too remote from Plaintiffs' alleged injuries. *See Metro*, 146 W. Va. at 990 ("the negligence which renders a defendant liable for damages must be a proximate, not a remote, cause of injury"); *See also Emp. Teamsters-Loc.*, 969 F. Supp. 2d at 475–76 (ruling on a motion to dismiss that "a vast array of intervening events, including the 'independent medical judgment' of doctors" precluded a finding of proximate cause (citation omitted)); *City of Charleston*, 473 F. Supp. 3d at 631 ("The independent medical judgment of the prescribing physicians further breaks the chain of causation" because "no injury would occur unless the physician proceeded to unnecessarily prescribe opioid treatments or if patients obtained the drugs through some other illegal means").

For this reason Plaintiffs cannot establish proximate causation. The Court can properly dismiss a complaint where, as here, Plaintiffs cannot establish proximate causation as a matter of law. *See Webb*, 135 W. Va. at 348–49; April 17 Order ¶ 5.

### **B. Sole Proximate Cause**

Plaintiffs also cannot establish the required element of proximate causation for their claims against Defendants for the independent reason that the Minors’ birth mothers were necessarily the sole proximate cause of the Minors’ alleged injuries. April 17 Order ¶ 9. “Where there is a sole, effective intervening cause, there can be no other causes proximately resulting in the alleged injury.” *Webb*, 135 W. Va. at 348. As Plaintiffs admit, the alleged injuries that form the basis of Plaintiffs’ claims necessarily occurred because the Minors’ birth mothers ingested opioids during their pregnancies, and they would not have occurred otherwise. April 17 Order ¶ 9; Finding Nos. 10, 13, *supra*. Put another way, because Plaintiffs necessarily base their claim on injuries to the Minors from alleged exposure to opioids *in utero*, those injuries could not have occurred unless the birth mothers took opioids during their pregnancies. April 17 Order ¶ 9; Finding No. 10.

Accepted as true, Plaintiffs’ allegations therefore establish that the birth mothers are the sole proximate cause of the Minors’ alleged injuries. Under the *Webb* standard, the birth mother’s ingestion of opioids—which, by Plaintiffs’ own allegations, was the necessary factor causing each of the Minors’ alleged NAS, independent of any alleged conduct by Defendants—“produced the wrong complained of,” which wrong “would not have occurred” without that conduct, and which wrong resulted from the birth mothers’ conduct “unbroken by any independent cause.” Syl. Pt. 3, *Webb*, 135 W. Va. 341. The actions of the birth mothers therefore “constitute[] a new effective cause and operate[] independently of any other act, making [them] and [them] only, the proximate cause of the injury.” Syl. Pt. 12, *Marcus v. Staubs*, 230 W. Va. 127 (2012). *Accord* Syl. Pt. 8, *Harbaugh v. Coffinberger*, 209 W. Va. 57 (2000).

In short, the birth mothers' ingestion of opioids during pregnancy is the sole proximate cause of the Minors' alleged injuries because it directly "produced the wrong complained of" "unbroken by any independent cause." *See* Syl. Pt. 3, *Webb*, 135 W. Va. 341; April 17 Order ¶ 9. As a matter of law, Plaintiffs cannot establish proximate causation in their claims against Defendants for this separate and additional reason.

#### **V. Defendant Indivior Inc.**

In addition to the findings of fact and conclusions of law addressed above, which apply generally to all Defendants, the Court concludes that Defendant Indivior Inc. ("Indivior") is independently entitled to dismissal as a matter of law. April 17 Order ¶ 10. Indivior is the manufacturer of Suboxone and Subutex, which are Schedule III buprenorphine-based medications indicated for the treatment of opioid use disorder ("OUD"), not for the treatment of chronic pain. *Id.* Plaintiffs allege that the Minors' birth mothers' addictions were initiated and caused by the use of opioids indicated for chronic pain *before* they ever used an Indivior product to treat their OUD; therefore, Plaintiffs' allegations regarding other Manufacturer Defendants cannot be applied to Indivior. *Id.* Plaintiffs have also failed to allege sufficient facts to support a reasonable inference that the Minors' alleged injuries were proximately caused by their birth mothers' use of any Indivior product during their pregnancies with the Minors. *Id.*

#### **VI. Fraud, Civil Conspiracy, Medical Monitoring, and Punitive Damages**

Plaintiffs' causes of action pertaining to fraud, civil conspiracy, medical monitoring, and punitive damages are also dismissed.

