

BOONE COUNTY
WEST VIRGINIA
SUE ANN ZICKEFOOSE

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**AMERISOURCEBERGEN DRUG
CORPORATION,**

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Plaintiff,

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v.

Civil Action No. 17-C-36

**ACE AMERICAN INSURANCE
COMPANY, ACE PROPERTY AND
CASUALTY INSURANCE COMPANY,
AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY, ENDURANCE
AMERICAN INSURANCE COMPANY
and ST. PAUL FIRE & MARINE
INSURANCE COMPANY,**

Defendants.

**COMPLAINT FOR
(1) DECLARATORY JUDGMENT AND
(2) BREACH OF CONTRACT**

Plaintiff AmerisourceBergen Drug Corporation ("ABDC"), by its undersigned counsel, brings this action against Defendants ACE American Insurance Company ("ACE American"), ACE Property and Casualty Insurance Company ("ACE Property & Casualty"), American Guarantee & Liability Insurance Company ("American Guarantee"), Endurance American Insurance Company ("Endurance") and St. Paul Fire & Marine Insurance Company ("St. Paul") (collectively, the "Defendants"), and in support thereof, alleges as follows:

THE NATURE OF THE ACTION

1. This is an action for (a) declaratory judgment brought pursuant to Rule 57 of the West Virginia Rules of Civil Procedure and the West Virginia Uniform Declaratory Judgments Act, W. Va. Code §§ 55-13-1, *et seq.*, to require the Defendant insurance companies to pay for the past, present and future defense costs and liability in connection with prescription opioid

lawsuits filed against Plaintiff in this state, and (b) damages for breach of contract and other relief.

2. ABDC asks the Court to construe the meaning of and enforce certain standard form primary, umbrella and excess comprehensive general liability insurance policies issued by Defendants to AmerisourceBergen Corporation¹ from 2006-2013 identified in the attached Exhibit A (the "Insurance Policies").

3. ABDC seeks a declaration that the terms of Defendants' Insurance Policies obligate the Defendants to pay the cost of investigating and defending the prescription opioid lawsuits and to pay all sums that ABDC has or may become legally obligated to pay with respect to such lawsuits.

4. ABDC also seeks monetary damages for the Defendants' breaches of their duties to defend and to indemnify ABDC, and further seeks any additional relief the Court deems appropriate.

PARTIES
Plaintiff

5. ABDC is incorporated under the laws of Delaware with its principal place of business located in Chesterbrook, Pennsylvania. ABDC distributes prescription medication, over-the-counter pharmaceutical products, and a wide range of health and beauty supplies to its customers (pharmacies, hospitals, and health care providers) across the United States, including in West Virginia.

¹ AmerisourceBergen Corporation ("ABC") is the parent corporation of ABDC and is identified as the Named Insured on the Insurance Policies at issue in this insurance coverage dispute. ABDC is also insured under the terms of the Insurance Policies.

The Defendants

6. ACE American is incorporated under the laws of Pennsylvania with its principal place of business located in Philadelphia, Pennsylvania. ACE American is licensed and/or registered to conduct insurance business in West Virginia.

7. ACE Property & Casualty is incorporated under the laws of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. ACE Property & Casualty is licensed and/or registered to conduct insurance business in West Virginia.

8. American Guarantee is incorporated under the laws of New York with its principal place of business in Schaumburg, Illinois. American Guarantee is licensed and/or registered to conduct insurance business in West Virginia.

9. Endurance is incorporated under the laws of Delaware with its principal place of business in Purchase, New York. Endurance is licensed and/or registered to conduct insurance business in West Virginia.

10. St. Paul is incorporated under the laws of Connecticut with its principal place of business in Hartford, Connecticut. St. Paul is licensed and/or registered to conduct insurance business in West Virginia.

JURISDICTION & VENUE

11. This Court has jurisdiction over this suit pursuant to W. Va. Code § 56-3-3, as the Defendants are licensed and/or registered to conduct insurance business in West Virginia and have otherwise purposefully subjected and availed themselves of and to the jurisdiction of this Court by transacting business in West Virginia.

12. This Court also has jurisdiction pursuant to the West Virginia Uniform Declaratory Judgments Act, W. Va. Code § 55-13-1, *et seq.*

13. Venue is proper before this Court pursuant to W. Va. Code § 56-1-1, as this is an action concerning insurance policies and a substantial portion of the events giving rise to this Complaint occurred in this County.

14. An actual controversy exists between ABDC and the Defendants relating to their respective rights and obligations under the Insurance Policies. A declaratory judgment is necessary to determine the rights and obligations of ABDC and the Defendants under the Insurance Policies because the Defendants have disputed coverage for the prescription opioid lawsuits, including what, if any, policy period is triggered by the underlying lawsuits. ABDC's breach of contract claim is ripe because the Defendants failed to indemnify ABDC for past and continuing defense costs for the prescription opioid lawsuits, and for the settlement of *State of West Virginia, et al. v. AmerisourceBergen Drug Corporation, et al.*, No. 12-C-141 (Boone County, Circuit Court of West Virginia).

FACTS
The WVAG Lawsuit

15. On or about February 1, 2012, the State of West Virginia appointed Special Assistant Attorney Generals to initiate and maintain a lawsuit against pharmaceutical distributors who allegedly oversupplied prescription opioids to pharmaceutical customers in West Virginia, purportedly causing the state to incur damages in providing medical care, treatment, and services to addicted West Virginia citizens.

16. On June 26, 2012, the State of West Virginia, through its Attorney General, filed a complaint against ABDC and other pharmaceutical distributors in an action styled *State of West Virginia v. AmerisourceBergen Drug Corporation, et al.*, No. 12-C-141 (Circuit Court of Boone County, West Virginia) (the "WVAG Lawsuit").

17. On January 2, 2014, the State of West Virginia filed an amended complaint in the WVAG Lawsuit, adding two state agencies as Plaintiffs – the West Virginia Department of Military Affairs and Public Safety and the West Virginia Department of Health & Human Resources (all Plaintiffs in the WVAG Lawsuit shall be referred to collectively as the “State of West Virginia”).

18. On January 13, 2015, the State of West Virginia filed under seal a Second Amended Complaint, the operative pleading in the WVAG Lawsuit (the “Second Amended Complaint”). The Second Amended Complaint was redacted to remove highly confidential information. A true and correct copy of the redacted Second Amended Complaint served on ABDC is attached hereto as Exhibit B.

19. On or about July 27, 2016, ABC and ABDC, acting through their insurance brokers at Marsh Risk and Insurance Services, provided written notice of the WVAG Lawsuit to each Defendant and sought coverage under the commercial general liability Insurance Policies that the Defendants issued to ABC during the relevant time period. Those Insurance Policies provide coverage to ABDC for the defense and/or indemnity of the prescription opioid lawsuits.

20. In the Second Amended Complaint, the State of West Virginia alleged that ABDC and its co-defendants negligently distributed and oversupplied prescription opioids to West Virginia pharmacies, thereby “sourcing drugs ultimately used by drug abusers.” Exhibit B at ¶ 8. This alleged conduct purportedly resulted in harm to citizens of West Virginia and the State of West Virginia, which provides medical care, treatment, and services to those of its drug addicted citizens who are unable to afford or obtain healthcare and related services.

21. Specifically, the Second Amended Complaint asserted, *inter alia*, that:

- “The Defendants’ negligent acts and omissions in violation of West Virginia’s drug laws have lead (sic) to the dispensing of controlled substances for non-

legitimate medical purposes of epidemic proportions, including the operation of bogus pain clinics that do little more than provide prescriptions for addictive controlled substances, thereby creating and continuing addictions to prescription medications.” Exhibit B at ¶ 30.

- West Virginians suffer from “unwarranted injuries, addictions, diseases and sicknesses” and “other adverse consequences from the use of the addictive prescription drugs distributed by Defendants” Exhibit B at ¶ 44.
- “Defendants and their agents have caused the State to incur excessive costs related to diagnosis, treatment and cure of addiction or the risk of addiction to such controlled substances, thus the State has borne the massive costs of these illnesses and conditions by having to provide necessary medical care, facilities and services for treatment of citizens of West Virginia who are unable to afford or otherwise obtain such necessary medical care, facilities and services.” Exhibit B at ¶ 57.
- “Because of prescription drug abuse the State of West Virginia expends additionally hundreds of millions of dollars annually on . . . healthcare and medical services and drug abuse education.” Exhibit B at ¶ 65.
- “The State of West Virginia remains responsible for costs of prescriptions, health care and other medically-related costs, rehabilitation and work-related programs, workers’ compensation, [and] public insurance..., which costs have substantially increased as the result of the Defendants’ acts and omissions herein complained of and will in the future continue to increase unless the Defendants’ conduct is abated. Exhibit B at ¶ 66.

22. ABDC denied all liability and vigorously defended itself in the WVAG Lawsuit.

23. ABDC risked liability for considerable damages in the WVAG Lawsuit, as well as for continuing defense costs because ABDC funded its own defense. Plaintiffs’ experts opined that Plaintiffs’ damages ranged from approximately \$2.2-\$2.5 billion.

24. ABDC provided the Defendants with status reports regarding the WVAG Lawsuit, settlement negotiations, and the mediation that the Court ordered to take place on December 1, 2016. None of the Defendants acknowledged their coverage obligation.

25. On or about December 1, 2016, ABDC and the State of West Virginia reached an agreement in principle during mediation on the material terms of a settlement to resolve the WVAG Lawsuit.

26. ABDC sought the Defendants' consent to settle. The Defendants generally agreed only that ABDC could take reasonable action to protect its interests.

27. ABDC and all Plaintiffs in the WVAG Lawsuit executed a Settlement Agreement and Release dated and effective as of January 9, 2017. The Settlement Agreement and Release expressly stated that "ABDC does not admit anything by this Agreement or waive any defenses to the State's claims, but rather expressly denies the allegations in the Litigation."

28. In a January 9, 2017 joint press release, West Virginia Governor Earl Ray Tomblin and the West Virginia Attorney General's Office publicly announced that the money from the settlement "will be used to support drug abuse prevention and treatment," including "long-term recovery options[.]"

29. The parties agreed in the Settlement Agreement and Release that no portion of the settlement payment would be allocated or attributed to, or characterized as, the payment of fines, penalties, punitive damages or forfeitures.

30. On February 6, 2017, ABDC paid \$16 million to the State of West Virginia pursuant to the terms of the Settlement Agreement and Release.

31. ABDC's settlement was reasonable in light of all facts and circumstances and was entered into in good faith.

The County and City Lawsuits

32. On December 23, 2016, McDowell County, West Virginia filed a complaint against ABDC, two other pharmaceutical distributors, and a physician, in an action styled

McDowell County v. McKesson Corporation, et al., No. 16-C-137-M (Circuit Court of McDowell County, West Virginia) (subsequently removed to federal court, and now pending before the United States District Court for the Southern District of West Virginia at Civil Action No. 1:17-cv-00946) (the “McDowell County Lawsuit”). A true and correct copy of the Complaint filed in the McDowell County Lawsuit is attached hereto as Exhibit C.

33. On January 19, 2017, the City of Huntington, West Virginia filed a complaint against ABDC, two other pharmaceutical distributors, and a physician, in an action styled *The City of Huntington v. AmerisourceBergen Drug Corporation, et al.*, No. 17-C-38 (Circuit Court of Cabell County, West Virginia) (the “City of Huntington Lawsuit”). A true and correct copy of the Complaint filed in the City of Huntington Lawsuit is attached hereto as Exhibit D.

34. On January 31, 2017, the Town of Kermit filed a complaint against ABDC, four other pharmaceutical distributors, and the operator of a medical clinic, in an action styled *Mayor Charles Sparks, on behalf of the Town of Kermit v. McKesson Corporation, et al.*, No. 17-C-13 (Circuit Court of Mingo County, West Virginia) (the “Town of Kermit Lawsuit”). A true and correct copy of the Complaint filed in the Town of Kermit Lawsuit is attached hereto as Exhibit E.

35. On February 13, 2017, the City of Welch filed a complaint against ABDC, four other pharmaceutical distributors, and a physician, in an action styled *Mayor Reba Honaker, on behalf of the City of Welch v. McKesson Corporation, et al.*, No. 17-C-18 (Circuit Court of McDowell County, West Virginia) (the “City of Welch Lawsuit”) (together with the McDowell County Lawsuit, the City of Huntington Lawsuit and the Town of Kermit Lawsuit, the “County and City Lawsuits”). A true and correct copy of the Complaint filed in the City of Welch Lawsuit is attached hereto as Exhibit F.

36. Additional counties, towns and/or cities in West Virginia have publicly announced that they intend to file prescription opioid lawsuits against ABDC. ABDC reserves the right to include additional lawsuits in this civil action.

37. The WVAG Lawsuit and the County and City Lawsuits shall be referred to collectively as the "Prescription Opioid Lawsuits."

38. ABDC provided written notice of the County and City Lawsuits to each Defendant and sought coverage under the Insurance Policies.

39. Plaintiffs in the County and City Lawsuits allege, *inter alia*, that ABDC and the other pharmaceutical defendants negligently distributed prescription opioids, purportedly resulting in bodily injury, death and/or property damage. *See, e.g.*, Exhibit C at ¶¶ 3-4, Exhibit D at ¶¶ 13, 120-127, Exhibit E at ¶ 4, and Exhibit F at ¶¶ 4, 5.

40. McDowell County and the Town of Kermit claim that the actions of ABDC and the other Defendants have caused the county "substantial damages, including but not limited to, increased expenses of drug treatment programs, medical care and hospitalizations, emergency medical transportation, costs of law enforcement response and investigations, costs of prosecutions and incarcerations, and costs of repair for property damage." Exhibits C and E at ¶ 4.

41. Similarly, the City of Huntington alleges that the actions of ABDC and the other Defendants have caused it "substantial damages, including, but not limited to, increased expenses of drug abuse treatment program (sic), prevention and training costs (for law enforcement, hospitals and schools), costs of the drug Naloxone as well as education, training and use, youth development community programs, medical care and hospitalizations, increased

costs of law enforcement, increased costs of prosecutions and most significantly, increased costs of incarcerations.” Exhibit D at ¶ 13.

42. Likewise, the City of Welch argues that the actions of ABDC and the other Defendants have “caused harm to the public health of Welch residents in the form of addiction, overdose and death[,]” “destruction of public property[,]” and “increases in crime in Welch” which “have caused and will continue to cause Welch to expend substantial sums of public funds...” Exhibit F at ¶¶ 4-6, 9.

43. ABDC denies all liability in connection with the County and City Lawsuits and continues to vigorously defend itself in all of these lawsuits.

ABDC’s Insurance Coverage and the Defendants’ Failure to Provide Coverage

44. ABC paid substantial premiums to purchase the Insurance Policies listed in Exhibit A, and has complied with all applicable conditions precedent under those contracts.

45. ABDC tendered its claim for defense and indemnity of the Prescription Opioid Lawsuits under the Insurance Policies.

46. ABDC reasonably expected that the Insurance Policies would provide coverage for lawsuits such as the Prescription Opioid Lawsuits.

47. The Insurance Policies contain a duty to defend and/or an obligation to pay ABDC’s defense costs.

48. The Insurance Policies also require the Defendants to pay those amounts ABDC is legally obligated or required to pay as damages “because of” or “for” “bodily injury” or “property damage” caused by an “occurrence” or an “event” that takes place during the policy period.

49. The Insurance Policies define “occurrence” or “event” to mean “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

50. Each of the Prescription Opioid Lawsuits alleges an “occurrence” or “event.” *See, e.g.*, Exhibit B at ¶¶ 3, 8, 29, 50; Exhibit C at ¶¶ 4, 118; Exhibit D at ¶ 111; Exhibit E at ¶¶ 4, 85; Exhibit F at ¶¶ 5, 102.

51. The Insurance Policies define “bodily injury” to include physical harm or injury, sickness or disease, including death resulting from any of these at any time.

52. Addiction to, or dependence on, prescription drugs is a “sickness” or “disease” and can lead to death.

53. The Prescription Opioid Lawsuits allege direct physical harm or death to West Virginia citizens as a result of ABDC’s purported negligence. *See, e.g.*, Exhibit B at ¶¶ 6(b), 6(d), 44; Exhibit C at ¶ 118; Exhibit D at ¶ 111; Exhibit E at ¶ 85; Exhibit F at ¶ 4. Such allegations fall within the Insurance Policies’ definition of “bodily injury.”

54. The Insurance Policies cover damages for “care, loss of services or death” resulting from “bodily injury.”

55. The State of West Virginia, McDowell County, the City of Huntington, the Town of Kermit and the City of Welch all seek or sought to recover as monetary damages the amounts that they allegedly paid to provide medical care and services to West Virginia citizens who experienced the physical effects of prescription drug abuse or dependence. *See, e.g.*, Exhibit B at ¶¶ 6(d), 51, 57, 65, 66; Exhibits C and E at ¶ 4; Exhibit D at ¶ 13; Exhibit F at ¶ 7.

56. The Insurance Policies define “property damage” to include physical damage or injury to tangible property, including all resulting loss of use of that property.

57. McDowell County, the Town of Kermit and the City of Welch allege that they have each expended monies to repair physical damage to public property, including harm “in the form of litter, clogged water and sewage lines” necessitating clean-up and repair. *See, e.g.*,

Exhibit C at ¶ 4; Exhibit E at ¶ 4; Exhibit F at ¶ 5. Such allegations fall within the Insurance Policies' definition of "property damage."

58. Despite ABDC's demonstration that the Prescription Opioid Lawsuits are clearly covered by the Insurance Policies, and despite the fact that the Defendants cannot demonstrate that any exclusion or bar to coverage applies, none of the Defendants has acknowledged any obligation to provide coverage for the defense and settlement of the WVAG Lawsuit or reimbursed ABDC for any amounts expended to date for the defense of the County and City Lawsuits.

59. Further, the Defendants dispute which, if any, of the Insurance Policies provide coverage for the Prescription Opioid Lawsuits.

60. The settlement and defense costs ABDC has paid in connection with the WVAG Lawsuit, and the defense costs paid to date in the County and City Lawsuits, exceed ABDC's "retained limit" under the Insurance Policies and trigger the Defendants' coverage obligations.

COUNT I **Declaratory Judgment**

61. ABDC incorporates by reference Paragraphs 1 through 60 hereof, as though the same were set forth in their entirety.

62. Each of the Defendants has refused to acknowledge, failed to honor, or disputed, its obligations under the Insurance Policies to provide coverage for the defense and investigation costs and expenses ABDC paid and continues to pay in connection with the Prescription Opioid Lawsuits, and for the settlement payment that ABDC paid in connection with the WVAG Lawsuit.

63. The Defendants dispute which, if any, of the insurance programs that ABDC maintained from May 1, 2006 through May 1, 2013 provide coverage for the defense and investigation of, and any liability in, the Prescription Opioid Lawsuits.

64. The Insurance Policies are valid and enforceable insurance contracts for which all premiums have been paid. Further, ABDC has complied with all material terms, provisions and conditions precedent of the Insurance Policies, except any that have been waived or excused.

65. ABDC has the right, as a policyholder, to designate the Insurance Policies and policy years pursuant to which the Defendants are obligated to defend and/or indemnify it in the Prescription Opioid Lawsuits.

66. It is necessary and proper for the Court to declare the rights and obligations of ABDC and each of the Defendants under the Insurance Policies, and declaratory relief from this Court will resolve this actual and justiciable controversy regarding the obligation of each Defendant to defend and/or indemnify ABDC.

WHEREFORE, ABDC respectfully requests that judgment be entered in its favor and against each of the Defendants with respect to Count I hereof and that, pursuant to W. Va. Code § 55-13-1 *et seq.*, this Court declare that, pursuant to the terms of the Insurance Policies: (i) each Defendant is obligated to defend, and/or pay the defense and investigation costs of, ABDC for the defense and investigation of the Prescription Opioid Lawsuits (including any additional prescription opioid lawsuits that may be included in this civil action), up to the applicable limits of liability of each of the Insurance Policies; (ii) each Defendant is obligated to pay all damages ABDC incurs in connection with the Prescription Opioid Lawsuits (including any additional prescription opioid lawsuits that may be included in this civil action), including the settlement of the WVAG Lawsuit, up to the applicable limits of liability of each of the Insurance Policies; and

(iii) ABDC has the right to designate the policy or policies, and policy year(s), that shall be called upon to pay such defense costs and damages. ABDC also asks that this Court award ABDC all of its fees, costs and expenses, and other disbursements in this civil action, and all other relief the Court deems just and proper.

COUNT II
Breach of Contract

67. ABDC incorporates by reference Paragraphs 1 through 66 hereof, as though the same were set forth in their entirety.

68. The Insurance Policies provide coverage for ABDC's defense and investigation costs and expenses, and any and all damages paid, in connection with the Prescription Opioid Lawsuits.

69. Any and all conditions precedent to the Defendants' duty to defend and/or indemnify ABDC in connection with the Prescription Opioid Lawsuits have been performed, satisfied, waived, excused, or Defendants are estopped from asserting them.

70. The Defendants have materially breached the terms of the Insurance Policies, as Defendants have failed, or will refuse, to defend and indemnify ABDC in connection with the Prescription Opioid Lawsuits.

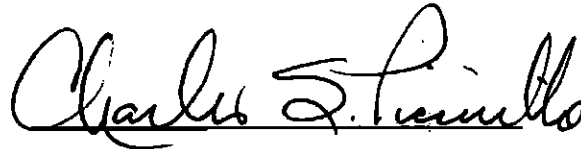
WHEREFORE, ABDC respectfully requests that judgment be entered in its favor and against the Defendants with respect to Count II hereof, in an amount as yet to be determined, as necessary to fully compensate ABDC for the Defendants' material breach of the Insurance Policies, including:

- a. All defense and investigation costs and expenses, and damages and payments, including the WVAG Lawsuit settlement, incurred or to be incurred in connection with the Prescription Opioid Lawsuits (including any additional prescription opioid lawsuits that may be included in this civil action);
- b. All other sums incurred or to be incurred by ABDC;

- c. Attorneys' fees, costs and expenses, and other disbursements in this civil action;
- d. Pre- and post-judgment interest and court costs;
- e. Damages for net economic loss and annoyance and inconvenience; and
- f. Such other relief as this Court deems just, proper, and equitable.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated: 3/16/2017

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EXHIBIT A

EXHIBIT A

<u>Defendant</u>	<u>Policy Number</u>	<u>Policy Period</u>
St. Paul Fire & Marine Insurance Company	TE06100918	05/01/06-05/01/07
American Guarantee & Liability Insurance Company	AEC 9279783 05	05/01/06-05/01/07
ACE American Insurance Company	XSL G23726579	05/01/07-05/01/08
ACE American Insurance Company	XSL G2290680A	05/01/07-05/01/08
ACE American Insurance Company	XSL G23739513	05/01/08-05/01/09
ACE American Insurance Company	XSL G23896412	05/01/08-05/01/09
ACE American Insurance Company	XSL G23749324	05/01/09-05/01/10
ACE American Insurance Company	XSL G23896412 002	05/01/09-05/01/10
ACE American Insurance Company	XSL G24941188	05/01/10-05/01/11
ACE American Insurance Company	XSL G23896412 003	05/01/10-05/01/11
Endurance American Insurance Company	EXC 100003739 00	05/01/07-05/01/08
Endurance American Insurance Company	EXC 100003739 01	05/01/08-05/01/09
ACE Property & Casualty Insurance Company	XOO G24873699	05/01/09-05/01/10
ACE Property & Casualty Insurance Company	XCP G24874710	05/01/10-05/01/11
ACE Property & Casualty Insurance Company	XOO G24875088	05/01/11-05/01/12
ACE Property & Casualty Insurance Company	XOO G27041188	05/01/12-05/01/13

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EXHIBIT B

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
ex rel. **PATRICK MORRISEY,**
Attorney General, **JOSEPH THORNTON,**
in his capacity as the Secretary of the
WEST VIRGINIA DEPARTMENT
OF MILITARY AFFAIRS AND PUBLIC SAFETY,
an agency of the State of West Virginia, and
KAREN BOWLING, in her capacity as the Secretary
of the **WEST VIRGINIA DEPARTMENT OF**
HEALTH & HUMAN RESOURCES, an agency
of the State of West Virginia,

Plaintiffs,

v.

Civil Action No.12-C-141
(Hon. William S. Thompson, Judge)

AMERISOURCEBERGEN DRUG CORP., a
Delaware corporation doing business in West Virginia,
MIAMI-LUKEN, INC., an Ohio corporation doing
business in West Virginia, **J.M. SMITH CORP. d/b/a**
SMITH DRUG CO., a South Carolina corporation doing
business in West Virginia, **THE HARVARD DRUG**
GROUP, LLC, a Michigan corporation doing business
in West Virginia, **ANDA INC.,** a Florida corporation doing
business in West Virginia, **ASSOCIATED PHARMACIES, INC.,**
an Alabama corporation doing business in West Virginia,
H.D. SMITH WHOLESALE DRUG CO., a Delaware corporation
doing business in West Virginia, **KEYSOURCE MEDICAL INC.,**
an Ohio corporation doing business in West Virginia, **MASTERS**
PHARMACEUTICALS, INC., an Ohio corporation doing business
in West Virginia, **QUEST PHARMACEUTICALS, INC.,**
a Kentucky corporation doing business in West Virginia,
and **TOP RX, INC.,** a Tennessee corporation doing
business in West Virginia,

Defendants.

