

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

_____ Division

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY
GENERAL,

Plaintiff,

v.

WALGREEN CO.,

Defendant.

Case No. _____

COMPLAINT

COMPLAINT

Plaintiff, the State of Arkansas, on the relation of its Attorney General (hereinafter “Arkansas” or “the State”), upon personal knowledge, information, and belief as to its own acts, and upon information and belief as to all matters based upon the investigation of counsel, alleges as follows:

I. INTRODUCTION

1. Opioids are highly addictive synthetic drugs derived from opium, which are pharmacologically similar to heroin. For this reason, the U.S. Drug Enforcement Administration (“DEA”) has categorized opioids as Schedule II controlled substances, having a “high potential for abuse[.]”¹ As the Director of the Centers for Disease Control and Prevention (“CDC”) has

¹ DEA / Drug Scheduling, <https://www.dea.gov/druginfo/ds.shtml> (last visited Sept. 2018).

noted: “We know of no other medication routinely used for a nonfatal condition that kills patients so frequently.”²

2. Because of the known dangers of opioids, all companies in the supply chain of a controlled substance, including Defendant Walgreen Co. (“Walgreens”), which distributes and dispenses these highly addictive drugs, have the primary responsibility of ensuring that such drugs are only distributed and dispensed to appropriate patients and not diverted. While all of these responsibilities are fully stated in state and federal law, they exist independent of those regulations as duties of businesses registered to do business and distribute and dispense controlled substances in this State. Based on its superior knowledge about where these highly addictive drugs are distributed and sold, Walgreens was placed in a position of special trust and responsibility and was uniquely positioned to act as the first line of defense.

3. Despite these obligations, Walgreens intentionally failed to monitor, detect, investigate, refuse, and report suspicious orders of opioids. At all relevant times, Walgreens distributed, supplied, sold, dispensed and placed into the stream of commerce prescription opioids without fulfilling its fundamental duty to detect and warn of diversion of dangerous drugs for non-medical purposes. Walgreens also failed to provide effective controls and procedures to prevent diversion and to only dispense prescriptions for legitimate medical purposes. Walgreens has contributed substantially to the opioid crisis by selling, distributing, and dispensing far greater quantities of prescription opioids than it knows could be necessary for legitimate medical uses, while failing to report, and to take steps to halt, suspicious orders when they were identified, thereby exacerbating the oversupply of such drugs and fueling an illegal secondary market.

² Thomas R. Frieden and Debra Houry, *Reducing the Risks of Relief—The CDC Opioid-Prescribing Guideline*, 372 NEW ENG. J. MED. 1501, 1503 (2016).

4. While Walgreens has reaped significant profits, Walgreens' failures to prevent the diversion of opioids has contributed to and created a national and statewide emergency. Consequently, the State of Arkansas and its citizens have borne the costs. According to the CDC, 145 Americans die every day from opioid overdoses. In Arkansas, hundreds of deaths are attributable to opioid overdoses every year. Many of these costs could have been avoided if Walgreens had fulfilled its duties to the State of Arkansas and its citizens.

5. The State of Arkansas seeks: (a) injunctive relief to stop Walgreens' actions; (b) damages for, and abatement of, the public health epidemic that Walgreens created; (c) civil penalties for each violation of Arkansas's consumer protection laws; (d) damages, including punitive damages, for money spent by the State of Arkansas as a result of Walgreens' conduct; (e) disgorgement of Walgreens' unjust profits; and (f) the maximum civil penalties allowed for each violation of the law.

II. JURISDICTION AND VENUE

6. 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.

7. This Court has personal jurisdiction over Walgreens as it conducts business in Arkansas, purposefully directs or directed its actions toward Arkansas, and/or has the requisite minimum contacts with Arkansas necessary to constitutionally permit the Court to exercise jurisdiction.

8. Venue is proper in Pulaski County under Ark. Code Ann. § 16-60-104. Walgreens: (1) does business in Arkansas and/or purposefully directs or directed its actions toward Arkansas; (2) committed torts in part in Arkansas against the State of Arkansas and Arkansas 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 necessary to constitutionally permit the Court to exercise its jurisdiction.

9. Venue is also proper before this Court under Ark. Code Ann. § 16-60-101(a) and (c).

III. PARTIES

10. This action is brought by the State of Arkansas on relation of Attorney General Leslie Rutledge. The State brings this case in a *parens patriae* capacity to advance the public interest. *See Lynch v. Nat'l Prescription Adm'rs, Inc.*, 787 F.3d 868, 872 (8th Cir. 2015) (“*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens.”) (citation omitted). No state agencies, which are independent legal entities, are parties in this case. *See Taylor v. Zanone Properties*, 342 Ark. 465, 473-74 (2000) (“Governmental agencies are independent entities who must be joined as parties even if the [State] is a party to the action”). Nor does the Attorney General represent any state agencies in this action, who have not requested such representation. *Id.* at 474 (citing Ark. Code Ann. § 25-16-702(a)) (“The Attorney General represents the agencies and departments of the State *only* when his services are needed and the request for services has been certified by the agency to the Attorney General”) (emphasis added). This action is brought under, *inter alia*, Ark. Code Ann. § 4-5-212, the provisions of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq.*, the provisions of the Arkansas Controlled Substances Act, Ark. Code Ann. §§ 5-64-101, *et seq.*, the provisions of the Arkansas Alcohol and Drug Abuse Act, Ark. Code Ann. §§ 20-64-101, *et seq.*, the common law of the State of Arkansas, and the common law and statutory authority of the Attorney General to represent the State. The

State also brings this action in its *parens patriae* capacity to protect the health and well-being of the citizens of Arkansas.

11. Defendant Walgreen Co. is an Illinois corporation with its principal place of business in Deerfield, Illinois. Walgreen Co. is a subsidiary of Walgreens Boots Alliance, Inc. and does business under the trade name Walgreens. Walgreens is the second-largest pharmacy store chain in the United States behind CVS, with annual revenue of more than \$130 billion. According to its website, Walgreens operates more than 8,000 retail locations and filled 990 million prescriptions on a 30-day adjusted basis in fiscal 2017. Walgreens, through its various DEA registered subsidiaries and affiliated entities, conducts business as a licensed wholesale distributor. At all times relevant to this Complaint, Walgreens distributed and dispensed prescription opioids throughout the United States, including in Arkansas. At all relevant times, Walgreens operated both as a licensed pharmacy wholesaler and operated multiple pharmacies through which it distributed prescription opioids in Arkansas.

