UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE COUNTY COMMISSION OF MINGO COUNTY,

Plaintiff,

v.

PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY, INC.; RICHARD S. SACKLER; JONATHAN D. SACKLER; MORTIMER D.A. SACKLER; KATHE A. SACKLER; ILENE SACKLER LEFCOURT; BEVERLY SACKLER; THERESA SACKLER; DAVID A. SACKLER; TRUST FOR THE BENEFIT OF THE MORTIMER SACKLER FAMILY; TRUST FOR THE BENEFIT OF THE RAYMOND SACKLER FAMILY; RHODES PHARMACEUTICALS L.P.; TEVA PHARMACEUTICAL INDUSTRIES, LTD; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC.; NORAMCO, INC.; MALLINCKRODT PLC; MALLINCKRODT LLC; MALLINCKRODT ENTERPRISES, LLC; JOHNSON & JOHNSON; ENDO HEALTH SOLUTIONS, INC.; ENDO PHARMACEUTICALS, INC.; INSYS THERAPEUTICS, INC.; ALLERGAN PLC; ACTAVIS PLC; ACTAVIS, INC.; ACTAVIS LLC; ACTAVIS PHARMA INC.; WATSON PHARMACEUTICALS, INC.; WATSON PHARMA, INC.; WATSON LABORATORIES, INC.; MCKESSON CORPORATION; CARDINAL HEALTH 102, INC.; CARDINAL HEALTH 110, LLC; AMERISOURCEBERGEN DRUG CORPORATION; MIAMI-LUKEN, INC.; H.D. SMITH WHOLESALE DRUG COMPANY; H.D. SMITH, LLC; RITE AID OF MARYLAND, INC. D/B/A RITE AID MID-ATLANTIC CUSTOMER SUPPORT CENTER, INC.; WAL-MART STORES EAST, L.P.; MARK ROSS; PATTY CARNES; CAROL DeBORD; JEFF WAUGH; SHANE COOK; and WEST VIRGINIA BOARD OF PHARMACY

MDL No. 2804
Lead Case: 1:17-md-02804-DAP
Case No.: 1:18-op-45940-DAP
Judge Dan Aaron Polster

Defendants.

AMENDED COMPLAINT

Plaintiff, the County Commission of Mingo County, hereby sues Defendants Purdue Pharma, L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Richard S. Sackler; Jonathan D. Sackler; Mortimer D.A. Sackler; Kathe A. Sackler; Ilene Sackler Lefcourt; Beverly Sackler; Theresa Sackler; David A. Sackler; Trust For The Benefit Of The Mortimer Sackler Family; Trust For The Benefit Of The Raymond Sackler Family; Rhodes Pharmaceuticals L.P.; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; Noramco, Inc.; Johnson & Johnson; Mallinckrodt PLC; Mallinckrodt LLC; Mallinckrodt Enterprises, LLC; Endo Health Solutions, Inc.; Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; Allergan PLC; Actavis PLC; Actavis, Inc.; Actavis LLC; Actavis Pharma, Inc.; Watson Pharmaceuticals, Inc.; Watson Pharma, Inc.; Watson Pharmaceuticals, Inc.; Watson Pharma, Inc.; Watson Laboratories, Inc.; McKesson Corporation; Cardinal Health 102, Inc.; Cardinal Health 110, LLC; AmerisourceBergen Drug Corporation; Miami-Luken, Inc.; H.D. Smith Wholesale Drug Company; H.D. Smith, LLC; Rite Aid of Maryland, Inc. d/b/a Rite Aid Mid-Atlantic Customer Support Center, Inc.; Wal-Mart Stores East, L.P.; and West Virginia Board of Pharmacy, for the causes of action stated as follows:

INTRODUCTION

1. Prescription opiates are narcotic drugs. They are derived from or possess properties similar to opium and heroin, and are categorized as "Schedule II" drugs due to their high potential for abuse and potential to cause severe psychological or physiological

dependence. The terms "opioids" and "opioid analgesics" describe the entire class of natural and synthetic opiates.

2. The Food and Drug Administration ("FDA") originally approved opioid treatment for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care.[1] Later, the label was stretched to reach treatment of patients with "chronic pain," pain lasting more than three months.

3. Within the last 20 years, a scourge infected this country in the form of a public health epidemic caused by widespread addiction to opioids like OxyContin and Percocet, as well as their generic forms - oxycodone and hydrocodone. The scourge is popularly known as the "opioid epidemic."[2] More of a modern plague, this opioid epidemic continues to mushroom, despite widespread media attention and national government response.

4. Along the front lines of this historic national health emergency sits Mingo County, where the misuse, abuse, and overdose of prescription pain pills has and continues to destroy lives, ruin state and local economies, and forever alter the welfare of the citizens of Mingo County.

5. Shrouded in a cloak of lawful activity, dominant pharmaceutical manufacturers and wholesaler/distributors saturated, then flooded, Mingo County with excessive amounts of dangerous and addictive prescription opioids, all the while disregarding their own real-time data and failing to report red-flag, facially suspicious orders within the county.

[1] Opioid was 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.

[2] L. Manchikanti et al., *Opioid Epidemic in the United States*, available at https://www.ncbi.nlm.nih.gov/pubmed/22786464.

6. During the creation and inflation of this epidemic, the Manufacturer Defendants, the Sackler Defendants, and the Distributor Defendants, as defined below, knew of the dangerously addictive qualities and high rates of loss and misappropriation ("diversion rates") of their drugs. These Defendants profitably staged themselves to play a significant role in creating a public nuisance of historic proportions.

7. Each Defendant played a significant role in creating what amounts to a public nuisance, by flooding Mingo County with excessive amounts of dangerous and addictive medications. The Defendants' actions are a serious breach of the public trust which has resulted in drug abuse, misuse, and overdose deaths, and untold expenses for Plaintiff.

8. Like sharks circling their prey, multi-billion dollar companies like McKesson, AmerisourceBergen, and Cardinal (the "Big Three"), descended upon Appalachia for the sole purpose of profiting off of the prescription drug fueled feeding frenzy commonly referred to, and more fully described below as, the opioid epidemic. Despite its position as guardian and protector of the public, Defendant BOP failed in all regards to do its job and stop the alleged conduct.

9. As controllers of dangerous and addictive products like narcotics, all Defendants bore a significant duty to ensure that the drugs did not end up in the wrong hands. In exchange for promising to honor their obligations, the Distributor Defendants, as defined herein, were licensed and/or registered by the BOP 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.

10. Unfortunately, the addictive qualities of the drugs and potential for abuse placed an unwavering stronghold on consumers and communities. Over half-a-billion doses of

hydrocodone and hundreds of millions of doses of oxycodone were shipped to West Virginia between 2007 and 2012. These drugs were diverted, misused, and abused, to the point where citizens of West Virginia, including the residents of Mingo County, lost their jobs, their health and even their lives. Left in the wake of this malfeasance are small towns and counties like Mingo County, to clean up the mess and try to restore order while Distributor Defendants sit back and count the money it made off of their misdeeds.

11. The effects of this epidemic are immediately traceable to the highly deceptive and unfair marketing campaigns employed by Defendants, designed to re-educate physicians by use of misleading marketing materials, rather than by use of scientific facts, to foster a culture of opioid use in unsuspecting patients.

12. As further proof of Defendants' intent to drive up profits, their marketing strategy included encouraging physicians to increase dose amounts and frequencies over time to keep up with patients' increased tolerance.

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

14. When the dangerous and addictive drugs caused harm to the public utilities of Mingo County in the form of litter and damaged and destroyed public property, among other things, Defendants were nowhere to be seen, but Plaintiff was there to enforce codes, clean up streets and neighborhoods, and repair and/or replace damaged and destroyed public property.

15. When the dangerous and addictive drugs caused increases in crime, including crimes related to addiction and the use of illegal drugs like heroin and methamphetamines, in

Mingo County, Defendants were nowhere to be found, but Plaintiff was there to dispatch police, prosecute cases, supervise offenders in jail and eventually back in society.

16. When Distributor Defendants failed to timely or sufficiently submit suspicious order reports, Defendant BOP failed to serve its purpose of maintaining a check on distribution. Even when the Distributor Defendants did submit suspicious reports, the BOP simply filed them away in a drawer without so much as second look in complete abrogation of its duty.

17. Simply put, Plaintiff has been overwhelmed by the problems resulting from the proliferation of opioid use, misuse, and abuse by its population.

18. Defendants separately, together, and in conjunction with one another, through their acts and/or omissions caused and/or contributed to the troubles that Plaintiff faced and continues to face in the opioid crisis.

19. Left in the wake of this malfeasance are small towns and counties throughout the West Virginia, including Mingo County, endeavoring to restore order. Plaintiff's response to the health emergency created by Defendants includes funding health insurance; providing medical treatment; dispatching emergency services; investigating and prosecuting drug-related crimes; incarcerating perpetrators; supervising and rehabilitating the addicted; preventing, investigating, and treating overdoses; assembling necessary response teams; and tending to the infirm, dying, and dead.

20. These costs reflect the natural reaction of leaders within Mingo County to traumas so unprecedented that no coping guidelines existed when they occurred.

21. The evils and associated costs created by Defendants remain unchecked and should be ultimately borne by Defendants themselves, rather than by the citizens of Mingo County.

22. This action is therefore brought to expose the Defendants' misdeeds, stop the proliferation of opioids, recoup the expenses and penalties owed, and recover the damages suffered by Mingo County and its citizens. Perhaps most importantly, this suit is brought in order to abate the continuing public nuisance caused, in whole or in part, by the actions of Defendants and force Defendants to help solve the problem they created.

PARTIES

I. PLAINTIFF

23. Plaintiff, the County Commission of Mingo County, is the duly elected governing body that oversees Mingo County, a political subdivision of the state of West Virginia. The County Commission of Mingo County brings this action on behalf and for the benefit of Mingo County at large pursuant to W.Va. Code §§7-1-3kk1 and 8-12-1(3). The County Commission of Mingo County is hereinafter referred to as "Plaintiff."

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

II. MANUFACTURER DEFENDANTS

A. Purdue Defendants

25. Purdue Pharma, L.P. is a limited partnership organized under Delaware law with its principal place of business in Stamford, Connecticut. Purdue Pharma, L.P., is registered to do business in West Virginia; its registered agent for service of process is Corporation Service Company, 209 West Washington Street, Charleston, West Virginia 25302.

26. Purdue Pharma, Inc. is a New York Corporation with its principal place of business in Stamford, Connecticut.

27. The Purdue Frederick Company, Inc. is a Delaware corporation with its principal place of business in Stamford, Connecticut.

