substances as required under the CSA and applicable DEA regulations."[162] Cardinal also vowed to "commence procedures to ensure that any pharmacy, chain or retail, placing orders of controlled substances … that Cardinal knows or should know are suspicious in nature, given the totality of the circumstances, will receive a site visit or an anonymous site inspection by a Cardinal employee or a qualified third-party inspector to provide an independent assessment of whether that customer's orders are being diverted."[163]

343. That same year, Cardinal issued a press release touting its anti-diversion system, claiming that the company has "robust controls and performs careful due diligence." Specifically, Cardinal described its system as follows:

> The company's controls feature a system of advanced analytics and teams of anti-diversion specialists and investigators to identify red flags that could signal diversion. When the company's program raises a red flag, its teams immediately investigate. Cardinal Health's anti-diversion specialists use their professional judgment and expertise to determine the appropriate action.[164]

344. Cardinal wrote that it "spent millions of dollars" to build its monitoring system,[165] and assured the public it was being "as effective and efficient as possible in constantly monitoring, identifying, and eliminating any outside criminal activity."[166]

345. In a 2017 document published to shareholders, Cardinal acknowledged its role in "maintaining a vigorous program to prevent opioid pain medications from being diverted to improper uses."[167] During an earnings call that same year, George Barrett, Cardinal's Chairman

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[162] Administrative Mem. of Agreement between DEA and Cardinal at 3, CAH_MDL2804_02465982.
[163] *Id.*
[164] Press Release, Cardinal Health Inc. Seeks Restraining Order to Avoid Disruption in Controlled Medicine Shipments from Florida (Feb. 3, 2012), https://cardinalhealth.mediaroom.com/newsreleasearchive?item=122803.
[165] Press Release, Cardinal Health Statement in Response to Preliminary Injunction Hearing: February 29, 2012, https://cardinalhealth.mediaroom.com/newsreleasearchive?item=122811.
[166] Bernstein, Lenny, *et al.*, *How Drugs Intended for Patients Ended Up in the Hands of Illegal Users: No One Was Doing Their Job*, Wash. Post (Oct. 22, 2016), https://www.washingtonpost.com/investigations/how-drugs-intended-for-patients-ended-up-in-the-hands-of-illegal-users-no-one-was-doing-their-job/2016/10/22/10e79396-30a7-11e6-8ff7-7b6c1998b7a0_story html?utm_term=.b5b04da86c80.
[167] Cardinal Health Proxy, Form 14A at 9 (filed Oct. 23, 2017).

and then-CEO, vowed to "operate a very strong, robust, suspicious order monitoring system and process that not only meets [] regulatory requirements," but also "exceeds what is required of distributors."[168]

346. In a subsequent 2017 earnings call, Cardinal stated: "[W]e have spent nearly a decade continuously enhancing our best-in-class suspicious order monitoring tools and analytics to keep pace with the ever-changing shape of the crisis …. We … take very seriously our responsibilities to serve our health care system. Our anti-diversion systems and controls are substantial, they are well-funded and they are best-in-class."[169]

347. To this day, Cardinal continues to publicly portray itself as "committed to fighting opioid addiction and misuse."[170] Cardinal's website holds the company out as an "industry leader" that uses "constantly adaptive, rigorous systems supported by program specialists who monitor and investigate suspicious orders using advanced analytics and other tools."[171]

348. Cardinal was aware that all of these public promises about what it purported to be doing with its compliance program and its efforts to address the opioid crisis did not align with its actions. Through its repeated statements, Cardinal fraudulently concealed its misconduct—violations of its obligations to monitor and prevent diversion.

B. McKesson concealed its failure to comply with its duty to prevent diversion.

349. Similarly, McKesson has publicized the quality of its anti-diversion efforts since 2005, claiming that it "focuses intensely on … systems and processes that enable full compliance with the laws and regulations that govern [its] operations …. [because it is] especially aware of

[168] Cardinal Health Quarterly Earnings Call Tr. at 22 (Aug. 2, 2017).
[169] Cardinal Health Quarterly Earnings Call Tr. at 4–5 (Nov. 6, 2017).
[170] Cardinal, Cardinal Health Opioid Action Program, https://www.cardinalhealth.com/en/about-us/corporate-citizenship/opioid-action-program html (last visited Feb. 24, 2019).
[171] Cardinal, Addressing the Opioid Crisis, https://www.cardinalhealth.com/en/about-us/corporate-citizenship/ethics-and-governance/board-engagement-and-governance.html (last visited Feb. 24, 2019).