IV. FACTUAL ALLEGATIONS

A. The Role of Distributors and Dispensers in the Pharmaceutical Supply Chain

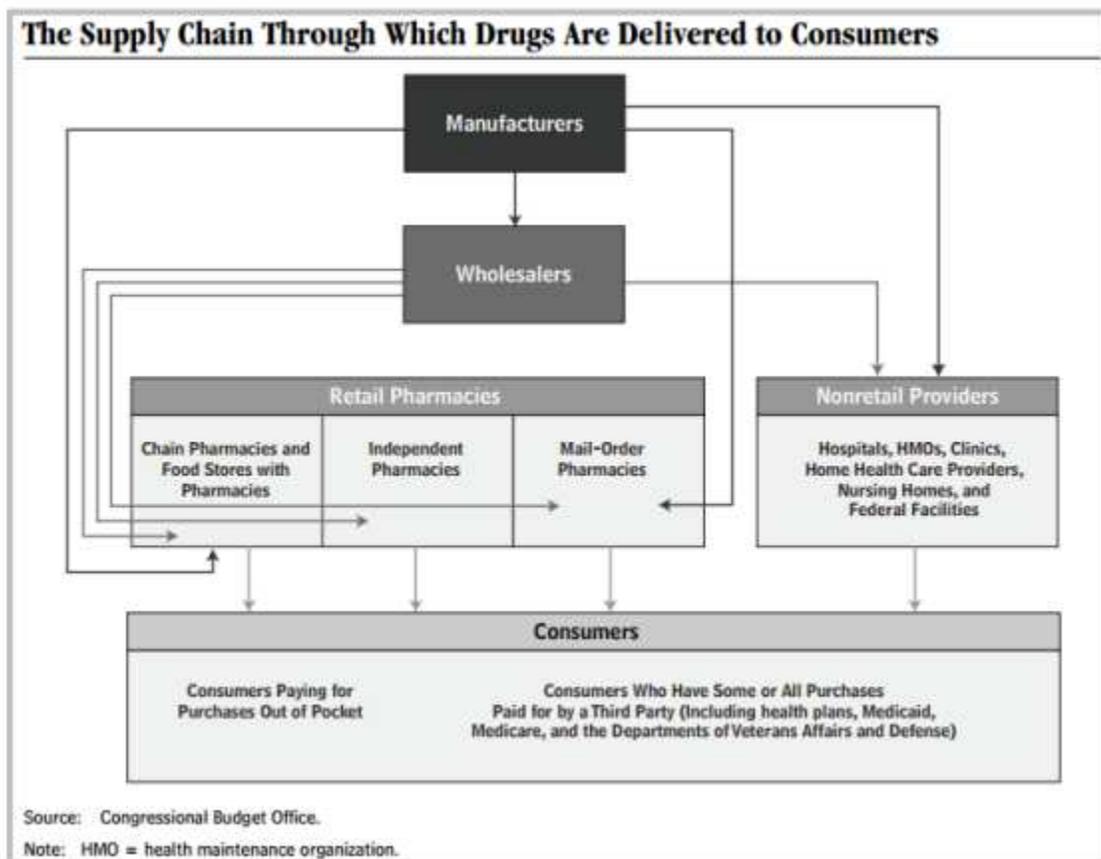
12. Prescription drugs are distributed through multiple channels before they are ultimately provided to patients. Generally speaking, for retail pharmacy channels, prescription branded drugs are distributed from manufacturer to wholesaler, to retailer (or mail order), to the patient-consumer.

13. Manufacturers, at the top of the chain, own the rights to manufacture and market drugs. Manufacturers typically own or contract with facilities that manufacture drugs and then sell their products to wholesalers. After production, many manufacturers send their drugs to FDA-registered drug wholesalers for further distribution. Wholesalers purchase, inventory, and sell pharmaceutical products to a variety of providers, including retail pharmacies, and ensure their

safe storage and distribution. States, including the State of Arkansas, license or authorize these wholesalers to sell and distribute pharmaceuticals within their borders.

14. Pharmacies are the final step on the pharmaceutical supply chain before drugs reach the consumer/patient. Pharmacies purchase drugs from wholesalers, and occasionally directly from manufacturers, and then take physical possession of the drugs. After purchasing drugs, pharmacies assume responsibility for their safe storage and dispensing to consumers.

15. The process described above is illustrated in the chart below:³



³ See American Health Policy Institute, *The Prescription Drug Supply Chain “Black Box:” How it Works and Why You Should Care* (2015) available at: http://www.americanhealthpolicy.org/Content/documents/resources/December%202015_AHPI%20Study_Understanding_the_Pharma_Black_Box.pdf.

B. Walgreens' Duties to Prevent the Diversion of Opioids Under Federal and State Law

16. Because of their specific and significant dangers, opioids are distributed within a “closed” system under which different entities within the pharmaceutical supply chain supervise the discrete links in the chain to reduce the widespread diversion of those drugs outside of legitimate channels. Each participant in the supply chain of opioid distribution, including Walgreens, is responsible for preventing diversion of prescription opioids into the illegal market by, among other things, monitoring and reporting suspicious activity. Because Walgreens handles, and has handled, such large volumes of controlled substances, and is a major line of defense in the movement of legal pharmaceutical controlled substances from legitimate channels into the illicit market, it is incumbent on Walgreens to maintain effective controls to prevent the diversion of these controlled substances. Should a distributor deviate from these checks and balances, the closed system subsequently collapses.

17. The Controlled Substances Act (CSA) and its implementing regulations create restrictions on the distribution of controlled substances. *See* 21 U.S.C. §§ 801-971; 21 C.F.R. 1300-1321. The CSA authorizes the Drug Enforcement Administration (DEA) to establish a registration program for manufacturers, distributors, and dispensers of controlled substances. Any entity that seeks to become involved in the production or chain of distribution of controlled substances, including Walgreens here, must first register with the DEA. 21 U.S.C. § 822; 21 C.F.R. 1301.11. Registrants are then required to comply with all security requirements imposed under that statutory scheme, including the maintenance of “effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels.” 21 U.S.C. § 823(b)(1). They must “design and operate a system to disclose to the

registrant suspicious orders of controlled substances” and inform the Field Division Office of the DEA of suspicious orders when discovered by the registrant. 21 C.F.R. § 1301.74(b).

18. Walgreens owes, and owed, the duties laid out below as both a distributor and dispenser of prescription opioids.

1. Walgreens’ Duties as a Distributor to Prevent the Diversion of Opioids Under Federal and State Law

19. Suspicious orders include those of “unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” 21 C.F.R. § 1301.74(b). These criteria are disjunctive and are not all-inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter, and the order should be reported as suspicious. Likewise, a wholesale distributor need not wait for a normal pattern to develop before determining whether an order is suspicious. The size of an order alone, regardless of whether it deviates from a normal pattern, is enough to trigger the wholesale distributor’s responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the customer, but also on the patterns of the entirety of the wholesale distributor’s customer base and the patterns throughout the relevant segment of the wholesale distributor industry.

