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11 **SUPERIOR COURT OF ARIZONA**
12 **IN MARICOPA COUNTY**

13 STATE OF ARIZONA, *ex rel.* KRISTIN K.
14 MAYES, Attorney General,

15 Plaintiff,

16 v.

17 CVS PHARMACY, INC.,

18 Defendant.
19
20

Case No. **CV2023-017049**

COMPLAINT

(Assigned to the Hon.)

21 Plaintiff, State of Arizona *ex rel.* Kristin K. Mayes, the Attorney General (the “State”),
22 brings this action (the “Complaint”) against Defendant CVS Pharmacy, Inc. (“Defendant”)
23 pursuant to the Arizona Consumer Fraud Act and to the common law of the State of Arizona and
24 alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. The State brings this action pursuant to the Arizona Consumer Fraud Act, Arizona
27 Revised Statutes (“A.R.S.”) §§ 44-1521 to -1534 to obtain injunctive relief to permanently
28 enjoin and prevent the unlawful acts and practices alleged in this Complaint, and to obtain other

1 relief, including restitution, disgorgement of profits, gains, gross receipts, or other benefits, civil
2 penalties, and costs and attorneys' fees.

3 2. This Court has subject-matter jurisdiction.

4 3. This Court may issue appropriate orders both prior to and following a
5 determination of liability pursuant to A.R.S. § 44-1528.

6 4. Defendant caused events to occur in this state out of which the claims which are
7 the subject of this Complaint arose.

8 5. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

9 **PARTIES**

10 6. Plaintiff is the State of Arizona *ex rel.* Kristin K. Mayes, the Attorney General of
11 Arizona, who is authorized to bring this action under the Arizona Consumer Fraud Act (the
12 "CFA"), A.R.S. §§ 44-1521 to -1534.

13 7. Defendant **CVS Pharmacy, Inc.** is a corporation organized under the laws of
14 Rhode Island and has its principal place of business in Rhode Island, at One CVS Drive,
15 Woonsocket, Rhode Island 02895.

16 8. Defendant conducts business in the State of Arizona.

17 9. Whenever in this Complaint it is alleged that Defendant did any act, it is meant
18 that Defendant:

19 a. Performed or participated in the act; or

20 b. Its officers, successors in interest, agents, partners, trustees, or employees
21 performed or participated in the act on behalf of and under the authority of the Defendant.

22 **ALLEGATIONS**

23 10. The United States saw a nearly four-fold increase in the annual number of opioid
24 pills dispensed by pharmacies between 1999 and 2014. This increase contributed to numerous
25 instances of opioid abuse, dependence, addiction, and overdose deaths in the State of Arizona.
26 It also contributed to a sharp increase in the use of even more powerful drugs such as fentanyl
27 and heroin, which are sometimes used by themselves and other times used in combination with
28

1 prescription opioids. Fentanyl and heroin use exacerbated opioid abuse, dependence, addiction,
2 and overdose deaths in the State of Arizona.

3 11. Among the ways that the surge in the use of prescription opioids has caused the
4 current public health crisis is through the diversion of prescription opioids from legitimate
5 distribution channels to illegitimate and illegal channels. Diversion can range from forging
6 prescriptions, to using legitimate prescriptions to obtain pills that can be resold on the street, to
7 obtaining prescriptions from corrupt prescribers who are profiting off of their prescription pads.

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

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

16 14. As a dispenser of opioids, Defendant played a crucial role in stopping the
17 diversion of opioids. The law makes pharmacies and pharmacists the last line of defense in
18 preventing the illegal diversion of controlled substances.

19 15. Specifically, the federal Controlled Substances Act, similar to parallel state law,
20 obligates pharmacies to practice their "corresponding responsibility" to dispense only legitimate
21 prescriptions for controlled substances written for legitimate medical purposes. 21 C.F.R.
22 § 1306.04(a).

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

27 17. Red flags can relate to the prescriber, the patient, and/or the physical prescription
28 itself. Examples of red flags include, but are not limited to: (1) patients who seek to fill opioid

1 prescriptions written by multiple doctors over a short period; (2) patients who seek to pay in
2 cash for an opioid prescription despite having insurance information on file; (3) opioid
3 prescriptions that appear altered or photocopied; (4) opioid prescriptions that contain
4 misspellings or non-standard abbreviations; or (5) opioid prescriptions written by a doctor
5 located far away from the patient's residence or the pharmacy's location.

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

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

16 20. Defendant failed to perform their corresponding responsibility adequately by
17 implementing insufficient controls to identify and resolve signs of diversion, as required by
18 federal and state controlled substances laws.

19 21. Defendant had policies with the stated purpose of identifying suspicious opioid
20 orders and conducting due diligence to resolve the suspicion. But Defendant frequently
21 designed, or applied, its policies in such a manner that they were ineffective controls against
22 diversion, thereby violating its legal obligations to guard against diversion of opioids by
23 practicing its corresponding responsibility.

24 22. The sheer volume of diverted opioids has wreaked havoc throughout the State of
25 Arizona.

26 23. Yet for numerous opioid prescriptions in the State of Arizona that resulted in one
27 or more red flags, Defendant nevertheless dispensed the opioids without first making sufficient
28 inquiries into the legitimacy of the prescription. Defendant also implemented policies in which

1 its pharmacists were given insufficient time and resources to practice their corresponding
2 responsibility, resulting in Defendant's pharmacists too often ignoring or insufficiently
3 investigating the red flags that they did identify.

4 24. Year after year as its opioid dispensing increased and the opioid crisis grew,
5 Defendant failed to practice its corresponding responsibility, including dispensing controlled
6 substances without first resolving the red flags presented by suspicious prescriptions.