28. Rhodes Pharmaceuticals L.P. is a Delaware limited partnership formed in or around 2007 with headquarters located in Coventry, Rhode Island.

29. Purdue Pharma, L.P. Purdue Pharma, Inc., The Purdue Frederick Company, Inc., and Rhodes Pharmaceuticals L.P. are hereinafter collectively referred to as "Purdue."

30. Purdue engaged in manufacture, promotion, and sale of the opioids referenced in this Complaint, including the following:

a. OxyContin, a Schedule II[3] opioid drug;

b. MS Contin, a Schedule II opioid drug;

c. Dilaudid, a Schedule II opioid drug;

d. Dilaudid-HP, a Schedule II opioid drug;

e. Butrans, a Schedule III opioid drug;

f. Hysingla ER, a Schedule II opioid drug; and

g. Targiniq, a Schedule II opioid drug.

31. Purdue's national annual sales of OxyContin alone reached almost $3 billion in 2009, up from 2006 sales of $800 million. OxyContin constitutes roughly 30% of the entire market for painkiller drugs.

[3] As scheduled by the DEA.

32. As a result of an earlier investigation into Purdue's untoward practices, in 2007, the company entered a Corporate Integrity Agreement with the government pledging to ensure it used only fair and accurate marketing, and monitoring and reporting compliance.

33. Upon information and belief, Purdue and its affiliates were registered to do business in the state of West Virginia and marketed and sold its products in West Virginia and Mingo County during the relevant time period.

B. Cephalon Defendants

34. Defendant Teva Pharmaceuticals USA, Inc., is a Delaware corporation with its principal place of business in North Whales, Pennsylvania. Teva Pharmaceuticals USA was formerly registered to do business in West Virginia; its registered agent is Corporate Creations Network, Inc., 5400-D Big Tyler Road, Charleston, West Virginia 25313. Teva Pharmaceuticals USA is a wholly owned subsidiary of Teva Pharmaceutical Industries, Ltd., an Israeli corporation. Collectively, these entities are referred to as "Teva."

35. Defendant Cephalon, Inc., is a Delaware corporation operating its principal place of business in Frazer, Pennsylvania. In 2011, Teva Pharmaceutical Industries, Ltd., acquired Cephalon, Inc.

36. Teva Pharmaceuticals USA and Cephalon, Inc., work closely to market, manufacture, sell, and distribute Cephalon products, Schedule II opioid drugs Actiq and Fentora, in the United States. Teva Pharmaceuticals USA, Inc., markets these drugs as Teva products, and sells all former Cephalon branded products through its "specialty medicines" division.

37. Upon information and belief, Teva was registered to do business in the state of West Virginia and marketed and sold a generic form of OxyContin in West Virginia and Mingo County from 2005 through 2009.

C. Janssen Defendants

38. Janssen Pharmaceuticals, Inc., f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., f/k/a Janssen Pharmaceuticals, Inc., is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey. It is a wholly owned subsidiary of Johnson & Johnson, a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. In addition, Noramco, Inc., was a wholly owned subsidiary of Johnson & Johnson, until July, 2016. Noramco, Inc., is incorporated in Delaware and has its principal place of business in Wilmington, Delaware.

39. Johnson & Johnson controls the sale and development of Janssen products, and corresponds with the FDA regarding Janssen products.

40. Janssen developed, marketed, and sold Schedule II opioid drugs Nucynta and Nucynta ER until 2015, with 2014 sales of $172 million. Additionally, Janssen manufactured, promoted, sold, and distributed Duragesic, a Schedule II opioid drug.

41. Upon information and belief, Janssen was registered to do business in the state of West Virginia and marketed and sold Nucynta and Nucynta ER in West Virginia and Mingo County during the relevant time period.

D. Endo Defendants

42. Endo Health Solutions, Inc. and its wholly-owned subsidiary Endo Pharmaceuticals, Inc., are Delaware corporations with principal places of business in Malvern, Pennsylvania. Endo Pharmaceuticals, Inc., is registered to do business in West Virginia; its

registered agent is CT Corporation System, 5400 D Big Tyler Road, Charleston, West Virginia 25313. These entities are referred to collectively as "Endo."

43. Endo develops, markets, and sells Schedule II opioid drugs Opana and Opana ER, Percodan, and Percocet.

44. The opioids sold by Endo contributed to $403 million of Endo's $3 billion in revenue in 2012. Opana ER alone accounted for $1.15 billion total for the years 2010 through 2013.

45. Endo also manufactures and sells generic opioids including generic oxycodone, oxymorphone, hydromorphone, and hydrocodone products.

46. Upon information and belief, Endo was registered to do business in the state of West Virginia and marketed and sold its products in West Virginia and Mingo County during the relevant time period.

E. Insys Therapeutics, Inc., Defendant

47. Insys Therapuetics, Inc., ("Insys") is a Delaware corporation with its principal place of business in Chandler, Arizona.

48. Insys manufactured and sold the highly addictive opioid prescription drug Subsys.

49. Insys is known to have promoted Subsys for inappropriate use, provide illegal kickbacks to physicians who prescribed Subsys, market Subsys for use by non-cancer patients, and mislead and defrauded health insurance companies regarding patients' need for Subsys[4], all for the purpose of gaining profits.

[4] Pharmaceutical Executives Charged in Racketeering Scheme, https://www.justice.gov/usao-ma/pr/pharmaceutical-executives-charged-racketeering-scheme (accessed Dec. 27, 2017)

50. Upon information and belief, Insys was registered to do business in the state of West Virginia and marketed and sold its products in West Virginia and Mingo County during the relevant time period.

F. Actavis Defendants

51. Allergan PLC is incorporated in Ireland with its principal place of business in Dublin, Ireland. By way of history, Watson Laboratories, Inc., a Nevada corporation with its principal place of business in Corona, California, acquired Actavis, Inc. in October, 2012. The name changed to Actavis, Inc. then Actavis plc in October, 2013. Actavis PLC acquired Allergan plc in March, 2015. The acquisition resulted in another name change to Allergan plc.

52. Actavis, LLC, is a Delaware corporation with its principal place of business in Parsippany, New Jersey.

53. Actavis Pharma, Inc., formerly Actavis, Inc., and Watson Pharma, Inc., is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Actavis Pharma, Inc., is licensed to do business in West Virginia, with the registered agent Corporate Creations Network, Inc., 5400 D Big Tyler Road, Charleston, West Virginia 25313.

54. Actavis PLC, Actavis, Inc. Actavis, LLC, Actavis Pharma, Inc., Watson Pharmaceuticals, Inc., Watson Pharma, Inc., and Watson Laboratories, Inc. are owned by Allergan plc (collectively "Actavis").

55. The drugs marketed and sold by Actavis includes Schedule II drugs Kadian and Norco (generic Kadian), and generic versions of Duragesic and Opana (previously discussed).

56. Upon information and belief, Actavis and its affiliates were registered to do business in the state of West Virginia and marketed and sold its products in West Virginia and Mingo County during the relevant time period.

G. Mallinckrodt Defendants

57. Mallinckrodt, PLC, is an Irish public limited company headquartered in United Kingdom, with its United States headquarters in St. Louis, Missouri. Mallinckrodt Enterprises, LLC, formerly Mallinckrodt, LLC, is incorporated in Delaware with its principal place of business in New Mexico.

58. Mallinckrodt manufactures, markets, sells, and distributes generic forms of hydrocodone and oxycodone.

59. Mallinckrodt was the subject of a prior investigation and settlement regarding the failure to detect and notify the DEA of suspicious orders of controlled substances.

60. Upon information and belief, Mallinckrodt was registered to do business in the state of West Virginia and marketed and sold its products in West Virginia and Mingo County during the relevant time period.

61. Collectively, the above-referenced opioid drug manufactures are referred to as "Manufacturer Defendants."

III. SACKLER DEFENDANTS

62. Defendant Richard S. Sackler is a natural person residing in Travis County, Texas. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990's. Richard S. Sackler is one of the six inventors listed on the original patent for OxyContin. He began working for Purdue in the 1970's as an assistant to his father, Raymond Sackler, was the president of Purdue at that time. Richard rose through leadership in the subsequent decades, serving as President of Purdue from 1999 to 2003. Richard S. Sackler resigned from his role as President during or after 2003 over apparent concern that executive

officers of Purdue would be held personally liable for any opioid-related liabilities. He continued to serve as co-chair of Purdue's board with his uncle, Mortimer Sackler. This allowed the Sackler Defendants to retain control of the company regardless of their involvement at the executive level.

63. During his executive tenure at Purdue, Richard S. Sackler actively participated in nearly every aspect of the company's opioid products, from invention to marketing to sale. With the assistance of his father, Raymond Sackler, and his uncle, Mortimer Sackler, Richard S. Sackler introduced OxyContin to the market in one of the largest pharmaceutical advertising campaigns in history. Within five years, OxyContin was earning the Purdue-related entities $1 billion a year.

64. At all relevant times, Richard S. Sackler served as a trustee of one or more trusts which own and control Purdue and Purdue-related entities. Richard S. Sackler is the direct or indirect beneficiary of some portion of the profits earned from the sale of opioids by Purdue and the Purdue-related entities listed herein.

65. Defendant Jonathan D. Sackler is a natural person residing in Fairfield County, Connecticut. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990's. Jonathan D. Sackler served as Senior Vice President of Purdue by 2000. Like his brother, Richard, Jonathan D. Sackler resigned from his position during or after 2003, due to concerns that the executive officers of Purdue would be personally liable for crimes and litigation stemming from Purdue's opioid products. Jonathan D. Sackler continued to serve on Purdue's board after his resignation.

66. At all relevant times, Jonathan D. Sackler served as a trustee of one or more trusts that own and control Purdue or Purdue-related entities. He is the direct or indirect

beneficiary of some portion of the profits earned from the sale of opioids by Purdue and the Purdue-related entities listed herein

67. Defendant Mortimer D. A. Sackler is a natural person residing in New York County, New York. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s. Mortimer D. A. Sackler is the direct or indirect beneficiary of the profits earned from the sale of opioids by Purdue and the Purdue-related entities listed herein.

68. Defendant Kathe A. Sackler is a natural person residing in Fairfield County, Connecticut. She has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s. Kathe A. Sackler began serving as Senior Vice President of Purdue by 2000. She resigned from her position during or after 2003 due to concerns that the executive officers of Purdue could be held personally liable for crimes and litigation stemming from Purdue's opioid products. Kathe A. Sackler continued to serve on Purdue's board. She is the direct or indirect beneficiary of the profits earned from the sale of opioids by Purdue and the Purdue-associated companies listed herein.