20. In addition to reporting all suspicious orders, distributors must also stop shipment on any order that is flagged as suspicious and only ship orders that are flagged as potentially suspicious if, after conducting due diligence, the distributor can determine that the order is not likely to be diverted into illegal channels. *See* 21 U.S.C. § 823(b); 21 C.F.R. 1301.74(b). Walgreens and all other registrants must likewise report acquisition and distribution transactions to the DEA through its Automation of Reports and Consolidated Orders System (“ARCOS”) database.

21. All of the above requirements, including other federal laws and regulations, are adopted and incorporated into Arkansas law. *See*, in part, Ark. Code Ann. §§ 20-64-102, 20-64-209, 20-64-507 (“The Arkansas State Board of Pharmacy shall adopt rules for the wholesale distribution of prescription drugs which promote the public health and welfare and which comply with the minimum standards, terms, and conditions of ... federal regulations, including without limitations 21 C.F.R. § 205, for licensing by state authorities of persons who engage in the wholesale distribution in interstate commerce of prescription drugs.”); Ark. Admin. Code §§ 007.07.01, *et seq.* and § 007.39.8-08-00-0011. Similarly, federal law imposes a duty on Walgreens to comply with applicable state and local law. 21 U.S.C. § 823(b)(2).

22. In addition, Walgreens is required to register with the Arkansas Board of Pharmacy. *See* Ark. Code Ann. §§ 17-92-404, 20-64-203, and 20-64-505. Before allowing a pharmaceutical distributor to register, the Board of Pharmacy must determine that granting a registration is consistent with the public interest and, to be consistent with the public interest, a registrant must, among other things, demonstrate its ability to maintain effective controls against the diversion of opioids under Arkansas law. *See* Ark. Code Ann. §§ 17-92-402, 17-92-405, 20-64-204 and Ark. Admin Code § 007.39.8-08-00-0006.

23. Failure to maintain effective controls against diversion is inconsistent with the public interest as that term is used in 21 U.S.C. §§ 823 and 824 and may result in the revocation of the registrant’s DEA Certificate of Registration or registration with the State of Arkansas.

24. As such, Walgreens owes, and owed, the following duties:

- To monitor and detect suspicious orders of prescription opioids. *See generally* Ark. Code Ann. §§ 20-64-102, 20-64-209, 20-64-507 and Ark. Admin. Code §§ 007.07.01, *et seq.*

- To investigate and refuse suspicious orders of prescription opioids. *See generally* Ark. Code Ann. §§ 20-64-102, 20-64-209, 20-64-507 and Ark. Admin. Code §§ 007.07.01, *et seq.*
- To report suspicious orders of prescription opioids. *See generally* Ark. Code Ann. § 20-64-102, 20-64-209, 20-64-507 and Ark. Admin. Code §§ 007.07.01, *et seq.*
- To prevent the diversion of prescription opioids into illicit markets in the State of Arkansas. *See* Ark. Code Ann. §§ 20-64-102, 20-64-209, 20-64-507 and Ark. Admin. Code §§ 007.07.01, *et seq.*

2. Walgreens’ Duties as a Dispenser to Prevent the Diversion of Opioids Under Federal and State Law

25. As described above, each participant in the supply chain of opioid distribution, is responsible for preventing diversion of prescription opioids into the illegal market by, among other things, monitoring and reporting suspicious activity. This includes Walgreens as a dispenser of prescription opioids.

26. “The control of the dispensing of medicines . . . [is] essential to the protection of the public health and general welfare of the people” Ark. Code Ann. § 17-92-404(c)(1). Dispensers are required by Arkansas law to hold a permit issued by the State Board of Pharmacy to sell prescription drugs. Ark. Code Ann. §§ 20-64-504; 17-92-404; Ark. Admin. Code 007.39.4-04-00-0011. Under Arkansas law, pharmacy registrants are required to provide “diversion prevention and detection tools” and develop policies and procedures to prevent and detect diversion. Ark. Admin. Code 007.39.4-04-00-0015(b), (c). Because pharmacies themselves are registrants under the Arkansas law, the duty to prevent diversion lies with the pharmacy entity, not just the individual pharmacist alone. Ark. Admin. Code 007.39.4-04-00-0015(a) (“The permit

holder and the pharmacist in charge are jointly responsible for the security and accountability of all controlled drugs stored in and/or ordered by a pharmacy.”).

27. The DEA, among others, has provided extensive guidance to pharmacies concerning their duties to the public. The guidance advises pharmacies how to identify suspicious orders and other evidence of diversion.

28. Suspicious pharmacy orders include orders of unusually large size, orders that are disproportionately large in comparison to the population of a community served by the pharmacy, orders that deviate from a normal pattern and/or orders of unusual frequency and duration, among others.

29. Additional types of suspicious orders include: (1) prescriptions written by a doctor who writes significantly more prescriptions (or in larger quantities or higher doses) for controlled substances compared to other practitioners in the area; (2) prescriptions that should last for a month in legitimate use, but are being refilled on a shorter basis; (3) prescriptions for antagonistic drugs, such as depressants and stimulants, at the same time; (4) prescriptions that look “too good” or where the prescriber’s handwriting is too legible; (5) prescriptions with quantities or doses that differ from usual medical usage; (6) prescriptions that do not comply with standard abbreviations and/or contain no abbreviations; (7) photocopied prescriptions; or (8) prescriptions containing different handwriting. Most of the time, these attributes are not difficult to detect and should be easily recognizable by pharmacies.

30. Suspicious pharmacy orders are red flags for, if not direct evidence of, diversion.

31. Numerous cases and administrative decisions have confirmed that pharmacies are obligated not to fill prescriptions until all red flags of diversion are resolved. “[W]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his

eyes and thereby avoid actual knowledge of the real purpose of the prescriptions.” *East Main Street Pharmacy*, Affirmance of Suspension Order, 75 Fed. Reg. 66149-01, 2010 WL 4218766 (Dep’t of Justice Oct. 27, 2010). “When [pharmacists’] suspicions are aroused as reasonable professionals,” they must at least verify the prescription’s propriety, and if not satisfied by the answer they must “refuse to dispense.” *Id.*; *see also Medic-Aid Pharmacy*, 55 Fed. Reg. 30,043, 30,044, 1990 WL 328750 (Dep’t of Justice July 24, 1990); *Townwood Pharmacy*, 63 Fed. Reg. 8,477, 1998 WL 64863 (Dep’t of Justice Feb. 19, 1998) (revocation of registration); *Grider Drug 1 & Grider Drug 2*, 77 Fed. Reg. 44070-01, 2012 WL 3027634 (Dep’t of Justice July 26, 2012) (decision and order); *The Medicine Dropper*; 76 Fed. Reg. 20,039, 2011 WL 1343276 (Dep’t of Justice April 11, 2011) (revocation of registration); *Medicine Shoppe-Jonesborough*, 73 Fed. Reg. 364-01, 2008 WL 34619 (Dep’t of Justice Jan. 2, 2008) (revocation of registration); *Notice of United Prescriptions Services, Inc.*, 72 Fed. Reg. 50397- 01, 50407-8, 2007 WL 2455578 (Aug. 31, 2007) (revocation of registration).