SECOND AMENDED COMPLAINT

Introduction

For their Second Amended Complaint, the State of West Virginia, at the relation of its duly-elected Attorney General Patrick Morrisey, and two of its agencies, the West Virginia Department of Military Affairs and Public Safety, and the West Virginia Department of Health & Human Resources, state the following:

Pursuant to the Order of this Court and in conformity with Rule 15(b) and (d) of the West Virginia Rules of Civil Procedure, counsel for the Plaintiffs file their Second Amended and Supplemental Complaint on behalf of the State of West Virginia, at the relation of its duly-elected Attorney General Patrick Morrisey and two of its agencies, the West Virginia Department of Military Affairs and Public Safety and the West Virginia Department of Health & Human Resources. They present the following as supplemented by information contained in the discovery which was previously produced by the named Defendants. The acts and omissions complained of by the Plaintiffs are more specifically identified hereinafter in paragraphs 14 and 15.

By Order dated December 12, 2014 the Court gave the Plaintiffs 30 days to set forth the wrongful acts of the Defendants. The Defendants' discovery production as presently exists in its nascent state already exceeds 10,000 pages for these Defendants alone. In the related case, the number of pages provided for 2 ½ years exceeds 13,000 pages. Accordingly, counsel for these Plaintiffs through the assistance of an IT expert have produced a database upon which the Plaintiffs rely to support the allegations made hereinafter. The database has been produced using as its basis the discovery which was produced. There exists the potential of literally thousands of wrongful acts which will be litigated in this case. For example, the largest of these Defendants

Amerisourcebergen Drug Corp. has produced records showing approximately 21,500 transactions involving controlled substances with one pill mill pharmacy which is located in Boone County. That information covers 468 pages in the records as produced. Another electronic document submitted by Defendant H.D. Smith Wholesale Drug Co. in discovery contains 271 pages for distributions to a pill mill pharmacy in Mingo County which reflects approximately 12,400 transactions.

As a consequence of the foregoing, Plaintiffs set forth categories of offending acts and omissions together with specific examples and statistics. This exceeds the threshold of notice required for a claim and allows these Defendants who possess their sales data as produced in the limited initial discovery phase to understand the allegations which are being made against them. In re: Flood Litigation Coal River Watershed, 222 W.Va. 574, 668 S.E.2d 203 (2008); Highmark West Virginia, Inc. v. Jamie, 221 W.Va. 487, 665 S.E.2d 509 (2007).

Description of Action

1. This civil action addresses the epidemic of prescription drug abuse and its costs to the State of West Virginia. Prescription drug abuse costs the State of West Virginia hundreds of millions of dollars annually. Beyond the actual dollars lost, prescription drug abuse devastates West Virginia communities and families and reduces the State's economic productivity. The damage done by prescription drug abuse adversely affects West Virginia's hospitals, schools, courts, social service agencies, jails and prisons as well as diminishing the very quality of life in our cities and towns. Accordingly, the State, at the relation of its Attorney General, the West Virginia Department of Military Affairs and Public Safety, and the West Virginia Department of Health and Human Resources,

(collectively herein referred to as "the State") brings this action against pharmaceutical drug distributors who have contributed substantially to and who have substantially, illicitly and tortiously benefitted financially from the prescription drug abuse problem in West Virginia.

2. The Defendants each distribute prescription drugs closely identified with the prescription drug abuse problem in West Virginia. In recent years, it has been well publicized in the media that West Virginia has been, per capita, one of the "most medicated" states in the Country, with a prescription drug abuse problem of epidemic proportions. Defendants were on notice of the growing West Virginia epidemic of the abuse of those prescription drugs which they supplied and of the quantities and frequency with which those drugs were distributed to entities in West Virginia. For reasons which are more specifically set forth in the following causes of actions these Defendants are answerable in damages to the State of West Virginia and are susceptible to such other relief as is requested.
3. These Defendants are major distributors of controlled substances who have supplied controlled substances to drugstores and pharmacies that then dispense those controlled substances often based upon bogus prescriptions from physicians who are prescribing controlled substances for illegitimate medical purposes. Some pharmacies that order such large quantities of abused controlled substances from Defendants are located in rural or low population areas where the amount of those controlled substances ordered from Defendants is so much greater than a population of that size would warrant that the orders are, at the very least, suspicious. These pharmacies are known as "Pill Mills."
4. Through their acts and omissions Defendants have inserted themselves as an integral part

of the Pill Mill process.

5. As hereinafter alleged these Defendants acted negligently, recklessly and in contravention of West Virginia law. More particularly, these Defendants have violated West Virginia statutes and regulations that govern controlled substances and consumer protection. The Defendants received substantial revenue from West Virginia entities while engaging in wholesale drug distribution in West Virginia and in supplying West Virginia Pill Mills.
6. The problems, damages and losses related to the prescription drug epidemic in West Virginia include, *inter alia*, the following:
 - a. Costs to the State of as much as \$430 million annually in the year 2010 with costs projected to be as much as \$695 million annually by 2017;
 - b. A per capita death rate from prescription drug overdose which has at times been either the highest or the second highest recorded for all states in the United States. One West Virginia County, McDowell County, located in Southern West Virginia, had a death rate of 34.2 per 100,000 in 2001 and 97.3 in 2008;
 - c. Between 2001 and 2008 West Virginia deaths from overdoses involving prescription drugs quadrupled from 5.1 deaths per 100,000 residents to 21.5;
 - d. According to Charleston Area Medical Center approximately twenty (20) percent of patients admitted through the hospital's trauma service have an issue with narcotic usage which contributes to their injuries. As such, the demand from the growing problem of addiction and management of addicted patients will eventually be too great for the available care provided unless the problem is addressed. Many of the addicted patients have no medical insurance coverage;
 - e. West Virginia has been identified as the nation's "most medicated state" based upon data gathered for 2009. Pharmacies in the State filled 18.4 prescriptions per capita as compared to the national average of 11.6 per capita;
 - f. One pharmacy located in tiny Kermit, West Virginia (with a population of approximately 400 people) in 2006 received 3,194,400 dosage units of hydrocodone which ranked 22nd in the nation among pharmacies with respect to purchases of hydrocodone dosage and 35th nationally if mail order pharmacies are taken into account. The owner who is a licensed pharmacist has testified that the

pharmacy filled one prescription per minute. Pharmacy records reveal that the pharmacy regularly paid suppliers hundreds of thousands of dollars and that virtually 90% of the drugs ordered and received are of the kind associated with the prescription drug epidemic. The pharmacy reported revenue of more than \$500,000 per month. Recently, an article described Kernit as "ground zero" in the prescription drug epidemic;

- g. One Pittsburgh area physician who entered a guilty plea to a drug law violation allegedly worked in or owned an operation in Southern West Virginia that a federal investigation disclosed netted him personally as much as \$20,000 per day in cash deposits made to his personal bank account. That so-called clinic was closed by the government resulting in seizure of hundreds of thousands of dollars in cash from physicians and others who were associated with the clinic. A pharmacy listed as a "preferred pharmacy" by this Pill Mill was among those that regularly were supplied by the Defendants with prescription drugs known to be abused;
- h. West Virginia Prosecuting Attorneys and Judges lament that as much as 90% of their criminal docket regularly is made up of matters that are either directly or indirectly related to prescription drug abuse. One Prosecutor recently told a Charleston newspaper, "I have sometimes morbidly said I would welcome a cocaine case because at least not as many people are dying from cocaine abuse as they are from prescription drug abuse. I bring this up to point out foremost that we continue to ignore the human cost of substance abuse. Families are destroyed. People die. People can't get jobs and become homeless. They don't send their children to school, which ultimately contributes to truancy, delinquency, another generation of crime and a host of other problems. We're at the top of the nation in births of drug-addicted babies."
- i. According to media reports from 2013, "Thirty-five percent of babies born in the state are born drug-addicted because their mothers are using drugs." It was reported also that West Virginia Senator Ron Stollings of Boone County, a physician, stated that the economic cost of substance abuse is "chewing up tremendous amounts of money."
- j. White House drug czar Gil Kerfowske stated the obvious to West Virginia leaders at an assembly: "The devastation wrought by prescription drug abuse on Appalachian communities is simply heartbreaking Prescription drug abuse is claiming too many lives, threatening public safety and placing unnecessary obstacles in the way of economic prosperity in Appalachia."
- k. The controlled substances distributed by Defendants without sufficient monitoring of suspicious orders include, but are not limited to, hydrocodone combinations

(vicodin, lortab, lorcet, vocoprofen, tussenex, tussicaps), codeine combinations (e.g. empirin with codeine, fiorinal with codeine, tylenol with codeine), phenobarbital, lorazepam (ativan), triazolam (halcion), chlordiazepoxide (librium), diazepam (valium), alprazolam (xanax), zolpidem (ambien), zaleplon (sonata), zopiclone (lunesta), dextropropoxyphene (davron, darvocet), codeine preparations (Robitussin A-C), amobarbital (amytal), pentobarbital (nembutal), secobarbital (seconal), morphine (roxanol, duramorph), oxycodone (oxycontin, tylox, percocet, percodan), hydromorphone (dilauid), oxymorphone (opana, numorphan, numorphone), meperidine (demerol), phentermine (adipex) and other generic versions of each of the foregoing.

7. West Virginia and its agencies seek to protect West Virginia communities by enjoining Defendants from distributing controlled substances without sufficient monitoring and controls and by requiring notice to the State in order to prevent the creation and operation of Pill Mills or distribution to any other suspicious prescription drug retailers. The State of West Virginia seeks to recover the damages it has incurred, continues to incur, and will incur in the future in addressing and combating the prescription drug abuse epidemic in West Virginia and in addressing its effects.
8. The Defendant drug distributors profit from this epidemic by distributing controlled substances in West Virginia in amounts that are in excess of the amount of controlled substances legitimately medically required, thereby sourcing drugs ultimately used by drug abusers. West Virginia law requires distributors of controlled substances such as Defendants to, "provide effective controls and procedures to guard against . . . diversion of controlled substances [and] . . . design and operate a system to disclose to the registrant suspicious orders of controlled substances. . . . Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency." 15 WVCSR § 2-4.2.1 and 15 WVCSR § 2-4.4. By distributing

excessive amounts of controlled substances, the Defendant drug distributors violate West Virginia law by failing to implement or more particularly to follow and adhere to effective controls to guard against prescription drug diversion and by failing to effectively monitor, enforce and/or disclose suspicious orders they fill.

9. These Defendants certainly are aware of their legal responsibilities in regard to preventing suspicious orders of abused prescription drugs from flooding susceptible locales. For example, Defendant AmerisourceBergen has acknowledged it is under investigation by the U.S. Attorney for the District of New Jersey for its lack of oversight of painkiller sales.

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In 2009, Defendant Masters Pharmaceutical, Inc. paid \$500,000 to the U.S. Attorney for the Southern District of Ohio to settle, *inter alia*, claims that it failed to report suspicious orders of controlled substances.

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10. The State expressly indicates that it does not seek any relief in this action for the federal

share of funding for the State Medicaid Program. Claims of damages for any federal monies expended are hereby expressly disavowed.

II.

Parties

11. Plaintiff State of West Virginia appears at the relation of its duly elected Attorney General, Patrick Morrissey. General Morrissey is authorized by the West Virginia Constitution, West Virginia common law and by statute to bring this action:
 - a. *West Virginia Code* § 60A-5-501(c) invests the Attorney General with the duty and the authority to assist in the enforcement of the provisions of the Uniform Controlled Substances Act and to cooperate with agencies and other governmental entities, including but not limited to the West Virginia Department of Military Affairs and Public Safety and the West Virginia Department of Health and Human Resources, as relates to controlled substances;
 - b. *West Virginia Code* § 46A- 7-101 *et seq.* invests the Attorney General with authority to sue for violations of the West Virginia Consumer Protection Act, to recover civil penalties and to seek other remedies for violations of said statute; and
 - c. Under West Virginia common law, the Attorney General possesses the authority to enforce all of the applicable laws cited herein, including the consumer protection laws, substance abuse laws, and laws governing the illicit distribution of drugs in West Virginia.
12. Plaintiff Joseph Thornton acting in his capacity as Secretary of the West Virginia

Department of Military Affairs and Public Safety, an agency of the State of West Virginia established by *W.Va. Code* §5F-1-2. The agency includes, *inter alia*, the West Virginia State Police, National Guard, the Division of Justice and Community Services, the Division of Corrections, the Division of Homeland Security & Emergency Management, the Division of Juvenile Services, the Division of Protective Services, and the Regional Jail and Correctional Facilities Authority. This agency is charged with responsibility for, *inter alia*, enforcing the Uniform Controlled Substance Act, *W.Va. Code* § 60A-5-501 and for housing inmates who have violated said Act and/or committed other crimes related to their violations of the Act.

13. Plaintiff Karen Bowling acting in her capacity as Secretary of the West Virginia Department of Health & Human Resources, an agency of the State of West Virginia established by *W.Va. Code* § 5F-1-2. The agency includes, *inter alia*, the Bureau of Behavioral Health & Health Facilities, the Bureau for Children and Families, the Bureau for Medical Services, and the Bureau for Public Health. This agency is charged with the responsibility for, *inter alia*, providing services related to drug addiction as well as the attendant problems of treatment and family-related issues.
14. At all times pertinent to this Second Amended Complaint each Defendant was doing business in West Virginia as a wholesale drug distributor. The Defendants are:
 - a. Amerisourcebergen Drug Corporation, a Delaware corporation;

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g. H.D. Smith Wholesale Drug Company, a Delaware corporation;

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i. Masters Pharmaceuticals, Inc., an Ohio corporation;

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and

k. Top RX, Inc., a Tennessee corporation.

Each of these Defendants was

- On notice that an epidemic of prescription drug abuse existed in West Virginia and in the specific areas of this State in which their customers were located. Further, each of these Defendants was on notice that the controlled substances being distributed were the kind which were being abused;
- On notice that State law required them, *inter alia*, to provide effective controls and procedures to guard against diversion of controlled substances, 15 WVC SR §2-4.21 and 15 WVC SR §2-4-4; and
- On notice that the Healthcare Distribution Management Association ("HDMA") "*Industry Compliance Guidelines: Reporting Suspicious Orders and Preventing Diversion of Controlled Substances*" describe the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines further provide: "At the center of a

sophisticated supply chain, distributors are uniquely situated to perform due diligence in order to help support the security of controlled substances they deliver to their customers." Industry guidelines contain the following elements:

- I. Know Your Customer Due Diligence
- II. Monitoring for Suspicious Orders
- III. Suspend/Stop an Order of Interest Shipment
- IV. Investigation of Orders of Interest
- V. File Suspicious Order Reports with DEA
- VI. Employees, Training and Standard Operating Procedure (SOP)
- VII. Additional Recommendations

The guidelines' first element of "Know Your Customer" provides that distributors must gather substantial information on each of its customers, including, *inter alia*, their business background, customer base, average number of prescriptions filled each day, average number of controlled substances item prescriptions filled each day, percentage of controlled substance purchases compared to overall purchases, etc. According to the industry guidelines, this information must be reviewed carefully by the distributor, and the distributor must conduct a thorough, independent investigation of the customer:

- Subject to the requirement that it provide notice to the appropriate authorities of any suspicious orders for controlled substances and not fill the same. Notwithstanding its duties regarding suspicious orders, these Defendants regularly filled suspicious orders of West Virginia customers.

More particularly, they acted either with gross negligence or with a willful blind eye to the facts and circumstances by filling suspicious orders for controlled substances.

- Further, Defendants failed to adhere to industry customs and standards, and violated applicable West Virginia statutes and regulations.

III.

Jurisdiction, Venue and Claims

15. Jurisdiction exists pursuant to the provisions of *West Virginia Code* § 56-3-33, as amended, in that Defendants by and through their authorized agents, servants and employees regularly transacted business in West Virginia, supplied and distributed prescription drugs in West Virginia and further through their acts and omissions tortiously caused injuries in West Virginia by engaging in a persistent course of conduct in West Virginia which violated West Virginia law. These Defendants derived substantial revenue as the result of the prescription drugs which were distributed to West Virginia entities and later consumed by persons then residing in West Virginia. More particularly, the acts and omissions as claimed are described hereinafter.

15 a. **Amerisourcebergen Drug Corp.**

- (i) At all times pertinent hereto this Defendant was a Delaware corporation doing business in the State of West Virginia. As a part of their business practices, Amerisourcebergen Drug Corp. distributed controlled substances to West Virginia customers. This Defendant is one of the largest distributors of prescription drugs

and is listed as No. 28 in the Forbe's list of Fortune 500 companies.

(ii) Records supplied as discovery by this Defendant reflect that in the five(5) years of records provided, Amerisourcebergen Drug Corp. distributed the following quantities, more or less to West Virginia pharmacies:

- 27,323,920 alprazolam
- 3,577,900 amphetamine
- 9,964,280 Klonopin
- 8,759,410 diazepam
- 60,937,584 hydrocodone (generic of Loroet, Lortab, Vicodin, Vicoprofen, among others)
- 1,239,380 opana
- 26,614,000 oxycodone
- 2,792,680 oxycontin

Other controlled substances widely known to be abused were also distributed as well as various quantities of some of the aforementioned substances in liquid form.

The foregoing numbers which are far beyond the number of distributions of controlled substances as would be reasonably distributed to a population of 1.85 million, indicate that for every West Virginian, including children, this Defendant distributed

thirty-three(33) hydrocodone tablets (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) during the period identified. For oxycodone, oxycontin and opana combined the figure would be 15.56 tablets per person.

- (iii) Amerisourcebergen was a distributor of substantial quantities of controlled substances to Tug Valley Pharmacy in Williamson, West Virginia. This pill mill pharmacy was located within yards of two notorious pill mill physicians and their operations in the town of Williamson. Doctors named Diane Shafer, Katherine Hoover, and William Ryckman operated pill mill clinics whose voluminous illegal prescriptions written for non-medical purposes were filled daily by this pharmacy to which Amerisourcebergen was distributing. This Defendant's records as supplied during discovery indicate that they distributed to Tug Valley Pharmacy a total of 149,300 hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) tablets during the calendar year 2009 for an average supply of 12,441 tablets per month. The operations of Drs. Hoover, Ryckman and Shafer were closed by State and federal law enforcement in 2010 which was followed by criminal prosecutions and asset seizures.

During the same period of 2009 in which this Defendant was distributing hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Tug Valley.

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was likewise distributing large quantities of hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Tug Valley Pharmacy as is set forth more particularly infra.

- (iv) This Defendant also distributed controlled substances in large quantities to a "drive-in" pill mill pharmacy located in Boone County. According to the discovery there were approximately 21,500 transactions with this pill mill.

From the discovery which was provided both by this Defendant and by

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it is known that on the

dates of July 16 and July 17, 2012 Defendant Amerisourcebergen Drug Corp. distributed 8000 hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) tablets to this "drive-in" pill mill pharmacy.

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On these same two dates, distributed 8600 hydrocodone tablets (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to this same pill mill.

Further, in the months of July, 2012 this Defendant distributed 3800

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Oxycodone tablets to this "drive-in" pill mill when distributed a combined total of 11,800 tablets of oxycodone, oxycotin and opana to the same pharmacy in July.

- (v) It is the industry standard that the distributor of controlled substances shall "know its customer." Due diligence in this regard is both expected and required to include an awareness of other suppliers of controlled substances to this company's customers. This standard was disregarded

and violated in thousands of transactions by this Defendant.

As the proximate result of the acts and omissions heretofore identified, the State of West Virginia and the Plaintiff agencies named herein have incurred substantial losses, costs, and damages and will continue to incur substantial losses, costs, and damages in the future.

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15. g. H.D. Smith Wholesale Drug Co.

- (i) At all time pertinent hereto this Defendant was a Delaware corporation doing business in the State of West Virginia. As a part of their business practices, H.D. Smith Wholesale Drug Co. distributed controlled substances to West Virginia customers.
- (ii) This Defendant made substantial distributions to West Virginia pharmacies of controlled substances widely known to be among those substances which were abused, including Strosnider Drug Store, Inc. dba Sav-Rite Pharmacy of Kermit, Sav-Rite #2 of Crum, Tug Valley Pharmacy of Williamson and Hurley Drug Co. of Williamson. These pharmacies were among the most notorious of the pill mill pharmacies in Southern West Virginia.

 - (aa). The Sav-Rite entities were owned and/or operated by a Mr. James Wooley who was also the pharmacist-in-charge at the Kermit store. These operations were little more than the dispensing center for the substances which then at the center of illegal drug activity and were known to be highly addictive. The addictions were often created by the pill mill doctors in Mingo County, namely Donald Kiser, Diane Shafer, Katherine Hoover and William Ryckman. In fact, Sav-Rite was one of the several pharmacies along with Tug Valley and Hurley which filled hundreds of prescriptions daily which were faxed or hand-delivered to the pharmacies from the pill mill physicians.
 - (bb). Sav-Rite Pharmacy #2 was a sham front for illegal prescriptions. It

was operated at a location which is next to the Justice Medical Clinic in the area of Crum, West Virginia which is near the border of Mingo and Wayne Counties and about a mile from Strosnider Sav-Rite in Kermit. This sham "pharmacy" was the brainchild of James Wooley who was subsequently prosecuted by the federal government. Mr. Wooley recruited physicians to work at Justice Medical Center, or more accurately stated, to authorize prescriptions under their licensing authority for pain medication which was then filled at Sav-Rite #2 or Sav-Rite in Kermit. At least two physicians were successfully prosecuted for their involvement in this operation. Further, the alleged "head" of Justice Medical Center who was a young man with no experience to justify his stated position went to prison for his role therein. The young man, named Justice, was the son of a woman who was an associate of Mr. Wooley.

- (cc). An investigation or inspection of the Sav-Rite entities should have raised red flags about the legitimacy of these operations. As such, this Defendant and any of the other Defendants who are named in this case flagrantly violated the "know your customer" standard of care required for distributors of controlled substances or wilfully turned a blind eye to the obvious fact that there was clearly suspicious orders which they were filling.
- (dd). Records supplied as discovery by this Defendant reflect that in the five (5) years provided, H.D. Smith Wholesale Drug Co. distributed

the following quantities, more or less, to West Virginia pharmacies:

- 12,448,827 generic hydrocone
- 3,142,900 oxcodone

In addition to the aforementioned controlled substances, this Defendant distributed 371,320 Oxycontin tablets, 94,400 Opana; 513,876 Alprazolam, as well as other Hydrocodone under their brand names and controlled substances known to be widely abused.

(cc). Examples of the Defendant's acts and omissions as complained of therein:

- (i) According to their records of transactions as produced in discovery, the Defendant in 29 listed transactions distributed at least 102,000 and as many as 157,400 hydrocodone tablets to Hurley Pharmacy, a pill mill pharmacy in Williamson, West Virginia, during the month of January 2008. If Defendant's records presented in discovery are accurate, such a distribution as this is on its face both suspicious and represents a gross violation of Defendant's legal duty not to distribute controlled substances which are being used for non-legitimate purposes. During this same month and year this Defendant

was also distributing large quantities of hydrocodone to Strosnider dba Sav-Rite Pharmacy and to Tug Valley Pharmacy, all pill mills in Mingo County.

- (ii) The Defendant distributed controlled substances to Sav-Rite Pharmacy #2. As stated elsewhere in this Complaint, this alleged pharmacy was a sham which existed purely to fill prescriptions written for non-medical purposes. The Defendant distributed controlled substances to Sav-Rite Pharmacy #2 on a regular basis between the late Fall of 2008 and March of 2009 which indicate that the Defendant did not "know its customer."
- (iii) The controlled substances distributed to Sav-Rite #2 included both generic and brand named hydrocodone, alprazolam and phentermine. The latter controlled substance is a stimulant known to be used by those who abuse the drugs Oxycodone and Xanax in order to enhance the effects of those drugs. The Defendant's records also show the distribution to Sav-Rite of 81,437 of hydrocodone tablets in a period which is less than six (6) months.
- (iv) The Defendant distributed suspiciously large quantities of oxycodone to Westside Pharmacy in Oceana, population 1351, during the years of 2008, 2009 and 2010. Defendant's records reflect approximately 1100 transactions for oxycodone distributions in that period

which would average one transaction a day over the course of three (3) years. As stated elsewhere in this Complaint, this community is in Wyoming County which has experienced the highest per capita death rate from prescription drug overdose in West Virginia.

- (v) This Defendant also distributed enormous amounts of controlled substances known to be those abused in West Virginia to Hurley Drug Co. and to Tug Valley Pharmacy, two pill mill pharmacies located just 4 blocks apart in Williamson. These two pill mills supported the pill mill physicians at the Mountain Medical/Williamson Wellness Center which was near these pharmacies and which listed both Hurley and Tug Valley as pharmacies where their patients should fill their prescriptions. These pharmacies also filled the non-medical prescriptions of Dr. Diane Shafer, a notorious pill mill physician in Williamson.
- (vi) The records presented in discovery by H.D. Smith for their distributions to Hurley Pharmacy cover 271 pages and reflects thousands of suspicious distributions of oxycontin, hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others), oxycodone, alprazolam, lorazepam, diazepam, and brand name hydrocodone.
- (vii) During the same period of time as the distributions were made to Hurley Drug, H.D. Smith was distributing the same

mix of drugs to Tug Valley Pharmacy. While not as extensive in number as those distributions to Hurley, those distributions to Tug Valley were suspiciously high when standing alone and more so when considered together with the distributions to Hurley. For example, according to this Defendant's records, on October 18, 2007, H.D. Smith distributed 30,000 hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) tablets to Tug Valley Pharmacy. On October 16, 2007 H. D. Smith delivered 5000 hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Hurley Drug. Then on October 18, 2007, H.D. Smith delivered another 4000 hydrocodone (generic of Lorcet, Lortab, Vicodin, Vicoprofen, among others) to Hurley resulting in a total of 39,000 hydrocodone delivered within a two (2) day period to a four (4) block area in a town which had a population of 3090 people.

