

NO.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF UNDER THE CONSUMER PROTECTION ACT AND PUBLIC NUISANCE

V.

RITE AID CORP.; RITE AID HDQRTS.
CORP.; THRIFTY PAYLESS, INC.; THE
BARTELL DRUG COMPANY;
THE KROGER COMPANY; QUALITY
FOOD CENTERS; FRED MEYER;
ALBERTSONS COMPANIES, INC.;
SAFEWAY, INC.;
and XYZ Corporations 1 through 20,

Defendants.

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I. INTRODUCTION

1.1 Fueled by dangerous prescription opioid drugs, the state of Washington, like many other cities and states across the country, is engulfed in an opioid epidemic that has led to a public health and safety crisis of an unprecedented and disastrous nature. The current epidemic in Washington is directly attributable to the commercial activities of the Defendant pharmacy distributors and dispensers and their unlawful diversion of prescription opioids, in violation of Washington's Consumer Protection Act, chapter 19.86 RCW, and Washington's nuisance statutes, chapter 7.48 RCW.

1.2 In 2021, more than four Washingtonians died each day from opioid overdoses. Between 2006 and 2021, opioid overdoses killed more than 12,000 Washingtonians, more than either car accidents or firearms.

1.3 Overdose deaths are not the only consequence of the opioid crisis. Babies are born addicted to opioids due to prenatal exposure, and children are displaced from their homes due to their parents' opioid use disorder (OUD) or death. There have been innumerable public health impacts including increased rates of hepatitis B and C and HIV. First responders have been overwhelmed handling emergency responses to overdoses and opioid-related investigations, and social service agencies lack the resources to handle the massive increase in the number of people who need support for OUD and its collateral effects. Even public use of parks, libraries and other civic facilities has been impacted. In short, there is almost no community in Washington that has not been grievously affected by the opioid epidemic.

1.4 This crisis is attributable to a staggering flood of prescription opioids into the state over the last two decades. In 2011 alone, 112 million daily doses of prescription opioids were pumped into Washington—enough for a 16-day supply for every woman, man, and child in the state. In 2017, four Washington counties had more opioid prescriptions than people—in 2015, the number was twice that.

1 1.5 This enforcement action seeks to protect the public from unfair practices in the
2 distribution and dispensation of opioids—dangerous and deadly drugs that are ravaging
3 Washington’s communities and overwhelming public resources.

4 1.6 Defendants are all chain pharmacies, which, as the last link in the opioid supply
5 chain, have a crucial responsibility as the gatekeeper between dangerous opioid narcotics and
6 the public. Due to their key position in the industry, expert knowledge of medications including
7 opioids, and access to prescription and purchasing data, Defendants were, and are, uniquely
8 positioned to halt the flow of illicit or suspicious opioids before they reached the streets or were
9 otherwise used improperly.

10 1.7 Yet instead of using the information they had to maintain effective controls
11 against diversion, Defendants flouted their duties to protect public health and safety. In
12 particular, Defendants failed to design and operate systems to sufficiently identify, halt,
13 investigate, and report suspicious orders or prescriptions of opioids and maintain effective
14 controls against diversion. Instead, they actively contributed to the oversupply of such drugs and
15 fueled an illegal secondary market. Their corporate policies focused on speed and maximizing
16 profit, undermining even the evolving (but still deficient) controls at their pharmacy stores. The
17 result is both deeply troubling and entirely predictable: opioids flowed out of Defendants’
18 warehouses and stores, and into communities throughout Washington. Demand for those opioids
19 resulted in diversion and drove demand for street drugs, including heroin and fentanyl, as
20 prescription opioids became expensive or difficult to obtain.

21 1.8 Statewide opioid death rates continue to increase. Overdose deaths involving
22 synthetic opioids such as fentanyl doubled statewide from 2019 to 2020, and nearly doubled
23 again from 2020 to 2021. The rise in deaths from illicit opioids is a foreseeable consequence of
24 Defendants’ regulatory failures. Nearly 80 percent of heroin users report using prescription
25 opioids before beginning heroin use. Having created physically dependent patients through
26 widespread and/or improper opioid prescribing, those patients inevitably sought cheaper and

1 more readily available sources of opioids after more restrictive prescribing rules became
2 necessary to alleviate the crisis.