32. Courts, too, have recognized the obligation not to dispense until red flags are resolved. *See e.g. Medicine Shoppe-Jonesborough v. Drug Enforcement Administration*, 300 F. App’x 409 (6th Cir. 2008); *United States v. Henry*, 727 F.2d 1373, 1378-79 (5th Cir. 1984); *Holiday CVS, L.L.C. v. Holder*, 839 F. Supp. 2d 145 (D.D.C. 2012).

33. The responsibility for dispensing is not limited to pharmacists, pharmacies, or holders of dispensing registrations. Rather, the State alleges that the owners of the pharmacies, *i.e.* the corporate parents, are responsible for the failure to ensure the dispensing practices of their pharmacies and pharmacists were legal, and the corporate parents directly inhibited their pharmacists’ ability to perform their legally mandated duties. *See Ark. Admin. Code 007.39.4-04-00-0015*; *United States v. City Pharmacy, LLC*, No. 3:16-CV-24, 2016 WL 9045859, (N.D.

W.Va. Dec. 19, 2016); *United States v. Stidham*, 938 F. Supp. 808, 814 (S.D. Ala. 1996); *United States v. Poulin*, 926 F. Supp. 246, 250, 253 (D. Mass. 1996); *United States v. Robinson*, No. 12-20319-CIV, 2012 WL 3984786, (S.D. Fla. Sept. 11, 2012). This is so regardless of whether the parent is a registrant under Arkansas law or whether the parent is the entity or person actually doing the dispensing.

34. Walgreens is responsible for the dispensing practices in its stores. Walgreens exerted day-to-day operational control from the top down, with its national, corporate entity designing and implementing uniform policies and procedures (to the extent they existed) that governed how all pharmacies in the chain were to operate, including the exact conduct at issue—actual dispensing and anti-diversion efforts. Walgreens’ control also intentionally resulted in a pharmacy environment that did not encourage, and in many instances did not even allow, pharmacists to fulfill their corresponding responsibility as pharmacists.

35. The State’s claims are based on Walgreens’ *own* duties, its *own* conduct in establishing dispensing policies and procedures, its *own* failure to make use of the data it had regarding the dispensing of illegitimate prescriptions, and its own failures to properly train its employees regarding their duties under Arkansas law.

C. Walgreens was Aware of and has Acknowledged its Obligations to Prevent Diversion and to Report and Take Steps to Halt Suspicious Orders

36. Federal and state regulations are consistent with guidance given to the industry by the DEA. The DEA has repeatedly reminded Walgreens, along with other distributors, of its regulatory obligations. Since 2007, the DEA has hosted at least five conferences that provided registrants with updated information about diversion trends and regulatory changes.

37. In a September 27, 2006 letter, the DEA also reminded every commercial entity registered to distribute controlled substances that they are “one of the key components of the

distribution chain. If the closed system is to function properly . . . distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes. This responsibility is critical, as . . . the illegal distribution of controlled substances has a substantial and detrimental effect on the health and general welfare of the American people.”

38. The DEA’s September 27, 2006 letter also warned that it would use its authority to revoke and suspend registrations when appropriate. The letter expressly states that a distributor, in addition to reporting suspicious orders, has a “statutory responsibility to exercise due diligence to avoid filling suspicious orders that might be diverted into other than legitimate medical, scientific, and industrial channels.” The letter also instructs that “distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes.”

39. The DEA sent a second letter to all entities registered to distribute or manufacture controlled substances on December 27, 2007. This letter reminded registrants of their statutory and regulatory duties to “maintain effective controls against diversion” and “design and operate a system to disclose to the registrant suspicious orders of controlled substances.” The letter further explained:

The regulation also requires that the registrant inform the local DEA Division Office of suspicious orders when discovered by the registrant. Filing a monthly report of completed transactions (e.g. “excessive purchase report” or “high unity purchases”) does not meet the regulatory requirement to report suspicious orders. Registrants are reminded that their responsibility does not end merely with the filing of a suspicious order report. Registrants must conduct an independent analysis of suspicious orders prior to completing a sale to determine whether the controlled substances are likely to be diverted from legitimate channels. Reporting an order as suspicious will not absolve the registrant of responsibility if the registrant knew, or should have known, that the controlled substances were being diverted.

The regulation specifically states that suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of an unusual frequency. These criteria are disjunctive and are not all inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter and the order should be reported as suspicious. Likewise, a registrant need not wait for a “normal pattern” to develop over time before determining whether a particular order is suspicious. The size of an order alone, whether or not it deviates from a normal pattern, is enough to trigger the registrant’s responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the particular customer, but also on the patterns of the registrant’s customer base and the pattern throughout the segment of the regulated industry.

Registrants that rely on rigid formulas to define whether an order is suspicious may be failing to detect suspicious orders. For example, a system that identifies orders as suspicious only if the total amount of a controlled substance ordered during one month exceeds the amount ordered the previous month by a certain percentage or more is insufficient. This system fails to identify orders placed by a pharmacy if the pharmacy placed unusually large orders from the beginning of its relationship with the distributor. Also, this system would not identify orders as suspicious if the order were solely for one highly abused controlled substance if the orders never grew substantially. Nevertheless, ordering one highly abused controlled substance and little or nothing else deviates from the normal pattern of what pharmacies generally order.

When reporting an order as suspicious, registrants must be clear in their communication with DEA that the registrant is actually characterizing an order as suspicious. Daily, weekly, or monthly reports submitted by registrant indicating “excessive purchases” do not comply with the requirement to report suspicious orders, even if the registrant calls such reports “suspicious order reports.”

Lastly, registrants that routinely report suspicious orders, yet fill these orders without first determining that order is not being diverted into other than legitimate medical, scientific, and industrial channels, may be failing to maintain effective controls against diversion. Failure to maintain effective controls against diversion is inconsistent with the public interest as that term is used in 21 USC 823 and 824, and may result in the revocation of the registrant’s DEA Certificate of Registration.

The letter also references the Revocation of Registration issued in *Southwood Pharmaceuticals, Inc.*, 72 Fed. Reg. 36,487-01 (July 3, 2007), which discusses the obligation to report suspicious orders and “some criteria to use when determining whether an order is suspicious.”

