

**COMMONWEALTH OF KENTUCKY**  
**JEFFERSON CIRCUIT COURT, DIV. \_\_\_\_\_**  
**CIVIL ACTION NO. 18-CI-\_\_\_\_\_**

COMMONWEALTH OF KENTUCKY, ex. rel.  
ANDY BESHEAR, ATTORNEY GENERAL,

PLAINTIFF

v.

CARDINAL HEALTH 5, LLC; CARDINAL  
HEALTH 100, INC.; CARDINAL HEALTH 108,  
LLC; CARDINAL HEALTH 110, LLC;  
CARDINAL HEALTH 113, LLC; CARDINAL  
HEALTH 132, LLC; CARDINAL HEALTH 200,  
LLC; CARDINAL HEALTH 414, LLC;  
AND THE HARVARD DRUG COMPANY, LLC,  
D/B/A MAJOR PHARMACEUTICALS, D/B/A  
RUGBY LABORATORIES

DEFENDANTS

Serve: CT Corporation System  
306 W. Main Street, Suite 512  
Frankfort, KY 40601  
REGISTERED AGENT

**COMPLAINT**

The Plaintiff, the Commonwealth of Kentucky (“the Commonwealth”), by and through its duly elected Attorney General, Andy Beshear, for its Complaint against Defendants, Cardinal Health 5, LLC; Cardinal Health 100, Inc.; Cardinal Health 108, LLC; Cardinal Health 110, LLC; Cardinal Health 113, LLC; Cardinal Health 132, LLC; Cardinal Health 200, LLC; Cardinal Health 414, LLC; and The Harvard Drug Company, LLC, d/b/a Major Pharmaceuticals, d/b/a Rugby Laboratories (collectively “Defendant Cardinal”) states a follows:

**I. INTRODUCTION**

1. This is a public interest lawsuit brought by the Kentucky Attorney General under

Kentucky constitutional, statutory, regulatory and common law authority to recover any and all damages, restitution, reimbursement, disgorgement, statutory civil penalties, injunctive relief, and other relief deemed appropriate by the Court from Cardinal as a consequence of its role fueling the opioid epidemic in the Commonwealth through fraudulent, unfair, false, misleading, and/or deceptive business practices.

2. The actions of Defendant Cardinal include filling massive and/or “suspicious” orders, including orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency, from Kentucky pharmacies for prescription opioids, shipping and/or distributing those massive quantities and/or suspicious orders of opioid drugs throughout the Commonwealth, shipping drugs into the Commonwealth without adequate policies and procedures in place to detect suspicious orders, failing to report to appropriate authorities such suspicious orders, and failing to halt such excessive and suspicious shipments. These orders include orders for such large quantities of prescription narcotic pain medication that there could be no associated legitimate medical purpose.

3. The prescription drugs in question, opiates, are narcotic drugs derived from or possessing properties similar to opium and heroin, and are generally categorized as “Schedule II” drugs due to their high potential for abuse and potential to cause severe psychological or physiological dependence<sup>1</sup>. The terms “opioids” and “opioid analgesics” describe the entire class of natural and synthetic opiates.

4. The Food and Drug Administration (“FDA”) originally approved opioid treatment

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<sup>1</sup> Codeine, also derived from the opium poppy, is a Schedule III narcotic when in a quantity of less than 90 milligrams per dosage unit. *See* DEA Drug Schedules <https://www.dea.gov/druginfo/ds.shtml> (last access February 16, 2018).

for short-term post-surgical or trauma-related pain, and for palliative (end-of-life) care.<sup>2</sup> Later, the approved use was extended to reach treatment of patients with “chronic pain,” pain lasting more than three months.

5. Following the extension of the approved use, the companies who manufactured and sold this class of drugs in the United States experienced a boon in their business. However, with this boon came a scourge that infected this country in the form of a public health epidemic caused by widespread addiction to opioids like OxyContin and Percocet, as well as their generic forms, oxycodone and hydrocodone. The scourge is now commonly known as the “opioid epidemic.”<sup>3</sup> More of a modern plague, the opioid epidemic continues to mushroom, despite widespread media attention, many states taking action, and national government response.

6. While there are many purported causes related to the opioid epidemic, this action is focused solely on the actions of a particular company that was one of the dominant pharmaceutical wholesalers and market leaders. Defendant Cardinal saturated and flooded the Commonwealth of Kentucky with excessive amounts of dangerous and addictive prescription opioids, while disregarding their own real-time data, customer thresholds, internal reports and common sense. Upon information and belief, Cardinal failed to report red flag, facially suspicious orders in the Commonwealth and opted instead to reap a windfall off the wave of addiction.

7. During the creation and inflation of this epidemic, Defendant Cardinal knew or should have known of the dangerous, addictive qualities, and high rates of loss and

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<sup>2</sup> Opioid was originally a term denoting synthetic narcotics resembling opiates but increasingly used to refer to both opiates and synthetic narcotics. Stedman’s Medical Dictionary 27<sup>th</sup> Edition.

<sup>3</sup> L. Manchikanti et al., *Opioid Epidemic in the United States* (July 2012) <https://www.ncbi.nlm.nih.gov/pubmed/22786464>.

misappropriation (“diversion rates”) of the drugs it shipped.

8. Upon information and belief, Defendant Cardinal received millions of dollars per year for distributing excessive volumes of opioids into Kentucky. Defendant Cardinal, in order to maintain or increase its profits and market dominance, situated itself to play a significant role in creating a public nuisance of historic proportions.

9. As set forth below, shipments of massive quantities of opioids into the Commonwealth by Cardinal, particularly to small sparsely populated rural counties in Eastern Kentucky, were unfair practices that were suspicious and excessive on their face.

10. As detailed further below, pharmaceutical wholesalers like Cardinal are required to “know their customers” and set thresholds for each customer’s anticipated order. When considering both the data available to Cardinal regarding the populations of the towns it shipped to and the customer thresholds they created based on said data, Cardinal violated several duties charged by law and by the nature of its industry.

11. Due to Defendant Cardinal’s continued proliferation of dangerous and addictive prescription opioids, citizens of Kentucky suffered from prescription drug addiction and abuse. A reasonably foreseeable result of this widespread addiction was patients’ transitioning their use and abuse of prescription opioids to illegal street drugs like heroin and carfentanil. The foreseeable results of Defendant Cardinal’s actions include loss of jobs and productivity, loss of health and enjoyment of life, increased financial burdens to the Commonwealth to respond to the devastation caused by the wave of addiction and, most tragically, the lost lives of thousands of Kentuckians.<sup>4</sup> Sadly, in 2015 Kentucky had the third highest drug overdose death rate, behind

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<sup>4</sup> See Nora D. Volkow, M.D. and A. Thomas McLellan, Ph.D., *Opioid Abuse in Chronic Pain – Misconceptions and Mitigation Strategies*, NEW ENG. J. MED., 374;1253-63 (March 31, 2016).

only West Virginia and New Hampshire.<sup>5</sup> Even worse, in 2016 the Kentucky Office of Drug Control Policy reported 1,404 overdose deaths.<sup>6</sup>

12. The citizens of Kentucky are left in the wake of this wrongful and illegal conduct, spread out among our many small towns and cities, endeavoring to restore order and put an end to this public health crisis in the face of wave after wave of excessive opioid distribution.

13. The Commonwealth's response to the health emergency created by Defendant Cardinal includes, but is not limited to, providing or reimbursing for medical treatment; shouldering the increased financial burden of public health insurance; dispatching emergency services; investigating and prosecuting drug-related crimes; incarcerating perpetrators; supervising and rehabilitating the addicted; preventing, investigating, and treating overdoses; providing foster care for children whose parents are in prison or dead from overdosing, or simply cannot care for them due to addiction; assembling necessary response teams; and tending to the infirm, dying, and dead.

14. The Kentucky Medicaid program alone has paid millions of dollars for medically unnecessary prescriber visits and improper prescriptions as well as addiction treatment and services, including emergency room admissions, inpatient hospitalizations, drug treatment, rehabilitation services, hepatitis treatments, and a multitude of other adverse consequences of addiction afflicting Kentucky Medicaid recipients who became addicted to the controlled substances that Defendant Cardinal excessively distributed in the Commonwealth.

15. This action is therefore brought on behalf of the Commonwealth to: 1) stop

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<sup>5</sup> Rate per 100,000 population age-adjusted to the 2000 U.S. standard population using the vintage 2015 population. Source: National Vital Statistics System, Mortality File, CDC WONDER.

<sup>6</sup> See Commonwealth of Kentucky Justice & Public Safety Cabinet 2016 Overdose Fatality Report, 2 <https://odcp.ky.gov/Documents/2016%20ODCP%20Overdose%20Fatality%20Report%20Final.pdf>.

Defendant Cardinal from fulfilling suspicious orders for opioids; 2) recover the damages suffered by Kentucky and its citizens; 3) recoup the expenses, penalties owed, and disgorge the amounts Defendant Cardinal unjustly enriched itself with; and, perhaps most importantly, 4) to enjoin and abate the continuing public nuisance caused in whole or in part, by the actions of Defendant Cardinal and force them to help solve the problem they both created and willingly profited from.

## II. PARTIES

16. Plaintiff is the Commonwealth of Kentucky, by and through its agent, Attorney General Andy Beshear, who is granted the right and duty under law to prosecute actions for abuse of public funds and torts harming the citizens of this state. The Commonwealth of Kentucky is and was a sovereign State and is a body politic created by the Kentucky Constitution and laws of the Commonwealth of Kentucky and, as such, is not a citizen of any State.

