

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
_____ **Division**

STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v.

Case No.:23CV-23-_____

CVS HEALTH CORPORATION and
CVS PHARMACY, INC.

DEFENDANTS

COMPLAINT

Plaintiff, the State of Arkansas, by and through its Attorney General, Tim Griffin (hereinafter “Arkansas” or “the State”), brings this action against Defendants CVS Health Corporation and CVS Pharmacy, Inc. (“Defendants”) pursuant to the State’s *parens patriae* capacity to advance the public interest, the Arkansas Deceptive Trade Practices Act and the common law of the State of Arkansas and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Ark. Code Ann. § 16-13-201 as Plaintiff seeks equitable and legal relief, the amount in controversy exceeds two hundred dollars, and this matter brings claims arising under the laws of this State that are not exclusively cognizable in another court.

2. At all times described below, Defendants and their agents have engaged in conduct affecting “business, commerce, or trade” in Arkansas pursuant to Ark. Code Ann. § 4-88-107(a)(10).

3. This Court has personal jurisdiction over Defendants because they conduct business, commerce, or trade in Arkansas. Defendants: (1) do business in Arkansas and/or purposely direct or directed its actions towards Arkansas; (2) committed torts in part in Arkansas against the State and its residents; (3) solicited and continues to seek business, and performed and continues to conduct business services such as marketing, advertising, promoting, distributing, and dispensing of its products in Arkansas; and (4) has the requisite minimum contacts with Arkansas

4. Plaintiff has reason to believe that Defendants have caused and will cause immediate, irreparable injury, loss, and damage to the State of Arkansas by unlawfully dispensing prescription opioids. Therefore, these proceedings are in the public interest.

5. Venue is proper in Faulkner County under Ark. Code Ann. §§ 4-88-115, 16-60-101(a) and (c).

III. PARTIES

6. This enforcement action is brought by Attorney General Tim Griff, in the name of the State of Arkansas and in the public interest pursuant to the authority granted by Ark. Code Ann. §§ 25-16-702 *et seq.*, upon the ground that Defendants have engaged in unfair or deceptive acts and practices in or affecting commerce as declared unlawful by the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq.*, the Arkansas Controlled Substances Act, Ark. Code Ann. §§ 5-64-101, *et seq.*, the Arkansas Alcohol and Drug Abuse Act, Ark. Code Ann. §§ 20-64-101, *et seq.*, and have created a public nuisance prohibited by the common law of the State of Arkansas.

7. Defendant CVS Health Corporation is a corporation organized under the laws of Delaware and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895.

8. Defendant CVS Pharmacy, Inc. is a corporation organized under the laws of Rhode Island and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895. Defendant CVS Pharmacy, Inc. is a subsidiary of Defendant CVS Health Corporation.

9. Defendants conduct business in the State of Arkansas.

10. Whenever this Complaint alleges that Defendants did any act, it means that Defendants:

- a. Performed or participated in the act; or
- b. Their subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of Defendants.

IV. FACTUAL BACKGROUND

11. The United States saw a nearly four-fold increase in the annual number of opioid pills dispensed by pharmacies between 1999 and 2014. This increase contributed to numerous instances of opioid abuse, dependence, addiction, and overdose deaths in the State of Arkansas. It also contributed to a sharp increase in the use of even more powerful drugs such as fentanyl and heroin, which are sometimes used by themselves and other times used in combination with prescription opioids. Fentanyl and heroin use exacerbated opioid abuse, dependence, addiction, and overdose deaths in the State of Arkansas.

12. Among the ways that the surge in the use of prescription opioids has caused the current public health crisis is through the diversion of prescription opioids from legitimate distribution channels to illegitimate and illegal channels. Diversion can range from forging

prescriptions, to using legitimate prescriptions to obtain pills that can be resold on the street, to obtaining prescriptions from corrupt prescribers who are profiting off of their prescription pads.

13. The federal Controlled Substances Act, along with the State of Arkansas's parallel controlled substances law, was designed to "provide an interlocking trellis of laws which will enable government at all levels to more effectively control the [narcotic and dangerous drug] problem." Special Message to the Congress on Control of Narcotics and Dangerous Drugs, Pub. Papers of the Presidents of the United States: Richard Nixon, 1969, at 513, 514 (July 14, 1969).

