

**CHARTER TOWNSHIP OF VAN BUREN BOARD OF TRUSTEES  
MARCH 5, 2018 WORK STUDY MEETING 4:00 P.M.  
TENTATIVE AGENDA**

**ROLL CALL:**

Supervisor McNamara \_\_\_\_\_  
Clerk Wright \_\_\_\_\_  
Treasurer Budd \_\_\_\_\_  
Trustee Frazier \_\_\_\_\_  
Trustee Martin \_\_\_\_\_

Trustee Miller \_\_\_\_\_  
Trustee White \_\_\_\_\_  
Engineer Potter \_\_\_\_\_  
Attorney McCauley \_\_\_\_\_  
Secretary Montgomery \_\_\_\_\_

**UNFINISHED BUSINESS:**

**NEW BUSINESS:**

1. Discussion on consideration to enter into opioid litigation.

**PUBLIC COMMENT:**

**CLOSED SESSION:**

**ADJOURNMENT:**

# Charter Township of Van Buren

Agenda Item: \_\_\_\_\_

## REQUEST FOR BOARD ACTION

**WORK STUDY MEETING**

**DATE: 3/5/2018**

Consent Agenda \_\_\_\_\_

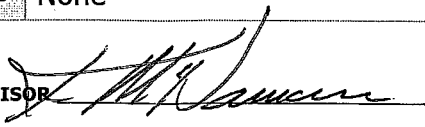
New Business ☒ X \_\_\_\_\_

Unfinished Business \_\_\_\_\_

Public Hearing \_\_\_\_\_

<b>ITEM (SUBJECT)</b>	Discussion on consideration to enter into opioid litigation.
<b>DEPARTMENT</b>	Supervisor's Department
<b>PRESENTER</b>	Supervisor McNamara
<b>PHONE NUMBER</b>	734-699-8910
<b>INDIVIDUALS IN ATTENDANCE (OTHER THAN PRESENTER)</b>	Director Laurain, Attorney Parker Stinar

### Agenda topic

<b>ACTION REQUESTED</b>	
Discussion on consideration to enter into opioid litigation.	
<b>BACKGROUND – (SUPPORTING AND REFERENCE DATA, INCLUDE ATTACHMENTS)</b>	
<p>Law firm Sommers Schwartz is preparing a municipal class action lawsuit against opioid pharmaceutical companies, opioid retailers, etc.</p> <p>Since the opioid epidemic has impacted communities nationwide, the Van Buren Board of Trustees will consider entering into the class action opioid litigation along with other local municipalities, with Sommer Schwartz serving as representation.</p> <p>Please see attached Public Interest Opioid Litigation booklet (firm proposal included) for additional information.</p>	
<b>BUDGET IMPLICATION</b>	none
<b>IMPLEMENTATION NEXT STEP</b>	
<b>DEPARTMENT RECOMMENDATION</b>	
<b>COMMITTEE/COMMISSION RECOMMENDATION</b>	
<b>ATTORNEY RECOMMENDATION</b>	
(May be subject to Attorney/Client Privilege and not available under FOIA)	
<b>ADDITIONAL REMARKS</b>	None
<b>APPROVAL OF SUPERVISOR</b>	

# Public Interest Opioid Litigation



Sommers Schwartz, P.C.  
One Towne Square  
17<sup>th</sup> Floor  
Southfield, MI 48076



Baron & Budd, P.C.  
3102 Oak Lawn Avenue  
Suite 1100  
Dallas, TX 75219



Green Ketchum Farrell  
Bailey & Tweel, LLP  
419 Eleventh Street  
Huntington, WV 25701



Hill, Peterson, Carper, Bee  
& Deitzler, PLLC  
NorthGate Business Park  
500 Tracy Way  
Charleston, WV 25311



Levin Papantonio Thomas  
Mitchell Rafferty  
& Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, FL 32502



McHugh Fuller Law Group  
97 Elias Whiddon Road  
Hattisburg, MS 39402

# **FIRM PROPOSAL**

## Introduction

### The epidemic and its causes

While the staggering impact of the opioid epidemic in America in terms of lives lost and lives ruined is well known, the economic impact of the epidemic on governments is less well understood. Those who are involved in providing governmental services are aware of the staggering amounts the epidemic has cost American tax payers. The Center for Disease Control estimates opioid-related expenditures, including first responder costs, addiction and mental health care costs, law enforcement costs, incarceration costs, costs for autopsies, costs for social and educational programs to exceed \$78.5 billion a year and growing.

The costs to Michigan governmental entities has been and will be staggering as well. Michigan has ranked 10<sup>th</sup> in the nation for opioid prescription sales per capita for the past several years. There is a known correlation between the extent of opioid sales and the abuse of prescription opioid medications in specific geographic areas.

Mounting evidence from numerous sources has reaffirmed that pharmaceutical manufacturers and drug distributors were largely responsible for creating and fueling the epidemic by deceptively convincing the medical community that prescription opioids for chronic pain was safe and effective, when, in fact, there were no studies that supported their claims. Years of experience has taught that the representations of select pharmaceutical companies were not only false, but driven by an insatiable thirst for enormous profits – billions and billions of dollars in profits.

Sadly, opioid addicts often turn to heroin as a cheaper alternative to opioid pills. The rise in opioid addiction has been accompanied by a step rise in heroin addiction. And Michigan tax payers have been footing the bill for the epidemic for over a decade.

### Governmental Units Seek Compensation

Governmental units all over the country are fighting back and seeking to hold the companies that made, marketed and sold the addictive opioids and the companies that distributed the drugs accountable for the financial damage they have caused.

As of January 2018, hundreds of counties, cities, and townships have filed lawsuits against several manufacturers and distributors of opioids prescription drugs.

The legal claims against the manufacturers are based not only on their deceptive marketing and branding practices regarding their claims that opioids were safe and effective in treating

chronic pain, but also they are charged with violations of the RICO act, fraud and public nuisance.

The claims against the 3 major distributors, Cardinal Heath, McKesson and Amerisourcebergen Drug Corporation related to their failure to adequately monitor and report to the Drug Enforcement Administration abnormal sales patterns to pharmacies and medical facilities, as required by state and federal law (See 21 U.S.C. § 801(2); 21 U.S.C. § 821-824, 827, 880; MCL 333.7311(1)(c); MCL 333.7306(1)). McKesson has already paid over 150 million dollars in fines to the DEA for violations of these laws. However, by revenues, McKesson is the 5<sup>th</sup> largest corporation in the United States and the fine amounted to less than a week's worth of profits for the company. Cardinal Health was fined \$44 million for its failure to report suspicious narcotic orders to the Drug Enforcement Administration.

Potentially recoverable economic damages include:

1. Money wrongfully paid for opioids through government-payor programs, including employee insurance;
2. Costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths;
3. Costs for providing treatment, counseling and rehabilitation services;
4. Costs for providing treatment of infants born with opioid-related medical conditions;
5. Costs for providing welfare or protective services for children whose parents suffer from opioid-related disability or incapacitation; and
6. Costs directly associated with law enforcement and public safety relating to the opioid epidemic. Local and state governments may also be entitled to injunctive relief to prevent further unlawful distribution of these drugs, including funding for their affected departments and education.

### **National Consolidation of Lawsuits**

Most of the lawsuits filed by governmental units have been filed in various Federal District Courts around the country. A panel of federal jurists called the Joint Panel On Multidistrict Litigation has ruled that all of the federal cases are to be consolidated before one District Court

Judge, at least for purposes of pre-trial discovery. The judge that was selected to preside over all of the opioid prescription cases in which governmental units are named plaintiffs is Judge Dan Aaron Polster of the Eastern Division of the Northern District of Ohio.

Given the sizable number of Plaintiff firms involved, Judge Polster has appointed lead counsel and an executive board to manage and conduct pre-trial discovery and all other aspects of the litigation. In the event that a settlement is not reached with all named Defendants, bellwether trials may be conducted.

### **The Sommers Schwartz Proposal**

The Southfield based firm of Sommers Schwartz has joined forces with 5 nationally prominent law firms, listed on the front page of this brochure, to pursue opioid litigation cases on behalf of Michigan governmental units. Paul Farrell of Green, Ketchum Farrell, Bailey & Tweet was appointed by Judge Polster as co-lead counsel and 4 other attorneys from this consortium of firms were appointed to be members of the executive committee and liaison counsel. This group of firms currently represents over 100 governmental units from more than 10 different states as well as the State of New Mexico.

We have recently obtained extensive data and reports from the State of Michigan that detail the sales and distribution of opioids to every county, zip code and pharmacy in Michigan during the years 2013 to 2017. The data and reports will be instrumental to proving Michigan claims against the manufacturers and distributors of opioids.

In this brochure, we have included informational material to better familiarize you with our proposal, including resumes of the firms and the attorneys with whom we have entered into co-counsel agreements for purposes of pursuing opioid claims. Also, we have attached a form retainer agreement and a form resolution that would need to be approved and adopted in order to retain outside legal counsel to pursue opioid related claims. The retainer agreement provides that the governmental unit will control the litigation process every step of the way, will not be obligated to pay any costs associated with prosecuting the claims and will be obligated to pay attorney fees only if there is a recovery.

For further information or to arrange for a meeting to discuss potential recoveries of tax dollars and steps to help abate the opioid epidemic, contact Robert Sickels or Lisa Esser-Weidenfeller.

# RESUMES





**GREENE KETCHUM**

**FARRELL BAILEY & TWEEL LLP**

Personal Injury Attorneys

For 60 years, Greene, Ketchum, Farrell, Bailey & Tweel LLP has been committed to fighting for justice for their clients, and has been a highly esteemed pillar in the community. The firm's attorneys have served on numerous legal and educational boards in West Virginia, including West Virginia State Bar Board of Governors; the West Virginia Ethics Commission; West Virginia Law Institute's Governing Council; West Virginia Judicial Vacancy Advisory Commission; West Virginia Association for Justice Board of Governors; Marshall University Foundation, Inc.; The Society of Yeager Scholars at Marshall University; the Faculty Merit Foundation of West Virginia, Inc. (selects higher education's "Professor of the Year"); the Marshall University Graduate School Advisory Board; Hospice of Huntington; and the Cabell County American Cancer Society.

Greene Ketchum attorneys have successfully tried numerous civil cases to verdict in state and federal courts. Their skilled advocacy has returned millions of dollars in verdicts for their clients in both trial settings and settlements. The firm's attorneys have been recognized by legal organizations for excellence and included in The National Advocates Top 100 Trial Lawyers and West Virginia Super Lawyers®.



Paul Farrell, Jr. is a West Virginia trial lawyer and partner at Greene, Ketchum, Farrell, Bailey & Tweel, LLP in Huntington, West Virginia. Mr. Farrell is recognized as a premier trial lawyer in the field of medical malpractice and appellate advocacy, making some thirty (30) appearances before the West Virginia Supreme Court. He has been a frequent presenter at legal education seminars and since 2004 has served on the West Virginia Continuing Legal Education Commission.

Mr. Farrell filed some of the first transvaginal mesh (TVM) cases in the country and served as liaison counsel on the executive committee for the 7 Pelvic Repair System Products Liability MDLs in Charleston, West Virginia. These MDLs consolidated 80,000 cases and resulted in several multi-million dollar jury verdicts. Mr. Farrell served as trial counsel for the TVM litigation, successfully trying 2 bellwether cases to verdicts in excess of \$20 million.

Mr. Farrell recently filed the first cases in the country on behalf of public entities against the wholesale distributors of prescription opiates in southern West Virginia and is focusing his efforts to abate the nationwide opioid epidemic.

Mr. Farrell is a graduate of the University of Notre Dame (1994) and West Virginia University College of Law (1997) and licensed to practice law in West Virginia, Ohio and Kentucky. He was named West Virginia Association for Justice Trial Lawyer of the Year (2002) and served as the President of the West Virginia Association for Justice (2011-2012).

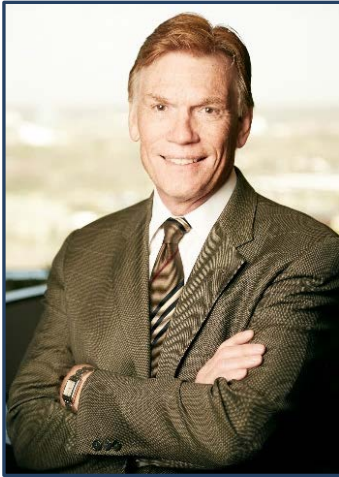
Currently, Sommers Schwartz consists of 36 partners, associates and of counsel, 8 paralegals, 3 nurse consultants, and a dedicated group of 44 support staff. We have been representing individuals and businesses for nearly 50 years. Our founding members, including Stanley Schwartz, Howard Silver, Norm Sommers, Jeffery Shillman and Leonard Schwartz were legal trailblazers in Michigan and the mid-west during the firm's formative years in the 1960's and 70's. They literally set the bar for legal excellence and an uncompromising dedication to their clients.

Respect in the legal field is not easily achieved. Through hard work, exceptional talent and a dedication to excellence, Sommers Schwartz has become one of the most well-respected and well-known firms in Michigan. We have successfully litigated and continue to litigate cases in many states, including Illinois, Georgia, Pennsylvania and Ohio and in federal courts throughout America.