69. Defendant Ilene Sackler Lefcourt is a natural person residing in New York County, New York. She has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s. Ilene Sackler Lefcourt served as Vice President of Purdue during the initial development and launch of OxyContin. She, too, resigned from her position during or after 2003 due to concerns of personal liability for executive officers of Purdue for opioid-related crime and litigation, but continued to serve on the board.

70. Defendant Beverly Sackler is a natural person residing in Fairfield County, Connecticut. She has served as a member of the Board of Directors of Purdue and Purdue-

related entities since the 1990s. Beverly Sackler has served on the Board of Directors of Purdue and associated entities since the 1990s. She serves as a trustee of one or more trusts that own or control Purdue and Purdue-related entities, and to which up to 50% of the profits of the sale of opioids by Purdue and Purdue-related entities have been conveyed. Beverly Sackler is the direct or indirect beneficiary of some portion of the profits earned by the Purdue through the sale of opioids.

71. Defendant Theresa Sackler is a natural person residing in New York County, New York. She has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s. Theresa Sackler has served on the Board of Directors of Purdue and Purdue-related entities since the 1990s. She is the direct or indirect beneficiary of some portion of the profits earned by Purdue through the sale of opioids.

72. Defendant David A. Sackler is a natural person residing in New York County, New York. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since 2012. David A. Sackler has served on the Board of Directors of Purdue and associated entities since 2012. He is the direct or indirect beneficiary of some portion of the profits earned by Purdue through the sale of opioids.

73. Defendant Trust for the Benefit of the Raymond Sackler Family (the "Raymond Sackler Family Trust") is a trust for which Defendants Beverly Sackler, Richard S. Sackler, David A. Sackler, and/or Jonathan D. Sackler may be trustees or co-trustees. The Trust created for the Benefit of the Raymond Sackler Family is a direct or indirect beneficial owner of Purdue and the Purdue-related entities and the recipient of as much as 50% of the profits from the sale of opioids by Purdue and Purdue-related entities.

74. Defendant Trust for the Benefit of the Mortimer Sackler Family (the "Mortimer Sackler Family Trust") is a trust for which Defendants Theresa Sackler, Ilene Sackler Lefcourt, Kathe A. Sackler and/or Mortimer D. A. Sackler may be trustees or co-trustees. The Trust created for the Benefit of the Raymond Sackler Family is a direct or indirect beneficial owner of Purdue and the Purdue-related entities and the recipient of as much as 50% of the profits from the sale of opioids by Purdue and Purdue-related entities.

75. Richard S. Sackler, Jonathan D. Sackler, Mortimer D. A. Sackler, Kathe A. Sackler, Ilene Sackler Lefcourt, Beverly Sackler, Theresa Sackler, David A. Sackler, Trustee(s) of the Trust Created for the Benefit of the Raymond Sackler Family, and Trustee(s) of the Trust Created for the Benefit of the Mortimer Sackler Family, each knowingly aided, participated in and benefited from the unlawful conduct of Purdue, described herein.

76. Collectively, the defendants listed in ¶¶62-75 are referred to as the "Sackler Defendants" or "Sackler Family."

IV. DISTRIBUTOR DEFENDANTS

A. McKesson Corporation Defendant

77. Each Defendant listed below, distributed, supplied, sold, marketed, advertised, and placed into the stream of commerce prescription opioid drugs. They are referred to collectively as "Distributor Defendants". Each Distributor Defendant was engaged in the "distribution" or "wholesale" of prescription opioid drugs.

78. Like manufacturers of controlled substances, distributors of controlled substances must register with the state pursuant to the WV CSA. W. Va. Code §§ 15-2-3, 15-2-5. *See also* § 15-2-2 (adopting the CSA, 21 U.S.C. 801 (*generally* requiring registration of distributors of controlled substances)).

79. Upon information and belief, each Distributor Defendant maintained licensure through the State of West Virginia for the wholesale distribution of controlled substances pursuant to multiple state regulations.

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

81. Among its many business interests, McKesson distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments. As such, McKesson is part of the group of Defendants that will be referred to collectively herein as Distributor Defendants.

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

83. McKesson does substantial business in the state of West Virginia wherein it distributed pharmaceuticals to at least 52 of West Virginia's 55 counties, it is a registrant with the West Virginia Board of Pharmacy, and it distributed pharmaceuticals in Mingo County.

B. Cardinal Health Defendants

84. Cardinal Health 110, LLC is a qualified Delaware Corporation with its principal place of business in Dublin Ohio. Cardinal Health 110, LLC is registered to do business in West Virginia; the registered agent is CT Corporation System, 1627 Quarrier Street, Charleston, West Virginia 25311. Cardinal Health 102, Inc. is an Ohio Corporation with its principal place of business in Dublin Ohio. Cardinal Health 102, Inc. is registered to do business in West Virginia; the registered agent is Corporation Service Company, 209 West Washington Street, Charleston, West Virginia 25302. Cardinal Health 110, LLC and Cardinal Health 102, Inc. are collectively referred to herein as "Cardinal".

85. The Harvard Drug Group LLC, d/b/a Major Pharmaceuticals, d/b/a Rugby Laboratories is a wholly owned subsidiary of Cardinal Health, Inc., as of 2015. The principal place of business for The Harvard Drug Group LLC, d/b/a Major Pharmaceuticals, d/b/a Rugby Laboratories is 31778 Enterprise Drive, Livonia, Michigan.

86. Like McKesson, Cardinal distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments. As such, Cardinal is part of the group of Defendants that will be referred to collectively herein as Distributor Defendants.

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

88. Cardinal does substantial business in the state of West Virginia wherein it distributed pharmaceuticals to at least 52 of West Virginia's 55 counties, it is a registrant with the West Virginia Board of Pharmacy, and, upon information and belief, it distributed pharmaceuticals in Mingo County.

89. These Defendants are referred to collectively herein as "Defendant Cardinal.

C. AmerisourceBergen Drug Corporation Defendant

90. Defendant AmerisourceBergen Drug Corporation is a Delaware Corporation with its principal place of business in Chesterbrook, Pennsylvania.

91. Specifically, Defendant AmerisourceBergen distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals county health departments, and pharmacies in Mingo County in the relevant time period. AmerisourceBergen is the second largest pharmaceutical distributor in North America; along with McKesson Corporation and Cardinal Health, AmerisourceBergen is a "Big Three"

92. Defendants H.D. Smith Wholesale Drug and H.D. Smith, LLC, (collectively "H.D. Smith") is a Delaware Corporation with its principal place of business in Illinois. The H.D. Smith website specifies that the entity is a wholesale distributor for "independent pharmacies.

93. Defendant AmerisourceBergen Drug Corporation acquired H.D. Smith in a late 2017, early 2018 transaction.[5]

D. Miami-Luken, Inc. Defendant

94. Miami-Luken, Inc. is an Ohio corporation with its principal place of business in Springboro, Ohio.

95. At all times relevant hereto, Miami-Luken, Inc., was registered to do business in West Virginia and distributed opioid drugs in West Virginia and Mingo County. Miami-Luken primarily distributed the highly addictive opioid drugs hydrocodone and oxycodone.

96. Miami-Luken faces scrutiny due to surreptitious opioid distribution practices in states like West Virginia and failure to report suspicious orders in low-population areas like Mingo County.

97. Between 2007 and 2012, Miami-Luken was the fourth-largest distributor of opioid drugs in West Virginia.

98. Upon information and belief, Miami-Luken, Inc., distributed opioid drugs in West Virginia and Mingo County during the relevant time period.

[5] AmerisourceBergen Completes Acquisition of HD Smith (Jan. 3, 2018) https://www.amerisourcebergen.com/abcnew/newsroom/press-releases/amerisourcebergen-completes-acquisition- of-hd-smith.

E. H.D. Smith Wholesale Drug Co.

99. Defendants H.D. Smith Wholesale Drug and H.D. Smith, LLC, (collectively "H.D. Smith") is a Delaware Corporation with its principal place of business in Illinois. The H.D. Smith website specifies that the entity is a wholesale distributor for "independent pharmacies.

100. From 2007 to 2012, H. D. Smith distributed 13,897,880 doses of Hydrocodone and 4,473,520 doses of Oxycodone for a total of 18,371,400 doses of Hydrocodone and Oxycodone to West Virginia during the six year period.

101. 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 Mingo County.

F. Rite Aid of Maryland, Inc. d/b/a Rite Aid Mid-Atlantic Customer Support Center, Inc.

102. Rite Aid of Maryland, Inc., is a Maryland corporation registered to do business in the State of West Virginia, with its principal place of business in Camp Hill, Pennsylvania.

103. Rite Aid of Maryland, Inc., does business as Rite Aid Mid-Atlantic Customer Support Center, Inc. ("Rite Aid").

104. Rite Aid distributed opioid drugs in West Virginia and Clay County during the relevant time period.

G. Wal-Mart Stores East, L.P.

105. Wal-Mart Stores East, L.P., is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart Stores East, L.P., is registered to do business in the State of West Virginia.

106. Upon information and belief, Wal-Mart Stores East, L.P., acted as a distributor in West Virginia and, specifically, Mingo County during the relevant time period.

107. Upon information and belief, Wal-Mart Stores East, L.P. distributed hydrocodone in Mingo County to pharmacies located in Mingo County during the relevant time period.

108. Upon information and belief, Wal-Mart Stores East, L.P. distributed oxycodone in Mingo County to pharmacies located in Mingo County during the relevant time period.

109. Collectively, the above-referenced opioid drug distributors are referred to as "Distributor Defendants."

V. INDIVIDUAL DEFENDANTS

110. Defendant Mark Ross is a resident and citizen of the State of West Virginia. At all times material hereto, Defendant Ross was employed by Purdue as a sales person. Upon information and belief, as an employee of Purdue, Defendant Ross contributed to the advertising, marketing, promotion, and sale of opioid products throughout the State of West Virginia, which includes Mingo County.

111. Defendant Patty Carnes is a resident and citizen of West Virginia. At all times material hereto, Defendant Carnes was employed by Purdue as a sales person. Upon information and belief, as an employee of Purdue, Defendant Carnes contributed to the advertising, marketing, promotion, and sale of opioid products throughout the State of West Virginia, which includes Mingo County.

112. Defendant Carol DeBord is a resident and citizen of West Virginia. At all times material hereto, Defendant DeBord was employed by Purdue as a sales person. Upon information and belief, as an employee of Purdue, Defendant DeBord contributed to the

advertising, marketing, promotion, and sale of opioid products throughout the State of West Virginia, which includes Mingo County.