3 **II. PARTIES**

4 2.1 The Plaintiff is the State of Washington. The Attorney General is authorized to
5 commence this action pursuant to RCW 19.86.080 and RCW 19.86.140. The State, by and
6 through the Attorney General and the Complex Litigation Division, brings this action to address
7 practices that violate the Consumer Protection Act relating to the marketing and sale of opioid
8 medications. The Attorney General is also authorized to bring this action pursuant to its common
9 law and parens patriae authority to bring an action to abate a public nuisance and vindicate the
10 rights of the public.

11 **A. Rite Aid Defendants**

12 2.2 Defendant Rite Aid Corporation is a Delaware corporation with its principal
13 office located in Pennsylvania.

14 2.3 Defendant Rite Aid Hdqtrs. Corp. is a Delaware corporation with its principal
15 office located in Pennsylvania.

16 2.4 Defendant Thrifty Payless, Inc. is a California corporation with its principal place
17 of business in Pennsylvania. Rite Aid Corporation acquired Thrifty Payless, Inc. in 1996 and the
18 Thrifty Payless pharmacies do business as Rite Aid.

19 2.5 Defendant The Bartell Drug Company (Bartell Drugs) is a Washington
20 corporation with its principal office located in Washington. Rite Aid Corporation acquired
21 Bartell Drugs in 2020, and the pharmacies retain the Bartell Drugs brand name.

22 2.6 Defendants Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Thrifty Payless, Inc.
23 and The Bartell Drug Company are collectively referred to as "Rite Aid."

24 2.7 Rite Aid has done business in Washington since as far back as 1890, with the
25 opening of the first Bartell Drugs store. As of the date of the filing of this Complaint, Rite Aid
26

1 operated approximately 2,452 pharmacies in the United States, including approximately 200 in
2 Washington (approximately 67 of which are Bartell Drugs stores).

3 2.8 At all times relevant to this Complaint, Rite Aid dispensed and sold prescription
4 opioids in Washington.

5 2.9 In addition to dispensing from its stores, Rite Aid served as a distributor of
6 prescription opioids to its own stores in Washington until approximately July 2014.

7 2.10 Rite Aid has filled opioid prescriptions written by medical providers without a
8 valid license to prescribe opioids in Washington.

9 2.11 Rite Aid has repeatedly faced enforcement actions for its systemic lack of due
10 diligence. In December 2020, Bartell Drugs settled allegations that since 2016 it had repeatedly
11 filled opioid prescriptions in Washington written by prescribers without a valid license, some of
12 whom had even been indicted for violations of federal law, and that it lacked adequate systems
13 to verify the standing of a prescriber's license or to ensure that pharmacists did so. As a result of
14 the allegations Bartell Drugs agreed to pay \$800,000 in fines.

15 2.12 In January 2022, Rite Aid agreed to pay \$30,000 in civil penalties following an
16 investigation that pharmacies in New Hampshire filled multiple forged prescriptions for the same
17 individual that they should have known were invalid.

18 2.13 In January 2019, Rite Aid agreed to pay \$177,000 to Massachusetts to resolve
19 allegations that it failed to follow state regulations regarding the monitoring of dispensing
20 controlled substances, including opioids. Evidencing the systemic nature of the problem, Rite
21 Aid, as part of the agreement, agreed to improve its dispensing practices.

22 2.14 In December 2018, Rite Aid also agreed to pay a \$300,000 settlement for filling
23 controlled substances prescriptions in Rhode Island in excess of the maximum dosage units
24 allowed to be dispensed at one time per state law.

25 2.15 In March 2017, Rite Aid paid \$834,200 in civil penalties to resolve allegations
26 that Rite Aid pharmacies in Los Angeles dispensed controlled substances in violation of the

1 federal Controlled Substances Act (CSA). The DEA’s “investigation revealed the incorrect or
2 invalid registration numbers were used at least 1,298 times as a result of Rite Aid’s failure to
3 adequately maintain its internal database.” Further evidencing the lack of internal controls, the
4 settlement also “resolve[d] allegations that Rite Aid pharmacies dispensed, on at least 63
5 occasions, prescriptions for controlled substances written by a practitioner whose DEA
6 registration number had been revoked by the DEA for cause.”

