instances, sales personnel or Distribution Center Managers would undertake the Level 1 review. For example, when a threshold event triggered a Level 1 review for a pharmacy in 2012, a McKesson sales employee merely discussed calling the pharmacy to ask if it "need[ed] an adjustment" instead of gathering information and conducting a Level 1 review as required under the CSMP.[64]

171. McKesson's employees were also left to develop their own *ad hoc* investigative techniques under the vague directives of the CSMP, which failed to provide specific standard operating procedures for investigations. The investigative procedures sometimes included generally conducting an interview, observing operations and customer flow, and internet research on public websites. McKesson also failed to standardize the interview questions for pharmacy site visits and interviews. One DRA noted that he created his own questionnaire, and answers were only recorded if something "stood out." Despite directing employees to consider various red flags, McKesson had no standard policy or practice for evaluating red flags. And deciding whether to stop supplying a pharmacy with opioid drugs, or to escalate a review to Level 2 or 3, was largely left to the discretion of the McKesson Distribution Center Managers without involvement of full-time regulatory staff.

172. An internal McKesson audit from March 2011 confirmed a pattern of deficiencies in its investigatory practices following threshold events, including Distribution Center Management's failure to sign Level 1 review forms as required by policy. The audit also found that the required Level 1 review documentation was not completed for 20 of the 56 Level 1 reviews that were triggered by threshold events in July 2010, and McKesson failed to complete documentation for reviews of 54 threshold events that occurred in November 2010 alone. In

[64] MCK-AGMS-032-0004751.

many cases, the salespeople were not filling out the Level 1 reports correctly, or at all, despite repeated threshold events.

173. These were not isolated incidents, but rather part of a systemic and nationwide problem. McKesson's Senior Vice President of Distribution Operations stated that "I am sure that if we picked four different [distribution centers] we would find the same issues so we should assume this is a network wide concern."[65]

174. In a communication to sales personnel, one DRA was aware of the pattern of poor review practices, and even confirmed that some Level 1 reviews were fabricated. As he noted, "[p]lease do not assume the reason, then fill out a [Level 1] form as if a call had taken place. If we ever find ourselves in a court of law regarding diversion and then we have to admit that we didn't really call the customer but rather just filled the form out like we had called, it will not be pretty. Word of advice."[66]

175. A pharmacy in rural Franklin County, Vermont, provides yet another example of McKesson's failure to conduct investigations in response to orders that exceeded thresholds. McKesson documents indicate that this pharmacy had a remarkable history of exceeding its threshold over a number of years, single-handedly accounting for 219 threshold events, or 44% of the state's threshold events and blocked orders from May 2008 through July 2013. While this deluge of threshold events in and of itself should have triggered a careful investigation of the pharmacy's business practices, there is no evidence of a single site visit or any Level 1 review conducted or completed pursuant to the McKesson's CSMP, let alone a Level 2 or Level 3 investigation. In fact, there are no indications that McKesson conducted a Level 2 or 3 review

[65] MCK-AGMS-076-0000319.
[66] MCK-AGMS-035-0001600 at 2.

between 2008 and 2013 at all, based on records produced for a sample group of Vermont pharmacies investigated by the State.

176. In some instances, the Franklin County pharmacy declined to request a threshold increase after exceeding a threshold with an order. In response, McKesson personnel merely noted that the pharmacy did not need the order, and the pharmacy simply ran out the clock and waited until the threshold was reset at the end of the month before resubmitting its order. For these instances, McKesson's sample regulatory files contain no indication that McKesson did anything further to carry out its duty to investigate and determine whether the order, even if withdrawn, was suspicious.

177. As a result of its systematic failure to conduct diligent investigations of threshold events, and in violation of its duty, McKesson failed to submit any suspicious orders to the DEA for this pharmacy at any point from 2008 to August 1, 2013. From 2010 to 2013, the county in which this pharmacy is located recorded 14 prescription opioid-related overdose deaths. Despite all this, McKesson continued doing business with the pharmacy [redacted]

3. McKesson failed to report flagged orders and shipped orders without conducting a diligent investigation.

178. McKesson already has admitted that it failed to report all the suspicious orders that it should have to the DEA. For example, in its 2017 settlement agreement with the DEA and DOJ, McKesson acknowledged that suspicious orders did not get flagged in the system and it did not identify and report all the suspicious orders it should have between 2008 and 2014.

179. McKesson also failed to report and block orders in Vermont. During a similar time period, from May 16, 2008 to August 1, 2013, McKesson failed to report **any** suspicious orders from Vermont pharmacies, despite profiting from and shipping approximately 54 million prescription opioid pills into Vermont during that period. For example, in September 2012,

McKesson blocked an order for oxycodone placed by a pharmacy in Franklin County, Vermont because the order exceeded the pharmacy's threshold for oxycodone. While it was supposed to conduct a Level 1 review of the threshold event, there is no documentation indicating any review, and McKesson instead initiated a threshold change, approved the threshold change, and resumed oxycodone shipments the very same day.