17. The Attorney General is the proper party to take action against Defendant for breach of state law and regulation. Andy Beshear is and was the duly elected Attorney General of Kentucky, an independent constitutional officer of the Commonwealth and its chief law enforcement officer, with full authority to initiate and prosecute cases, including this action, in which the Commonwealth has an interest. The Attorney General is vested with specific constitutional, statutory and common law authority to commence proceedings to enforce KRS 194A.505, KRS 205.8451 through KRS 205.8483, KRS 218A.240, KRS 315.235, KRS 367.170 *et seq.*, to initiate actions necessary to guard against unauthorized demands against the Treasury of the Commonwealth, to exercise all common law duties and authority pertaining to the office of the Attorney General under the common law pursuant to KRS 15.020, and pursuant to the Attorney General's *parens patriae* authority, to bring an action on behalf of the Commonwealth, its

departments and agencies, and its citizens. The Attorney General has determined that these proceedings are in the public interest.

### **Cardinal Health Defendants**

18. Defendants Cardinal Health 100, Inc. is a for-profit Ohio Corporation registered to do business in the Commonwealth Kentucky. Their principal place of business is 7000 Cardinal Place, Dublin, Ohio 43017.

19. Cardinal Health 113, LLC is a for-profit Wisconsin limited liability company registered to do business in the Commonwealth Kentucky. Their principal place of business is 7000 Cardinal Place, Dublin, Ohio 43017.

20. Cardinal Health 110, LLC; Cardinal Health 108, LLC; Cardinal Health 200, LLC; Cardinal Health 5, LLC; and Cardinal Health 414, LLC are for-profit Ohio limited liability companies registered to do business in the Commonwealth Kentucky. Their principal place of business is 7000 Cardinal Place, Dublin, Ohio 43017.

21. Cardinal Health 132, LLC, is a for-profit Delaware limited liability company with its principal place of business at 1330 Enclave Parkway, Houston, Texas 77077. It is registered to do business with the Kentucky Secretary of State.

22. The Harvard Drug Company, LLC, is a for-profit Michigan limited liability company with its principal place of business at 31778 Enterprise Drive, Livonia, Michigan 48150. The Harvard Drug Company, LLC, became a subsidiary of Cardinal Health, Inc., in 2015.

23. Each Defendant's registered agent is CT Corporation System, 306 W. Main Street Suite 512, Frankfort, KY 40601.

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

25. Specifically, Defendant Cardinal distributes pharmaceuticals to retail pharmacy operations, as well as institutional providers like hospitals and county health departments. Cardinal is the third largest pharmaceutical distributor in North America. Upon information and belief, Defendant distributed oxycodone and hydrocodone, among other opioids, in the Commonwealth of Kentucky between January 1, 2007, and December 31, 2016.

26. Upon information and belief, Defendant Cardinal maintained licensure through the Commonwealth of Kentucky for the wholesale distribution of controlled substances pursuant to multiple regulations, including the Kentucky Controlled Substances Act.

27. Kentucky law mandates that all drug distributors, including Defendant Cardinal, apply for and receive a license from the Kentucky Board of Pharmacy. KRS 315.402. Additionally, wholesale distributors of controlled substances, including Defendant Cardinal, must apply for and receive a license from the Kentucky Cabinet for Health and Family Services. KRS 218A.150. Continuing licensure is dependent upon compliance with laws and regulations relating to controlled substances. KRS 218A.160(1)(a), 201 KAR 2:105 Section 3(2)(a), 902 KAR 55.010, KRS 218A.240, and 21 U.S.C. § 823.

### **III. JURISDICTION AND VENUE**

28. The Jefferson Circuit Court has personal jurisdiction over Defendant, as Defendant purposefully availed itself of this forum by conducting business in the Commonwealth and by causing harm as a direct and proximate result of its actions. Defendant Cardinal has and does transact business from its Louisville locations, and/or solicited business in the Commonwealth, and/or derived substantial revenue from goods used or consumed or services rendered in the Commonwealth, and/or contracted to supply good or services in the Commonwealth, and/or caused tortious injury by an act or omission in the Commonwealth,

and/or caused tortious injury in the Commonwealth by an act or omission outside the Commonwealth. Defendant has the requisite minimum contacts with Kentucky necessary to permit this Court to exercise jurisdiction. Defendant has designated a registered agent for service of process and otherwise consented to the jurisdiction of Kentucky courts.

29. Jefferson Circuit Court has subject matter jurisdiction over the claims submitted pursuant to KRS 15.060, KRS 23A.010, KRS 194A.505(8), KRS 205.8469, KRS 315.235, and KRS 367.190 as the claims enumerated herein arise exclusively under Kentucky statutory and common law and from the *parens patriae* authority of the Attorney General to act on behalf of the Commonwealth of Kentucky and its citizens. The Commonwealth's claims are in excess of any minimum dollar amount necessary to establish the jurisdiction of the Court.

30. Plaintiff does not plead any cause of action or request any remedy arising under or founded in federal law. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332, as the Commonwealth is not a citizen of any state and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005.

31. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by the Complaint, as it sets forth herein exclusively viable state law claims against Defendant. Nowhere herein does Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in the allegations of this Complaint do not implicate any substantial federal issues and do not turn on the necessary interpretation of federal law. No federal issue is important to the federal system as a whole under the criteria set by the Supreme Court in Gunn v. Minton, 568 U.S. 251 (2013).

32. Specifically, the causes of action asserted, and the remedies sought herein, are founded upon the positive statutory, common, and decisional laws of Kentucky. Further, the

assertion of federal jurisdiction over the claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities. Accordingly, any exercise of federal jurisdiction is without basis in law or fact.

33. In this Complaint, Plaintiff cites or alludes to federal statutes, regulations or agency memoranda. Plaintiff does so only to establish Defendant's knowledge, state the duty owed under Kentucky law, or to explain the hybrid nature of industry oversight, not to allege an independent federal cause of action and not to allege any substantial federal question under Gunn v. Minton, *supra*.

34. Venue is appropriate in Jefferson Circuit Court under KRS 452.460, which allows venue in the county where the injury was suffered, and under KRS 452.450, which allows venue in the county in which the business is situated.

#### **IV. THE MEDICAID PROGRAM**

35. The Medicaid Program ("Medicaid") operates under Title XIX of the Social Security Act. Medicaid is a cooperative venture between the Federal and State governments to assist States in the provision of adequate medical care to its most vulnerable citizens, including the poor, the disabled, the elderly, the blind, pregnant women, infants and dependent children.

36. Within broad federal statutory and regulatory guidelines a State: (a) establishes its own eligibility standards; (b) determines the type, amount, duration, and scope of services; (c) sets the rate of payment for services; and (d) administers its own program. The Medicaid program is administered at the federal level by the United States Department for Health and Human Services, Centers for Medicare and Medicaid Services ("CMS").

37. The Department for Medicaid Services ("Kentucky Medicaid") is the single state agency charged with the administration of the Kentucky Medicaid program pursuant to Title XIX

of the Federal Social Security Act. 42 U.S.C. 1396a(a)(5), 42 C.F.R. § 431.10. 42 C.F.R. § 100, KRS 12.020 (II)(8)(k), KRS 194A.030(2), Chapter 205 of the Kentucky Revised Statutes, Title 907 of the Kentucky Administrative Regulations and other applicable law.

38. Upon information and belief, Kentucky Medicaid, among other State agencies, has paid and continues to pay substantial sums for the costs associated with treatment and services provided to opioid-addicted Medicaid beneficiaries whose addiction was created by availability and access to diverted drugs which were distributed in whole or in part by Cardinal.

## V. FACTUAL BACKGROUND

39. The opioid epidemic in America is unparalleled. On August 10, 2017, the President declared America's opioid crisis to be a national emergency. According to the Centers for Disease Control ("CDC"), the most recent data estimates that 142 Americans die every day from a drug overdose. Drug overdoses now kill more people than gun homicides and car crashes combined. Between 1999 and 2015, more than 560,000 people in this country died due to drug overdoses. Approximately 6 out of 10 drug overdose deaths are caused by opioids.<sup>7</sup>

40. Opioids are the prime contributor to the addiction and overdose crisis. In 2015, nearly two-thirds of drug overdoses were linked to opioids like Percocet, OxyContin, heroin, and fentanyl. Americans consume more opioids than any other country in the world. In 2015, the amount of opioids prescribed in the United States was enough for every American to be medicated around the clock for three weeks.<sup>8</sup>

41. Additionally, the Substance Abuse and Mental Health Services Administration

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<sup>7</sup> Letter from President's Commission on Combating Drug Addiction and the Opioid Crisis to the President of the United States (Nov. 1, 2017), [https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final\\_Report\\_Draft\\_11-1-2017.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf).