14. A main objective of these laws was to establish a closed regulatory system for the legitimate handlers of controlled drugs that would prevent controlled substances moving from legitimate channels to illegitimate channels, thereby guarding against diversion.

15. As a dispenser of opioids, Defendants played a crucial role in stopping the diversion of opioids. The law makes pharmacies and pharmacists the last line of defense in preventing the illegal diversion of controlled substances.

16. Specifically, the federal Controlled Substances Act, similar to parallel state law, obligates pharmacies to practice their "corresponding responsibility" to dispense only legitimate prescriptions for controlled substances written for legitimate medical purposes. 21 C.F.R. § 1306.04(a); Arkansas Controlled Substances Act, Ark. Code Ann. § 5-64-101, *et seq.*; Arkansas Alcohol and Drug Abuse Act, Ark. Code Ann. §§ 20-64-101, *et seq.*

17. To comply with its legal duty to dispense only legitimate opioid prescriptions written for legitimate medical purposes, a pharmacy must, among other things, engage in due diligence to identify opioid prescriptions that have one or more "red flags" that are indicia of diversion and resolve those red flags before dispensing a prescription.

18. Red flags can relate to the prescriber, the patient, and/or the physical prescription itself. Examples of red flags include, but are not limited to: (1) patients who seek to fill opioid prescriptions written by multiple doctors over a short period; (2) patients who seek to pay in cash for an opioid prescription despite having insurance information on file; (3) opioid prescriptions that appear altered or photocopied; (4) opioid prescriptions that contain misspellings or non-standard abbreviations; or (5) opioid prescriptions written by a doctor located far away from the patient's residence or the pharmacy's location.

19. Chain pharmacy companies like Defendants have unique real-time knowledge of opioid prescriptions dispensed by their thousands of pharmacies across the country. This allows chain pharmacies like Defendants to have access to, and the ability to track, aggregate, and maintain, data related to suspicious opioid prescriptions with red flags. As a result of the red flag data available to Defendants, they have a unique ability to spot and guard against diversion of opioids.

20. Defendants had the resources to implement systems to use their real time knowledge of their pharmacies' opioid ordering volume and prescription red flags to guard against diversion because of their enormous annual revenues. Yet Defendants did not timely implement such systems, and when they did, such systems were inadequate and ineffective, as described below.

21. Defendants failed to perform their corresponding responsibility adequately by implementing insufficient controls to identify and resolve signs of diversion, as required by federal and state controlled substances laws.

22. Defendants had policies with the stated purpose of identifying suspicious opioid orders and conducting due diligence to resolve the suspicion. But Defendants frequently designed,

or applied, their policies in such a manner that they were ineffective controls against diversion, thereby violating their legal obligations to guard against diversion of opioids by practicing their corresponding responsibility.

23. The sheer volume of diverted opioids has wreaked havoc throughout the State of Arkansas.

24. Yet for numerous opioid prescriptions in the State of Arkansas that resulted in one or more red flags, Defendants nevertheless dispensed the opioids without first making sufficient inquiries into the legitimacy of the prescription. Defendants also implemented policies in which their pharmacists were given insufficient time and resources to practice their corresponding responsibility, resulting in Defendants' pharmacists too often ignoring or insufficiently investigating the red flags that they did identify.

25. Year after year as their opioid dispensing increased and the opioid crisis grew, Defendants failed to practice their corresponding responsibility, including dispensing controlled substances without first resolving the red flags presented by suspicious prescriptions.

26. Defendants knew that their internal compliance program was inadequate to fulfill their anti-diversion duties pursuant to state and federal law.

27. Through their actions and inactions in connection with the dispensing of opioids, including those alleged above, Defendants materially contributed to the creation of an opioid addiction crisis that has injured, harmed, and otherwise disrupted the lives of thousands of residents of the State of Arkansas, as well as cost state, county and municipal governments billions of dollars in expenditures to prevent, mitigate and remedy the multitude of different societal harms and injuries caused by the addiction crisis. Defendants knew, or in the exercise of reasonable care and diligence should have known, that their actions and inactions would lead to this result.

V. CAUSES OF ACTION

FIRST COUNT

Violations of Arkansas's Deceptive Trade Practices Act Ark. Code Ann. §§ 4-88-101, *et seq.*

28. Plaintiff incorporates and adopts by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

29. Opioids are “goods” as defined under Ark. Code Ann. § 4-88-102(4), each Defendant is a “person” as that term is defined under Ark. Code Ann. § 4-88-102(5), and distributing and dispensing prescribed drugs are “services” pursuant to Ark. Code Ann. § 4-88-102(7).