180. Three months later, in December 2012, McKesson again blocked an order for oxycodone from the same Vermont pharmacy because the order exceeded its monthly threshold. Again, on the same day that the order was blocked, McKesson initiated a threshold change request and again commenced shipments of oxycodone the next business day without documentation of a Level 1 review. Even after this repeated pattern of suspicious orders, McKesson's diligence records provide no indication of whether McKesson regulatory personnel visited this Vermont pharmacy, and there is no documentation of any investigations.

181. Such practices were not limited to Vermont—they were a symptom of McKesson's systemic anti-diversion failures. Often McKesson failed to report any suspicious orders until the DEA initiated an investigation. For example, McKesson failed to report any suspicious orders to the DEA nationwide from May 2008 to July 2011. Only after the DEA commenced an investigation in 2011 did McKesson begin a flurry of remedial reporting activity and cease doing business with certain customers in an overdue attempt to comply with its duty. In January 2012, for example, McKesson discontinued doing business with two pharmacies and submitted suspicious order reports for these two pharmacies to the DEA—just one week before McKesson was scheduled to meet with the DEA.

182. In November 2011, McKesson ceased shipping controlled substances to a pharmacy—less than one month after the DEA requested the pharmacy's diligence files from

McKesson for its own investigation. In that case, one doctor accounted for 80% of the pharmacy's oxycodone business, and the doctor was more than 25 miles from the pharmacy—two clear red flags for the presence of diversion. Although it had never previously reported a suspicious order from the [redacted] pharmacy, and had supplied it for years, McKesson claimed that it was in the process of ceasing business with the pharmacy and that it was only a coincidence that the DEA investigation commenced at that time. Even when McKesson stopped doing business with the [redacted] pharmacy, it failed to report any suspicious order reports to the DEA, instead claiming that there were no individual suspicious orders.

183. Further demonstrating its systemic problems, McKesson also failed to report suspicious orders by [redacted] that were owned by the same person and whose opioid thresholds were approved for permanent increase by McKesson from 4,000 to 16,000 per month in August 2010, and increased again to 20,000 in 2011. In addition to the exponential threshold increases granted to these pharmacies, 70% of the controlled substances that they were ordering from McKesson were hydrocodone products—"obvious indicia of diversion" that McKesson ignored. The owner of this pharmacy and dozens of other participants were later convicted on charges related to a drug trafficking conspiracy.

184. McKesson failed to block or report orders that represented significant multiples of the average monthly orders at its distribution centers. Over a four-year period at one distribution center, there were 122,288 instances in which pharmacies ordered and received two times the monthly average of a pharmacy their size; 71,000 instances where pharmacies received three times the monthly average of a pharmacy their size; 10,609 instances where pharmacies received ten times the monthly average of a pharmacy of their size.

185. Overall, between 2008 and 2013, McKesson failed to report **any** suspicious orders from its Methuen distribution center, which was the primary distribution point for shipment of drugs into Vermont, and which also serviced other states. Because of McKesson's poor implementation of its already inadequately-designed CSMP, McKesson failed to identify, report, and prevent shipment of suspicious orders, as required under Vermont law.

4. McKesson applied a different, even looser, set of rules to its chain pharmacy customers.

186. McKesson wholly abdicated its responsibility to investigate threshold events triggered by orders from its large chain pharmacy customers, in violation of its duties under Vermont law. McKesson's pharmacy customers were typically divided into ISM (independent/small/medium size) and larger chains identified as "RNAs" (Retail National Accounts). When an ISM pharmacy exceeded a threshold, the pharmacy was contacted and was supposed to be investigated directly by McKesson. However, if a Retail National Account pharmacy did the same, McKesson did not initiate any investigation, but rather contacted the chain's corporate office, because "they perform their own due diligence internal regulatory review."

187. McKesson relied on the corporate offices of the Retail National Accounts to conduct their own due diligence, despite a pattern that the pharmacy chains were violating their duties under federal law. For example, McKesson engaged in this conduct for one Retail National Account that was one of the largest chains serviced by McKesson in Vermont and had a significant history of settlements related to alleged violations of the Controlled Substance Act (CSA) settlements. In 2009, this chain agreed to pay $5 million in civil penalties to settle allegations of violations of the CSA, violations alleged to have occurred in several states from New York to California. This chain entered into another settlement in 2017, agreeing to pay

$834,200 to resolve allegations arising from an investigation in Los Angeles, California. And in late 2018, the chain entered into yet another settlement, agreeing to pay a $300,000 penalty for filling prescriptions at Rhode Island pharmacies over the maximum allowed under state law.