<sup>8</sup> *Id.*

(“SAMHSA”) Center for Behavioral Health and Statistics Quality (“CBHSQ”) reports that four out of every five new heroin users begin with prescription opioids.<sup>9</sup>

42. The reality for states like Ohio, West Virginia, and Kentucky is, incredibly, much worse. Kentucky’s overdose fatalities, already high, increased dramatically in 2015. Overdose deaths of Kentucky residents, regardless of where the death occurred, and non-residents who died in Kentucky, numbered 1,248 in 2015<sup>10</sup>, topping the already unacceptable 1,087 overdose deaths in 2014.<sup>11</sup> In 2015, drug overdoses accounted for 51.17% of Kentucky’s statewide accidental deaths, more than motor vehicle accidents, fire, drowning and gunshot wounds combined. In 2015, opioids accounted for 46.63% of the statewide total of drug related fatal overdose victims.<sup>12</sup>

**A. OPIOIDS ARE SCHEDULE II, HIGHLY ADDICTIVE DRUGS, KNOWN TO CAUSE USERS TO DEVELOP DRUG SEEKING BEHAVIORS.**

43. Opioids—once a niche drug—are now the most prescribed class of drugs, above even blood pressure medicine. While Americans represent only 4.6% of the world’s population, they consume 80% of the opioids supplied around the world and 99% of the global hydrocodone supply. In 2012, opioids generated a combined \$8 billion in revenue for drug companies; this revenue exceeded \$15 billion in 2016. The cost of the country’s opioid crisis is estimated to have exceeded \$1 trillion from 2001 to 2017, and is projected to cost an additional \$500 billion by 2020.<sup>13</sup>

44. Prescription opioids bind to receptors on the spinal cord and in the brain,

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<sup>9</sup> See *Id.* See also Ctrs. for Disease Control and Prevention, U.S. Dep’t of Health and Human Servs., *Today’s Heroin Epidemic*, <https://www.cdc.gov/vitalsigns/heroin/index.html> (last accessed Feb. 15, 2018).

<sup>10</sup> *2015 Overdose Fatality Report, Kentucky Office of Drug Control Policy* <https://odcp.ky.gov/Documents/2016%20ODCP%20Overdose%20Fatality%20Report%20Final.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *2015 Annual Report, Office of the Kentucky State Medical Examiner* <https://odcp.ky.gov/Reports/2016%20annual%20report.pdf>.

<sup>13</sup> See Wilson Hyan, *The Potential Societal Benefit of Eliminating Opioid Overdoses, Deaths, and Substance Use Disorders Exceeds \$95 Billion Per Year*, Altarum Center for Value in Health Care (2017).

dampening the perception of pain. Like heroin, opioids can create a euphoric high, and thereby possess addictive qualities. At certain doses, opioids can slow the user's breathing, causing respiratory depression and, ultimately, death. With prolonged use, a patient's tolerance increases, causing a correlating increased need in dose amounts and frequency of administration or use. The increased tolerance also increases the risk of significant side effects and addiction rate as well as decreases the effectiveness of patient weaning.

45. According to the CDC, the percentage of heroin users who also use opioid pain relievers rose from 20.7% between 2002 and 2004 to 45.2% between 2011 and 2013. More current studies cement the connection between heroin and prescription opioids.<sup>14</sup>

46. Dr. Robert DuPont, former director of the National Institute on Drug Abuse and the former White House drug czar, opines that opioids are more destructive than crack cocaine:

“[Opioid abuse] is building more slowly, but it's much larger. And the potential[] for death, in particular, [is] way beyond anything we saw then. . . . [F]or pain medicine, a one-day dose can be sold on the black market for \$100. And a single dose can [be] lethal to a non-patient. There is no other medicine that has those characteristics. And if you think about that combination and the millions of people who are using these medicines, you get some idea of the exposure of the society to the prescription drug problem.”<sup>15</sup>

## **B. THE ROLE OF PHARMACEUTICAL DISTRIBUTORS**

47. Rather than drug manufacturers selling opioids directly to physicians or pharmacies for ultimate dispensing, a sophisticated, closed distribution system exists to push the

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<sup>14</sup> See Wilson M. Compton, *Relationship Between Nonmedical Prescription-Opioid Use and Heroin*, 374 N. Eng. J. Med. 154 (2016), Ctrs. for Disease Control and Prevention, *MMWR Report* (March 17, 2017) [https://www.cdc.gov/mmwr/volumes/66/wr/mm6610a1.htm?s\\_cid=mm6610a1\\_w](https://www.cdc.gov/mmwr/volumes/66/wr/mm6610a1.htm?s_cid=mm6610a1_w).

<sup>15</sup> Transcript, Use and Abuse of Prescription Painkillers, The Diane Rehm Show (Apr. 21, 2011), at <http://thedianerehmshow.org/shows/2011-04-21/use-and-abuse-prescription-painkillers/transcript>.

drugs across the nation.<sup>16</sup> This sophisticated system, born out of an acknowledgement by Congress that greater control was needed over abused and addictive prescription drugs, is intended to track and account for controlled substances from manufacturing to the ultimate consumer.<sup>17</sup>

48. For many important reasons, this system relies upon the honesty, integrity, and accountability of prescription drug distributors to be effective. This “closed” chain of distribution was specifically designed by Congress to prevent the diversion and abuse that is complained of herein.

49. States, including Kentucky, enacted similar state laws, rules and regulations in order to regulate the distribution of drugs and provide oversight over this unique industry. The Kentucky General Assembly determined and declared that “[t]he regulation of controlled substances in this Commonwealth is important and necessary for the preservation of public safety and public health...” KRS 218A.005(1).

50. This closed-system of state and federal authority imposes specific duties upon wholesale distributors to monitor, identify, halt and, perhaps most importantly, report suspicious orders of controlled substances. 21 C.F.R. § 1301.74; Masters Pharm., Inc. v. Drug Enf't Admin., 861 F.3d 206 (D.C. Cir. 2017). All registrants of the closed distribution system “must adhere to specific security, recordkeeping, monitoring, and reporting requirements that are designed to identify or prevent diversion.”<sup>18</sup> The end purpose of these laws is to protect the consuming public.

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<sup>16</sup> Statement of Joseph T. Rannazzasi, Deputy Assistant Administrator, Drug Enforcement Agency to the Department of Justice Before the Caucus on International Narcotics Control, United States Senate (July 18, 2012) <http://docs.house.gov/meetings/IF/IF14/20140407/102093/HHRG-113-IF14-Wstate-RannazzasiJ-20140407.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

51. Pharmaceutical distributors such as Defendant Cardinal are one of the key components of this closed distribution chain. The role of the pharmaceutical distributor is not simply one of shelf stocker, freight forwarder, or simple shipper. 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.

52. To piggyback on the state and federal regulatory schemes, distributors created a system of “self-regulation and best practice sharing” through an industry trade group called the Healthcare Distribution Alliance (HDA), formerly known as the Healthcare Distribution Management Association. According to the HDA, “[h]ealthcare distribution has never been just about delivery. It’s about getting the right medicines to the right patients at the right time, safely and efficiently.”<sup>19</sup>

53. The HDA created “Industry Compliance Guidelines” that stressed the critical role of each member of the supply chain in distributing controlled substances. These industry guidelines provided: “At the center of a sophisticated supply chain, Distributors are uniquely situated to perform due diligence in order to help support the security of controlled substances they deliver to their customers.” Indeed, the HDA advises all distributors to “Know Your Customer.”

54. As a dominant player within the healthcare distribution industry, senior executives from Cardinal historically served on the board of the HDA. The CEO of Cardinal’s Medical Segment, Jon Giacomini, is currently the chairman of the HDA board of directors and a member of the executive committee of the HAD. Craig Cowman, Cardinal’s Executive Vice President of

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<sup>19</sup> See Healthcare Distribution Alliance, Role of Distributors <http://www.hdma.net/about/role-of-distributors> (last access February 15, 2018).

Global Sourcing, also serves on the HDA's board of directors. Mike Kaufman, Cardinal's current CEO, is a former member of the executive committee of this powerful trade group.

55. Distributors, specifically including Defendant Cardinal, are required to establish expected order thresholds for each customer. These thresholds are vital data points used to determine whether prospective orders are unusual in size, deviate from a prior pattern or are unusual in their frequency.

56. In order to fulfill their obligations under federal and state laws as well as self-regulation, distributors, specifically including Defendant Cardinal, use highly advanced data collection and analytical systems. These sophisticated software systems monitor the inventory and ordering needs of customers in real-time.

57. Upon information and belief, Defendant Cardinal, by virtue of its data analytics and "know your customer" initiatives, was actually aware of the extent of numerous suspicious orders, but failed to report or halt shipment of them. Further, Defendant Cardinal was aware that several of their pharmacy customers had indicia of suspicion for diversion or misuse such as (1) individuals traveling long distances to fill prescriptions; (2) prescriptions for drug "cocktails," known for their abuse potential, such as oxycodone and Xanax; (3) individuals who arrived together with identical or nearly identical prescriptions; (4) purported pain patients with prescriptions for immediate-release rather than long-acting narcotics; (5) high percentage of cash purchases; and (6) doctors prescribing outside the scope of their usual practice.

**C. CARDINAL CAUSED OR CONTRIBUTED TO THE OPIOID EPIDEMIC IN KENTUCKY BY OVERSATURATING THE PHARMACEUTICAL MARKET IN FILLING SUSPICIOUS AND FRAUDULENT ORDERS AND FAILING TO REPORT OR HALT THE SAME.**

58. The data collected by distributors and reported to government regulators is often

reported in terms of drug dosage or doses. A dose is the amount of active ingredient in a particular pill or capsule.

59. Per “The Flow of Money Through the Pharmaceutical Distribution System” published by the Leonard D. Schaeffer Center for Health Policy & Economics at the University of California, (June, 2017), Cardinal boasted a 20.7% share of the prescription opioid market.