##### **A. Fraud**

Plaintiffs' fraud claims sound in tort. *See Wilt v. State Auto. Mut. Ins. Co.*, 203 W. Va. 165, 170 (1998). As with any tort, Plaintiffs cannot sustain their fraud claims without a showing of proximate causation. *See White v. Wyeth*, 227 W. Va. 131, 140 (2010). For the reasons

addressed above, Plaintiffs’ own allegations make clear that Defendants’ alleged misrepresentations and omissions cannot be a direct or proximate cause of the Minors’ injuries as a matter of law. This lack of causation therefore bars Plaintiffs’ fraud claims. April 17 Order ¶ 11.

### **B. Civil Conspiracy**

Civil conspiracy is not a “*per se*, stand-alone cause of action.” *Dunn v. Rockwell*, 225 W. Va. 43, 57 (2009). “[A] civil conspiracy must be based on some underlying tort or wrong.” *O’Dell v. Stegall*, 226 W. Va. 590, 625 (2010). For this reason, when a plaintiff’s underlying tort claims fail, so too must civil conspiracy claims premised on those underlying torts. *See Hammer v. Hammer*, No. 14-0995, 2016 WL 765839, at \*4 (W. Va. Feb. 26, 2016) (“if the [underlying] claim fails, the civil conspiracy claim cannot survive”). For the reasons addressed above, all of Plaintiffs’ underlying tort claims fail as to all Defendants. Plaintiffs’ civil conspiracy claims therefore “cannot survive.” *Id.*; April 17 Order ¶ 11.

### **C. Medical Monitoring**

Although a plaintiff may “as a matter of pleading, assert a separate cause of action based upon medical monitoring,” “liability must be established” through application of existing theories of tort liability. *Bower v. Westinghouse Elec. Corp.*, 206 W. Va. 133, 142 (1999). This requires Plaintiffs to allege an “underlying . . . recognized tort—*e.g.*, negligence, strict liability, trespass, intentional conduct, etc.” *Id.* Thus, because Plaintiffs’ tort claims are dismissed for the reasons addressed above, their medical monitoring claims are also dismissed. April 17 Order ¶ 11.

### **D. Punitive Damages**

Punitive damages are “not the cause of action itself, but a mere incident thereto.” *Lyon v. Grasselli Chem. Co.*, 106 W. Va. 518, 146 S.E. 57, 58 (1928); *Stern v. Marshall Cnty. Coal Co.*, No. 5:17-CV-93, 2017 WL 11439875, at \*2 (N.D.W.Va. July 18, 2017) (dismissing separate punitive damages claim because “West Virginia does not recognize an independent cause of action

for damages”). Because no underlying claims survive, Plaintiffs’ claims for punitive damages are dismissed. *See Roche v. Lincoln Prop. Co.*, 175 F. App’x 597, 606 (4th Cir. 2006) (dismissing separate punitive damages claim because plaintiff’s “underlying” common law claims were barred).

## **VII. WVBOP—Public Duty Doctrine and Qualified Immunity**

Under West Virginia law, the determination of “whether qualified or statutory immunity bars a civil action is one of law for the court to determine.” *W. Va. Dep’t of Health & Human Res. v. Payne*, 231 W. Va. 563, 576 n.31 (2013). As a matter of law, Plaintiffs’ claims against the WVBOP are barred by the public duty doctrine and by qualified immunity. April 17 Order ¶ 12.

Plaintiffs’ allegations against the WVBOP stem from alleged negligence (failure of a duty) in the performance of certain statutory and/or regulatory duties pursuant to West Virginia Code of State Rules Section 15-8-7.8.<sup>45</sup> One of the main elements of a negligence action is the existence of a legal duty. The public duty doctrine is a defense based upon the absence of a duty owed to the specific party asserting the negligence claim. *Holsten v. Massey*, 200 W. Va. 775, 780 (1997).

Under the public duty doctrine, a “governmental entity is not liable because of its failure to enforce regulatory or penal statutes.” *Benson v. Kutsch*, 181 W. Va. 1, 2–3 (1989). Thus, a local governmental entity’s liability for certain functions “may not be predicated upon the breach of a general duty owed to the public as a whole; instead, only the breach of a duty owed to the particular person injured is actionable.” *Walker v. Meadows*, 206 W. Va. 78, 83 (1999). A “government entity can interpose the public duty doctrine as a defense when it perceives a plaintiff

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<sup>45</sup> Plaintiffs’ Complaints refer to “Section 115-8-7.8” of the West Virginia Code of State Rules, *See, e.g., Adkins Compl. – Trans. ID No. 68374292* ¶ 467; *A.N.C. Compl. – Trans. ID No. 68741817* ¶ 142, but the correct citation is Section 15-8-7.8, which addresses the West Virginia Board of Pharmacy and the Controlled Substances Monitoring Program.

is attempting to hold the entity liable for breach of a non-discretionary duty owed to the general public.” *W. Va. State Police v. Hughes*, 238 W. Va. 406, 413 (2017); *See also Parkulo v. W. Va. Bd. of Prob. & Parole*, 199 W. Va. 161, 172 (1996).