- (v) The volume of oxycodons and hydrocodone pills distributed to Tug Valley Pharmacy by H.D. Smith in view of the town's population, the close proximity to pill-pushing physicians whose reputations were both well-known and the subject of extensive publicity, the close proximity to another pharmacy, existence of other suppliers of controlled substances to this same pharmacy, all should

have served to alert a distributor acting with due diligence

that the orders were suspicious in nature.

As the proximate result of the acts and omissions heretofore identified, the State of West Virginia and the Plaintiff agencies named herein have incurred substantial losses, costs, and damages and will continue to incur substantial losses, costs, and damages in the future.

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15. i. Masters Pharmaceuticals, Inc.

- (i) At all times pertinent hereto, Defendant Masters Pharmaceuticals, Inc. ("Masters") was a foreign corporation doing business throughout West Virginia. As part of its business, Masters distributed controlled substances to West Virginians.
- (ii) Examples of Masters's wrongful acts and omissions include but are not limited to:
 - (a) Masters produced their responses to the limited discovery allowed by this court with only three categories: "Customer Name, Item Description, Total Quantity Shipped." From this incomplete

information, the State can nevertheless glean from Masters's partial responses that certain pharmacies ordered boxes of narcotics in the following amounts - 658, 508, 480, 476, 439, 394, 386, 359, 312, 301, 290, 288, 248, 247, 246, 221, 220; whereas the other pharmacies ordered shipments of narcotics typically in increments of 4, 3, 2 or 1. With one exception, these shipments in excess of 200 were to McDowell County (the County with the highest overdose rate in the country) or to the Northern Panhandle (which also has a well-documented prescription drug problem). In other words, the foregoing distributions were supplied to entities with a population base which could in no legitimate way consume the volume of drugs being distributed. Moreover, most of these recipients of controlled substances from Masters are known to be located in areas notorious for prescription drug abuse.

- (b) In one instance, a pharmacy in Van, Boone County, West Virginia (population 211) ordered 11,400 pills of oxycodone, hydrocodone, endocet, and morphine over the span of approximately 6 months from December 2011 through May 2012. That's more than 63 pills for each resident per day!
- (c) In another example, Masters received an order from a pharmacy in Crab Orchard (population 2,678) on May 17, 2010. On that day, May 17, 2010, this particular pharmacy ordered every type of hydrocodone available, including dosages in 325 mg, 500 mg, 650 mg, and 750 mg. The total number of dosage units of hydrocodone

ordered that day by the pharmacy in Crab Orchard was 4,000.

Masters filled these orders and continued to supply this pharmacy with controlled substances, including hydrocodone through 2010, 2011 and into 2012 up until the time this lawsuit was filed in June 2012.

- (d) Between January 20, 2009 and May 27, 2009, a pharmacy in Raleigh County ordered 34,300 dosage units of oxycodone from Masters. On the first day, January 20, 2009, this pharmacy ordered 60 boxes of 100 dosage units of oxycodone. Three days later, on January 23, 2009, this pharmacy ordered 19 more boxes of 100 dosage units. This pharmacy continually ordered and Masters filled requests for oxycodone.
- (e) In 2009, a pharmacy in Logan County ordered 47,500 dosage units of hydrocodone from Masters. Masters continued to supply this pharmacy with hydrocodone through 2012, prior to the time this lawsuit was filed. By way of example, a 6-day stretch in January 2009 is illustrative. On January 6, 2009, Masters shipped 2,000 dosage units of hydrocodone to this pharmacy. The next day, on January 7, 2009, Masters shipped 1,500 more hydrocodone dosage units to this pharmacy. The following day, January 8, 2008, Masters shipped 2,000 more dosage units of hydrocodone to this pharmacy. On Friday, January 9, 2009, Masters shipped another 2,000 dosage units of hydrocodone to this pharmacy. Following the weekend, Masters sent 2,000 additional dosage units of

hydrocodone to this same pharmacy on January 12, 2009. Between January 6, 2009 and January 12, 2009, Masters sent 9,500 dosage units of hydrocodone to this particular pharmacy in Logan County.

- (f) On July 1, 2009, Masters supplied a pharmacy in Marshall County with 25,000 dosage units of oxycodone. Later that year, Masters shipped another 19,000 dosage units of oxycodone to this same pharmacy in Marshall County on December 8, 2009.
- (g) Between June 21, 2011 and August 23, 2011, Masters distributed 25,000 dosage units of oxycodone to the same pharmacy in Raleigh County. Of this amount, Masters sent 15,000 to the same pharmacy on August 23, 2011.
- (h) On two separate occasions in 2010 and 2011, Masters shipped 20,000 dosage units of hydrocodone per day to a particular pharmacy in Putnam County.
- (iii) Masters distributed, among other narcotics and highly-abused drugs, the following staggering numbers, more or less, of total dosage units in West Virginia between 2007 and 2012:
 - 1,454,040 of hydrocodone; and
 - 859,800 of oxycodone.
- (iv) Masters has not fully complied with the State's discovery requests which would further reveal the ratios regarding its distribution of controlled substances vis-a-vis non-controlled substances, or the State's discovery requests regarding its adherence to any sort of policy identifying suspicious orders. However, DEA records indicate that Masters

distributed 1,454,040 Oxycodone tablets to West Virginia between years 2007 and 2012. In the period of 2007 through 2010, 176,700 tablets went to Mingo County pharmacies out of a total of 781,100 for the period.

As the proximate result of the acts and omissions heretofore identified, the State of West Virginia and the Plaintiff agencies named herein have incurred substantial losses, costs, and damages and will continue to incur substantial losses, costs, and damages in the future.

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15. k. Top Rx, Inc.

- (i) At all times pertinent hereto this Defendant was a Tennessee corporation doing business in the State of West Virginia. As a part of their business practices, Top Rx, Inc. distributed controlled substances to West Virginia customers.
- (ii) In the years beginning 2007 and ending 2012 the records of the DEA reflect that this Defendant distributed 1,668,290 hydrocodone tablets to pharmacies in West Virginia. The highest totals were distributed to pharmacies which were in counties designated by federal and state authorities as high intensity drug trafficking areas. Those West Virginia Counties to which Top Rx, Inc. distributed

hydrocodone, namely Wayne and McDowell, have a combined population of 62,313 (2013) - 64,594 (2010). For the years stated, the Wayne pharmacy received 435,000 tablets while the McDowell pharmacy, located in the town of War, population 862 in 2010, received 303,170. Taking into account the particular pharmacies, the number of pills distributed, the population base and the history of drug activity and abuse associated with these locations these orders filled by this Defendant are suspicious orders. Further, if the population of War is taken into account the number of hydrocodone tablets per person over the four(4) years identified equals 351.

- (iii) As previously filed with this Court *and hereby corrected to adopt Top Rx, Inc.'s reply* (captioned Top Rx, Inc.'s Reply to Plaintiff's Separate Response) this Defendant supplied one Southern West Virginia physician a total of 53,500 phentermine tablets during a three(3) month period in 2009 (*incorrectly identified in Plaintiffs' filing as hydrocodone*). Phentermine (Adipex) is a Schedule IV substance intended for weight loss which is used by those who abuse hydrocodone and Xanax to enhance the effects of those drugs. In 2011 this Defendant distributed 137,500 phentermine according to their records produced as discovery.
- (iv) As reflected in the five(5) years of transactions which Defendant presented, this Defendant distributed to a single Logan County physician monthly totals of phentermine which *according to the*

Defendant's reply reached levels as high as 20,000 in a single month. Logan County is identified as a high intensity drug trafficking area. To reiterate, phentermine is a stimulant which is used by drug abusers or addicts to enhance the effects of Xanax and hydrocodone.

- (v) In addition to the aforementioned, Top Rx, Inc.'s records as produced in discovery reflect distributions of hydrocodone in high volumes on a regular basis which when considering the population served, to pharmacies located in Crab Orchard (Raleigh) in Northfork (McDowell) and in Hinton (Summers), West Virginia. These distributions occurred in the years 2007, 2008 and 2009. The distributions referred to herein are suspicious as contrary to the "know your customer" standard of due diligence which is required.

As the proximate result of acts and omissions heretofore identified, the State of West Virginia and the Plaintiff agencies named herein have incurred substantial losses, costs, and damages and will continue to incur substantial losses, costs, and damages in the future.

16. Pursuant to *W.Va. Code* § 46A-7-114 venue is proper in that the Defendants committed the acts which are complained of in the preceding paragraph in violation of, *inter alia*, the West Virginia Uniform Controlled Substances Act and the West Virginia Consumer Credit and Protection Act in Boone County West Virginia. Further, the Defendants transacted business in Boone County as well as in other counties within the State of West Virginia.

Causes of Action

Count I

Injunctive Relief for Violations of Responsibilities and Duties Under The West Virginia Uniform Controlled Substances Act

17. The State hereby incorporates by reference all of the previous allegations of this Amended Complaint.
18. *West Virginia Code* § 60A-5-501(c) provides: "All prosecuting attorneys and the attorney general, or any of their assistants, shall assist in the enforcement of all provisions of this act and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances."
19. *West Virginia Code* § 60A-5-503(a) states that, "The courts of record of this state have and may exercise jurisdiction to restrain or enjoin violations of this act."
20. Regulations promulgated pursuant to the West Virginia Uniform Controlled Substances Act, *W. Va. Code* § 60A-3-301, provide, *inter alia*, for the following:
 - "Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance shall obtain annually a controlled substance permit unless exempted by law or pursuant to Section 3.2 of this rule." 15 *W.Va. C.S.R.* § 2-3.1.1.
 - "All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances." 15 *W.Va. C.S.R.* § 2-4.2.1.
 - "The registrant shall design and operate a system to disclose to the registrant suspicious orders of controlled substances. The registrant shall inform the Office of the West Virginia Board of Pharmacy of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency." 15 *W.Va. C.S.R.* § 2-4.4.

21. Defendants have failed to diligently respond to suspicious orders which the Defendants have filled. The Defendants therefore have failed to provide effective controls and procedures to guard against diversion of controlled substances in contravention of West Virginia law.
22. By failing to do so, Defendants have willfully and repeatedly violated the Uniform Controlled Substances Act and corresponding regulations.
23. The State, by and through, the Attorney General under the authority of *W.Va. Code* § 60A-5-501(c) and *W. Va. Code* § 60A-5-503(a) seeks to restrain the violations of 15 *W.Va.C.S.R.* §§ 2-4.2.1, 2-4.4.
24. The State of West Virginia and its agencies have in the past sustained enormous damages as the proximate result of the failure by the Defendants to comply with 15 *W.Va. CSR* §2-4.2.1 and 15 *W.Va. CSR* §2-4.4. Unless restrained by injunctive relief the State will continue to suffer losses as the proximate result of the failure by the Defendants to monitor and to disclose suspicious orders of controlled substances.
25. The State of West Virginia and its agencies have suffered substantial and irreparable harm and will in the future suffer irreparable harm unless the Defendants are restrained by an injunction.
26. A lawsuit for damages for past losses as have been sustained by the State and its agencies is inadequate by itself to prevent the future losses that will result from the failures of Defendants to comply with West Virginia law as herein alleged..

Count II

Damages Resulting From Negligence and Violations of the West Virginia Uniform Controlled Substances Act

27. The State hereby incorporates by reference all of the previous allegations of this Amended Complaint.
28. The epidemic prescription drug abuse is attended and promoted by the repeated violation of various provisions of the West Virginia Uniform Controlled Substances Act, to wit:
- a. Improper dispensing of prescriptions contrary to *W. Va Code* § 60A-3-308;
 - b. Engaging in prohibited acts contrary to *W. Va Code* §§ 60A-4-401 through 403;
 - c. Deceiving and attempting to deceive medical practitioners in order to obtain prescriptions in contravention of *W. Va. Code* § 60A-4-410;
 - d. Disregarding the requirements of the Wholesale Drug Distribution Licensing Act of 1991, *W. Va. Code* § 60A-8-1 *et seq.*; and
 - e. Conspiring to violate the West Virginia Uniform Controlled Substances Act.
29. The Defendants are distributors of controlled substances and must comply both with the laws of the State into which they distribute controlled substances and with industry custom and standards. In the instant case, the standard of conduct for Defendants' industry requires that the Defendants know their customers, which includes, *inter alia*, an awareness of their customer base (including but not limited to population levels of the immediate area), knowledge of the average prescriptions filled each day, the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases, a description of how the dispenser fulfills its responsibility to ensure that prescriptions filled are for legitimate medical purposes, and identification of physicians and bogus centers for the alleged treatment of pain that are the dispenser's most frequent prescribers.

30. These Defendants have wilfully turned a blind eye towards the foregoing factors by regularly distributing large quantities of commonly-abused controlled substances to clients who are serving a customer base comprised of individuals who are themselves abusing prescription medications, many of whom are addicted and whom reasonably can be expected to become addicted or to engage in illicit drug transactions. The Defendants' negligent acts and omissions in violation of West Virginia's drug laws have lead to the dispensing of controlled substances for non-legitimate medical purposes of epidemic proportions, including the operation of bogus pain clinics that do little more than provide prescriptions for addictive controlled substances, thereby creating and continuing addictions to prescription medications.
31. Under West Virginia law a party who violates a statute which violation results in damages is liable for such damages as are sustained therefrom. *W.Va. Code § 55-7-9*.
32. These Defendants have by their acts and omissions proximately caused and substantially contributed to damage to the State by violating West Virginia laws, by creating conditions which contribute to the violations of West Virginia laws by others, by their negligence and by their reckless disregard of the customs, standards and practices within Defendants' own industry.

Count III

Violation of the West Virginia Consumer Credit and Protection Act (WVCCPA) Unfair Methods of Competition or Unfair or Deceptive Acts or Practices

33. The State and its agencies hereby incorporate by reference all of the previous allegations of this Amended Complaint.
34. West Virginia law as embodied in *W.Va. Code § 46A-6-104* prohibits the use of unfair methods and/or competition or unfair or deceptive acts or practices in any trade or commerce.

35. The Attorney General specifically is charged with the administration of this provision and may act *sua sponte* as the agent and legal representative of the State in civil proceedings to enforce the statute, *W. Va. Code* § 46A-6-103, §§ 46A-7-102, -108, -110, -111.
36. Violations of statutes and regulations that are enacted to protect the Public or in the exercise of the State's police power constitute unfair or deceptive acts or practices.
37. Regulations promulgated pursuant to the West Virginia Uniform Controlled Substances Act, *W. Va. Code* § 60A-3-301 18 provide, *inter alia*, for the following:
- "Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance shall obtain annually a controlled substance permit unless exempted by law or pursuant to Section 3.2 of this rule." 15 *W.Va.C.S.R.* § 2-3.1.1.
 - "All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances." 15 *W.Va.C.S.R.* § 2-4.2.1.
 - "The registrant shall design and operate a system to disclose to the registrant suspicious orders of controlled substances. The registrant shall inform the Office of the West Virginia Board of Pharmacy of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency." 15 *W.Va.C.S.R.* § 2-4.4.
38. Each violation of these mandatory duties in the West Virginia Uniform Controlled Substances Act and its corresponding regulations is an unfair or deceptive act or practice in the conduct of trade or commerce, as set forth in *W. Va. Code* § 46A-6-104.
39. Defendants' repeated violations were and are willful, and the State seeks civil penalties under *W. Va. Code* § 46A-7-111(2) for each violation.
40. As a result of the Defendants' actions and omissions the State has sustained damages, both past and in the future.
41. The State seeks all "other appropriate relief" under *W. Va. Code* § 46A-7-108, including attorney fees and costs.

Count IV

Public Nuisance

42. The State and its agencies hereby incorporate by reference all of the previous allegations of this Amended Complaint.
43. Defendants, individually and acting through their employees and agents, have created and continue to perpetrate and maintain a public nuisance by the massive distribution of abused prescription drugs for use by the citizens of West Virginia, and by their failure to put in place effective controls and procedures to guard against theft and diversion of controlled substances, and their failures to adequately design and operate a system to disclose suspicious orders of controlled substances, and by their failures to inform the State of suspicious orders when discovered by the registrant ("suspicious orders" include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency). Defendants knew or should have known their conduct would cause hurt or inconvenience to the State of West Virginia in a multitude of ways.
44. As a direct result of the conduct of each of the Defendants as set forth above, Defendants have negligently, intentionally and/or unreasonably interfered with the right of West Virginians to be free from unwarranted injuries, addictions, diseases and sicknesses and have caused ongoing damage, hurt or inconvenience to the State of West Virginia and its residents exposed to the risk of addiction to prescription drugs, who have become addicted, and/or have suffered other adverse consequences from the use of the addictive prescription drugs distributed by Defendants, and countless others who will suffer the same fate in the future as Defendants' conduct is continuing.
45. As a direct result of Defendants' conduct as set forth above, Defendants have negligently, intentionally and/or unreasonably interfered with the Public's right to be free from

unwarranted injury, disease or sickness, and have caused ongoing damage, hurt or inconvenience to the public health, the public safety and the general welfare of the citizens of West Virginia.

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

47. The public nuisance created, perpetuated and maintained by Defendants can be abated and further occurrence of such harm and inconvenience can be prevented.

48. These Defendants were on notice that an epidemic from prescription drug abuse existed and has existed during times which are relevant to this Amended Complaint. Such notice is the result of

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

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

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

51. As the result of the above-described conduct the Defendants negligently, recklessly and/or intentionally, and acting with blind indifference to the facts, created and continued propagate a public nuisance. More particularly, the public nuisance so created, injuriously, and in many areas pervasively, affects West Virginia communities and the State, and endangers the public health and safety and inconveniences the citizens of the State, *inter alia*, in the following ways:

- Areas in certain communities have become congested with persons who gather in large groups outside of "clinics, pharmacies and physician offices" that in fact are component parts of Pill Mills that exist only to prescribe and deliver drugs for illicit, non-medical purposes;
- Crimes and other dangerous activities have increased;
- Hospital services, especially those services provided by emergency rooms, are being consumed by persons with prescription drug abuse issues;
- Law enforcement and prosecutorial resources are being exhausted and consumed by having to address prescription drug abuse issues to the exclusion of other matters;
- Public resources are being unreasonably consumed in efforts to address the prescription drug abuse epidemic, thereby eliminating available resources which could be used to benefit the public at large;
- Court dockets are congested by prescription drug-related cases as well as by crimes committed by addicts, thereby diminishing access to our courts by others;
- Jails and prisons suffer from overcrowding.

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

53. The State has sustained economic harm in the expenditure of massive sums of monies and will in the future continue to suffer economic harm unless the above-described public nuisance is abated.

Count V

Negligence

54. The State realleges and incorporates by reference all preceding paragraphs as though fully set forth herein and further alleges the following.
55. Defendants have a duty to exercise reasonable care in the distribution of controlled substances.
56. Defendants have breached this duty by their conduct alleged above.
57. As a proximate result, Defendants and their agents have caused the State to incur excessive costs related to diagnosis, treatment and cure of addiction or the risk of addiction to such controlled substances, thus the State has borne the massive costs of these illnesses and conditions by having to provide necessary medical care, facilities and services for treatment of citizens of West Virginia who are unable to afford or otherwise obtain such necessary medical care, facilities and services.
58. The Defendants were negligent in failing to monitor and guard against third-party misconduct, i.e. the conduct of the Pill Mill physicians and staff as well as corrupt pharmacists and staff and, in fact, by their actions the Defendants participated and enabled such misconduct.
59. Defendants' acts and omissions as aforesaid imposed an unreasonable risk of harm to others separately and/or as combined with the negligent and/or criminal acts of third parties.
60. The Defendants are in a class of a limited number of parties that distribute controlled substances and such activity poses distinctive and significant dangers. The dangers

include diversion of controlled substances for non-legitimate medical purposes and addiction to same by consumers.

61. The Defendants were negligent in not acquiring and utilizing special knowledge and special skills that relate to the dangerous activity in order to prevent and/or ameliorate such distinctive and significant dangers.
62. Controlled substances are dangerous commodities. The Defendant distributors are required to exercise a high degree of care and diligence to prevent injury to the public from the diversion of controlled substances during distribution. The Defendants breached their duty to exercise the degree of care, prudence, watchfulness, and vigilance commensurate to the dangers involved in the transaction of its business. The Defendants cannot delegate this duty of care to another.
63. The distribution of these controlled substances are under the exclusive control and management of the Defendants. The State is without fault and the injuries to the State and its citizens would not have happened in the ordinary course of events had the Defendants used due care commensurate to the dangers involved in the distribution of controlled substances. Hence, the Defendants are negligent.

Count VI

Unjust Enrichment

64. Plaintiffs incorporate by reference all of the previous allegations of this Complaint.
65. Because of prescription drug abuse the State of West Virginia expends additionally hundreds of millions of dollars annually on law enforcement, prosecutors and prosecutions, courts and court personnel, public defender services, corrections and correctional facilities, probation and parole, public welfare and service agencies, healthcare and medical services and drug abuse education. Further, the State suffers

losses in revenue and incurs costs from workplace accidents and absenteeism resulting from prescription drug abuse.

66. The State of West Virginia remains responsible for costs of prescriptions, health care and other medically-related costs, rehabilitation and work-related programs, workers' compensation, public insurance, law enforcement, prosecution costs, court related costs, public defender services, correctional institutions, probation and parole services, which costs have substantially increased as the result of the Defendants' acts and omissions herein complained of and will in the future continue to increase unless the Defendants' conduct is abated.
67. The Defendants have thus been enriched unjustly by neglecting its duty of distributing drugs only for proper medical purposes which substances are consumed for reasons other than medical.
68. The unjust enrichment of the Defendants is directly related to the damage, loss and detriment to the Plaintiff State of West Virginia and its agencies named herein.

PRAYER

WHEREFORE, the State and its agencies pray that the Court grant the following relief:

1. Judgment in favor of the State;
2. Temporary relief, a preliminary injunction and permanent injunction ordering the ordering the Defendants to comply with the West Virginia Uniform Controlled Substances Act, *W. Va. Code* § 60A-3-301 (and regulations promulgated thereto), and *West Virginia Code* § 46A-6-104, and to cease their unlawful conduct, and mandate the Defendants to promptly notify the West Virginia Board of Pharmacy, the Office of the Attorney General, and the Department of Military Affairs and Public Safety of any and all suspicious orders for controlled substances as received from parties who are located in

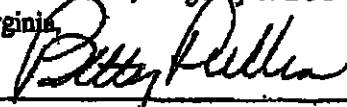
West Virginia and to submit their system for determining suspicious orders to those West Virginia authorities for prior approval, and to enter temporary and permanent injunctions that mandate Defendants be enjoined from distributing in West Virginia any controlled substances for any non-legitimate medical purpose;

3. Equitable relief, including but not limited to restitution and disgorgement;
4. Order a jury trial where so triable to determine such costs, losses and damages as are proved in this action in relation to the several counts of this Second Amended Complaint including, but not limited to:
 - a. Losses sustained as the proximate result of both negligent and conscious violations of the West Virginia Uniform Controlled Substances Act and regulations;
 - b. Damages sustained as the proximate result of nuisances created by the prescription drug abuse epidemic;
 - c. Damages and losses sustained as the proximate result of the Defendants' negligence in marketing, promoting and distribution of controlled substances in West Virginia;
 - d. Disgorgement of unjust enrichment of the Defendants;
 - e. Civil penalties of up to \$5000 for each repeated and willful violation of Chapter 46A, under West Virginia Code § 46A-7-111;
 - f. Pre- and post-judgment interest;
 - g. Costs and reasonable attorneys' fees; and
5. Such other relief, fees and cost as shall be available under the West Virginia Credit and Consumer Protection Act;
6. Order reimbursement of all litigation costs and enter an award of attorney fees herein;

7. And grant such other and further relief including but not limited to punitive damages as shall be deemed appropriate herein.

Plaintiffs seek a jury trial for all such counts as are so triable.

STATE OF WEST VIRGINIA
ex rel. PATRICK MORRISSEY,
Attorney General, the WEST VIRGINIA
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY, an agency of the State of
West Virginia, and the WEST VIRGINIA
DEPARTMENT OF HEALTH & HUMAN
RESOURCES, an agency of the State of West
Virginia.



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EXHIBIT C

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA
MCDOWELL COUNTY,

Plaintiff,

v.

**Civil Action No. 16-C-
Judge:**

**MCKESSON CORPORATION,
AMERISOURCEBERGEN DRUG
CORPORATION, CARDINAL HEALTH INC.,
and HAROLD ANTHONY COFER, Jr., M.D.,**

Defendants.

COMPLAINT

COMES NOW the Plaintiff, McDowell County, West Virginia, by counsel, and for its Complaint against Defendants, McKesson Corporation ("McKesson"), AmerisourceBergen Drug Co. (Amerisource), Cardinal Health Inc. ("Cardinal") and Harold Anthony Cofer, Jr., M.D. ("Dr. Cofer"), alleges, avers and complains as follows:

PARTIES

1. Plaintiff McDowell County is a political subdivision of the state of West Virginia.
2. McDowell County has been severely damaged by Defendants' collective actions. More specifically, McDowell County has suffered actual harm as a result of the conduct of Defendants, motivated by profit and greed, in knowingly flooding McDowell County with opioids (schedule II drugs) well beyond what would be necessary to address the pain and other associated reasons that the residents of McDowell County might use opioids. The devastation caused by these Defendants has wrecked the local economy, over-burdened the budget of McDowell County, and destroyed the lives of many residents who call McDowell County home.