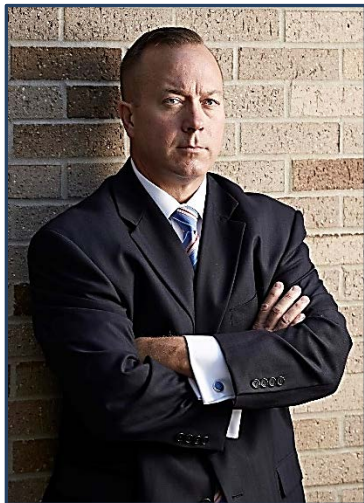
A stellar reputation and long history of success has its benefits: we are regarded by the bench and bar as formidable advocates, particularly in the fields of medical malpractice, class actions, product liability, mass torts, employment disputes, complex business litigation, FLSA litigation, consumer protection, appeals and more. Our national reach includes serving on plaintiff steering committees in mass torts and business related multi-district litigation matters.



Lisa Esser-Weidenfeller has been a champion for justice for over a decade, fighting tirelessly for the rights of Michigan's citizens. Possessing expertise in complex civil litigation, Lisa has obtained millions on behalf of her clients. Her experience in advancing the claims of those harmed by pharmaceutical products and compounded drugs began with the 2012 case against New England Compounding Center who dispensed thousands of vials of contaminated steroids, subsequently causing 60 deaths and hundreds of serious fungal infections in Michigan citizens. Lisa is a shareholder at Sommers Schwartz, P.C. She has recently been recognized as an Up and Coming Lawyer by Michigan Lawyers Weekly by National Trial Lawyers as a Top 40 under 40 litigator, and has been named as a Rising Star by Super Lawyers every year since 2011. She is an active member of the American Bar Association, American Association for Justice, Michigan Association for Justice for which she serves on the Executive Board, the Oakland County Bar Association serving on the medical legal committee, and in serving on the Character & Fitness Committee.



Rob Sickels is a 1978 graduate of Wayne State University Law School. Since that time, he has engineered hundreds of settlements and scores of jury verdicts that have provided many millions of dollars in compensation for his clients. He is a senior shareholder and elected member of the Board of Directors of Sommers Schwartz, P.C. He has developed particular expertise in handling medical negligence and defective medical device liability claims. Recently, he was co-counsel in class action representing hundreds of victims of the meningitis outbreak due to contaminated steroids sold to Michigan pain clinics by the New England Compounding Pharmacy. He filed and resolved numerous suits in various counties throughout Michigan against the Stryker Corporation relating to its defective Rejuvenate hip implant. He has been a long-standing member of the Executive Board of Directors of the Michigan Association for Justice. Currently, he is a member of several AAJ litigation groups, including the DePuy ASR hip implant group, the Stryker Rejuvenate hip implant group, the Wright Medical Technologies hip implant group and the Transvaginal Mesh litigation group. For MAJ and the Negligence Law Section of the Michigan State Bar, he has lectured on the topics of Daubert motion practice, Damages in Malpractice actions, Radiology Malpractice and Medical Device litigation.



Jason Thompson is a shareholder, Board of Director and Department Head for the Sommers Schwartz Complex Litigation Department. His complex litigation experience includes suits against pharmaceutical manufacturers and wholesalers for price fixing and marketing violations. In 2004, he worked on one of the largest prescription drug cases in the country, *In Re: Neurontin Marketing and Sales Practice Litigation*, MDL No.1629 and since then on pharmaceutical cases involving the drugs Nexium, Vioxx, TriCor, Toporol, and Celebrex. In those cases, he represented Michigan cities such as Detroit, Pontiac, River Rouge, Bay City, Holland and Sterling Heights, and Michigan counties such as Oakland, Midland, Saginaw and Cass.

Mr. Thompson has also served as lead class counsel in nuisance cases, including cases against United States Steel Corporation and Atofina Chemical Company. He is currently representing insureds and municipalities in one of the largest antitrust lawsuit in history against all 38 Blue Cross Blue Shield companies in America, *In Re: Blue Cross Blue Shield Antitrust Litigation*, MDL 2406.

Because of his experience in complex litigation, he has lectured on nuisance and negligence theories of recovery, testified before the Michigan Legislature on pharmaceutical drug immunity and taught complex litigation at the Michigan State University of Law School. Thompson graduated from the University of Southern California in 1989 with a Bachelor of Arts degree in Economics and Michigan State University College of Law, JD - cum laude in 1992 and is Board Certified by the National Board of Trial Attorneys.



Richard Groffsky is a graduate of the DePaul University School of Law, and focuses his practice on medical malpractice and personal injury litigation. He has spent his career representing clients with significant brain and other injuries, handling these types of cases in Michigan, Ohio, Illinois, Indiana, Iowa, North Carolina, South Carolina, and Georgia.

Mr. Groffsky has secured hundreds of verdicts and settlements, more than 30 of which have exceeded \$1,000,000. His accomplishments on behalf of his clients has earned him repeat recognition by "Best Lawyers in America", "Super Lawyers", "DBusiness Top Lawyers" and an "AV" rating by Martindale Hubbell. He currently is the practice group leader for the personal injury practice at Sommers Schwartz.

[WWW.SOMMERSPC.COM](http://WWW.SOMMERSPC.COM) | ONE TOWNE SQUARE, 17<sup>TH</sup> FLOOR, SOUTHFIELD, MI 48076 | MAIN: 248-355-0300 | FAX: 248-746-4001





Baron & Budd, P.C. is among the largest and most accomplished plaintiffs' law firms in the country. With 40 years of experience, Baron & Budd has the expertise and resources to handle complex litigation throughout the United States. As a law firm that takes pride in remaining at the forefront of litigation, Baron & Budd has spearheaded many significant cases for entities and individuals. Since the firm was founded in 1977, Baron & Budd has achieved substantial national acclaim for its work on cutting-edge litigation, trying hundreds of cases to verdict and settling tens of thousands of cases in areas of litigation as diverse as pharmaceuticals and defective medical devices, asbestos and mesothelioma, water contamination, fraudulent banking practices, motor vehicles, employment, and other consumer fraud issues.

Baron & Budd has represented hundreds of public entities in pharmaceutical, environmental, consumer and securities litigation. The Firm's attorneys were part of an attorney group that recently negotiated a \$553 million settlement with 4 vehicle manufacturers regarding their use of faulty airbags manufactured by Takata. Baron & Budd's environmental litigation group litigated and settled claims on behalf of more than 150 water providers in 17 states regarding Methyl Tertiary Butyl Ether (MTBE) contamination in groundwater. The \$423 million settlement, reached with many of the country's leading gas companies, requires gasoline refiners to pay water providers' costs to remove MTBE from public drinking water wells and for refiners to pay for treatment of qualifying wells that may become contaminated within the next 30 years. The Firm's attorneys were co-lead counsel in litigation brought on behalf of seven states' attorneys general against GlaxoSmithKline regarding its fraudulent marketing of the diabetes drug Avandia; these cases settled for \$177 million. Baron & Budd's environmental litigation group represented 30 mid-west water providers in litigation regarding the contamination of water systems by the agricultural chemical atrazine; these cases settled for \$105 million. The firm also served as co-lead counsel for the states of West Virginia, Hawaii and Mississippi for their claims against various financial institutions regarding fraudulent marketing of payment protection plans and related credit card services, ultimately settling the cases for more than \$43 million.

Baron & Budd represents thousands of individuals in pharmaceutical, defective medical device, securities, environmental and motor vehicle-related cases. The firm's attorneys have served or continue to serve on Plaintiffs Steering Committees and in key leadership roles in complex, multi-district litigations, including *In Re: 7-Eleven, Inc. Shareholders Litigation*; *In re Semtech Corporation Securities Litigation*; *In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*; *In Re: Checking Account Overdraft Litigation*; *In Re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico*; the 7 Pelvic Repair System Products Liability MDLs; *In re: Cook Medical, Inc., IVC Filters Marketing, Sales Practices and Products Liability Litigation*; *In Re: Bard IVC Filters Products Liability Litigation*; *In Re: Takata Airbag Products Liability Litigation*; *In Re: Fluoroquinolone Products Liability Litigation*; *In Re: Zofran (Ondansetron) Products Liability Litigation*; and *In Re: Volkswagen Clean Diesel Marketing, Sales Practices, and Products Liability Litigation*.

Baron & Budd's attorneys are consistently recognized for excellence in advocacy by both peers and national legal publications and organizations, including the *Best Lawyers in America*, *National Trial Lawyers Top 100 Trial Lawyers List*, and the Firm's attorneys won a 2017 Burton Award, recognizing outstanding legal writing for an article appearing in *Trial Magazine*. *The National Law Journal* has included the firm in its NLJ "Hot List" of exemplary plaintiffs firms in the United States eight years since the list's inception in 2002 (American Lawyer Media). *The National Law Journal* also named Baron & Budd to the list of America's Elite Trial Lawyers, a list is comprised of 50 law firms that have achieved significant results on behalf of plaintiffs within the previous year and have an established track record of delivering impressive results. Baron & Budd has been a finalist for the Public Justice Foundation's "Trial Lawyer of the Year" award four times – most recently in 2013 for the Atrazine litigation and 2012 for the *In Re Checking Account Overdraft Litigation* – and was awarded the honor in 2007 for its work on a decades-long case against fighting water contamination in Tucson, Arizona.

Baron & Budd has frequently contributed resources and finances to a number of worthwhile nonprofit organizations including the International Mesothelioma Program at Brigham and Women's Hospital, Asbestos Disease Awareness Organization, Lung Cancer Alliance, the National Comprehensive Cancer Network (NCCN), Attorneys Serving the Community (a Dallas-Ft. Worth area women's attorney group), Genesis Women's Shelter and the Dallas Children's Advocacy Center.



Russell W. Budd, a shareholder of Baron & Budd since 1985 and president and managing shareholder since 2002, has devoted his entire career to championing the rights of people and communities harmed by corporate malfeasance. As chair and member of several asbestos creditors' bankruptcy committees, Budd has successfully resolved over 100,000 victims' claims with some of Wall Street's biggest companies, including establishing trust funds and settlement funds valued at nearly \$11 billion to protect present and future

asbestos victims throughout the United States.

Budd has also been instrumental in conducting national negotiations for non-asbestos claims. Budd was a leader in settlement negotiations in *In Re Checking Account Overdraft Litigation* that resulted in settlements valued at more than \$500 million in cash and more than \$100 million in business practice changes. Budd was one of the negotiators of a \$177 million settlement for litigation brought on behalf of seven states' attorneys general against GlaxoSmithKline regarding its fraudulent marketing of the diabetes drug Avandia, and was a key negotiator of settlements valued at more than \$43 million for the states of West Virginia, Hawaii and Mississippi for their claims against various financial institutions regarding fraudulent marketing of payment protection plans and related credit card services.



Baron & Budd shareholder Burton LeBlanc has successfully represented both individuals and governmental entities, including the States of Hawaii, Mississippi, Louisiana, and West Virginia in complex consumer fraud litigation. He was part of Baron & Budd's team that pursued litigation on behalf of seven states' attorneys general against GlaxoSmithKline regarding its fraudulent marketing of the diabetes drug Avandia, litigation which settled for \$177 million. LeBlanc is a recent (2013- 2014) past-president of the nation's largest

non-profit trial lawyer group, American Association for Justice (AAJ). He remains actively involved with AAJ and shares their commitment to relentlessly advocate for the protection of America's civil justice system and the fundamental right to a trial by jury. LeBlanc is a 2017 recipient of the Lifetime Achievement Honor from America's Top 100 Attorneys for his career dedicated to the protection of America's civil justice system. He was named as one of the top 75 plaintiff's attorneys in the United States by *The American Lawyer* in 2014 and has also been selected for inclusion in the *Louisiana Super Lawyers*® list from 2012 to the present.



Roland Tellis' practice focuses on complex, high-profile litigation, including consumer class actions, financial fraud, business torts, corporate misconduct, automobile defect, food labeling, false advertising, securities fraud and environmental contamination. He holds leadership roles in numerous multi-state, complex class action cases, including *Bias v. Wells Fargo Bank*, a certified nationwide RICO class action involving millions of mortgage loans that settled for more than \$50 million; *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, a multi-state

class action in the process of settling with values and fines totaling in the billions of dollars, involving hundreds of thousands of vehicles equipped with "defeat devices" designed to evade emissions laws; and *In Re: Takata Airbag Products Liability Litigation*, which has received preliminary approval for a settlement valued at \$553 million. Tellis received commendation from the U.S. Department of Justice and the Federal Bureau of Investigation for his assistance in a successful parallel prosecution of a \$120 million securities Ponzi scheme perpetrated by foreign currency traders. He has served on the Board of Governors of the Association of Business Trial Lawyers and as a Lawyer Representative to the Ninth Circuit Judicial Conference. Tellis has also served as a Co-Chair of the Settlement Panel of the U.S. District Court for the Central District of California. He was selected for the 2017 edition of *The Best Lawyers in America*®.



Former Baron & Budd Shareholder S. Ann Saucer is an Of Counsel lawyer with the firm, focusing her practice on appellate advocacy and briefing in complex litigation for both individuals and public entities. She has successfully argued before the U.S. Fifth Circuit Court of Appeals, the U.S. Ninth Circuit Court of Appeals, the Texas Court of Appeals (Dallas) and federal and state trial courts across the country, often as the key author of briefings and presenter of oral argument. Ms. Saucer has also spoken

and published articles on federal procedure issues. Her background covers the spectrum of commercial, financial, pharmaceutical and defective medical devices, environmental law, consumer protection, product liability and toxic torts.