The only exception to the public duty doctrine is where a special relationship exists such that a state agency could be said to have assumed a specific duty to the individual plaintiff. *See Randall v. Fairmont City Police Dep’t*, 186 W. Va. 336, 347 (1999); Syl. Pt. 2, *Wolfe v. City of Wheeling*, 182 W. Va. 253 (1989). The complaints include no allegations that could establish this “special relationship exception” to the public duty doctrine. April 17 Order ¶ 12.<sup>46</sup> Thus, Plaintiffs’ claims against the WVBOP are barred by the public duty doctrine.

Plaintiffs’ claims against the WVBOP are also barred by qualified immunity. April 17 Order ¶ 12. “Under the doctrine of qualified immunity, the discretionary actions of government agencies, officials and employees performed in an official capacity are shielded from civil liability so long as the actions do not violate clearly established law or constitutional duty.” *Hughes*, 238 W. Va. at 411. The doctrine of qualified immunity shields “discretionary judgments and decisions” that do not violate a “clearly established law, statute, or regulation.” *W. Va. Bd. of Educ. v. Croaff*, No. 16-0532, 2017 WL 2172009, at 6–7 (W. Va. May 17, 2017). Qualified immunity therefore bars civil actions when “an objectively reasonable official, situated similarly to the defendant, could have believed that his conduct did not violate the plaintiff’s constitutional rights, in light of clearly established law and the information possessed by the defendant at the time of the allegedly wrongful conduct[.]” *Hutchison v. City of Huntington*, 198 W. Va. 139, 149

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<sup>46</sup> To the extent Plaintiffs contend that there is a malicious conduct exception to the public duty doctrine, this exception applies only to political subdivisions pursuant to West Virginia Code § 29-12A-1, *et seq.*, and not to WVBOP, a state agency.

(1996). Qualified immunity “is broad and protects all but the plainly incompetent or those who knowingly violate the law.” *Hughes*, 238 W. Va. at 411 (citation and quotation marks omitted).

Under these standards, Plaintiffs’ claims against the WVBOP are barred by qualified immunity. While Plaintiffs allege that the WVBOP “failed in its mandatory, regulatory duty” under West Virginia Code of State Rules Section 15-8-7.8 to review records in the Controlled Substances Monitoring Program (“CSMP”) and to issue reports on any abnormal patterns revealed by that review, Plaintiffs’ allegations offer no factual support for those conclusory assertions that the WVBOP violated its statutory and regulatory duties. The Court must not accept statements of legal conclusions without any factual support. *Hylton v. Bennett*, No. 12-0194, 2012 WL 5834621, at \*2 (W. Va. Nov. 16, 2012). In matters where qualified immunity is implicated, “the trial court must insist on heightened pleading by the plaintiff.” *Hutchison*, 198 W. Va. at 149. Here, the complaints contain nothing but conclusory allegations without any factual support. Such generalized, unsupported allegations of regulatory violations are insufficient to overcome qualified immunity, which “insulates the State and its agencies from liability based on vague or principled notions [of government responsibility].” *Crouch v. Gillispie*, 240 W. Va. 229, 238 (2018) (alteration in original) (quoting *W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 516 n.33 (2014)). “We are wary of allowing a party to overcome qualified immunity by cherry-picking a violation of any internal guideline irrespective of whether the alleged violation bears any causal relation to the ultimate injury.” *Id.* at 237.

Certain of the complaints include further allegations that the WVBOP failed to investigate “at least 7,200 reports of ‘suspicious orders’” and “did not conduct a single investigation or make



a single phone call in response.”<sup>47</sup> Yet even crediting those allegations as true, the judgments made by the WVBOP in deciding how to evaluate and respond to suspicious order reports are inherently “discretionary actions” that fall squarely within the scope of qualified immunity because they “do not violate a clearly established law.” *Hughes*, 238 W. Va. at 411. No regulation, statute, or other law requires or places a duty on the WVBOP to investigate or review reports of suspicious orders, and its decisions as to how to respond to such suspicious order reports are vested to its discretion. For this reason, any decisions made by the WVBOP to investigate (or not to investigate) suspicious order reports it receives are discretionary acts that “do not violate a clearly established law” and are subject to qualified immunity.