[its] responsibility to maintain the integrity of the pharmaceutical supply chain and consumer and patient safety."[172]

350. In May 2008, McKesson entered into a settlement to resolve a DEA investigation over its failure to maintain effective controls at distribution centers in six states. As part of the settlement, McKesson vowed to "maintain a compliance program designed to detect and prevent diversion of controlled substances" and review orders that "exceed established thresholds and criteria" to determine whether the orders were suspicious and "should not be filled and reported to DEA."[173] McKesson also vowed to "follow the procedures established by its Controlled Substance Monitoring Program."[174]

351. McKesson subsequently reassured the public in 2016 that it "put significant resources towards building a best-in-class controlled substance monitoring program to help identify suspicious orders and prevent prescription drug diversion in the supply chain."[175] And McKesson claimed it is "deeply passionate about curbing the opioid epidemic in our country."[176]

352. McKesson continued to hold itself out as committed to preventing diversion, assuring the public in 2017 that it is "doing everything [it] can to help address [the opioid] crisis in close partnership with doctors, pharmacists, government and other organizations across the

[172] McKesson Corporate Citizenship Report 2005, https://www.slideshare net/finance2/mckesson-corporate-citizenship-report-74m-2005.
[173] Settlement and Release Agreement and Administrative Mem. of Agreement at 3–4 (May 2, 2008), https://www.dea.gov/sites/default/files/2018-06/Pharmaceutical%20Agreements%20-%20McKesson%20-%202008_0.pdf.
[174] Administrative Mem. of Agreement between McKesson and DEA at 3 (Jan. 17, 2017); https://www.dea.gov/sites/default/files/2018-06/Pharmaceutical%20Agreements%20-%20McKesson%20-%202017_0.pdf.
[175] Higham, Scott, *et al.*, *Drug Industry Hired Dozens of Officials from the DEA as the Agency Tried to Curb Opioid Abuse*, Wash. Post (Dec. 22, 2016), https://www.washingtonpost.com/investigations/key-officials-switch-sides-from-dea-to-pharmaceutical-industry/2016/12/22/55d2e938-c07b-11e6-b527-949c5893595e_story html?utm_term=.b40d6961d1df.
[176] Higham, Scott, *et al.*, *Drug Industry Hired Dozens of Officials from the DEA as the Agency Tried to Curb Opioid Abuse*, Wash. Post (Dec. 22, 2016), https://www.washingtonpost.com/investigations/key-officials-switch-sides-from-dea-to-pharmaceutical-industry/2016/12/22/55d2e938-c07b-11e6-b527-949c5893595e_story html?utm_term=.b40d6961d1df.

supply chain."[177] McKesson also claimed it "invested millions of dollars to build a first class Controlled Substance Monitoring Program [], allowing the company to monitor suspicious ordering patterns, block the shipment of controlled substances to pharmacies when certain thresholds are reached, report suspicious orders to the DEA, and educate customers on identifying opioid abuse."[178]

353. Also in 2017, as part of an agreement with the Department of Justice and DEA to resolve an investigation into some of McKesson's distribution centers, McKesson vowed to "maintain a compliance program intended to detect and prevent diversion of controlled substances."[179] Specifically, McKesson vowed to make specific staffing and organizational improvements to ensure rigorous compliance and eliminate conflicts of interest, maintain customer due diligence files, refrain from shipping suspicious orders, increase customer thresholds only through an established regulatory review process, and conduct periodic auditing.

354. To this day, McKesson continues to tout its commitment to preventing diversion, claiming that it "uses sophisticated algorithms designed to monitor for suspicious orders." McKesson also claims to have "developed a cutting-edge controlled substances threshold management program, using complex and dynamic data analytics."[180]

355. Through these public promises about what McKesson purported to be doing with its compliance program and its efforts to address the opioid crisis, all of which were knowingly in contradiction to the actual facts, McKesson fraudulently concealed its misconduct—violations of its obligations to monitor and prevent diversion.

