

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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THE PEOPLE OF THE STATE OF NEW YORK, :
by LETITIA JAMES, :
Attorney General of the State of New York, :
: **COMPLAINT**
: Assigned to Justice:
Plaintiff, :
:
:
v. :
: Index No.:
:
CVS PHARMACY, INC; WALGREEN CO.; :
WALGREEN EASTERN CO; and :
WALMART, INC., :
:
Defendants. :
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Plaintiff, The People of the State of New York, through its attorney, Letitia James, Attorney General of the State of New York, brings this action against Defendants CVS Pharmacy, Inc.; Walgreen Co.; Walgreens Eastern Co.; and Walmart, Inc. (collectively, “Defendants”) pursuant to New York Executive Law § 63(12), for repeated and persistent illegality as well as under the New York common law doctrine of public nuisance. Plaintiff alleges as follows:

I. JURISDICTION AND STATUTORY AUTHORITY

1. This enforcement action is brought by The People of the State of New York, by its attorney, New York Attorney General Letitia James, in the public interest pursuant to the authority granted by New York Executive Law § 63(12), upon the ground that Defendants have engaged in repeated and persistent illegal conduct in violation of the New York Controlled Substance Act, N.Y. Public Health Law §§ 3300 *et seq.* and its implementing regulations, 10 NYCRR §§ 80 *et seq.*, and have created a public nuisance prohibited by the common law of the State of New York.

2. At all times described below, Defendants and their agents have engaged in persistent fraud and illegality in conducting their businesses within the meaning of N.Y. Executive Law § 63(12).

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

II. PERSONAL JURISDICTION and VENUE

4. The Court has jurisdiction over Defendants pursuant to CPLR § 301 because Defendants have each transacted business within New York at all times relevant to the Complaint.

5. Venue for this action properly lies in the Supreme Court of the State of New York, Suffolk County, pursuant to CPLR § 505.

III. PARTIES

6. Plaintiff is the People of the State of New York, through its attorney, Letitia James, Attorney General of the State of New York. The Attorney General is charged with, among other things, enforcing and seeking redress for violations of N.Y. Executive Law § 63(12) and the creation and/or maintenance of a public nuisance.

7. 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.

8. Defendant Walgreen, Co. is a corporation organized under the laws of Illinois and has its principal place of business in Illinois, at 108 Wilmot Road, Deerfield, Illinois 60015.

9. Defendant Walgreens Eastern Co. is a corporation organized under the laws of New York and has its principal place of business in Illinois at 108 Wilmot Road, Deerfield, Illinois 60015.

10. Defendant Walmart, Inc. is a corporation organized under the laws of Delaware and has its principal place of business in Arkansas, at 702 S.W. 8th Street, Bentonville, Arkansas 72716.

11. Defendants conduct business in the State of New York.

12. 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

13. 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 New York. 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 New York.

14. As a result, by 2019 more than 130 people in the United States, and about nine who live in New York, died each day as a result of opioid-related overdoses. As of November

2022, a New Yorker died from an opioid overdose less than every two hours. Among New York residents, the number of opioid-involved overdose deaths increased each year between 2010 and 2017, from 1,074 deaths to 3,224 deaths. In 2020, the total was 4,233 deaths—a 294% increase since 2010. This equates to the State’s death rate from opioid overdoses increasing from 5.0 per 100,000 population in 2010, to 25.3 per 100,000 population in 2021.

15. New York has also seen a significant increase in the number of its citizens seeking treatment for an opioid use disorder over the past decade that has only in recent years begun to level off. In 2010, 602.4 New Yorkers per 100,000 were admitted to the State’s Office of Addiction Services and Supports (“OASAS”)-certified substance use disorder treatments programs for opioids. That number increased every year through 2016, to a peak of 755.8 per 100,000. Only then did it begin to decrease to 673.9 by 2019, the most recent year in which numbers were not impacted by the COVID-19 pandemic (and for which the State Department of Health has warned do not represent a “typical year for admissions”).

16. The impact of the opioid epidemic has also been felt by some of New York’s most vulnerable constituencies. In New York, the incidence of neonatal abstinence syndrome per every 1,000 newborn discharges was 5.0 in 2017, and remained as high as 4.6 in 2019 and 4.9 in 2020. By comparison, in 2005, the incidence of neonatal abstinence syndrome per every 1,000 newborns was only 1.2.