D. Walgreens Failed to Report Suspicious Orders or Otherwise Act to Prevent Diversion.

40. Signs of diversion can be observed through data gathered, consolidated, and analyzed by pharmacies, including Walgreens. That data allows pharmaceutical distributors and dispensers to observe patterns or instances of dispensing that are potentially suspicious, of oversupply in particular stores or geographic areas, or of prescribers or facilities that seem to engage in improper prescribing.

41. Despite its legal obligations as a registrant under Arkansas law, Walgreens entered an illegal drug market and allowed widespread diversion to occur—and did so knowingly.

42. Walgreens failed to prevent diversion, or otherwise control the supply of opioids flowing into communities across the United States, including in the State of Arkansas. Walgreens further failed to report and halt shipment of suspicious orders. In disregard of its known duties, Walgreens continued to pump massive quantities of opioids into the State of Arkansas.

43. Specifically, Walgreens knew that its suspicious order monitoring (“SOM”) system did not comply with its obligations. In May 2006, the DEA sent Walgreens a Letter of Admonition citing Walgreens for controlled substances violations at its Perrysburg (Ohio) Distribution Center. Specifically, the DEA informed Walgreens that the “formulation utilized by the firm for reporting suspicious ordering of controlled substances was insufficient,”⁴ and “inadequate.” The DEA reminded Walgreens that its suspicious ordering “formula should be based on (size, pattern, frequency).”⁵

⁴ CAH_MDL_PRIORPROD_DEA12_00011836, CAH_MDL_PRIORPROD_DEA12_00011853, CAH_MDL_PRIORPROD_DEA07_00159466, CAH_MDL_PRIORPROD_DEA12_00004383.

⁵ WAGMDL00709508.

44. After receiving the Letter of Admonishment, Walgreens decided to generate and send the DEA a monthly report of post-shipment “Suspicious Control Drug Orders” that Walgreens had filled for its stores, and did so from 2007 through 2012.⁶ Despite the orders being flagged as “suspicious,” Walgreens did not halt these orders or perform any due diligence on them before shipment.⁷

45. Walgreens knew that this type of post-shipment “excessive purchase report” did not satisfy the requirements in the CSA and its implementing regulations. In September 2007, three Walgreens’ senior employees attended the DEA Office of Diversion Control’s 13th Pharmaceutical Industry Conference in Houston, Texas.⁸ Michael Mapes, Chief of the DEA’s Regulatory Section, gave a presentation at this Conference relating to suspicious orders, which included the reminder that the CSA “requirement is to report suspicious orders, not suspicious sales after the fact.”⁹ Participant notes from this meeting indicate that Mr. Mapes advised the audience not to “confuse suspicious order report with an excessive purchase report. They are two different things.”¹⁰

46. Despite knowing as early as 2006 that its SOM policies were inadequate, being admonished by the DEA, and receiving specific instruction that the post-shipment excessive purchase reports did not satisfy its duties, Walgreens still did not institute a SOM program.¹¹

⁶ WAGMDL00400357.

⁷ See Errata to E. Bratton 30(b)(6) deposition.

⁸ CAH_MDL_PRIORPROD_DEA07_01185382 at 01185404-5.

⁹ CAH_MDL_PRIORPROD_DEA12_00011059; HDS_MDL_00002032 at 2040.

¹⁰ Acquired_Actavis_00441354 at 441355.

¹¹ WAGMDL00757193 (“internal controls that ensure compliance with DEA regulations ... pertain[ing] to all company DCs ... should be addressed to void potential DEA sanctions”, noting that these issues had been pending and “un-remediated” since audits in 2005 and 2006, and included “suspicious controlled drug order processing and reporting” and “lack of formalized CII

47. It was not until March 2008, in response to three of Cardinal Health's facilities being shut down by the DEA for suspicious drug ordering violations, that Walgreens finally took action to "begin creating" a SOM program.¹²

48. In December 2008, Walgreens conducted an internal audit of its Perrysburg, OH Distribution Center. That audit found that issues related to Walgreens suspicious controlled drug order processing and reporting system were still open from the DEA's May 2006 inspection, but Walgreens did not begin to address these issues until five months later.¹³

49. Though Walgreens developed a SOMS algorithm in June 2008,¹⁴ Walgreens did not practically begin to implement its SOM program until August 2009, when it began to pilot the algorithm with respect to orders from seven (7) Walgreens stores.¹⁵ Until September 2010, the SOM program flagged certain orders that exceeded the tolerance or frequency thresholds as "suspicious," but did not reduce, block, or report the orders. In September 2010, the program began to reduce orders that exceeded the tolerance threshold set by Walgreens to an amount below the threshold but still did not halt the orders for evaluation or report the orders as suspicious. In November 2012, the program began to automatically reduce orders that violated ceiling thresholds.¹⁶ Still, the program did not halt the orders for due diligence evaluation or report the orders as suspicious.

controlled substance policies and procedures."); *See also* WAGMDL00709508 ("suspicious ordering report is inadequate"); WAGMDL00709510 ("formulation utilized by the firm for reporting suspicious ordering of controlled substances was insufficient").

¹² WAGMDL00659801 at 818; WAGMDL00709395.

¹³ WAGMDL00757193.

¹⁴ WAGMDL00624527.

¹⁵ WAGMDL00667936, at 938 and 940; *see also* WAGMDL00658227.

¹⁶ WAGMDL00667938.

50. Not only did Walgreens's SOM program not halt or report the orders its SOM program flagged as being suspicious, but there were other loopholes that limited the program's effectiveness. First, the program only monitored orders Walgreens stores placed to Walgreens' own distribution centers, so that even if a store hit its ceiling with Walgreens, the store could order more controlled substances through outside vendors such as Cardinal Health.¹⁷ Second, even though a Walgreens store had hit its ceiling limit, the SOM program permitted stores to place PDQ ("pretty darn quick") orders for controlled substances outside of those limits.¹⁸ Additionally, stores had the ability to "interstore," which means they simply transferred product from another store outside of the visibility of the SOM program.¹⁹

51. Beginning in 2013, Walgreens finally implemented a process which, in theory, permitted stores to order controlled substances in excess of the thresholds only if such orders could be justified. However, the review process was nominal, as such requests were almost always approved, as evidenced by the 95%+ approval rate for FY 2014 and 2015.²⁰

52. Walgreens admits that, since at least 2009, the DEA instructed Walgreens to "stop what was considered suspicious drug shipments to any of our stores."²¹ However, until the end of 2012 Walgreens continued to ship all flagged orders without due diligence review and continued to merely send a report to the DEA.

53. Thus, though Walgreens had access to significant information about red flags due to its vertical integration with its stores, Walgreens failed to use available information from red

¹⁷ See N. Polster Deposition at 250:1-253:7.

¹⁸ WAGMDL00705321.

¹⁹ See N. Polster Deposition at 257:14-258:2.

²⁰ WAGMDL00010887.