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[177] Morgenson, Gretchen, *Hard Questions for a Company at the Center of the Opioid Crisis*, NY Times (July 21, 2017), https://www nytimes.com/2017/07/21/business/mckesson-opioid-packaging.html.
[178] *McKesson Announces Preliminary Voting Results From 2017 Annual Meeting of Stockholders* (July 26, 2017), https://www.businesswire.com/news/home/20170726005746/en/.
[179] Administrative Mem. of Agreement at 5 (Jan. 17, 2017), https://www.justice.gov/usao-nj/press-release/file/928636/download.
[180] McKesson's Controlled Substance Monitoring Program, https://www.mckesson.com/about-mckesson/fighting-opioid-abuse/controlled-substance-monitoring-program (last visited Feb. 24, 2019).

C. Defendants concealed their marketing and promotion of prescription drugs.

356. As recently as 2018, at a hearing on "Combatting the Opioid Epidemic: Examining Concerns About Distribution and Diversion," Cardinal's Chairman testified before Congress that Cardinal does not market any medications to patients, a statement now known to be deceptive. As detailed in Section III.A.1 *supra*, Cardinal has run marketing programs for drug manufacturers—including promoting opioids—for many years. Cardinal's Chairman also testified that opioid prescriptions are written by healthcare providers and filled by pharmacies, suggesting distributors have no role in this decision-making process. He claimed that, "[a]s an intermediary in the pharmaceutical supply chain, Cardinal Health does not ultimately control either the supply of or the demand for opioids."[181] However, as detailed in Section III.A.1 *supra*, Cardinal has worked for years to drive increased demand for opioids through its marketing programs.

357. These misstatements are emphasized on the Cardinal website, where the company styles itself a transporter of prescription medications, responsible for secure delivery, and claims that it does not promote prescription medications to members of the public.

358. At the same Congressional hearing, McKesson's Chairman likewise testified that McKesson does not market prescription drugs to doctors or patients, nor "any particular category of drugs, such as opioids, to pharmacies."[182] The State now knows this to be deceptive. As discussed in Section III.B *supra*, McKesson markets prescription drugs to pharmacies through multiple programs and to consumers through the Pharmacy Information Program. McKesson's Chairman also testified that the company does not ship prescription drugs absent a pharmacy

[181] Testimony of George S. Barrett, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, United States House of Representatives, May 8, 2018.
[182] Testimony of John Hammergren, Chairman, President, and Chief Executive Officer McKesson Corporation, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, United States House of Representatives, May 8, 2018.

order.[183] However, McKesson has, in the past, auto-shipped opioids to pharmacies, through one of its marketing programs, as detailed in Section III.B.1.

359. Defendants' trade lobbying association, HDA, has also falsely denied that Defendants marketed opioids. In publicly denying distributors' role in the opioid epidemic, HDA stated: "Distributors have no ability to influence what prescriptions are written. The fact is that distributors don't make medicines, **market medicines**, prescribe medicines or dispense them to consumers."[184]

360. Defendants' deceptive and misleading public statements, including to the U.S. House of Representatives Oversight Committee, were intended to and did conceal their conduct, preventing the State of Vermont from discovering facts essential to its claims.

D. Defendants fought to safeguard the market for opioids, further ensuring that their misconduct remained concealed.

361. Defendants spent millions of dollars to protect the market for opioids and ensure their misconduct remained concealed.

362. From 2008 through 2018, Defendants' lobbying expenditures increased, corresponding with the increase in opioid use and abuse. To further their interests, including decreased enforcement, Cardinal spent $19.17 million and McKesson spent $17.27 million on lobbying during these deadly years. Meanwhile, law enforcement actions related to opioids declined—civil case filings by the DEA against distributors, manufacturers, pharmacies, and doctors dropped from 131 in fiscal year 2011 to just 40 in fiscal year 2014.[185]

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[183] *Id.*
[184] HDA Press Release, *HDA Statement On Attorneys General Opioid Investigations*, Sept. 19, 2017, https://www.prnewswire.com/news-releases/hda-statement-on-attorneys-general-opioid-investigations-300522358.html
[185] *See* Lenny Bernstein & Scott Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, Wash. Post (Oct. 22, 2016), https://www.washingtonpost.com/investigations/the-dea-slowedenforcement-while-the-opioid-epidemic-grew-out-of-control/2016/10/22/aea2bf8e-7f71-11e6-8d13-d7c704ef9fd9_story.html?utm_term=.e2d89d4ccd07.

363. Cardinal and McKesson also worked with trade associations and other organizations. Chief among them is their powerful lobbying association: HDA.