17. As part of efforts to stop and remedy this epidemic, New York and its subdivisions have settled with all of the major opioid manufacturers and distributors for over \$2.5 billion. County jury found Teva liable for the opioid epidemic public nuisance it helped create in New York after a landmark seven-month trial. These dollars will go primarily towards

the abatement of the opioid epidemic, but they are not nearly enough given the size of the ongoing and sprawling harms that have been caused to New Yorkers and their communities.

18. For example, over the past few years, in response to the opioid crisis and the need for widespread treatment, New York has had to greatly expand its use of (and funding for) opioid use disorder treatment facilities, including especially mobile treatment centers to help serve high-need counties in underserved areas.

19. New York will have to continue to invest billions of dollars in State and federal funding to even begin to repair the harm that Publicis and its clients have caused. In fiscal year 2020-21, OASAS spent \$246.2 million on directly opioid-related costs, split between funding to community-based providers and direct state-operated services. In the 2020-21 fiscal year, the State spent \$9 million on naloxone kits alone.

20. As of November 2022, OASAS was projected to spend \$1.1 billion in the 2022-23 fiscal year, a substantial portion of which will go to address the opioid crisis driven by Publicis and its clients.

21. In addition to the direct treatment costs of remediating the opioids crisis, the opioid epidemic in New York has harmed New York and required it to continue expending significant resources to address the opioid epidemic in other ways, including:

- Health care services for the indigent, including substance and opioid use disorder treatment and medication-assisted treatment;
- State workers' compensation benefits;
- Criminal justice system, including law enforcement, probation, community corrections, imprisonment, parole, and provision of treatment at correctional facilities;
- Education and treatment programs at college/university health facilities;
- Increased costs for first responder services, including increased provision of naloxone to first responders across New York;

- Adult protective services;
- Child welfare services, including dependency and neglect proceedings and foster care;
- Work/food/employment assistance;
- Early childhood development for children born with neonatal abstinence syndrome; and
- Lost productivity/Lost tax revenue.

22. 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.

23. The federal Controlled Substances Act, along with New York'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).

24. 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.

25. 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.

26. 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).

27. Similarly, New York's State Controlled Substance Act and its implementing regulations obligate pharmacists and pharmacies to exercise their corresponding responsibility only to dispense controlled substances in the course of professional practice for legitimate medical purposes. N.Y. Public Health Law § 3333(1) ("A licensed pharmacist may, in good faith and in the course of his or her professional practice, sell and dispense to an ultimate user controlled substances only upon the delivery of an official New York state prescription or the receipt of an electronic prescription to such pharmacist."); 10 NYCRR § 80.65 ("A prescription, in order to be effective in legalizing the possession of controlled substances, shall be issued for legitimate medical purposes only. The responsibility for the proper prescribing and dispensing of controlled substances shall be on the physician, dentist, podiatrist, veterinarian or other authorized practitioner, but a corresponding liability shall rest with the pharmacist who fills the prescription."); *see also*, 10 NYCRR § 80.6(d) ("Persons operating pharmacies and supervising pharmacists are not relieved of their responsibility to detect and correct any diversion or mishandling of controlled substances by a delegation of responsibility.").

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. The sheer volume of diverted opioids has wreaked havoc throughout New York.

35. Yet for numerous opioid prescriptions in New York 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.

36. 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.

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

38. 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 New York, 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.

FIRST CAUSE OF ACTION**Repeated and Persistent Illegality in Violation of N.Y. Executive Law § 63(12) (Violations of The New York Controlled Substance Act, N.Y. Public Health Law §§ 3300 et seq. and 10 NYCRR § 80 et seq.)**

39. Plaintiff realleges, incorporates and adopts by reference the allegations contained in paragraphs 1 through 29 above.

40. Each Defendant engaged in repeated and/or persistent illegality in violation of Executive Law § 63(12) in the course of its sale and dispensing of opioids in New York State.