113. Defendant Jeff Waugh is a resident and citizen of West Virginia. At all times material hereto, Defendant Waugh was employed by Purdue as a sales person. Upon information and belief, as an employee of Purdue, Defendant Waugh contributed to the advertising, marketing, promotion, and sale of opioid products throughout the State of West Virginia, which includes Mingo County.

114. Defendant Shane Cook is a resident and citizen of West Virginia. At all times material hereto, Defendant Cook was employed by Purdue as a sales person. Upon information and belief, as an employee of Purdue, Defendant Cook contributed to the advertising, marketing, promotion, and sale of opioid products throughout the State of West Virginia, which includes Mingo County.

VI. WEST VIRGINIA BOARD of PHARMACY

115. The West Virginia Board of Pharmacy, (herein after referred to as "BOP") is an agency of the state of West Virginia, and consists of seven board members who are appointed by the Governor for a term of five years. Five board members are practicing pharmacists while two members are public members. It is the duty of the BOP to protect the public health, safety, and welfare by the effective regulation of the practice of pharmacy; the licensure of pharmacists; and the licensure and regulation of all sites or persons who distribute, manufacture, or sell drugs or devices used in the dispensing and administration of drugs or devices within the state of West Virginia.

116. The BOP conducts inspections of pharmacies to ensure that the dispensing of prescription drugs is occurring in a safe, clean environment and being done by competent

licensed individuals according to federal and state drug laws. The BOP conducts opening inspections of pharmacies applying for an initial license, and at least a biennial inspection of each licensed pharmacy. The BOP employs at least five inspectors who each cover a certain geographic region of the state and operate out of their homes. Buck Selby acts in the capacity of Chief Compliance Officer for the inspectors.

117. In advance of bringing this action, Plaintiff has placed the State of West Virginia on Notice in compliance with W.V. Code 55-17-3 by serving notice of intent on both the West Virginia Attorney General and the BOP on February 21, 2017.

118. The Board of Pharmacy served the State of West Virginia during the relevant time period.

119. Plaintiff seeks recovery against the BOP only under and up to the limits of available insurance coverage.

JURISDICTION AND VENUE

120. The West Virginia State Courts have jurisdiction over this case and over Defendants pursuant to the provisions of W.Va. Code § 51-2-2. Federal subject matter jurisdiction does not exist.

121. Venue is appropriate in Mingo County as the acts and practices of the Defendants occurred in, and caused damage to Mingo County. Defendants deliberately and regularly transact or transacted business in Mingo County, West Virginia, and Plaintiff's causes of action arose in Mingo County, West Virginia. See W. Va. Code §§ 56-1-1.

FACTUAL BACKGROUND

122. According to 2013 estimates, Mingo County had a population of 25,956.

123. From 2007 to 2012,[6] Distributor Defendants distributed 21,153,600 Hydrocodone and 1,401,920 Oxycodone doses to Mingo County pharmacies. Miami-Luken alone distributed 11,059,500 Hydrocodone doses and 214,500 Oxycodone doses, all to Mingo County pharmacies.

124. In addition, Distributor Defendants 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.

125. This is more than a marginal amount of excess medication. This is the concoction and proliferation of a plan by All Defendants to maximize profits by manipulating medical judgment of prescribers and saturate towns too small to fight back with a dangerous product that would affect the entire community. For years, these opioids were pushed in Mingo County. The BOP neglected to protect its citizens. Rather, the epidemic grew, and the results have been devastating.

I. OPIOIDS GENERALLY

126. Prescription opioids work by binding to receptors on the spinal cord and in the brain, dampening the perception of pain. Like heroin, opioids can create a euphoric high, and thereby possess addictive qualities. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, ultimately, death.

127. Only after deliberate interference by All Defendants into the professional judgment of physicians through aggressive marketing techniques did opioids become

[6] Plaintiff's reference to statistics from 2007 to 2012 should not be construed as a limitation on the timeframe during which Defendants' misconduct occurred. Rather, these years are simply the timeframe for which Plaintiff already possesses significant statistical data. Plaintiff intends to discover Defendants' distribution amounts for later time periods during the course of discovery in this case.

acceptable long-term treatment for chronic pain (pain lasting more than three months). Rather, opioids were originally 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, for medical conditions such as post-surgical pain, trauma pain, and palliative care. Indeed, the FDA expressly recognized that no long-term studies demonstrate the safety and efficacy of opioids for long-term use.

128. All Defendants knew as well that with prolonged use, the effectiveness wanes and patient tolerance increases, causing marked increases in doses, the risk of significant side effects, and addiction. In addition, as tolerance increases, the effectiveness of patient waning decreases.

129. Use for even a few weeks results in withdrawal symptoms when the opioid drug is discontinued, including severe anxiety, nausea, vomiting, headaches, agitation, insomnia, tremors, and delirium; theses withdrawal symptoms may last months, depending on the duration of opioid use.

130. The practice of prescribing drugs to patients inherently centers on an open, honest, transparent communication of the risk and benefits of the therapeutic drug between the manufacturer and distributor, the distributor and prescriber, and among the prescriber, pharmacist, and patient together.

131. Unlike engaging in a simple purchase, the prescription and sale of opioid drugs involves the manufacturer convincing a physician of the usefulness of the drug, and the physician in turn advising the patient that, in the course of their practice and through their education as well as analysis of the patient and his ailments, the physician has determined that the drug is the best possible treatment option for the patient.

132. Thus, unlike handing a person a gun, and allowing them to decide whether pull the trigger, here the prescriber, through a chain of events, education, and misleading information stemming from all Defendants, hands the patient the gun and convinces the patient that pulling the trigger is in the patient's best option and, *further*, that there is no other viable option.

A. Opioids as Addictive Substances Subject to Tolerance Increases

133. Any belief that long-action opioids, such as OxyContin, would not prompt abuse and addiction has been discredited. In response to a 2013 physician-lead petition to restrict the labels of long-acting opioids products, the FDA acknowledged "grave risks" associated with opioids including "addiction, overdose, and even death." In fact, all labels of Schedule II long-acting opioids must include the warning that the drug "exposes users to risks of addiction, abuse, and misuse, which can lead to overdose and death." The FDA now requires extended release and long-acting opioids to adopt "Risk Evaluation Mitigation Strateg[ies]" because the drugs present a "serious public health crisis of addiction, overdose, and death."

134. The FDA thereby confirmed the line of thinking that pre-dated Manufacturer Defendants and Distributor Defendant's marketing scheme: due to their risks, opioids should be used "only when alternative treatments are inadequate."

135. Further, tolerance-reactive increases of opioid drug doses can become "frighteningly high."[7] Where a patient reaches such doses, the risk and severity of withdrawal symptoms increases as well, leaving the patient at a higher risk of abuse, addiction, and

[7] M. Katz, Long-term Opioid Treatment of Nonmalignant Pain: A Believer Loses His Faith, 170(16) Archives of Internal Med. 1422 (2010).

progression to illegal drug use. Indeed, users become convinced that the drug is "needed to stay alive."[8]

136. As the tolerance of analgesic effects rise, so does tolerance of known respiratory depressive effects of opioids, though at a slower rate. Thus, the practice of continuously increasing dose amount and/or frequency to match tolerance of analgesic effect can lead to an overdose even where the opioid drug is taken as directed.

137. Defendants knew of—and even capitalized on—the fact of patient tolerance of the analgesic effects of opioid drugs. Patients on opioid therapy require progressively higher doses as tolerance increases in order to obtain the same levels of pain reduction to which the patient became accustom.

138. 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.

B. Opioids as Causing Significant, Non-Addiction Related Side Effects

139. Opioid use comes with additional negative side effects not related to addiction.

140. Defendant Endo's research shows that opioid patients, opposed to patients taking other prescription pain medication, report higher rates of obesity, insomnia, and self-described fair or poor health.

[8] David Montero, *Actor's Death Sows Doubt Among O.C.'s Recovering Opioid Addicts*, The Orange Cnty. Reg. (Feb 3, 2014), https://www.ocregister.com/2014/02/04/actors-death-sows-doubt-among-ocs-recovering-opioid-addicts/ (accessed Dec. 20, 2017).

141. Increased opioid use is associated with an increased likelihood of mental health conditions such as depression and anxiety, psychological distress, healthcare utilization, and a general decrease in health and wellness.

142. Long-term opioid use for low back pain does not assist in returning a patient to work or physical activity after a hiatus.

143. In fact, opioids have been found inefficient in treating migraine pain, and use is associated with sleepiness, confusion, increase in frequency of headaches, and increase in depression susceptibility.

C. Opioids as a Gateway to Heroin Use

144. As likely foreseen due to the disparate cost of heroin versus opioids, and the similar effect, opioid abuse has not displaced heroin. Rather, opioid abuse has triggered resurgence in heroin use, imposing additional burdens on Plaintiff and local agencies that address heroin use and addiction. For instance, Huntington, West Virginia experienced 27 heroin overdoses in the span of four hours on August 15, 2016.[9]

145. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% between 2002 and 2004 to 45.2% between 2011 and 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 which this complaint seeks to shine a light upon.

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

146. 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."[10]

147. Defendants each played a key role in the distribution and regulation of opioids in Mingo County over the relevant time period. Simply put, the scheme could not have worked without each Defendant playing their respective part or at a minimum, remaining silent about the absurd volume of drugs which they were collectively shipping into Mingo County. To be clear, the problems facing Mingo County, its residents and visitors, its businesses and schools, its police and courts, are born in large part out of the reckless disregard of Defendants.

II. THE ROLE OF DEFENDANTS

A. General Role of Marketing in the Emergence of Opioids as Preferred Chronic Pain Treatment

148. Rather than selling opioids directly to physicians or pharmacies for ultimate dispensing, Manufacturer Defendants sell to Distributor Defendants, who then disseminate the products to physicians and pharmacists.

149. Marketing efforts, rather than any medical breakthrough, rationalized and promoted prescribing opioids for chronic pain, thereby opening the floodgates for opioid use, misuse, and abuse. Defendants, under the guise of lawful sale and distribution, created an

[10] 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.

environment of overuse and abuse that, while once under the radar of Americans, is now at such epic proportions as to cause the effected persons and municipalities to seek recovery through litigation.

150. Prior to the launch of a marketing campaign by Defendants, opioids were not believed to be safe for long-term use. Instead, they were used only for short-term acute pain or for cancer and palliative care. The risks of addiction, due to the limited framework within which the drugs were prescribed, were low.