188. This chain has a significant foothold in the Vermont retail pharmacy marketplace: at least 51 individual DEA registration numbers associated with its pharmacies in Vermont with more than 145,000 transactions with these pharmacies from 2014-2018 alone. McKesson's abandonment of its duty allowed McKesson to both maintain profitable business relationships with large chain customers and continue shipping massive quantities of prescription opioids into Vermont without interruption.

189. McKesson's uniform policy of special treatment for chain pharmacies was also evident in a September 2008 agreement with another Retail National Account, pursuant to which McKesson temporarily stopped monitoring thresholds for that chain altogether. By November 2008, McKesson was back to monitoring thresholds but instructed its regulatory personnel to automatically increase this chain's thresholds without any investigation at all, even if the threshold was exceeded. As McKesson explained, any location within this chain "that encroaches upon these new thresholds will be increased by the Regulatory Affairs team without [ ] explanations so long as they don't fall into a category we are identifying as 'unusual' thus requiring further explanation from [the company]."[67] McKesson also approved permanent bulk threshold change requests to chains without appropriate reasons or documentation. A permanent threshold increase was provided to all of this chain's pharmacies in a region due to "the thanksgiving increases."[68] In yet another example, McKesson provided a bulk increase to this chain's pharmacies without any justification or documentation at all.

[67] MCK-AGMS-041-0066748.
[68] MCK-AGMS-032-0004722.

III. Cardinal and McKesson Unfairly and Deceptively Promoted Opioids by Spreading Opioid Manufacturers' Misleading Marketing to Pharmacies and Consumers.

190. Cardinal's and McKesson's contributions to the opioid epidemic are not limited to their escalating sales and failure to design and implement policies that effectively prevented diversion. Defendants' internal documents confirm that they actively marketed prescription opioids to prescribers and pharmacists. Through these marketing activities, they built upon, reinforced, and profited from the drug manufacturers' campaign to deceive healthcare providers about the risks and benefits of prescription opioid use—a campaign that encouraged and normalized over-prescribing and over-dispensing of prescription opioids.

191. Cardinal's and McKesson's promotion and marketing of prescription opioids constitutes an unfair business practice, in the context of their legal duties as licensed distributors of controlled substances and their failure to implement adequate systems to detect, prevent, and report diversion. Their marketing of prescription opioids ranged from "reminder" advertisements—awareness-building messages about the availability of certain drugs—to affirmative promotion of opioids, disseminated through marketing channels over which they had unique control, as well as promotion and/or administration of prescription savings card programs designed to encourage initiation and long-term use of branded prescription opioids. Through these marketing activities, Cardinal and McKesson built upon and reinforced the opioid manufacturers' deceptive, misleading, and highly successful marketing campaign to promote prescription opioid use.

192. Cardinal's and McKesson's roles in marketing prescription opioids were at odds with their core responsibilities as licensed distributors of controlled substances. These marketing efforts were intended to increase opioid sales, which would thereby increase the supply of

opioids in the community and increase abuse and diversion, further undermining Defendants' already insufficient diversion prevention systems.

193. Cardinal and McKesson profited in two ways from their marketing activities: (1) they were paid by the drug manufacturers to promote their prescription opioids, and/or (2) they were paid from increases in pharmacy drug sales that resulted from these marketing efforts.

194. Defendants focused their marketing efforts on pharmacists because they knew—as did the opioid manufacturers—that pharmacists, as the last healthcare professionals to see patients before medication is dispensed, occupy a unique position of influence over both prescribers and consumers. Particularly over the last few decades, the typical pharmacist's role has evolved from rote dispensing of prescriptions to actively advising on drug therapies.[69]

195. In a 2010 survey by the National Community Pharmacists Association ("NCPA"), pharmacists reported interacting with other health care professionals regarding patients' drug therapy an average of 7.1 times per day. Eighty-one percent of the surveyed pharmacists reported recommending changes to patients' drug regimens, with physicians accepting 73% of those recommendations. Nearly all (93%) of the surveyed pharmacists reported, for example, recommending changes from branded to generic drugs, with physicians accepting 80% of those recommendations.[70]

196. Cardinal expressly acknowledged pharmacists as important conduits for educating and influencing patients and for providing drug recommendations to prescribers. One Cardinal marketing proposal emphasized to an opioid manufacturer client that [redacted]

[69] https://www.pharmacytimes.com/publications/issue/2015/october2015/the-pharmacists-expanded-role
[70] https://www.pharmacytimes.com/publications/issue/2012/january2012/strong-pharmacy-entrepreneurs-make-for-a-strong-profession