DALLAS | AUSTIN | BATON ROUGE | NEW ORLEANS | LOS ANGELES | SAN DIEGO  
[www.baronandbudd.com](http://www.baronandbudd.com)





The Levin Papantonio Law Firm was founded in 1955, in Pensacola, Florida, and is one of the largest plaintiff's law firms in the country with nearly 40 attorneys and more than 150 support staff.

In the past 25 years, the firm has received more than 150 jury verdicts throughout the country in the amount of \$1 million or more each, and has achieved verdicts and settlements in excess of \$3 billion. In July 2002, the National Law Journal recognized Levin Papantonio as the fourth most successful law firm in America based on total jury

verdicts. Senior shareholder, Fred Levin, was named as one of the nation's "Top Ten Litigators." In 2008, after securing a \$380 million verdict against a multi-national corporation, the Public Justice Foundation nominated three of the firm's attorneys as one of the top trial teams in the country. In 2017, court victories by Levin Papantonio attorneys, including senior partner Mike Papantonio, helped bring about a \$670 million settlement in the nationwide DuPont C8 litigation.



Levin Papantonio routinely represents cities, counties, and government agencies in lead counsel roles ranging from areas such as pharmaceutical, environmental, derivative, securities, and antitrust litigation, to a key role in the landmark tobacco cases brought by states to recover health care expenditures. Levin Papantonio has held leadership positions in some of the country's most complex multi-district litigations, including the Plaintiffs' Executive Committee In re Deepwater Horizon (BP) Oil Spill in the Gulf, MDL 2179 (E.D. LA), helping to bring about the recent \$20.8 billion settlement in that action. The firm's attorneys

also served on the Plaintiff Steering Committee and as co-chair of the Discovery Committee for the Bayer Yaz/Yasmin pharmaceutical litigation, in which Bayer has paid approximately \$2 billion to date.

Levin Papantonio is "AV" rated, and its attorneys have been inducted into the National Trial Lawyer Hall of Fame, listed in Best Lawyers in America, and profiled by national publications and news outlets including the New York Times, Los Angeles Times, Forbes, Time Magazine, Newsweek, Fox News, ABC News, and CNN.

As a nationally recognized litigation firm, Levin Papantonio has built a reputation on its willingness to litigate to verdict complex disputes against some of the world's largest companies. The firm routinely litigates cases that require thousands of attorney hours and millions in expenses.

The Law Firm of Hill, Peterson, Carper, Bee & Deitzler, PLLC, began in 1980, when senior partner, R. Edison Hill, departed a large corporate and insurance defense firm to begin a small personal injury practice. The firm's attorneys represent individuals and families in many diverse areas of complex litigation including water contamination, personal injury, pharmaceutical and defective medical devices, and medical malpractice. The firm's attorneys were awarded the prestigious Trial Lawyer of the Year award by Public Justice in 2005 for their work on the successful class action litigation *Leach, et al. v. E. I. du Pont de Nemours and Company* involving representation of plaintiffs who suffered various cancers and other illnesses due to exposure through drinking water to the chemical ammonium perfluorooctanoate ("PFOA" or "C-8"), a chemical utilized in the manufacture of Teflon. The firm's attorneys also served on the Plaintiffs Steering Committee for *In re: E. I. Dupont de Nemours and Company C-8 Personal Injury Litigation*, which has reached a global settlement of close to \$1 billion. Hill, Peterson, Carper, Bee & Deitzler, PLLC, has been designated by "Benchmark Plaintiff" (The Definitive Guide To American Leading Plaintiff Firms & Attorneys) as one of West Virginia's three top and "highly recommended" litigation law firms.



R. Edison (Ed) Hill is a trial attorney and the founder and a member/partner of Hill, Peterson, Carper, Bee & Deitzler, PLLC. Mr. Hill has served as class action counsel for numerous certified class actions, including *Burch, et al. v. American Home Products Corp, et al.* (Fen-Phen Diet Drug Litigation), the largest pharmaceutical class action in the history of West Virginia, and *Leach, et al. v. E. I. du Pont de Nemours and Company*. He also serves on the Plaintiffs Steering Committee for *In re: E. I. Dupont de Nemours and Company C-8 Personal Injury Litigation*, which recently reached a settlement valued at nearly \$1 billion. Mr. Hill was named as one of "America's 100 Most Influential Trial Lawyers" by *The Trial Lawyer's RoundTable* in 2017 and has been designated as one of West Virginia's twelve "Litigation Stars" by *Benchmark Plaintiff* (The Definitive Guide To American Leading Plaintiff Firms & Attorneys). He has also been named as a Fellow of the West Virginia Bar Foundation, awarded to "lawyers

whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and honorable service to the legal profession with the individuals selected reflecting the diverse nature of the legal profession in West Virginia." Mr. Hill is involved in many legal professional organizations, including American Association for Justice (Life Member), National Trial Lawyers Association (Executive Committee Member), West Virginia Trial Lawyers Association (Past-President and current Board of Governors member), Public Justice Foundation, Lawyer-Pilots Bar Association, Southern Trial Lawyers Association and the Consumer Attorneys of West Virginia. He has been named a *West Virginia Super Lawyer®* each year from 2009 to the present. He also serves as Chairman for the Central West Virginia Regional Airport Authority, which is the governing board for Yeager Airport, located in Charleston, West Virginia. He has served on the Yeager Airport Board of Directors since 1993.



James C. Peterson has been a member/partner at Hill, Peterson, Carper, Bee & Deitzler, PLLC since 1983, focusing his legal practice on litigation of severe personal injury, medical/legal malpractice, product liability, insurance bad faith, mass tort/class action involving defective products, pharmaceuticals and insurance issues. He served as co-lead counsel for on the settlement of the largest pharmaceutical class action litigation in the history of the State of West Virginia, involving the diet drug Fen-Phen (*Burch, et al. v. American Home Products Corporation, et al.*). Settlements and verdicts handled on behalf of his firm Hill & Peterson or on a co-counsel basis exceeds \$1.6 billion. Representative mass tort/class action in addition to *Burch* includes *McCallister, et al., v. Purdue- Pharma, Inc., et al.* (Oxycontin - potent pain killer drug); *VIOXX Products Liability Litigation*, MDL 1657 (osteo-arthritic pain medication); *In Re: E. I. Dupont de Nemours and Company C-8 Personal Injury Litigation*, MDL 2433 (involving representation of 3,500 plaintiffs who suffered various cancers and other illnesses due to exposure to C-8, a chemical used in the manufacture

of Teflon, in public drinking water; global settlement reached in 2017 for close to \$1 billion.); and *Good v. American Water Works Company, Inc., et al.*, Case No. 2:14-CV-01374 (putative class alleging economic and personal injury loss due to water contamination, tentative settlement reached Fall 2016, for over 250,000 residents and businesses in the 9-county area). Mr. Peterson has been board-certified as a civil trial specialist by the National Board of Trial Advocacy (NBTA) since 1990; named member of the year by the West Virginia Trial Lawyers Association in both 1988 and 1993; served in a variety of positions with both state and national trial lawyer organizations, including president of the West Virginia Trial Lawyers' Association (1996-1997); and admitted to practice in the states of Minnesota, Ohio, and West Virginia. Since 1987, Mr. Peterson has presented over 40 papers and articles nationwide on various legal topics in over two dozen states. He authored a chapter for a National Brain Injury Association publication involving hedonic damages, and an article on the same for TRIAL Magazine (published by American Association for Justice). Mr. Peterson is recognized as a life member of American Association for Justice (AAJ), an honor bestowed on approximately 50 lawyers for that nationwide trial organization. He was selected in 2005, along with two of his partners Ed Hill and Harry Deitzler, as Trial Lawyers of the Year by Public Justice.

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McHugh Fuller Law Group is a trial firm based out of Hattiesburg, Mississippi that specializes in complex litigation and trials in the health and medical fields. With only eight members, the firm functions as an elite trial team made up of experienced litigators and legal writers. The attorneys at McHugh Fuller are admitted to practice law in eighteen states including Mississippi, Florida, Texas, Alabama, Arkansas, Georgia, Illinois, Kentucky, Michigan, Missouri, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, West Virginia, Wisconsin, and the District of Columbia. Our lawyers have tried over one hundred cases, obtaining multi-million dollar verdicts in courts throughout the country. The attorneys at McHugh Fuller have amassed over three-hundred million dollars in jury verdicts alone, and have successfully handled appeals before State Supreme Courts and Courts of Appeal in seven states, numerous Federal District Courts, the 4th, 5th and 11th Circuit Courts of Appeal and the United States Supreme Court.



Mike Fuller has extensive experience in nursing home, medical malpractice and criminal prosecutions and trials. He has worked with a top national law firm and the Hillsborough County State Attorney's Office in Florida, and he has litigated and tried numerous cases to verdict in jurisdictions nationwide.

Mr. Fuller obtained his undergraduate degree from the University of Central Florida, where he graduated Summa Cum Laude, and his Juris Doctorate from the University of Florida, where he graduated with high honors. Part of his educational process was spent working in the White House as an intern involved with Presidential Correspondence, providing a wealth of experience with citizens, legislators and diplomats across the United States.

Mr. Fuller is licensed to practice law in the District of Columbia, Florida, Georgia, Kentucky, Michigan, Mississippi, Missouri, New York, Ohio, Pennsylvania, Tennessee, West Virginia and Wisconsin.



Amy Quezon received her undergraduate degree from Furman University in 1989. She received her Juris Doctorate degree from Stetson University, College of Law, cum laude, in 1992.

Prior to joining McHugh Fuller Law Group, Ms. Quezon was an associate with the law firm of Jacobs & Goodman. Prior to that she was with the law firm of Wilkes & McHugh, P.A. where she practiced nursing home abuse and neglect litigation. Ms. Quezon also spent part of her career as a prosecutor with the Hillsborough County State Attorney's Office. While there, Ms. Quezon was the lead trial attorney focusing on violent felony cases. During her career, she has tried over 100 civil and criminal jury trials.



Ms. Quezon is licensed to practice law in Florida, Georgia, Kentucky, Mississippi, Missouri, New Hampshire, Ohio, Tennessee, Texas, West Virginia and Wisconsin. She is a member of the Florida Bar, the Hillsborough County Bar Association, The Florida Justice Association (f/k/a The Academy of Florida Trial Lawyers), the American Bar Association, the American Association for Justice (f/k/a the American Trial Lawyers Association), the Mississippi Bar Association, the State Bar of Texas, and the Southern Trial Lawyers Association.

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**AUTHORITY TO REPRESENT**

### AUTHORITY TO REPRESENT

RE: [INSERT CITY/COUNTY] (Michigan) civil suit against those legally responsible for the wrongful distribution of prescription opiates/opioids and damages caused thereby.

The [INSERT CITY/COUNTY] (hereinafter "CLIENT") hereby retains the law firm SOMMERS SCHWARTZ, P.C., pursuant to the Michigan Rules of Professional Conduct, on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the [INSERT CITY/COUNTY] (Michigan) including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. **LISA ESSER-WEIDENFELLER, Esq. (Michigan P#70628), JASON THOMPSON Esq. (Michigan P#47184) and ROBERT SICKELS, Esq. (Michigan P#29086)** of the law firm SOMMERS SCHWARTZ, P.C., shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms:

SOMMERS SCHWARTZ, P.C.  
1 Towne Square, Suite 1700  
Southfield, Michigan 48076

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP  
419 11st Street  
Huntington, West Virginia 25701

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida 32502

BARON & BUDD, P.C.  
3102 Oak Lawn Avenue, #1100  
Dallas, Texas 75219

HILL PETERSON CARPER BEE & DEITZLER, PLLC  
500 Tracy Way  
Charleston, West Virginia 25311

MCHUGH FULLER LAW GROUP  
97 Elias Whiddon Road  
Hattiesburg, Mississippi 39402

In consideration, CLIENT agrees to pay thirty (30%) percent of the total recovery (gross) in favor of the CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys' fees, Attorneys shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. There is no fee if there is no recovery.

SOMMERS SCHWARTZ, P.C., and the other law firms, hereinafter referred to as the "Attorneys," agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculate. **There is no reimbursement of litigation expenses if there is no recovery.**

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved , and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers and wholesale distributors and their role in the diversion of millions of prescription opiates/opioids into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the Attorneys regarding the definition of a "successful recovery."

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors. The CLIENT agrees to compensate the Attorneys, contingent upon prevailing, by paying thirty (30%) percent of any settlement/resolution/judgment, in favor of the CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay thirty (30%) percent of the gross amount to Attorneys as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay thirty (30%) percent of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any



consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the CLIENT be obligated to pay any Attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the CLIENT'S claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the Michigan Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division offers will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement and remittance in a case involving a contingent fee shall be signed by the CLIENT and each lawyer and shall comply with the terms of Rule 1.5 of the Michigan Rules of Professional Conduct; and (4) the total fee is *reasonable*.

