

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT IN ANCHORAGE**

THE STATE OF ALASKA,	)	
	)	
Plaintiff,	)	Case No. 3AN-24-_____CI
	)	
vs.	)	
	)	
CVS PHARMACY, INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff, the State of Alaska, by and through its Attorney General, Treg Taylor, brings this action against Defendant CVS Pharmacy, Inc. (“CVS” or “Defendant”) pursuant to the Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Statutes § 45.50.471 *et seq.*, and the common law of the State of Alaska and alleges as follows:

**I.    JURISDICTION AND STATUTORY AUTHORITY**

1.    This enforcement action is brought by Attorney General Treg Taylor, in the name of the State of Alaska and in the public interest pursuant to the authority granted by Alaska Statutes § 45.50.501(a), upon the ground that Defendant has engaged in unfair or deceptive acts and practices in or affecting commerce as declared unlawful by § 45.50.471 *et seq.* and has contributed to and/or assisted in creating a public nuisance prohibited by the common law of the State of Alaska.

2.    At all times described below, Defendant and its agents have engaged in conduct affecting “commerce” under the Alaska Unfair Trade Practices and Consumer Protection Act.

3. This Court has personal jurisdiction over Defendant because it regularly conducts business in Alaska and/or has the requisite minimum contacts with Alaska necessary to permit the Court to exercise jurisdiction, with such jurisdiction also being proper under Alaska's long-arm statute, as codified in Alaska Statutes § 09.05.015.

## **II. VENUE**

4. Venue is appropriate in the Third Judicial District at Anchorage pursuant to Rule 3 of the Alaska Rules of Civil Procedure, in that many of the unlawful acts committed by Defendant were committed in Anchorage.

## **III. DEFENDANT**

5. Defendant CVS Pharmacy, Inc. is a corporation organized under the laws of Rhode Island and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895. Defendant CVS Pharmacy, Inc. is a subsidiary of CVS Health Corporation.

6. Defendant conducts business in the State of Alaska.

7. Whenever this Complaint alleges that Defendant did any act, it means that Defendant:

- a. Performed or participated in the act; or
- b. Its subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of Defendant.

## **IV. FACTUAL BACKGROUND**

8. The United States saw a nearly four-fold increase in the annual number of opioid pills dispensed by pharmacies between 1999 and 2014. This increase contributed to numerous instances of opioid abuse, dependence, addiction, and overdose deaths in the State of Alaska. It

also contributed to a sharp increase in the use of even more powerful drugs such as fentanyl and heroin, which are sometimes used by themselves and other times used in combination with prescription opioids. Fentanyl and heroin use exacerbated opioid abuse, dependence, addiction, and overdose deaths in the State of Alaska.

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

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

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

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

13. Specifically, the federal Controlled Substances Act, similar to parallel state law, obligates pharmacies to practice their "corresponding responsibility" to dispense only legitimate

prescriptions for controlled substances written for legitimate medical purposes. 21 C.F.R. § 1306.04(a); Alaska Controlled Substances Act § 17.30 *et seq.*

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

15. Red flags can relate to the prescriber, the patient, and/or the physical prescription itself. Examples of red flags include, but are not limited to: (1) patients who seek to fill opioid prescriptions written by multiple doctors over a short period; (2) patients who seek to pay in cash for an opioid prescription despite having insurance information on file; (3) opioid prescriptions that appear altered or photocopied; (4) opioid prescriptions that contain misspellings or non-standard abbreviations; or (5) opioid prescriptions written by a doctor located far away from the patient’s residence or the pharmacy’s location.

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

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

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

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

20. The sheer volume of diverted opioids has wreaked havoc throughout the State of Alaska.

21. Yet for numerous opioid prescriptions in the State of Alaska that resulted in one or more red flags, Defendant nevertheless dispensed the opioids without first making sufficient inquiries into the legitimacy of the prescription. Defendant also implemented policies in which its pharmacists were given insufficient time and resources to practice their corresponding responsibility, resulting in Defendant's pharmacists too often ignoring or insufficiently investigating the red flags that they did identify.

22. Year after year as opioid dispensing increased and the opioid crisis grew, Defendant's pharmacists failed to practice their corresponding responsibility, including dispensing opioids without first resolving the red flags presented by suspicious prescriptions.