[redacted] Cardinal's proposal advised the drug company that "[redacted]"[71]

197. Opioid manufacturers that used Defendants' marketing services also knew that pharmacists are key to ensuring that prescriptions are converted to sales. Purdue, for example, asserted in a 2013 marketing plan that promotion to pharmacists was necessary for "educating on benefits of OxyContin (to avoid negative pharmacist recommendations)."[72] In 2015, when Purdue launched its extended-release hydrocodone product, Hysingla, it cited the aforementioned NCPA survey to conclude that "[t]he ability to partner with … pharmacists will be key to ensure that when a patient presents a prescription for Hysingla ER, they won't recommend a switch to generic IR hydrocodone."[73] Purdue also noted that "educated" pharmacists "may be willing to speak to HCPs [healthcare providers] about Hysingla ER where appropriate."[74]

198. Purdue and other manufacturers worked hand-in-glove with Defendants to promote their products—through the distributors—to pharmacies and pharmacists. For example, Purdue partnered closely with Cardinal to support its Hysingla launch through an email campaign, managed by Cardinal, to market the opioid to pharmacists.

199. The targeting of pharmacists by Cardinal and McKesson in their marketing activities was particularly problematic because of Cardinal's and McKesson's existing and often long-term business relationships with pharmacies—with whom Defendants shared a legal responsibility to prevent diversion. Opioid distributors, like Defendants, were in a unique and trusted position in the controlled substances supply chain from which they could have spoken

[71] CAH_MDL2804_02879120.
[72] PWG00062629.
[73] PWG000362181.
[74] PWG000362181.

truthfully to their pharmacy customers about the serious risks posed by opioids (including the risk of diversion). They could have remained silent about the benefits and risks of opioids, and simply filled orders and shipped drugs. Instead, Cardinal and McKesson abused their unique position for profit, by contributing to the chorus of deception surrounding opioids.

200. To engage in the promotion of controlled substances at all, under the circumstances detailed in this Complaint, was a dereliction of Defendants' duties to prevent opioid diversion. Through these marketing activities, Defendants contributed to and reinforced the deceptive and misleading marketing messages that healthcare providers received about opioids through other channels. Moreover, much of the Defendants' marketing content was deceptive, because it either affirmatively misrepresented the benefits and risks of prescription opioids, or it omitted important information about the risks of prescription opioids. Both Cardinal and McKesson knew or should have known that these marketing messages—particularly those that misrepresented or omitted material information about the potential for diversion or risks of addiction associated with prescription opioids—were deceptive. Through their unfair and deceptive conduct, Defendants put Vermont consumers at increased risk of harm from the escalating and largely unchecked distribution and sale of prescription opioids, increased availability and diversion of opioids to non-medical use in Vermont, and increased misuse and addiction that has created an epidemic of health problems, overdose, and death in Vermont.

A. Cardinal unfairly and deceptively marketed opioids.

201. Cardinal has actively sought to increase the sale of opioids in Vermont by marketing these dangerous and addictive drugs to pharmacists and prescribers, and even directly to consumers, contrary to its public claim that it merely serves as a secure delivery service for transporting medications from warehouse to pharmacy. Cardinal not only offers marketing

services to its drug manufacturer clients, it incentivizes and encourages manufacturers to use these marketing channels as a way of building their business and increasing sales of prescription opioids.

202. Increased drug sales benefit Cardinal. [redacted]

203. Through Cardinal's marketing programs, it disseminated the drug manufacturers' promotional messages about opioids nationally and, upon information and belief, into Vermont. These marketing activities constituted an unfair business practice, under the circumstances detailed in this Complaint.

204. Cardinal offers a range of marketing services to its drug manufacturer clients. These marketing services are a key feature in the overall portfolio of amenities that Cardinal provides. For many manufacturers, the cost of Cardinal's marketing services is [redacted]

[redacted]"[75] [redacted]

[75] CAH_MDL2804_002893641.

[redacted]

205. [redacted]

206. [redacted] A year later, Purdue and three of its current and former executives pled guilty to federal criminal charges connected to their misleading marketing of OxyContin, paying $600 million in fines and other payments. Undeterred, Cardinal continued working with Purdue to promote its opioid products. [redacted]

207. As another example, [redacted]

[redacted] By late 2013, INSYS had publicly announced that it was under federal investigation and had received a subpoena from the U.S. Department of Health and Human Services inquiring into INSYS's sales and marketing practices relating to SUBSYS. Cardinal personnel were aware of, and circulated internally, news reports regarding the widespread off-label use of SUBSYS by October 2014. [redacted] Cardinal "eConnections" blast email to pharmacists promoting SUBSYS.