LEAD COUNSEL shall appoint a contact person to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. The CLIENT at all times shall retain the authority to decide the disposition of the case and maintain absolute control of the litigation.

Upon conclusion of this matter, LEAD COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm, as required in Rule 1.5(e) of the Michigan Rules of Professional Conduct. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

Nothing in this Agreement and nothing in the Attorneys' statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

SIGNED, this \_\_\_\_ day of \_\_\_\_\_, 2017.

[INSERT CITY/COUNTY]

\_\_\_\_\_  
[INSERT NAME/TITLE]

ACCEPTED:

SOMMERS SCHWARTZ, P.C.  
1 Towne Square  
Suite 1700  
Southfield, MI 48076

By: \_\_\_\_\_  
Lead Counsel

Date:

# **BOARD RESOLUTION**

**RESOLUTION NO.    [INSERT NO.]**

The Board of County Commissioners of **[INSERT COUNTY]** County, Michigan, met in regular session on the \_\_\_\_ day of \_\_\_\_\_, 2017 with the following members present:

**[INSERT COMMISSIONERS AND TITLES]**

[INSERT NAME OF COMMISSIONER WHO MOVED] moved for the adoption of the following Resolution:

**RESOLUTION DECLARING THAT THE UNLAWFUL DISTRIBUTION OF PRESCRIPTION CONTROLLED SUBSTANCES HAS CREATED A PUBLIC NUISANCE AND A SERIOUS PUBLIC HEALTH AND SAFETY CRISIS FOR THE CITIZENS OF [INSERT COUNTY] COUNTY.**

**WHEREAS**, the Board of County Commissioners is the policy-determining body of the County; and

**WHEREAS**, the Board of County Commissioners has the authority to take action to protect the public health, safety, and welfare of the citizens of **[INSERT COUNTY]** County; and

**WHEREAS** , there exists a serious public health and safety crisis involving opioid/opiate abuse, addiction, morbidity, and mortality in **[INSERT COUNTY]** County; and

**WHEREAS**, the diversion of legally produced controlled substances into the illicit market causes or contributes to the serious public health and safety crisis involving opioid/opiate abuse, addiction, morbidity, and mortality in **[INSERT COUNTY]** County; and

**WHEREAS**, the violation of any laws of Michigan or of the United States of America controlling the distribution of a controlled substance is inimical, harmful, and adverse to the public welfare of the citizens of **[INSERT COUNTY]** County and constitutes a public nuisance; and

**WHEREAS**, the Board of County Commissioners has the authority to abate, or cause to be abated, any public nuisance including those acts that significantly interfere with the public health, safety, and welfare of the citizens of **[INSERT COUNTY]** County; and

**WHEREAS**, the Board of County Commissioners has expended, is expending, and will continue to expend in the future County public funds to respond to the serious public health and safety crisis involving opioid/opiate abuse, addiction, morbidity, and mortality in [INSERT COUNTY] County; and

**WHEREAS**, the Board of County Commissioners may sue to obtain any money due the County; and

**WHEREAS**, the Board of County Commissioners has received information that indicates that the manufacturers and wholesale distributors of controlled substances who dispensed or otherwise caused opioids to be diverted into [INSERT COUNTY] County may have violated Federal and State laws and regulations that were enacted to prevent the diversion of legally produced controlled substances into the illicit market; and

**WHEREAS**, the citizens of [INSERT COUNTY] County will benefit from the retention of special outside counsel to investigate and pursue, if appropriate, County claims against the manufacturers and/or wholesale distributors of controlled substances in [INSERT COUNTY] County, on a contingent fee basis, wherein there is no attorney fee or reimbursement of litigation expenses if there is no recovery; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of [INSERT COUNTY] County, Michigan with at least two-thirds of its members [VERIFY QUORUM IN COUNTY] thereto concurring as follows:

## **SECTION I**

That the Board of County Commissioners hereby declares that opiate/opioid abuse, addiction, morbidity and mortality has created a serious public health and safety crisis in [INSERT COUNTY] County, Michigan, and is a public nuisance; and

## **SECTION II**

That the Board of County Commissioners of [INSERT COUNTY] County, Michigan, hereby retains the firm of SOMMERS SCHWARTZ, P.C., 1 Towne Square, Suite 1700, Southfield, MI 48076, and such other legal counsel as needed, as Special Counsel to represent the Board of County Commissioners, to

investigate and, if appropriate, pursue all civil remedies which may be afforded under law as against the manufacturers and/or wholesale distributors in the chain of distribution of controlled substances who have caused or contributed to the public nuisance and serious public health and safety crisis involving opioid/opiate abuse, addiction, morbidity, and mortality in [INSERT COUNTY] County, with the compensation therefore on a contingent fee basis, in concert with the contingent fee agreement that is designated as "Authority to Represent" and for which all members of the Board of County Commissioners are authorized to execute the afore stated contingent fee agreement, the same of which is identified as Exhibit A and attached hereto and made a part hereof in its entirety.

### SECTION III

That the Board of County Commissioners hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and its Committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with all applicable legal requirements.

[INSERT NAME OF COUNTY COMMISSIONER] seconded the Resolution and on roll the vote resulted as follows:

[INSERT NAME] \_\_\_\_Yes\_\_\_\_

[INSERT NAME] \_\_\_\_Yes\_\_\_\_

[INSERT NAME] \_\_\_\_Yes\_\_\_\_

This Resolution was duly passed on the \_\_\_\_day of\_\_\_\_, 2017.

ATTEST:

---

[INSERT NAME OF CLERK], CLERK  
[INSERT COUNTY] County Board of  
Commissioners

This Resolution was approved as to form by the Office of the Prosecuting Attorney of [INSERT COUNTY] County, Michigan

By: \_\_\_\_\_  
[INSERT NAME OF PROSECUTING ATTY]  
Prosecuting Attorney

Date: \_\_\_\_\_

# RETAINER AGREEMENT



PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE \_\_\_\_\_[INSERT CITY/COUNTY]  
AND SOMMERS SCHWARTZ, PC

THIS AGREEMENT is made and entered into by and between \_\_\_\_\_[INPUT CITY/COUNTY], a Michigan \_\_\_\_\_[INPUT STATE SUBDIVISION], \_\_\_\_\_[INSERT ADDRESS] ("[INSERT CITY/COUNTY]"), and Sommers Schwartz, P.C., 1 Towne Square, Suite 1700, Southfield, MI 48076, as lead counsel, as well as other participating firms identified in the document entitled "Authority to Represent," incorporated by reference herein, (collectively "Law Firms").

WITNESSETH:

WHEREAS, the \_\_\_\_\_[INSERT CITY/COUNTY] and its officials maintain legal causes of action against those in the chain of distribution of prescription opiates/opioids responsible for the opioid epidemic plaguing the \_\_\_\_\_[INSERT CITY/COUNTY], including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby:

WHEREAS, the \_\_\_\_\_[INSERT CITY/COUNTY] requires the retention of special counsel to prosecute such claims;

WHEREAS, Sommers Schwartz, P.C., has the requisite subject matter expertise and experience to pursue such claims on behalf of the \_\_\_\_\_[INSERT CITY/COUNTY];

NOW, THEREFORE, the \_\_\_\_\_[INSERT CITY/COUNTY] and the Law Firms mutually agree as follows:

**SECTION 1. Scope of Services**

The Law Firms agree to perform and carry out in a manner satisfactory to the \_\_\_\_\_[INSERT CITY/COUNTY] OR [INSERT CITY/COUNTY ATTORNEY IF APPLICABLE] the following services: advise, consult, and litigate the claims referenced herein as

requested and supervised by the \_\_\_\_\_ [INSERT CITY/COUNTY ATTORNEY OR REPRESENTATIVE] or [IDENTIFY HIS/HER] designee. This shall include any related litigation and/or appeals as agreed to by the parties.

## **SECTION 2. Compensation and Method of Payment**

### **2.1. Compensation.**

Compensation for legal services rendered will be in accordance with the terms set forth in the Authority to Represent, incorporated herein by reference.

### **2.2. Method of Payment**

The fees set forth herein shall be paid in accordance with the Authority to Represent or, if applicable, with the final order of the Court which ultimately adjudicates the claims or which finally approves any resulting settlement agreement.

The Law Firms have agreed to bring this action on a contingency basis. This means that the payment of attorney fees is dependent upon a recovery. If the Law Firms are unsuccessful and there is no recovery, the \_\_\_\_\_ [INSERT CITY/COUNTY] will not be obligated to pay any attorneys' fees or expenses. The fees that the \_\_\_\_\_ [INSERT CITY/COUNTY] pays to the Law Firms will come from the Defendants if the Law Firms are successful.

### **2.3. Guide for Outside Legal Counsel. [IF APPLICABLE]**

The Law Firms acknowledge that they will be subject to the terms of \_\_\_\_\_ [INSERT CITY/COUNTY] Guide for Outside Legal Counsel, attached hereto and incorporated herein by reference, as is applicable given the nature of the engagement. Any charges billed to the \_\_\_\_\_ [INSERT CITY/COUNTY] which fall outside the permissible charges outlined in the Guide for Outside Legal Counsel will be deducted from the bill and will not be paid. In the case of a conflict between the terms of this

Agreement and the Guide for Outside Legal Counsel or the Authority to Represent, this Agreement shall control.

**SECTION 3. Term**

The term of this Agreement shall commence on \_\_\_\_\_ [INSERT DATE OF RETENTION], and shall continue until this Agreement is terminated or amended.

**SECTION 4. Equal Employment Opportunity [IF APPLICABLE]**

This Agreement is subject to the provisions of the Equal Employment Opportunity Program of the \_\_\_\_\_[INSERT CITY/COUNTY] contained in \_\_\_\_\_[INSERT STATUTORY/CODE CITATION]. \_\_\_\_\_ [INSERT STATUTORY/CODE CITATION] is hereby incorporated by reference into this Agreement. The Law Firms agree to comply with the provisions of \_\_\_\_\_ [INSERT STATUTORY/CODE CITATION].

**SECTION 5. Small Business Enterprise Program [IF APPLICABLE]**

This Agreement is subject to the provisions of the Small Business Enterprise Program contained in \_\_\_\_\_ [INSERT SECTION OF MUNICIPAL CODE]. Section \_\_\_\_\_ [INSERT SECTION] of the \_\_\_\_\_ [INSERT CITY/COUNTY] Municipal Code is hereby incorporated by reference into this Agreement. The Law Firms shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, including the utilization of small business enterprises, which includes small business firms owned by minorities and women. Best efforts include the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitation and dividing large contracts into smaller contracts when economically feasible.

## **SECTION 6. Subcontracting**

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the \_\_\_\_\_ [INSERT CITY/COUNTY]. Any work or services subcontracted hereunder shall be specified by written contract and shall be made expressly subject to each provision of this Agreement. Prior to the Law Firms retaining or utilizing any outside consultants or experts to provide services related to this Agreement, the Law Firms and the \_\_\_\_\_ [INSERT CITY/COUNTY] shall consult and agree on the selection, cost, and method of payment of any consultants or experts necessary to prosecute the lawsuit.

That said, the parties to this Agreement understand that the prosecution of these claims will likely require the retention of expert witnesses and consultants. Nothing in this Agreement will be construed to prevent the retention of same.

## **SECTION 7. Assignment**

The Law Firms shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the \_\_\_\_\_ [INSERT CITY/COUNTY].

## **SECTION 8. Compliance with Laws and Policies**

In the performance of services under this Agreement, the Law Firms shall comply with all applicable statutes, ordinances, regulations and rules of the Federal Government, the State of Michigan, the \_\_\_\_\_ [INSERT CITY AND/OR COUNTY]. **[IF APPLICABLE]** The Law Firms shall also comply with the \_\_\_\_\_ [INSERT CITY/COUNTY] Guide to Outside Legal Counsel. To the extent there are any inconsistencies between this Agreement and the Guide for Outside Legal Counsel, the terms of this Agreement shall apply.

#### **SECTION 9. Reports, Information and Audits**

The Law Firms, at such times and in such form as the \_\_\_\_\_ [INSERT CITY/COUNTY] may require, shall furnish the \_\_\_\_\_ [INSERT CITY/COUNTY] reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, and any other matters covered by this Agreement. The Law Firms shall retain all financial and administrative records applicable to this Agreement and the work performed hereunder for a period of three years after the expiration or termination of this Agreement, and shall permit the \_\_\_\_\_ [INSERT CITY/COUNTY] or any of its representatives or auditors access to such records, including for purposes of responding to public records requests.

#### **SECTION 10. Confidentiality**

The Law Firms and their agents and employees will keep and retain any and all information and records generated under this Agreement in the strictest confidence, regarding all such matters as subject to attorney-client privilege to the fullest extent allowed by law, and will neither use such information or records, nor disclose such information or records to anyone without the explicit written permission of the \_\_\_\_\_ [INSERT CITY/COUNTY].

#### **SECTION 11. Termination**

The \_\_\_\_\_ [INSERT CITY/COUNTY] may terminate this Agreement after not less than thirty (30) days written notice to the Law Firms. If this Agreement is terminated by the \_\_\_\_\_ [INSERT CITY/COUNTY] other than for default by the Law Firms, the Law Firms will be paid for services performed up to the effective date of termination upon satisfactory review of the \_\_\_\_\_ [INSERT CITY/COUNTY ATTORNEY OR DESIGNATED REP.] of the billed services.