7 2.16 In January 2009, as a result of a multi-jurisdictional investigation by the
8 Department of Justice (DOJ), Rite Aid and nine of its subsidiaries in eight states were fined \$5
9 million in civil penalties for its violations of the CSA. The investigation revealed that from 2004
10 onwards, Rite Aid pharmacies across the country had a pattern of non-compliance with the
11 requirements of the CSA and federal regulations that lead to the diversion of prescription opioids
12 in and around the communities of the Rite Aid pharmacies investigated. Rite Aid also failed to
13 notify the DEA of losses of controlled substances in violation of 21 U.S.C. § 842(a)(5) and
14 21 C.F.R. § 1301.76(b).

15 **B. Kroger Defendants**

16 2.17 Defendant The Kroger Company is an Ohio corporation, with its principal place
17 of business located in Ohio.

18 2.18 Defendant Quality Food Centers (QFC) is a Washington corporation with its
19 principal place of business located in Washington. In 1997, Fred Meyer acquired QFC, though
20 the stores remain branded as QFC.

21 2.19 Defendant Fred Meyer is a Delaware corporation with its principal place of
22 business located in Oregon. In 1998, The Kroger Company acquired Fred Meyer, though the
23 stores remain branded as Fred Meyer.

24 2.20 Defendants The Kroger Company, QFC, and Fred Meyer are collectively referred
25 to as “Kroger.”
26

1 2.21 Kroger has done business in Washington since as far back as 1955 with the first
2 QFC store. As of the date of the filing of this Complaint, Kroger operated approximately 2,256
3 pharmacies in the United States, including approximately 117 in Washington.

4 2.22 At all times relevant to this Complaint, Kroger dispensed and sold prescription
5 opioids in Washington.

6 2.23 In addition to dispensing from its stores, Kroger served as a distributor of
7 prescription opioids to its own stores in Washington until approximately October 2014.

8 2.24 Kroger has filled opioid prescriptions written by medical providers without a
9 valid license to prescribe opioids in Washington.

10 2.25 Kroger has also been the subject of numerous enforcement actions evidencing
11 systemic due diligence failures. In December 2019, the DOJ announced that Kroger agreed to
12 pay \$225,000 to settle civil allegations that it violated the CSA more than a dozen times at a
13 pharmacy in Virginia. Among other things, the United States claimed that Kroger violated the
14 CSA by improperly filling “office use only” prescriptions for Schedule II controlled substances;
15 failed to make and keep DEA 222 order forms; improperly distributed a Schedule II controlled
16 substance absent the required DEA 222 form; and failed to provide effective controls and
17 procedures to guard against diversion of controlled substances.

18 2.26 In October 2005, Kroger agreed to pay a record \$7 million settlement for systemic
19 violations of the CSA by the company’s pharmacies, and to implement a pharmacy compliance
20 program in all 1,900 of its pharmacies nationwide.

21 **C. Albertsons Defendants**

22 2.27 Defendant Albertsons Companies, Inc. is a Delaware corporation with its
23 principal place of business in Idaho.

24 2.28 Defendant Safeway, Inc. is a Delaware corporation with its principal place of
25 business in California. In 2015, Safeway was acquired by Albertsons.

1 2.29 Haggen, Inc. is a Washington corporation with its principal place of business in
2 Washington. In 2014, after Albertsons was required to divest approximately 168 of its stores in
3 order to complete the Safeway acquisition, Haggen purchased approximately 146 of the stores,
4 including all 26 in Washington. The following year, Haggen filed for bankruptcy and Albertsons
5 repurchased the Washington Haggen stores. However, some stores in Washington retain the
6 Haggen branding.

7 2.30 Defendant Albertsons Companies, Inc., Defendant Safeway, Inc., and
8 Haggen, Inc. are collectively referred to as “Albertsons.”

9 2.31 Albertsons has done business in Washington since as far back as the 1920s. As
10 of the date of the filing of this Complaint, Albertsons operated more than 1,700 pharmacies in
11 the United States under its various banners, including approximately 188 pharmacies in
12 Washington.

13 2.32 At all times relevant to this Complaint, Albertsons dispensed and sold
14 prescription opioids in Washington.

15 2.33 In addition to dispensing from its stores, Albertsons served as a distributor of
16 prescription opioids to its own stores in Washington.

17 2.34 Albertsons has filled opioid prescriptions written by medical providers without a
18 valid license to prescribe opioids in Washington State.