60. In only 12 months, from February 1, 2016, to January 31, 2017, pharmacies in the Commonwealth filled prescriptions for 307,234,816 doses of Schedule II prescription drugs, which breaks down to 69 doses of Schedule II narcotics for every man, woman, and child in the Commonwealth. Market share analysis indicates that of those, Cardinal distributed 63,597,606 doses.

61. From January 1, 2010, through December 31, 2016, Jefferson County, Kentucky, had an average population of approximately 755,305. Pharmacies located in Jefferson County filled prescriptions for a total of 388,652,108 doses of opioid narcotic drugs in Jefferson County alone. With a 20.7% market share, Defendant Cardinal would have contributed 1,186,418 of those doses. From 2012 through 2016, Jefferson County experienced 1,066 prescription drug overdose deaths.

62. From January 1, 2010, through December 31, 2016, Floyd County, Kentucky, had an average population of 38,638. Pharmacies located in Floyd County filled prescriptions for a total of 56,375,642 doses of opioid narcotic drugs. With a 20.7% market share, Defendant Cardinal would have contributed 11,669,757 of those doses, 302 per resident. From 2012 through 2016, Floyd County experienced 89 prescription drug overdose deaths.

63. From January 1, 2010, through December 31, 2016, Bell County, Kentucky, had an average population of 27,961. Pharmacies located in Bell County filled prescriptions for a total

of 30,091,681 doses of opioid narcotic drugs. With a 20.7% market share, Defendant Cardinal would have contributed 6,228,977 of those doses, 222 per resident. From 2012 through 2016, Bell County experienced 81 prescription drug overdose deaths.

64. From January 1, 2010, through December 31, 2016, Clay County, Kentucky, had an average population of 21,047. Pharmacies located in Clay County filled prescriptions for a total of 25,429,897 doses of opioid narcotic drugs. With a 20.7% market share, Defendant Cardinal would have contributed 5,263,988.68 of those doses, 245 per resident. From 2012 through 2016, Clay County experienced 28 prescription drug overdose deaths.

65. These figures are only a snapshot of the gross amount of opioid narcotic doses per county and per person distributed in part by Defendant Cardinal, solely in the Commonwealth of Kentucky. Upon information and belief, the statistics for county-by-county prescription volume for controlled substances for the preceding years, especially for those years preceding the enactment of House Bill 1 in 2012, are substantially higher and more egregious.

66. The amounts of pills shipped or delivered by Defendant Cardinal to Kentucky was and is unreasonable, dangerous, and facially suspicious.

67. With the systems and technology used by Defendant Cardinal to collect and analyze robust data, Defendant had access to information reflecting the full extent of their lethal over-shipments in Kentucky. Rather than taking steps to protect the end customer from the massive volume of dangerous and addictive drugs, Cardinal instead chose to pump addictive pill after addictive pill into the Commonwealth.

68. In its position as an opioid distributor, Defendant Cardinal knew or should have known of Kentucky's exceedingly high rate of suspicious shipments, and a correlating risk of abuse, misuse, and diversion of prescription opioids. Indeed, the shipments mentioned above, and

others, constitute facially suspicious orders to disproportionately small markets. Numerous publications, news sources and studies highlighted the epidemic rate of opioid abuse and overdose rates in Kentucky.

69. Defendant Cardinal knew, or should have known, that many of the controlled substances that it was providing to customers in the Commonwealth were being obtained through fraudulent prescriptions from physicians who were prescribing controlled substances for illegitimate medical purposes.

70. Defendant Cardinal knew, or should have known, it was supplying “pill-mill” pharmacies in the Commonwealth.

71. Defendant Cardinal was on notice of the “suspicious orders” it was receiving when it shipped massive quantities of controlled substances to pharmacies in areas that lacked the population dynamics to support the claimed need. Defendant Cardinal shipped these highly addictive prescription opioids to pharmacies in the Commonwealth located in sparsely populated areas in such quantities that it knew, or should have known, the drugs were being diverted for illegal use.

72. Further, Defendant Cardinal had a duty, known to Defendant Cardinal by way of the licensure practices in Kentucky, to report diversion of controlled substances. Specifically, wholesalers of controlled substances must apply for a license or renewal of license to operate in Kentucky through the Cabinet for Health and Family Services Office of Inspector General, Drug Enforcement and Professional Practices Branch (“DEPPB”) The DEPPB administers and enforces the Kentucky Controlled Substances Act and grants renewals of licenses of wholesalers of controlled substances in part by relying on the information provided by the applicant.

73. To maintain a Kentucky wholesaler’s license, entities are required to comply with

rules regarding controlled substance diversion controls. Additionally, at the time of initial application or renewal, “the Cabinet for Health Services shall be notified in the event of any theft of other loss of controlled substances. Any problem, such as pilferage, which develops in a facility, must also be reported.”<sup>20</sup> Directly below this instructive paragraph is a paragraph stating “I hereby certify that all answers given in this application are true, complete and correct and I understand that any license issued to me by the Cabinet for Health Services may be suspended or revoked for cause,” with a signature line directly below.

74. Similarly, to maintain a distributor’s license in Kentucky, the Kentucky Board of Pharmacy requires licensed entities to comply with both state and federal law, including rules preventing the diversion of controlled substances. Pursuant to KRS 315.402, failure to report to the board or willful submission of inaccurate information shall be grounds for disciplinary action, including fines, suspension, or revocation of the wholesaler’s license at issue. In addition, the Kentucky Board of Pharmacy requires initial and renewal applications for License to Operate as a Wholesale Distributor. These applications require acknowledgment of whether an applicant, owner, partner, officer, agent, or employee has (1) been convicted of any felony, (2) had a wholesale distributor license or permit revoked or suspended, and (3) been convicted under laws relating to drug samples and wholesale or retail drug distribution of controlled substances.<sup>21</sup>

75. Defendant Cardinal acknowledged this language with each application for license

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<sup>20</sup> Application for License Renewal as a Manufacturer or Wholesaler of Controlled Substances (May 2017), <http://www.chfs.ky.gov/NR/rdonlyres/7F58922D-B496-45A3-B12B-B33BE9727ADB/0/DEPPBCSLicenseRenewalForm05172017.pdf>, Application for a New License as a Manufacturer or Wholesaler of Controlled Substances (May 2017) <http://www.chfs.ky.gov/NR/rdonlyres/3063B7E3-9B49-4569-94EF-777AFA4F2624/0/DEPPBCSNewLicenseApplicationForm05172017.pdf>.

<sup>21</sup> Application for License to Operate as a Wholesale Distributor, <https://pharmacy.ky.gov/Businesses/Wholesale%20Distributor%20License%20Documents/Wholesale%20Distributor%20License%20Application.pdf> (last accessed Feb. 16, 2018).

renewal and made sworn representations regarding the same.

76. Despite an existing duty to the consuming public and both federal and Kentucky law requiring procedural safeguards against diversion of controlled substances, Defendant Cardinal failed to take any action to effectively prevent, minimize, or reduce the distribution or availability of these dangerous drugs.

77. Defendant Cardinal had a legal duty to ensure they were not filling suspicious orders that should have simply been refused. However, despite the existence of suspicious orders, and the information available regarding the same through Defendant Cardinal's own sophisticated tracking system, Defendant did not refuse to ship or supply the often abused and highly addictive prescription opioids to Kentucky pharmacies, between 2010 and the present.

78. Additionally, Defendant Cardinal knowingly failed to report suspicious orders in Kentucky from 2010 to the present. This business practice was and is unfair and unconscionable, deceptive, and/or misleading.

79. In fact, Defendant Cardinal admitted to similar wrongdoing in both 2008<sup>22</sup> and 2012.<sup>23</sup> Specifically, Defendant Cardinal failed to heed warnings by DEA officials in 2005 regarding excessive sales of their product to pharmacies filling illegal online prescriptions. In 2008, the company was penalized for satisfying orders placed to fill prescriptions that were not issued for any legitimate medical purpose.<sup>24</sup>

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<sup>22</sup> Dpt. of Justice Release, Cardinal Health Inc., Agrees To Pay \$34 Million To Settle Claims That It Failed To Report Suspicious Sales Of Widely-Abused Controlled Substances (October 2, 2008) [https://www.justice.gov/archive/usao/co/news/2008/October08/10\\_2\\_08.html](https://www.justice.gov/archive/usao/co/news/2008/October08/10_2_08.html)

<sup>23</sup> Drug Enforcement Agency Release, DEA Suspends for Two Years Pharmaceutical Wholesale Distributor's Ability to Sell Controlled Substances from Lakeland, Florida Facility (May 15, 2012) <https://www.dea.gov/pubs/pressrel/pr051512.html>

<sup>24</sup> Cardinal Health Inc., Agrees To Pay \$34 Million To Settle Claims That It Failed To Report Suspicious Sales Of Widely-Abused Controlled Substances.

80. Defendant Cardinal’s wrongdoings were neither halted nor deterred from these penalties, however, as in 2012, Defendant Cardinal admitted to “Failure to maintain effective controls against the diversion of controlled substances” and “Failure to detect and report suspicious orders of controlled substances.”<sup>25</sup> The violations resulted in a two-year suspension of distribution of pharmaceutical drugs from Defendant Cardinal’s Lakeland, Florida facility.

81. In 2016 it reached another “Nationwide Civil Penalty Settlement” of \$44 million. This penalty stemmed from the 2012 behavior addressed by the DEA.<sup>26</sup>

82. Defendant Cardinal’s intentional distribution of enormous quantities of prescription opioids throughout Kentucky’s small rural communities and towns showed a reckless disregard for the health and safety of Kentucky’s citizens.