364. Defendants are members of HDA, and Defendants' executives have long maintained leadership positions in HDA's management. These privileged and powerful positions have enabled Defendants to influence the agendas pushed by the trade association.

365. Paul Julian, who was an Executive Vice President and Group President at McKesson, was chairman of HDA from 2008 to 2010, on the HDA Board of Directors from 2000 to 2013, and on its Executive Committee from 2005 to 2013. For his service in furthering distributors' agendas, Julian received HDA's Nexus Award for Lifetime Achievement in 2015. While President of McKesson, Mark Walchirk served on HDA's Board of Directors and Executive Committee for multiple years, beginning in 2014. Layne Martin currently serves on the HDA Research Foundation's Board of Directors in addition to his duties as Vice President and General Manager of Supply Chain Solutions at McKesson.

366. Cardinal senior executives also have served as HDA leaders. While employed as CEO of Cardinal's Medical Segment, Jon Giacomin concurrently served as the Vice Chairman of the HDA Board of Directors from 2014 to 2016, and as its Chairman from 2016 to 2017. Cardinal's Executive Vice President of Global Sourcing, Craig Cowman, currently serves on the HDA Research Foundation's Board of Directors. And Cardinal's current CEO, Mike Kaufman, is a former member of HDA's Board of Directors as well as its Executive Committee.

367. In addition to maintaining leadership positions in HDA, Defendants made significant financial contributions to the association. In 2017 alone, McKesson paid about [redacted] to HDA for dues and other expenses. McKesson increased that contribution to [redacted] the following year due to additional advertising and public affairs expenses. Also in 2017,

Cardinal and McKesson each contributed $1,161,667 for HDA's Education and Communications Campaign.

368. Part of HDA's stated mission was to prevent "onerous legislation from being enacted"—legislation that could have brought Defendants' misconduct to light much sooner. McKesson's VP of Federal Government Affairs, Joseph Ganley, admitted that controlled substance lobbying was the top priority of HDA's Federal and State Affairs Committee. Mr. Ganley admitted: "State efforts to address, reduce, prevent Rx abuse and diversion" is the primary challenge for HDA.[186]

369. Not surprisingly then, by 2014, HDA had a state government affairs budget of almost $1 million, with an additional budget of $235,000 for contract lobbyists. HDA also had an employee assigned to every single state.

370. In 2016, HDA submitted an amicus brief to the United States Court of Appeals in *Masters Pharm., Inc. v. Drug Enf't Admin.*, 861 F.3d 206 (D.C. Cir. 2017). In the brief, the HDA represented that Cardinal and McKesson "take seriously their duty to report suspicious orders, utilizing both computer algorithms and human review to detect suspicious orders based on the generalized information that is available to them in the ordering process."[187]

371. Significantly, while acknowledging distributors' duties regarding suspicious orders, HDA also requested the Court of Appeals to limit those duties. HDA asked the court to renounce "any attempt to impose additional obligations on [Defendants] to investigate and halt suspicious orders."[188] The court rejected HDA's arguments. *Id.* at 222–223.

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[186] Deposition of Joseph Ganley, July 27, 2018, MCK-AGMS-032-0000550 at 118-119; MCK-AGMS-032-0000878 at 4.
[187] Brief for Healthcare Distribution Alliance and National Association of Chain Drug Stores as Amici Curiae in Support of Neither Party, *Masters Pharm., Inc. v. Drug Enf't Admin.*, 861 F.3d 206 (D.C. Cir. 2017) (No. 15-1335), 2016 WL 1321983 at *25.
[188] *Id.* at *26.

372. In addition to its own matters, HDA supported the activities of other front groups. It was a member of the Pain Care Forum, a lobbying consortium that spent more than $880 million from 2006 through 2015 on campaign contributions and lobbying expenses at the state and federal level in an effort to increase the flow of dangerous opioids to consumers. From 2007 to 2014, the number of registered lobbyists in Vermont employed by members of the Pain Care Forum ranged from 16 to 29.

373. The Pain Care Forum lobbied both state and federal governments to prevent restrictions on opioid prescribing. For example, the group paid a PR consultant to draft patient testimonials to encourage the state medical boards to adopt more lax guidelines on opioid dosage. According to reporting by the Associated Press and the Center for Public Integrity, as early as 2008, the Pain Care forum was developing a strategy to "inform the process" at FDA, generating 2,000 comments opposing new barriers to opioids. According to the article, the Pain Care Forum has, for over a decade, met with some of the highest-ranking health officials in the federal government, while quietly working to influence proposed regulations on opioids and promote legislation and reports on the problem of untreated pain. The group is coordinated by the chief lobbyist for Purdue Pharma, the maker of OxyContin. From 2006 through 2015, participants in the Pain Care Forum spent over $740 million on lobbying.