19 2.35 Albertsons has also been the subject of numerous enforcement actions reflecting
20 a systemic lack of due diligence. In 2017, the DOJ and Safeway reached a civil settlement of
21 allegations the company failed to timely report significant losses of controlled substances from
22 pharmacies in North Bend, Washington and Wasilla, Alaska. Safeway agreed to pay \$3 million
23 in fines and to implement a compliance agreement reached with the DEA. The investigation
24 revealed a widespread practice of Safeway pharmacies failing to timely report missing or stolen
25 controlled substances.

1 2.36 In January of 2020, Albertsons paid a fine of \$1 million in conjunction with its
2 dispensing conduct from 2015 to 2017 at an Albertsons-owned store in Wyoming including
3 allegations that customers filled prescriptions for unusually large quantities and dosages of
4 narcotics, utilized multiple pharmacies to fill prescriptions, and filled prescriptions belonging to
5 different out-of-state customers. Additional record keeping violations were also discovered.

6 2.37 In September of 2019, Albertsons agreed to pay \$30,000 to resolve allegations
7 that it had filled fraudulent prescriptions for controlled substances at a pharmacy location in New
8 Hampshire between 2013 and 2014.

9 **D. Other Defendants**

10 2.38 Upon information and belief, Defendants XYZ Corporations 1 through 20 are
11 corporations, the names and addresses of which are unknown.

12 **III. JURISDICTION AND VENUE**

13 3.1 The State files this Complaint and institutes these proceedings under the
14 provisions of the Consumer Protection Act, RCW 19.86; the State also brings this action in its
15 parens patriae capacity for the benefit of the State’s residents, to protect and remedy their health
16 and safety.

17 3.2 Personal jurisdiction is appropriate under RCW 19.86.160 because each
18 Defendant has engaged in the conduct set forth in this Complaint in King County and elsewhere
19 in the state of Washington.

20 3.3 Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025, and
21 Superior Court Civil Rule 82 because Defendants transact or transacted business in King County
22 by transporting, marketing, distributing, and dispensing opioid products to health care providers
23 and consumers in King County, as described more fully below.

IV. FACTS

A. Prescription Opioids Are Dangerous and Deadly

4.1 Opioids are a class of central nervous system depressant drugs that attach to receptors in the brain, spinal cord, and gastrointestinal tract and suppress function. There are several different opioid molecules; the most common are morphine, hydrocodone, oxycodone, oxymorphone, hydromorphone, tapentadol, buprenorphine, and methadone.

4.2 While prescribed for pain relief, opioids also cause respiratory depression—slow and shallow breathing resulting in too much carbon dioxide and not enough oxygen inside the body, which can lead to heart attack, brain damage, coma, or death. This is the primary mechanism by which opioids have killed thousands of Washington citizens, and hundreds of thousands of Americans. There is “no other medication routinely used for a nonfatal condition that kills patients so frequently.”¹

4.3 Opioids are extremely addictive, and once a patient starts opioid treatment, it can be extraordinarily difficult to stop using opioids. Moreover, aside from overdose, long-term opioid use is associated with a significant increase in mortality from other causes.

4.4 Opioids carry heightened risks for certain vulnerable populations, including pregnant women, babies, children, adolescents, and older patients.

B. Opioids Have Had a Devastating Effect on Washington

4.5 Prescriptions and sales of opioids in Washington skyrocketed more than 500 percent between 1997 and 2011. Nearly one-fourth of all Washington residents received at least one opioid prescription in 2014.

4.6 Drug-caused deaths involving opioids increased 71 percent statewide between 2003–2005 and 2018–2020, with increases in most counties. In 2020, more than 7 out of 10 fatal drug overdoses in Washington involved an opioid. That same year, the number of overdose

¹ Thomas R. Frieden and Debra Houry, Reducing the Risks of Relief, N. Engl. J. Med. (2016).

1 deaths in Washington exceeded the number of deaths from motor vehicles and firearms
2 *combined*.

3 4.7 The scope of human suffering and economic cost of opioids on Washington
4 reverberates far beyond overdose mortality rate. The State spends significant additional public
5 resources on medical services, law enforcement, corrections, workers' compensation, diversion
6 programs, prosecution, probation, treatment, and child welfare because of the impacts of opioids.
7 Publicly funded drug treatment admissions for opioids as the primary drug increased 257 percent
8 statewide between 2002–2004 and 2013–2015, with increases in 38 of 39 counties.