7 25. Defendant knew that its internal compliance program was inadequate to fulfill its
8 anti-diversion duties pursuant to state and federal law.

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

17 **FIRST CLAIM FOR RELIEF**

18 **Violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534**

19 27. The State realleges all prior allegations of this Complaint as though fully set forth
20 herein.

21 28. Defendant, in the course of dispensing opioid-containing prescription drugs,
22 engaged in unfair or deceptive acts and practices that are prohibited by the Arizona Consumer
23 Fraud Act.

24 29. The conduct described in the preceding paragraphs of this Complaint constitutes
25 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
26 misrepresentations, or concealment, suppression or omission of material facts with intent that
27 others rely on such concealment, suppression or omission, in connection with the sale or
28 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to -1534, including, but not

1 limited to:

2 a. Defendant, in the course of dispensing opioid-containing prescription
3 drugs, engaged in deceptive and unfair acts and practices that are prohibited by the
4 Arizona Consumer Fraud Act; and

5 b. Defendant's practices were likely to and did in fact deceive and mislead
6 prescribers into prescribing and consumers into seeking and taking medically
7 unnecessary and in many cases, harmful quantities and strengths of opioids in the State of
8 Arizona, and did so with intent that others rely on such concealments, suppressions, or
9 omissions.

10 30. Defendant's practices were also unfair to consumers because they caused
11 substantial injury to patients in the form opioid abuse disorder, overdose and in some cases
12 death, which could not have been reasonably avoided by those consumers, and which did not
13 provide any offsetting benefits

14 31. Defendant's unfair or deceptive acts and practices include, but are not limited to,
15 the following:

16 a. Failing to provide effective controls and procedures to guard against
17 diversion of opioids in the State of Arizona; and

18 b. Failing to practice its corresponding responsibility and dispensing opioids
19 in the State of Arizona despite not resolving red flags indicating that a prescription may
20 be for an illegitimate purpose.

21 32. While engaging in the acts and practices alleged in this Complaint, Defendant
22 knew or should have known that its conduct was of the nature prohibited by A.R.S. § 44-1522,
23 subjecting itself to enforcement and penalties as provided in A.R.S. § 44-1531(A).

24 33. With respect to the concealments, suppressions, or omissions of material fact
25 described above, Defendant did so with intent that others rely on such concealments,
26 suppressions, or omissions.

27 34. With respect to the unfair acts and practices described above, these acts and
28 practices caused or were likely to cause substantial injuries to consumers that were not

1 reasonably avoidable by consumers and were not outweighed by countervailing benefits to
2 consumers.

3 **SECOND CLAIM FOR RELIEF**

4 **Common Law Public Nuisance**

5 35. The State realleges all prior allegations of this Complaint as though fully set forth
6 herein.

7 36. Defendant, in the course of dispensing opioid-containing prescription drugs,
8 created a public nuisance by unreasonably interfering with rights common to the general public
9 as prohibited by the common law of the State of Arizona. Defendant's acts and practices that
10 unreasonably interfered with rights common to the general public include, but are not limited to,
11 the following:

12 a. Failing to provide effective controls and procedures to guard against
13 diversion of opioids in the State of Arizona; and

14 b. Failing to practice its corresponding responsibility and dispensing opioids
15 in the State of Arizona despite not resolving numerous red flags indicating that
16 prescriptions may have been for illegitimate purposes.

17 37. Defendant as alleged and detailed above has created a public nuisance by
18 unreasonably interfering with rights common to the general public as prohibited by the common
19 law of the State of Arizona.

20 38. The conduct of Defendant significantly interfered with public health and safety by
21 creating an opioids crisis leading to many hundreds of deaths and thousands of serious injuries.

22 39. The harm created by the conduct of Defendant is continuing in nature and
23 produced serious long-term effects.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the State respectfully requests that the Court:

26 40. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction in accordance
27 with Ariz. R. Civ. P. 65(d)(1), enjoining and restraining (a) Defendant, (b) its officers, agents,
28 servants, employees, attorneys, and (c) all persons in active concert or participation with anyone

1 described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in deceptive,
2 misleading, or unfair acts or practices, or concealments, suppressions, or omissions, that violate
3 the CFA, A.R.S. § 44-1522(A), including specific injunctive relief barring Defendant from
4 engaging in the unlawful acts and practices set forth above;ⁱ

5 41. Pursuant to A.R.S. § 44-1528(A)(2), order Defendant to restore to all persons in
6 interest any monies or property, real or personal, which may have been acquired by any means
7 or any practice in this article declared to be unlawful;

8 42. Pursuant to A.R.S. § 44-1528(A)(3), order Defendant to disgorge all profits, gains,
9 gross receipts, or other benefits obtained as a result of its unlawful acts alleged herein;

10 43. Pursuant to A.R.S. § 44-1531, order Defendant to pay to the State of Arizona a
11 civil penalty of up to \$10,000 for each willful violation by Defendant of A.R.S. § 44-1522;

12 44. Pursuant to A.R.S. § 44-1534, order Defendant to reimburse the State for its costs
13 and attorneys' fees incurred in the investigation and prosecution of Defendant's activities
14 alleged in this Complaint;

15 45. Pursuant to A.R.S. § 44-1201, require Defendant to pay pre-judgment and post-
16 judgment interest to the State and all consumers;

17 46. Award the State such further relief the Court deems just and proper under the
18 circumstances.

19 DATED this 30th day of October 2023.

20
21 KRISTIN K. MAYES
22 Attorney General

23
24 By: 
25 LESLIE KYMAN COOPER
26 Division Chief Counsel
27 *Attorneys for the State of Arizona*

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