374. Through these efforts, Cardinal and McKesson not only concealed their own misconduct in marketing and promoting opioids and failing to comply with their duties to prevent diversion, but actively lobbied against increased regulation of the opioids market and enforcement of existing laws and regulations, for the purpose of protecting their lucrative market and ensuring that their wrongdoing did not come to light.

CAUSES OF ACTION

COUNT I
Unfair Acts and Practices
Violations of the Vermont Consumer Protection Act

375. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint, as though fully set forth herein.

376. Defendants engaged in unfair acts or practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), by:

- Transporting and selling opioids in the State of Vermont while failing to comply with their duties, under federal and state law, to detect, prevent, and report diversion of opioids to other than legitimate channels, including by:
    - Designing suspicious order monitoring programs that failed to monitor, identify, report, and prevent fulfillment of suspicious orders by, *inter alia*, utilizing inflated order thresholds that failed to account for known characteristics of suspicious orders, allowing for manipulation of order thresholds by and/or for the benefit of pharmacy customers, and failing to require adequate investigations of pharmacies; and
    - Failing to adhere to the terms of their suspicious order monitoring programs by, *inter alia*, assigning inadequate staffing to compliance responsibilities, conducting inadequate due diligence of their customers, raising customers' order thresholds without conducting an appropriate investigation, and exempting chain pharmacies from important aspects of the anti-diversion programs;
- Advertising and promoting opioids in the State of Vermont, for the purpose of increasing sales, while failing to design and maintain effective systems to detect, prevent, and report diversion of opioids to other than legitimate channels—as required by federal and state law;
- Disseminating advertising and promotional messages in the State of Vermont that failed, despite the known, serious risks of addiction and adverse effects posed by opioids, to present a fair balance of benefit and risk information; and
- Promoting the initiation of opioid use and/or long-term continuation of opioid use by providing Savings Cards to reduce patients' out-of-pocket expense for these drugs.

377. These acts or practices may be deemed "unfair" in that they offend public policy reflected in (a) established legal standards that require the truthful and balanced marketing of

prescription drugs; and (b) Vermont and federal law, which require licensed wholesale distributors of controlled substances to take steps to combat drug abuse, to regulate legitimate and illegitimate traffic in controlled substances, and to detect, prevent, and report diversion of controlled substances to other than legitimate channels. *See* 20-4 Vt. Code R. § 1400, Part 17; the Controlled Substances Act, 21 U.S.C. § 801, *et seq*., and its implementing regulations.

378. These acts or practices were unfair because they represented a dereliction of the Defendants' duties to monitor, prevent, and report diversion of the dangerous and addictive opioids that they sold in the State. Defendants understood that they had a critical role in the federal- and state-mandated system to prevent diversion, and that they were responsible for not sending more opioids into Vermont communities than were reasonably necessary to meet legitimate demand for medical use. However, their financial interests were best served by (1) increasing sales of these expensive and profitable drugs, and (2) avoiding damage to customer relationships (and potential loss of market share) that could result from holding or investigating suspiciously-high orders. Defendants chose to prioritize their financial interests ahead of consumer health and safety, designing and implementing ineffective diversion control systems, and marketing and promoting opioids on behalf of their manufacturer clients. This conduct is immoral, unethical, oppressive, and unscrupulous.

379. By reason of Defendants' conduct, Vermont consumers have suffered substantial injury by reason of the health risks associated with opioid abuse and misuse, including the pain and suffering associated with opioid addiction, injury, disability, overdose, and death, as well as the associated financial costs.

COUNT II
Deceptive Acts and Practices
Violations of the Vermont Consumer Protection Act

380. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint, as though fully set forth herein.

381. Defendants engaged in unfair and deceptive trade practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), by making material misrepresentations and omissions regarding the risks and benefits of its opioid products, including by:

- Making and disseminating false or misleading statements about the benefits, risks, and diversion-potential of opioids; and
- Making statements to promote the use of opioids that omitted or concealed material facts, including the risks of diversion and misuse, dependence, addiction, overdose, and death associated with these drugs.