208. From at least 2010 to 2017, Cardinal's marketing team routinely [redacted]

209. Cardinal did not simply disseminate manufacturer-created marketing content, it also [redacted]

210. Cardinal's marketing programs were not [redacted]

1. Cardinal engaged in an unfair business practice by marketing prescription opioids through a variety of marketing programs.

211. Cardinal worked to increase sales of opioids through a range of in-house marketing platforms directed at prescribers, pharmacists, and consumers, implemented nationally

and, on information and belief, in Vermont. These marketing activities constituted an unfair business practice, under the circumstances detailed in this Complaint.

212. ***Direct-to-Consumer Marketing.*** Cardinal markets drugs directly to consumers through its placement of flat-screen televisions running "health and wellness" content, including advertisements for prescription drugs, in the patient waiting area of pharmacies. Cardinal describes this program, Pharmacy Health Network ("PHN"), as a "consumer-facing" network that provides manufacturers with marketing opportunities right at the "point of influence."[76]

213. There is ample evidence that this type of marketing is effective. A 2014 audience-research study conducted by Nielsen found 74% of PHN viewers indicated advertisements are more believable when viewed in a pharmacy; 49% of viewers surveyed indicated that they felt encouraged to discuss a product or brand they had seen on the network with their pharmacist; 48% indicated that after seeing advertisements on PHN, they felt motivated to discuss those products or brands with their physicians; and 13% of consumers who have seen advertisements on PHN have purchased those products or brands.[77]

214. As John Disher, Cardinal's Senior Manager for Marketing and Business Development, said in 2014: "This study again confirms that consumers consider advertising messages on Pharmacy Health Network to be informative and highly credible, and that ads on our network drive action, by encouraging consumers to talk with their pharmacists and physicians about products they see on our network … As our network continues to receive a

[76] CAH_MULTISTATE_0013372.
[77] *Nielson Study Confirms Ads on Cardinal Health's Retail Pharmacy Digital Advertising Network Motivate Consumers to Discuss, Purchase Products* (March 17, 2014), https://digitalsignagefederation.wildapricot.org/widget/memberpress/1520048.

positive response from advertisers and consumers alike, we look forward to expanding the number of stores and advertisers that participate in the program.[78]

215. In fact, additional studies show that, as of November 2015, Cardinal's PHN was proven to increase sales of advertised products.[79]

216. Although it is currently unknown to the State whether opioid advertisements were run through PHN, it is clear that Cardinal offered and recommended PHN as a channel for opioid advertising. [redacted][80] [redacted][81]

217. ***Direct Mail Marketing.*** Cardinal utilizes direct mail campaigns to promote opioids, despite internal company guidelines that prohibit direct mail advertising for controlled substances. The company promoted Cephalon's Actiq and Fentora (both fentanyl products) through direct mail marketing in January 2012.

218. Cardinal charges [redacted]

219. ***Email Marketing.*** Cardinal also disseminates opioid marketing content to pharmacists and other healthcare providers through mass emails, referred to as its eConnections program.

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[78] *Id.* (emphasis added).
[79] Respario, *Case Study: Cardinal Health Engages Retail Pharmacy Customers Through Digital Signage Network* (November 2015), http://respario.com/wp-content/uploads/2015/11/respario-case-study-cardinalhealth.pdf.
[80] CAH_MDL2804_01296417.
[81] CAH_MDL2804_00134274.

220. Through a listserv called RxInsider—part of the eConnections program—Cardinal sends colorful, full-page advertisements with graphics and pictures for products, including opioids, to prescribers and pharmacists nationwide.

221. Cardinal claims that through eConnections, marketing messages can reach [redacted] Cardinal specifically promotes its ability to effectively target marketing—including these eConnections messages—to prescribers. In its own words, Cardinal advertises that its "commercial team helps to position [a manufacturer's] product for success by identifying physicians who treat unique patient populations, understanding prescriber behavior and driving engagement."

222. From 2010 through at least 2015, Cardinal used eConnections to target prescribers—including pediatricians, nurse practitioners and physician assistants—for promotion of opioids.[82]

223. From at least 2012 through 2017, Cardinal frequently used eConnections to market opioids—including oxycodone, hydrocodone, fentanyl, and morphine—to pharmacists.[83]

[82] [redacted]