151. Even at a shallow glance, the marketing strategies employed by Defendants appear shady and intended to manipulate the medical judgment of treatment providers. In fact, now years into this crisis and seeing the results of the Defendants' marketing, there can be no question that the manipulation of medical judgment making was the goal of these entities. Unfortunately, that goal was realized. Direct evidence of the same exists in the sheer number of persons on opioids and suffering from opioid dependency and addiction.

152. Defendants specifically promoted the idea that pain should be a "vital sign." They further promoted the idea that pain should be treated by long-acting opioids (OxyContin, MS Contin, Nucynta ER, Duragesic, Opana ER, and Kadian) continuously and supplementing them with short-acting, rapid-onset opioids (Actiq and Fentora) for episodic pain.

153. Defendants met with prescribers through third-party salespeople. Through countless meetings over years, presentations, invitations to speak at events, bonus structures, and brand perks, Defendants indoctrinated prescribers with the belief that opioids were appropriate—and even necessary—for treatment of chronic pain sufferers.

154. Defendants, from the inception of the idea that their drugs could reach a larger market of chronic pain sufferers, engaged in widespread, aggressive marketing campaigns

focused solely on the benefits of their drugs. Defendants printed advertisements in the focused *Journal of Pain* and the *Clinical Journal of Pain* as well as the broad-audience *Journal of the American Medical Association*. Advertising became so aggressive during the proliferation of opioid usage that 2011 expenditure for solely medical journal advertising by Defendants reached over $14 million, with Purdue and the Sackler Defendants leading the pack at $8.3 million spent.

155. However, these marketing messages were riddled with misleading and unsupported statements, beginning with the general notion that opioids were positive for long-term use.

156. In fact, Defendants knew that OxyContin did not provide pain relief lasting up to 12 hours as marketed. Defendants knew that a risk existed that patients would take additional pain medication, beyond what was prescribed, to treat the pain not covered by the drug.

157. Purdue, Purdue related-entities, the Sackler Defendants and the individual Defendants were aware that OxyContin and other prescription medication could lead to addiction since at least summer 1999. An internal memo prepared by Purdue employee, Maureen Sara, described the abuse and recreational use of OxyContin. The memo was sent directly to Purdue's board members, including Richard S. Sackler, Jonathan D. Sackler, and Kathe A. Sackler.

158. In spite of the 1999 memo, Purdue President Michael Friedman testified before the U.S. House of Representatives in 2001 that Purdue had not become aware of OxyContin's potential for abuse until 2000. Neither Purdue nor the Sackler Defendants or individual Defendants attempted to correct this false narrative. Thus, the Sackler Defendants were thus aware of potential liability for Purdue since at least 1999 due to OxyContin's addictive nature. Despite this knowledge, Purdue, the Sackler Defendants, and the individual Defendants continued to market OxyContin as providing pain relief lasting up to 12 hours.

159. Purdue and Purdue-related entities were under investigation by 26 states and the DOJ from 2001 through 2017. In 2003, on the advice of legal counsel, every Sackler Defendant who held an executive role at Purdue and/or a Purdue-related entity resigned to avoid personal liability for the conduct in which they had engaged and continued to engage prior to and after their resignations.

160. In May 2007, Purdue and three of its executives pled guilty to federal charges of misbranding OxyContin in what the company acknowledged was an attempt to mislead doctors about the risk of addiction. Purdue was ordered to pay $600 million in fines and fees. In its plea, Purdue admitted that its promotion of OxyContin was misleading and inaccurate, misrepresented the risk of addiction and was unsupported by science. These 2007 convictions warned the directors against any further deception.

161. Nevertheless, even after the settlement, Purdue continued to pay doctors on speakers' bureaus to promote the liberal prescribing of OxyContin for chronic pain and fund seemingly neutral organizations to disseminate the message that opioids were non-addictive as well as other misrepresentations. At least until early 2018, Purdue continued to deceptively market the benefits of opioids for chronic pain while diminishing the associated dangers of addiction.

162. Additionally, instead of attempting to fix or solve the issue created by the Defendants, the Sackler Defendants began to transfer profits from Purdue and Purdue-related entities to their own private trusts and accounts in order to shield their funds from creditors. Rather than protect the public's health once they became aware of OxyContin's potential for abuse, the Sackler Defendants acted to protect their own wealth. In 2015, for example, the Sackler Defendants removed $700 million from Purdue and Purdue-related entities. These

transfers of ill-gotten gains were and are fraudulent, unjustly enriched the Sackler Defendants and were done for the purpose of protecting the money from any civil or criminal judgment against Purdue and Purdue-related entities for participation in the opioid crisis. These transfers also left Purdue and Purdue-related entities undercapitalized and potentially unable to pay a judgment against it in this litigation.

163. Defendants have been admonished for making claims in marketing materials where no evidence exists for the claims. Defendants created and disseminated unsupported claims through unbranded marketing materials afterward, pushing the misleading and unsupported message that opioids allow patients to have their life back after pain, permit patients to sleep, return to work, and resume physical activity.

164. These materials were never accompanied by necessary warning to mitigate the misleading promotions of opioid drugs.

165. Additionally, Defendants used puppet prescribers as "Key Opinion Leaders," who promoted opioid drugs at talking events and Continued Medical Education seminars under the offensive guise that they were sharing a genuine, considered medical opinion regarding treatment options for patients. These Key Opinion Leaders reaped rewards in the form of case, prestige, recognition, research funding, and publications, through Manufacturer Defendants and Sackler Defendants.

166. Manufacturer Defendants and Sackler Defendants worked to elevate favorable studies in widely disseminated literature. They manipulated treatment guidelines by funding the production of the guidelines. They distributed, at no cost to the prescribers and through their third-party salespeople, literature and guidelines fabricated to reflect their intent that ever chronic pain patient undergo opioid treatment.

167. Overall, the message promoted by the Manufacturer Defendants and the Sackler Defendants mislead prescribers and consumers by misrepresenting that opioids improve patient functioning overall; falsely claiming that opioids had a low risk for addiction; misrepresenting the risk of addiction and the relationship between long-term opioid use and addiction; downplaying the severity of addiction and withdrawal by labeling the signs of addiction as "pseudoaddiction" and claiming that withdrawal can be easily managed; omitting information regarding non-addiction related side effects; and promoting the message that opioid treatment is a favorable initial treatment choice.

B. Distribution System of Opioids, and the Role of Distributors in the Epidemic

168. Distributor Defendants are all in the business of pharmaceutical distribution. Distributor Defendants 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.

169. Distributor Defendants purchased opioids from drug manufacturers and sold them to retail pharmacies throughout Mingo County.

170. Distributor Defendants 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.

171. Though they had a duty to the consuming public, both collectively and individually, Distributor Defendants failed to take any action to effectively prevent, minimize, or reduce the distribution or availability of these dangerous drugs.

172. Distributor Defendants were all on notice and aware 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 West Virginia Controlled Substances Act.

173. A sophisticated, closed distribution system exists to push the drugs across the nation. For many important reasons, this system relies upon the honesty, integrity, and accountability of distributors and pharmacies.

174. Congress devised the "closed" chain of distribution specifically to prevent the diversion and abuse that is complained of heroin.

175. States, including West Virginia, enacted similar state laws, rules, and regulations in order to regulate the distribution of drugs and provide oversight over this unique industry.

176. The closed-system of state and federal authority imposes specific duties upon wholesale distributors to monitor, identify, halt and, perhaps most importantly, report "suspicious orders" of controlled substances. 21 C.F.R. § 1301.74; *Masters Pharm., Inc. v. Drug Enf't Admin.*, 861 F.3d 206 (D.C. Cir. 2017).

177. The role of the pharmaceutical distributor is not simply one of shelf stocker, freight forwarder, simple shipper, or vending machine. Under the closed-system, distributors serve as the eyes and ears of the government in identifying diversion threats.

178. Distributors are placed in a unique position to analyze data, which they obtain and track, regarding the amounts of prescription drugs flowing into pharmacies and facilities. They use said information to adjust quotas, forecast future sales, and report to federal and state agencies.

179. To piggyback on state and federal regulatory schemes, distributors created a system of "self-regulation and best practice sharing" through an industry trade group called the Healthcare Distribution Alliance (HDA), formerly known as the Healthcare Distribution Management Association (HDMA). Each of the Distributor Defendants is a member of this trade group. 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."[11]

180. The HDA created "Industry Compliance Guidelines" based upon Drug Enforcement Agency requirements that 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 HDA advises all distributors to "Know Your Customer."

181. In fact, as the dominant players within the healthcare distribution industry, senior executives from the Distributor Defendants have historically served on the board of the HDA or HDMA. Currently, Cardinal's CEO Jon Giacomin serves as the Chairman of HDA and McKesson's President Mark Walchirk serves on the executive committee of this powerful trade group.

182. The website for HDA at the time of filing 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

[11] *See* http://www.hdma.net/about/role-of-distributors

prescription painkillers out of the hands of people who may use them for purposes other than those for which they are intended."[12]

183. According to its website, members of HDA, including the Distributor Defendants named herein, are committed to addressing the threat of prescription painkillers ending up misused or diverted. 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.

- 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.

184. Beyond their industry commitments and seemingly empty trade group pledges, as entities involved in the distribution and sale of dangerous opioid medications, Distributor

[12] *See* http://www.hdma.net/issues/prescription-drug-abuse-and-diversion

Defendants were engaged in an abnormally and/or inherently dangerous activity and, thus, had a heightened duty of care under West Virginia law.

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

186. McKesson further proudly pronounces that it follows Six Sigma methodology, which according to the 2013 annual report, is "an analytical approach that emphasizes setting high-quality objectives, collecting data and analyzing the results to a fine degree in order to improve processes, reduce costs and minimize errors."