382. Defendants' material omissions rendered even seemingly truthful or neutral statements about opioids false and misleading, because they were materially incomplete. At the time Defendants made these statements and disseminated these promotional materials, Defendants failed to include material facts about the risks and benefits of opioid use and failed to provide "fair balance," as required by law.

383. These misrepresentations and omissions were likely to mislead the prescribers and pharmacists to whom they were directed, affecting their decisions regarding the prescribing, dispensing, and use of opioids. The meaning Plaintiff ascribes to Defendants' misrepresentations herein is reasonable, given the nature thereof.

COUNT III
Negligence

384. The State incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

385. Defendants have a duty under the common law of Vermont to exercise the degree of care that a reasonably prudent person would under the circumstances. The scope of this common law duty of ordinary care expands according to the foreseeability of the consequences of a defendant's acts or omissions.

386. Defendants distribute large quantities of addictive prescription opioid narcotics, which have been designated as controlled substances under state and federal law. It is foreseeable that Defendants' failure to design and operate effective controls to monitor, identify, report, and prevent the fulfillment of suspicious orders of prescription opioids would create a risk of abuse, misuse, and injury to the State and its citizens. The very purpose of state and federal laws regulating Defendants' activities is to prevent the abuse of controlled substances and to prevent the diversion of those substances. Thus, Defendants have a common law duty to prevent the diversion of controlled substances into illegitimate channels.

387. This common law duty of care is fully supported by and incorporates State laws governing distributors of controlled substances, which impose a statutory duty on such distributors to provide effective controls and procedures to guard against diversion. The statutory duty includes the explicit requirements that a distributor must: (a) design and operate a system to identify suspicious orders of controlled substances; (b) report the identification of all suspicious orders of controlled substances; and (c) exercise sufficient diligence to prevent the fulfillment of any suspicious orders. 26 V.S.A. § 2068; 20-4 Vt. Code R. § 1400:17.25 (incorporating the security requirement set forth under federal law).

388. State laws regulating the distribution of controlled substances are "safety statutes" under Vermont law, the violation of which gives rise to a rebuttable presumption of negligence.

389. Defendants breached their common law and statutory duties by failing to maintain effective controls over prescription opioids by, *inter alia*, the following acts and omissions:

- creating ineffective anti-diversion and suspicious order monitoring systems that utilized inflated order thresholds that failed to account for known characteristics of suspicious orders, allowed for manipulation of order thresholds by and/or for the benefit of pharmacy customers, and failed to require adequate investigations of pharmacies;
- failing to effectively implement their anti-diversion programs, including by assigning inadequate staffing to compliance responsibilities, conducting inadequate due diligence of their customers, raising customers' order thresholds without conducting an appropriate investigation, and applying, different, even looser rules to their chain pharmacy customers;
- failing to report to the proper authorities all suspicious orders identified by their own monitoring protocols; and
- failing to prevent the shipment of suspicious orders by, among other things, failing to conduct proper diligence prior to filling suspicious or potentially suspicious orders.

390. Defendants' breach of their duties fueled the widespread circulation of opioids into illegitimate channels in Vermont. The structure of Vermont's controlled substances regulations—and of the federal regulations incorporated by Vermont law—acknowledges that preventing the abuse, misuse, and diversion of controlled substances can only occur where every participant in the distribution chain maintains effective controls. Defendants' failure to satisfy their duties to monitor, identify, report, and prevent the fulfillment of suspicious orders for prescription opioids has caused or substantially contributed to the abuse, misuse, and diversion of those opioids. Had Defendants effectively carried out their duties, opioid abuse, misuse, diversion, and addiction would not have become so widespread in Vermont, and the costs borne by the State in addressing and abating the opioid epidemic would have been averted or much less severe.

391. The State has expended millions of dollars in addressing and attempting to abate a wide-spread public health epidemic that has been fueled by the drugs that Defendants sent into Vermont. These expenses are the foreseeable and proximate result of Defendants' failure to design and implement effective diversion controls in accordance with their legal duties. A reasonably prudent distributor of controlled substances would foresee that failing to maintain effective controls against the diversion of highly addictive narcotics would fuel over-prescription, would lead to overpayment by payors, and would result in the attendant costs of addressing an opioid crisis.

392. As a direct result of Defendants' misleading representations regarding their purported compliance with their duties to prevent diversion, the State was unaware of, and could not reasonably know or have learned at an earlier time through reasonable diligence, the risks described herein.