83. Defendant Cardinal played a key part in the creation, proliferation, and continuation of the opioid epidemic and the resulting and continuing catastrophic damage in the Commonwealth of Kentucky.

84. Specifically, Defendant Cardinal shipped millions of doses of highly addictive controlled painkillers into Kentucky, many of which should have been stopped and/or investigated as suspicious orders. This business practice was and is unfair and unconscionable, deceptive, and/or misleading.

85. The CDC identified Kentucky as having a statistically significant drug overdose

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<sup>25</sup> DEA Suspends for Two Years Pharmaceutical Wholesale Distributor’s Ability to Sell Controlled Substances from Lakeland, Florida Facility.

<sup>26</sup> Dpt. of Justice Release, United States Reaches \$34 Million Settlement With Cardinal Health For Civil Penalties Under The Controlled Substances Act (Dec. 23, 2016) <https://www.justice.gov/usao-mdfl/pr/united-states-reaches-34-million-settlement-cardinal-health-civil-penalties-under>.

death rate increase from 2014 to 2015.<sup>27</sup> According to the CDC, Kentucky has the third highest opioid-related overdose rate in the country. Data from 2013 onward shows that Kentucky has the third highest drug overdose mortality rate in the country.<sup>28</sup>

86. Kentucky has been devastated by the opioid epidemic and the epidemic has not abated. Jefferson County, Kentucky reported 364 overdose deaths in 2016, almost one per day, up from 268 in 2015.<sup>29</sup>

87. Kentucky has one of the highest rates of prescriptions for opioids in the nation.<sup>30</sup> These statistics reflect the fact that Kentucky is one of the top states for over-shipment of opioids by Defendant Cardinal. The overall national opioid prescribing rate declined from 2012 to 2016, and in 2016, the prescribing rate had fallen to the lowest it had been in more than a decade at 66.5 prescriptions per 100 persons (over 214 million total opioid prescriptions). However, in 2016 52 of Kentucky's 120 counties had an opioid prescription rate higher than 100 prescriptions per 100 persons, eight (8) of which had a rate in excess of 200 prescriptions per 100 persons.<sup>31</sup> Experts agree that this problem must be tackled head on and at the source, that being the distributors who flooded the market.<sup>32</sup>

88. Upon information and belief, Defendant Cardinal failed to maintain effective

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<sup>27</sup> Drug Overdose Death Data, Centers for Disease Control, <https://www.cdc.gov/drugoverdose/data/statedeaths.html> (last visited October 22, 2017).

<sup>28</sup> See <http://www.healthyamericans.org/reports/drugabuse2013/release.php?stateid=KY> (last accessed on October 21, 2017).

<sup>29</sup> See Commonwealth of Kentucky, Justice & Public Safety Cabinet, Kentucky Office of Drug Policy 2016 Overdose Fatality Report, available at: <https://odcp.ky.gov/Reports/2016%20ODCP%20Overdose%20Fatality%20Report%20Final.pdf>; (last visited October 22, 2017).

<sup>30</sup> [http://www.bgdailynews.com/news/kentucky-in-top-states-in-painkiller-prescriptions/article\\_0d8d0555-47e1-5717-b042-e3d53e7f3ee2.html](http://www.bgdailynews.com/news/kentucky-in-top-states-in-painkiller-prescriptions/article_0d8d0555-47e1-5717-b042-e3d53e7f3ee2.html) (7/12/14) (last accessed on October 22, 2017)

<sup>31</sup> <https://www.cdc.gov/drugoverdose/maps/rxcounty2016.html>

<sup>32</sup> See <http://kentuckytoday.com/stories/prescription-drug-epidemic-must-be-tackled-head-on.6966> (3/32/17) (last visited October 21, 2017).

controls against diversion in its eight distribution centers within Kentucky, including those in Jefferson County, as well as centers that distributed opioids into Kentucky, including but not limited to its hub in Dublin, Ohio.

89. Upon and information and belief, Defendant Cardinal derived millions of dollars of income from the controlled substances it shipped into the Commonwealth.

**D. DEFENDANT CARDINAL HAS CONTINUED OVER-SHIPMENT OF OPIOIDS TO KENTUCKY CAUSED OR CONTRIBUTED TO AN INCREASE IN HEROIN AND ILLICIT FENTANYL USE IN KENTUCKY.**

90. The rise in prescription opioid use and abuse triggered resurgence in heroin abuse, imposing additional burdens on states and local governments that address heroin use and addiction, including in the Commonwealth of Kentucky.

91. Heroin produces a very similar high to prescription opioids for a much lower cost. As a result, addicted opioid users soon find themselves turning to street drugs to satisfy the high they crave as a result of addiction created, in part, by irresponsible wholesaler practices.

92. Beyond the dangers associated with heroin, a new drug has emerged with far more serious risks; synthetic fentanyl and its analogs like carfentanil. Addicts, who seek ever-increasing doses, are compelled by their addiction to advance toward both heroin and these synthetic drugs. In 2016, the Kentucky Office of Drug Control Policy reported that 47% of all overdose deaths involved a combination of heroin and fentanyl.<sup>33</sup>

93. The increase in opioid related overdose deaths coincides with increases in heroin and fentanyl use across the country and has been shown to be closely tied to opioid pain reliever

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<sup>33</sup> Commonwealth of Kentucky Justice & Public Safety Cabinet 20116 Overdose Fatality Report, 2 <https://odcp.ky.gov/Documents/2016%20ODCP%20Overdose%20Fatality%20Report%20Final.pdf>

misuse and dependence. Past misuse of prescription opioids is the strongest risk factor for heroin initiation and use, specifically among persons who report past-year dependence or abuse.<sup>34</sup>

**E. DEFENDANT CARDINAL POSSESSES SOPHISTICATED DRUG TRACKING SYSTEMS THAT PROVIDE THE COMPANY WITH REAL-TIME DATA THAT LIKELY REVEALS THE GROSS OVERSHIPPING OF OPIOIDS TO KENTUCKY.**

94. Distributors licensed to participate in the closed-system, including Defendant Cardinal, devote substantial resources to ordering and inventory management systems.

95. Defendant Cardinal's inventory system allowed for real-time inventory control and item lookup. These products additionally permit for streamlined ordering, purchasing, reconciliations, and account management.

96. Further, Defendant Cardinal utilized Six Sigma methodology, "an analytical approach that emphasizes setting high-quality objectives, collecting data and analyzing the results to a fine degree in order to improve processes, reduce costs and minimize errors."<sup>35</sup>

97. Accordingly, Defendant Cardinal possesses real-time data that fully and accurately depicts the exact amounts of pills, pill type, and anticipated customer order threshold they have set.

98. It is conceivable that such data monitoring systems could, and likely did, track and/or record facially suspicious orders from within the Commonwealth of Kentucky.

99. Additionally, said data likely reflects the exact, grossly inflated orders that caused

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<sup>34</sup> See <https://odcp.ky.gov/Pages/The-Heroin-Epidemic.aspx> (last accessed October 22, 2017).

<sup>35</sup> Cardinal's 2005 Annual Report states: "Across more than 50 manufacturing locations, we're gaining efficiency through the implementation of lean six-sigma processes, common quality systems and shared sourcing initiatives." See <https://www.isixsigma.com/community/blogs/six-sigma-cardinal-health/> and <http://www.cardinalhealth.com/en/essential-insights/op-ex-transform-healthcare.html> (last accessed Feb. 14, 2018).

or contributed to the opioid crisis in Kentucky, including where Defendant Cardinal overrode its own internal controls or thresholds in order to consistently increase shipment volumes.

100. The Commonwealth has been damaged by Defendant Cardinal's unfair, false, misleading, or deceptive acts or practices in the conduct of the pharmaceutical wholesale trade or commerce by failing to investigate, report, and cease fulfilling suspicious orders of controlled substances to pharmacies in the Commonwealth.

101. The Commonwealth has been damaged by Defendant Cardinal's negligent and/or intentional and reckless actions by failing to investigate, report, and cease fulfilling suspicious orders of controlled substances to pharmacies in the Commonwealth.

102. The Commonwealth has been damaged by the continuing public nuisance created by Defendant Cardinal's actions by failing to investigate, report, and cease fulfilling suspicious orders of controlled substances to pharmacies in the Commonwealth.

103. Defendant Cardinal's actions have caused and will continue to cause the Commonwealth to expend substantial sums of funds from the State Treasury to deal with the effects of epidemic of prescription drug addiction that was substantially fueled by Defendant Cardinal's illegal action in flooding the Commonwealth with highly addictive prescription medications without regard for the consequences to the Commonwealth and its citizens.

104. The Commonwealth of Kentucky hereby seeks recuperation of the cost to its society caused by Defendant Cardinal's failure to act in accordance with the various laws cited herein, general disregard for the law, misrepresentations, actions, and inactions with regard to the distribution of opioids in the Commonwealth's communities.

105. The scope of conduct alleged herein has proximately caused damages to Kentuckians and their government in the form of a multigenerational health care epidemic of

addiction, and resulting disease and deaths. Despite being acutely aware of the risks of oversupplying opioids, and despite being acutely aware of the increases in orders that were suspicious, Cardinal continued to oversupply opioids to Kentucky.

106. The Attorney General, in fulfilling his duties and exercising his authority under Kentucky law, brings this action to stop the harmful conduct, reverse the effects of the epidemic and hold Defendant accountable for their misdeeds.