187. Like McKesson, Cardinal also employs lean Six Sigma methods in its operations. Cardinal began its 'lean journey' in 2007, as part of an initiative to drive collaboration in the health care supply chain, with the goal of achieving zero errors, zero waste and zero lost revenue. According to a 2012 article, Cardinal's Vice President of Inventory Management Andy Keller reported that "the company uses predictive analytics, fed by transactional information provided by suppliers, to increase the speed of communication from the manufacturer to the end customer."[13] Mr. Keller further opined that "[w]e're a critical link in the supply chain because we talk to both suppliers and health care providers,"

188. AmerisourceBergen similarly employs Lean Six Sigma methods. According to their website, AmerisourceBergen claims: "[t]hrough our state-of-the-art supply chain technology and Lean Six Sigma-compliant business processes, your pharmacy and patients will benefit from the safest, most secure and efficient distribution system in healthcare."[14]

[13] See http://www.industryweek.com/supply-chain/supply-chain-and-logistics-lean-six-sigma-keeps-cardinals-supply-chain-healthy?page=1

[14] See http://www.amerisourcebergen.com/abcnew/pharmacies/solutions/global-sourcing-and-distribution.aspx

AmerisourceBergen also boasts of "an average order accuracy rate of 99.99 percent, powered by high-touch customer support services and the latest self-service technologies that enable us to stay on top of every order." *Id.*

189. AmerisourceBergen also claims that its "26 world-class distribution centers leverage sophisticated workflow technology, inventory tracking systems and delivery route planning tools to bring you the products you need—when you need them most." *Id.*

190. In spending millions of dollars on systems and technology to collect and analyze robust data and utilizing Lean Six Sigma methodology, Distributor Defendants could have, and likely did in fact, learn the extent of their lethal over shipments to Mingo County. In hindsight, the data and information collecting systems of Distributor Defendants was a rather ineffective canary in a deadly coalmine. Rather than taking steps to protect the end customer from the dangerous and addictive drugs, all Distributor Defendants instead chose to ignore their own reports, data, and analysis and simply keep the supply lines open.

191. The claims and allegations contained herein come as no surprise to the Distributor Defendants. 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.

192. On January 17, 2017, the Department of Justice announced it had reached yet 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.

193. According to the press release, "[f]rom 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.[15]

194. 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.

195. Similarly, 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.

196. Further, the Teva submitted the medication guide approved by the FDA and distributed with Cephalon opioids marketed and sold in the county, which directs physicians to contact Teva USA to report adverse events. Further, as a part of a 2008 Corporate Integrity Agreement, Teva pledged to provide physicians with a means of reporting questionable conduct of its sales representatives.

197. The result of Defendants' collective actions has been catastrophic for nearly everyone in Mingo County except Distributor Defendants, who profited handsomely while the social fabric of Mingo County and counties and towns like it were torn to shreds by the opioid epidemic.

[15] Dep't of Justice, U.S. Attorney's Office, Middle District of Florida, *McKesson Agrees To Pay Record $150 Million Settlement For Failure To Report Suspicious Orders Of Pharmaceutical Drugs* (Jan. 17, 2017), *available at* https://www.justice.gov/usao-mdfl/pr/mckesson-agrees-pay-record-150-million-settlement-failure-report-suspicious-orders.

198. 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.

199. In their 2013 annual report to shareholders, McKesson boasted that their "award winning Acumax® Plus technology provides real time product availability, Mobile Manager[sm] which integrates Acumax® Plus to give customers complete ordering and inventory control and McKesson Connect[sm], an internet based ordering system that provides item lookup and real-time inventory availability as well as ordering, purchasing, reconciliations, and account management functionality." The 2013 Annual Report concludes that "together, these features help ensure customers have the right products at the right time."

200. McKesson further proudly pronounced that it employs Six Sigma methodology, which according to the 2013 annual report, is "an analytical approach that emphasizes setting high-quality objectives, collecting data and analyzing the results to a fine degree in order to improve processes, reduce costs and minimize errors."

201. The knowledge obtained by Distributor Defendants inherently places them at a superior position within regards to foreseeing any addiction and abuse issues arising in communities from the disproportionate amount of opioids requested when compared to the population of the county.

202. Distributor Defendants shipped millions of doses of highly addictive controlled pain killers into relatively small Mingo County, many of which should have been stopped and/or investigated as suspicious orders.

203. When the population of Mingo County is taken into consideration, Distributor Defendants delivered an excessive and unreasonable number of highly addictive controlled substances in Mingo County.

204. Distributor Defendants undertook no discernible efforts to determine whether the volume of prescription pain killers they were shipping to Mingo County was excessive and whether any of the orders they filled qualified as suspicious orders, which should have been refused.

205. Upon information and belief, Distributor Defendants failed to refuse to ship or stop shipment of suspicious orders of controlled substances to Mingo County pharmacies, between 2007 and the present.

206. Distributor Defendants knew or should have known that they were supplying opioid medications far in excess of the legitimate needs for residents of Mingo County.

207. Distributor Defendants 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 Mingo County were being diverted to illegal use or abuse.

208. Distributor Defendants had a legal duty to ensure they were not filling suspicious orders.

209. The sheer volume of highly addictive opioid pain medications Distributor Defendants shipped to Mingo County is suspicious on its face. From 2007 to 2012, Distributor Defendants shipped 21,153,600 hydrocodone doses to Mingo County, the equivalent of 135 doses for every man, woman, and child residing in Mingo County per year. This is in addition to the 1,401,920 doses of oxycodone distributed to Mingo County by Distributor Defendants during the same time period.

210. During the same time period, Miami-Luken shipped 20.4 million hydrocodone doses and 8.2 million oxycodone doses to West Virginia pharmacies. Miami-Luken was known to service local, small-town pharmacies in West Virginia, thus promoting opioid abuse in some of the most depraved areas in the country.

211. Distributor Defendants, along with their employees and shareholders, made little to no effort to visit the pharmacies and drug stores in Mingo County 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. When customer orders breached the volume thresholds set up by Distributor Defendants to meet their regulatory requirements, the Distributor Defendants adjusted their limits to allow for more and more dangerous and addictive pills to enter Mingo.

212. Rather, Distributor Defendants paid their sales force employees' and managers' bonuses and commissions based upon the sale of most, or all, of the highly addictive prescription pain killers supplied to Mingo County.

213. Indeed, this commission-structure business model infiltrated every sector of Defendants' markets. Monetary awards were given to employees, while physicians received expenses-paid trips to speaking engagements, where they were touted as "key opinion leaders" and prompted to promote Defendants' opioid medications as the treatment of choice for chronic pain.

214. Defendants' marketing approaches intentionally misled physicians and patients regarding how and when opioids should and could be used safely and effectively. They persuaded doctors and patients that benefits of long-term opioid use outweighed the risks.

215. Distributor Defendants profited substantially from the drugs that were sold in Mingo County.

216. Distributor Defendants knowingly filled, and failed to report, suspicious orders in Mingo County from 2007 to the present.

217. Distributor Defendants' intentional distribution of excessive prescription pain killers to the Plaintiff's small community showed a reckless disregard to the safety of Mingo County and its residents.

218. Distributor Defendants thus knew or should have known the amount of Oxycodone and Hydrocodone they supplied to Mingo County was in excess of any amount reasonable to serve a community as small as Mingo County.

219. The causal chain is not broken here by the involvement of physicians and pharmacists. Rather, Defendants' roles were separate and distinct in the promotion of the opioid epidemic. Their negligence and wrongful acts cannot be excused nor can they hide behind other bad actors. This litigation is about answering for the wrong and devastation they knowingly and intentionally caused and/or ignored.

III. THE ROLE OF THE BOARD OF PHARMACY

220. As an agency of the State of West Virginia, the BOP was charged with overseeing and enforcing the regulations relating to the licensing and inspections of registrants, including pharmacies, pharmacists, and "wholesale drug distributors" as that term is defined in WV Code §30-5-4 (69) and §60A-8-3(b).

221. In fact, the BOP is and was the sole administrator of the West Virginia Uniform Controlled Substances Act, which parallels the federal Controlled Substances Act, during the relevant time period. *See* W. Va. Code § 60A-2-201(a).

222. Part of these duties included receiving reports from registrants about suspicious orders. *See* W. Va. Code R. § 15-2-4.4. Suspicious order reports were intended to be used by the BOP to identify and investigate possible fraud, waste, abuse or diversions of prescription drugs.

223. If the BOP properly performed its job duties as statutorily defined, the Distributor Defendants herein could not have undertaken such widespread and damaging conduct.

224. Specifically, the BOP was required "to determine whether a registrant has provided effective controls against diversion," and to "evaluate the overall security system and needs of the applicant or registrant." W. Va. Code R. § 15-2-4.2.1. The BOP was likewise authorized to "enter and inspect" Distributor Defendants' "premises and delivery vehicles, and to audit their records and written operating procedures," in order to ensure compliance with state law. W. Va. Code R. § 15-5-8.9.1; *see also* W. Va. Code R. § 15-5-10.1–10.2.

225. The BOP knowingly violated this clearly established law by failing to investigate Distributor Defendants in order to determine whether they had provided effective controls against diversion.

226. At all times material to these allegations, the BOP was aware of, but opted to disregard, its duties. When the BOP did receive suspicious order reports it simply "placed them in a file, organized by month" and did nothing with them.

227. Upon information and belief there were never any inspections, investigations, follow up or inquiries conducted as a result of a BOP registrant's submission of a suspicious order report.

228. Defendant BOP had a duty to fulfill its mission to protect the public health and welfare by enacting and overseeing regulations to ensure situations as those alleged here never happen. Unfortunately, the BOP abrogated its duties entirely.

229. This unprecedented issue requires answers by Defendants under novel application of existing laws. By nature of their positions of knowledge with regard to the risks associated with long-term opioid use, and disregard for the same, Defendants breached all cognizable duties owed to their consumers, including the communities who served said consumers.

230. Plaintiff, loyal to its population, provided and continues to provide the aforementioned public services at great cost. No community should be deprived of resources, lives, and happiness at the cost of greedy, scheming corporations, without redress.

CAUSES OF ACTION

COUNT I
NEGLIGENCE & NEGLIGENT MARKETING
(DISTRIBUTOR DEFENDANTS)

231. Plaintiff incorporates by reference the allegations in paragraphs 1 through 230.

232. West Virginia recognizes a legal duty where the foreseeability of harm is such that harm may result if due care is no exercise. This is phrased as the question "would the ordinary [corporation] in the defendant's position, knowing what [they] knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?" *Sewell v. Gregory*, 179 W. Va. 585 (1988). The determination of the existence of a duty further involves "policy consideration underlying the core issue of the scope of the legal system's protection," including the "likelihood of injury, the magnitude of the burden guarding against it, and the consequences of placing that burden on the defendant." *Robertson v. LeMaster*, 171 W. Va. 607 (1983).

233. All Distributor Defendants owed a duty to Plaintiff based on the unique position each Distributor Defendant had as the most knowledgeable parties regarding addiction rates of the drugs distributed to Mingo County, the quantities of opioids distributed in Mingo County, the legitimacy or lack thereof of the need for the quantity of opioids ordered by and distributed to Mingo County pharmacies when compared to national statistics regarding opioid use and population comparison, the market for opioids when compared to population of the geographic area served by the Mingo County pharmacies, and the legitimacy or lack thereof with regard to the prescriptions for opioids being submitted to the pharmacies in Mingo County.