²¹ WAGMDL00660331.

flags that were indicated to more effectively prevent diversion. Notably, because of its vertically integrated structure, Walgreens has access to complete information regarding red flags of diversion across its pharmacies in and around Arkansas, but, upon information and belief, Walgreens failed to utilize this information to effectively prevent diversion, both as a distributor and as a pharmacy.

54. Upon information and belief, Walgreens adopted “performance” metrics and prescription quotas that made it nearly, if not actually, impossible for its pharmacists to comply with Walgreens’ duties under Arkansas law.

55. Upon information and belief, this problem was compounded by Walgreens’ failure to adequately train its pharmacists and pharmacy technicians on how to properly and adequately handle prescriptions for opioid painkillers, including what constitutes a proper inquiry into whether a prescription is legitimate, whether a prescription is likely for a condition for which the FDA has approved treatments with opioids, what measures and/or actions to take when a prescription is identified as phony, false, forged, or otherwise illegal, or when suspicious circumstances are present, including when prescriptions are procured and pills supplied for the purpose of illegal diversion and drug trafficking.

56. Upon information and belief, Walgreens also failed to adequately use data available to it to identify doctors who were writing suspicious numbers of prescriptions and/or prescriptions of suspicious amounts of opioids, or to adequately use data available to them to do statistical analysis to prevent the filling of prescriptions that were illegally diverted or otherwise contributed to the opioid crisis.

57. Upon information and belief, Walgreens failed to analyze: (a) the number of opioid prescriptions filled by individual pharmacies relative to the population of the pharmacy’s community; (b) the increase in opioid sales relative to past years; (c) the number of opioid

prescriptions filled relative to other drugs; and, (d) the increase in annual opioid sales relative to the increase in annual sales of other drugs.

58. Upon information and belief, Walgreens failed to conduct adequate internal or external audits of its opioid sales to identify patterns regarding prescriptions that should not have been filled and to create policies accordingly, or, if Walgreens conducted such audits, it failed to take any meaningful action as a result.

59. Upon information and belief, Walgreens also failed to effectively respond to concerns raised by its own employees regarding inadequate policies and procedures regarding the filling of opioid prescriptions.

60. Walgreens was, or should have been, fully aware that the quantity of opioids being distributed and dispensed by its stores was untenable, and in many areas was so high that illegal diversion was the only logical explanation; yet it did not take meaningful action to investigate or to ensure that it was complying with its duties and obligations under the law with regard to controlled substances.

E. Enforcement Actions against Walgreens Confirm its Compliance Failures

61. Walgreens has been penalized for serious and flagrant violations of its duties to prevent diversion. In 2013, Walgreens agreed to pay \$80 million to resolve allegations that it committed an unprecedented number of recordkeeping and dispensing violations, including negligently allowing controlled substances such as oxycodone and other prescription painkillers to be diverted for abuse and illegal black-market sales.²²

²² *Walgreens Agrees To Pay A Record Settlement Of \$80 Million For Civil Penalties Under The Controlled Substances Act*, U.S. Dep't of Just. (June 11, 2013), <https://www.justice.gov/usao-sdfl/pr/walgreens-agrees-pay-record-settlement-80-million-civil-penalties-under-controlled>.

62. The settlement resolved investigations into violations in Florida, New York, Michigan, and Colorado that resulted in the diversion of millions of opioids into illicit channels.

63. Walgreens' settlement stemmed from an investigation into Walgreens' distribution center in Jupiter, Florida, which was responsible for significant opioid diversion in Florida. Walgreens' corporate headquarters pushed to increase the number of oxycodone sales to Walgreens' Florida pharmacies, and provided bonuses for pharmacy employees based on number of prescriptions filled at the pharmacy in an effort to increase oxycodone sales. In July 2010, Walgreens ranked all of its Florida stores by number of oxycodone prescriptions dispensed in June of that year, and found that the highest-ranking store in oxycodone sales sold almost 18 oxycodone prescriptions per day. All of these prescriptions were filled by the Jupiter Center.²³

64. Walgreens' Florida operations at issue in this settlement highlight its egregious conduct regarding diversion of prescription opioids. Walgreens' Florida pharmacies each allegedly ordered more than one million dosage units of oxycodone in 2011—more than ten times the average amount.²⁴

65. They increased their orders over time, in some cases as much as 600% in the space of just two years, including, for example, supplying a town of 3,000 with 285,800 orders of oxycodone in a one-month period. Yet Walgreens corporate officers turned a blind eye to these abuses. In fact, corporate attorneys at Walgreens suggested, in reviewing the legitimacy of prescriptions coming from pain clinics, that “if these are legitimate indicators of inappropriate prescriptions perhaps we should consider not documenting our own potential noncompliance,”

²³ *Id.*

²⁴ Order to Show Cause and Immediate Suspension of Registration, *In the Matter of Walgreens Co.* (Drug Enf't Admin. Sept. 13, 2012).

underscoring Walgreens' attitude that profit outweighed compliance with its legal obligations or the health of communities.²⁵

66. Walgreens has also settled with a number of state attorneys general, including West Virginia (\$575,000) and Massachusetts (\$200,000).²⁶

67. The Massachusetts Attorney General's Medicaid Fraud Division found that, from 2010 through most of 2015, multiple Walgreens stores across the state failed to monitor the opioid use of some Medicaid patients who were considered high-risk.

68. In January 2017, an investigation by the Massachusetts Attorney General found that some Walgreens pharmacies failed to monitor patients' drug use patterns and didn't use sound professional judgment when dispensing opioids and other controlled substances—despite the context of soaring overdose deaths in Massachusetts. Walgreens agreed to pay \$200,000 and follow certain procedures for dispensing opioids.²⁷

F. Walgreens' Conduct Allowed Massive Quantities of Opioids to be Distributed and Dispensed Throughout the State of Arkansas

69. Despite its legal obligations as a registrant under Arkansas law, Walgreens allowed widespread diversion to occur—and did so knowingly.

70. Statewide data from the DEA's ARCOS database confirms that Walgreens distributed and dispensed substantial quantities of prescription opioids throughout Arkansas. In addition, Walgreens also distributed and dispensed substantial quantities of prescription opioids in other states, and these drugs were diverted from these other states to Arkansas. Walgreens failed

²⁵ *Id.*

²⁶ *Walgreens to Pay \$200,000 Settlement for Lapses with Opioids*, APhA (Jan. 25, 2017), <https://www.pharmacist.com/article/walgreens-pay-200000-settlement-lapses-opioids>.