3. The collective actions of Defendants have caused and will continue to cause McDowell County to expend substantial sums of public funds to deal with the significant consequences of the opioid epidemic that was fueled by Defendants' illegal, reckless, and malicious actions in flooding the state with highly addictive prescription medications without regard for the adverse consequences to McDowell County or its residents.

4. Defendants' actions, motivated by the pursuit of money without regard to the welfare of McDowell County and its residents, have caused substantial damages, including but not limited to, increased expenses of drug treatment programs, medical care and hospitalizations, emergency medical transportation, costs of law enforcement response and investigations, costs of prosecutions and incarcerations, and costs of repair for property damage.

McKesson Corporation

5. McKesson Corporation is a Delaware Corporation with headquarters in California that conducts business in West Virginia.

6. Among its many business interests, McKesson distributes pharmaceuticals to retail pharmacies as well as institutional providers like hospitals and county health departments.

7. McKesson is the largest pharmaceutical distributor in North America. McKesson delivers approximately one third of all pharmaceuticals used in North America.

8. McKesson is a registrant with the West Virginia Board of Pharmacy and does substantial business in the State of West Virginia wherein it has, during the period relevant herein, distributed pharmaceuticals in McDowell County.

AmerisourceBergen Drug Corporation

9. AmerisourceBergen Drug Corporation is a Delaware Corporation that conducts business in West Virginia.

10. The above named Defendant is referenced throughout this Complaint as Amerisource. Like McKesson, Amerisource distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

11. Amerisource is the second largest pharmaceutical distributor in North America.

12. Amerisource is a registrant with the West Virginia Board of Pharmacy and does substantial business in the State of West Virginia wherein it has, during the period relevant herein, distributed pharmaceuticals in McDowell County.

Cardinal Health Inc.

13. Cardinal Health Inc. is an Ohio Corporation that conducts business in West Virginia.

14. The above named Defendant is referenced throughout this Complaint as Cardinal. Like McKesson and Amerisource, Cardinal distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

15. Cardinal is the third largest pharmaceutical distributor in North America.

16. Cardinal is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it has, during the period relevant herein, distributed pharmaceuticals McDowell County.

17. Collectively, the above named Defendants shipped 423 million pain pills to West Virginia between 2007 and 2012, earning \$17,000,000,000 in net income.

Dr. Harold Anthony Cofer, Jr.

18. Dr. Cofer is a licensed physician who has been licensed to practice in West Virginia since 1981 (medical license number 12594).

19. Dr. Cofer practiced medicine in McDowell County (Northfork) from 2012 through 2015. Dr. Cofer currently practices in Bluefield, West Virginia (Mercer County).

20. Over the relevant time period, Dr. Cofer wrote prescriptions for medications, including but not limited to schedule II opioids, to individual patients at his office in McDowell County.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this case and over Defendants pursuant to the provisions of W.Va. Code § 56-3-33.

22. Venue is appropriate in McDowell County, West Virginia as the acts and practices of the Defendants at issue herein occurred in and caused the damage in McDowell County. Additionally, during the relevant time period, Dr. Cofer maintained an office in McDowell County.

FACTUAL BACKGROUND

23. Within the last 20 years, a scourge has infected this country, particularly in greater Appalachia and West Virginia.¹ McDowell County is ground zero for this plague that has destroyed lives and ruined local economies. The scourge is commonly described as the 'opioid epidemic.' Defendants herein each played a key part in the creation, proliferation, and continuation of the opioid epidemic and the resulting catastrophic damage.

24. Defendants each profited while disregarding the impact that their actions had on the people under the spell of these drugs.

25. Opioids are effective treatments for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care.² However, opioids are addictive and subject to abuse,

¹ <https://www.ncbi.nlm.nih.gov/pubmed/22786464>

² "Originally a term denoting synthetic narcotics resembling opiates but increasingly used to refer to both opiates and synthetic narcotics." Stedman's Medical Dictionary 27th Edition

particularly when used long-term for chronic non-cancer pain (pain lasting three months or longer, hereinafter referred to as "chronic pain"), and should not be used except as a last-resort.

26. As pharmaceutical wholesalers and a practicing physician, Defendants have known for years that with prolonged use, the effectiveness of opioids wanes, requiring increases in doses and markedly increasing the risk of significant side effects and addiction.

27. Defendants knew also that controlled studies of the safety and efficacy of opioids were limited to short-term use (not longer than 90 days), and in managed settings (e.g., hospitals), where the risk of addiction and other adverse outcomes was much less significant. The U.S. Food and Drug Administration ("FDA") has expressly recognized that there have been no long-term studies demonstrating the safety and efficacy of opioids for long-term use.

28. Prescription opioids, which include well-known brand-name drugs like OxyContin and Percocet, as well as generics like oxycodone and hydrocodone, are narcotics. They are derived from or possess properties similar to opium and heroin, and thus, they are regulated as controlled substances.³

29. Opioids—once a niche drug—are now the most prescribed class of drugs—more than blood pressure, cholesterol, or anxiety drugs. While Americans represent only 4.6% of the world's population, they consume 80% of the opioids supplied around the world and 99% of the global hydrocodone supply. Together, opioids generated \$8 billion in revenue for drug companies in 2012, a number that is projected to reach \$15.3 billion by the end of 2016.

³ Since passage of the Controlled Substances Act ("CSA") in 1970, opioids have been regulated as controlled substances. Controlled substances are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the highest. The CSA imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally had been categorized as Schedule II or Schedule III drugs. Schedule II drugs have a high potential for abuse, have a currently accepted medical use, and may lead to severe psychological or physical dependence. 21 U.S.C. § 812. Schedule II drugs may not be dispensed without an original copy of a manually signed prescription, which may not be refilled, from a doctor and filled by

30. Like heroin, prescription opioids work by binding to receptors on the spinal cord and in the brain, dampening the perception of pain. Opioids also can create a euphoric high, which can make them addictive. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, ultimately, death.

31. The dramatic increase in opioid prescriptions to treat common chronic pain conditions has resulted in a population of addicts who seek drugs from doctors. When turned down by one physician, many of these addicts deploy increasingly desperate tactics—including doctor-shopping, use of aliases, and criminal means—to satisfy their cravings.

32. Opioid abuse has not displaced heroin, but rather triggered resurgence in its use, imposing additional burdens on McDowell County and local agencies that address heroin use and addiction. Huntington, West Virginia experienced 27 heroin overdoses in the span of four hours on August 15, 2016.⁴

33. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% in 2002 to 2004 to 45.2% in 2011 to 2013. Heroin produces a very similar high to prescription opioids, but is often cheaper. While a single opioid pill may cost \$10-\$15 on the street, users can obtain a bag of heroin, with multiple highs, for the same price. It is hard to imagine the powerful pull that would cause a law-abiding, middle-aged person who started on prescription opioids for a back injury to turn to buying, snorting, or injecting heroin, but that is the dark side of opioid abuse and addiction.

34. Dr. Robert DuPont, former director of the National Institute on Drug Abuse and the former White House drug czar, opines that opioids are more destructive than crack cocaine:

“[Opioid abuse] is building more slowly, but it's much larger. And the potential[1] for death, in particular, [is] way beyond anything we saw then. . . . [F]or pain

⁴ See <http://www.cnn.com/2016/08/17/health/west-virginia-city-has-27-heroin-overdoses-in-4-hours/index.html>

medicine, a one-day dose can be sold on the black market for \$100. And a single dose can [be] lethal to a non-patient. There is no other medicine that has those characteristics. And if you think about that combination and the millions of people who are using these medicines, you get some idea of the exposure of the society to the prescription drug problem.”⁵

35. The hard working people of McDowell County, many of whom work in labor intensive occupations like mining, construction or transportation (e.g., railroad), often suffer from chronic pain. This pain takes an enormous toll on their health, their lives, and their families. These patients deserve both appropriate care and the ability to make decisions based on accurate, complete information about treatment risks and benefits.

36. As laid bare in this Complaint, Defendants each played a key role in the distribution and prescribing of opioids over the relevant time period. Simply put, the scheme could not have worked without each Defendant playing their respective part.

37. Pharmaceuticals like opioids are not sold directly to pharmacies for ultimate dispensing. Rather, there is a highly sophisticated system which distributes the drugs across the nation.

38. Defendants were each on notice that the controlled substances they distributed or prescribed were the kinds that were susceptible to being diverted for illegal purposes, abused, overused, and otherwise sought for illegal, unhealthy, or problematic purposes.

39. As entities involved in the distribution and prescribing of dangerous opioid medications, McKesson, Amerisource, Cardinal and Dr. Cofer were engaged in an abnormally and/or inherently dangerous activity and, thus, had a heightened duty of care under West Virginia law.

⁵ Transcript, Use and Abuse of Prescription Painkillers, The Diane Rehm Show (Apr. 21, 2011), <http://thedianerehmshow.org/shows/2011-04-21/use-and-abuse-prescription-painkillers/transcript>.

40. McKesson, Amerisource and Cardinal purchased opioids from manufacturers and sold them to pharmacies throughout McDowell County. In order to do so they must first register with the West Virginia Board of Pharmacy.

41. McKesson, Amerisource and Cardinal knew or should have known that they were supplying vast amounts of dangerous drugs to small markets that were already facing abuse, diversion, misuse and other problems associated with the opioid epidemic. Though they had a duty to the consuming public, collectively and individually, McKesson, Amerisource and Cardinal failed to take any action to prevent, minimize, or reduce the distribution of these dangerous drugs.

42. McKesson, Amerisource and Cardinal all had the ability to slow down, question, inspect, report, alert, or otherwise limit the flow of these dangerous drugs into McDowell County, but chose not to do so.

43. Individuals in West Virginia cannot obtain opioids without a prescription written by a licensed medical provider. Dr. Cofer was a licensed medical provider in West Virginia over the relevant time period. Dr. Cofer provided written opioid prescriptions for patients despite knowing that the opioids were likely to be abused, diverted, or misused. Dr. Cofer knew or should have known his actions resulted in patients obtaining dangerous drugs that they did not need, were likely to be abused, or were likely to be resold on the street.

44. All Defendants were on notice that West Virginia law required them, inter alia, to provide effective controls and procedures to guard against diversion of controlled substances, pursuant to 15 C.S.R. § 2-4.21 and 2-4.4 and the WV Controlled Substances Act.

45. The result of Defendants' collective actions has been catastrophic for nearly everyone in McDowell County except the Defendants.

The Role of Wholesalers

46. McKesson, Amerisource and Cardinal knew, or should have known that West Virginia had an exceedingly high rate of illegal use and diversion of prescription opioids. Numerous publications, news sources and studies highlighted the epidemic rate of opioid abuse and overdose rates in West Virginia.

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

48. McKesson, Amerisource and Cardinal, like all pharmaceutical wholesalers, were under an obligation to report suspicious orders to the appropriate authorities. Despite having information that suspicious orders were being placed, and despite actually filling these suspicious orders time after time, McKesson did not begin to comply with its regulatory obligations until March 2015, well after the unfortunate opioid train had left the station. Since that time, McKesson has submitted 4,814 suspicious order reports.

49. Failing to submit its required suspicious order reports is not a new development for McKesson. In fact, McKesson paid a \$13.2 million fine to settle similar claims in 2008 with regard to suspicious orders from internet pharmacies.

50. More recently, McKesson settled a similar investigation brought by the Department of Justice in 2015 by paying \$150 million and suspending the DEA registrations for three distribution centers.

51. Amerisource and Cardinal similarly delayed compliance with the reporting of suspicious orders. After June 2012, Cardinal finally submitted 2,426 suspicious order reports, though nine months are seemingly missing from their submissions. In 2008 Cardinal paid a \$34

million fine for failing to report suspicious orders of hydrocodone. More recently, in 2012 Cardinal's Lakeland, Florida warehouse was suspended by the DEA for two years as a result of shipping suspect orders of opioids.

52. McKesson, Amerisource and Cardinal were also aware that the Healthcare Distribution Management Association ("HDMA"), of which they are members, created "Industry Compliance Guidelines" based upon Drug Enforcement Agency requirements which stressed the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines provided: "At the center of a sophisticated supply chain, Distributors are uniquely situated to perform due diligence in order to help support the security of controlled substances they deliver to their customers." Indeed, the HDMA advises all distributors to "Know Your Customer."

53. Between 2007 and 2012, McKesson, Amerisource and Cardinal have shipped 423 million doses of highly addictive controlled pain killers into West Virginia, many of which should have been stopped and/or investigated as suspicious orders.

54. Upon information and belief, McKesson, Amerisource and Cardinal failed to undertake any effective affirmative efforts to prevent diversion of its medicines for illegal or abusive purposes.

55. When the population of the county is taken into consideration, McKesson, Amerisource and Cardinal delivered an excessive and unreasonable number of highly addictive controlled substances in McDowell County.

56. Upon information and belief, McKesson, Amerisource and Cardinal did not refuse to ship or supply any controlled substances to any McDowell County pharmacy between 2007 and the present.

57. McKesson, Amerisource and Cardinal knew or should have known that they were supplying opioid medications far in excess of the legitimate needs for McDowell County.

58. McKesson, Amerisource and Cardinal knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers they supplied to pharmacies and drug stores in McDowell County were being diverted to illegal use or abuse.

59. McKesson, Amerisource and Cardinal had a legal duty to ensure they were not filling suspicious orders, as well as to report suspicious orders.

60. The sheer volume of highly addictive opioid pain medications McKesson, Amerisource and Cardinal shipped to McDowell County from 2007 through the present was suspicious on its face.

61. Upon information and belief, McKesson, Amerisource and Cardinal made little to no effort to visit the pharmacies and drug stores in McDowell County to which they shipped substantial amounts of prescription medication, in order to conduct due diligence to ensure the medications they were shipping were not diverted to illegal uses.

62. McKesson, Amerisource and Cardinal paid its sales force employees' and managers' bonuses and commissions on the sale of most or all of the highly addictive prescription pain killers supplied to McDowell County.

63. McKesson, Amerisource and Cardinal made substantial profits from the drugs which were sold in McDowell County.

64. McKesson, Amerisource and Cardinal knowingly filled suspicious orders in McDowell County from 2007 to the present.

65. McKesson, Amerisource and Cardinal undertook intentional distribution of excessive prescription pain killers to a small community which showed a reckless disregard to the safety of McDowell County and its residents.

The Role of Dr. Cofer

66. Despite being a licensed physician, Dr. Cofer undertook no efforts to determine whether the volume of prescription pain killers he was prescribing to McDowell County patients was excessive and whether any of the prescriptions he wrote should have been refused.

67. Dr. Cofer knew or should have known that he was prescribing opioid medications far in excess of the legitimate needs for McDowell County.

68. Dr. Cofer knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers he wrote in McDowell County were being diverted to illegal use or abuse.

69. Dr. Cofer had a legal duty to ensure he was not prescribing suspicious orders.

70. The sheer volume of highly addictive opioid pain medications Dr. Cofer wrote in McDowell County was suspicious on its face.

71. Dr. Cofer made substantial profits from the drugs which were sold in McDowell County.

72. Dr. Cofer was investigated by the Complaint Committee of the West Virginia Board of Medicine for improper prescribing of narcotic pain medication.

73. In March 2015, the Committee initiated a second investigation of Dr. Cofer based on a report from the West Virginia Controlled Substance Monitoring Program Database Review Committee (CSMP Review Committee).

74. The CSMP Review Committee notified the West Virginia Board of Medicine that a review done by the chief medical examiner of two drug overdoses could be traced to prescriptions written by Dr. Cofer for controlled substances. The overdoses resulted in the deaths of two patients.

75. In addition to the two patients who died, 14 other patients who had been prescribed controlled substances were included in the review by the West Virginia Board of Medicine.

76. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records did not contain evidence of routine use of controlled substance agreements or routine drug screens prior to 2015.

77. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited documentation that drug screens were reviewed and documented in the patient record.

78. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited evidence that the Controlled Substance Monitoring Program database was queried in conformity with West Virginia law (W. VA. Code R. §11-10-1 et seq.).

79. On or about February 6, 2016, Dr. Cofer agreed with the stipulated Findings of Fact and Conclusions of Law reached by the West Virginia Board of Medicine.

COUNT I
NEGLIGENCE OF MCKESSON, AMERISOURCE AND CARDINAL

80. Plaintiff incorporates by reference the allegations in paragraphs 1 through 79.

81. McKesson, Amerisource and Cardinal are distributors of controlled substances and must comply with both the laws of West Virginia and with industry customs and standards.

82. As licensed registrants with the West Virginia Board of Pharmacy, McKesson, Amerisource and Cardinal were required to submit suspicious order reports.

83. McKesson, Amerisource and Cardinal failed to submit, or fully disclose suspicious orders.

84. McKesson and Cardinal negligently failed to ensure its conduct conformed to West Virginia law and regulations.

85. McKesson and Cardinal negligently failed to conform their conduct to United States law and regulations.

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

87. McKesson, Amerisource and Cardinal had a duty to McDowell County to comply with their obligation to report suspicious orders in McDowell County.

88. McKesson, Amerisource and Cardinal breached this duty by virtue of the above allegations. The breach is the proximate cause of damages suffered by Plaintiff.

89. Industry standards also require McKesson, Amerisource and Cardinal to:

- know its customers,
- know its customer base,
- know the population base served by a particular pharmacy or drug store,
- know the average prescriptions filled each day,
- know the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases,
- have a description of how the dispenser fulfills its responsibility to ensure that prescriptions filled are for legitimate medical purposes, and

- know the identification of the physicians and bogus pain clinics and centers for the alleged treatment of pain that are the pharmacy or drug stores' most frequent prescribes.

90. McKesson, Amerisource and Cardinal negligently failed to ensure its conduct conformed to industry standards.

91. The aforementioned conduct was a direct breach of the duty Defendants McKesson, Amerisource and Cardinal owed to Plaintiff which was the proximate cause of Plaintiff suffering damages for which it seeks a recovery herein.

COUNT II NEGLIGENCE OF DR. COFER

92. Plaintiff incorporates by reference the allegations in paragraphs 1 through 79.

93. Medicare data obtained for the years 2012 through 2014 showed a steady increase in the number of claims filed by Dr. Cofer for Medicare Part D. In 2012, Dr. Cofer filed 7,133 claims; in 2013, Dr. Cofer filed 10,238 claims; and in 2014, Dr. Cofer filed 12,468 claims.⁶

94. Data obtained from an agency of the United States government for 2013 revealed that Dr. Cofer prescribed schedule II drugs to 19% of the 397 Medicare patients examined in 2013. The average among all physicians was only 5%.

95. Dr. Cofer wrote 308 prescriptions (to include refills) for Oxycodone HCL7 to Medicare patients in 2013. Based on an average of 30 pills per prescription, this equaled 9,240 pills.

96. The 308 prescriptions for Oxycodone HCL was the second highest prescribed medication by Dr. Cofer in 2013.

⁶ All Medicare data for Dr. Cofer was located at ProPublica.org.

97. Data obtained from an agency of the United States government for 2014 revealed that Dr. Cofer filled at least one prescription for an opioid to 57% of the 449 Medicare patients examined in 2014. The average among physicians was only 25%.

98. Dr. Cofer wrote 387 prescriptions (to include refills) for Oxycodone HCL to Medicare patients in 2014. Based on an average of 30 pills per prescription, this equaled 11,610 pills.

99. The 387 prescriptions of Oxycodone HCL was the third highest prescribed medication by Dr. Cofer in 2014.

100. In January 2015, the Complaint Committee of the West Virginia Board of Medicine (West Virginia Board of Medicine) initiated an investigation of Dr. Cofer for improper prescribing of narcotic pain medication.

101. In March 2015, the West Virginia Board of Medicine initiated a second investigation of Dr. Cofer based on a report from the West Virginia Controlled Substance Monitoring Program Database Review Committee (CSMP Review Committee).

102. The CSMP Review Committee notified the West Virginia Board of Medicine that a review done by the chief medical examiner of two drug overdoses could be traced to prescriptions written by Dr. Cofer for controlled substances. The overdoses resulted in the deaths of two patients.

103. In addition to the two patients who died, 14 other patients who had been prescribed controlled substances were included in the review by the West Virginia Board of Medicine.

104. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records did not contain evidence of routine use of controlled substance agreements or routine drug screens prior to 2015.

105. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited documentation that drug screens were reviewed and documented in the patient record.

106. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited evidence that the Controlled Substance Monitoring Program database was queried in conformity with West Virginia statute (W. VA. Code R. §11-10-1 et. seq.).

107. On or about February 6, 2016, Dr. Cofer agreed with the stipulated Findings of Fact and Conclusions of Law reached by the West Virginia Board of Medicine.

108. As a practicing physician working in McDowell County, Dr. Cofer owed a duty of care to the residents of McDowell County and to the County itself.

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

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

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

112. Dr. Cofer's negligent violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

113. Dr. Cofer's negligent acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff.

COUNT III
DEFENDANTS MCKESSON, AMERISOURCE AND CARDINAL'S
Violation of W.Va. Code § 60A-8-1 et seq and W.Va. Code § 55-7-9

114. Plaintiff incorporates by reference the allegations in paragraphs 1 through 79.

115. Defendants McKesson, Amerisource and Cardinal intentionally contributed to the prescription drug abuse epidemic in the state of West Virginia through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act and through reckless disregard to the safety and well-being to the citizens of West Virginia, including the citizens of McDowell County.

116. Defendants McKesson, Amerisource and Cardinal intentionally failed to meet or otherwise misrepresented their compliance with the requirements of W.Va. Code § 60A-8-1 et seq and otherwise intentionally violated the West Virginia Uniform Controlled Substances Act.

117. Defendants McKesson, Amerisource and Cardinal intentionally failed to ensure their conduct conformed to industry standards, West Virginia law and other regulations.

118. Defendants McKesson, Amerisource and Cardinal intentionally turned a blind eye toward industry standards, West Virginia law, and other regulations by regularly distributing obscenely large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and whom can reasonably be expected to become addicted or to engage in illicit drug transactions.

119. Defendants McKesson, Amerisource and Cardinal's intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse epidemic in West Virginia, including McDowell County.

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

121. Defendants' McKesson, Amerisource and Cardinal's intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

122. Defendants McKesson, Amerisource and Cardinal's intentional violations of West Virginia law make them liable for all the damages which are sustained therefrom. W.Va. Code Section 55-7-9.

123. Defendants McKesson, Amerisource and Cardinal's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by McDowell County, and created conditions which contribute to the violation of West Virginia laws by others.

124. Defendants McKesson, Amerisource and Cardinal's intentional acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards and practices within Defendants' own industries.

125. Upon information and belief, Defendants McKesson, Amerisource and Cardinal continue to intentionally violate West Virginia laws and regulations, United States laws and regulations, and Defendants' industry customs, standards and practices which continue to proximately cause substantial damages to Plaintiff.

COUNT IV
DR. COFER'S VIOLATION
of W.Va. Code § 60A-4-401 and W.Va. Code § 55-7-9

126. Plaintiff incorporates by reference the allegations in paragraphs 1 through 79.

127. Dr. Cofer constructively delivered controlled substances requiring valid prescriptions by the issuance of purported prescriptions on behalf of purported patients who received the controlled substances from various pharmacists who filled such prescriptions.

128. Dr. Cofer issued such prescriptions intentionally or knowingly outside the usual "course of professional practice or research," thereby not engaging in the authorized activities of a "practitioner," as defined in W.Va. Code, 60A-1-101(v), as amended. Dr. Cofer's prescriptions were issued intentionally or knowingly without a legitimate medical other authorized purpose.

129. By virtue of Dr. Cofer's actions, he constructively delivered controlled substances in violation of W.Va. Code, 60A-4-401(a), as amended, which is part of West Virginia's Uniform Controlled Substances Act.

130. Defendant Dr. Cofer's intentional violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

131. Defendant Dr. Cofers' intentional acts and omissions have proximately caused and substantially contributed to damage suffered by McDowell County, and created conditions which contribute to the violation of West Virginia laws by others.

COUNT V UNJUST ENRICHMENT

132. Plaintiff incorporates by reference the allegations in paragraphs 1 through 79.

133. As a result of all Defendants' actions, Plaintiff has expended substantial amounts of money annually that it would not have otherwise expended on numerous services through various agencies, including, but not limited to: Increased law enforcement, prosecutors and prosecutions, courts and court personnel, public defender services, corrections and correctional facilities, probation and parole, public welfare and service agencies, healthcare and medical services and drug abuse education and treatment.

134. Plaintiff has lost revenue and incurred direct and indirect costs from workplace accidents, absenteeism, and decreased productivity from prescription drug abuse.

135. Plaintiff remains responsible for costs of prescriptions, health care, and other medically-related costs, rehabilitation, and work-related programs, workers' compensation, public insurance, law enforcement, prosecution costs, court related costs, public defender services, correctional institutions, probation and parole services, which costs have substantially increased as a result of the Defendants' acts and omissions.

136. Plaintiff will continue to incur these increased costs in the future as a result of the Defendants' conduct listed herein.

137. Collectively, Defendants McKesson, Amerisource, Cardinal and Dr. Cofer made large profits while fueling the prescription drug epidemic in West Virginia and McDowell County.