[83] Cardinal used eConnections to market to pharmacists Actavis's Kadian (a Schedule II morphine drug) in September and October 2012 (CAH_MDL2804_02959967); Endo's Opana (a Schedule II oxycodone drug) in April 2013 (CAH_MDL2804_02956220), April 2014 (CAH_MDL2804_02957406-02957407), and January 2015 (CAH_MDL2804_02957401-02957404); Teva's Vantrela ER (a Schedule III hydrocodone drug) in October 2015 (CAH_MDL284_00132780); INSYS's SUBSYS (a Schedule II fentanyl spray) in December 2015 (CAH_MULTISTATE_0001483); The Medicines Company's Ionsys (a Schedule II fentanyl patch) in January 2016 (CAH_MDL2804_02957456-02957457); Mallinckrodt's Fentanyl (also a Schedule II fentanyl patch) in January 2016 (CAH_MDL2804_02957398-02957399); Pernix's Zohydro (a Schedule II hydrocodone drug) in February

224. ***Marketing in Customer Newsletters.*** Cardinal also offers opioid marketing through its "Service Flash" newsletter, distributed to pharmacists nationwide, including in Vermont.

225. The "Service Flash" newsletter is a weekly publication distributed to all of Cardinal's [redacted] both in hard copy, to accompany product shipments to all Cardinal customers, and via email. Cardinal has distributed its Service Flash newsletter—and the marketing content contained therein—to pharmacies nationwide, including in Vermont. Service Flash carries the Cardinal logo and promotes various drugs, in addition to containing basic product ordering and recall information.

226. Drug manufacturers can purchase [redacted]

227. Cardinal used Service Flash to market opioids—including oxycodone, levorphanol, Vicodin, and fentanyl—to pharmacists, including pharmacists in Vermont, from at least 2009 through 2017.[84]

228. ***Telemarketing.*** Cardinal offers its manufacturer clients the option of purchasing custom telemarketing campaigns to target both pharmacists and physicians with marketing messages about their drugs. Cardinal offered this service as recently as November 2017.

2016 (CAH_MULTISTATE_0001487); and Depomed's Nucynta ER (a Schedule II tapentadol drug) in June 2017. (CAH_MDL2804_02959244).

[84] [redacted] Cardinal's Service Flash featured advertisements for Abbott's Vicodin in December 2012 (CAH_MDL2804_00134473; Confidential), Sentynl Therapeutics drug Levorphanol (opioid similar to morphine, but 8x more powerful) in June 2015 (CAH_MDL2804_02955757; Confidential), Depomed's Lazanda (a Schedule II fentanyl drug) in July 2016, (CAH_MDL2804_00132701; Confidential) and Depomed's Nucynta ER in June 2017. (CAH_MDL2804_02959244; Confidential).

229. One telemarketing script from August 2011 for Hawthorn Pharmaceuticals's Rezira and Zutripro (both Schedule III[85] hydrocodone drugs) offered [redacted] to pharmacists ordering the drugs from the caller. The script described the indications for these drugs but did not include any warnings about the risks of opioid use, including the danger of abuse or addiction.[86]

230. ***Advertisements on Ordering Platform.*** Cardinal also runs drug advertisements on "Order Express," the web-based ordering platform that pharmacists at Cardinal's pharmacy customers use to place orders. [redacted]

231. Cardinal offers drug manufacturers the options of home-page advertisements and across-screen banner advertisements on Order Express. Banner advertisements are triggered by keywords that pharmacists use to search for products on the site, [redacted]

[85] Controlled substances—including opioids—are divided into Schedules, depending on their potential for abuse. Schedule III drugs have a potential for abuse that is lower than drugs in Schedules I and II, and abuse of these drugs may lead to moderate or low physical dependence or high psychological dependence.

[86] [redacted]

[redacted]

232. As of 2015, advertisements on the Order Express platform reached [redacted][87] Cardinal marketed opioids—including oxymorphone, hydrocodone combination drugs, and oxycodone combination drugs—through home-page and banner-page content on Order Express until at least 2017.[88]

233. ***Pharmacy Rebates.*** Cardinal further encourages purchases of opioids through its RxDeals program, which offers discounts and rebates to pharmacies for the purchase of drugs, including opioids. Cardinal typically includes promotional language about the featured drug in the notice of the discount.

234. As of 2015, promotion through the RxDeals program reached approximately [redacted], including, on information and belief, in Vermont. Cardinal used RxDeals to promote opioids—including oxymorphone, hydrocodone combination drugs, and oxycodone combination drugs—from 2008 until at least 2015.[89]

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[87] CAH_MDL2804_00134788.

