IN THE FIRST JUDICIAL DISTRICT OF THE
CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

| | |
|---|---|
| STATE OF MISSISSIPPI,<br><br>Plaintiff,<br><br>v.<br><br>CARDINAL HEALTH, INC., McKESSON CORPORATION, AMERISOURCEBERGEN CORPORATION, WALGREENS BOOTS ALLIANCE, INC., WALGREEN CO., WALMART INC. f/k/a WAL-MART STORES, INC., AND DOES 1 THROUGH 100, INCLUSIVE,<br><br>Defendants. | Civil Action No. 25CI1:18-cv-00692 |

**AMENDED COMPLAINT**
**(Jury Trial Demanded)**

Plaintiff, the State of Mississippi, by and through its Attorney General (hereinafter "Mississippi" or "the State"), upon personal knowledge, information, and belief, and upon information and belief as to all matters based upon the investigation of counsel, alleges as follows:

## I. INTRODUCTION

1. Opioids are highly addictive synthetic drugs derived from opium, which are pharmacologically similar to heroin. For this reason, the U.S. Drug Enforcement Administration ("DEA") has categorized opioids as Schedule II controlled substances, having a "high potential

for abuse[.]"[1] As the Director of the Centers for Disease Control and Prevention ("CDC") has noted: "We know of no other medication routinely used for a nonfatal condition that kills patients so frequently."[2]

2. Because of the known dangers of opioids, all companies in the supply chain of controlled substances, including Defendants Cardinal Health, Inc., McKesson Corporation, AmerisourceBergen Corporation, Walgreens Boots Alliance, Inc., Walgreen Co., and Walmart Inc. f/k/a Wal-Mart Stores, Inc. (collectively "Defendants"), which distribute these highly addictive drugs, have the primary responsibility of ensuring that these drugs are distributed and dispensed only to appropriate patients and not diverted. While all of these responsibilities are fully stated in state and federal law, they also exist independent of those regulations as duties of businesses registered to do business and distribute controlled substances in this State. Based on their superior knowledge about where these highly addictive drugs are distributed and sold, Defendants are placed in a position of special trust and responsibility and are uniquely positioned to act as the first line of defense.

3. Despite these obligations, Defendants intentionally failed to monitor, detect, investigate, refuse, and report suspicious orders of opioids. At all relevant times, Defendants distributed, supplied, sold, and placed into the stream of commerce, prescription opioids without fulfilling their fundamental duty as wholesale drug distributors to detect and warn of the diversion of dangerous drugs for non-medical purposes.

---

[1] DEA / Drug Scheduling, https://www.dea.gov/druginfo/ds.shtml (last visited Sept. 2018).

[2] Thomas R. Frieden and Debra Houry, *Reducing the Risks of Relief—The CDC Opioid-Prescribing Guideline*, 372 NEW ENG. J. MED. 1501, 1503 (2016).

4. While these Defendants have reaped significant profits, their failures to prevent the diversion of opioids have contributed to and created a national and statewide emergency and the State of Mississippi and its citizens have borne the costs. According to the CDC, 145 Americans die every day from opioid overdoses. In Mississippi, hundreds of deaths are attributable to opioid overdoses every year. Many of these costs, including the lives lost, could have been avoided if Defendants had fulfilled their duties to the State of Mississippi and its citizens.

5. Accordingly, the State of Mississippi seeks: (a) the maximum civil penalties allowed for each violation of the law; (b) damages for, and abatement of, the public health epidemic that these Defendants have created; (c) civil penalties for each violation of Mississippi's consumer protection laws; (d) damages, including punitive damages, for money spent by the State of Mississippi as a result of these Defendants' conduct; (e) disgorgement of these Defendants' unjust profits; and (f) injunctive relief to stop these Defendants' actions.

## II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Miss. Code Ann. § 9-7-81 as Plaintiff seeks equitable and legal relief, the amount in controversy exceeds two hundred dollars, and this matter brings claims arising under the laws of this State that are not exclusively cognizable in another court. Jurisdiction is also appropriate under Section 156 of the Mississippi Constitution.

7. This Court has personal jurisdiction over the Defendants as they conduct business in Mississippi, purposefully direct or directed their actions toward Mississippi, and/or have the requisite minimum contacts with Mississippi necessary to constitutionally permit the Court to exercise jurisdiction.