23. Through its actions and inactions in connection with the dispensing of opioids, including those alleged above, Defendant materially contributed to the creation of an opioid addiction crisis that has injured, harmed, and otherwise disrupted the lives of thousands of residents of the State of Alaska, as well as cost state and municipal governments billions of dollars

in expenditures to prevent, mitigate, and remedy the multitude of different societal harms and injuries caused by the addiction crisis. Defendant knew, or in the exercise of reasonable care and diligence should have known, that its actions and inactions would lead to this result.

**FIRST CAUSE OF ACTION**  
**(Violations of § 45.50.471 *et seq.*)**

24. Plaintiff incorporates and adopts by reference the allegations contained in paragraphs 1 through 23.

25. Defendant, in the course of dispensing opioid-containing prescription drugs, engaged in unfair or deceptive acts and practices that are prohibited by § 45.50.471 *et seq.*

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

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the State of Alaska; and
- b. Defendant's pharmacists failing to practice their corresponding responsibility and dispensing opioids in the State of Alaska despite not resolving red flags indicating that a prescription may be for an illegitimate purpose.

27. The State expressly disclaims that it is bringing any claim to enforce—directly or indirectly—the federal Controlled Substances Act or Alaska Controlled Substances Act.

28. As a result of Defendant's conduct as alleged herein, Alaska consumers, including the State and its agencies, suffered and continue to suffer injury.

29. In addition to penalties and restitution, Defendant is liable for attorneys' fees and costs, including costs of investigation, under AS 45.50.537(d).

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

30. Plaintiff incorporates and adopts by reference the allegations contained in paragraphs 1 through 29.

31. Defendant, in the course of dispensing opioid-containing prescription drugs, contributed to and/or assisted in creating a public nuisance by unreasonably interfering with rights common to the general public as prohibited by the common law of the State of Alaska. Defendant's acts and practices that unreasonably interfered with rights common to the general public include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the State of Alaska; and
- b. Defendant's pharmacists failing to practice their corresponding responsibility and dispensing opioids in the State of Alaska despite not resolving numerous red flags indicating that prescriptions may have been for illegitimate purposes.

32. The State expressly disclaims that it is bringing any claim to enforce—directly or indirectly—the federal Controlled Substances Act or Alaska Controlled Substances Act.

33. Defendant's conduct is of a continuing nature and has contributed to producing a permanent or long-lasting effect on the public right that Defendant knew, or had reason to know, would occur.

34. Defendant's conduct created or increased an unreasonable risk of harm.

35. Defendant's conduct is unreasonable, intentional, reckless, and/or negligent, and unlawful.

36. The public nuisance is substantial and unreasonable. Defendant's actions caused and continue to cause the public health epidemic and state of emergency described in the Complaint.

37. It was reasonably foreseeable that Defendant's actions and omissions would result in the public nuisance and harm to the State described herein.

38. Defendant's actions were, at the very least, a substantial factor in the public health crisis that followed and has reached a state of emergency.

39. The public nuisance—i.e., the oversupply of opioids and the opioid epidemic—can be abated and further recurrence of such harm and inconvenience can be abated.

40. The State has been, and continues to be, injured by Defendant's actions in creating a public nuisance.

#### **REQUEST FOR RELIEF**

41. Plaintiff respectfully requests that the Court enter an Order:

a. Issuing a permanent injunction prohibiting Defendant, Defendant's officers, agents, servants, employees, attorneys—and any other person in active concert or participation with Defendant—from engaging in unfair or deceptive acts and practices in violation of AS 45.50.471 *et seq.*;

b. Ordering Defendant to pay to consumers compensatory restitution and remediation as set forth in AS 45.50.501;

c. Ordering Defendant to abate the public nuisance by paying restitution and remediation;

d. Ordering Defendant to pay Plaintiff's attorneys' fees and costs of court; and

e. All other relief to which Plaintiff is entitled.



DATED this 7th day of March, 2024.

Respectfully submitted,

STATE OF ALASKA

TREG TAYLOR, ATTORNEY GENERAL

Margaret Paton Walsh

Department of Law

1031 W. Fourth Avenue, #200

Anchorage, AK 99501

Telephone: 907.269.5100

Facsimile: 907.276.3697

By: /s/ David K. Gross

David Karl Gross, ABA #9611065

Mara E. Michaletz, ABA #0803007

BIRCH HORTON BITTNER & CHEROT

510 L Street, #700

Anchorage, AK 99501

Telephone: 907.276.1550

Facsimile: 907.276.3680