234. Distributor Defendants are distributors of controlled substances and must comply with the laws of West Virginia as well with industry customs and standards developed in large part by these particular Distributor Defendants.

235. Distributor Defendants negligently failed to ensure their conduct conformed to West Virginia law and regulations.

236. Industry standards require these Defendants to:

a. know its customers,

b. know its customer base,

c. know the population base served by a particular pharmacy or drug store,

d. know the average prescriptions filled each day,

e. know the percentage of diverted and/or abused controlled substances distributed as compared to overall purchases,

f. have a description of how the dispenser fulfills its responsibility to ensure that prescriptions filled are for legitimate medical purposes, and

g. know the physicians, pain clinics, and centers for the treatment of pain that are the pharmacy or drug stores' most frequent prescribers.

237. Distributor Defendants negligently failed to ensure their conduct conformed to industry standards.

238. Distributor Defendants negligently failed to conform their conduct to the duties imposed by common law.

239. As licensed registrants with the West Virginia Board of Pharmacy, Distributor Defendants were required to submit suspicious order reports.

240. Distributor Defendants failed to submit, or fully disclose suspicious orders.

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

242. Distributor Defendants took insufficient or no action to stem the flow of opioids into the hands of abusers, misusers, and diverters in Mingo County.

243. Each Distributor Defendant knew that the dangerous qualities of their opioid drugs bore a direct relationship to the volume of opioids being prescribed and ordered by pharmacies and prescribers in Mingo County, and that the opioid drugs were being misused, abused, and diverted across the country, including in Mingo County.

244. Each Distributor Defendant knew or should have known of the reasonable foreseeability of injury and damage to West Virginia communities, including Mingo County,

caused by the known and foreseeable misuse, overuse, abuse, and diversion of the opioid drugs distributed in Mingo County.

245. Each Distributor Defendant owed Plaintiff a duty to use reasonable care when marketing and selling drugs which would be ultimately distributed in Mingo County. Each Distributor Defendant owed Plaintiff a duty to use reasonable care when marketing and selling drugs in Mingo County.

246. Each Distributor Defendant knew or should have known that its marketing was a substantial factor in the prescribing, purchasing, and use of opioid drugs in Mingo County.

247. Plaintiff has suffered and will continue to suffer devastating consequences as a result of the Distributor Defendant actions. The damages incurred by Plaintiff, include but are not limited to money expended 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, emergency healthcare and medical services, drug abuse education and treatment, public utilities, nuisance abatement, property damage repair, and code enforcement, among others.

248. Plaintiff has also lost tax revenue and incurred both 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 Distributor Defendants' actions.

249. The aforementioned conduct was a direct breach of the duty of care the Distributor Defendants owe to Plaintiff which breach of duty is the proximate cause of damages incurred by Plaintiff.

COUNT II
NEGLIGENCE AND NEGLIGENT MARKETING
(MANUFACTURER DEFENDANTS, SACKLER DEFENDANTS, AND INDIVIDUAL DEFENDANTS)

250. Plaintiff incorporates by reference the allegations in paragraphs 1 through 230.

251. West Virginia recognizes a legal duty where the foreseeability of harm is such that harm may result if a duty of care is not exercised. This is phrased as the question "would the ordinary [corporation] in the defendant's position, knowing what [they] knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?" *Sewell v. Gregory*, 179 W. Va. 585 (1988). The determination of the existence of a duty further involves "policy consideration underlying the core issue of the scope of the legal system's protection," including the "likelihood of injury, the magnitude of the burden guarding against it, and the consequences of placing that burden on the defendant." *Robertson v. LeMaster*, 171 W. Va. 607 (1983).

252. The information available to the Defendants enabled the Defendants to predict this opioid epidemic. Instead, the Defendants hid behind certifications and approvals by government agencies, disguised their negligent acts as lawful behavior, influenced the medical decision making of prescribers, and failed to recognize the legal duty that arose to municipalities like Mingo County along the way.

253. Further and in addition to the unique position by Defendants as most knowledgeable regarding the risk of use of opioid drugs, Defendants owed a duty to use reasonable care in their actions with regarding to opioid drug marketing, sale, and distribution, due to the inherent high risks associated with opioid use. The sheer danger associated with the use of these drugs, including the known substantial threat of abuse and diversion, create a legal duty owed to the county or municipality in which the drug is distributed and/or consumed.

254. Indeed, each Defendant owed a duty of care to Plaintiff in the marketing and sale of these highly addictive opioid drugs. Each Defendant owed Plaintiff a duty to use reasonable care when marketing and selling drugs which would be ultimately distributed in Mingo County. The Defendants owed Plaintiff a duty to use reasonable care when marketing and selling drugs in Mingo County.

255. The Defendants knew or should have known that marketing was a substantial factor in the prescribing, purchasing, sale, and use of opioid drugs in Mingo County.

256. The Defendants knew or should have known of the unreasonably dangerous qualities of these opioid drugs and that said opioid drugs were and are highly addictive and highly susceptible to abuse and diversion.

257. While explicit standards applicable to the manufacture, advertising, labeling, distribution, and sale of opioid drugs exist to control addiction, abuse, and diversion of opioid drugs, a broader, general duty exists for the Defendants herein, to exercise due care when marketing and distributing opioid drugs.

258. The Defendants knew or should have known that the dangerous qualities of opioid drugs bore a direct relationship to the volume of opioids being prescribed and ordered by pharmacies and prescribers in Mingo County, and that the opioid drugs were being misused, abused, and diverted across the country, including in Mingo County.

259. The Defendants knew or should have known of the reasonable foreseeability of injury and damage to American communities, including Mingo County, caused by the known and/or foreseeable misuse, overuse, abuse, and diversion of the opioid drugs in their control.

260. Despite this knowledge and the existing legal duty of care, the Defendants, breached said duty care by:

a. Negligently marketing their opioid drugs in Mingo County;

b. Misrepresenting the addiction, abuse, and diversion potential and rates associated with their opioid drugs;

c. Publishing misleading information regarding the benefits of long-term opioid use while understating the lack of evidence supporting long-term opioid use and the downfalls associated with the same;

d. Trivializing the serious risks associated with long-term opioid use, including addiction, abuse, diversion, overdose, and death;

e. Publishing misleading information overstating the superiority of long-term opioid use when compared to alternative treatment methods including conservative treatment and non-opioid treatment;

f. Misleading prescribers, consumers, and communities regarding addiction rates, difficulties associated with withdrawal, and prevalence of withdrawal symptoms;

g. Marketing opioid drugs for unintended use, and publishing misleading information;

h. Failing to implement reasonable controls and safeguards to identify and prevent or reduce the misuses, abuse, and diversion of their opioids drugs;

i. Failing to comply with reporting requirements;

j. Having conscious disregard for suspicious orders;

k. Negligently raising quotas and/or distributing opioid drugs where there could be no legitimate use for the opioids being ordered;

l. Negligently raising quotas and/or distributing opioid drugs where the ratio of dosage unit per person in the relevant community, including Mingo County, exceeded any national norm or average of opioid drug usage;

m. Acting with conscious disregard for the consumers and communities, including Mingo County, with the sole goal of maximizing market potential and profits.

261. The breach of duty by the Defendants owed to Plaintiff directly and proximately caused the harm caused to Plaintiff. Plaintiff suffered and continues to suffer injury and damages including but not limited to increased cost of funding health insurance; providing public health programs, providing medical treatment; dispatching emergency services; investigating and prosecuting drug-related crimes; incarcerating perpetrators of illegal activities associated with opioid drug use and diversion; supervising and rehabilitating the addicted; preventing, investigating, and treating overdoses; assembling necessary response teams; and tending to the infirm, dying, and dead.

COUNT III
NEGLIGENCE

(WEST VIRGINIA BOARD OF PHARMACY)

262. Plaintiff incorporates by reference the allegations in paragraphs 1 through 230.

263. Defendant BOP's negligent acts and omissions resulted in the proliferation of excessive doses of commonly-abused, highly addictive controlled substances.

264. Defendant BOP's negligent acts and omissions resulted in countless prescriptions that were primarily filled to divert the medication to illegal purposes for people without proper prescriptions.

265. In complete abrogation of its duties under the law, the BOP stood by and merely filed away the handful of suspicious order reports which Distributor Defendants submitted.

266. Despite being vested with rule making authority, and despite having the clearly defined statutory ability to inspect Distributor Defendants, restrict, suspend or revoke their distribution licenses, file a written complaint, hold an expedited hearing, apply for restraining orders or injunctions, or seek criminal redress, the BOP did next to nothing.

267. The BOP knowingly violated clearly established law by failing to investigate Distributor Defendants in order to determine whether they had provided effective controls against diversion.

268. The BOP's negligent acts and omissions have proximately caused and substantially contributed to damage suffered by Plaintiff as described in this Amended Complaint.

269. Plaintiff has suffered and will continue to damages as a result of the BOP's conduct, including decreased tax revenues and increased expenditures, as explained above.

270. Plaintiff seeks damages against BOP only to the extent of available insurance coverage. In advance of bringing this claim, Plaintiff has satisfied all conditions precedent, including placing the State of West Virginia on Notice in compliance with WV Code 55-17-3 by serving notice of intent on both the West Virginia Attorney General and the BOP on February 21, 2017.

COUNT IV
W. VA. CODE §§ 60A-8-1 and 55-7-9
(DISTRIBUTOR DEFENDANTS)

271. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 230.

272. Distributor Defendants intentionally contributed to the prescription drug abuse epidemic in the state of West Virginia, and specifically in Mingo County, through repeated intentional violations of various provisions of the West Virginia Uniform Controlled Substances Act as well as through reckless disregard for the safety and well-being to the citizens of West Virginia.

273. Through their actions outlined herein, Distributor Defendants 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.

274. Distributor Defendants intentionally failed to ensure their conduct conformed to industry standards, West Virginia law and other regulations.

275. Distributor Defendants 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 customers who were serving a client 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.

276. Distributor 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 West Virginia generally, and specifically in Mingo County.

277. Distributor Defendants' 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.

278. Distributor Defendants' intentional acts and omissions fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

279. Distributor Defendants' intentional violations of West Virginia law make them liable for all the damages which are sustained therefrom. W.Va. Code § 55-7-9.

280. Distributor Defendants' intentional acts and omissions have proximately caused and substantially contributed to damage suffered by Plaintiff, and created conditions which contribute to the violation of West Virginia laws by others.

281. Distributor 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 Distributor Defendants' own industries.

282. Upon information and belief, Distributor Defendants continue to intentionally violate West Virginia laws and regulations, Distributor Defendants' industry customs, and other standards and practices which continue to proximately cause substantial damages to Plaintiff.