Furthermore, Plaintiffs’ allegations are barred by the doctrine of absolute immunity, which applies if the “cause of action arises from . . . administrative policy-making acts or omissions.” *W. Va. Reg’l Jail*, 234 W. Va. at 507. Even crediting Plaintiffs’ conclusory allegations that the WVBOP breached its regulatory duties to review records in the CSMP or to issue reports related to that review, these are clearly “administrative policy-making acts” that are subject to absolute immunity.

### **VIII. Grounds For Dismissal Not Reached**

In addition to the grounds discussed above, Defendants raised numerous additional grounds for dismissal, including, among others, that: (1) Plaintiffs’ claims based on a theory of failure to warn should be dismissed because the prescription opioid medications at issue were at all relevant times accompanied by warnings that the use of medications during pregnancy could cause NAS; (2) Plaintiffs’ claims are barred under the product-identification rule; (3) Plaintiffs’ claims are

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<sup>47</sup> See, e.g., *A.N.C. Compl. – Trans.* ID No. 68741817 ¶ 55; *A.D.A. Compl. – Trans.* ID No. 68754509 ¶ 48.

barred under the learned-intermediary doctrine; (4) Plaintiffs' claims are preempted; (5) Plaintiffs' claims are barred under the component-parts doctrine; (6) Plaintiffs' claims are barred as to certain Defendants under West Virginia's innocent seller statute, W. Va. Code § 55-7-31; (7) Plaintiffs' claims are barred as to the Pharmacy Defendants under the West Virginia Pharmacy Act, W. Va. Code § 30-5-21(a), and the Innocent Prescriber Act, W. Va. Code § 55-7-23; (8) Plaintiffs' fraud claims are barred for failure to plead fraud with particularity and to allege reliance; (9) Plaintiffs' civil conspiracy claims fail to plead the elements of civil conspiracy, including an agreement to commit tortious acts for a common purpose; (10) Plaintiffs cannot hold the manufacturer of a brand-name drug liable for harm allegedly caused by a generic equivalent drug; (11) Plaintiffs' product liability claim against McKinsey fails because it is neither a manufacturer nor seller of the products in question; (12) as to certain Defendants, Plaintiffs' claims fail for lack of personal jurisdiction; (13) Plaintiffs do not seek to vindicate a "common right" and cannot allege defendants unreasonably interfered with such a right; (14) Defendants were not the cause-in-fact of the alleged injuries; and (15) all of Plaintiffs' causes of action against McKinsey are barred by First Amendment protections..

Because the Court dismisses Plaintiffs' claims in full and with prejudice based on the other grounds discussed above, the Court need not, and does not, reach these additional asserted grounds for dismissal.

For the foregoing reasons, the Court hereby **GRANTS** the motions to dismiss and **ORDERS** that all the above-captioned complaints are hereby **DISMISSED** in their entirety as to

all Defendants with prejudice.<sup>48</sup> Plaintiffs' objections and exceptions are noted and preserved for the record.

The Court **FINDS** upon **EXPRESS DETERMINATION** that this is a final order available for the proper application of the appellate process pursuant to the Rules of Civil Procedure and the Rules of Appellate Procedure. Accordingly, this order is subject to immediate appellate review.

A copy of this Order has been electronically served this day on all counsel of record via File & ServeXpress.

It is so **ORDERED**.

**ENTERED:** May 31, 2023.

/s/ Alan D. Moats  
Lead Presiding Judge  
Opioid Litigation

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation

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<sup>48</sup> For the avoidance of doubt, the Court finds that the grounds for dismissal expressed in this Order apply equally to all Defendants in the captioned cases regardless of whether a Defendant filed a motion to dismiss in a certain case or filed a motion to dismiss on other grounds. Thus, pursuant to its authority under the doctrines of the law of the case, collateral estoppel, or *res judicata*, applicable either together or in the alternative, and consistent with its prior practice, the Court dismisses all claims against all Defendants in the captioned cases for the reasons contained in this Order. *See S.U. v. C.J.*, No. 19-1181, 2021 WL 365824, at \*3–4 (W. Va. Feb. 2, 2021) (recognizing the Court's precedent allowing *sua sponte* dismissal pursuant to *res judicata* to avoid judicial waste); *See also Medley v. Ames*, No. 21-0113, 2022 WL 856611, at \*4 (W. Va. Mar. 23, 2022) (unpublished) (affirming denial of a habeas petition where the "Petitioner's claims are . . . barred by the doctrines of the law of the case, collateral estoppel, and/or *res judicata*"); *See also In re: Opioid Litig.*, 19-C-9000, Ord. Regarding Rulings Issued During the Sept. 20, 2019 Status Conference, Trans. ID No. 64297517 (Kanawha Cnty. Cir. Ct. Oct. 9, 2019) (holding the Court will not revisit its rulings to the extent the parties file identical motions on the same issues already ruled upon by this Court).