## **VI. CAUSES OF ACTION**

### **COUNT I CONSUMER PROTECTION ACT VIOLATION**

107. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

108. Kentucky has enacted a Consumer Protection Act to ensure that citizens are protected against predatory or inappropriate actions by sellers of goods. KRS 367.120 “The General Assembly finds that the public health, welfare and interest require a strong consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services...”

109. KRS 367.170(1) states that “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Where such practices occur in the course of “trade” and “commerce”, as those terms are defined in KRS 367.170(1) and KRS 367.110(2), that being: “the advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, and shall include any trade or commerce directly or indirectly affecting the people of this Commonwealth”, the Consumer Protect Act applies to

penalize the seller and to protect the consumer.

110. With regard to Defendant's particular practices, the Commonwealth regulates the distribution of controlled substances within its borders. The Kentucky Legislature promulgated the Kentucky Controlled Substances Act to promote the "preservation of public safety and public health." KRS 218A.005(1).

111. The Kentucky Controlled Substances Act requires of Defendant, as a wholesaler of any Scheduled drug, to record all diverted controlled substances, and forward the record to the Cabinet for Health and Family Services. See e.g. KRS §§ 218A.160(1)(a); 218A.170; 902 KY. Admin Reg. 55:010 §4(1)(h),(2)(b); 201 KY. Admin. Reg. 2:105 §2(4)(d).

112. Both the federal version and the Kentucky Controlled Substances Act create a broad duty on the part of wholesalers to monitor, detect, investigate, refuse to fill, and report suspicious orders of prescription opioids. These laws are intended to protect consumers from harm. See 21 U.S.C. § 823, 21 CFR 1301.74 and KRS §§ 218A.160(1)(a); 218A.170; 902 KY. Admin Reg. 55:010 §4(1)(h),(2)(b); 201 KY. Admin. Reg. 2:105 §2(4)(d).

113. The harm stemming from any breach of this law and applicable regulations is foreseeable and should have been known to Defendant Cardinal.

114. Defendant Cardinal failed and/or refused to comply with the Controlled Substances Acts and the reporting requirements imposed therein by wholly failing to report facially suspicious orders and failing to halt distribution when appropriate.

115. Defendant Cardinal shipped drugs into the Commonwealth without adequate policies or procedures in place to detect suspicious orders.

116. Defendant Cardinal concealed vital knowledge and information from the

Commonwealth of Kentucky, its agents and employees, resulting in significant harm to the citizens and to the public coffers.

117. As a result of Defendant Cardinal's violations of the Controlled Substances Acts, vis-à-vis failing to report and halt suspicious orders, the Defendant per se violated the Kentucky Consumer Protection Act.

118. Kentucky has been forced to respond to the increase in addicted persons with a substantial increase in expenditure of resources, for example, for monitoring and prosecuting drug related crimes, emergency response to drug related crimes and medical emergencies, cost of administration of opioid reversal agents such as Naloxone, and those associated with the care of opioid addicted infants.

119. Defendant Cardinal systematically engaged in distribution that was excessive on its face and knowingly failed to alert patients, providers, and government regulators regarding the extent of suspected diversion of opioids. These false and deceptive practices were the proximate cause of the harm incurred by the Commonwealth. The Commonwealth is entitled to sue to recover any monies paid out as a result of these unfair trade practices under KRS 367.200.

120. Defendant Cardinal's refusal to comply with applicable laws resulted in the proliferation of disproportionate amounts of opioids within Kentucky when compared to population. While Defendant Cardinal reaped substantial profits, it also created an environment ripe for abuse and diversion of opioids. The subsequent and related public health and wellness and financial impact more fully lay bare above, is the reasonably foreseeable result of Defendant Cardinal's actions.

121. The costs and harm suffered by the Commonwealth of Kentucky resulted directly and proximately from Defendant's unfair, false, misleading and deceptive trade practices.

Defendant Cardinal should be held liable for all resulting harm.

**COUNT II  
PUBLIC NUISANCE**

122. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

123. Public Nuisances are a “class of wrongs which arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property and produces such material annoyance, inconvenience, discomfort, or hurt that the law will presume a consequent damage.” City of Somerset v. Sears, 313 Ky. 784, 233 S.W.2d 530 (1950) (quoting 39 Am.Jur., Nuisances, Section 2). The method in which a defendant acts or conducts its operation can in and of itself, create an actionable nuisance. *See: West Ky. Coal Co. v. Rudd*, 328 S.W.2d 156, 160 (Ky. 1959). Such actions are prosecuted under common law principles. *See: KRS 411.500*.

124. Defendant Cardinal’s conduct constitutes a public nuisance that, if unabated, will continue to threaten the health, safety and welfare of Kentucky’s citizens.

125. Defendant Cardinal sold, distributed, and allowed dispersal of opioid analgesics that lacked any legitimate medical or scientific purpose. Defendant Cardinal unlawfully distributed prescription opioids where Defendant knew, or reasonably should have known, such opioids will be diverted and possessed and/or used illegally.

126. Defendant Cardinal intentionally and/or unlawfully failed to maintain effective controls against diversion through proper monitoring, distributing opioids without reporting, and refusing to fail to fill suspicious orders. Such actions were inherently dangerous to the welfare of Kentucky’s communities.

127. Due to the actions of Defendant Cardinal, opioid use and abuse in the

Commonwealth of Kentucky increased substantially, with correlating increases in illicit drug use, crime, and overdoses. The effects of Defendant Cardinal's actions are continuing in nature.

128. Defendant Cardinal knew of the dangers to public health and safety that diversion of opioids would create.

129. As a result of Defendant Cardinal's actions, the Commonwealth was forced to deal with drug addiction, related criminal and civil malfeasance and misfeasance, treatment and incarceration costs, and a plethora of providers operating pill mills or otherwise encouraging overutilization of opioids across the state.

130. Defendant Cardinal caused a substantial and unreasonable interference with the public health, safety, welfare, peace, comfort and convenience, and ability to be free from disturbance and reasonable apprehension of danger to person or property. Defendant Cardinal's conduct is proscribed by law. See *Restatement Second*, Torts Section 821B.

131. Defendant Cardinal is liable for all costs borne by the Commonwealth and its agencies that were proximately caused by the wrongful action of Defendant.

132. In addition to damages for past nuisance by Defendant Cardinal, Plaintiff requests relief barring any further such misconduct by Defendant in this Commonwealth and more significantly, Plaintiff seeks to hold Defendant liable for abating, or cleaning up the issues it has created.

133. Abatement of the now deep-rooted addiction among Kentucky communities is a complex, expensive, and lengthy process. Defendant Cardinal must be held accountable for their role in creating this nuisance, and correspondingly, are necessary parties to the abatement.

**COUNT III**  
**BREACH OF STATUTORY DUTIES/NEGLIGENCE PER SE**

134. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

135. Violation of a statute gives rise to a private right of action where the injured is within the class of persons the statute intended to be protected. This is true even where the statute is penal in nature and provides no civil remedy, and extends to Kentucky administrative regulations concerning public safety adopted pursuant to an enabling statute.

136. Generally, Kentucky law expressly prohibits distributors from operating in a manner that endangers the public. 201 KAR 2:105 § 7.

137. Kentucky Board of Pharmacy requires coordination and use of reported opioid distribution and sale data, and continued demonstration of “acceptable operational procedures, including . . . compl[iance] with all DEA regulations.” 201 KAR 2:105 Section(4)(d), KRS 205.5634.

138. To promote public health with regard to the use of opioids, the Kentucky Agency for Substance Abuse Policy provides a statewide framework for anti-abuse and anti-diversion practices across the Commonwealth. KY-ASAP is currently being used in many of Kentucky communities as the primary component of a comprehensive drug education/prevention, treatment, and law enforcement programs.<sup>36</sup>

139. Information and data sharing between all agencies related to prescription drug use or abuse, pursuant to KRS 205.177, serves the purpose of protection of Kentucky’s citizens. These agencies include the Cabinet for Health and Family Services, the Justice and Public Safety

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<sup>36</sup> See <https://odcp.ky.gov/Pages/Agency-for-Substance-Abuse-Policy.aspx> (last visited October 21, 2017).

Cabinet, and “any other state or local government agency.”

140. Finally, additional Kentucky “pill mill” laws, restrict improper access to opiates across the state and put in place reporting and data review protections to be enforced by various state agencies, including but not limited to the state Department of Medicaid, the Cabinet for Human Resources, the state Pharmacy Board, the state Office of Drug Control Policy, and the Kentucky Board of Medical Licensure.

141. These laws promote transparency regarding the wholesale, dispersal, and use of opioid analgesics. Each agency may access and share information that protects citizens from drug diversion, medication abuse and misuse, lawful use of state healthcare funds, and all harms incident to violations of those laws and regulations. Distributors who comply with the regulations allow the state agencies to track and analyze risk data and to implement safeguards to protect the public coffers and the citizens of this Commonwealth.

142. The implementation of these programs and the sharing of information among these agencies is meaningless without the honest participation of wholesalers like Defendant.

143. Defendant Cardinal, as the wholesaler and private company, has access to information that is otherwise unavailable to governmental entities striving to protect and care for their citizens. This information or data includes the real time transaction level records, the customer order thresholds, and the actual order and inventory records. However, Defendant Cardinal hoarded the data and misled the federal and state government regarding the distribution and use of opioid analgesics. Defendant Cardinal failed to comply with the mandatory reporting and data sharing requirements imposed by Kentucky law.