30. Defendants, in the course of dispensing opioid-containing prescription drugs, engaged in deceptive, false, and unconscionable acts and practices that are prohibited by the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-107, 4-88-108.

31. Defendants’ practices were likely to and did in fact deceive and mislead prescribers into prescribing and consumers into seeking and taking medically unnecessary and in many cases, harmful quantities and strengths of opioids.

32. Defendants’ practices were also deceptive, false, and unconscionable to consumers because they caused substantial injury to patients in the form of opioid abuse disorder, overdose and in some cases death, which could not have been reasonably avoided by those consumers, and which did not provide any offsetting benefits.

33. Defendants’ unfair or deceptive acts and practices include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against the diversion of opioids in the State of Arkansas; and

- b. Failing to practice their corresponding responsibility and dispensing opioids in the State of Arkansas despite not resolving red flags indicating that a prescription may be for an illegitimate purpose.
- c. knowingly used deceptive and unconscionable trade practices in violation of Ark. Code Ann. § 4-88-107(a)(1), in general, consisting of making false representations as to the characteristics, uses, benefits, source, sponsorship, approval, or certification of opioids.
- d. knowingly used deceptive and unconscionable trade practices in violation of Ark. Code Ann. § 4-88-107(a)(8)(B) by taking advantage of consumers who were reasonably unable to protect their own interests due to ignorance.
- e. engaging, and continuing to engage, in other unconscionable, false, and deceptive acts or practices in business, commerce or trade in violation of Ark. Code Ann. § 4-88-107(a)(10).
- f. acting, using and employing, and continuing to act, use or employ, deception, fraud or false pretense in connection with the sale, distribution and dispensing of opioids in violation of Ark. Code Ann. § 4-88-108(a)(1).
- g. concealing, suppressing and omitting material facts in connection with the sale, distribution and dispensing of opioids with the intent that others, including the State of Arkansas and Arkansas consumers, would rely on that concealment, suppression or omission, in violation of Ark. Code Ann. § 4-88-108(a)(2).

34. As a result of Defendants' deceptive conduct, consumers, including the State of Arkansas, have suffered millions of dollars in payments for products that were either illegal,

misrepresented, unfair, and/or harmful to consumers in derogation of the public interest of the State of Arkansas and its citizens

35. Defendants' actions alleged herein were an inequitable assertion of its power, position, and/or knowledge to the detriment of consumers, including the State of Arkansas, through Defendants' deceptive practices.

36. Because of these violations and Defendants' involvement in the actions described herein, consumers paid for goods that were illegal, deceptive, usurious, oppressive, and the products of an illegal and deceptive scheme involving Defendants and others.

37. As a result of Defendants' knowing violations described herein, consumers suffered substantial damages for which the State of Arkansas is entitled to restitution and other relief under Ark. Code Ann. § 4-88-113(a)(2)(A).

38. Each of Defendants' deceptive trade practices, as outlined above, constitutes a distinct violation of the ADTPA.

39. The State of Arkansas is also entitled to civil penalties of up to \$10,000.00 for each violation resulting from Defendants' unlawful conduct, investigative costs, and attorneys' fees under Ark. Code Ann. § 4-88-113(a)(3) and (e).

40. Also, the State seeks a permanent injunction against Defendants' future deceptive trade practices under Ark. Code Ann. § 4-88-113(a)(1).

SECOND CAUSE OF ACTION

(Common Law Public Nuisance)

41. Plaintiff incorporates and adopts by reference the allegations contained in preceding paragraphs as if fully set forth herein.

42. This action is brought by the State to abate the public nuisance created by Defendants.

43. Defendants have contributed to and/or assisted in creating and maintaining a condition that is harmful to the health of Arkansans or interferes with the comfortable enjoyment of life in Arkansas.

44. Defendants, in the course of dispensing opioid-containing prescription drugs, created a public nuisance by unreasonably interfering with rights common to the general public as prohibited by the common law of the State of Arkansas. Defendants' acts and practices that unreasonably interfered with rights common to the general public include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against the diversion of opioids in the State of Arkansas; and
- b. Failing to practice their corresponding responsibility and dispensing opioids in the State of Arkansas despite not resolving numerous red flags indicating that prescriptions may have been for illegitimate purposes.