## **SECTION 12. Notices**

All notices required or contemplated by this Agreement shall be personally served or sent by certified mail, addressed to the parties as follows (or to such other address as either party may direct by notice in accordance with this section):

To: \_\_\_\_\_ [INSERT CITY/COUNTY]:  
[INSERT POINT PERSON NAME]  
[INSERT ADDRESS]

To: Sommers Schwartz, P.C  
Lisa Esser-Weidenfeller  
1 Towne Square, Suite 1700  
Southfield, MI 48076

## **SECTION 13. Michigan Law to Govern**

This Agreement is entered into and is to be performed in the State of Michigan. The law of the State of Michigan shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

## **SECTION 14. Amendment**

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto.

## **SECTION 15. Entirety**

This Agreement and the Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

#### **SECTION 16. Severability**

This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

#### **SECTION 17. Forum Selection**

The Law Firms and their successors and assigns acknowledge and agree that all federal courts of record for \_\_\_\_\_ [INSERT COUNTY COURT] County, Michigan, shall be the preferred forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment of attachment thereto, including any duty owed by the Law Firms to the \_\_\_\_\_ [INSERT CITY/COUNTY] in connection therewith. The parties acknowledge, however, that the unique nature of the claims contemplated herein may require prosecution in federal district courts outside Michigan and the \_\_\_\_\_ [INSERT EASTERN OR WESTERN] District of Michigan, and/or may be consolidated with claims filed outside local jurisdictions.

#### **SECTION 18. Ownership of Property**

The Law Firms agree that at the expiration or in the event of any termination of this Agreement that any memoranda, maps, drawings, working papers, reports, and other similar documents produced in connection with this Agreement shall become the property of the \_\_\_\_\_ [INSERT CITY/COUNTY] and the Law Firms shall promptly deliver such items to the \_\_\_\_\_ [INSERT CITY/COUNTY].

#### **SECTION 19. Certification as to Non-Debarment**

The Law Firms certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the

transaction covered by this Agreement. The Law Firms acknowledge and agree that if they or their principals are presently debarred then they shall not be entitled to compensation under this Agreement and that they shall promptly return to the \_\_\_\_\_ [INSERT CITY/COUNTY] any funds received pursuant to this Agreement. In such event, any materials received by the \_\_\_\_\_ [INSERT CITY/COUNTY] pursuant to this Agreement shall be retained as liquidated damages.

**SECTION 20. Contractor's Insurance and Indemnification**

- a. Workers' Compensation** - The Law Firms shall secure and maintain such insurance as will protect the Law Firms from claims under the Workers' Compensation Laws.
- b. Professional Liability Insurance** - The Law Firms shall secure and maintain such professional liability insurance as will protect the Law Firms from claims for malpractice which may arise from the performance of the Law Firms' services under this Agreement.

**SECTION 21. Non-Performance**

If through any cause, the Law Firms shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Law Firms shall violate any of the covenants or agreements of this Agreement, the \_\_\_\_\_ [INSERT CITY/COUNTY] shall have the right to terminate this Agreement by giving written notice to the Law Firms specifying the effective date of the termination, at least five (5) days before such effective date. In such event, all finished or unfinished documents, data, studies, reports, and/or information prepared by the Law Firms under this Agreement shall, at the option of the \_\_\_\_\_ [INSERT CITY/COUNTY], become the



\_\_\_\_\_ [INSERT CITY/COUNTY] property and the Law Firms shall be entitled to receive equitable compensation for any work satisfactorily completed at the date of termination.

If the Law Firms terminate this Agreement after the work has begun, the \_\_\_\_\_ [INSERT CITY/COUNTY] shall not be required to compensate the Law Firms for services/work not fully completed.

## **SECTION 22. Conflict of Interest**

- a. Employee Or Agent Of \_\_\_\_\_ [INSERT CITY/COUNTY]** - The Law Firms agree that no officer, employee, or agent of the \_\_\_\_\_ [INSERT CITY/COUNTY] who exercises any functions or responsibilities in connection with the planning and carrying out of the litigation, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in the Law Firms or in this Agreement and the Law Firms shall take appropriate steps to assure compliance with this provision.
- b. Current or Future Conflicts** - For the purposes of this Section, the term "Matter" shall mean any official proceeding before a judicial or administrative body that is readily identifiable under the laws of the federal, state or local government. For the purposes of this Agreement, unless and until representation by the Law Firms of another client rises to the level of being a "Matter", it shall not be considered a conflict.

It is agreed that the Law Firms reserve the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to the Law Firms' work for the \_\_\_\_\_ [INSERT CITY/COUNTY] even if the interests of such clients in those other matters are directly adverse to the \_\_\_\_\_ [INSERT CITY/COUNTY], including litigation in which the \_\_\_\_\_ [INSERT CITY/COUNTY] or its officers or related entities are parties. The Law Firms shall notify the \_\_\_\_\_ [INSERT CITY/COUNTY] of any such conflict. The Law Firms agree, however, that the prospective consent to conflicting representation reflected in the preceding shall not apply in any instance where as the result of the Law Firms' representation of the \_\_\_\_\_ [INSERT CITY/COUNTY] the Law Firms have obtained sensitive, proprietary or otherwise confidential information that, if known to any such other client of the Law Firms, could be used in any such other matter by such client to the material disadvantage of the \_\_\_\_\_ [INSERT CITY/COUNTY] and/or any of its individual officers or the entities represented by those officers or agents.

The Law Firms consent to alert the \_\_\_\_\_ [INSERT CITY/COUNTY] as soon as they become aware of new or potential Matters in order to give the \_\_\_\_\_ [INSERT CITY/COUNTY] the opportunity to waive any potential conflict of interest. However, should the \_\_\_\_\_ [INSERT CITY/COUNTY] refuse to waive a conflict of interest to allow the Law Firms to represent another client in a Matter adverse to the \_\_\_\_\_ [INSERT CITY/COUNTY], the \_\_\_\_\_ [INSERT CITY/COUNTY] agrees to terminate this Agreement and the Law Firms' representation of the \_\_\_\_\_ [INSERT CITY/COUNTY] under this Agreement so that the Law Firms are free to undertake such other Matters, subject only to the restrictions designated herein.

**SECTION 23. Waiver**

This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

IN WITNESS WHEREOF, this Agreement has been executed by the Law Firms on the \_\_\_\_\_ day of \_\_\_\_\_, 2017 and by the \_\_\_\_\_ [INSERT CITY/COUNTY] on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

RECOMMENDED BY:

\_\_\_\_\_

Its: \_\_\_\_\_

APPROVED BY:

\_\_\_\_\_

[INSERT NAME/TITLE]

APPROVED AS TO FORM:

\_\_\_\_\_

INSERT NAME/TITLE]

[INSERT CITY/COUNTY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

SOMMERS SCHWARTZ, P.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# **CINCINNATI COMPLAINT**

**(Abstract)**

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

CITY OF CINCINNATI,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG  
CORPORATION, CARDINAL HEALTH,  
INC., McKESSON CORPORATION,  
PURDUE PHARMA L.P.; PURDUE  
PHARMA, INC.; THE PURDUE FREDERICK  
COMPANY, INC.; TEVA  
PHARMACEUTICAL INDUSTRIES, LTD.;  
TEVA PHARMACEUTICALS USA, INC.;  
CEPHALON, INC.; JOHNSON & JOHNSON;  
JANSSEN PHARMACEUTICALS, INC.;  
ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC. n/k/a JANSSEN  
PHARMACEUTICALS, INC.; JANSSEN  
PHARMACEUTICA INC. n/k/a JANSSEN  
PHARMACEUTICALS, INC.; NORAMCO,  
INC.; ENDO HEALTH SOLUTIONS INC.;  
ENDO PHARMACEUTICALS, INC.;  
ALLERGAN PLC f/k/a ACTAVIS PLS;  
WATSON PHARMACEUTICALS, INC. n/k/a  
ACTAVIS, INC.; WATSON  
LABORATORIES, INC.; ACTAVIS LLC;  
ACTAVIS PHARMA, INC. f/k/a WATSON  
PHARMA, INC.;  
MALLINCKRODT PLC and  
MALLINCKRODT LLC.

Defendants.

CIVIL ACTION NO. 2:17-cv-00713

**FIRST AMENDED COMPLAINT**

Complaint for Public Nuisance;  
Violations of Racketeer Influenced and  
Corrupt Organizations Act (RICO) 18  
U.S.C. § 1961 *et seq.*; Violations of Ohio  
Corrupt Practices Act; Ohio Revised Code  
§ 2307.60; Negligence and Negligent  
Misrepresentation; Negligence Per Se;  
Violation of Ohio Deceptive Trade  
Practices Act, Ohio Revised Code Ch.  
4165; Civil Conspiracy; and Fraud and  
Fraudulent Misrepresentation

**JURY TRIAL DEMANDED AND  
ENDORSED HEREON**

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Plaintiff, the CITY OF CINCINNATI (“Plaintiff”), brings this First Amended Complaint against Defendants Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceutical Industries, LTD.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica Inc. n/k/a Janssen Pharmaceuticals, Inc.; Noramco, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Allergan PLC f/k/a Actavis PLS; Watson Pharmaceuticals, Inc. n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Mallinckrodt plc; Mallinckrodt LLC; McKesson Corporation; Cardinal Health, Inc.; and AmerisourceBergen Drug Corporation (collectively “Defendants”) and alleges as follows:

## **I. INTRODUCTION**

1. Plaintiff brings this civil action to eliminate the hazard to public health and safety caused by the opioid epidemic, to abate the nuisance caused thereby, and to recoup monies that have been spent because of Defendants’ false, deceptive and unfair marketing and/or unlawful diversion of prescription opioids.<sup>1</sup> Such economic damages were foreseeable to Defendants and were sustained because of Defendants intentional and/or unlawful actions and omissions.

2. Opioid analgesics are widely diverted and improperly used, and the widespread abuse of opioids has resulted in a national epidemic of opioid overdose deaths and addictions.<sup>2</sup>

3. The opioid epidemic is “directly related to the increasingly widespread misuse of powerful opioid pain medications.”<sup>3</sup>

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<sup>1</sup> As used herein, the term “opioid” refers to the entire family of opiate drugs including natural, synthetic and semi-synthetic opiates.

<sup>2</sup> See Nora D. Volkow & A. Thomas McLellan, *Opioid Abuse in Chronic Pain—Misconceptions and Mitigation Strategies*, 374 N. Eng. J. Med. 1253 (2016).

<sup>3</sup> See Robert M. Califf et al., *A Proactive Response to Prescription Opioid Abuse*, 374 N. Eng. J. Med. 1480 (2016).

4. Plaintiff brings this suit against the manufacturers of prescription opioids. The manufacturers aggressively pushed highly addictive, dangerous opioids, falsely representing to doctors that patients would only rarely succumb to drug addiction. These pharmaceutical companies aggressively advertised to and persuaded doctors to prescribe highly addictive, dangerous opioids, turned patients into drug addicts for their own corporate profit. Such actions were intentional and/or unlawful.

5. Plaintiff also brings this suit against the wholesale distributors of these highly addictive drugs. The distributors and manufacturers intentionally and/or unlawfully breached their legal duties under federal and state law to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.

## **II. PARTIES**

### **A. PLAINTIFF, THE CITY OF CINCINNATI.**

6. Plaintiff is a municipal corporation organized under Ohio law. OHIO REV. CODE ANN. § 715.01. Plaintiff has all the powers of local self-government and home rule and all other powers possible for a city to have under the constitution of the state of Ohio, and the laws of the state of Ohio, which are exercised in the manner prescribed by the CHARTER OF THE CITY OF CINCINNATI.

7. Plaintiff has declared, *inter alia*, that opioid<sup>4</sup> abuse, addiction, morbidity and mortality has created a serious public health and safety crisis, and is a public nuisance, and that the diversion of legally produced controlled substances into the illicit market causes or contributes to this public nuisance.

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<sup>4</sup> As used herein, the term “opioid” refers to the entire family of opiate drugs including natural, synthetic and semi-synthetic opiates.

8. The distribution and diversion of opioids into Ohio (“the State”), and into the City of Cincinnati and surrounding areas (collectively, “Plaintiff’s Community”), created the foreseeable opioid crisis and opioid public nuisance for which Plaintiff here seeks relief.

9. Plaintiff directly and foreseeably sustained all economic damages alleged herein. Defendants’ conduct has exacted a financial burden for which the Plaintiff seeks relief. Categories of past and continuing sustained damages include, *inter alia*,: (1) costs for providing medical care, additional therapeutic, and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths; (2) costs for providing treatment, counseling, and rehabilitation services; (3) costs for providing treatment of infants born with opioid-related medical conditions; (4) costs associated with law enforcement and public safety relating to the opioid epidemic; (5) and costs associated with providing care for children whose parents suffer from opioid-related disability or incapacitation. These damages have been suffered, and continue to be suffered directly, by the Plaintiff.

10. Plaintiff also seeks the means to abate the epidemic created by Defendants’ wrongful and/or unlawful conduct. Plaintiff is authorized by law to abate any nuisance and prosecute in any court of competent jurisdiction any person who creates, continues, contributes to, or suffers such nuisance to exist and prevent injury and annoyance from such nuisance. OHIO REV. CODE ANN. § 715.44.