COUNT IV
Public Nuisance

393. The State incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

394. Defendants, through their actions described throughout the Complaint, have created—or were a substantial factor in creating—a public nuisance by unreasonably interfering with a right that is common to the general public.

395. The State and its citizens have a public right to be free from the substantial injury to public health, safety, peace, comfort, and convenience that has resulted from Defendants' actions and omissions.

396. Defendants have interfered with the above enumerated right by creating a long-lasting and continuing public nuisance through distributing prescription opioids that they knew,

or reasonably should have known, were being overprescribed, misused, or abused while illegally failing to maintain appropriate controls over such distribution. By causing or substantially contributing to the opioid crisis in Vermont, Defendants have created an unreasonable public nuisance. Without Defendants' actions, opioid use would not have become so widespread in Vermont, and the opioid epidemic which the State now faces would have been averted or would be much less severe.

397. As a direct and proximate result of Defendants' actions and omissions, the State and its citizens suffered harms including, *inter alia*, the following:

- Normalization of over-prescribing and over-dispensing of prescription opioids by prescribers and pharmacists in the State;
- Increased availability and sales of prescription opioids, accompanied by increased diversion;
- Dependence and addiction to prescription opioids leading to escalation to non-prescription or "street" opioids such as heroin and fentanyl;
- Higher rates of opioid misuse, abuse, injury, overdose, and death, and their impact on Vermont families and communities;
- Heightened rates of opioid use disorder in pregnant women and resulting neonatal abstinence syndrome in their children;
- Increased health care costs for individuals, families, employers, and the State; and
- Greater demand for law enforcement, including the costs of treating prisoners with addiction.

398. Public resources have been, and are being, consumed in efforts to address the opioid epidemic, reducing the available resources that could be used to benefit the Vermont public at large.

399. At all times relevant, Defendants controlled the instrumentalities of the nuisance: distribution channels that moved prescription opioids from manufacturers to pharmacies in the

State and the systems (or lack thereof) for monitoring and identifying suspicious orders of prescription opioids and the protocols for halting, investigating, and reporting those orders.

400. At all times relevant, Defendants knew that prescription opioids are regulated controlled substances that have a high potential for abuse and may lead to severe psychological or physical dependence. Defendants were further aware—because they helped create it—that a national opioid epidemic had led to widespread addiction, overdoses, hospitalizations, and fatalities. The harms alleged herein were therefore foreseeable to Defendants as a direct and proximate result of their actions and omission. It was unreasonable for them to move prescription opioids from manufacturers to pharmacies and other dispensaries without systems in place to detect, investigate, halt, and report suspicious orders. It was also unreasonable for Defendants to fail to design and operate a system that would disclose the existence of suspicious orders of prescription opioids and to fail to report, investigate, and halt those orders, as required under Vermont law.

401. Defendants' actions and omissions were a material element in allowing prescription opioids to become available throughout the State on an unnecessary and dangerously large scale.

402. As a direct result of Defendants' misleading representations regarding their purported compliance with their duties to prevent diversion, the State was unaware of, and could not reasonably know or have learned at an earlier time through reasonable diligence, the risks described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Vermont respectfully requests the Court enter judgment in its favor and the following relief:

(A) A judgment in the State's favor and against Defendants on each cause of action asserted in the Complaint;

(B) With respect to Counts I and II, a permanent injunction prohibiting Defendants from engaging in the unfair and deceptive acts and practices described in the Complaint;

(C) With respect to Counts I and II, a judgment requiring Defendants to disgorge all funds acquired or retained as a result of any acts or practices found to be unlawful;

(D) With respect to Counts I and II, statutory penalties of $10,000 for each violation of the Vermont Consumer Protection Act;

(E) With respect to Count III, all damages allowable under common law;

(F) With respect to Count IV, an order providing for abatement of the nuisance that Defendants created or were a substantial factor in creating, enjoining Defendants from further conduct contributing to the nuisance, and damages as compensation for funds the State has already used to abate the nuisance;

(G) The award of investigative and litigation costs and fees, including attorneys' fees, to the State; and

(H) Such other, further, and different relief as this Court may deem appropriate.

JURY TRIAL DEMANDED

The State demands a trial by jury.

Dated: March ___, 2019

Respectfully submitted,

THOMAS J. DONOVAN JR.
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