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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
<b>21-C-110 MSH A.D.A. v. Johnson &amp; Johnson et al.</b>			
	Janssen 68750860	Plaintiff's Opposition 69268389	Reply 69319141
	Noramco 68720295	Plaintiff's Opposition 69268503	Reply 69319583
	WV Board of Pharmacy 68754853	Plaintiff's Opposition 68754853	Reply 68755628
	McKinsey 69015192	Plaintiff's Opposition 69268561	Reply 69317994
<b>22-C-05 MSH Travis Blankenship v. McKesson et al.</b>			
	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC and Actavis Pharma, Inc. 68736280	Plaintiff's Opposition 68908253	Reply 69244810
	Teva Pharmaceutical Industries Ltd. 69016421	Plaintiff's Opposition 69233333	Reply 69317720
	Janssen 68754685	Plaintiff's Opposition 68910264  Plaintiff's Combined Opposition 68816745	Reply 69073482
	Certain Manufacturers <sup>1</sup> 68770719  Memo of Law 68770757	Plaintiff's Combined Opposition 68816745	Reply 68994396

<sup>1</sup> This motion was filed on behalf of Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals Inc., f/k/a Janssen Pharmaceutica Inc.; and Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff’s Opposition to Motion to Dismiss	Reply Brief
	SK Capital Partners, LP and SK Capital Management, IV, LP (Combined) (22-C-05, 20, 29, 30, 31) 69022584	Plaintiff’s Opposition 69271804	Reply 69318161
	Noramco (Joinder in Certain Manufacturers’ and Janssen’s Motion) 68721220	Plaintiff’s Combined Opposition 68816745  Plaintiff’s Opposition - Noramco’s Joinder in Janssen’s Motion 68952365	Reply (Joinder to Certain Manufacturers) 68994563  Reply (Joinder to Janssen) 69076654
	Specially Appearing Defendants Aurobindo Pharma USA, Inc. and Aurolife Pharma LLC 68766877	Plaintiff’s Opposition 68887002	Reply 68989951
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68487875	Plaintiff’s Combined Opposition 68830762	Reply 68990870
	Anda, Inc. (Joinder to Distributors’ Motion) 68740193	Plaintiff’s Combined Opposition 68830762	Reply 68993765
	Joinder of H.D. Smith Holdings, LLC, H.D. Smith Holding Co. (Joinder to Distributors’ Motion) 68725636	Plaintiff’s Combined Opposition 68830762  Plaintiff’s Combined Opposition 68816745	Reply 68993782
	Pharmacy Defendants <sup>2</sup> 68509255	Plaintiff’s Opposition 69268689	Omnibus Reply 69319298

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<sup>2</sup> The term “Pharmacy Defendants” as used in this Appendix includes one or more of the following defendants named in one or more complaints: Walmart Inc., The Kroger Co., Walgreens Boots Alliance, Walgreens Eastern Co., Walgreens Co. (“Walgreens”); CVS

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	Peterstown Pharmacy’s (Joinder) 69261588	Plaintiff’s Opposition 69268689	Reply 69319615
	WV Board of Pharmacy 69313553	Plaintiff’s Opposition 69268583	Reply 69313553
<b>22-C-20 MSH <i>Scott Otwell v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69060936	Plaintiff’s Opposition 69231697	Reply 69310795
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs’ Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-20 through 22-C-36) 69042963	Plaintiffs’ Combined Opposition (22-C-20 through 22-C-36) 69250667	Reply (Combined) (22-C-20 through 22-C-36) 69319871
	SK Capital Partners, LP and SK Capital Management, IV, LP (Combined) (22-C-05, 20, 29, 30, 31) 69022584	Plaintiffs’ Combined Opposition (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69271804	Reply (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69318161
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522048	Plaintiff’s Combined Opposition to Motion and Joinders 68830762	Reply 68990870
	Anda, Inc. (Joinder to Distributors’ Motion) 69029634	Plaintiff’s Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-20 through 22-C-36) 69319130

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Pharmacy Inc., CVS Indiana, L.L.C., CVS Rx Services, Inc., CVS TN Distribution, L.L.C., West Virginia CVS Pharmacy, L.L.C. (“CVS”); Rite Aid of West Virginia, Inc., Rite Aid of Maryland, Inc. (“Rite Aid”).