8. Venue is proper in Hinds County under Miss. Code Ann. § 11-11-3. Each Defendant: (1) does business in Mississippi and/or purposefully directs or directed its actions

toward Mississippi; (2) committed torts in part in Mississippi against the State of Mississippi and Mississippi residents; (3) solicited and continues to seek business, and performed and continues to conduct business services, such as marketing, advertising, promoting, and distributing of their products in Mississippi; and (4) has the requisite minimum contacts with Mississippi necessary to constitutionally permit the Court to exercise its jurisdiction.

## III. PARTIES

9. This action is brought for and on behalf of the sovereign State, by and through Jim Hood, the duly elected and current Attorney General of the State, under, *inter alia*, Miss. Code Ann. § 7-5-1, the provisions of the Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq*., and the common law and statutory authority of the Attorney General to represent the State. The State also brings this action in its *parens patriae* capacity to protect the health and well-being of the citizens of Mississippi.

10. Cardinal Health, Inc. ("Cardinal") describes itself as a "global, integrated health care services and products company" and is the fifteenth largest company by revenue in the U.S., with annual revenue of $121 billion in 2016. Based on Cardinal's estimates, one of every six pharmaceutical products dispensed to United States patients travels through the Cardinal Health network. Through its various DEA-registered subsidiaries and affiliated entities, Cardinal distributes pharmaceutical drugs, including opioids, throughout the country, including in Mississippi. Cardinal is an Ohio corporation and is headquartered in Dublin, Ohio, and may be served with process of this Court there at 7000 Cardinal Place, Dublin, Ohio 43017.

11. McKesson Corporation ("McKesson") is sixth on the list of Fortune 500 companies, ranking immediately after Apple and ExxonMobil, with annual revenue of $198 billion in 2017. Through its various DEA registered subsidiaries and affiliated entities, McKesson is a wholesaler

of pharmaceutical drugs that distributes opioids throughout the country, including in Mississippi. McKesson is incorporated in Delaware, with its principal place of business in San Francisco, California, and is registered in the State of Mississippi as a foreign corporation where it may be served with process of this Court upon its registered agent, CSC of Rankin County, Inc., at its address of 2829 Lakeland Drive, Suite 1502, Flowood, Mississippi 39232.

12. AmerisourceBergen Drug Corporation ("AmerisourceBergen"), through its various DEA registered subsidiaries and affiliated entities, is a wholesaler of pharmaceutical drugs that distributes opioids throughout the country, including throughout the State of Mississippi. AmerisourceBergen is the twelfth largest company by revenue in the United States, with annual revenue of $153 billion in 2017. AmerisourceBergen's principal place of business is located in Chesterbrook, Pennsylvania, it is incorporated in Delaware, and registered in the State of Mississippi as a foreign corporation where it may be served with process of this Court upon its registered agent, CT Corporation System, at its address of 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

13. Walgreens Boots Alliance, Inc. is a Delaware corporation with its principal place of business in Illinois, and it may be served with process of this Court there at 108 Wilmot Road, Deerfield, Illinois 60015. Walgreen Co. is an Illinois corporation with its principal place of business in Deerfield, Illinois, and it is registered in the State of Mississippi as a foreign corporation where it may be served with process of this Court upon its registered agent, The Prentice-Hall Corporation System, Inc., at its address of 7716 Old Canton Road, Suite C, Madison, Mississippi 39110. Walgreen Co. is a subsidiary of Walgreens Boots Alliance, Inc. and does business under the trade name Walgreens. Defendants Walgreens Boots Alliance, Inc. and Walgreen Co. are collectively referred to as "Walgreens."

14. Walgreens, through its various DEA registered subsidiaries and affiliated entities, is a wholesaler of pharmaceutical drugs that distributes opioids throughout the country, including in Mississippi. As a distributor of prescription opioids, Walgreens distributes only to its own pharmacies. However, as a pharmacy, Walgreens receives prescription opioids from other distributors.

15. Walmart Inc., ("Walmart") formerly known as Wal-Mart Stores, Inc., through its various DEA registered subsidiaries and affiliated entities, is a wholesaler of pharmaceutical drugs that distributes opioids throughout the country, including throughout the State of Mississippi. Walmart is a Delaware corporation with its principal place of business in Arkansas, and it is registered in the State of Mississippi as a foreign corporation where it may be served with process of this Court upon its registered agent, CT Corporation System, at its address of 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232. As a distributor of prescription opioids, Walmart distributes only to its own pharmacies. However, as a pharmacy, Walmart receives prescription opioids from other distributors.