11. Plaintiff has standing to recover damages incurred as a result of Defendants’ actions and omissions. Plaintiff has standing to bring all claims pled herein, including, *inter alia*, standing to recover damages caused by a criminal act, pursuant to Ohio Revised Code § 2307.60, 2307.011(F) (“person” includes “political subdivisions”) and § 2744.01(F) (municipal corporations are “political subdivisions”); standing to recover damages under the Deceptive

Trade Practices Act pursuant to Ohio Revised Code § 4165.01(D) (“person” includes corporations, governments, and government subdivisions) and §4165.03(A)(2) (injured “persons” have standing); standing to bring claims under the Ohio racketeering statute, the Ohio Corrupt Practices Act, pursuant to Ohio Revised Code § 2923.31(G) (“persons” include governmental entities); § 2923.34(A) (“persons” have standing); and standing to bring claims under the federal RICO statute, pursuant to 18 U.S.C. § 1961(3) (“persons” include entities which can hold legal title to property) and 18 U.S.C. § 1964 (“persons” have standing).

## **B. DEFENDANTS.**

### **1. Manufacturer Defendants.**

12. The Manufacturer Defendants are defined below. At all relevant times, the Manufacturer Defendants have packaged, distributed, supplied, sold, placed into the stream of commerce, labeled, described, marketed, advertised, promoted and purported to warn or purported to inform prescribers and users regarding the benefits and risks associated with the use of the prescription opioid drugs. The Manufacturer Defendants, at all times, have manufactured and sold prescription opioids without fulfilling their legal duty prevent diversion and report suspicious orders.

13. PURDUE PHARMA L.P. is a limited partnership organized under the laws of Delaware. PURDUE PHARMA INC. is a New York corporation with its principal place of business in Stamford, Connecticut, and THE PURDUE FREDERICK COMPANY is a Delaware corporation with its principal place of business in Stamford, Connecticut (collectively, “Purdue”).

14. Purdue manufactures, promotes, sells, and distributes opioids such as OxyContin, MS Contin, Dilaudid/Dilaudid HP, Butrans, Hysingla ER, and Targiniq ER in the United States. OxyContin is Purdue’s best-selling opioid. Since 2009, Purdue’s annual nationwide sales of

OxyContin have fluctuated between \$2.47 billion and \$2.99 billion, up four-fold from its 2006 sales of \$800 million. OxyContin constitutes roughly 30% of the entire market for analgesic drugs (painkillers).

15. CEPHALON, INC. is a Delaware corporation with its principal place of business in Frazer, Pennsylvania. TEVA PHARMACEUTICAL INDUSTRIES, LTD. (“Teva Ltd.”) is an Israeli corporation with its principal place of business in Petah Tikva, Israel. In 2011, Teva Ltd. acquired Cephalon, Inc. TEVA PHARMACEUTICALS USA, INC. (“Teva USA”) is a Delaware corporation which is registered to do business in Ohio and is a wholly owned subsidiary of Teva Ltd. in Pennsylvania. Teva USA acquired Cephalon in October 2011.

16. Cephalon, Inc. manufactures, promotes, sells, and distributes opioids such as Actiq and Fentora in the United States. Actiq has been approved by the FDA only for the “management of breakthrough cancer pain in patients 16 years and older with malignancies who are already receiving and who are tolerant to around-the-clock opioid therapy for the underlying persistent cancer pain.”<sup>5</sup> Fentora has been approved by the FDA only for the “management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.”<sup>6</sup> In 2008, Cephalon pled guilty to a criminal violation of the Federal Food, Drug and Cosmetic Act for its misleading promotion of Actiq and two other drugs, and agreed to pay \$425 million.<sup>7</sup>

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<sup>5</sup> *Highlights of Prescribing Information, ACTIQ® (fentanyl citrate) oral transmucosal lozenge, CII* (2009), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2009/020747s0301b1.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2009/020747s0301b1.pdf).

<sup>6</sup> *Highlights of Prescribing Information, FENTORA® (fentanyl citrate) buccal tablet, CII* (2011), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2012/021947s0151b1.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2012/021947s0151b1.pdf).

<sup>7</sup> Press Release, U.S. Dep’t of Justice, Biopharmaceutical Company, Cephalon, to Pay \$425 Million & Enter Plea to Resolve Allegations of Off-Label Marketing (Sept. 29, 2008), <https://www.justice.gov/archive/opa/pr/2008/September/08-civ-860.html>.

17. Teva Ltd., Teva USA, and Cephalon, Inc. work together closely to market and sell Cephalon products in the United States. Teva Ltd. conducts all sales and marketing activities for Cephalon in the United States through Teva USA and has done so since its October 2011 acquisition of Cephalon. Teva Ltd. and Teva USA hold out Actiq and Fentora as Teva products to the public. Teva USA sells all former Cephalon branded products through its “specialty medicines” division. The FDA-approved prescribing information and medication guide, which is distributed with Cephalon opioids, discloses that the guide was submitted by Teva USA, and directs physicians to contact Teva USA to report adverse events.

18. All of Cephalon’s promotional websites, including those for Actiq and Fentora, display Teva Ltd.’s logo.<sup>8</sup> Teva Ltd.’s financial reports list Cephalon’s and Teva USA’s sales as its own, and its year-end report for 2012 – the year immediately following the Cephalon acquisition – attributed a 22% increase in its specialty medicine sales to “the inclusion of a full year of Cephalon’s specialty sales,” including *inter alia* sales of Fentora®.<sup>9</sup> Through interrelated operations like these, Teva Ltd. operates in the United States through its subsidiaries Cephalon and Teva USA. The United States is the largest of Teva Ltd.’s global markets, representing 53% of its global revenue in 2015, and, were it not for the existence of Teva USA and Cephalon, Inc., Teva Ltd. would conduct those companies’ business in the United States itself. Upon information and belief, Teva Ltd. directs the business practices of Cephalon and Teva USA, and their profits inure to the benefit of Teva Ltd. as controlling shareholder. Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc., and Cephalon, Inc. are referred to as “Cephalon.”

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<sup>8</sup> E.g., ACTIQ, <http://www.actiq.com/> (displaying logo at bottom-left) (last visited Aug. 21, 2017).

<sup>9</sup> Teva Ltd., Annual Report (Form 20-F) 62 (Feb. 12, 2013), [http://annualreports.com/HostedData/AnnualReportArchive/t/NASDAQ\\_TEVA\\_2012.pdf](http://annualreports.com/HostedData/AnnualReportArchive/t/NASDAQ_TEVA_2012.pdf).

19. JANSSEN PHARMACEUTICALS, INC. is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey, and is a wholly owned subsidiary of JOHNSON & JOHNSON (J&J), a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. NORAMCO, INC. (“Noramco”) is a Delaware company headquartered in Wilmington, Delaware and was a wholly owned subsidiary of J&J until July 2016. ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania corporation registered to do business in Ohio with its principal place of business in Titusville, New Jersey. JANSSEN PHARMACEUTICA INC., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey. J&J is the only company that owns more than 10% of Janssen Pharmaceuticals’ stock, and corresponds with the FDA regarding Janssen’s products. Upon information and belief, J&J controls the sale and development of Janssen Pharmaceuticals’ drugs and Janssen’s profits inure to J&J’s benefit. Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc., Noramco, and J&J are referred to as “Janssen.”

20. Janssen manufactures, promotes, sells, and distributes drugs in the United States, including the opioid Duragesic (fentanyl). Before 2009, Duragesic accounted for at least \$1 billion in annual sales. Until January 2015, Janssen developed, marketed, and sold the opioids Nucynta (tapentadol) and Nucynta ER. Together, Nucynta and Nucynta ER accounted for \$172 million in sales in 2014.

21. ENDO HEALTH SOLUTIONS INC. is a Delaware corporation with its principal place of business in Malvern, Pennsylvania. ENDO PHARMACEUTICALS INC. is a wholly owned subsidiary of Endo Health Solutions Inc. and is a Delaware corporation registered to do

business in Ohio with its principal place of business in Malvern, Pennsylvania. Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. are referred to as “Endo.”

22. Endo develops, markets, and sells prescription drugs, including the opioids Opana/Opana ER, Percodan, Percocet, and Zydone, in the United States. Opioids made up roughly \$403 million of Endo’s overall revenues of \$3 billion in 2012. Opana ER yielded \$1.15 billion in revenue from 2010 and 2013, and it accounted for 10% of Endo’s total revenue in 2012. Endo also manufactures and sells generic opioids such as oxycodone, oxymorphone, hydromorphone, and hydrocodone products in the United States, by itself and through its subsidiary, Qualitest Pharmaceuticals, Inc.

23. ALLERGAN PLC is a public limited company incorporated in Ireland with its principal place of business in Dublin, Ireland. ACTAVIS PLC acquired ALLERGAN PLC in March 2015, and the combined company changed its name to ALLERGAN PLC in January 2013. Before that, WATSON PHARMACEUTICALS, INC. acquired ACTAVIS, INC. in October 2012, and the combined company changed its name to Actavis, Inc. as of January 2013 and then ACTAVIS PLC in October 2013. WATSON LABORATORIES, INC. is a Nevada corporation with its principal place of business in Corona, California, and is a wholly-owned subsidiary of ALLERGAN PLC (f/k/a Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.). ACTAVIS PHARMA, INC. (f/k/a Actavis, Inc.) is registered to do business with the Ohio Secretary of State as a Delaware corporation with its principal place of business in New Jersey and was formerly known as WATSON PHARMA, INC. ACTAVIS LLC is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. Each of these defendants is owned by ALLERGAN PLC, which uses them to market and sell its drugs in the United States. Upon information and belief, ALLERGAN PLC exercises control over these



marketing and sales efforts and profits from the sale of Allergan/Actavis products ultimately inure to its benefit. ALLERGAN PLC, ACTAVIS PLC, ACTAVIS, Inc., Actavis LLC, Actavis Pharma, Inc., Watson Pharmaceuticals, Inc., Watson Pharma, Inc., and Watson Laboratories, Inc. are referred to as “Actavis.”

24. Actavis manufactures, promotes, sells, and distributes opioids, including the branded drugs Kadian and Norco, a generic version of Kadian, and generic versions of Duragesic and Opana, in the United States. Actavis acquired the rights to Kadian from King Pharmaceuticals, Inc. on December 30, 2008, and began marketing Kadian in 2009.

25. MALLINCKRODT, PLC is an Irish public limited company headquartered in Staines-upon-Thames, United Kingdom, with its U.S. headquarters in St. Louis, Missouri. MALLINCKRODT, LLC is a limited liability company organized and existing under the laws of the State of Delaware and licensed to do business in Ohio. Mallinckrodt, LLC is a wholly owned subsidiary of Mallinckrodt, plc. Mallinckrodt, plc and Mallinckrodt, LLC are referred to as “Mallinckrodt.”

26. Mallinckrodt manufactures, markets, and sells drugs in the United States including generic oxycodone, of which it is one of the largest manufacturers. In July 2017 Mallinckrodt agreed to pay \$35 million to settle allegations brought by the Department of Justice that it failed to detect and notify the DEA of suspicious orders of controlled substances.

## **2. Distributor Defendants.**

27. The Distributor Defendants also are defined below. At all relevant times, the Distributor Defendants have distributed, supplied, sold, and placed into the stream of commerce the prescription opioids, without fulfilling the fundamental duty of wholesale drug distributors to detect and warn of diversion of dangerous drugs for non-medical purposes. The Distributor Distributors universally failed to comply with federal and/or state law. Plaintiff alleges the

unlawful conduct by the Distributor Distributors is responsible for the volume of prescription opioids plaguing Plaintiff's Community.

28. McKESSON CORPORATION ("McKesson") at all relevant times, operated as a licensed pharmacy wholesaler in Ohio. McKesson is registered with the Ohio Secretary of State as a Delaware corporation. McKesson has its principal place of business located in San Francisco, California. McKesson operates distribution centers in Ohio, including in Washington Court House, Ohio.

29. CARDINAL HEALTH, INC. ("Cardinal") at all relevant times, operated as a licensed pharmacy wholesaler in Ohio. Cardinal is registered with the Ohio Secretary of State as an Ohio corporation, with its principal office located in Dublin, Ohio. Cardinal operates distribution centers in Ohio, including in Groveport, Ohio and Zanesville, Ohio. Cardinal Health, Inc. is an Ohio corporation with its principal place of business in Dublin, Ohio.

30. AMERISOURCEBERGEN DRUG CORPORATION ("AmerisourceBergen") at all relevant times, operated as a licensed pharmacy wholesaler in Ohio. AmerisourceBergen is registered with the Ohio Secretary of State as a Delaware corporation which may be served through its registered agent for service of process. AmerisourceBergen's principal place of business is located in Chesterbrook, Pennsylvania. AmerisourceBergen operates distribution centers in Ohio, including in Lockbourne, Ohio.