9 4.8 The opioid crisis has extended beyond prescriptions. Many people in Washington
10 who use heroin (and the majority of young adults who use heroin) report first using
11 prescription-type opioids prior to switching to heroin. More recently, deaths attributed to highly
12 dangerous illicit fentanyl—cheaper and easier to obtain than prescription opioids—have
13 skyrocketed in the past few years. Evidence shows that the staggering rise in use of heroin and
14 fentanyl, and heroin- and fentanyl-related overdose deaths, is not only the predictable result of,
15 but directly caused by, the influx of prescription opioids in Washington.

16 **C. Defendants Have a Duty to Prevent Diversion of Opioids**

17 4.9 Defendants have a duty of care as registrants to distribute and/or dispense
18 controlled substances under the CSA. *See* 21 U.S.C. § 823(a)–(b), (e); 28 C.F.R. § 0.100;
19 28 C.F.R. § 1301.71.

20 4.10 Every registrant under the CSA is required to “maintain effective controls against
21 diversion” of controlled substances. 21 C.F.R. § 1301.74(a).

22 4.11 Under the CSA and its implementing regulations, distributors and dispensers of
23 controlled substances are required to “design and operate a system to disclose to the registrant
24 suspicious orders of controlled substances.” 21 C.F.R. § 1301.74(b). The CSA’s implementing
25
26

1 regulations define a “suspicious order” to include “orders of unusual size, orders deviating
2 substantially from a normal pattern, and orders of unusual frequency.” *Id.*

3 4.12 Defendants are not allowed to ship or dispense any suspicious orders unless they
4 conclude that the order is not likely to be diverted. That order must still be reported to the DEA
5 even if it cleared for shipment. *Id.*

6 4.13 The CSA requires that controlled substances be dispensed only pursuant a valid
7 prescription written by a medical professional acting in the ordinary course of professional
8 practice. 21 C.F.R. § 1306.04(a).

9 4.14 Pharmacists have a “corresponding responsibility” to determine whether a
10 prescription for a controlled substance is written for a legitimate medical purpose before
11 dispensing it. *Id.*

12 4.15 While the corresponding responsibility requires pharmacists to perform due
13 diligence on controlled substance prescriptions, the duty to prevent diversion also lies with the
14 pharmacies. Pharmacists are the agents of a pharmacy, and the pharmacy is responsible for their
15 conduct. In this regulatory framework, pharmacies act as the “last line of defense” for guarding
16 against diversion by providing their pharmacists with the training and resources needed to ensure
17 that pharmacists only dispense legitimate prescriptions for controlled substances.

18 4.16 A prescription that is not for the purpose of treating a patient’s genuine medical
19 condition is an illegitimate prescription. *See id.* Two sources of illegitimate prescriptions are
20 unscrupulous prescribers and drug-seeking patients. Unscrupulous prescribers—sometimes
21 referred to as “pill mills”—write medically unnecessary or excessive prescriptions for patients,
22 often in exchange for cash payment. Drug-seeking patients may forge prescriptions and/or
23 deceive prescribers into writing unnecessary prescriptions in a variety of ways, including by
24 faking symptoms and visiting multiple prescribers to obtain multiple prescriptions for the same
25 condition.

1 4.17 Signs that a prescription may be illegitimate are commonly referred to as “red
2 flags,” which are warning signs indicating that further inquiry is required. Red flags include, but
3 are not limited to: (a) multiple prescriptions to the same patient using the same doctor;
4 (b) multiple prescriptions by the same patient using different doctors; (c) prescriptions of unusual
5 size and frequency for the same patient; (d) orders from out-of-state patients or prescribers; (e) an
6 unusual or disproportionate number of prescriptions paid for in cash; (f) prescriptions paired
7 with other drugs frequently abused with opioids, like benzodiazepines, or prescription
8 “cocktails”; and (g) volumes, doses, or combinations that suggested that the prescriptions were
9 likely being diverted or were not issued for a legitimate medical purpose.

10 4.18 Any red flags present must be resolved through due diligence before the
11 prescription is dispensed. If, even after investigating the order, there is any remaining basis to
12 suspect that a customer is engaged in diversion, the order must be deemed suspicious and the
13 DEA must be informed.

14 4.19 The CSA also imposes crucial recordkeeping obligations on pharmacies.
15 “[E]very registrant . . . dispensing a controlled substance or substances shall maintain, on a
16 current basis, a complete and accurate record of each such substance . . . received, sold, delivered,
17 or otherwise disposed of by him.” 21 U.S.C. § 827(a).