138. Defendants McKesson, Amerisource and Cardinal continue to receive considerable profits from the distribution of controlled substances in McDowell County.

139. Defendants McKesson, Amerisource, Cardinal, and Dr. Cofer were each unjustly enriched by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing.

140. Defendants McKesson, Amerisource, and Cardinal's sales of prescription medications were increased by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing by the distribution of drugs which were diverted for purposes other than legitimate medical needs.

141. Defendants McKesson, Amerisource, and Cardinal's negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing have unjustly enriched the Defendants and are directly related to the damages and losses of the Plaintiff.

142. Defendants McKesson, Amerisource, and Cardinal's negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing entitle Plaintiff to disgorgement of the profits received by Defendants for all sales it made in McDowell County from 2007 to present.

143. Defendants are liable to Plaintiff for all damages incurred as a result of Defendants' negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing contained herein.

PRAYER


WEHREFORE, Plaintiff prays that the Court grant the following relief:

1. Order a jury trial on all issues so triable to determine damages as a result of the Defendants' actions outlined in this Complaint
2. Enter Judgment in favor of Plaintiff;
3. Enter a temporary restraining order which:
 - a. Prevents Defendants from continuing to violate West Virginia laws;
 - b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in McDowell County;
 - d. Mandates Defendants submit their system for determining suspicious orders to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in McDowell County for any non-legitimate medical purpose;
4. Enter a permanent restraining order which:
 - a. Prevents Defendants from continuing to violate West Virginia laws;

- b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in McDowell County;
 - d. Mandates Defendants submit their system for determining suspicious orders to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in McDowell County for any non-legitimate medical purpose; and
 - e. Mandates Defendants provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendants' actions
- 5. Order equitable relief, including, but not limited to restitution and disgorgement;
 - 6. Award punitive damages for Defendants' willful, wanton, malicious, oppressive, and intentional actions as detailed herein;
 - 7. Award attorneys' fees and costs and
 - 8. Award such other relief as this Court deems just and appropriate.

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

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EXHIBIT D

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

v.

Civil Action No.: 17-C-_____

AMERISOURCEBERGER DRUG CORPORATION,
CARDINAL HEALTH, INC.,
MCKESSON CORPORATION and
GREGORY DONALD CHANEY, M.D.,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, the City of Huntington, West Virginia, by counsel Charles R. "Rusty" Webb of The Webb Law Centre, PLLC and for its Complaint against Defendants, AmerisourceBergen Drug Co. (Amerisource), Cardinal Health Inc. ("Cardinal") McKesson Corporation ("McKesson") and Gregory Donald Chaney, M.D. ("Dr. Chaney") and state as follows:

1. Plaintiff, the City of Huntington, is a political subdivision of the state of West Virginia.
2. The City of Huntington has been severely damaged by Defendants' collective actions. The Defendants have illegally and tortiously profited from the prescription drug abuse problems knowingly dumping opioids into the City of Huntington. The devastation caused by these Defendants goes beyond the economic damage; the City of Huntington's families have lost children, parents and grandparents. This epidemic of opioid abuse caused by the Defendants has taken and destroyed the lives of many residents of the City of Huntington.
3. Upon information and belief, Defendant AmerisourceBergen Drug Corporation ("Amerisource") is a Delaware Corporation that conducts business in West Virginia. Upon

information and belief, Amerisource distributes pharmaceuticals to retail pharmacies, hospitals and county health departments. Upon information and belief, Amerisource is a registrant with the West Virginia Board of Pharmacy and does substantial business in the State of West Virginia wherein it has, during the period relevant herein, distributed pharmaceuticals in the City of Huntington.

4. Upon information and belief, Cardinal Health Inc. ("Cardinal") is an Ohio Corporation that conducts business in West Virginia. Upon information and belief, Cardinal distributes pharmaceuticals to retail pharmacies, hospitals and county health departments. Upon information and belief, Cardinal is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it has, during the period relevant herein distributed pharmaceuticals in the City of Huntington.

5. Upon information and belief, McKesson Corporation ("McKesson") is a Delaware Corporation with headquarters in California that conducts business in West Virginia. Upon information and belief, McKesson distributes pharmaceuticals to retail pharmacies, hospitals and county health departments. Upon information and belief, McKesson is a registrant with the West Virginia Board of Pharmacy and does substantial business in the State of West Virginia wherein it has, during the period relevant herein, distributed pharmaceuticals in the City of Huntington.

6. Upon information and belief, the above named Defendants shipped 423 million pain pills to West Virginia between 2007 and 2012, earning \$17,000,000,000 in net income.

7. Upon information and belief, Dr. Chaney was a licensed physician who had held an active license, No. 16608, to practice medicine in the State of West Virginia which was issued by the Board on July 1, 1991.

8. Upon information and belief, Dr. Chaney's practice address of record with the Board was in Barboursville, West Virginia.

9. Upon information and belief, Dr. Chaney was the sole shareholder of Area Health Systems, Inc., d/b/a Tri-State Medical Center. From January 1, 1996 through January 1, 2016, Area Health Systems, Inc. held a Certificate of Authorization as a Medical Corporation issued by the Board, Registration Number 01213.

10. Upon information and belief, over the relevant time period, Dr. Chaney wrote prescriptions for medications, including but not limited to schedule II opioids, to Huntington residents.

11. Through their acts and omissions the Defendants have inserted themselves as an integral part of the epidemic of opioid abuse. As alleged herein, this epidemic consist of medical providers, pharmacies and distributors of controlled substances, each of whom knowingly or while acting grossly negligent prescribe, dispense or distribute prescription medicine for illegitimate medical purposes. Each act alone would be ineffective to divert controlled substances for illegitimate medical purposes. Equally, each act together causes and contributes to the opioid epidemic.

12. The actions of Defendants have caused and will continue to cause the City of Huntington to disburse substantial sums of public funds to deal with the significant consequences of the opioid epidemic that was fueled by Defendants' illegal, reckless, and malicious actions in flooding the state with highly addictive prescription medications without regard for the adverse consequences to the City of Huntington or its residents.

13. The Defendants' actions, motivated by financial gain without regard to the welfare of the City of Huntington and its residents, have caused substantial damages, including, but not

limited to, increased expenses of drug abuse treatment program, prevention and training costs (for law enforcement, hospitals and schools), costs of the drug Naloxone as well as education, training and use, youth development community programs, medical care and hospitalizations, increased costs of law enforcement, increased costs of prosecutions and most significantly increased costs of incarcerations.

14. This Court has jurisdiction over this case and over Defendants pursuant to the provisions of W .Va. Code § 56-3-33.

15. Venue is appropriate in Cabell County, West Virginia as the acts and practices of the Defendants at issue herein occurred in and caused damages in the City of Huntington, West Virginia.

FACTS

16. In the last six years, drug wholesalers have showered the state of West Virginia with 780 million hydrocodone and oxycodone pills, while 1,728 West Virginians have fatally overdosed on those two painkillers. The unregulated shipments amount to 433 pain pills for every man, woman and child in the state of West Virginia.

17. In the last 20 years, an opioid epidemic has infected this country, particularly in Huntington, West Virginia. Defendants each played a key role in the creation and continuation of the opioid epidemic resulting momentous damages.

18. The Defendants each profited while disregarding the impact that their actions had on the people under the influence of these drugs.

19. Opioids are effective treatments for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care.¹ However, opioids are addictive and subject to abuse,

¹ "Originally a term denoting synthetic narcotics resembling opiates but increasingly used to refer to both opiates and synthetic narcotics." Stedman's Medical Dictionary, 27nd Edition.

particularly when used long-term for chronic non-cancer pain (pain lasting three months or longer, hereinafter referred to as "chronic pain"), and should not be used except as a last-resort.

20. As pharmaceutical wholesalers and a practicing physician, Defendants have known for years that with prolonged use, the effectiveness of opioids wanes, requiring increases in doses and markedly increasing the risk of significant side effects and addiction.

21. Prescription opioids, which include well-known brand-name drugs like OxyContin and Percocet, as well as generics like oxycodone and hydrocodone, are narcotics. They are derived from or possess properties similar to opium and heroin, and thus, they are regulated as controlled substances.²

22. Prescription opioids work by binding to receptors on the spinal cord and in the brain, dampening the perception of pain. Opioids also can create a euphoric high, which can make them addictive. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, possibly, death.

23. The dramatic increase in opioid prescriptions to treat common chronic pain conditions has resulted in a population of addicts who seek drugs from doctors. When turned down by one physician, many of addicts deploy increasingly desperate tactics-including doctor-shopping, use of aliases, and criminal means to satisfy their cravings or turning to heroin as a cheaper alternative to prescription drugs.

24. Opioid abuse has not displaced heroin, but rather triggered resurgence in its use imposing additional burdens on the City of Huntington and local agencies that address heroin use and addiction. Huntington, West Virginia experienced 26 heroin overdoses in the span of four

² Since passage of the Controlled Substances Act ("CSA") in 1970, opioids have been regulated as controlled substances. Controlled substances are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the highest. The CSA imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally had been categorized as Schedule II or Schedule III drugs. Schedule II drugs have a high potential for abuse, have a currently accepted medical use, and may lead to severe psychological or physical dependence. 21 U.S.C. § 812. Schedule II drugs may not be dispensed without an original copy of a manually signed prescription, which may not be refilled, from a doctor.

hours on August 17, 2016. The amount of calls that were received overwhelmed emergency responders. When the first few calls came in, three ambulances were already out dealing with overdoses. For a half-hour span, there were no ambulances available in the county to send. Eight of the victims were revived using the opioid-overdose-reversing drug naloxone and others by a manual resuscitator "a bag valve mask" to stimulate breathing. One victim was given three doses of naloxone.³

25. A recent study by the Centers for Disease Control and Prevention found that hepatitis C cases in the State West Virginia have more than tripled between 2006 and 2012. The recent outbreak of hepatitis C, which can be transmitted by injecting drugs or having unprotected sex, is centered in rural areas among young, white drug users. West Virginia has seen 3,000 drug overdose deaths in the last five years, or an average of 600 a year. In Cabell County alone this year, there were at least 32 overdose deaths and 360 drug overdoses, including heroin and prescription drugs. There have been 406 drug-related arrests in Huntington this year⁴.

26. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% in 2002 to 2004 to 45.2% in 2011 to 2013. Heroin produces a very similar high to prescription opioids, but is often cheaper and easier to obtain. While a single opioid pill may cost \$10-\$15 on the street, users can obtain a bag of heroin (0.1g), with multiple highs, for the same price.

27. West Virginia had the highest drug-overdose death rate in the US in 2014, according to a recent CDC report⁵. The state also has one of the highest prescription rates of opioids in the United States⁶. West Virginia ranks in the top 10 for the highest rate of

³ See <http://www.cnn.com/2016/08/17/health/west-virginia-city-has-27-heroin-overdoses-in-4-hours/index.html>

⁴ <http://www.dailymail.co.uk/news/article-3128229/West-Virginia-rate-drug-overdose-deaths.html#ixzz4W7qD5w3j>

⁵ <http://www.cdc.gov/drugoverdose/data/statedeaths.html>.

⁶ <http://www.businessinsider.com/these-are-the-states-prescribing-the-most-opioid-painkillers-2016-3>.

prescriptions given out for high-dose opioids and extended-release opioids both of which are targets for abusers.

28. The roots of the opioid epidemic in West Virginia mirror the rest of the United States. However, there are crucial differences. As in the rest of the United States, opioid prescriptions started skyrocketing in the mid-1990s as pharmaceutical companies introduced powerful new painkillers such as MS Contin and Oxycontin to the public. Medical groups began calling pain the "fifth vital sign" that doctors should attend to, according to Dr. Ted Cicero, a professor of psychiatry at Washington University in St. Louis and an opioid-use researcher.

"There was a big push saying we had a big problem with the under-treatment of pain,"

"Opioid prescriptions skyrocketed from the early '90s until about 2010."

The same phenomenon applied in West Virginia but collided with two other factors 1) A disproportionate number of jobs involving manual labor like coal mining, timbering, and manufacturing; and 2) High rates of joblessness.

29. West Virginia has long been known as "coal country." Mining, timbering, and manufacturing play a huge role in West Virginia's economy⁷. They are all jobs that require heavy manual labor and leave workers prone to injury. Coal mining accounts for more than 18,000 jobs in West Virginia⁸. Although the West Virginia's coal mines have lost more than 7,000 jobs since 2011, the mining industry as a whole has continued to grow in the state, thanks to strong growth in the natural gas and oil industries. According to the US Bureau of Economic Analysis, mining accounted for 18% of the state's overall GDP in 2014⁹.

⁷ http://www.seniorjobbank.org/database/West_Virginia/West_Virginia.html.

⁸ http://www.nma.org/pdf/c_employment_state_region_method.pdf.

⁹ <https://www.afsc.org/sites/afsc.civicactions.net/files/documents/Report-state-working-west-va-2014.pdf>.

30. Mining operations proved to be flash points for opioid abuse when prescription practices liberalized, as workers tried to stave off injuries. John Temple, a professor at West Virginia University and the author of the 2015 book "American Pain", has offered:

*In a mining camp, there aren't a lot of doctors," he said. "That doctor is going to be more likely to opt for the quick fix and give people pills to fix their pain and get them back into the mine, rather than give them rest or therapy or those things that can actually cure pain."*¹⁰

31. Dr. Carl "Rolly" Sullivan, who has run the addiction program at West Virginia University Hospitals since 1985, has noted the link between opioid abuse and the West Virginian economy:

West Virginia was ripe for the picking, We had a lot of blue-collar workers who were in farming and timbering and coal mining and things that were likely to produce injuries.

*There are a lot of dangerous occupations" in Appalachia, he said. "People get prescribed opioids far more frequently" for the injuries associated with them."*¹¹

32. Opioid abuse was further exacerbated by a declining economy and heavy job loss in the state over the last 20 years. As of March 2016, West Virginia has the second-highest unemployment rate in the US, at 6.5%¹². According to a Bureau of Labor Statistics report last August, West Virginia was the only state to experience a statistically significant decrease in employment over the previous year, losing 19,100 jobs from 2014 to 2015¹³.

33. Though the coal-mining industry has been hit hard jobs in the sector have decreased from 41,000 in 1983 to approximately 18,000 in 2016¹⁴, according to the Mine Safety and Health Administration, other industries were struck as bad or worse. According to The Wall

¹⁰ <http://www.amazon.com/American-Pain-Unleashed-Americas-Deadliest/dp/1493007386?tag=blsafety-net-20>.

¹¹ <http://www.wvgazette.com/apps/pbcs.dll/article?AID=/20151017/GZ01/151019539>.

¹² <http://www.bls.gov/web/laus/laumstrk.htm>.

¹³ <http://blogs.wsj.com/economics/2015/08/21/the-only-state-to-lose-jobs-since-july-last-year-west-virginia/>.

¹⁴ <https://www.washingtonpost.com/news/work/wp/2013/11/04/heres-why-central-appalachias-coal-industry-is-dying/>.

Street Journal, jobs in construction and manufacturing have fallen by 23% and 16%, respectively, since the recession¹⁵.

34. West Virginia was primed by prescriptions from work-related injuries, job loss was the gasoline on the fire. Dr. Richard Vaglienti, the director of the Pain Management Center at West Virginia University and a co-chair of West Virginia's Expert Pain Management panel, stated:

The parts of the state that were worst hit were the areas in the southern coal fields that had just collapsed. It became a problem there and it spread throughout the state until it was everywhere," "If you look at the areas that are hardest hit, they are usually the areas that have nothing going on economically.

35. Substance abuse in West Virginia becomes more common as joblessness increases. A lot of citizens will turn to alcohol, tobacco, illegal drugs and get high for recreation until the next job comes along.

36. Low education levels, high rates of unemployment and job-related injuries are closely linked to abuse of alcohol, illicit drugs and prescription medications¹⁶.

37. As opioid prescribing rose, prescription opioids became the recreational drug of choice.¹⁷

38. The composition of the patients at the West Virginia University addiction program switched from 90% alcoholism in the 1990s to between 90% and 95% prescription painkiller addiction by 2002. Not long after, the state began cracking down on the "pill mills," tightening prescription rules, and launching a prescription drug monitoring program, leading to the arrests of many physicians and pharmacists. But at that point, the opioid epidemic was in full swing.

¹⁵ <http://blogs.wsj.com/economics/2015/08/21/the-only-state-to-lose-jobs-since-july-last-year-west-virginia/>.

¹⁶ Appalachian Regional Commission, 2009 report.

¹⁷ http://www.salon.com/2012/04/11/americas_pill_popping_capital/.

39. Pharmaceuticals, like opioids, are not sold directly to pharmacies for ultimate dispensing. There is a sophisticated system which distributes the drugs across our nation.

40. Defendants were each on notice that the controlled substances they distributed or prescribed were the kinds that were susceptible to being diverted for illegal purposes, abused, overused, and otherwise sought for illegal, unhealthy and problematic purposes. As entities involved in the distribution and prescribing of dangerous opioid medications, Defendants were engaged in an abnormally and/or inherently dangerous activity and had a duty of care under West Virginia law.

41. The Defendants Amerisource, Cardinal and McKesson purchased opioids from manufacturers and sold them to pharmacies throughout the City of Huntington.

42. Upon information and belief, the Defendants Amerisource, Cardinal and McKesson are registered with the West Virginia Board of Pharmacy.

43. The Defendants Amerisource, Cardinal and McKesson knew or should have known that they were supplying vast amounts of dangerous drugs to small markets that were already facing abuse, diversion, misuse and other problems associated with the opioid epidemic. Though they had a duty to the consuming public, collectively and individually, Defendants Amerisource, Cardinal and McKesson failed to take any action to prevent or reduce the distribution of these drugs.

44. The Defendants Amerisource, Cardinal and McKesson had the ability to slow down, question, inspect, report or otherwise limit the flow of these drugs into the City of Huntington, but chose not to do so, because they did not want to lose profits.

45. Individuals in West Virginia cannot obtain opioids without a prescription written by a licensed medical provider. Dr. Chaney was a licensed medical provider in West Virginia

over the relevant time period. Dr. Chaney provided written opioid prescriptions for patients despite knowing that the opioids were likely to be abused, diverted, or misused. Dr. Chaney knew or should have known his actions resulted in patients obtaining dangerous drugs that they did not need, were likely to be abused, or were likely to be resold on the street.

46. All Defendants were on notice that West Virginia law required them, inter alia, to provide effective controls and procedures to guard against diversion of controlled substances, pursuant to 15 C.S.R. § 2-4.21 and 2-4.4 and the WV Controlled Substances Act.

47. The Defendants Amerisource, Cardinal and McKesson, knew, or should have known that West Virginia had an exceedingly high rate of illegal use and diversion of prescription opioids. Numerous publications, news sources and studies highlighted the epidemic rate of opioid abuse and overdose rates in West Virginia.

48. The Defendants Amerisource, Cardinal and McKesson, like all pharmaceutical wholesalers, were under an obligation to report suspicious orders to the appropriate authorities. Despite having information that suspicious orders were being placed, and despite actually filling these suspicious orders time after time, McKesson did not begin to comply with its regulatory obligations until March 2015. Since that time, McKesson has submitted 4,814 suspicious order reports.

49. Failing to submit its required suspicious order reports is not a new development for McKesson. McKesson paid a \$13.2 million fine to settle similar claims in 2008 with regard to suspicious orders from internet pharmacies.

50. The Defendant McKesson settled a similar investigation brought by the Department of Justice in 2015 by paying \$150 million and suspending the DEA registrations for three distribution centers.

51. The Defendants Amerisource and Cardinal similarly delayed compliance with the reporting of suspicious orders. After June 2012, Cardinal finally submitted 2,426 suspicious order reports, though nine months are seemingly missing from their submissions. In 2008 Cardinal paid a \$34 million fine for failing to report suspicious orders of hydrocodone. More recently, in 2012 Cardinal's Lakeland, Florida warehouse was suspended by the DEA for two years as a result of shipping suspect orders of opioids.

52. The Defendants Amerisource, Cardinal and McKesson were also aware that the Healthcare Distribution Management Association ("HDMA"), of which they are members, created "Industry Compliance Guidelines" based upon Drug Enforcement Agency requirements which stressed the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines provided: "At the center of a sophisticated supply chain, Distributors are uniquely situated to perform due diligence in order to help support the security of controlled substances they deliver to their customers." Indeed, the HDMA advises all distributors to "Know Your Customer."

53. Between 2007 and 2012 the Defendants Amerisource, Cardinal and McKesson have shipped 423 million doses of highly addictive controlled pain killers into West Virginia, many of which should have been stopped and/or investigated as suspicious orders.

54. Upon information and belief, the Defendants Amerisource, Cardinal and McKesson failed to undertake any effective affirmative efforts to prevent diversion of its medicines for illegal or abusive purposes.

55. The Defendants Amerisource, Cardinal and McKesson delivered an excessive and unreasonable number of highly addictive controlled substances in the City of Huntington.

56. Upon information and belief, the Defendants Amerisource, Cardinal and McKesson did not refuse to ship or supply any controlled substances to any the City of Huntington pharmacy between 2007 and the present.

57. The Defendants Amerisource, Cardinal and McKesson knew or should have known that they were supplying opioid medications far in excess of the legitimate needs for the City of Huntington.

58. The Defendants Amerisource, Cardinal and McKesson knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers they supplied to pharmacies and drug stores in the City of Huntington were being diverted to illegal use or abuse.

59. The Defendants Amerisource, Cardinal and McKesson had a legal duty to ensure they were not filling suspicious orders, as well as to report suspicious orders.

60. Upon information and belief, the Defendants Amerisource, Cardinal and McKesson made little to no effort to inquire of the pharmacies and drug stores in and adjacent to the City of Huntington to which they shipped substantial amounts of prescription medication, in order to conduct due diligence to ensure the medications they were shipping were not diverted to illegal uses.

61. The Defendants Amerisource, Cardinal and McKesson paid its sales force employees' and managers' bonuses and commissions on the sale of most or all of the highly addictive prescription pain killers supplied to and the City of Huntington.

62. The Defendants Amerisource, Cardinal and McKesson made substantial profits from the drugs which were sold in the City of Huntington.

63. The Defendants Amerisource, Cardinal and McKesson undertook intentional distribution of excessive prescription pain killers to a small community which showed a reckless disregard to the safety of the City of Huntington and its residents.

64. Despite being a licensed physician, Dr. Chaney undertook no efforts to determine whether the volume of prescription pain killers he was prescribing to Huntington residents was excessive and whether any of the prescriptions he wrote should have been refused.

65. Dr. Chaney knew or should have known that he was prescribing opioid medications far in excess of the legitimate needs for Huntington patients.

66. Dr. Chaney knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers he wrote in Huntington were being diverted to illegal use or abuse.

67. Dr. Chaney had a legal duty to ensure he was not prescribing suspicious orders.

68. Dr. Chaney made substantial profits from the drugs which were sold to Huntington residents.

**COUNT I
NEGLIGENCE OF DEFENDANTS AMERISOURCEBERGER
DRUG CORPORATION, CARDINAL HEALTH, INC. and
MCKESSON CORPORATION**

69. Plaintiff incorporates by reference the allegations in paragraphs 1 through 68.

70. The Defendants Amerisource, Cardinal and McKesson are distributors of controlled substances and must comply with both the laws of West Virginia and with industry customs and standards.

71. As licensed registrants with the West Virginia Board of Pharmacy, the Defendants Amerisource, Cardinal and McKesson were required to submit suspicious order reports.

72. The Defendants Amerisource, Cardinal and McKesson failed to submit, or fully disclose suspicious orders.

73. The Defendants Cardinal and McKesson negligently failed to ensure its conduct conformed to West Virginia law and regulations.

74. The Defendants Cardinal and McKesson negligently failed to conform their conduct to United States law and regulations.

75. The Defendants Cardinal and McKesson negligently disregarded the aforementioned factors by regularly distributing large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and whom reasonably can be expected to become addicted or to engage in illicit drug transactions and probable heroin use.

76. The Defendants Amerisource, Cardinal and McKesson had a duty to the City of Huntington to comply with their obligation to report suspicious orders in the City of Huntington.

77. The Defendants Amerisource, Cardinal and McKesson breached this duty. The breach is the proximate cause of damages suffered by Plaintiff.

78. Industry standards also require the Defendants Amerisource, Cardinal and McKesson to:

Know its customers, know its customer base, know the population base served by a particular pharmacy or drug store, know the average prescriptions filled each day, know the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases, have a description of how the dispenser fulfills its responsibility to ensure that prescriptions filled are for legitimate medical purposes, and know the identification of the physicians and bogus pain clinics and centers for the alleged treatment of pain that are the pharmacy or drug stores' most frequent prescribes.

79. The Defendants Amerisource, Cardinal and McKesson negligently failed to ensure its conduct conformed to industry standards.

80. The aforementioned conduct was a direct breach of the duty Defendants Amerisource, Cardinal and McKesson owed to Plaintiff which was the proximate cause of Plaintiff suffering damages for which it seeks recovery herein.

COUNT II NEGLIGENCE OF DR. CHANEY

81. Plaintiff incorporates by reference the allegations in paragraphs 1 through 80.

82. Data obtained from an agency of the United States government for 2014 revealed that Dr. Chaney prescribed opioids to 58% of the 398 Medicare patients, compared to an average of 25% among all physicians.¹⁸

83. Dr. Chaney wrote 1,357 prescriptions (to include refills) for Hydrocodone-Acetaminophen to Medicare patients in 2014. Based on an average of 30 pills per prescription, this equaled 40,700 pills.