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	H.D. Smith (Joinder to Distributors' Motion) 68725633	Plaintiff's Combined Opposition 68830762	Reply 68993782
	Bypass Pharmacy 69178865	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Local Pharmacy Defendants (Joinder in Omnibus Reply of Pharmacy Defendants) 69334056
	WV Board of Pharmacy 69167003	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-21 MSH <i>Tammy Boswell v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. and KVK-Tech, Inc. 69063235	Plaintiff's Opposition 69230202	Reply 69310971
	Janssen (Combined) (22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Reply (Combined) (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521175	Plaintiff's Combined Opposition 68830762	Reply 68990870

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Anda, Inc. (Joinder to Distributors' Motion) (22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder to Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiff's Combined Opposition 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Pharmacy Defendants 69179082	Plaintiff's Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69319023
	Hickman Pharmacy 69179910	Plaintiff's Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Local Pharmacy Defendants (Joinder in Omnibus Reply of Pharmacy Defendants) 69334056
	WV Board of Pharmacy 69166028	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined - 22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiff's Combined Opposition (22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-22 MSH <i>Timothy Lambert v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69061158	Plaintiff's Opposition 69231947	Reply 69310022



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	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-2- through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	Indivior 69030010	Plaintiffs' Combined Opposition (22-C-22, 24, 25, 26, 32) 69270250	Combined Reply (22-C-22, 24, 25, 26, 32) 69319351
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521450	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiffs' Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder to Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68993782
	Pharmacy Defendants 69176535	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69320678
	Riverside Pharmacy 68518595	Plaintiffs' Combined Opposition 69268364	Reply 69318849

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	WV Board of Pharmacy 69166730	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-23 MSH <i>Kelly Mangus v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, Actavis Pharma, Inc. and Hikma Pharmaceuticals USA, Inc. 69069661	Plaintiff's Opposition 69230648	Reply 69311227
	Janssen (Combined - 22-C-20 through 22-C- 36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-20 through 22-C- 36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522576	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C- 36) 68993782

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Rite Aid Defendants 69178370 (filed 2/17/2023)	-	-
	Bypass Pharmacy 69179022	Plaintiffs' Omnibus Opposition to Pharmacy Defendants 69272405	Omnibus Reply of Local Pharmacy Defendants 69320788
	WV Board of Pharmacy 69166793	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-24 MSH <i>Stacey Harris v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. and Hikma Pharmaceuticals USA, Inc. 69069870	Plaintiff's Opposition 69230500	Reply 69311092
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Reply (22-C-20 through 22-C-36) 69319871
	Indivior 69029562  Memo of Law 69029909	Plaintiffs' Combined Opposition (22-C-22, 24, 25, 26, 32) 69270250	Combined Reply (22-C-22, 24, 25, 26, 32) 69319351
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521310	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Anda, Inc. (Joinder to Distributors' Motions) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) to Anda's Joinder 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith's Joinder 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Pharmacy Defendants 69178590	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply of Local Pharmacy Defendants 69320788
	WV Board of Pharmacy 69166583	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-25 MSH <i>Cynthia Woolwine v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc. 69063460	Plaintiff's Opposition 69232453	Reply 69311361
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Indivior 69030592	Plaintiffs' Combined Opposition (22-C-22, 24, 25, 26, 32) 69270250	Combined Reply (22-C-22, 24, 25, 26, 32) 69319351
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522570	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	The Kroger Co. 69178721	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69319911
	Westside Pharmacy, Inc. 69709407	-	Westside Pharmacy, Inc. (Joinder in Omnibus Reply of Pharmacy Defendants) 69320115
	WV Board of Pharmacy 69167769	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-26 MSH <i>Angela Whited v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69061438	Plaintiff's Opposition 69231583	Reply 69310686

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Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	Indivior 69030310	Plaintiffs' Combined Opposition (22-C-22, 24, 25, 26, 32) 69270250	Combined Reply (22-C-22, 24, 25, 26, 32) 69319351
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522546	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Pharmacy Defendants 69178747	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69318992