16. Plaintiff is ignorant of the true names or capacities, whether individual, corporate, or otherwise, of the defendants sued herein under the fictitious names "Does 1 through 100," inclusive, and they are therefore sued herein under Miss. R. Civ. P. 9(h). Plaintiff will amend this Complaint to show their true names and capacities if and when they are ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that each of the defendants named as a "Doe" is responsible in some manner for the events and occurrences alleged in this Complaint and is liable for the relief sought herein.

## IV. ACTIONS OF DEFENDANTS

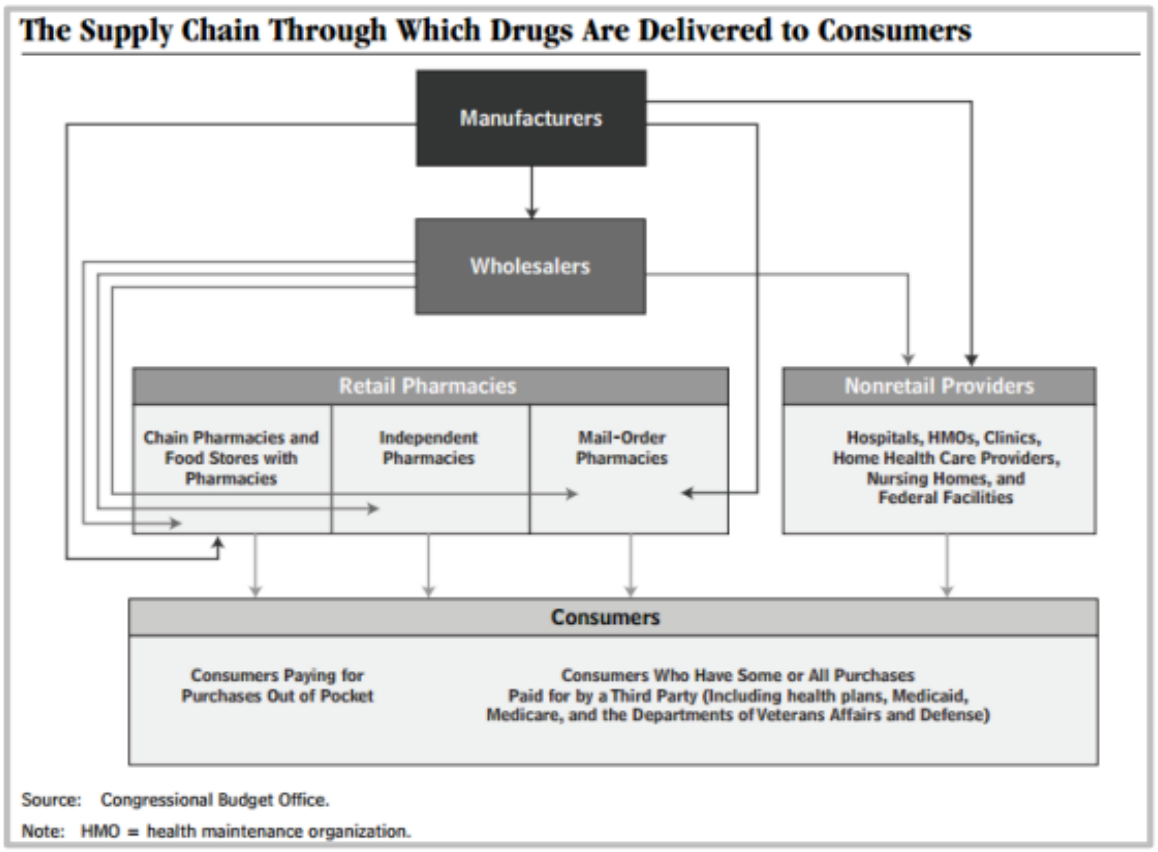
### A. The Role of Distributors in the Pharmaceutical Supply Chain

17. Prescription drugs are distributed through multiple channels before they are ultimately provided to patients. Generally speaking, for retail pharmacy channels, prescription branded drugs are distributed from manufacturer to wholesaler, to retailer, to the consumer/patient.

18. Manufacturers, at the top of the chain, own the rights to manufacture and market drugs. Manufacturers typically own or contract with facilities that manufacture drugs and then sell their products to wholesalers. After production, many manufacturers send their drugs to FDA-registered drug wholesalers for further distribution. Wholesalers purchase, inventory, and sell pharmaceutical products to a variety of providers, including retail pharmacies, and ensure their safe storage and distribution. States, including the State of Mississippi, license or authorize wholesalers to sell and distribute pharmaceuticals within their borders.