31. The data which reveals and/or confirms the identity of each wrongful opioid distributor is hidden from public view in the DEA's confidential ARCOS database. *See Madel v. USDOJ*, 784 F.3d 448 (8th Cir. 2015). Neither the DEA<sup>10</sup> nor the wholesale distributors<sup>11</sup> will

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<sup>10</sup> See Declaration of Katherine L. Myrick, Chief, Freedom of Information (FOI)/Privacy Act Unit ("SARF"), FOI, Records Management Section ("SAR"), Drug Enforcement Administration (DEA), United States Department of Justice (DOJ), *Madel v. USDOJ*, Case 0:13-cv-02832-PAM-FLN, (Document 23) (filed 02/06/14) (noting that ARCOS data is "kept confidential by the DEA").

voluntarily disclose the data necessary to identify with specificity the transactions which will form the evidentiary basis for the claims asserted herein.

32. Consequently, Plaintiff has named the three (3) wholesale distributors (i.e., AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation) which dominate 85% of the market share for the distribution of prescription opioids. The “Big 3” are Fortune 500 corporations listed on the New York Stock Exchange whose principal business is the nationwide wholesale distribution of prescription drugs. *See Fed. Trade Comm’n v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 37 (D.D.C. 1998) (describing Cardinal Health, Inc., McKesson Corporation, and AmerisourceBergen Drug Corporation predecessors). Each has been investigated and/or fined by the DEA for the failure to report suspicious orders. Plaintiff has reason to believe each has engaged in unlawful conduct which resulted in the diversion of prescription opioids into our community and that discovery will likely reveal others who likewise engaged in unlawful conduct. Plaintiff names each of the “Big 3” herein as defendants and places the industry on notice that the Plaintiff is acting to abate the public nuisance plaguing the community. Plaintiff will request expedited discovery pursuant to Rule 26(d) of the Federal Rules of Civil Procedure to secure the data necessary to reveal and/or confirm the identities of the wholesale distributors, including data from the ARCOS database.

### **III. JURISDICTION & VENUE**

33. This Complaint was filed as an original action in this District.

34. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 based upon the federal claims asserted under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.

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<sup>11</sup> See Declaration of Tina Lantz, Cardinal Health VP of Sales Operation, *Madel v. USDOJ*, Case 0:13-cv-02832-PAM-FLN, (Document 93) (filed 11/02/16) (“Cardinal Health does not customarily release any of the information identified by the DEA notice letter to the public, nor is the information publicly available. Cardinal Health relies on DEA to protect its confidential business information reported to the Agency.”).

§ 1961, *et seq.* (“RICO”). This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to Plaintiff’s federal claims that they form part of the same case or controversy.

35. This Court has personal jurisdiction over Defendants because they conduct business in Ohio, purposefully direct or directed their actions toward Ohio, consented to be sued in Ohio by registering an agent for service of process, consensually submitted to the jurisdiction of Ohio when obtaining a manufacturer or distributor license, and have the requisite minimum contacts with Ohio necessary to constitutionally permit the Court to exercise jurisdiction.

36. This Court also has personal jurisdiction over all of the defendants under 18 U.S.C. 1965(b). This Court may exercise nation-wide jurisdiction over the named Defendants where the “ends of justice” require national service and Plaintiff demonstrates national contacts. Here, the interests of justice require that Plaintiff be allowed to bring all members of the nationwide RICO enterprise before the court in a single trial. *See, e.g., Iron Workers Local Union No. 17 Insurance Fund v. Philip Morris Inc.*, 23 F. Supp. 2d 796 (1998) (citing *LaSalle National Bank v. Arroyo Office Plaza, Ltd.*, 1988 WL 23824, \*3 (N.D. Ill. Mar 10, 1988); *Butcher’s Union Local No. 498 v. SDC Invest., Inc.*, 788 F.2d 535, 539 (9th Cir. 1986).

37. Venue is proper in this District under Southern District of Ohio Local Rule 82.1(c), which provides “[a]n action against a defendant or defendants resident in this District shall be filed at the location of Court that serves a county in which at least one defendant resides.” *See also*, 28 U.S.C. § 1391(c). Defendant, CARDINAL HEALTH, INC., is an Ohio corporation with its principal office located in Dublin, Franklin County, Ohio, which is located in the Eastern Division of the Southern District of Ohio and served by the Columbus location of Court. Venue is further proper in this District pursuant to 28 U.S.C. § 1391 and 18 U.S.C. §

1965 because a substantial part of the events or omissions giving rise to the claim occurred in this District and each Defendant transacted affairs and conducted activity that gave rise to the claim of relief in this District. 28 U.S.C. §§ 1391(b); § 1965(a).

38. Plaintiff does not bring any product liability claims or causes of action and does not seek compensatory damages for death, physical injury to person, or emotional distress. Claimant does not bring common law claims for property damage.

#### **IV. FACTUAL BACKGROUND**

##### **A. THE OPIOID EPIDEMIC.**

###### **1. The National Opioid Epidemic.**

39. The past two decades have been characterized by increasing abuse and diversion of prescription drugs, including opioid medications, in the United States.<sup>12</sup>

40. Prescription opioids have become widely prescribed. By 2010, enough prescription opioids were sold to medicate every adult in the United States with a dose of 5 milligrams of hydrocodone every 4 hours for 1 month.<sup>13</sup>

41. By 2011, the U.S. Department of Health and Human Resources, Centers for Disease Control and Prevention, declared prescription painkiller overdoses at epidemic levels. The News Release noted:

- a. The death toll from overdoses of prescription painkillers has more than tripled in the past decade.
- b. More than 40 people die every day from overdoses involving narcotic pain relievers like hydrocodone (Vicodin), methadone, oxycodone (OxyContin), and oxymorphone (Opana).

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<sup>12</sup> See Richard C. Dart et al, *Trends in Opioid Analgesic Abuse and Mortality in the United States*, 372 N. Eng. J. Med. 241 (2015).

<sup>13</sup> Katherine M. Keyes et al., *Understanding the Rural-Urban Differences in Nonmedical Prescription Opioid Use and Abuse in the United States*, 104 Am. J. Pub. Health e52 (2014).

- c. Overdoses involving prescription painkillers are at epidemic levels and now kill more Americans than heroin and cocaine combined.
- d. The increased use of prescription painkillers for nonmedical reasons, along with growing sales, has contributed to a large number of overdoses and deaths. In 2010, 1 in every 20 people in the United States age 12 and older—a total of 12 million people—reported using prescription painkillers non-medically according to the National Survey on Drug Use and Health. Based on the data from the Drug Enforcement Administration, sales of these drugs to pharmacies and health care providers have increased by more than 300 percent since 1999.
- e. Prescription drug abuse is a silent epidemic that is stealing thousands of lives and tearing apart communities and families across America.
- f. Almost 5,500 people start to misuse prescription painkillers every day.<sup>14</sup>

42. The number of annual opioid prescriptions written in the United States is now roughly equal to the number of adults in the population.<sup>15</sup>

43. Many Americans are now addicted to prescription opioids, and the number of deaths due to prescription opioid overdose is unacceptable. In 2016, drug overdoses killed roughly 64,000 people in the United States, an increase of more than 22 percent over the 52,404 drug deaths recorded the previous year.<sup>16</sup>

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<sup>14</sup> See Press Release, Ctrs. for Disease Control and Prevention, U.S. Dep't of Health and Human Servs., Prescription Painkiller Overdoses at Epidemic Levels (Nov. 1, 2011), [https://www.cdc.gov/media/releases/2011/p1101\\_flu\\_pain\\_killer\\_overdose.html](https://www.cdc.gov/media/releases/2011/p1101_flu_pain_killer_overdose.html).

<sup>15</sup> See Califf et al., *supra* note 3.

<sup>16</sup> See Ctrs. for Disease Control and Prevention, U.S. Dep't of Health and Human Servs., Provisional Counts of Drug Overdose Deaths, (August 8, 2016), [https://www.cdc.gov/nchs/data/health\\_policy/monthly-drug-overdose-death-estimates.pdf](https://www.cdc.gov/nchs/data/health_policy/monthly-drug-overdose-death-estimates.pdf).

44. Moreover, the CDC has identified addiction to prescription pain medication as the strongest risk factor for heroin addiction. People who are addicted to prescription opioid painkillers are forty times more likely to be addicted to heroin.<sup>17</sup>

45. Heroin is pharmacologically similar to prescription opioids. The majority of current heroin users report having used prescription opioids non-medically before they initiated heroin use. Available data indicates that the nonmedical use of prescription opioids is a strong risk factor for heroin use.<sup>18</sup>

46. The CDC reports that drug overdose deaths involving heroin continued to climb sharply, with heroin overdoses more than tripling in 4 years. This increase mirrors large increases in heroin use across the country and has been shown to be closely tied to opioid pain reliever misuse and dependence. ***Past misuse of prescription opioids is the strongest risk factor for heroin initiation and use***, specifically among persons who report past-year dependence or abuse. The increased availability of heroin, combined with its relatively low price (compared with diverted prescription opioids) and high purity appear to be major drivers of the upward trend in heroin use and overdose.<sup>19</sup>

47. The societal costs of prescription drug abuse are “huge.”<sup>20</sup>

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<sup>17</sup> See Ctrs. for Disease Control and Prevention, U.S. Dep’t of Health and Human Servs., *Today’s Heroin Epidemic*, <https://www.cdc.gov/vitalsigns/heroin/index.html> (last updated July 7, 2015).

<sup>18</sup> See Wilson M. Compton, *Relationship Between Nonmedical Prescription-Opioid Use and Heroin*, 374 N. Eng. J. Med. 154 (2016).

<sup>19</sup> See Rose A. Rudd et al., *Increases in Drug and Opioid Overdose Deaths—United States, 2000–2014*, 64 Morbidity & Mortality Wkly. Rep. 1378 (2016).

<sup>20</sup> See Amicus Curiae Brief of Healthcare Distribution Management Association in Support of Appellant Cardinal Health, Inc., *Cardinal Health, Inc. v. United States Dept. Justice*, No. 12-5061 (D.C. Cir. May 9, 2012), 2012 WL 1637016, at \*10 [hereinafter Brief of HDMA].

48. Across the nation, local governments are struggling with a pernicious, ever-expanding epidemic of opioid addiction and abuse. Every day, more than 90 Americans lose their lives after overdosing on opioids.<sup>21</sup>

49. The National Institute on Drug Abuse identifies misuse and addiction to opioids as “a serious national crisis that affects public health as well as social and economic welfare.”<sup>22</sup> The economic burden of prescription opioid misuse alone is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice expenditures.<sup>23</sup>

50. The U.S. opioid epidemic is continuing, and drug overdose deaths nearly tripled during 1999–2014. Among 47,055 drug overdose deaths that occurred in 2014 in the United States, 28,647 (60.9%) involved an opioid.<sup>24</sup>

51. The rate of death from opioid overdose has quadrupled during the past 15 years in the United States. Nonfatal opioid overdoses that require medical care in a hospital or emergency department have increased by a factor of six in the past 15 years.<sup>25</sup>

52. Every day brings a new revelation regarding the depth of the opioid plague: just to name one example, the New York Times reported in September 2017 that the epidemic, which

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<sup>21</sup> Opioid Crisis, NIH, National Institute on Drug Abuse (available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-crisis>, last visited Sept. 19, 2017) (“Opioid Crisis, NIH”) (citing at note 1 Rudd RA, Seth P, David F, Scholl L, Increases in Drug and Opioid-Involved Overdose Deaths — United States, 2010–2015, *MMWR MORB MORTAL WKLY REP.* 2016;65, doi:10.15585/mmwr.mm655051e1).

<sup>22</sup> Opioid Crisis, NIH.

<sup>23</sup> *Id.* (citing at note 2 Florence CS, Zhou C, Luo F, Xu L, The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013, *MED CARE* 2016;54(10):901-906, doi:10.1097/MLR.0000000000000625).

<sup>24</sup> See Rose A. Rudd et al., *Increases in Drug and Opioid-Involved Overdose Deaths—United States, 2010–2015*, 65 *Morbidity & Mortality Wkly. Rep.* 1445 (2016).

<sup>25</sup> See Volkow & McLellan, *supra* note 1.



now claims 60,000 lives a year, is now killing babies and toddlers because ubiquitous, deadly opioids are “everywhere” and mistaken as candy.<sup>26</sup>

53. In 2016, the President of the United States declared an opioid and heroin epidemic.<sup>27</sup>

54. The epidemic of prescription pain medication and heroin deaths is devastating families and communities across the country.<sup>28</sup> Meanwhile, the manufacturers and distributors of prescription opioids extract billions of dollars of revenue from the addicted American public while public entities experience tens of millions of dollars of injury caused by the reasonably foreseeable consequences of the prescription opioid addiction epidemic.

55. The prescription opioid manufacturers and distributors, including the Defendants, have continued their wrongful, intentional, and unlawful conduct, despite their knowledge that such conduct is causing and/or continuing to the national, state, and local opioid epidemic.