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	Black Diamond Pharmacy, LLC (Joinder) 69239873	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Local Pharmacy Defendants' (Joinder in Omnibus Reply of Pharmacy Defendants) 69334056
	Riverside Pharmacy, Inc. 68518893	Plaintiff's Combined Opposition 69268364	Reply 69318723
	Four Seasons Pharmacy, Inc. 68975832	Plaintiff's Combined Opposition 69680454	Reply 69319373
	WV Board of Pharmacy 69167698	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-27 MSH <i>Floretta Adkins v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69054568	Plaintiff's Opposition 69233691	Reply 69308705
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68506441	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811 Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130

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	H.D. Smith (Joinder in Distributors' Motion) (22-C-5, 22-C-20 through 22-C-36) 68993782	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	CVS 69178579	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69319065
	WV Board of Pharmacy 69165793	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined) (22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiffs' Opposition (Combined - 22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (Combined - 22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-28 MSH <i>Dianna Brooks v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69054698	Plaintiff's Opposition 69232630	Reply 69308972
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined - 22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521222	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870



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	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Rite Aid Defendants 69177414	-	-
	Four Seasons Pharmacy, Inc. 68976244 Memo of Law 68976454	Plaintiffs Combined Opposition 69680454	Joinder in Omnibus Reply 69322177
	Bypass Pharmacy 69179811	Plaintiffs Omnibus Opposition 69272405	Reply of Local Pharmacies – (Joinder in Pharmacy Defendants' Reply) 69334056
	WV Board of Pharmacy 69166197	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined - 22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiffs' Opposition (Combined - 22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (Combined - 22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-29 MSH <i>Jacqueline Adams v. McKesson et al.</i></b>			

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	Teva Pharmaceuticals USA, Inc. 69054798	Plaintiff's Opposition 69233103	Reply USA, Inc. 69309133
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	SK Capital Partners, LP and SK Capital Management, IV, LP (Combined) (22-C-05, 20, 29, 30, 31) 69022584	Plaintiffs' Combined Opposition (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69271804	Reply (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69318161
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68506091	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782

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	Bypass Pharmacy 69179802	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Reply of Local Pharmacies – (Joinder in Pharmacy Defendants' Reply) 69334056
	WV Board of Pharmacy 69165652	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined) (22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiffs' Opposition (Combined) (22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (Combined) (22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-30 MSH <i>Stacey Anderson v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC and Actavis Pharma, Inc., Hikma Pharmaceuticals USA, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, KVK-Tech, Inc., Sun Pharmaceutical Industries, Inc. 69070062	Plaintiff's Opposition 69230388	Reply 69311554
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	Sun Pharmaceutical Industries, Inc. 69029242	Plaintiff's Opposition 69231875	Reply 69318174

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	SK Capital Partners, LP and SK Capital Management, IV, LP (Combined) (22-C-05, 20, 29, 30, 31) 69022584	Plaintiffs' Combined Opposition (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69271804	Reply (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69318161
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68506501	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion) (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Pharmacy Defendants 69178049	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69319597
	WV Board of Pharmacy 69165916	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-31 MSH <i>Thomas Paynter v. McKesson et al.</i></b>			

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	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC and Actavis Pharma, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, Sun Pharmaceutical Industries, Inc., Ranbaxy Laboratories, Inc., Ranbaxy USA, Inc. 69070755	Plaintiff's Opposition 69230763	Reply 69309516
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	Sun Pharmaceutical Industries, Inc., Ranbaxy Laboratories, Inc. and Ranbaxy USA, Inc. 69028798	Plaintiff's Opposition 69233835	Reply 69317258
	SK Capital Partners, LP and SK Capital Management, IV, LP (Combined) (22-C-05, 20, 29, 30, 31) 69022584	Plaintiffs' Combined Opposition (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69271804	Reply (22-C-5, 22-C-20, 22-C-29, 22-C-30, 22-C-31) 69318161
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522080	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870

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	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Pharmacy Defendants 69178384	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply (22-C-5, 22-C-31) 69319298 Refile 69320106
	Bluewells Family Pharmacy, Inc. and Black Diamond Pharmacy, LLC 69178382	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Reply (Joinder) 69334056
	WV Board of Pharmacy 69167079	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-32 MSH <i>Patricia Fuller v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69054903	Plaintiff's Opposition 69232558	Reply 69309268
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001