²⁷ *Id.*

to take meaningful action to stop this diversion, despite its knowledge that diversion was occurring, and it contributed substantially to the diversion problem in violation of Arkansas law. Data from the DEA's ARCOS database shows that Walgreens placed a huge volume of prescription opioids into the State of Arkansas.²⁸

71. Walgreens distributed over 142,090,680 dosage units of oxycodone and hydrocodone into Arkansas from 2006 to 2014.²⁹ Walgreens distributed over 30 million dosage units of oxycodone, almost 114 million dosage units of hydrocodone and another 1.7 million dosage units of hydromorphone. Moreover, nine Walgreens pharmacies were within the top 20 recipients of prescription opioids in the State.

72. This high volume of opioids alone should have alerted Walgreens to the fact that suspicious orders were being placed, as the amount of opioids that were sent into Arkansas far exceeded what could be consumed for medically legitimate purposes; yet, Walgreens failed to report and halt those orders and instead increased the number of pills distributed.

73. Walgreens repeatedly and purposefully breached its duties under state and federal law. It sold prescription opioids, including hydrocodone and/or oxycodone, to retailers in the State of Arkansas and/or to retailers from which Walgreens knew prescription opioids were likely to be diverted to the State of Arkansas.

74. Walgreens breached its duty to design and operate a system to disclose suspicious orders of controlled substances to the registrant.

²⁸ *Drilling into the DEA's pain pill database*, The Washington Post, (originally published July 16, 2019, updated July 21, 2019), at https://www.washingtonpost.com/graphics/2019/investigations/dea-pain-pill-database/?utm_term=.f0cebd69c859.

²⁹ *Id.*

75. Walgreens breached its duty to monitor, detect, investigate, refuse, and report suspicious orders of prescription opioids originating from the State and/or in areas from which Walgreens knew opioids were likely to be diverted to the State and failed to report suspicious orders when discovered to federal and state authorities, including the DEA and/or the state Board of Pharmacy.

76. Walgreens unlawfully filled suspicious orders of unusual size, orders deviating substantially from a normal pattern, and/or orders of unusual frequency in the State of Arkansas and/or in areas from which Walgreens knew opioids were likely to be diverted to the State of Arkansas. Walgreens breached its duty to exercise due diligence to avoid filling suspicious orders that might be diverted into channels other than legitimate medical, scientific, and industrial channels. *See* Ark. Code Ann. §§ 20-64-102, 20-64-209, 20-64-504, 20-64-507, 17-92-404 and Ark. Admin. Code §§ 007.07.01, *et seq.*; Ark. Admin. Code 007.39.4-04-00-0011; Ark. Admin. Code 007.39.4-04-00-0015.

77. Walgreens supplied prescription opioids to suspicious physicians and pharmacies, enabled the illegal diversion of opioids, aided criminal activity, and disseminated massive quantities of prescription opioids into the black market.

78. Upon information and belief, Plaintiff expects other egregious examples of Walgreens failing to fulfill its statutory duty to prevent diversion will be discovered as additional ARCOS data and other relevant information is obtained as this litigation progresses.

G. Walgreens Contributed to and Caused the Opioid Epidemic in the State of Arkansas

79. Walgreens' failures to monitor, detect, investigate, refuse, and report suspicious orders are direct and proximate causes of the widespread diversion of prescription opioids for non-medical purposes into the State.

80. The unlawful diversion of prescription opioids is a direct and proximate cause and/or substantial contributing factor to the opioid epidemic and prescription opioid abuse, addiction, and death in the State of Arkansas. See Richard C. Dart, MD, *et al.*, *Trends in Opioid Analgesic Abuse and Mortality in the United States*, NEW ENGL. J. MED. 372:241-48 (Jan. 2015) (finding “parallel relationship between the availability of prescription opioid analgesics through legitimate pharmacy channels and diversion and abuse of these drugs and associated adverse outcomes”). The primary purpose of enacting the CSA was to prevent the known dangers associated with the diversion and abuse of controlled substances, such as prescription opioids.

81. Walgreens intentionally continued its conduct with the knowledge that such conduct was creating the opioid nuisance and causing the harms and damages alleged herein. Walgreens knew or should have known, both explicitly and implicitly, that it has statutory and regulatory responsibilities to detect and prevent the diversion of controlled substances and to undertake such efforts as a business registered to do business and distribute and dispense controlled substances in the State of Arkansas.

82. The foreseeable harm resulting from a breach of these duties is the diversion of prescription opioids for non-medical purposes and the subsequent plague of opioid addiction. The sheer volume of prescription opioids distributed to pharmacies in the State of Arkansas, and/or to pharmacies from which Walgreens knew the opioids were likely to be diverted into the State, is excessive for the medical need of the community and facially suspicious. Some red flags are so obvious that no one who engages in the legitimate distribution of controlled substances can reasonably claim ignorance of them.

83. While Walgreens has profited greatly from the increased sales of opioids, Arkansas citizens have borne the costs. As a single measure of that harm, opioids are by far the

most commonly prescribed class of controlled substances in Arkansas. For example, in 2013, 120.9 opioid prescriptions were dispensed for every 100 persons. In that same year, the average U.S. rate was 79.3.³⁰ By 2016, Arkansas ranked second in the United States for over-prescribing opioids with 114.6 opioids being dispensed for every 100 Arkansans.³¹ This trend continued in 2017 with Arkansas maintaining the second highest opioid prescription rate in the country at 106 prescriptions per 100 persons.³² Even though those numbers have fallen, in 2019, Arkansas still had the second highest dispensing rate of any State, at 80.9 prescriptions for every 100 persons while the national average was 46.7.³³

84. Further, the volume of opioids flooding the State has had tragic consequences measured in human lives. In 2017 alone, there were at least 446 drug overdose deaths in Arkansas—a rate of 15.5 deaths per 100,000 persons.³⁴ This is up from a rate of 5.4 deaths per 100,000 residents in 2000.³⁵

85. The human toll on Arkansas' citizens is not only measured by death, but by births as well. The incidence of neonatal abstinence syndrome (NAS) in Arkansas increased from 0.4 per 1,000 births in 2004 to 4.8 per 1,000 births in 2017—a twelvefold increase.³⁶

86. Additionally, according to the Substance Abuse and Mental Health Services Administration (SAMHSA), in a single day in 2015, 1,095 Arkansans were receiving methadone

³⁰ <https://www.cdc.gov/drugoverdose/maps/rxstate2013.html>

³¹ <https://www.cdc.gov/drugoverdose/maps/rxstate2016.html>

³² <https://www.cdc.gov/drugoverdose/maps/rxstate2017.html>

³³ <https://www.cdc.gov/drugoverdose/maps/rxstate2019.html>;
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>

³⁴ <https://www.cdc.gov/drugoverdose/data/statedeaths/drug-overdose-death-2017.html>

³⁵ https://www.healthy.arkansas.gov/images/uploads/pdf/Mortality_Report_-_2017_v3.pdf