41. Defendants, in the course of selling and dispensing opioid-containing prescription drugs in New York, engaged in illegal practices that are prohibited by the New York Controlled Substance Act, N.Y. Public Health Law §§ 3300 *et seq.* and its implementing regulations, 10 NYCRR §§ 80 *et seq.* Defendants' repeated and/or persistent illegal conduct includes, but is not limited to, the following:

- a. Failing to ensure that opioids were sold and dispensed only upon the receipt of a *bona fide* prescription to ultimate users with a legitimate medical need in violation of N.Y. Public Health Law § 3333(1); and
- b. Dispensing and selling opioids to patients in New York despite not resolving red flags indicating that a prescription may be for an illegitimate and/or non-medical purpose in violation of Defendants' corresponding responsibility under 10 NYCRR § 80.65.

42. Each Defendant damaged Plaintiff and numerous other individuals and entities resident in New York, and obtained ill-gotten profits, through its repeated and persistent illegality in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION
(Common Law Public Nuisance)**

43. Plaintiff realleges, incorporates and adopts by reference the allegations contained in paragraphs 1 through 29 above.

44. Residents of the State of New York enjoy common rights, including, without limitation: (i) an honest and effective marketplace for healthcare treatment; (ii) the maintenance of a well-regulated system for the dispensing and sale of controlled substances for medically-necessary purposes; (iii) public safety and public order, unburdened by the introduction of foreseeable dangers such as those caused by the over-prescription, over-dispensing and oversupply of controlled substances.

45. Each Defendant owed a duty to the public not to offend, interfere with, or cause damage to such common rights through illegal actions and omissions in violation of applicable laws and regulations.

46. Defendants, in the course of dispensing opioid-containing prescription drugs, created a public nuisance by substantially and unreasonably interfering with and causing damage to a considerable number of people in the exercise and enjoyment of such common rights as prohibited by the common law of New York. Defendants' acts and practices that substantially and unreasonably interfered with and caused damage to 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 diversion of opioids in New York;
- b. Dispensing and selling opioids to patients in New York in bad faith and/or outside the course of Defendants' professional practice; and

- c. Failing to practice their corresponding responsibility and dispensing and selling opioids in New York despite not resolving numerous red flags indicating that prescriptions may have been for illegitimate purposes.

47. Each Defendant knew, or should have foreseen, that its actions and omissions would result in offense, interference, and/or damage to the public in the exercise of the aforementioned common rights.

48. The offense, interference, and/or damage to the public in the exercise of common rights caused by Defendants' collective actions and omissions remains unabated.

REQUEST FOR RELIEF

49. WHEREFORE, Plaintiff, The People of the State of New York, respectfully requests that the Court enter an Order:

- a. Permanently enjoining, pursuant to Executive Law § 63(12), Defendants, Defendants' officers, agents, servants, employees, attorneys, successors and assigns – and any other person in active concert or participation with Defendant – from dispensing or selling controlled substances in bad faith or outside the scope of their professional practice;
- b. Ordering each Defendant, pursuant to Executive Law § 63(12), to pay compensatory restitution and damages for harms suffered by consumers, as well as disgorge all profits it wrongfully obtained as a result of its illegal practices in amounts to be determined at trial;
- c. Ordering each Defendant, pursuant to Public Health Law § 12(1), to pay civil penalties for each separate instance in which it violated the New

York Controlled Substance Act, Public Health Law §§ 3300 *et seq.* and/or 10 NYCRR §§ 80 *et seq.*, in the amount of:

- i. \$2,000 for every such violation;
 - ii. \$5,000 for every subsequent instance of the same violation within twelve months of the first, in instances where the violations were a serious threat to the health and safety of an individual or individuals; and
 - iii. \$10,000 for every violation that directly resulted in serious physical harm to any patient or patients;
- d. Ordering Defendants, jointly and severally, to endow an abatement fund with sufficient capital to eliminate the public nuisance they are responsible for creating, exacerbating, and/or perpetuating;
- e. Awarding Plaintiff, pursuant to common law, direct and consequential damages from each Defendants caused by its conduct offending, interfering with and/or causing damage to the public in the exercise and enjoyment of its common rights, in an amount to be determined at trial; and
- f. Awarding Plaintiff's reasonable attorneys' fees and costs.

50. Plaintiff further requests that this Court grant all such other relief to which the Plaintiff is entitled or the which the Court may deem just.

Respectfully submitted,

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