18 4.20 As a result, if pharmacies adhere to their recordkeeping obligations, they possess
19 valuable dispensing data providing unique and detailed insight into the volume, frequency, dose,
20 and type of controlled and non-controlled substances a pharmacy typically orders. Defendants
21 must utilize their information to identify patterns of diversion and for auditing, training, and
22 investigation of suspicious activity.

23 4.21 The requirements of the CSA have been explicitly adopted and incorporated into
24 Washington law. WAC 246-887-020; RCW 69.50.303, 304.

D. Defendants Were Well Aware of their Regulatory Obligations

4.22 These legal requirements are well known to Defendants. Defendants have had access to and received specific resources, guidance, reminders, confirmation, conference presentations, citations, and even shutdowns from or by the DEA regarding their obligations to stop diversion through effective monitoring of suspicious orders or prescriptions.

E. Each Defendant Failed Their Duty to Maintain Effective Anti-Diversion Controls

4.23 Despite the fact that Defendants are or should be fully aware of their obligations to maintain effective controls to prevent the diversion of highly dangerous and addictive prescription opioids, each of the Defendants has illegally, recklessly, and/or negligently distributed and/or dispensed suspicious opioid orders in Washington without maintaining effective anti-diversion controls.

4.24 As a result, each of the Defendants has been subject to repeated enforcement actions and significant fines by the DEA and/or other federal and state agencies.

4.25 Based upon the widespread nature of these violations, these enforcement actions are the product of, and confirm, systemic policies and practices of the Defendants that violated their legal obligations regarding the distribution and dispensing of prescription opioids.

4.26 The systemic failures of the Defendants led to large numbers of Washingtonians developing OUD, significantly contributed to the widespread diversion of prescription opioids, and caused the explosion of illicit opioid use.

**V. FIRST CAUSE OF ACTION
(VIOLATIONS OF THE CONSUMER PROTECTION ACT, RCW 19.86)**

5.1 The State incorporates each of the foregoing paragraphs herein as if set forth in their entirety.

5.2 RCW 19.86.020 prohibits “unfair” or “deceptive” acts or practices in trade or commerce.

1 5.3 The distribution and dispensing of opioids in Washington constitutes “trade” or
2 “commerce” defined by RCW 19.86.010(2).

3 5.4 Defendants engaged in unfair acts or practices in the distribution and dispensing of
4 massive amounts of opioids even as it became clear that opioid dependence and OUD had become
5 a health epidemic.

6 5.5 Defendants dispensed opioids indiscriminately, including filling tens of thousands
7 of suspicious prescriptions they should never have filled, without adequate due diligence or
8 reporting to law enforcement, in violation of federal and state law and Washington’s clear public
9 policy to curb opioid abuse.

10 5.6 Defendants engaged in numerous unfair acts or practices, including the
11 following:

- 12 a. failing to properly identify potentially suspicious orders or prescriptions;
- 13 b. failing to conduct adequate due diligence to ensure that they were only filling
14 legitimate orders or prescriptions for legitimate customers;
- 15 c. filling suspicious orders or prescriptions which they knew or should have known
16 were likely to be diverted into illegitimate channels;
- 17 d. filling orders or prescriptions which their internal monitoring systems flagged as
18 potentially suspicious, without engaging in adequate due diligence; and
- 19 e. failing to properly report suspicious orders or prescriptions.

20 5.7 Defendants’ unfair conduct in the distribution and dispensing of opioids affects
21 the public interest because the opioids were distributed to Washington businesses and ultimately
22 to numerous consumers in Washington, injured numerous Washington consumers, created a
23 public health crisis and a public nuisance, were part of Defendants’ very business model and
24 regular course of business operations, and were repeated.
25
26

**VI. SECOND CAUSE OF ACTION
(PUBLIC NUISANCE)**

6.1 The State incorporates each of the foregoing paragraphs herein as if set forth in their entirety.

6.2 RCW 7.48.120 provides that:

[n]uisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

6.3 Pursuant to RCW 7.48.130, a “public nuisance” is a nuisance that “affects equally the rights of the entire community or neighborhood, although the extent of the damage may be unequal.”

6.4 RCW 7.48.010 defines an “actionable nuisance” to include “whatever is injurious to health or indecent or offensive to the senses.”