84. Dr. Chaney wrote 124 prescriptions (to include refills) for Oxycodone-Acetaminophen to Medicare patients in 2014. Based on an average of 30 pills per prescription, this equaled 3,720 pills.

85. Dr. Chaney wrote 117 prescriptions (to include refills) for Tramadol HCL to Medicare patients in 2014. Based on an average of 30 pills per prescription, this equaled 3,510 pills.

86. Dr. Chaney wrote 107 prescriptions (to include refills) for Oxycodone HCL to Medicare patients in 2014. Based on an average of 130 pills per prescription¹⁹, this would equal 13,910 pills.

¹⁸ All Medicare data for Dr. Chaney was located at ProPublica.org.

87. In January 6, 2015, the Complaint Committee of the West Virginia Board of Medicine (West Virginia Board of Medicine) initiated an investigation of Dr. Chamber for improper prescribing of narcotic pain medication, including narcotics, to a patient who subsequently died.

88. On or about December 4, 2015, and after vacating his former offices located at 6007 US Rt. 60, East, Dr. Chaney opened a medical office at 702 Central Avenue in Barboursville, West Virginia.

89. The Office of Health Facility Licensure and Certification, Chronic Pain Management ["OHFLAC/CPM"] conducted a verification survey with respect to Dr. Chaney. This survey included on site review of Dr. Chaney's practice on December 8 and 9, 2015 at the 702 Central Avenue practice location.

90. On December 29, 2015, the Board received correspondence from OHFLAC/CPM chronicling some observations of Dr. Chaney's practice on December 8-9, 2015. Specifically, and related to the disarray and dangerous procedures employed by Dr. Chaney, the Board was advised:

- a. On December 8, 2015, an OHFLAC/CPM surveyor observed a woman sitting at the front desk writing out multiple prescription by copying information from prescription bottles onto new prescriptions;
- b. On December 9, 2015, at 8:50 am, an OHFLAC/CPM surveyor observed an unsecured, unsigned prescription pad lying on top of the desk;
- c. On December 9, 2015, at 11:05am, an OHFLAC/CPM surveyor observed a patient arrive requesting medication refills. The patient handed prescription bottles to the receptionist, who used them to write new prescriptions. The prescriptions were then taken by the receptionist to Dr. Chaney for signature, and were subsequently provided to the patient;

¹⁹ On Dec. 1, 2015, Dr. Chaney wrote a prescription for an employee for 120 30-milligram oxycodone pills without a physical examination.

- d. On December 9, 2015, at 11:20am, an OHFLAC/CPM surveyor observed another patient requesting medication refills. The receptionist could not locate the patient's medical chart, and asked the patient to write down her medications on a piece of paper. The receptionist wrote prescriptions according to the paper filled out by the patient. The receptionist questioned the patient about "the insulin" and the patient told the receptionist that she did not know the name of the insulin, but that it came in an orange pen. The receptionist named off different medications and the patient identified "Novolog" as the insulin she was prescribed. The receptionist wrote the prescription and told the patient that she would have another employee fill in the sliding scale dosages. The receptionist returned and provided the patient with prescriptions. On December 9, 2015, at 11:50am, an OHFLAC/CPM surveyor observed another patient arrive and ask for medication refills. This patient's chart could not be located, and the patient was asked to list medications on a sheet of paper. The receptionist filled out prescriptions according to the list and took them to the back of the office. The receptionist returned with signed prescriptions and provided them to the patient. These prescriptions included a prescription for Norco 1 Omg three times a day.
- e. The receptionist ceased writing prescriptions at 2: 15pm.
- f. On December 9, 2015, an OHFLAC/CPM surveyor observed a tray containing sixteen referrals on a shelf at the receptionist's desk. The office manager stated that the referrals had not been sent due to no facsimile service at the medical office.
- g. OHFLAC/CPM staff interviewed Dr. Chaney on December 9, 2015. Dr. Chaney informed them that fifty percent of the patients who come in to the medical offices just get prescriptions and are never seen by him and not charged for an office visit.

91. The December 29, 2015 report from OHFLC/CPM also contains additional allegations related to Dr. Chaney's standard of care and improper prescribing.

92. From December 1, 2015 through January 10, 2016, Dr. Chaney was without a functioning medical practice location.

93. Dr. Chaney continued to prescribe medication to his patients in December 2015, including after he was without any medical practice location.

94. As of January 1, 2016, Dr. Chaney's medical corporation is not authorized to engage in the practice of medicine.

95. It was found that Dr. Chaney was not mentally and/or physically fit to practice medicine with reasonable skill and safety.

96. The Complaint Committee reviewed the information received from the Evaluating Physician, the Board Investigator, and OHFLAC/CPM and determined that evidence in its possession indicated that Dr. Chaney's continuation in practice or unrestricted practice constituted as an immediate danger to the public.

97. Thereafter, the Committee determined, based upon the evidence in its possession, to recommend that the full Board impose summary discipline in this matter, pursuant to W. Va. Code §30-3-14(k), because Dr. Chaney's continuation in practice constituted an immediate danger to the public.

98. The conduct which formed the basis of the Complaint Committee's conclusions are predicated in whole or in part upon the following professional conduct standards:

- a. W. Va. Code §30-3-14(c)(21) and W. Va. Code R. §11-1A-12.1.h., relating to an inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol; and/or
- b. W. Va. Code §30-3-14(c)(17), W. Va. Code R. §11-1A-12.1.e and 12.1.j, and W. Va. Code R. §11-1A-12.2.d., related to engaging in dishonorable, unethical or unprofessional conduct and/or conduct that has the effect of bringing the medical profession into disrepute; and/or
- c. W. Va. Code §30-3-14(c)(19) and W. Va. Code R. §11-1A-12.1.aa, related to gross negligence in the use and control of prescription forms; and/or
- d. W. Va. Code §30-3-14(c)(16) relating to the delegation of professional responsibilities to a person when the delegating physician knows or has reason to know that the person is not qualified by training, experience or licensure to perform them.

99. A meeting of the West Virginia Board of Medicine was convened on Monday, January 11, 9:00a.m. At the January 11, 2016, meeting of the full Board, the Complaint

Committee reported that evidence in its possession indicating that Dr. Chaney's continuation in practice or unrestricted practice constituted as an immediate danger to the public.

100. The Board further determined, with no dissenting votes, that under all of the circumstances and given the cumulative effect of the evidence referenced herein, for Dr. Chaney to continue to hold an active license to practice medicine in the State of West Virginia, constituted as an immediate danger to the health, welfare and safety of the public.

101. The Board concluded, as a matter of law, that such a danger to the public demands extraordinary measures, and the Board, with a quorum of the Board present and voting, therefore found, with no dissenting votes, that in accordance with its statutory mandate to protect the public interest, the license to practice medicine of Dr. Chaney, license number 16608, was summarily suspended, in accordance with the provisions of W. Va. Code §30-3-14(k) and W. Va. Code R. §11-3-10.16.

102. As a practicing physician prescribing drugs to Huntington residents, Dr. Chaney owed a duty of care to the residents of Huntington, West Virginia.

103. Dr. Chaney's negligent acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling an opioid epidemic in West Virginia.

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

105. Dr. Chaney's negligent violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

106. Dr. Chaney's negligent acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff.

COUNT III
DEFENDANTS AMERISOURCE, CARDINAL AND MCKESSON'S
VIOLATION OF WEST VIRGINIA
UNIFORM CONTROLLED SUBSTANCES ACT

107. Plaintiff incorporates by reference the allegations in paragraphs 1 through 106.

108. The Defendants Amerisource, Cardinal and McKesson intentionally contributed to the opioid epidemic in the state of West Virginia through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act and through reckless disregard to the safety and wellbeing of the citizens of the City of Huntington.

109. The Defendants Amerisource, Cardinal and McKesson intentionally failed to meet or otherwise misrepresented their compliance with the requirements of W.Va. Code § 60A-8-1 et seq. and otherwise intentionally violated the West Virginia Uniform Controlled Substances Act.

110. The Defendants Amerisource, Cardinal and McKesson intentionally failed to ensure their conduct conformed to industry standards, West Virginia law and other regulations.

111. The Defendants Amerisource, Cardinal and McKesson intentionally violated industry standards, West Virginia law, and other regulations by regularly distributing obscene quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and whom can reasonably be expected to become addicted or to engage in illicit drug transactions.

112. The Defendants Amerisource, Cardinal and McKesson's intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling an opioid epidemic in the City of Huntington.

113. The Defendants Amerisource, Cardinal and McKesson's intentional acts and omissions supplied millions of doses of commonly-abused, highly addictive controlled

substances that supported the demands of pain clinics that provided highly addictive prescription pain killers to individuals with no medical evidence supporting the prescription.

114. The Defendants Amerisource, Cardinal and McKesson's intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

115. The Defendants Amerisource, Cardinal and McKesson's intentional violations of West Virginia law make them liable for all the damages which are sustained there from W.Va. Code Section 55-7-9.

116. The Defendants Amerisource, Cardinal and McKesson's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by the City of Huntington, and created conditions which contribute to the violation of West Virginia laws by others.

117. The Defendants Amerisource, Cardinal and McKesson's intentional acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards and practices within Defendants' own industries.

118. Upon information and belief, the Defendants Amerisource, Cardinal and McKesson continue to intentionally violate West Virginia laws and regulations, United States laws and regulations, and Defendants' industry customs, standards and practices which continue to proximately cause substantial damages to Plaintiff.

**COUNT V
DR. CHANEY'S VIOLATION OF
VIOLATION OF WEST VIRGINIA
UNIFORM CONTROLLED SUBSTANCES ACT**

119. Plaintiff incorporates by reference the allegations in paragraphs 1 through 118.

120. Dr. Chaney constructively delivered controlled substances requiring valid prescriptions by the issuance of purported prescriptions on behalf of purported patients who received the controlled substances from various pharmacists who filled such prescriptions.

121. Dr. Chaney issued such prescriptions intentionally or knowingly outside the usual "course of professional practice or research," thereby not engaging in the authorized activities of a "practitioner," as defined in W.Va. Code, 60A-1-101(v), as amended. Dr. Chaney's prescriptions were issued intentionally or knowingly without a legitimate medical other authorized purpose.

122. By virtue of Dr. Chaney's actions, he constructively delivered controlled substances in violation of W.Va. Code, 60A-4-401(a), as amended, which is part of West Virginia's Uniform Controlled Substances Act.

123. Defendant Dr. Chaney's intentional violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

124. Defendant Dr. Chaney's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by the City of Huntington, and created conditions which contribute to the violation of West Virginia laws by others.

**COUNT Y
UNJUST ENRICHMENT**

125. Plaintiff incorporates by reference the allegations in paragraphs 1 through 124.

126. As a result of all Defendants' actions, Plaintiff has expended substantial amounts of money annually that it would not have otherwise expended on numerous services through various agencies, including, but not limited to: increased law enforcement, emergency response teams, prosecutors and prosecutions, courts and court personnel, public defender services, corrections and correctional facilities, probation and parole, public welfare and service agencies, healthcare and medical services and drug abuse education and treatment.

127. Plaintiff remains responsible for costs of prescriptions, health care, and other medically-related costs, rehabilitation, and work-related programs, workers' compensation, public insurance, law enforcement, prosecution costs, court related costs, public defender services, correctional institutions, probation and parole services, which costs have substantially increased as a result of the Defendants' acts and omissions.

128. Plaintiff will continue to incur these increased costs in the future as a result of the Defendants' conduct.

129. Collectively, Defendants made large profits while fueling the opioid epidemic in West Virginia and the City of Huntington.

130. The Defendants Amerisource, Cardinal and McKesson continue to receive considerable profits from the distribution of controlled substances in the City of Huntington.

131. The Defendants have thus been enriched unjustly by neglecting its duty of distributing drugs only for proper medical purposes, which are for purposes other than legitimate medical needs.

132. The unjust enrichment of the Defendants is directly related to the damage, loss and detriment to the Plaintiff.

133. The Defendants negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing have unjustly enriched the Defendants and are directly related to the damages and losses of the Plaintiff.

PRAYER

WEHREFORE, Plaintiff prays that the Court grant the following relief:

1. Order a jury trial on all issues so triable to determine damages as a result of the Defendants' actions outlined in this Complaint.

2. Enter Judgment in favor of Plaintiff;

3. Enter a temporary restraining order which:

- a. Prevents Defendants from continuing to violate West Virginia laws;
- b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
- c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in the City of Huntington;
- d. Mandates Defendants submit their system for determining suspicious orders to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in the City of Huntington for any non-legitimate medical purpose.

4. Enter a permanent restraining order which:

- a. Prevents Defendants from continuing to violate West Virginia laws;
- b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
- c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in the City of Huntington;
- d. Mandates Defendants submit their system for determining suspicious orders to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in the City of Huntington for any non-legitimate medical purpose; and
- e. Mandates Defendants provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendants' actions.

5. Award punitive damages for Defendants' willful, wanton, malicious, oppressive, and intentional actions as detailed herein;

6. Award attorneys' fees and costs; and

7. Award such other relief as this Court deems just and appropriate.

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

THE CITY OF HUNTINGTON,
By Counsel:

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EXHIBIT E

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MAYOR CHARLES SPARKS, ON BEHALF OF
THE TOWN OF KERMIT,

Plaintiff,

v.

Civil Action No.: 17-C-13
Judge: Hon. Miki Thompson

MCKESSON CORPORATION,
AMERISOURCEBERGEN DRUG
CORPORATION, CARDINAL HEALTH 110,
LLC, MIAMI-LUKEN, INC., H.D. SMITH
WHOLESALE DRUG CO., and CAMERON
JUSTICE,

Defendants.

COMPLAINT

The Town of Kermit, West Virginia, (hereinafter "Plaintiff" or "Kermit") sues Defendants McKesson Corporation ("McKesson"), AmerisourceBergen Drug Co. ("Amerisource"), Cardinal Health 110, LLC ("Cardinal"), Miami-Luken, Inc. ("Miami-Luken") H.D. Smith Wholesale Drug Co. ("HD Smith"), and Cameron Justice, and for causes of action states as follows:

PARTIES

1. Plaintiff, Charles Sparks is the duly elected Mayor of the Town of Kermit, which is a political subdivision located within Mingo County in the state of West Virginia. Mayor Sparks brings this action on behalf of the Town of Kermit.

2. Though small in population, Kermit has been severely damaged by Defendants' collective actions. More specifically, Kermit has suffered substantial actual harm as a result of the conduct of Defendants, motivated by profit and greed, in knowingly flooding Kermit with opioids (schedule II drugs) well beyond what would be necessary to address the pain and other associated reasons that the residents of Kermit might use opioids. The devastation caused by

these Defendants has wrecked the local economy, over-burdened the budget of Kermit, and destroyed the lives of many residents who call Kermit home.

3. The collective actions of Defendants have caused and will continue to cause Kermit to expend substantial sums of public funds to deal with the significant consequences of the opioid epidemic that was fueled by Defendants' illegal, reckless, and malicious actions in flooding the state with highly addictive prescription medications without regard for the adverse consequences to Kermit or its residents.

4. Defendants' actions, motivated by the pursuit of money without regard to the welfare of Kermit and its residents, have caused substantial damages, including but not limited to, increased expenses of drug treatment programs, medical care and hospitalizations, emergency medical transportation, costs of law enforcement response and investigations, costs of prosecutions and incarcerations, and costs of repair for property damage.

MCKESSON CORPORATION

5. McKesson Corporation is a Delaware Corporation with headquarters in California that conducts business in West Virginia.

6. Among its many business interests, McKesson distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

7. McKesson is the largest pharmaceutical distributor in North America. McKesson delivers approximately one third of all pharmaceuticals used in North America.

8. McKesson is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals in Kermit.

AMERISOURCEBERGEN DRUG CORPORATION

9. AmerisourceBergen Drug Corporation is a Delaware Corporation that conducts business in West Virginia.

10. The above named Defendant is referred to throughout this complaint as Amerisource. Like McKesson, Amerisource distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

11. Amerisource is the second largest pharmaceutical distributor in North America.

12. Amerisource is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals in Kermit.

CARDINAL HEALTH 110, LLC.

13. Cardinal Health 110, LLC is an Ohio company that conducts business in West Virginia.

14. The above named Defendant is referred to throughout this complaint as Cardinal. Like McKesson and Amerisource, Cardinal distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

15. Cardinal is the third largest pharmaceutical distributor in North America.

16. Cardinal is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals Kermit.

17. Collectively, the above named Defendants shipped 423 million pain pills to West Virginia between 2007 and 2012, earning \$17,000,000,000 in net income.

MIAMI-LUKEN, INC.

18. Defendant Miami-Luken, Inc. is a for profit corporation which is headquartered in Ohio and registered in the state of West Virginia.

H.D. SMITH WHOLESALE DRUG CO.

19. H.D. Smith Wholesale Drug Co. is a for profit corporation registered in the state of Delaware and registered in the state of West Virginia.

CAMERON JUSTICE

20. Cameron Justice is a resident of West Virginia, who at one time was the owner and operator of a medical clinic (Justice Medical Clinic) in Kermit, West Virginia.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this case and over Defendants pursuant to the provisions of W.Va. Code § 56-3-33.

22. Venue is appropriate in Mingo County, West Virginia as the acts and practices of the Defendants occurred in and caused damage in Kermit which is located within Mingo County, in this Judicial Circuit. Additionally, during the relevant time period, Mr. Justice owned and operated a medical clinic in this Judicial Circuit.

FACTUAL BACKGROUND

23. Within the last 20 years, a scourge has infected this country, particularly in greater Appalachia and West Virginia.¹ Mingo County West Virginia, and particularly Kermit, is essentially ground zero for this plague that has destroyed lives and ruined the local economy. The scourge is popularly described as the 'opioid epidemic.' Defendants herein each played a key part in the creation, proliferation, and continuation of the opioid epidemic and the resulting catastrophic damage.

¹ <https://www.ncbi.nlm.nih.gov/pubmed/22786464>

24. Defendants each profited while disregarding the impact that their actions had on the people under the spell of these drugs.

25. Opioids are effective treatments for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care.² However, opioids are addictive and subject to abuse, particularly when used long-term for chronic non-cancer pain (pain lasting three months or longer, hereinafter referred to as "chronic pain"), and should not be used except as a last-resort.

26. In their roles as pharmaceutical wholesalers and as a medical clinic operator, Defendants have known for years—that with prolonged use, the effectiveness of opioids wanes, requiring increases in doses and markedly increasing the risk of significant side effects and addiction.

27. Defendants knew also that controlled studies of the safety and efficacy of opioids were limited to short-term use (not longer than 90 days), and in managed settings (e.g., hospitals), where the risk of addiction and other adverse outcomes was much less significant. The U.S. Food and Drug Administration ("FDA") has expressly recognized that there have been no long-term studies demonstrating the safety and efficacy of opioids for long-term use.

28. Prescription opioids, which include well-known brand-name drugs like OxyContin and Percocet, as well as generics like oxycodone and hydrocodone, are narcotics. They are derived from or possess properties similar to opium and heroin, and thus, they are regulated as controlled substances.³

² "Originally a term denoting synthetic narcotics resembling opiates but increasingly used to refer to both opiates and synthetic narcotics." Stedman's Medical Dictionary 27th Edition

³ Since passage of the Controlled Substances Act ("CSA") in 1970, opioids have been regulated as controlled substances. Controlled substances are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the highest. The CSA imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally had been categorized as Schedule II or Schedule III drugs. Schedule II drugs have a high potential for abuse, have a currently accepted medical use, and may lead to severe psychological or physical dependence. 21 U.S.C. § 812. Schedule II drugs may

29. Opioids—once a niche drug—are now the most prescribed class of drugs—more than blood pressure, cholesterol, or anxiety drugs. While Americans represent only 4.6% of the world's population, they consume 80% of the opioids supplied around the world and 99% of the global hydrocodone supply. Together, opioids generated \$8 billion in revenue for drug companies in 2012, a number that is projected to reach \$15.3 billion by 2016.

30. Like heroin, prescription opioids work by binding to receptors on the spinal cord and in the brain, dampening the perception of pain. Opioids also can create a euphoric high, which can make them addictive. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, ultimately, death.

31. The dramatic increase in opioid prescriptions to treat common chronic pain conditions has resulted in a population of addicts who seek drugs from doctors. When turned down by one physician, many of these addicts deploy increasingly desperate tactics—including doctor-shopping, use of aliases, and criminal means—to satisfy their cravings.

32. Opioid abuse has not displaced heroin, but rather triggered resurgence in its use, imposing additional burdens on Kermit and local agencies that address heroin use and addiction. In 2015, West Virginia had the highest death rate due to drug overdose of 41.5 deaths per 100,000.⁴

33. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% in 2002 to 2004 to 45.2% in 2011 to 2013. Heroin produces a very similar high to prescription opioids, but is often cheaper. While a single opioid pill may cost \$10-\$15 on the street, users can obtain a bag of heroin, with multiple highs, for the same price. It is hard to imagine the powerful pull that would cause a law-abiding, middle-aged person who

not be dispensed without an original copy of a manually signed prescription, which may not be refilled, from a doctor and filled by

⁴ See <https://www.cdc.gov/drugoverdose/index.html>

started on prescription opioids for a back injury to turn to buying, snorting, or injecting heroin, but that is the dark side of opioid abuse and addiction.

34. Dr. Robert DuPont, former director of the National Institute on Drug Abuse and the former White House drug czar, opined that opioids are more destructive than crack cocaine:

"[Opioid abuse] is building more slowly, but it's much larger. And the potential[] for death, in particular, [is] way beyond anything we saw then. . . . [F]or pain medicine, a one-day dose can be sold on the black market for \$100. And a single dose can [be] lethal to a non-patient. There is no other medicine that has those characteristics. And if you think about that combination and the millions of people who are using these medicines, you get some idea of the exposure of the society to the prescription drug problem."⁵

35. As laid bare in this complaint, Defendants each played a key role in the distribution and prescribing of opioids over the relevant time period. Simply put, the scheme could not have worked without each Defendant playing their respective part.

36. Pharmaceuticals, like opioids are not sold directly by manufacturers to pharmacies for ultimate dispensing. Rather, there is a highly sophisticated system which distributes the drugs across the nation.

37. Defendants were each on notice that the controlled substances they distributed or prescribed were the kinds that were susceptible to being diverted for illegal purposes, abused, overused, and otherwise sought for illegal, unhealthy, or problematic purposes.

38. As entities involved in the distribution and prescription of dangerous opioid medications, McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice were engaged in an abnormally and/or inherently dangerous activity and, thus, had a heightened duty of care under West Virginia law.

⁵ Transcript, *Use and Abuse of Prescription Painkillers*, The Diane Rehm Show (Apr. 21, 2011), <http://thedianerehmshow.org/shows/2011-04-21/use-and-abuse-prescription-painkillers/transcript>.

39. McKesson, Amerisource, Cardinal, Miami-Luken, and HD Smith purchased opioids from manufacturers and sold them to pharmacies within Kermit and the surrounding areas. In order to do so, wholesalers like these Defendants must first register with the West Virginia Board of Pharmacy.

40. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith knew or should have known that they were supplying vast amounts of dangerous drugs to disproportionately small markets that were already facing abuse, diversion, misuse and other problems associated with the opioid epidemic.

41. Though they had a duty to the consuming public at large as well as Kermit, collectively and individually, McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith failed to take any action to prevent, minimize, or reduce the distribution of these dangerous drugs.

42. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith all had the ability to slow down, question, inspect, report, alert, or otherwise limit the flow of these dangerous drugs into Kermit, but chose not to do so.

43. Individuals in West Virginia obtain opioids by first obtaining a prescription and then presenting it to a licensed pharmacy or pharmacist. Cameron Justice, a resident of West Virginia at all times material, operated what was essentially a pill mill operation known as Justice Medical Clinic in Mingo County. Cameron Justice eventually went to prison as a result of his misdeeds, but through his clinic he prescribed opioids to residents of the surrounding area, including residents of Kermit.

44. Upon information and belief, Cameron Justice, vis-à-vis his clinic prescribed opioids which were eventually provided to pharmacies by McKesson, Amerisource, Cardinal,

Miami-Luken and HD Smith. Cameron Justice knew or should have known that he was prescribing vast amounts of dangerous drugs to patients who were likely to abuse, divert, misuse or otherwise contribute to the opioid epidemic.

45. Though he had a duty to his patients, the public at large, as well as the Town of Kermit, collectively and individually, Cameron Justice failed to take any action to prevent, minimize, or reduce the dispensing of these dangerous drugs.

46. All Defendants were on notice that West Virginia law required them, inter alia, to provide effective controls and procedures to guard against diversion of controlled substances, pursuant to 15 C.S.R. § 2-4.21 and 2-4.4 and the WV Controlled Substances Act.

47. The result of Defendants' collective actions has been catastrophic for nearly everyone in Kermit except the Defendants who stood by and watched their profits grow.

The Role of Wholesalers

48. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith knew, or should have known that West Virginia had an exceedingly high rate of illegal use and diversion of prescription opioids. Numerous publications, news sources and studies highlighted the epidemic rate of opioid abuse and overdose rates in West Virginia.

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

50. McKesson, Amerisource Cardinal, Miami-Luken and HD Smith, like all pharmaceutical wholesalers, were under an obligation to report suspicious orders to the appropriate authorities.