144. Defendant Cardinal’s violations of public safety laws are *prima facie* evidence of negligence. Defendant at the least had a duty to refrain from operating in a manner that endangers

the public. Defendant Cardinal had a duty to maintain effective controls against diversion of prescription opioids and to guard against, prevent, and report suspicious orders of opioids. Defendant breached mandatory, non-delegable legal duties and did not act reasonably.

145. Additionally and through the aforementioned failures, Defendant Cardinal failed to maintain “acceptable operational procedures” pursuant to Kentucky law. Defendant Cardinal’s failure to enact, or simply find guidance in, the framework proposed by Kentucky Agency for Substance Abuse Policy evidences Defendant Cardinal’s disregard for black letter law, guidelines, recommendations, and other methods to prevent the spread and abuse of prescription opioids.

146. Defendant Cardinal’s actions constitute negligence per se as they are facial violations of existing law and regulations. The violations promoted the misuse and diversion of opioids across the Commonwealth.

147. Indeed, the citizens of Kentucky have been harmed, as stated above, including through increases in addictions, the need for enforcement and treatment (including treatment of infants) and even deaths due to the actions of Defendant Cardinal. Costs of harm to the public are logically traceable to Plaintiff, who is charged with the general protection of the Commonwealth.

148. Accordingly, Defendant Cardinal’s actions constitute negligence per se. Defendant Cardinal should be held liable for all damages proximately caused by the breach of their statutory duties.

#### **COUNT IV NEGLIGENCE**

149. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

150. Recovery for negligence requires establishment of the elements of duty, breach of duty, causation, and damages. See, e.g., Lewis v. B & R Corp., 56 S.W.3d 432, 436-37 (Ky. App. 2001). Duty is a fluid and elusive concept, and the court's decision regarding the existence of a duty is described as a "policy determination."

151. Kentucky law has adopted a "universal duty of care" which requires every person to exercise ordinary care in his activities to prevent foreseeable injury. See T & M Jewelry, Inc. v. Hicks ex rel. Hicks, 189 S.W.3d 526 (Ky. 2006).

152. The applicable statutes and administrative regulations, as previously referenced herein, impose a duty on every opioid distributor to maintain and report data and to take affirmative action with regard to unusual volume or suspicious orders. However, beyond the statutory obligations, Defendant Cardinal had a general duty to protect Kentucky's citizens by the nature of the business in which it engaged.

153. A general duty must exist when viewing all of the elements of negligence in this case. Defendant Cardinal's actions constitute gross disregard for the people and government of Kentucky, those who purchased from Defendant Cardinal and trusted Defendant Cardinal to comply with laws regarding prescription drug distribution.

154. It was industry knowledge that an abundance of potent opioids and a lax tracking and reporting system would provide opportunity for diversion, misuse and overprescribing. The foreseeable risk of misuse and diversion is immediately apparent when discussing disproportionate influx of opioids to low-populated areas. The resulting harms were foreseeable and known to Defendant Cardinal.

155. Defendant Cardinal's breach of these duties were the proximate cause of the harms inflicted upon Kentucky and its citizens. The harm includes, but is not limited to, the financial

damages of the Commonwealth in responding to the opioid epidemic and caring for its citizens.

156. The Commonwealth and its residents suffered significant financial and personal damages as a direct and proximate result of Defendant Cardinal's negligence and misfeasance.

157. Defendant Cardinal breached the applicable duty of care with regard to prevention of foreseeable injury. Defendant Cardinal must be held liable for all injuries resulting from their negligence

### **COUNT V UNJUST ENRICHMENT**

158. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

159. Defendant Cardinal created and maintained an artificial market for opioids within the Commonwealth that served only the purpose of spreading the addiction to create a reliable and growing stream of revenue.

160. Defendant Cardinal received financial benefit from the excessive distribution of opioids across Kentucky. The clear overuse and diversion was not reported to the appropriate authorities because Defendant Cardinal did not want to disrupt or diminish its highly profitable business practices.

161. Each year, Defendant Cardinal renewed its license to operate as a pharmaceutical distributor in Kentucky, all the while misusing and abusing its privilege to do so by failing to report and halt suspicious orders and by failing to inform the Commonwealth of Kentucky of its continuing violations.

162. The Commonwealth of Kentucky, through its insurers, including but not limited to the Department for Medicaid Services, paid direct reimbursement to the pharmacies or

insurance programs which were pass through entities in order to allow financial benefits to be received by Defendant Cardinal.

163. Defendant Cardinal was unjustly enriched and received an inequitable financial benefit as a result of their own unlawful action. *See* Rose v. Ackerson, 374 S.W.3d 339, 343 (Ky. App. 2012).

164. Defendant Cardinal should be required to disgorge all such unjust enrichment and to reimburse the Commonwealth for all sums to which Defendant Cardinal were not entitled.

**COUNT VI  
FRAUD BY OMISSION**

165. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

166. Under Kentucky law, fraud by omission includes the following four elements: (1) that the Defendant had a duty to disclose a fact or facts, (2) that the Defendant failed to disclose such fact, (3) that the failure to disclose induced the plaintiff to act, and (4) that the plaintiff suffered actual damages therefrom. Rivermont Inn, Inc. v. Bass Hotels & Resorts, Inc., 113 S.W.3d 636, 641 (Ky.Ct.App.2003).

167. Defendant Cardinal was under a duty required by law, to disclose or report orders of unusual size, orders deviating substantially from a normal pattern, or orders of unusual frequency.

168. Defendant Cardinal failed to provide the aforementioned reporting required by law. Defendant provided minimal, inaccurate or partial reporting, if any reporting was provided at all. As a direct and proximate result, this Commonwealth acted in reliance on such failure to disclose and suffered grievous injury as a result.

169. The failure to disclose these facts constitutes fraud by omission.

170. Further, Defendant Cardinal admitted to prior violations of the federal Controlled Substances Act.<sup>37</sup> Thus, Plaintiff reasonably inferred that Defendant Cardinal conducted business within the Commonwealth of Kentucky in such a way as to violate the Kentucky Controlled Substances Act.

171. Defendant Cardinal caused harm to Plaintiff due to its clear fraud by omission. Plaintiff is entitled to recover all damages proximately caused by these fraudulent actions.

**COUNT VII**  
**MEDICAID FRAUD KRS CHAPTER 205**

172. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

173. KRS 205.8463 is violated when a person “knowingly or wantonly devise[s] a scheme or plan[s] a scheme or artifice, or enter[s] into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false, or fraudulent application, claim, report, or document submitted to the Cabinet for Health and Family Services, or intentionally engage in conduct which advances the scheme or artifice.” KRS 205.8463(1).

174. It is likewise a violation of KRS 205.8463 when any person “intentionally, knowingly, or wantonly make[s], present[s], or cause[s] to be presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious, or fraudulent statement, representation or entry in any application, claim, report, or document used in determining rights

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<sup>37</sup> Dep’t of Justice, U.S. Attorney’s Office, Middle District of Florida, *Cardinal Agrees To Pay Record \$150 Million Settlement For Failure To Report Suspicious Orders Of Pharmaceutical Drugs* (Jan. 17, 2017), available at <https://www.justice.gov/usao-mdfl/pr/Cardinal-agrees-pay-record-150-million-settlement-failure-report-suspicious-orders>.

to any benefit or payment.” KRS 205.8463(2).

175. Similarly, KRS 205.8463 is violated when any person to “in any matter within the jurisdiction of the Cabinet for Health and Family Services under this chapter, knowingly, falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, factious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.” KRS 205.8463(4).

176. Under KRS 205.8469(1), “[t]he Attorney General, on behalf of the Commonwealth, may commence proceedings to enforce KRS 205.8451 to 205.8483.”

177. Additionally, KRS 446.070 provides that “[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.”

178. Defendant Cardinal’s conduct, as described in the Complaint, violated KRS 205.8463(1), (2), & (4). Defendant Cardinal, through its annual deceptive license renewals through the Commonwealth’s Cabinet for Health and Family Services (“CHFS”) and Board of Pharmacy as well as its failure to identify, track, and reject suspicious orders of addictive prescription opioids: (a) schemed to obtain payment from a medical assistance program through false application or document presented to the CHFS; (b) caused to be presented false or fraudulent claims to the CHFS; and (c) knowingly used or caused to be used a false statement, or statement which concealed or covered up a material fact, to get a false or fraudulent claim paid or approved by a program within the jurisdiction of the CHFS.

179. Defendant Cardinal through its duty to identify and track suspicious orders of prescription drugs, knew or should have known that, as a natural consequence of its actions, the Commonwealth would necessarily be paying for prescription opioids that were improperly

diverted for non-medically necessary and improper abuse. Defendant Cardinal financially benefits from the excessive and non-medically necessary distribution of these prescription narcotics.

180. Defendant Cardinal's misrepresentations were material because if the Commonwealth had knowledge of Defendant Cardinal's failure to comply with state and federal law, Defendant Cardinal's license to distribute opioids would have been suspended or not renewed, and, pursuant to both state and federal law, said shipments would not have been made by Defendant.

181. By virtue of the above-described acts, Defendant Cardinal knowingly made, used, or caused to be made or used, false records and statements, and omitted material facts, to induce the Commonwealth to continue and renew its distribution license and obfuscate the presence of suspicious prescription drug orders and distribute same throughout the Commonwealth.