6.5 Through the actions described above, the Defendants have contributed to and/or assisted in creating and maintaining a condition that is unreasonable and harmful to the health of Washingtonians and/or interferes with the comfortable enjoyment of life in violation of Washington law. For example:

a. Opioid use, abuse, and overdose deaths have increased throughout the state.

b. Locations such as the offices of high-prescribing health care practitioners and the pharmacies at which their patients fill opioid prescriptions have attracted opioid drug dealers and people seeking illicit opioids.

c. Locations such as abandoned homes and some public spaces have attracted opioid drug dealers and people seeking illicit opioids, rendering them and the surrounding private property less safe or unsafe. In addition, family medicine cabinets became outlets for opioid

1 diversion and abuse due to overprescribing, and the foreseeable failure to safely dispose of
2 opioids.

3 d. The greater demand for opioid-related emergency services, law enforcement,
4 addiction treatment, court proceedings, and social services places an unreasonable burden on
5 State and local resources.

6 e. Expanding the market for prescription opioids to primary care patients and
7 chronic conditions has also created an abundance of opioids available for criminal use and fueled
8 a wave of addiction, abuse, and injury.

9 f. Additional illicit markets have been created for other opiates, particularly heroin
10 and fentanyl. Many users who were initially dependent on prescription opioids and then were
11 unable to obtain or afford prescription opioids turned to heroin and fentanyl as an alternative,
12 fueling a new wave of the epidemic.

13 g. Defendants also interfered with enjoyment of the public right by failing to report
14 suspicions of illicit prescribing to the State, law enforcement, or the Board of Medicine, allowing
15 health care providers who were profitable to Defendants but problematic for the public health to
16 continue prescribing increasing numbers of opioids throughout the state.

17 6.6 The public nuisance created by Defendants' actions is substantial and
18 unreasonable. It has caused significant harm to communities across Washington, outweighing
19 any offsetting benefit.

20 6.7 Defendants' actions described above were a substantial factor in opioids
21 becoming widely available, used, and abused.

22 6.8 But for Defendants' actions, opioid use could not have become so widespread.
23 Defendants' actions have and will continue to injure and harm many residents throughout
24 Washington.

6.9 The public nuisance and associated financial and economic losses were foreseeable to Defendants, who knew or should have known that their unfair business practices were creating a public nuisance or otherwise harming the public.

6.10 The health and safety of Washington residents, including those who use, have used or will use opioids, as well as those affected by users of opioids, is a matter of great public interest and of legitimate concern to the State, whose duty to protect the health, safety, and well-being of its residents is paramount. Washington and its residents have a right to be free from conduct that endangers their health and safety.

6.11 Pursuant to RCW 7.48.020 and 7.48.180, the State seeks an order that provides for abatement of the public nuisance Defendants have created and enjoins Defendants from future violations of RCW 7.48.

VII. PRAYER FOR RELIEF

Wherefore, the State prays for the following relief:

7.1 A declaration that Defendants' acts described above are unfair acts or practices in trade or commerce, affecting the public interest, and in violation of the Consumer Protection Act, RCW 19.86;

7.2 An injunction pursuant to RCW 19.86.080(1) enjoining Defendants from engaging in any acts that violate the Washington Consumer Protection Act, including, but not limited to, the unfair acts and practices alleged herein;

7.3 An order necessary to restore to any person an interest in any moneys or property, real or personal, which may have been acquired by means of an act prohibited by the Consumer Protection Act, pursuant to RCW 19.86.080(2);

7.4 An award of a civil penalty in the amount of \$7,500.00 for each and every violation of Washington's Consumer Protection Act, pursuant to RCW 19.86.140;

7.5 An award of the State's reasonable costs and attorney fees incurred in this action, pursuant to RCW 19.86.080(1);

1 7.6 An order requiring Defendants to abate the public nuisance that they created;

2 7.7 Equitable relief requiring restitution and disgorgement of the revenues resulting
3 from Defendants' wrongful conduct;

4 7.8 An award of pre-judgment and post-judgment interest, as provided by law; and

5 7.9 Any other and further relief the Court deems just and equitable.

6
7 DATED this 21st day of December, at Seattle, Washington.

8 ROBERT W. FERGUSON
9 Attorney General

10 s/ Susan E. Llorens

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26 **The signing attorneys certify that this document
contains 4, 891 words, in accordance with King
County Local Rules.

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DATED this 21st day of December 2022 at Seattle, Washington.

COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT,
PUBLIC NUISANCE, AND
NEGLIGENCE
KING CTY CAUSE NO.