51. Cameron Justice's clinic prescription rates were so aberrant that they should have triggered suspicious order reports from any pharmacy or distributor who was filling such orders.

52. Despite having information that suspicious orders were being placed, and despite actually filling these suspicious orders time after time, McKesson did not begin to comply with its regulatory obligations until March 2015, well after the unfortunate opioid train had left the station. Since that time, McKesson has submitted 4,814 suspicious order reports.

53. Failing to submit its required suspicious order reports is not a new development for McKesson. In fact, McKesson paid a \$13.2 million fine to settle similar claims in 2008 with regard to suspicious orders from internet pharmacies.

54. More recently, McKesson settled a similar investigation brought by the Department of Justice in 2015 by paying \$150 million and suspending the DEA registrations for three distribution centers.

55. Amerisource and Cardinal similarly delayed compliance with the reporting of suspicious orders. After June 2012, Cardinal finally submitted 2,426 suspicious order reports, though nine months are seemingly missing from their submissions. In 2008 Cardinal paid a \$34 million fine for failing to report suspicious orders of hydrocodone. More recently, in 2012 Cardinal's Lakeland, Florida warehouse was suspended by the DEA for two years as a result of shipping suspect orders of opioids.

56. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith were also aware that the Healthcare Distribution Management Association ("HDMA"), of which they are members, created "Industry Compliance Guidelines" which stressed the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines provided: "At the center of a sophisticated supply chain, Distributors are uniquely situated to

perform due diligence in order to help support the security of controlled substances they deliver to their customers." Indeed, the HDMA advises all distributors to "Know Your Customer."

57. Between 2007 and 2012, McKesson, Amerisource and Cardinal have shipped 423 million doses of highly addictive controlled pain killers into West Virginia, many of which should have been stopped and/or investigated as suspicious orders.

58. Upon information and belief, Miami-Luken and HD Smith similarly shipped excessive numbers of opioids into West Virginia, many of which should have been flagged or stopped and investigated as suspicious orders. According to litigation brought by the West Virginia Attorney General⁶, HD Smith distributed over 12 million doses of hydrocodone and over 3 million doses of oxycodone to West Virginia over the relevant time period.

59. Upon information and belief, McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith failed to undertake any effective affirmative efforts to prevent diversion of its medicines for illegal or abusive purposes.

60. When the population of the county is taken into consideration, McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith delivered an excessive and unreasonable number of highly addictive controlled substances in Kermit.

61. Upon information and belief, McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith did not refuse to ship or supply any controlled substances to any Kermit pharmacy between 2007 and the present.

62. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith knew or should have known that they were supplying opioid medications far in excess of the legitimate needs for Kermit.

⁶ See *State v. Amerisource et al*, pending in the Circuit Court of Boone County, bearing civil action number 12-C-141

63. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers they supplied to pharmacies and drug stores in Kermit were being diverted to illegal use or abuse.

64. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith had a legal duty to ensure they were not filling suspicious orders, as well as to report suspicious orders.

65. The sheer volume of highly addictive opioid pain medications McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith shipped to Kermit from 2007 through the present was suspicious on its face.

66. Upon information and belief, McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith made little to no effort to visit the pharmacies and drug stores in Kermit to which they shipped substantial amounts of prescription medication, in order to conduct due diligence to ensure the medications they were shipping were not diverted to illegal uses.

67. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith paid its sales force employees' and managers' bonuses and commissions on the sale of most or all of the highly addictive prescription pain killers supplied to Kermit.

68. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith made substantial profits from the drugs which were sold in Kermit.

69. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith knowingly filled suspicious orders in Kermit from 2007 to the present.

70. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith undertook intentional distribution of excessive prescription pain killers to a small community which showed a reckless disregard to the safety of Kermit and its residents.

The Role of Pill Mills

71. Cameron Justice was the former owner and president of Justice Medical Clinic who was a necessary participant in the wholesalers' scheme to distribute schedule II opioids with reckless abandon solely for profit and to the detriment of residents of Kermit and Mingo County.

72. Despite operating his medical clinic, Cameron Justice undertook no efforts to determine whether the volume of pain killers he was prescribing to residents of Kermit was excessive and should not have been sold. In fact, Cameron Justice knew or should have known that he was prescribing opioid medications far in excess of the legitimate needs for residents of Kermit.

73. Cameron Justice knew or should have known that there was a high likelihood that a substantial number of the schedule II opioids he was prescribing were being diverted to illegal use or abuse.

74. Cameron Justice had a legal duty to not prescribe schedule II opioids without a proper medical evaluation.

75. The sheer volume of highly addictive opioid pain medications Cameron Justice prescribed in Mingo County was suspicious on its face.

76. Cameron Justice made substantial profits from the drugs which were sold in Kermit and Mingo, County.

77. Cameron Justice acted in concert with McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith to hide or cover up their misdeeds, negligence or malfeasance in order to

continue making substantial profits from the drugs which were prescribed and sold in Kermit and Mingo, County.

78. Consistent with the allegation contained herein, Cameron Justice was convicted and sentenced to two and one half years in 2010 for conspiring to misuse a DEA registration number to distribute prescription painkillers and Medicare fraud.

**COUNT I
NEGLIGENCE OF WHOLESALERS
MCKESSON, AMERISOURCE, CARDINAL, MIAMI-LUKEN and HD SMITH**

79. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

80. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith are distributors of controlled substances and must comply with both the laws of West Virginia and with industry customs and standards.

81. As licensed registrants with the West Virginia Board of Pharmacy, McKesson, Amerisource and Cardinal were required to submit suspicious order reports.

82. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith failed to submit, or fully disclose suspicious orders.

83. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith negligently failed to ensure its conduct conformed to West Virginia law and regulations.

84. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith negligently failed to conform its conduct conformed to United States law and regulations.

85. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith negligently turned a blind eye to the foregoing factors by regularly distributing large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of

whom were addicted and whom reasonably can be expected to become addicted or to engage in illicit drug transactions.

86. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith had a duty to Kermit to comply with their obligation to report suspicious orders in Kermit.

87. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith breached this duty by virtue of the above allegations. The breach is the proximate cause of damages suffered by Plaintiff.

88. Industry standards also require McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith to:

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

89. McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith negligently failed to ensure its conduct conformed to industry standards.

90. The aforementioned conduct was a direct breach of the duty Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith owed to Plaintiff which was the proximate cause of Plaintiff suffering damages.

COUNT II
DEFENDANTS MCKESSON, AMERISOURCE AND CARDINAL'S
Violation of W.Va. Code § 60A-8-1 et seq and W.Va. Code § 55-7-9

91. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

92. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith intentionally contributed to the prescription drug abuse epidemic in Kermit through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act and through reckless disregard to the safety and well-being to the citizens of Kermit.

93. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith intentionally failed to meet or otherwise misrepresented their compliance with the requirements of W.Va. Code § 60A-8-1 et seq and otherwise intentionally violated the West Virginia Uniform Controlled Substances Act.

94. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith intentionally failed to ensure their conduct conformed to industry standards, West Virginia law and other regulations.

95. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith intentionally turned a blind eye toward industry standards, West Virginia law, and other regulations by regularly distributing obscenely large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and whom can reasonably be expected to become addicted or to engage in illicit drug transactions.

96. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse epidemic in Kermit, West Virginia.

97. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional acts and omissions supplied millions of doses of commonly-abused, highly addictive controlled substances that supported the demands of bogus pain clinics that did little more than provide prescriptions of highly addictive prescription pain killers to individuals with no medical evidence supporting the prescription.

98. Defendants' McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

99. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional violations of West Virginia law make it liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

100. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by Kermit, and created conditions which contribute to the violation of West Virginia laws by others.

101. Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith's intentional acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards and practices within Defendants' own industries.

102. Upon information and belief, Defendants McKesson, Amerisource, Cardinal, Miami-Luken and HD Smith continue to intentionally violate West Virginia laws and regulations, United States laws and regulations, and Defendants' industry customs, standards and practices which continue to proximately cause substantial damages to Plaintiff.

COUNT III UNJUST ENRICHMENT

103. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

104. The Defendants acted in concert in undertaking the aforementioned scheme. The actions of the wholesalers would be offset without the complicit actions of the pill mills like those operated by Cameron Justice, who were willing to look the other way and subvert the rules, regulations and professional responsibility in order to profit.

105. As a result of all Defendants' actions, Plaintiff has expended substantial amounts of money annually that it would not have otherwise expended on numerous services through various agencies, including, but not limited to: Increased law enforcement, prosecutors and prosecutions, courts and court personnel, public welfare and service agencies, healthcare and medical services and drug abuse education and treatment.

106. Plaintiff has lost revenue and incurred direct and indirect costs from workplace accidents, absenteeism, and decreased productivity from prescription drug abuse.

107. Plaintiff remains responsible for costs of prescriptions, health care, and other medically-related costs, rehabilitation, and work-related programs, workers' compensation, public insurance, law enforcement, prosecution costs, and court related costs, which costs have substantially increased as a result of the Defendants' acts and omissions.

108. Plaintiff will continue to incur these increased costs in the future as a result of the Defendants' conduct listed herein.

109. Collectively, Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice made substantial profits while fueling the prescription drug epidemic in West Virginia and Kermit.

110. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice continue to receive considerable profits from the distribution of controlled substances in Kermit.

111. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice were each unjustly enriched by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing.

112. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice's prescription and sales of prescription medications were increased by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing by the distribution of drugs which were diverted for purposes other than legitimate medical needs.

113. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice's negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing have unjustly enriched the Defendants and are directly related to the damages, losses, and to the detriment of the Plaintiff.

114. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice's negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing entitle Plaintiff to disgorgement of the profits received by Defendants for all sales it made in Kermit from 2007 to present.

115. Defendants are liable to Plaintiff for all damages incurred as a result of Defendants' negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing contained herein.

**COUNT IV
NEGLIGENCE OF CAMERON JUSTICE**

116. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

117. As a principle and owner of a medical clinic in Mingo County, Cameron Justice owed a duty of care to the residents of Kermit and to the town itself.

118. Cameron Justice's negligent acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a drug abuse epidemic in West Virginia.

119. Cameron Justice's negligent acts and omissions supplied millions of doses of commonly-abused, highly addictive controlled substances that supported the demands of bogus pain clinics like Justice Medical Clinic that did little more than provide highly addictive pain killers to individuals with no medical evidence supporting the prescription.

120. Cameron Justice's negligent violations and those of his medical clinic make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

121. Cameron Justice's negligent acts and omissions have proximately caused and substantially contributed to damage suffered by Plaintiff.

**COUNT V
CAMERON JUSTICE'S VIOLATION of
W.Va. Code § 60A-4-401 and W.Va. Code § 55-7-9**

122. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

123. Cameron Justice constructively delivered controlled substances requiring valid prescriptions to persons who received the controlled substances.

124. Cameron Justice prescribed or caused to be prescribed schedule II drugs intentionally or knowingly outside the usual "course of professional practice or research," thereby not engaging in the authorized activities of a "practitioner," as defined in W.Va. Code, 60A-1-101(v), as amended.

125. These prescriptions were written for profit and without a legitimate medical need or authorized purpose.

126. By virtue of Cameron Justice's actions, he constructively delivered controlled substances in violation of W.Va. Code, 60A-4-401(a), as amended, which is part of West Virginia's Uniform Controlled Substances Act.

127. Defendant Cameron Justice's intentional violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

128. Cameron Justice's intentional acts and omissions have proximately caused and substantially contributed to damage suffered by Kermit, and created conditions which contribute to the violation of West Virginia laws by others.

**COUNT VI
CIVIL CONSPIRACY (NEGLIGENCE) AS TO ALL DEFENDANTS**

129. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78.

130. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice acted in concert in all of the above allegations.

131. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice fraudulently concealed their actions.

132. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice owed a duty to the Plaintiff to not distribute, prescribe or otherwise distribute or provide opioids that they knew or should have known were diverted, abused or misused.

133. Defendants McKesson, Amerisource, Cardinal, Miami-Luken, HD Smith and Cameron Justice, acting together, breached their duty to Plaintiff, which in turn suffered harm as a result. The harm suffered by Plaintiff includes the financial burden associated with the opioid epidemic as more fully described above.

PRAYER

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

1. Order a jury trial on all issues so triable to determine damages as a result of the Defendants' actions outlined in this Complaint
2. Enter Judgment in favor of Plaintiff;
3. Enter a temporary restraining order which:
 - a. Prevents Defendants from continuing to violate West Virginia laws;
 - b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in Kermit;
 - d. Mandates Defendants submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in Kermit for any non-legitimate medical purpose;
4. Enter a permanent restraining order which:
 - a. Prevents Defendants from continuing to violate West Virginia laws;
 - b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in Kermit;
 - d. Mandates Defendants submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin Defendants from

distributing any controlled substance in Kermit for any non-legitimate medical purpose; and

- e. Mandates Defendants provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendants' actions
5. Order equitable relief, including, but not limited to restitution and disgorgement;
6. Award punitive damages for Defendants' willful, wanton, malicious, oppressive, and intentional actions as detailed herein;
7. Award attorneys' fees and costs and
8. Award such other relief as this Court deems just and fair;

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



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EXHIBIT F

IN THE CIRCUIT COURT OF
MCDOWELL COUNTY, WEST VIRGINIA

MAYOR REBA HONAKER, on behalf of
the CITY OF WELCH,

Plaintiff,

Civil Action No.: 17-c-18-m

v.

MCKESSON CORPORATION,
AMERISOURCEBERGEN DRUG
CORPORATION, CARDINAL HEALTH 110,
LLC, MIAMI-LUKEN, INC., H.D. SMITH
WHOLESALE DRUG CO., and HAROLD
ANTHONY COFER, Jr., M.D.,

Defendants.

COMPLAINT

Mayor Reba Honaker, on Behalf of the City of Welch, Plaintiff sues Defendants McKesson Corporation, Amerisource Bergen Drug Corporation, Cardinal Health 110, LLC, Miami-Luken, Inc., H.D. Smith Wholesale Drug Co., and Harold Anthony Cofer, Jr., M.D. ("Dr. Cofer"), and for causes of action states as follows:

I. INTRODUCTION

1. This matter involves a serious breach of the public trust which has resulted in drug abuse, misuse and overdose deaths. Like sharks circling their prey, multi-billion dollar companies, along with smaller players like local physicians, descended upon Appalachia for the sole purpose of profiting off of the prescription drug fueled feeding frenzy commonly referred to, and more fully explained below as, the opioid epidemic.

2. As distributors of dangerous products like narcotics, these companies bore a rather significant duty to ensure that the drugs did not end up in the wrong hands. In exchange

for promising to honor their obligations, each of the defendants was licensed and/or registered by the West Virginia Board of Pharmacy and ultimately received compensation in the form of millions of dollars per year for shipping volumes of drugs well beyond what a reasonable company would expect.

3. Unfortunately for everyone except Defendants, these dangerous and addictive drugs did end up in the wrong hands. These drugs were diverted, misused, and abused, to the point where citizens of West Virginia, residents of Welch in fact, lost their jobs, health and even their lives. Left in the wake of this malfeasance are small towns and cities like Welch, to clean up the mess and try to restore order while Defendants sit back and count the money they made off of their misdeeds.

4. When the dangerous and addictive drugs caused harm to the public health of Welch residents in the form of addiction, overdose and death, Defendants were nowhere to be seen, but Welch was there to dispatch emergency services, run drug treatment programs, investigate overdoses, care for the infirm and transport dead bodies.

5. When the dangerous and addictive drugs caused harm to the public utilities of Welch in the form of litter, clogged water and sewage lines, destruction of public property, the Defendants were nowhere to be seen, but Welch was there enforce codes, clean up streets and neighborhoods, repair water lines and other public property.

6. When the dangerous and addictive drugs caused increases in crime in Welch, Defendants were nowhere to be found, but Welch was there to dispatch police, prosecute cases, supervise offenders in jail and eventually place them back into society.

7. This action is therefore brought to recoup the expenses and recover the damages suffered by Welch, and to abate the continuing public nuisance caused in whole or in part, by the actions of Defendants.

II. PARTIES

8. Plaintiff Reba Honaker is the duly elected mayor of the City of Welch, a political subdivision of the state of West Virginia located in McDowell County. Mayor Honaker brings this action on behalf and for the benefit of the city of Welch pursuant to W.Va Code §8-12-1(3).

9. The collective actions of Defendants have caused and will continue to cause Welch to expend substantial sums of public funds to deal with the significant consequences of the opioid epidemic that was fueled by Defendants' illegal, reckless, and malicious actions in flooding the state with highly addictive prescription medications without regard for the adverse consequences to Welch or its residents.

a. MCKESSON CORPORATION

10. McKesson Corporation (hereinafter "McKesson") is a Delaware Corporation with headquarters in California that conducts business in West Virginia.

11. Among its many business interests, McKesson distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

12. McKesson is the largest pharmaceutical distributor in North America. McKesson delivers approximately one third of all pharmaceuticals used in North America.

13. McKesson does substantial business in the state of West Virginia wherein it distributed pharmaceuticals to at least 52 of West Virginia's 55 counties, including and significantly, in Welch.

14. From 2007 to 2012, McKesson distributed 46,179,600 doses of Hydrocodone and 54,304,980 doses of Oxycodone for a total of 99,484,580 doses of Hydrocodone and Oxycodone to West Virginia during the six year period. In addition to Oxycodone and Hydrocodone, McKesson distributed high quantities of several other scheduled narcotics to pharmacies throughout the state including formulations of fentanyl and suboxone which have quickly become centerpieces in the opioid epidemic.

b. CARDINAL HEALTH 110 LLC

15. Cardinal Health 110 LLC (hereinafter "Cardinal") is an Ohio Corporation that conducts business in West Virginia.

16. Like McKesson, Cardinal distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

17. Cardinal is the third largest pharmaceutical distributor in North America.

18. Cardinal does substantial business in the state of West Virginia wherein it distributed pharmaceuticals to at least 52 of West Virginia's 55 counties, including and significantly, in Welch.

c. AMERISOURCEBERGEN DRUG CORPORATION

19. AmerisourceBergen Drug Corporation (hereinafter referred to as "ABDC") is a Delaware Corporation that conducts business in West Virginia.

20. Like McKesson, ABDC distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments.

21. ABDC is the second largest pharmaceutical distributor in North America.

22. ABDC is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals in Welch.

d. MIAMI-LUKEN, INC.

23. Defendant Miami-Luken, Inc. (hereinafter referred to as "Miami-Luken") is a for profit corporation which is headquartered in Ohio and registered in the state of West Virginia.

24. Miami-Luken is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals in Welch.

e. H.D. SMITH WHOLESALE DRUG CO.

25. H.D. Smith Wholesale Drug Co. (hereinafter referred to as "H.D. Smith") is a for-profit corporation registered in the state of Delaware and registered to do business in the state of West Virginia.

26. H.D. Smith is a registrant with the West Virginia Board of Pharmacy and does substantial business in the state of West Virginia wherein it distributed pharmaceuticals in Welch.

f. DR. HAROLD ANTHONY COFER, JR.

27. Dr. Cofer has been licensed to practice in West Virginia since 1981 (medical license number 12594).

28. Dr. Cofer practiced medicine in neighboring Northfork from 2012 through 2015. Dr. Cofer currently practices in Bluefield, West Virginia (Mercer County).

29. Over the relevant time period, Dr. Cofer wrote prescriptions for medications, including but not limited to schedule II opioids, to individual patients at his office in Welch.

III. JURISDICTION AND VENUE

30. This Court has jurisdiction over this case and over Defendants pursuant to the provisions of W.Va. Code § 56-3-33.

31. Venue is appropriate in McDowell County as the acts and practices of the Defendants occurred in and caused the damage in Welch, located within McDowell County. Additionally, during the relevant time period, Dr. Cofer knowingly treated patients and prescribed opioids to residents of Welch and was aware that a great majority of his prescriptions were filled at pharmacies located within Welch.

IV. FACTUAL BACKGROUND

32. Within the last 20 years, a scourge has infected this country, particularly in greater Appalachia and West Virginia.¹ McDowell County, and specifically Welch, is ground zero for this plague, where it has destroyed lives and ruined local economies. The scourge is commonly described as the 'opioid epidemic.' Defendants herein each played a key part in the creation, proliferation, and continuation of the opioid epidemic and the resulting catastrophic damage.

33. Defendants each profited while disregarding the impact that their actions had on the people under the spell of these drugs and the cities and towns where they lived.

34. Opioids are effective treatments for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care.² However, opioids are addictive and subject to abuse, particularly when used long-term for chronic non-cancer pain (pain lasting three months or longer, hereinafter referred to as "chronic pain"), and should not be used except as a last-resort.

¹ <https://www.ncbi.nlm.nih.gov/pubmed/22786464>

² "Originally a term denoting synthetic narcotics resembling opiates but increasingly used to refer to both opiates and synthetic narcotics." *Stedman's Medical Dictionary* 27th Edition

35. As pharmaceutical distributors and a practicing physician, Defendants have known for years—that with prolonged use, the effectiveness of opioids wanes, requiring increases in doses and markedly increasing the risk of significant side effects and addiction.

36. Defendants knew also that controlled studies of the safety and efficacy of opioids were limited to short-term use (not longer than 90 days), and in managed settings (e.g., hospitals), where the risk of addiction and other adverse outcomes was much less significant. The U.S. Food and Drug Administration (“FDA”) has expressly recognized that there have been no long-term studies demonstrating the safety and efficacy of opioids for long-term use.

37. Prescription opioids, which include well-known brand-name drugs like OxyContin and Percocet, as well as generics like oxycodone and hydrocodone, are narcotics. They are derived from or possess properties similar to opium and heroin, and thus, they are regulated as controlled substances.³

38. Like heroin, prescription opioids work by binding to receptors on the spinal cord and in the brain, dampening the perception of pain. Opioids also can create a euphoric high, which can make them addictive. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, ultimately, death.

39. As laid bare in this Complaint, Defendants each played a key role in the distribution and prescribing of opioids over the relevant time period. Simply put, the scheme could not have worked without each Defendant playing their respective part or at a minimum,

³ Since passage of the Controlled Substances Act (“CSA”) in 1970, opioids have been regulated as controlled substances. Controlled substances are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the highest. The CSA imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally had been categorized as Schedule II or Schedule III drugs. Schedule II drugs have a high potential for abuse, have a currently accepted medical use, and may lead to severe psychological or physical dependence. 21 U.S.C. § 812.

remaining silent about the absurd volume of drugs which they were collectively shipping into or prescribing for Welch.

40. Opioids—once a niche drug—are now the most prescribed class of drugs—more than blood pressure, cholesterol, or anxiety drugs. While Americans represent only 4.6% of the world's population, they consume 80% of the opioids supplied around the world and 99% of the global hydrocodone supply. Together, opioids generated \$8 billion in revenue for drug companies in 2012, a number that exceeded \$15 billion in 2016.

41. The dramatic increase in opioid prescriptions to treat common chronic pain conditions has resulted in a population of addicts who seek drugs from doctors. When turned down by one physician, many of these addicts deploy increasingly desperate tactics—including doctor-shopping, use of aliases, and criminal means—to satisfy their cravings.

42. Opioid abuse has not displaced heroin, but rather triggered resurgence in its use, imposing additional burdens on Welch and local agencies that address heroin use and addiction. Huntington, West Virginia experienced 27 heroin overdoses in the span of four hours on August 15, 2016.⁴

43. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% in 2002 to 2004 to 45.2% in 2011 to 2013. Heroin produces a very similar high to prescription opioids, but is often cheaper. While a single opioid pill may cost \$10-\$15 on the street, users can obtain a bag of heroin, with multiple highs, for the same price. It is hard to imagine the powerful pull that would cause a law-abiding, middle-aged person who started on prescription opioids for a back injury to turn to buying, snorting, or injecting heroin, but that is the dark side of opioid abuse and addiction.

⁴ See <http://www.wvnn.com/2016/08/17/health/west-virginia-city-has-27-heroin-overdoses-in-4-hours/index.html>

44. Dr. Robert DuPont, former director of the National Institute on Drug Abuse and the former White House drug czar, opines that opioids are more destructive than crack cocaine:

"[Opioid abuse] is building more slowly, but it's much larger. And the potential[] for death, in particular, [is] way beyond anything we saw then. . . . [F]or pain medicine, a one-day dose can be sold on the black market for \$100. And a single dose can [be] lethal to a non-patient. There is no other medicine that has those characteristics. And if you think about that combination and the millions of people who are using these medicines, you get some idea of the exposure of the society to the prescription drug problem."⁵

45. Pharmaceuticals like opioids are not sold directly to physicians or pharmacies for ultimate dispensing. Rather, there is a highly sophisticated system which distributes the drugs across the nation.

46. Make no mistake; the role of the pharmaceutical distributor is not simply one of freight forwarder or shipper. Each of the Defendant distributors is a member of the trade group Healthcare Distribution Alliance (HDA), formerly known as the Healthcare Distribution Management Association (HDMA). According to the HDA, the leading trade group of distributors, "[h]ealthcare distribution has never been just about delivery. It's about getting the right medicines to the right patients at the right time, safely and efficiently."⁶

47. In fact, as the dominant players within the healthcare distribution industry, senior executives from each of the Defendant distributors have historically served on the board of the HDA or HDMA. Currently, Cardinal Health's CEO Jon Giacomini serves as the Chairman of HDA and HD Smith's Chairman and CEO Dale Smith serves as the Vice Chairman. ABDC's President Robert Mauch and McKesson's President Mark Walchirk are both on the current executive committee of this powerful trade group.