19. Pharmacies are the final step in the pharmaceutical supply chain before the drugs reach the consumer/patient. Pharmacies purchase drugs from wholesalers, and occasionally directly from manufacturers, and then take physical possession of the drug products. After purchasing pharmaceuticals, pharmacies assume responsibility for their safe storage and dispensing to consumers/patients.

20. The process described above is illustrated in the chart below:[3]




## B. Defendants' Duties to Prevent the Diversion of Opioids Under Federal and State Law

### 1. Duties under federal and state law

21. Because of their specific and significant dangers, these controlled substances are distributed within a "closed" system under which different entities within the pharmaceutical supply chain supervise the discrete links in the chain to reduce the widespread diversion of these

[3] *See* American Health Policy Institute, *The Prescription Drug Supply Chain "Black Box:" How it Works and Why You Should Care* (2015) available at: http://www.americanhealthpolicy.org/Content/documents/resources/December%202015_AHPI%20Study_Understanding_the_Pharma_Black_Box.pdf.

drugs outside of legitimate channels. Because the Defendants are the first major line of defense in the movement of legal pharmaceutical controlled substances from legitimate channels into the illicit market, it is incumbent on Defendants to maintain effective controls to prevent the diversion of these controlled substances. Should a distributor deviate from these checks and balances, the closed system subsequently collapses.

22. The Controlled Substances Act (CSA) and its implementing regulations create restrictions on the distribution of controlled substances. *See* 21 U.S.C. §§ 801-971; 21 C.F.R. 1300-1321. The CSA authorizes the DEA to establish a registration program for manufacturers, distributors, and dispensers of controlled substances. Any entity that seeks to become involved in the production or chain of distribution of controlled substances, including these Defendants, must first register with the DEA. 21 U.S.C. § 822; 21 C.F.R. 1301.11. Registrants are then required to comply with all security requirements imposed under that statutory scheme, including the maintenance of "effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels." 21 U.S.C. § 823(b)(1). They must "design and operate a system to disclose to the registrant suspicious orders of controlled substances" and inform the Field Division Office of the DEA in its area of suspicious orders when discovered by the registrant. 21 C.F.R. § 1301.74(b).

23. "Suspicious orders include those of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency." 21 C.F.R. § 1301.74(b). These criteria are disjunctive and are not all inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter, and the order should be reported as suspicious. Likewise, a wholesale distributor need not wait for a normal pattern to develop before determining whether or not an order is suspicious. The size of an order alone, regardless of whether it deviates

from a normal pattern, is enough to trigger the wholesale distributor's responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the customer, but also on the patterns of the entirety of the wholesale distributor's customer base and the patterns throughout the relevant segment of the wholesale distributor industry.

24. In addition to reporting all suspicious orders, distributors must also stop shipment of any order that is flagged as suspicious and may only ship orders that are flagged as potentially suspicious if, after conducting due diligence, the distributor determines that the order is not likely to be diverted into illegal channels. *See* 21 U.S.C. § 823(b); 21 C.F.R. 1301.74(b). Defendants and all other registrants must likewise report acquisition and distribution transactions to the DEA through its Automation of Reports and Consolidated Orders System ("ARCOS") database.

25. All of the above requirements have been adopted and incorporated into Mississippi law. *See* Miss. Code Ann. § 41-29-127. Similarly, federal law imposes a duty on Defendants to comply with applicable state and local law. 21 U.S.C. § 823(b)(2).

26. Defendants are required to register with the Mississippi Board of Pharmacy. *See* Miss. Code Ann. § 41-29-127. Before allowing a pharmaceutical distributor to register, the Board of Pharmacy must determine that granting a registration is consistent with the public interest and, to be consistent with the public interest, a registrant must, among other things, demonstrate its ability to maintain effective controls against the diversion of opioids under Mississippi law. *See* Miss. Code Ann. § 41-29-127(a)(1) and (4).

27. Failure to maintain effective controls against diversion is inconsistent with the public interest as that term is used in 21 U.S.C. §§ 823 and 824 and Miss. Code Ann. § 41-29-

127, and may result in the revocation of the registrant's DEA Certificate of Registration or registration with the State of Mississippi.

28. As such, Defendants owe, and owed, the following duties:

- To monitor and detect suspicious orders of prescription opioids. *See generally* Miss. Code Ann. § 41-29-127.
- To investigate and refuse suspicious orders of prescription opioids. *See generally* Miss. Code Ann. § 41-29-127.
- To report suspicious orders of prescription opioids. *See generally* Miss. Code Ann. § 41-29-127.
- To prevent diversion of prescription opioids into illicit markets in the State of Mississippi. *See* Miss. Code Ann. § 41-29-127.