COUNT V
UNJUST ENRICHMENT
(ALL DEFENDANTS)

283. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 230.

284. As a result of actions of all Defendants actions, Plaintiff has expended and continues to expend substantial amounts of money that Plaintiff 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, property damage repair, and code enforcement.

285. Plaintiff has lost tax revenue and has incurred both 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 the actions of all Defendants.

286. Plaintiff will continue to incur these increased costs, or continue to suffer these losses, in the future as a result of the actions of all Defendants.

287. All Defendants made substantial profits while fueling the prescription drug epidemic in West Virginia and Mingo County.

288. All Defendants continue to receive considerable profits from the sale and distribution of controlled substances in Mingo County.

289. All Defendants were each unjustly enriched by negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoings.

290. The negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoings of all Defendants have unjustly enriched all Defendants and these intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoings are directly related to the damages and losses incurred by and to the detriment of the Plaintiff.

291. All Defendants are liable to Plaintiff for all damages incurred as a result of the negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing of all Defendants contained in this Complaint.

292. Plaintiff's payment for these damages on behalf of all Defendants conferred benefits on the all Defendants; satisfied a debt or duty owed by all of the Defendants; added to the security or advantage of all of the Defendants and/or saved all of the Defendants from experiencing expense or loss.

293. The negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing of all of the Defendants entitle Plaintiff to disgorgement of the profits received by the all of the Defendants for all sales made in Mingo County or to Mingo County residents from 2007 to present.

COUNT VI
PUBLIC NUISANCE
(ALL DEFENDANTS)

294. Plaintiff incorporates, by reference, all the allegations contained in paragraphs 1 through 230.

295. All Defendants, individually and acting through their employees and agents including, the BOP, have created and continue to perpetuate and maintain a public nuisance to the citizens of Mingo County through the massive distribution of millions of doses of highly addictive, commonly abused prescription pain killers known as opioids.

296. Failure by all Defendants to put in place effective controls and procedures to guard against theft and diversion of controlled substances, and the failure of all Defendants to adequately design and operate a system to disclose suspicious orders of controlled substances, and by the failure of all of the Defendants to inform the State of West Virginia of suspicious orders when suspected or discovered has created a public nuisance to the citizens of Mingo County.

297. All Defendants enabled and/or failed to prevent the illegal diversion of opioids into the black market, including through drug rings, pill mills, and other dealers in Mingo County, with actual knowledge, intent, and/or reckless or negligent disregard that such pills would be illegally trafficked and abused.

298. All Defendants knew or should have known their conduct would cause harm or inconvenience to Plaintiff in a multitude of ways.

299. The conduct of all Defendants annoys, injures, and/or endangers the comfort, repose, health, and safety of others. In addition, the conduct of all Defendants caused and continues to cause harm to Mingo County and its residents.

300. As such, the wrongful conduct of all Defendants gives rise to a public nuisance, including the unlawful availability and abuse of opioids and addiction within Mingo County.

301. The wrongful conduct of all Defendants caused inconvenience to the Plaintiff in a multitude of ways.

302. As a direct and proximate result of the wrongful conduct of all Defendants, as set forth herein, all Defendants negligently, intentionally, and/or unreasonably interfered with the rights of Mingo County citizens to be free from unwarranted injuries, addictions, diseases, sicknesses, overdoses, criminal actions, and have caused ongoing damage, harm, and inconvenience to Plaintiff, Mingo County, 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 the highly addictive, prescription pain medication distributed by all Defendants.

303. The actions of all Defendants resulted in the illegal diversion, abuse, misuse and will continue to cause negligent proliferation of opioids in Mingo County.

304. The actions of all Defendants have and will continue to cause Mingo County, its agencies, and citizens to suffer the same fate in the future if Defendants' conduct continues.

305. The health and safety of the citizens of Mingo County, including those who have used or will use prescription drugs, is a matter of great public interest and of legitimate concern to Plaintiff, Mingo County and its citizens.

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

307. All 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;
- Changes in law and regulations which were designed specifically to address the growing problem of prescription drug abuse;
- This 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; and
- The data collection and analytics used by all Defendants.

308. Notwithstanding the knowledge of this epidemic of prescription drug abuse in West Virginia and specifically in Mingo County, all 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 all Defendants knew or should have known that these substances were not being prescribed and consumed for legitimate medical purposes.

309. As a direct and proximate result of the above-described conduct, all 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 Plaintiff, and endangers the public health and safety and inconveniences the residents of Mingo County.

310. As a direct result of the acts and/or omissions of all Defendants in creating, perpetuating, and maintaining the public nuisance hereinabove described, the public nuisance has damaged the health and safety of Mingo County residents in the past will continue to do so in the future unless the nuisance is abated.

311. Plaintiff has sustained economic harm in the expenditure of massive sums of monies and will continue to suffer economic harm in the future unless the public nuisance is abated.

312. The rights, interests, and inconvenience to Plaintiff and the general public far outweigh the rights, interests, and inconvenience to all Defendants, which profited heavily from the illegal diversion, abuse, misuse and negligent proliferation of opioids.

313. Plaintiff is entitled to abate the public nuisance and to obtain damages occasioned by the public nuisance.

COUNT VII
INTENTIONAL ACTS AND OMISSIONS
(ALL DEFENDANTS)

314. Plaintiff incorporates, by reference, all allegations in Paragraphs 1 through 230.

315. All Defendants intentionally contributed to the prescription drug abuse epidemic in Mingo County 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 Mingo County, to wit:

a. All Defendants intentionally and improperly distributed, and continue to distribute prescription drugs contrary to W.Va. Code § 60A-3-308;

b. All Defendants intentionally engaged in prohibited acts, contrary to W.Va. Code §§ 60A-4-401 through 403;

c. All 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;

d. All Defendants intentionally failed to meet the requirements of W.Va. Code § 60A-8-1 et seq.;

e. All Defendants intentionally conspired to violate the WV Uniform Controlled Substances Act;

f. All Defendants intentionally failed to ensure their conduct conformed to industry standards;

g. All Defendants intentionally failed to ensure their conduct conformed to West Virginia law and regulations; and

h. All Defendants intentionally turned a blind eye toward 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.

316. The intentional acts and omissions by all Defendants have led to the dispensing of controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse epidemic in Mingo County.

317. All Defendants acted solely for the maximization of profit and the expansion of market and market share. All Defendants acted with the intent to barely comply with and manipulate controlling regulations regarding quota and distribution.

318. In doing so, the intentional acts and omissions all Defendants ultimately supplied millions of doses of commonly-abused, highly addictive controlled substances to patients of pill mills.

319. The intentional acts and omissions by all Defendants fueled countless prescriptions that were primarily filled to divert the medication to illegal purposes.

320. The intentional violations of West Virginia law by all Defendants make them liable for all the damages which are sustained therefrom. W. Va. Code § 55-7-9.

321. The intentional acts and omissions by all Defendants have proximately caused and substantially contributed to damage suffered by Plaintiff, and created conditions which contribute to the violation of West Virginia laws by others.

322. The intentional acts and omissions by all Defendants have proximately caused and substantially contributed to damages suffered by Plaintiff and were in violation of the customs, standards and practices within the industry of all Defendants.

323. Upon information and belief, all Defendants continue to intentionally violate West Virginia laws and regulations, and the usual industry customs, standards and practices, of all Defendants and continue to proximately cause substantial damages to Plaintiff.

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 all Defendants' actions outlined in this Complaint;

2. Enter Judgment in favor of Plaintiff;

3. Enter a temporary restraining order which:

   a. Prevents all Defendants from continuing to violate West Virginia laws;

   b. Mandates all Distributor Defendants to promptly notify the appropriate authorities of any and all suspicious orders for controlled substances as received from parties who are located in Plaintiff;

   c. Mandates all Defendants to submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin all Defendants from distributing any controlled substance in Mingo County for any non-legitimate medical purpose;

   d. Otherwise abates the public nuisance caused in whole or in part by the actions of all Defendants; and

   e. Mandates all Defendants to provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by the actions of

all Defendants to abate the damage they have caused and are continuing to cause.

4. Enter a permanent restraining order which:

a. Prevents all Defendants from continuing to violate West Virginia laws;

b. Mandates all Defendants to promptly notify the appropriate authorities of any and all suspicious orders for controlled substances as received from parties who are located in Mingo County;

c. Mandates all Defendants to submit their system for determining suspicious order to those West Virginia authorities for prior approval, and to enjoin all Defendants from distributing any controlled substance in Mingo County for any non-legitimate medical purpose;

d. Mandates that Defendant BOP timely investigate and resolve suspicious order reports;

e. Mandates all Defendants provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendants' actions to abate the damage they have caused and are continuing to cause; and

f. Otherwise abates the public nuisance caused in whole or in part by all Defendants.

5. Order equitable relief, including, but not limited to restitution and disgorgement;

6. Award punitive damages for the willful, wanton, malicious, oppressive, and intentional actions by all Defendants, as detailed herein;

7. Award damages against the Board of Pharmacy as may be recoverable under and up to the limits of its applicable insurance coverage;

8. Award attorneys' fees and costs; and

9. Award such other relief as this Court deems just and fair;

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

Dated: March 15, 2019

/s/ James D. Young

James D. Young (Pro Hac Vice)
Florida Bar No. 567507
jyoung@forthepeople.com
MORGAN & MORGAN COMPLEX LITIGATION GROUP
76 S. Laura St., Suite 1100
Jacksonville, FL 32202
(904) 398-2722

H. Truman Chafin (WV BAR NO. 684)
Letitia N. Chafin (WV BAR NO. 7207)
THE CHAFIN LAW FIRM, PLLC
P.O. Box 1799
Williamson, WV 25661
Phone: 304-235-2221
Fax: 304-235-2777
Email: truman@thechafinlawfirm.com
Email: tish@thechafinlawfirm.com

Mark E. Troy, Esq. (WV BAR NO. 6678)
Troy Law Firm, PLLC
222 Capitol Street, Suite 200A
Charleston, WV 25301
Email: mark@troylawwv.com
Phone 304-345-1122

Harry F. Bell, Jr., Esq. (WV BAR NO. 297)
THE BELL LAW FIRM, PLLC
P.O. Box 1723
30 Capitol St.
Charleston, WV 25326-1723
Email: hfbell@belllaw.com
Phone: 304-345-1700

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2019, I electronically filed a true and correct copy of the foregoing Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send notification to all attorneys of record in this matter.

/s/ *James D. Young*