⁵ Transcript, Use and Abuse of Prescription Painkillers, The Diane Rehm Show (Apr. 21, 2011), <http://thedianerehmshow.org/shows/2011-04-21/use-and-abuse-prescription-painkillers/transcript>.

⁶ See <http://www.hdma.net/about/role-of-distributors>

48. The current website for HDA explains that "[w]hile distributors do not prescribe or dispense drugs directly to patients, they do share a common goal with physicians, manufacturers, pharmacists, law enforcement officials and policymakers: to ensure a safe supply of medicines. Among other safeguards, distributors are dedicated to keeping prescription painkillers out of the hands of people who may use them for purposes other than those for which they are intended."⁷ (emphasis added)

49. According to their website, members of HDA, including the Defendant distributors named herein, are committed to addressing the threat of prescription painkillers ending up in the wrong hands. Their multilayered approach includes the following:

- Our members register with the DEA and follow rigorous statutory and regulatory requirements for the storage, handling and distribution of controlled substances. These sophisticated security systems and processes help safeguard the supply chain.
- Pharmaceutical distributors coordinate with a range of supply chain partners, as well as federal and state regulatory agencies, to help prevent the diversion of prescription drugs.
- We work with supply chain stakeholders, including pharmaceutical manufacturers, hospitals, retail pharmacies and other healthcare providers, to share information and develop strategies to identify and help prevent abuse and diversion.
- We work collaboratively with law enforcement and regulators to combat bad actors who attempt to breach the security of the legitimate supply chain, coordinating with law enforcement and regulators to offer information technology, security and logistics expertise that helps locate and prosecute individuals who attempt to misuse and divert prescription drugs from the legitimate supply chain.
- We take steps to "know our customers," including actively assessing and reviewing purchases from pharmacies and healthcare providers that order controlled substances to monitor and report to the DEA if a customer's controlled substances volume or pattern of ordering might signal inappropriate use of the product. If inappropriate use is suspected, distributors work proactively with DEA, local law enforcement and others to help in the investigation of potential diversion cases.

⁷ See <http://www.hdma.net/issues/prescription-drug-abuse-and-diversion>

- We provide the DEA with additional data and reports to aid their efforts to seek out criminal behavior. Distributors communicate about any handling of selected controlled substances to the DEA's reporting system, Automation of Reports and Consolidated Orders System (ARCOS). This system monitors the flow of DEA controlled substances from their point of manufacture through commercial distribution channels to the point of sale at the dispensing/retail level.

50. Beyond their industry commitments and trade group pledges, as entities involved in the distribution and sale of dangerous opioid medications, Defendant distributors were engaged in an abnormally and/or inherently dangerous activity and, thus, had a heightened duty of care under West Virginia law.

51. Defendants were on notice that the controlled substances they distributed or prescribed were the kinds that were susceptible to being diverted for illegal purposes, abused, overused, and otherwise sought for illegal, unhealthy, or problematic purposes.

52. Defendant distributors purchased opioids from manufacturers and sold them to pharmacies throughout Welch.

53. Defendant distributors knew or should have known that they were supplying vast amounts of dangerous drugs to small markets that were already facing abuse, diversion, misuse and other problems associated with the opioid epidemic. Though they had a duty to the consuming public, collectively and individually, Defendant distributors failed to take any action to prevent, minimize, or reduce the distribution of these dangerous drugs.

54. Individuals in West Virginia cannot obtain opioids without a prescription written by a licensed medical provider. Dr. Cofer was a licensed medical provider in West Virginia over the relevant time period. Dr. Cofer provided written opioid prescriptions for patients despite knowing that the opioids were likely to be abused, diverted, or misused. Dr. Cofer knew or should have known his actions resulted in patients obtaining dangerous drugs that they did not need, were likely to be abused, or were likely to be resold on the street.

55. Defendants were on notice that West Virginia law required them, inter alia, to provide effective controls and procedures to guard against diversion of controlled substances, pursuant to 15 C.S.R. § 2-4.21 and 2-4.4 and the WV Controlled Substances Act.

56. The result of Defendants' collective actions has been catastrophic for nearly everyone in Welch except Defendants.

The Role of the Distributors

57. McKesson, Cardinal, Miami-Luken, H.D. Smith, and ABDC are all in the business of pharmaceutical distribution. These Defendants, collectively referred to as Defendant Distributors, knew, or should have known that West Virginia had an exceedingly high rate of illegal use, abuse, misuse, and diversion of prescription opioids. Numerous publications, news sources and studies highlighted the epidemic rate of opioid abuse and overdose rates in West Virginia.

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

59. The HDA created "Industry Compliance Guidelines" based upon Drug Enforcement Agency requirements which stressed the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines provided: "At the center of a sophisticated supply chain, Distributor are uniquely situated to perform due diligence in order to help support the security of controlled substances they deliver to their customers." Indeed, the HDMA advises all distributors to "Know Your Customer."

60. Defendant Distributors have shipped millions of doses of highly addictive controlled pain killers into the tiny city of Welch, many of which should have been stopped and/or investigated as suspicious orders.

61. Upon information and belief, Defendant Distributors failed to adopt or implement any effective affirmative efforts to prevent diversion of its medicines for illegal or abusive purposes.

62. When the population of the city is taken into consideration, Defendant Distributors delivered an excessive and unreasonable number of highly addictive controlled substances in Welch.

63. Defendant Distributors undertook no discernible efforts to determine whether the volume of prescription pain killers it was shipping to Welch was excessive and whether any of the orders it filled qualified as suspicious orders, which should have been refused.

64. Upon information and belief, Defendant Distributors did not refuse to ship or supply any controlled substances to any Welch pharmacy between 2007 and the present.

65. Defendant Distributors knew or should have known that they were supplying opioid medications far in excess of the legitimate needs for Welch.

66. Defendant Distributors knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers they supplied to pharmacies and drug stores in Welch were being diverted to illegal use or abuse.

67. Defendant Distributors had a legal duty to ensure they were not filling suspicious orders.

68. The sheer volume of highly addictive opioid pain medications Defendant Distributors shipped to Welch from 2007 through the present was suspicious on its face.

69. Upon information and belief, Defendant Distributors made little to no effort to visit the pharmacies and drug stores in Welch to which they shipped substantial amounts of prescription medication to do due diligence to ensure the medications they were shipping were not diverted to illegal uses.

70. Defendant Distributors paid their sales force employees' and managers' bonuses and commissions on the sale of most or all of the highly addictive prescription pain killers supplied to Welch.

71. Defendant Distributors made substantial profits from the drugs which were sold in Welch.

72. Defendant Distributors knowingly filled suspicious orders in Welch from 2007 to the present.

73. Defendant Distributors' intentional distribution of excessive prescription pain killers to a small community showed a reckless disregard to the safety of Welch and its residents.

74. According to 2013 estimates, Welch had a population of 2,200.

75. Defendant Distributors knew or should have known the amount of Oxycodone and Hydrocodone they supplied to Welch and neighboring towns was in excess of any amount reasonable to serve a community as small as Welch.

76. The claims and allegations contained herein should come as no surprise to the Defendant Distributors.

77. In 2008, Defendant McKesson paid the Department of Justice \$13.25 million for failing to comply with its obligations under the Controlled Substances Act. Specifically, the government alleged that McKesson failed to report suspicious orders for opioids from internet pharmacies.

78. On January 17, 2017 the Department of Justice announced it had reached another settlement with McKesson Corporation, this time to pay \$150 million to resolve allegations McKesson had violated the Controlled Substances Act by filling millions of orders for drugs, including highly addictive opioids, without sufficient anti-abuse safeguards.

79. According to the press release, from 2008 until 2013, McKesson supplied various U.S. pharmacies an increasing amount of oxycodone and hydrocodone pills, frequently misused products that are part of the current opioid epidemic," the DOJ said in the release.

80. As part of the nationwide settlement, McKesson agreed to suspend sales of controlled substances from distribution centers in Colorado, Ohio, Michigan and Florida for multiple years, which the DOJ touted as the "most severe sanctions ever" agreed to by a Drug Enforcement Administration registered distributor.

81. In its own release announcing the deal, McKesson focused on the fact that the allegedly illegal practices took place years in the past, and said the settlement had actually been publicly disclosed in a 2015 U.S. Securities and Exchange Commission filing. The company said it had decided to put aside its disagreements with the DEA and DOJ about its interpretations of the regulations for monitoring of orders, in part to "help stem the opioid epidemic in this country." John H. Hammergren, McKesson's chairman and chief executive officer, said in a statement that pharmaceutical distributors have a key role to play in combating prescription drug abuse, and said his company was taking this task on seriously. Mr. Hammergren specified: "We continue to significantly enhance the procedures and safeguards across our distribution network to help curtail prescription drug diversion while ensuring patient access to needed medications," he said. "We are committed to tackling this multi-faceted problem in collaboration with all

parties in the supply chain that share the responsibility for the distribution of opioid medications."

82. In January 2017, AmerisourceBergen, Cardinal Health, H.D. Smith and Miami-Luken agreed to pay \$16 million, \$20 million, \$3.5 million and \$2.5 million respectively to resolve the West Virginia Attorney General's claims relating to their distribution of controlled substances

83. Cardinal Health noted in its press release related to the settlement that "it takes its role as a wholesale distribution company seriously and is working collaboratively with everyone from regulators to physicians to better address the tactics used by those determined to divert prescription drugs for illegitimate use."

The Role of Dr. Cofer

84. Despite being a licensed physician, Dr. Cofer undertook no efforts to determine whether the volume of prescription pain killers he was prescribing to his patients was excessive and whether any of the prescriptions he wrote should have been refused.

85. Dr. Cofer knew or should have known that he was prescribing opioid medications far in excess of the legitimate needs for Welch residents.

86. Dr. Cofer knew or should have known that there was a high likelihood that a substantial number of the prescription pain killers he wrote for residents of Welch or for patients whose prescriptions were filled within Welch, were being diverted to illegal use or abuse.

87. Dr. Cofer had a legal duty to ensure he was not prescribing suspicious orders.

88. The sheer volume of highly addictive opioid pain medications Dr. Cofer wrote from 2007-present was suspicious on its face.

89. Dr. Cofer made substantial profits from the drugs which were sold in Welch or to Welch residents.

90. Specifically, Dr. Cofer was investigated by the Complaint Committee of the West Virginia Board of Medicine for improper prescribing of narcotic pain medication. In March 2015, the Committee initiated a second investigation of Dr. Cofer based on a report from the West Virginia Controlled Substance Monitoring Program Database Review Committee (CSMP Review Committee).

91. The CSMP Review Committee notified the West Virginia Board of Medicine that a review done by the chief medical examiner of two drug overdoses could be traced to prescriptions written by Defendant for controlled substances. The overdoses resulted in the death of two patients.

92. In addition to the two patients who died, 14 other patients who had been prescribed controlled substances were included in the review by the West Virginia Board of Medicine.

93. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records did not contain evidence of routine use of controlled substance agreements or routine drug screens prior to 2015.

94. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited documentation that drug screens were reviewed and documented in the patient record.

95. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited evidence that the Controlled Substance Monitoring Program database was queried in conformity with West Virginia statute (W. Va. Code R. §11-10-1 et. seq.).

96. On or about February 6, 2016, Dr. Cofer agreed with the stipulated Findings of Fact and Conclusions of Law reached by the West Virginia Board of Medicine.

V. CAUSES OF ACTION

**COUNT I
NEGLIGENCE OF DEFENDANT DISTRIBUTORS**

97. Plaintiff incorporates by reference the allegations in paragraphs 1 through 96.

98. Defendant Distributors must comply with both the laws of West Virginia and with industry customs and standards.

99. Industry standards require these Defendants to:

- know its customers,
- know its customer base,
- know the population base served by a particular pharmacy or drug store,
- know the average prescriptions filled each day,
- know the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases,
- have a description of how the dispenser fulfills its responsibility to ensure that prescriptions filled are for legitimate medical purposes, and
- know the identification of the physicians and bogus pain clinics and centers for the alleged treatment of pain that are the pharmacy or drug stores' most frequent prescribes.

100. Defendant Distributors negligently failed to ensure its conduct conformed to industry standards.

101. Defendant Distributors negligently failed to ensure its conduct conformed to West Virginia law and regulations.

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

103. Defendant Distributors took no action, or insufficient action to stem the flow of opioids into the hands of abusers, misusers, and diverters in Welch.

104. The aforementioned conduct was a direct breach of the duty Defendant Distributors owed to Plaintiff which was the proximate cause of Plaintiff suffering damages.

COUNT II NEGLIGENCE OF DR. COFER

105. Plaintiff incorporates by reference the allegations in paragraphs 1 through 96.

106. In January 2015, the Complaint Committee of the West Virginia Board of Medicine (West Virginia Board of Medicine) initiated an investigation of Dr. Cofer for improper prescribing of narcotic pain medication.

107. In March 2015, the West Virginia Board of Medicine initiated a second investigation of Dr. Cofer based on a report from the West Virginia Controlled Substance Monitoring Program Database Review Committee (CSMP Review Committee).

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109. In addition to the two patients who died, 14 other patients who had been prescribed controlled substances were included in the review by the West Virginia Board of Medicine.

110. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records did not contain evidence of routine use of controlled substance agreements or routine drug screens prior to 2015.

111. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited documentation that drug screens were reviewed and documented in the patient record.

112. The West Virginia Board of Medicine concluded that Dr. Cofer's medical records contained limited evidence that the Controlled Substance Monitoring Program database was queried in conformity with West Virginia statute (W. VA. Code R. §11-10-1 et. seq.).

113. On or about February 6, 2016, Dr. Cofer agreed with the stipulated Findings of Fact and Conclusions of Law reached by the West Virginia Board of Medicine.

114. As a practicing physician treating patients who lived or worked in Welch, Dr. Cofer owed a duty of care to the residents of Welch and to Welch itself.

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

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

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

118. Dr. Cofer's negligent violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

119. Dr. Cofer's negligent acts and omissions have proximately caused and substantially contributed to damage suffered by Plaintiff.

COUNT III
DEFENDANT DISTRIBUTORS' VIOLATION
W.Va. Code § 60A-8-1 et seq and W.Va. Code § 55-7-9

120. Plaintiff incorporates by reference the allegations contained in paragraph 1 through 96.

121. Defendant Distributors intentionally contributed to the prescription drug abuse epidemic in the state of West Virginia, and specifically in Welch, through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act as well as through reckless disregard to the safety and well-being to the citizens of West Virginia.

122. Defendant Distributors intentionally failed to meet or otherwise misrepresented their compliance with the requirements of W.Va. Code § 60A-8-1 et seq and otherwise intentionally violated the West Virginia Uniform Controlled Substances Act.

123. Defendant Distributors intentionally failed to ensure their conduct conformed to industry standards, West Virginia law and other regulations.

124. Defendant Distributors intentionally turned a blind eye toward industry standards, West Virginia law, and other regulations by regularly distributing obscenely large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of

whom were addicted and whom can reasonably be expected to become addicted or to engage in illicit drug transactions.

125. Defendant Distributors' intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse epidemic in West Virginia generally, and specifically in Welch.

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

127. Defendant Distributors' intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes including but not limited to those written by Dr. Cofer.

128. Defendant Distributors' intentional violations of West Virginia law make it liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

129. Defendant Distributors' intentional acts and omissions have proximately caused and substantially contributed to damage suffered by Welch, and created conditions which contribute to the violation of West Virginia laws by others.

130. Defendant Distributors' intentional acts and omissions have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards and practices within Defendants' own industries.

131. Upon information and belief, Defendant Distributors continue to intentionally violate West Virginia laws and regulations, United States laws and regulations, and Defendant

Distributors' industry customs, standards and practices which continue to proximately cause substantial damages to Plaintiff.

**COUNT IV
DR. COFER'S VIOLATION
W.Va. Code § 60A-4-401 and W.Va. Code § 55-7-9**

132. Plaintiff incorporates by reference the allegations contained in paragraph 1 through 96.

133. Dr. Cofer constructively delivered controlled substances requiring valid prescriptions by the issuance of purported prescriptions on behalf of patients who received the controlled substances from various pharmacists who filled such prescriptions either in Welch, for Welch residents, or otherwise for recipients of said substances whose actions harmed or impacted Plaintiff.

134. Dr. Cofer issued such prescriptions intentionally or knowingly outside the usual "course of professional practice or research," thereby not engaging in the authorized activities of a "practitioner," as defined in W.Va. Code, 60A-1-101(v), as amended. Dr. Cofer's prescriptions were issued intentionally or knowingly without a legitimate medical other authorized purpose.

135. By virtue of Dr. Cofer's actions, he constructively delivered controlled substances in violation of W.Va. Code, 60A-4-401(a), as amended, which is part of West Virginia's Uniform Controlled Substances Act.

136. Dr. Cofer's intentional violations of West Virginia law make him liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

137. Dr. Cofers' intentional acts and omissions have proximately caused and substantially contributed to damage suffered by Welch, and created conditions which contribute to the violation of West Virginia laws by others.

**COUNT V
UNJUST ENRICHMENT**

138. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96.

139. As a result of all Defendants' actions, Plaintiff has expended substantial amounts of money annually that it would not have otherwise expended on numerous services, including, but not limited to: law enforcement, prosecutors and prosecutions, courts and court personnel, public defender services, corrections and correctional facilities, probation and parole, public welfare and service agencies, emergency, healthcare and medical services and drug abuse education and treatment, public utilities, nuisance abatement, code enforcement.

140. Plaintiff has lost tax revenue and incurred direct and indirect costs as a result of workplace accidents, absenteeism, and decreased productivity from prescription drug abuse caused in whole or in part by Defendants' actions.

141. Plaintiff will continue to incur these increased costs, or continue to suffer these losses, in the future as a result of the Defendants' conduct listed herein.

142. Collectively, all Defendants made substantial profits while fueling the prescription drug epidemic in West Virginia and Welch.

143. Defendant Distributors continue to receive considerable profits from the distribution of controlled substances in Welch.

144. Defendants were each unjustly enriched by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing.

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

146. Defendants are liable to Plaintiff for all damages incurred as a result of Defendants' negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing contained herein.

147. Defendants' negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing entitle Plaintiff to disgorgement of the profits received by Defendants for all sales it made in Welch or to Welch residents from 2007 to present.

COUNT VI PUBLIC NUISANCE

148. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96.

149. Defendants, individually and acting through their employees and agents have created and continue to perpetuate and maintain a public nuisance to the citizens of Welch through the massive distribution of millions of doses of highly addictive, commonly abused prescription pain killers.

150. Defendants' failure to put in place effective controls and procedures to guard against theft and diversion of controlled substances, and their failure to adequately design and operate a system to disclose suspicious orders of controlled substances, and by their failure to inform the State of suspicious orders when discovered has created a public nuisance to the citizens of Welch.

151. Defendants knew or should have known its conduct would cause harm or inconvenience to Welch in a multitude of ways.

152. As a direct and proximate result of the conduct of Defendants, as set forth herein, Defendants have negligently, intentionally, and/or unreasonably interfered with the right of Welch citizens to be free from unwarranted injuries, addictions, diseases and sicknesses, overdoses from prescription pain medication, and ongoing damage, harm, inconvenience and ongoing damage, harm and inconvenience to Welch and its residents who have been exposed to the risk of addiction to prescription drugs, who have become addicted, and/or have suffered other adverse consequences from the use of the addictive prescriptions drugs, and have been adversely affected by the addiction and abuse of others in their communities from highly addictive, prescription pain medication distributed by Defendants.

153. Defendants' actions have and will continue to cause Welch, its agencies, and citizens to suffer the same fate in the future if Defendants' conduct continues.

154. As a direct result of Defendants' conduct, as set forth herein, Defendants have negligently, intentionally, recklessly, maliciously, oppressively, and/or unreasonably interfered with the public's right to be free from unwarranted injury, disease or sickness, criminal actions, and have cause ongoing damage, harm and/or inconvenience to the public health, the public safety, and the general welfare of the citizens of Welch.

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

156. The public nuisance created, perpetuated, and maintained by Defendants can be abated and further occurrence of such harm and inconvenience can be prevented.

157. Defendants were on notice that an epidemic from prescription drug abuse existed and has existed during all relevant times for this Complaint as the result of:

- A large amount of media coverage of prescription drug abuse and its consequences by both national and local print, television, and radio media;
- Multiple documentary movies depicting the state of prescription drug abuse in West Virginia;
- Publications received from government sources as well as warnings and recommendations contained in trade and professional journals; and
- Changes in law and regulations which were designed specifically to address the growing problem of prescription drug abuse.
- The widespread publicity contained many references and statistics concerning West Virginia's problems from prescription drug abuse, including, but not limited to, suffering the nation's highest per capita death rate from prescription drug overdose.

158. Notwithstanding the knowledge of this epidemic of prescription drug abuse in West Virginia and specifically in Welch, Defendants persisted in a pattern and practice of distributing controlled substances of kinds which were well-known to be abused and diverted in such quantities and with such frequency, that the Defendants knew or should have known that these substances were not being prescribed and consumed for legitimate medical purposes.

159. As a direct and proximate result of the above-described conduct, Defendants negligently, recklessly, maliciously, oppressively, and/or intentionally, and acting with blind indifference to the facts, created and continue to propagate a public nuisance. More particularly, the public nuisance created by Defendants, injuriously, and in many areas pervasively, affects Welch, and endangers the public health and safety and inconveniences the residents of Welch.

160. As a direct result of the acts and/or omissions of Defendants in creating, perpetuating, and maintaining the public nuisance hereinabove described, the public nuisance described herein has damaged the health and safety of Welch residents in the past will continue to do so in the future unless the nuisance is abated.

161. Plaintiffs have sustained economic harm in the expenditure of massive sums of monies and will continue to suffer economic harm in the future unless the above- described public nuisance is abated.

COUNT VII INTENTIONAL ACTS AND OMISSIONS

162. Plaintiff incorporates by reference all allegations in paragraphs 1 through 96.

163. Defendants intentionally contributed to the prescription drug abuse epidemic in Welch through repeated intentional violations of variprovisions of the West Virginia Uniform Controlled Substances Act and through reckless disregard to the safety and well-being to the citizens of Welch, to wit:

- Defendants intentionally and improperly dispensed, and continues to dispense prescriptions contrary to W.Va. Code § 60A-3-308;
- Defendants intentionally engaged in prohibited acts, contrary to W.Va. Code §§ 60A-4-401 through 403;
- Defendants intentionally abetted and continue to abet individuals in deceiving and attempting to deceive medical practitioners in order to obtain prescriptions in violation of W.Va. Code § 60A-4-401.
- Defendants intentionally failed to meet the requirements of W.Va. Code § 60A-8-1 et seq.
- Defendants intentionally conspired to violate the WV Uniform Controlled Substances Act.
- Defendants intentionally failed to ensure its conduct conformed to industry standards.
- Defendants intentionally failed to ensure its conduct conformed to West Virginia law and regulations.
- Defendants intentionally turned a blind eye toward the foregoing industry standards by regularly distributing large quantities of commonly-abused, highly addictive controlled substances to clients who were serving a customer base comprised of individuals who were abusing prescription medications, many of whom were addicted and whom can reasonably be expected to become addicted or to engage in illicit drug transactions.

164. Defendants' intentional acts and omissions have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse epidemic in Welch.

165. Defendants' intentional acts and omissions ultimately supplied millions of doses of commonly-abused, highly addictive controlled substances to patients of pill mills and physicians like Dr. Cofer with no legitimate medical evidence supporting the prescription.

166. Defendants' intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

167. Defendants' intentional violations of West Virginia law make it liable for all the damages which are sustained therefrom. W. Va. Code § 55-7-9.

168. Defendants' intentional acts and omissions have proximately cause and substantially contributed to damage suffered by Welch, and created conditions which contribute to the violation of West Virginia laws by others.

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

170. Upon information and belief, Defendants continue to intentionally violate West Virginia laws and regulations, and Defendant's industry customs, standards and practices which continue to proximately cause substantial damages to Plaintiff.

VI. PRAYER

WEHREFORE, Plaintiff prays that the Court grant the following relief:

1. Order a jury trial on all issues so triable to determine damages as a result of the Defendants' actions outlined in this Complaint
2. Enter Judgment in favor of Plaintiff;
3. Enter a temporary restraining order which:
 - a. Prevents Defendants from continuing to violate West Virginia laws;

- b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in Welch;
 - d. Mandates Defendants submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in Welch for any non-legitimate medical purpose;
4. Enter a permanent restraining order which:
- a. Prevents Defendants from continuing to violate West Virginia laws;
 - b. Prevents Defendants from continuing to violate United States laws and regulations relating to the distribution of controlled substances;
 - c. Mandates that Defendants promptly notify the appropriate state and federal authorities of any and all suspicious orders for controlled substances as received from parties who are located in Welch;
 - d. Mandates Defendants submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin Defendants from distributing any controlled substance in Welch for any non-legitimate medical purpose; and
 - e. Mandates Defendants provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendants' actions
5. Order equitable relief, including, but not limited to restitution and disgorgement;
6. Award punitive damages for Defendants' willful, wanton, malicious, oppressive, and intentional actions as detailed herein;
7. Award attorneys' fees and costs and
8. Award such other relief as this Court deems just and fair;

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



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