182. By reason of Defendant Cardinal's unlawful acts, the Commonwealth has been damaged, and continues to be damaged, in a substantial amount to be determined at trial. Costs of prescriptions filled due to Defendant Cardinal's deceptive operations, and costs of addressing the public health crisis caused or substantially contributed to by that scheme, are direct and proximate results of Defendant's violations as alleged herein and a significant financial burden in the Commonwealth.

183. Defendant's actions constitute Medicaid fraud such that Plaintiff is entitled to recover moneys expended, in addition to penalties, fines, and interest.

184. Defendant should be held liable for all such costs, fines, remedies, and penalties as permitted by law.

## **COUNT VIII**

**MEDICAID FRAUD KRS CHAPTER 194A**

185. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

186. KRS 194A.505(6) provides: “No person shall, with intent to defraud or deceive, devise a scheme or plan a scheme or artifice to obtain benefits from any assistance program by means of false or fraudulent representations or intentionally engage in conduct that advances the scheme or artifice.”

187. Defendant Cardinal, by reason of the acts and/or omissions set forth herein, with the intent to defraud or deceive, devised a scheme or artifice to obtain benefits from the Kentucky Medicaid program and intentionally engaged in conduct that advanced said scheme, in violation of KRS 194A.505(6).

188. Defendant Cardinal, through its annual deceptive license renewals through the Commonwealth’s CHFS and Board of Pharmacy as well as its failure to identify, track, and not distribute suspicious orders of addictive prescription opioids, schemed to obtain benefits from an assistance program through false representations and intentionally engage in conduct that advanced the scheme.

189. KRS 194A.505(8) provides: “The Attorney General on behalf of the Commonwealth of Kentucky may commence proceedings to enforce this section, and the Attorney General shall in undertaking these proceedings exercise all powers and perform all duties that a prosecuting attorney would otherwise perform or exercise.”

190. KRS 194A.990(5) provides: “Any person who violates KRS 194A.505(1) to (6) shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment

to the cabinet in the amount of all benefits and payments to which the person was not entitled.”

191. By engaging in the conduct set forth above, Defendant Cardinal violated KRS 194A.505(6), and the Kentucky Medicaid program, as a direct and proximate result, paid for opioid prescriptions that were not medically necessary. Additionally, Kentucky Medicaid has and will be required to make payments for ongoing medical treatment and care associated with opioid use, misuse, and abuse, on behalf of Kentucky Medicaid beneficiaries in the future as a result of Defendant’s actions.

192. Because of the above violations of KRS 194A.505(6), the Commonwealth is entitled to recover damages from Defendant Cardinal in an amount to be proved at trial.

193. Because of the above violations of KRS 194A.505(6), the Commonwealth is entitled to recover from Defendant Cardinal civil penalties in the amount of all benefits and payments to which Cardinal was not entitled in accordance with the provisions of KRS 194A.990(5).

194. Because of the above violations of KRS 194A.505(6), the Commonwealth is entitled to recover from Defendant Cardinal all reasonable expenses that the court determines have been necessarily incurred by the Commonwealth in prosecution of this action in accordance with the provisions of KRS 194A.990(6).

### **COUNT IX PUNITIVE DAMAGES**

195. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows:

196. Punitive damages are given to a Plaintiff over and above the full compensation for their injuries, for the purpose of punishing the Defendant, teaching him not to do it again, and

detering others from following his example. See Hensley v. Paul Miller Ford, Inc., 508 S.W.2d 759, 762 (Ky. 1974).

197. Defendant Cardinal's repeated and excessive shipments of suspicious orders, over an extended period of time, in violation of public safety statutes, and without reporting the suspicious orders to the relevant authorities, demonstrates wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others and justifies an award of punitive damages.

198. Kentucky and its citizens have suffered severe loss in terms of addiction, overutilization, diversion, law enforcement costs, increased cost of treating addiction, social ills related to addiction, and untimely patient death as a result of overdose and related illnesses.

199. Defendant Cardinal's intentional and willful actions were the direct and proximate cause of the losses suffered by the Commonwealth.

200. For these reasons, KRS 411.184 authorizes an award of damages upon a showing by clear and convincing evidence that the defendant acted with fraud, oppression or malice. In addition, a Plaintiff may show entitlement to punitive damages where the Defendant has acted with gross negligence. See Williams v. Wilson, 972 S.W.2d 260, 264 (Ky. 1998). Plaintiff is entitled to imposition of punitive damages against the Defendants pursuant to KRS 411.184.

201. Gross negligence is a "wanton or reckless disregard for the lives, safety or property of others." See Phelps v. Louisville Water Co., 103 S.W.3d 46, 51-52 (Ky. 2003). The threshold for the award of punitive damages is whether the misconduct was "outrageous" in character, not whether the injury was intentionally or negligently inflicted. Horton v. Union Light, Heat & Power Co., 690 S.W.2d 382, 389 (Ky. 1985).

202. In a case where gross negligence is used as the basis for punitive damages, gross

negligence has the same character of outrage justifying punitive damages as willful and malicious misconduct in torts where the injury is intentionally inflicted. Just as malice need not be expressed and may be implied from outrageous conduct, so too may wanton or reckless disregard for the rights of others be implied from the nature of the misconduct. *Id.* at 389-90. A finding of gross negligence clearly requires more than a failure to exercise ordinary care. It requires a finding of a failure to exercise even slight care such as to demonstrate a wanton or reckless disregard for the rights of others. *See Phelps*, 103 S.W.3d at 51-52. *See also People's Bank of Northern Kentucky, Inc. v. Crowe Chizek & Co., LLC*, 277 S.W.3d 255, 268 (Ky. App. 2008).

203. Defendant Cardinal engaged in fraudulent conduct and gross negligence that resulted in harm to the Plaintiff. As such, Plaintiff is entitled to punitive damages against Defendant Cardinal.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

- A. Declaring that Defendant Cardinal committed willful violations of KRS 367.170;
- B. An Order permanently enjoining Defendant Cardinal, and its employees, officers, directors, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and any and all persons acting in concert or participation with Cardinal, from future false, misleading, deceptive, and/or unfair acts or practices in relation to their shipment of controlled substances to the Commonwealth pursuant to KRS 367.190;
- C. Declaring pursuant to KRS 446.070 that Defendant Cardinal committed repeated violations of KRS 205.8463;
- D. Declaring that Defendant Cardinal has engaged in conduct, acts, or practices that resulted in fraudulent, erroneous, or illegal payments out of the Kentucky State Treasury.
- E. Temporarily enjoining Defendant Cardinal and its employees, officers, directors, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or

controlling entities, subsidiaries, and any and all persons acting in concert or participation with Cardinal, from continuing their unlawful conduct, acts and practices, including:

1. Prevents Defendant Cardinal from continuing to violate Kentucky laws;
2. Mandates that Defendant Cardinal promptly notify the appropriate authorities of any and all suspicious orders for controlled substances as received from parties who are located in Kentucky;
3. Mandates Defendant Cardinal submit its system for determining suspicious order to those Kentucky authorities for prior approval, and to enjoin Defendant from distributing any controlled substance in Kentucky for any non-legitimate medical purpose;
4. Otherwise abates the public nuisance caused in whole or in part by Defendant Cardinal's actions; and
5. Mandates Defendant Cardinal provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendant's actions to abate the damage they have caused and are continuing to cause.

F. Permanently enjoining Defendant Cardinal and its employees, officers, directors, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and any and all persons acting in concert or participation with Cardinal, from continuing their unlawful conduct, acts and practices, including:

1. Prevents Defendant Cardinal from continuing to violate Kentucky laws;
2. Mandates that Defendant Cardinal promptly notify the appropriate authorities of any and all suspicious orders for controlled substances as received from parties who are located in Kentucky;
3. Mandates Defendant Cardinal submit their system for determining suspicious order to those Kentucky authorities for prior approval, and to enjoin Defendant from distributing any controlled substance in Kentucky for any non-legitimate medical purpose;
4. Mandates Defendant Cardinal provide Plaintiff with the assistance necessary to address the addiction and the resulting destruction left by Defendant's actions to abate the damage they have caused and are continuing to cause; and
5. Otherwise abates the public nuisance caused in whole or in part by Defendant Cardinal.

- G. Awarding treble damages pursuant to KRS 205.8467 and KRS 446.070 as well as restitution to the Kentucky Medicaid program pursuant to KRS 194.990 on account of the damages caused to it as a result of Defendant Cardinal's unlawful conduct;
- H. Awarding civil penalties of \$2,000 for each willful violation of the Kentucky Consumer Protection Act pursuant to KRS 367.990(2);
- I. Awarding civil penalties of \$10,000 for each violation of the Kentucky Consumer Protection Act pursuant to KRS 367.990(2), where Cardinal's conduct is directed at a person aged sixty (60) or older and Defendant Cardinal knew or should have known that the person aged sixty (60) or older is substantially more vulnerable than other members of the public;
- J. Awarding punitive damages against Defendant Cardinal pursuant to KRS 411.184;
- K. Awarding the Commonwealth of Kentucky its costs and attorneys' fees;
- L. Awarding the Commonwealth of Kentucky prejudgment interest as permitted by law;
- M. Awarding any other relief to which the Commonwealth is entitled or the Court deems appropriate and just; and
- N. For a trial by jury on all issues so triable.
- O. Award such other relief as this Court deems just and fair.

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL

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