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	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	Indivior 69029783	Plaintiffs' Combined Opposition (22-C-22, 24, 25, 26, 32) 69270250	Combined Reply (22-C-22, 24, 25, 26, 32) 69319351
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521279	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Bypass Pharmacy, Inc, Crab Orchard Pharmacy, Inc., Beckley Pharmacy, Inc. 69178497	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply of Local Pharmacy Defendants 69320788 Reply (Joinder) 69334056
	WV Board of Pharmacy 69166478	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-33 MSH Donna Johnson v. McKesson et al.</b>			

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	Teva Pharmaceuticals USA, Inc. 69055076	Plaintiff's Opposition 69232186	Reply 69310278
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68521371	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Rite Aid Defendants 69178113	-	-



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	Black Diamond Pharmacy, LLC (Joinder) 69240248  Black Diamond Pharmacy, LLC, Citizens Drug Store, and Welch Pharmacy, Inc. 69178613	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Reply (Joinder-Local Pharmacies) 69334056
	WV Board of Pharmacy 69166306	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined – 22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiff's Opposition (Combined - 22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-34 MSH <i>Brandy Swift v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69062071	Plaintiff's Opposition 69231258	Reply 69311624
	Janssen (Combined) 22-C-20 through 22-C-36 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522224	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870

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	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Rite Aid Defendants 69178702	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Omnibus Reply 69320788
	WV Board of Pharmacy 69167590	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-35 MSH Stacy Stacey v. McKesson et al.</b>			
	Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC and Actavis Pharma, Inc. 69064119	Plaintiff's Opposition 69230949	Reply 69311826
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001
	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871

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	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68522138	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811  Plaintiff's Combined Opposition 68830762	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Rite Aid Defendants 69177841	-	-
	Riverside Pharmacy 68518832	Plaintiffs' Opposition (Combined) 69268364	Reply 69318807
	WV Board of Pharmacy 69167522	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
<b>22-C-36 MSH <i>Roger Johnson v. McKesson et al.</i></b>			
	Teva Pharmaceuticals USA, Inc. 69055198	Plaintiff's Opposition 69233142	Reply 69309775
	Janssen (Combined - 22-C-20 through 22-C-36) 69040610	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250810	Reply (22-C-20 through 22-C-36) 69319001

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	Noramco (Combined) (22-C-20 through 22-C-36) 69042963	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69250667	Combined Reply (22-C-20 through 22-C-36) 69319871
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 68628511	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply 68990870
	Anda, Inc. (Joinder in Distributors' Motion (Combined - 22-C-20 through 22-C-36) 69029634	Plaintiffs' Combined Opposition to Anda's Joinder (22-C-20 through 22-C-36) 69233811	Reply (22-C-20 through 22-C-36) 69319130
	H.D. Smith (Joinder in Distributors' Motion) (22-C-20 through 22-C-36) 68725633	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 68830762	Reply (22-C-5, 22-C-20 through 22-C-36) 68993782
	Western Greenbrier Pharmacy 69179451	Plaintiffs' Omnibus Opposition to Pharmacy Defendants (22-C-20 through 22-C-36) 69272405	Reply (Local Pharmacies' Joinder) 69334056
	WV Board of Pharmacy 69167306	Plaintiffs' Combined Opposition (22-C-20 through 22-C-36) 69268858	Reply 69313689
	McKinsey (Combined – 22-C-21, 27, 28, 29, 33, 36) 69172935	Plaintiff's Opposition (Combined - 22-C-21, 27, 28, 29, 33, 36) 69271055	Reply (22-C-21, 27, 28, 29, 33, 36) 69317657
<b>22-C-73 MSH A.N.C. v. Johnson &amp; Johnson et al.</b>			
	Teva Pharmaceuticals USA, Inc. 69015289	Plaintiff's Opposition 69269551	Reply 69316972

## APPENDIX A

Docket No. & Case Caption	Motion to Dismiss – Moving Part(ies) and Transaction ID No.	Plaintiff's Opposition to Motion to Dismiss	Reply Brief
	Janssen 69018260	Plaintiff's Opposition 69268708	Combined Reply (21-C-110 and 22-C-73) 69319141
	Noramco 69018737	Plaintiff's Opposition 69268850	Reply 69319625
	AbbVie Inc. 69016128	Plaintiff's Opposition 69269319	Reply 69320090
	AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. 69017485	Plaintiff's Opposition 69269496	Reply 69318144
	Anda, Inc. (Joinder in Distributors' Motion) 69022525	Plaintiff's Opposition 69268758	Reply 69318764
	H.D. Smith (Joinder in Distributors' Motion) 69016202	Plaintiff's Opposition 69269527	Reply 69320153
	McKinsey 69014660	Plaintiff's Opposition 69268918	Reply 69317912