³⁶ https://www.healthy.arkansas.gov/images/uploads/pdf/2018_Annual_Report_09_09_19.pdf

in treatment programs due to opioid addiction. Arkansas also ranks first in the nation for ages 12 to 17 in misuse of painkillers.³⁷

87. The number of children in Arkansas's foster care system has also spiked. For example, the number of children in the system grew from 3,806 in 2015 to 5,209 as of September 28, 2016.³⁸

88. These and other costs were caused, in large measure, by Walgreens and should be borne by Walgreens.

V. CLAIMS FOR RELIEF

COUNT I: Public Nuisance

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

90. This action is brought by the State to abate the public nuisance created by Walgreens.

91. Walgreens has 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 violation of Arkansas law.

92. The public nuisance created by Walgreens' actions is substantial and unreasonable—it has caused and continues to cause significant harm to the community. The

³⁷ Wesley Brown, *Arkansas at front line of U.S. opioid epidemic*, Talk Business & Politics (Sept. 13, 2017), available at <https://talkbusiness.net/2017/09/arkansas-at-front-line-of-u-s-opioid-epidemic>.

³⁸ Steve Brawner, *Director: Foster spike's cause hard to pinpoint; some caseworkers erring on side of removal*, Talk Business & Politics (Nov. 29, 2016), available at <https://talkbusiness.net/2016/11/director-foster-spikes-cause-hard-to-pinpoint-some-caseworkers-erring-on-side-of-removal>.

staggering rates of opioid abuse resulting from Walgreens' conduct have caused harm to the community that includes, but is not limited to:

- a. Upwards of 30% of all adults have used opioids. This high rate of use has led to unnecessary opioid abuse, addiction, overdose, injuries, and deaths.
- b. Children, too, have been harmed by opioids. They have been exposed to medications prescribed to family members or others, resulting in injury, addiction, and death. Easy access to prescription opioids has made opioids a recreational drug of choice among Arkansas teenagers; opioid use among teenagers is only outpaced by marijuana use. Even infants have been born addicted to opioids due to prenatal exposure, causing severe withdrawal symptoms and lasting developmental impacts.
- c. Arkansans who have never taken opioids have also suffered the costs of Walgreens' public nuisance. Many have endured both the emotional and financial burdens of caring for loved ones addicted to or injured by opioids and the loss of companionship, income, or other support from family members who have used, abused, become addicted to, overdosed on, or been killed by opioids.
- d. More broadly, opioid use and misuse have driven Arkansans' health care costs higher.
- e. Employers have lost the value of productive and healthy employees who suffered from the adverse consequences of opioid use.
- f. Walgreens' success in flooding the market with opioids has also created an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury. Walgreens' scheme has created both ends of a new secondary market for opioids—providing both the supply of narcotics to sell and the demand of addicts to buy them.
- g. This demand also has created additional illicit markets in other opiates, particularly heroin. The low cost of heroin has led some of those who initially became addicted to prescription opioids to migrate to cheaper heroin, fueling a new heroin epidemic in the process.
- h. The diversion of opioids into the criminal market and the increase in the number of individuals who abuse or are addicted to opioids has increased the demands on emergency services and law enforcement in the State.
- i. All of this has caused significant harm to the community—in lives lost; addictions endured; the creation of an illicit drug market and all its concomitant crime and costs; unrealized economic productivity; and broken families and homes.
- j. These harms have taxed the human, medical, public health, law enforcement, and financial resources of the State.

k. Walgreens' interference with the comfortable enjoyment of the life of a substantial number of people is entirely unreasonable, because there is little social utility to opioid use and any potential value is outweighed by the gravity of the harm inflicted by Walgreens' actions.

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

94. Walgreens has engaged in the massive distribution and dispensing of opioids for use by the citizens of the State of Arkansas.

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

96. Walgreens' actions were, at the least, a substantial factor in opioids becoming widely available and widely used. Without Walgreens' 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.

97. 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.

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

99. Walgreens' 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.

100. Walgreens created or assisted in the creation of the epidemic of opioid use, abuse, and injury, and is liable for abating it.

COUNT II: Negligence

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

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

103. By engaging in negligent conduct that created an unreasonable risk of harm to others, Walgreens failed to exercise reasonable care to prevent harm to others. To 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.

104. Walgreens is 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 Walgreens in relation to the State of Arkansas and its citizens.

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

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

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

COUNT III: Violations of Arkansas’s Deceptive Trade Practices Act

(Ark. Code Ann. §§ 4-88-101, *et seq.*)

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

109. Opioids are “goods” as defined under Ark. Code Ann. § 4-88-102(4), Walgreens 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).

110. Walgreens’ actions alleged herein constitute deceptive and unconscionable trade practices in violation of Ark. Code Ann. § 4-88-107 and § 4-88-108. Specifically, and without limitation, Walgreens:

- a) 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.
- b) 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.
- c) 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).
- d) 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).
- e) 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).

111. As a result of Walgreens' 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.

112. Walgreens' 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 Walgreens' deceptive practices.

113. Because of these violations and Walgreens' 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 Walgreens and others.

114. As a result of Walgreens' 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).

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

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

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

COUNT IV: Unjust Enrichment

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

119. As a direct and proximate result of the unlawful conduct described herein, Walgreens has been and will continue to be unjustly enriched.

120. Walgreens has 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 Walgreens 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.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

A. That the acts alleged herein be adjudged and decreed to be unlawful in violation of State 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 Walgreens in favor of Plaintiff;

C. That Plaintiff recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorneys' fees as provided by law;

D. That Walgreens be ordered to pay civil penalties for violations of applicable statutes;

E. That Walgreens be ordered to abate the public nuisance it created in violation of State law; and

F. That the Court order such other and further relief as the Court deems just, necessary, and appropriate.

JURY DEMAND

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

Respectfully submitted,

STATE OF ARKANSAS
LESLIE RUTLEDGE, ATTORNEY GENERAL

By: /s/ Leslie Rutledge
Leslie Rutledge, ABN 2001126
Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682-2007
Facsimile: (501) 682-8118
Leslie.Rutledge@ArkansasAG.gov

Charles J. Harder, ABN 86080
Deputy Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682-4058
Facsimile: (501) 682-2000
Chuck.Harder@ArkansasAG.gov

Kate Donovan, ABN 98189
Senior Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682-8114
Facsimile: (501) 682-8118
Kate.Donoven@ArkansasAG.gov

Shannon Halijan, ABN 2005136
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 683-1509
Facsimile: (501) 682-8118
Shannon.Halijan@ArkansasAG.gov

OF COUNSEL:

Gary B. Rogers, ABN 82139
Michael G. Smith, ABN 81146
DOVER DIXON HORNE, PLLC
425 West Capitol Avenue, Suite 3700
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 375-6484
grogers@ddh.law
msmith@ddh.law