## **2. Ohio’s Opioid Epidemic.**

56. Ohio has been especially ravaged by the national opioid crisis.

57. Ohio has an opioid prescription rate of 100.1 per 100 persons, which ranks twelfth in the country (U.S. median rate: 82.5) and a benzodiazepine prescription rate of 41.3 per 100 persons which ranks twentieth nationally (U.S. median rate: 37.6).<sup>29</sup>

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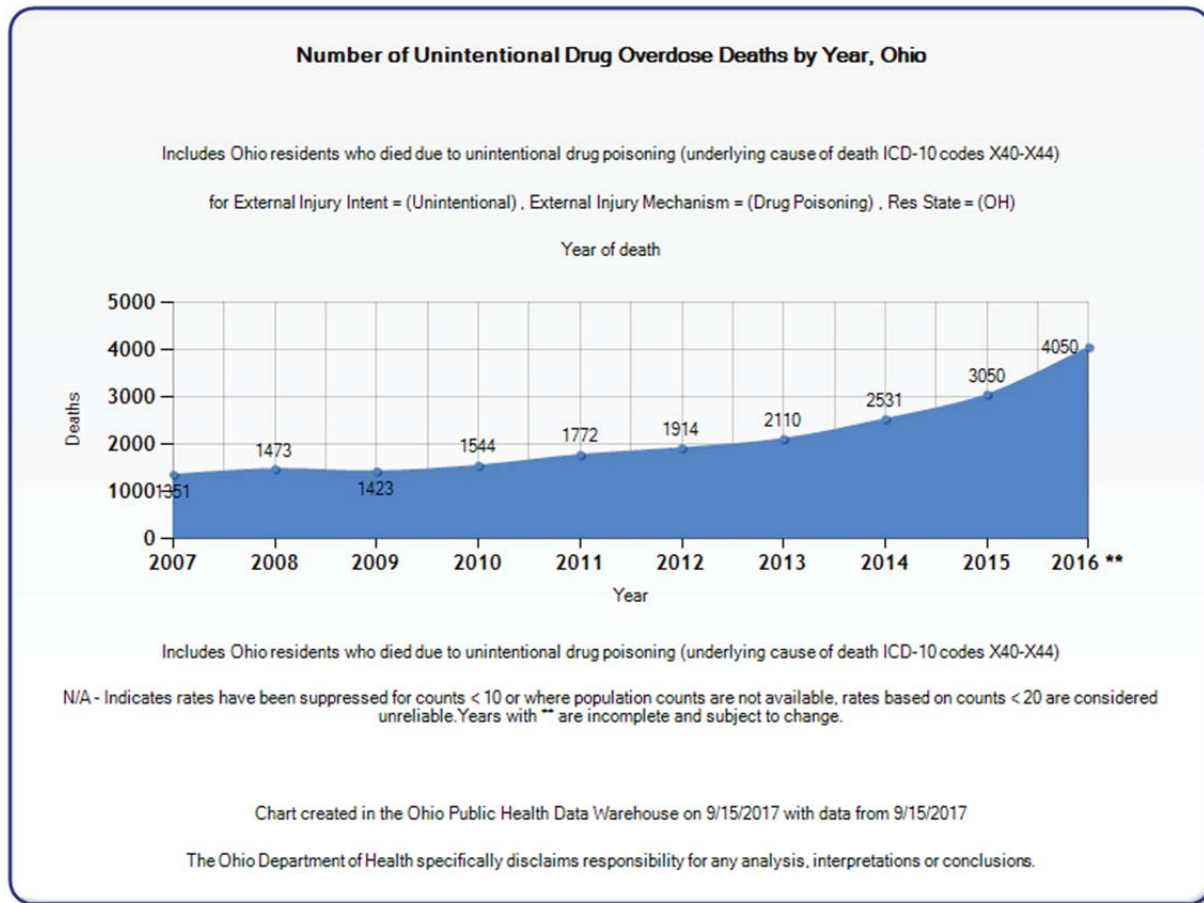
<sup>26</sup> Julie Turkewitz, *‘The Pills are Everywhere’: How the Opioid Crisis Claims Its Youngest Victims*, N.Y. Times, Sept. 20, 2017 (“‘It’s a cancer,’ said [grandmother of dead one-year old], of the nation’s opioid problem, ‘with tendrils that are going everywhere.’”).

<sup>27</sup> See Proclamation No. 9499, 81 Fed. Reg. 65,173 (Sept. 16, 2016) (proclaiming “Prescription Opioid and Heroin Epidemic Awareness Week”).

<sup>28</sup> See Presidential Memorandum – Addressing Prescription Drug Abuse and Heroin Use, 2015 Daily Comp. Pres. Doc. 743 (Oct. 21, 2015), <https://www.gpo.gov/fdsys/pkg/DCPD-201500743/pdf/DCPD-201500743.pdf>.

<sup>29</sup> See Leonard J. Paulozzi, M.D., *et al.*, *Vital Signs: Variation Among States in Prescribing of Opioid Pain Relievers and Benzodiazepines – United States, 2012*, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services (July 4, 2014). The combination of hydrocodone, oxycodone, and benzodiazepines is referred to as the “holy trinity” and significantly increases the risk of harm to those that abuse prescription pills.

58. As reported by the Ohio Department of Health, Ohio has been among the states hardest hit by the opioid epidemic for years. From 2000 to 2015, Ohio's death rate due to unintentional drug poisonings increased 642 percent, driven largely by opioid-related overdoses.<sup>30</sup> In 2015, there were 3050 Ohio overdose deaths, up 20.5 percent from 2531 Ohio overdose deaths in 2014.<sup>31</sup> 85% of these overdoses involved opioids.<sup>32</sup> The problem is only getting worse: between 2015 and 2016, overdose deaths in Ohio rose by nearly 33 percent.<sup>33</sup>



<sup>30</sup> Ohio Department of Health, Prevalence and Trends in Unintentional Drug Overdose, <https://www.odh.ohio.gov/health/vipp/drug/dpoison.aspx> (last visited Sept. 15, 2017).

<sup>31</sup> See Governor's Cabinet Opiate Action Team at <http://fightingopiateabuse.ohio.gov/>, (last visited September 17, 2017).

<sup>32</sup> *Id.*

<sup>33</sup> Ohio Department of Health, 2016 Ohio Drug Overdose Data: General Findings, <https://www.odh.ohio.gov/-/media/ODH/ASSETS/Files/health/injury-prevention/2016-Ohio-Drug-Overdose-Report-FINAL.pdf?la=en> (last visited Sept. 15, 2017).

544. Defendants' conspiracy, and Defendants' actions and omissions in furtherance thereof, caused the direct and foreseeable losses alleged herein.

545. Plaintiff seeks economic losses (direct, incidental, or consequential pecuniary losses) resulting from Defendants' civil conspiracy. Plaintiff does not seek damages for the wrongful death, physical personal injury, serious emotional distress, or any physical damage to property caused by Defendants' actions.

546. Plaintiff seeks all legal and equitable relief as allowed by law, except as expressly disavowed herein, including *inter alia* injunctive relief, restitution, disgorgement of profits, compensatory and punitive damages, and all damages allowed by law to be paid by the Distributor Defendants, attorney fees and costs, and pre- and post-judgment interest.

**COUNT X**  
**FRAUD AND FRAUDULENT MISREPRESENTATION**  
**(Against All Defendants)**

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

548. Defendants violated their general duty not to actively deceive, and have made knowingly false statements and have omitted and/or concealed information which made statements Defendants did make knowingly false. Defendants acted intentionally and/or unlawfully.

549. As alleged herein, Defendants made false statements regarding their compliance with state and federal law regarding their duties to prevent diversion, their duties to monitor, report and halt suspicious orders, and/or concealed their noncompliance with these requirements.

550. As alleged herein, the Manufacturer Defendants engaged in false representations and concealments of material fact regarding the use of opioids to treat chronic non-cancer pain.

551. As alleged herein, Defendants knowingly and/or intentionally made representations that were false. Defendants had a duty to disclose material facts and concealed them. These false representations and concealed facts were material to the conduct and actions at issue. Defendants made these false representations and concealed facts with knowledge of the falsity of their representations, and did so with the intent of misleading Plaintiff, Plaintiff's community, the public, and persons on whom Plaintiff relied.

552. These false representations and concealments were reasonably calculated to deceive Plaintiff, Plaintiff's Community, and the physicians who prescribed opioids for persons in Plaintiff's Community, were made with the intent to deceive, and did in fact deceive these persons, Plaintiff, and Plaintiff's Community.

553. Plaintiff, Plaintiff's Community, and the physicians who prescribed opioids reasonably relied on these false representations and concealments of material fact.

554. Plaintiff justifiably relied on Defendants' representations and/or concealments, both directly and indirectly. Plaintiff's injuries were proximately caused by this reliance.

555. The injuries alleged by Plaintiff herein were sustained as a direct and proximate cause of Defendants' fraudulent conduct.

556. Plaintiff seeks economic losses (direct, incidental, or consequential pecuniary losses) resulting from Defendants' fraudulent activity, including fraudulent misrepresentations and fraudulent concealment. Plaintiff does not seek damages for the wrongful death, physical personal injury, serious emotional distress, or any physical damage to property caused by Defendants' actions.

557. Plaintiff seeks all legal and equitable relief as allowed by law, except as expressly disavowed herein, including *inter alia* injunctive relief, restitution, disgorgement of profits,

compensatory and punitive damages, and all damages allowed by law to be paid by the Distributor Defendants, attorney fees and costs, and pre- and post-judgment interest.

### **PUNITIVE DAMAGES**

558. Plaintiff re-alleges all paragraphs of this Complaint as if set forth fully herein.

559. By engaging in the above-described unfair acts or practices, Defendants acted with actual malice, wantonly, and oppressively. Defendants acted with conscious disregard to the rights of others and/or in a reckless, wanton, willful, or gross manner. Defendants acted with a prolonged indifference to the adverse consequences of their actions and/or omissions. Defendants acted with a conscious disregard for the rights and safety of others in a manner that had a great probability of causing substantial harm.

560. Here, Defendants were selling dangerous drugs statutorily categorized as posing a high potential for abuse and severe dependence. Thus, Defendants knowingly traded in drugs that presented a high degree of danger if prescribed incorrectly or diverted to other than legitimate medical, scientific, or industrial channels. Because of the severe level of danger posed by, and indeed visited upon the State and Plaintiff's Community by, these dangerous drugs, Defendants owed a high duty of care to ensure that these drugs were only used for proper medical purposes. Defendants chose profit over prudence, and the safety of the community, and an award of punitive damages is appropriate, as punishment and a deterrence.

561. By engaging in the above-described wrongful conduct, Defendants also engaged in willful misconduct and exhibited an entire want of care that would raise the presumption of a conscious indifference to consequences.

### **RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays that this Court grant the following relief:

562. Entering Judgment in favor of the Plaintiff in a final order against each of the Defendants;

563. Enjoining the Defendants and their employees, officers, directors, agents, successors, assignees, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in unfair or deceptive practices in violation of law and ordering temporary, preliminary or permanent injunction;

564. Order that Defendants compensate the Plaintiff for past and future costs to abate the ongoing public nuisance caused by the opioid epidemic;

565. Order Defendants to fund an “abatement fund” for the purposes of abating the opioid nuisance;

566. Awarding actual damages, treble damages, injunctive and equitable relief, forfeiture as deemed proper by the Court, and attorney fees and all costs and expenses of suit pursuant to Plaintiff’s racketeering claims;

567. Awarding the Plaintiff the damages caused by the opioid epidemic, including (A) costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths; (B) costs for providing treatment, counseling, and rehabilitation services; (C) costs for providing treatment of infants born with opioid-related medical conditions; (D) costs for providing care for children whose parents suffer from opioid-related disability or incapacitation; and (E) costs associated with law enforcement and public safety relating to the opioid epidemic.

568. Awarding judgment against the Defendants requiring Defendants to pay punitive damages;

569. Granting the Plaintiff

1. The cost of investigation, reasonable attorneys' fees, and all costs and expenses;
2. Pre-judgment and post-judgment interest; and,
3. All other relief as provided by law and/or as the Court deems appropriate and just.

Dated: September 22, 2017

Respectfully Submitted,

CITY OF CINCINNATI  
By Counsel

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# CLIENT LIST

## OPIOID LITIGATION: CURRENT LIST OF GOVERNMENTAL CLIENTS

Kentucky (37):

Anderson County

Bell County

Boone County

Boyd County

Boyle County

Campbell County

Carlisle County

Christian County

Clay County

Cumberland County

Fayette County (City of Lexington)

Fleming County

Franklin County

Garrard County

Greenup County

Harlan County

Henderson County

Henry County

Hopkins County

Jefferson County (City of Louisville)

Jessamine County

Kenton County

Knox County

Laurel County

Leslie County

Lincoln County

Madison County

Marshall County

Nicholas County

Oldham County

Pendleton County

Perry County

Pulaski County

Shelby County

Spencer County

Union County  
Whitley County

Ohio (20):  
Adams County  
Belmont County  
Brown County  
City of Cincinnati  
Clermont County  
Columbiana County  
Erie County  
Gallia County  
Guernsey County  
Hocking County  
Huron County  
Jackson County  
Jefferson County  
Lawrence County  
Licking County  
Pike County  
City of Portsmouth  
Ross County  
Scioto County  
Vinton County

Illinois (6):  
Alexander County  
Bond County  
Christian County  
Gallatin County  
Hardin County  
Jersey County

West Virginia (6):  
Boone County  
Cabell County  
Fayette County  
Kanawha County  
Logan County  
Wayne County

Alabama (4):  
Barbour County  
City of Birmingham  
Etowah County  
City of Fort Payne

Pennsylvania (2):  
Columbia County  
Luzerne County

Eastern Band of Cherokee

Indiana:  
Harrison County, IN

Mississippi (2):  
Lawrence County, MS  
Jefferson Davis, MS

State of New Mexico

North Carolina:  
New Hanover County