[88] Cardinal ran advertisements for Covidien's Exalgo (a Schedule II, hydromorphone drug) in April and May 2013 (CAH_MDL2804_02959126-02959129; Highly Confidential), Global Pharmaceutical's generic Opana ER (a Schedule II oxymorphone drug) in March (CAH_MDL2804_00133481; Confidential) and June 2013 (CAH_MDL2804_02956402; Highly Confidential), Abbvie's Vicodin in March 2014 (CAH_MDL2804_02955369-02955370; Confidential), Egalet's Oxaydo (a Schedule II oxycodone drug) in March 2017 (CAH_MDL2804_00132543-00132544; Confidential), Global/Impax Laboratories Inc.'s generic oxymorphone drug in August 2017 (CAH_MDL2804_02959282; Highly Confidential), and Purdue's Hysingla ER (a Schedule II hydrocodone drug) in June 2017. (CAH_MDL2804_02959381-02959385; Highly Confidential). Cardinal's advertisement for Hysingla linked to an interactive game that quizzes the player on information about the drug. (CAH_MDL2804_02959382; Highly Confidential).

[89] Cardinal used RxDeals to promote Opana in 2008 (encouraging pharmacists to "Order Today!") (CAH_MDL2804_02956242; Highly Confidential), Stagesic in 2010 (emphasizing that the discount was a "limited time offer" and including deceptive statements related to the risk of diversion) (CAH_MDL2804_02957392;

235. ***Auto-Shipments.*** Through its "First Script" program, Cardinal contracted with drug manufacturers to auto-ship their drugs to pharmacies (without first receiving an order), for the purpose of ensuring that the pharmacies were stocked with the drug "before the first script arrives." This service was sometimes packaged with other marketing programs as part of a new product launch.

236. Cardinal auto-shipped Schedule III opioids, including [redacted] through the FirstScript program, although internal company guidelines restricted use of this program for Schedule II[90] controlled substances.

2. Cardinal deceptively marketed opioids.

237. In addition to being an unfair business practice, some of Cardinal's marketing content was also deceptive. These marketing messages—like other opioid marketing messages disseminated in the medical community by opioid manufacturers—contained deceptive statements about the benefits of particular opioids or misleading omissions about the serious risks associated with them.

238. Cardinal's deceptive and misleading marketing of opioids contributed to—and built upon—the deceptions that drug manufacturers were disseminating through other channels.

239. Cardinal disseminated certain opioid advertisements that contained deceptive statements regarding the risk of addiction, abuse, and diversion posed by these drugs. For example, a 2010 advertisement for Stagesic, a drug in the hydrocodone family, claimed that this opioid "has no street value! (IE. Drug seekers and dealers do not trust capsule forms)."[91] This

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Confidential), Nucynta ER in 2011 (including the Cardinal logo and asking the viewer to "Place your order with Cardinal Health today!") (CAH_MDL2804_02956566; Highly Confidential), Primlev in 2012 (CAH_MDL2804_00134299; Confidential) and Embeda in 2015 (CAH_MDL2804_02957340; Highly Confidential).

[90] Schedule II controlled substances are so-categorized because they have a high potential for abuse, which may lead to severe psychological and physical dependence.

[91] CAH_MDL2804_02957392.

advertisement was sent to prescribers in one state and to pharmacists across the country. This 2010 advertisement built upon earlier deceptions regarding the diversion potential of Stagesic, which had made similar misrepresentations to pharmacists. Titled "Important Information Regarding Filling Hydrocodone Prescriptions," the advertisement asked pharmacists, "[d]o you ever worry when filling a hydrocodone prescription?" and went on to state "[t]he capsule formulation helps to assure pharmacists and physicians that the intended patient is the legal recipient of the hydrocodone versus when prescriptions are filled with tablet formulations."[92]

240. Moreover, many of Cardinal's opioid advertisements failed to disclose the serious risks associated with opioids or to provide "fair balance" in their representation of the risks and benefits of the drugs. For example, a 2011 advertisement for Lortab Elixer, an opioid-based cough medicine, emphasized that this drug contained the lowest dose of acetaminophen among comparable drugs, "which may help reduce concerns of acetaminophen toxicity."[93] But nowhere on the advertisement does it disclose or explain the risk for addiction and dependence, respiratory distress, and death associated with opioids. Likewise, Cardinal disseminated advertisements promoting opioids without mentioning any of the drugs' risks—providing, at most, a link to additional information on the manufacturer's website. These advertisements failed to provide "fair balance" and had material omissions, which rendered them misleading to their intended recipients, in violation of the Consumer Protection Act.

241. Cardinal disseminated advertisements that were not clearly labeled as paid advertising content and would reasonably have been mistaken by Cardinal's pharmacy customers as neutral informational content provided by Cardinal.

[92] CAH_MDL2804_02955823.
[93] CAH_MDL2804_02955979.

242. Through these and other advertisements, Cardinal took advantage of its unique position of trust as a distributor of controlled substances to promote opioids in deceptive and misleading ways. Cardinal knew or should have known that these advertisements—particularly those that misrepresented the risk of diversion for, or addictive potential of, prescription opioids—were deceptive, because of its own heightened duties, as a distributor, when handling controlled substances. Moreover, when engaging in pharmaceutical marketing, Cardinal knew or should have known about the attendant legal obligations, including the obligation to provide "fair balance" and adequately disclose the risks associated with the drugs it was promoting.