45. Defendants knew or should have known that its unchecked distribution of opioids would create a public nuisance in derogation of the public interest of the State of Arkansas and its citizens.

46. Defendants engaged in the massive distribution and dispensing of opioids for use by the citizens of the State of Arkansas.

47. Defendants knew or should have known that its distribution and dispensing of opioids would lead to addiction and other adverse consequences and that the large community would suffer as a result, in derogation of the public interest of the State of Arkansas.

48. Defendants' actions were, at the least, a substantial factor in opioids becoming wide available and widely used. Without Defendants' actions, opioid use would not have become so

widespread, and the enormous public health hazard of opioid overuse, abuse, and addiction that now exists would have been averted.

49. The health and safety of the citizens of the State, including those who use, have used, or will use opioids, as well as those affected by users of opioids, is a matter of great public interest and legitimate concern to the State's citizens and residents.

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

51. Defendants' conduct has affected and continues to affect a considerable number of people within the State of Arkansas and is likely to continue to cause significant harm to those who take opioids, their families, and the community at large.

52. Defendants created or assisted in the creation of the epidemic of opioid use, abuse, and injury, and are liable for abating it.

THIRD CAUSE OF ACTION

(Common Law Negligence)

53. Plaintiff incorporates and adopts by reference the allegations contained in preceding paragraphs as if fully set forth herein.

54. At all relevant times, Defendants had a duty to exercise reasonable care in distributing and dispensing highly dangerous opioids in the State of Arkansas. Defendants had a duty to exercise reasonable care under the circumstances, including not causing foreseeable harm to others.

55. By engaging in negligent conduct that created an unreasonable risk of harm to others, Defendants failed to exercise reasonable care to prevent harm to others. On the contrary, reasonably prudent distributors and dispensers of opioids would have anticipated that the scourge of opioid addiction would wreak havoc on communities, and significant costs would be imposed

upon the governmental entities of those communities. And reasonably prudent distributors and dispensers know that failing to report and stop suspicious orders would lead to the diversion of the opioids they distribute and dispense.

56. Defendants are part of a limited and regulated class of entities authorized to legally sell, distribute, and dispense controlled substances. This role places a great responsibility upon Defendants in relation to the State of Arkansas and its citizens.

57. Upon information and belief, Defendants failed to exercise reasonable care in failing to prevent the diversion of opioids and therefore repeatedly negligently breached its duties.

58. The use, abuse, and diversion of opioids resulting in addiction, morbidity, and increased mortality in the State of Arkansas was a foreseeable harm of Defendants' breach of those duties.

59. The State has suffered damages as a direct and proximate result of the negligent failures by Defendants and its employees and/or agents.

FOURTH CAUSE OF ACTION

(Common law Unjust Enrichment)

60. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

61. As a direct and proximate result of the unlawful conduct described herein, Defendants have been and will continue to be unjustly enriched.

62. Defendants have benefited from its unlawful acts by causing millions of illegal and suspicious orders to be distributed and dispensed in violation of its legal duties. It would be inequitable and not in good conscience for Defendants to retain any ill-gotten gains earned as a

result of the conduct alleged herein, which gains would not exist but for the payments made by the State and other payors.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- a. That the acts alleged herein be adjudged and decreed to be unlawful in violation of Arkansas statutory and common law;
- b. That Plaintiff recover all measures of damages allowable under the State statutes identified herein and the common law, and that judgment be entered against Defendants in favor of Plaintiff;
- c. Issuing a permanent injunction prohibiting Defendants, Defendants' officers, agents, servants, employees, attorneys – and any other person in active concert or participation with Defendant – from engaging in unfair or deceptive acts and practices in violation of Ark. Code Ann. § 4-88-113(a);
- d. Ordering Defendants to pay to consumers compensatory restitution and remediation as set forth in Ark. Code Ann. § 4-88-113(a)(2)(A-B);
- e. That Defendants be ordered to pay civil penalties for violations of applicable statutes;
- f. Ordering Defendants to abate the public nuisance by paying compensatory restitution and remediation;
- g. Ordering Defendants to pay Plaintiff's attorneys' fees and costs of court pursuant to Ark. Code Ann. § 4-88-113 and as provided by law; and
- h. That the Court grant all other relief to which the Plaintiff is entitled.

JURY DEMAND

The State demands a trial by jury on all issues so triable.

Respectfully submitted,

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