B. McKesson unfairly and deceptively marketed opioids nationally and in Vermont.

243. McKesson actively sought to increase the sale of opioids by assisting manufacturers in marketing these dangerous, addictive, and misuse- and abuse-prone drugs.

1. McKesson engaged in an unfair business practice by marketing prescription opioids.

244. McKesson's marketing programs disseminated drug manufacturers' promotional messages about opioids nationally and, upon information and belief, into Vermont. These marketing activities constituted an unfair business practice, under the circumstances detailed in this Complaint.

245. McKesson claims to have had a policy of not providing advertising for Schedule II drugs as early as 2014. Despite that policy, [redacted], McKesson's marketing team identified Xtampza ER, a Schedule II oxycodone drug, [redacted]

246. Prior to 2014, McKesson offered marketing services across the drug lifecycle (from product development to product launch and beyond), including creating new markets for

drugs. McKesson pitched the following to drug manufacturers: "We have proven solutions for the challenges you face when commercializing a new therapy. Prescriber access and education, adherence services, and reimbursement support are just a few of many ways we can help …. Our connected network of providers coupled with our array of expertise offers a unique access channel for understanding and successfully developing drugs."[94]

247. ***Auto-Shipments.*** Specifically, McKesson promoted prescription opioids through its RxFocus Autoship program. This marketing program identified pharmacies that were high dispensers of medications similar to the newly-released medications—and then **auto-shipped** those newly released medications to the identified pharmacies, without ever receiving an order for these drugs from the pharmacy.

248. McKesson described RxFocus Autoship as delivering "the latest blockbuster Branded Rx medications to retail pharmacies within 72 hours of release—helping to make sure that our customers can be **one of the first** to serve patients newly prescribed a medication" (emphasis in the original).[95]

249. The prescription opioids McKesson promoted and auto-shipped (including to Vermont pharmacies) through RxFocus Autoship include the following:

Opioid	Manufacturer	Approximate Date[96]
Butrans (buprenorphine)	Purdue Pharma	Jan. 2011
Suboxone (buprenorphine/naloxone)	Reckitt Benckiser	Dec. 2012
Zubsolv (buprenorphine/naloxone)	Orexo	Aug. 2013

250. McKesson charged manufacturers $[redacted] for its RxFocus Autoship program. McKesson eventually discontinued auto-shipping controlled substances in late 2013, recognizing that it does "not want to be auto-shipping, up-selling or providing sales incentives for any

[94] MCKAGMS-069-0000020.
[95] MCK-AGMS-019-0008109, -8171; MCK-AGMS-038-0000040.
[96] All dates in this table reflect implementation dates.

controlled substances (all schedules) to customers" and that "all orders must come from the customer."[97] In stopping auto-shipping, McKesson lamented that it would "be giving up marketing income" and would need to get their customers "to order before the manufacturer's deal period ends (more work without the autoship)."[98]

251. ***Email Marketing.*** McKesson also promoted opioids through the RxBulletin program, which sent e-mail campaigns to pharmacies. McKesson described RxBulletin as having the capability to deliver e-mail messages to approximately 7,000 independent pharmacies. McKesson promoted RxBulletin to drug manufacturers as offering "rapid delivery of time-sensitive messages and requir[ing] minimal development time."[99]

252. The prescription opioids that McKesson marketed through RxBulletin include the following:

Opioid	Manufacturer	Approximate Date[100]
Exalgo (hydromorphone)	Mallinckrodt	Nov. 2012
Actiq (fentanyl)	Cephalon	Jan. 2012
Fentora (fentanyl)	Cephalon	Jan. 2012
Suboxone (buprenorphine/naloxone)	Reckitt Benckiser	Jan. & Mar. 2013
Zubsolv (buprenorphine/naloxone)	Orexo	Sept. 2013

253. McKesson charged manufacturers between $[redacted]$[redacted] **for each** RxBulletin e-mail campaign.

254. ***Fax Marketing.*** McKesson promoted opioids through its Fax Blast program, which sent marketing campaigns via fax to pharmacies. McKesson described Fax Blast as having the ability to distribute a fax promoting a product to its network of 5,000 pharmacy customers.

255. The prescription opioids that McKesson promoted through Fax Blast include the following:

[97] MCK-AGMS-069-0002800.
[98] MCK-AGMS-069-0002796.
[99] MCK-AGMS-019-0008143; MCK-AGMS-019-0008201.
[100] The dates in this table reflect the implementation date or, if unavailable, the date the marketing agreement was executed.