**2. Guidance from the DEA**

29. These federal and state regulations are consistent with guidance given to the industry by the DEA. As the DEA advised all registrants, including each of the Defendants, in a September 27, 2006 letter:

> Wholesale distributors are "one of the key components of the distribution chain. If the closed system is to function properly . . . distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes. This responsibility is critical, as . . . the illegal distribution of controlled substances has a substantial and detrimental effect on the health and general welfare of the American people."

30. The DEA's September 27, 2006 letter also warned that it would use its authority to revoke and suspend registrations when appropriate. The letter expressly states that a distributor, in addition to reporting suspicious orders, has a "statutory responsibility to exercise due diligence to avoid filling suspicious orders that might be diverted into other than legitimate medical, scientific,

and industrial channels." The letter also instructs that "distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes."

31. The DEA sent a second letter to all DEA registrants, including each of the Defendants, on December 27, 2007. This letter was sent to remind Defendants of their statutory and regulatory duties to "maintain effective controls against diversion" and "design and operate a system to disclose to the registrant suspicious orders of controlled substances." The letter further explains:

> The regulation also requires that the registrant inform the local DEA Division Office of suspicious orders when discovered by the registrant. Filing a monthly report of completed transactions (e.g. "excessive purchase report" or "high unity purchases") does not meet the regulatory requirement to report suspicious orders. Registrants are reminded that their responsibility does not end merely with the filing of a suspicious order report. Registrants must conduct an independent analysis of suspicious orders prior to completing a sale to determine whether the controlled substances are likely to be diverted from legitimate channels. Reporting an order as suspicious will not absolve the registrant of responsibility if the registrant knew, or should have known, that the controlled substances were being diverted.
>
> The regulation specifically states that suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of an unusual frequency. These criteria are disjunctive and are not all inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter and the order should be reported as suspicious. Likewise, a registrant need not wait for a "normal pattern" to develop over time before determining whether a particular order is suspicious. The size of an order alone, whether or not it deviates from a normal pattern, is enough to trigger the registrant's responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the particular customer, but also on the patterns of the registrant's customer base and the pattern throughout the segment of the regulated industry.
>
> Registrants that rely on rigid formulas to define whether an order is suspicious may be failing to detect suspicious orders. For example, a system that identifies orders as suspicious only if the total amount of a controlled substance ordered during one month exceeds the amount ordered the previous month by a

> certain percentage or more is insufficient. This system fails to identify orders placed by a pharmacy if the pharmacy placed unusually large orders from the beginning of its relationship with the distributor. Also, this system would not identify orders as suspicious if the order were solely for one highly abused controlled substance if the orders never grew substantially. Nevertheless, ordering one highly abused controlled substance and little or nothing else deviates from the normal pattern of what pharmacies generally order.
>
> When reporting an order as suspicious, registrants must be clear in their communication with DEA that the registrant is actually characterizing an order as suspicious. Daily, weekly, or monthly reports submitted by the registrant indicating "excessive purchases" do not comply with the requirement to report suspicious orders, even if the registrant calls such reports "suspicious order reports."
>
> Lastly, registrants that routinely report suspicious orders, yet fill these orders without first determining that the order is not being diverted into other than legitimate medical, scientific, and industrial channels, may be failing to maintain effective controls against diversion. Failure to maintain effective controls against diversion is inconsistent with the public interest as that term is used in 21 USC 823 and 824, and may result in the revocation of the registrant's DEA Certificate of Registration.

**3. Industry guidelines**

32. Industry compliance guidelines established by the Healthcare Distribution Management Association (HDMA), the trade association of pharmaceutical distributors, explains that distributors are "[a]t the center of a sophisticated supply chain" and therefore "are uniquely situated to perform due diligence to help support the security of the controlled substances they deliver to their customers."

33. These guidelines set forth recommended steps in the due diligence process, and note in particular:

> If an order meets or exceeds a distributor's threshold, as defined in the distributor's monitoring system, or is otherwise characterized by the distributor as an order of interest, the distributor should not ship to the customer, in fulfillment of that order, any units of the specific drug code product as to which the order met or exceeded a threshold or as to which the order was otherwise characterized as an order of interest.

**4. Duties to the State of Mississippi and its citizens**

34. In addition to all of the above, Defendants, who had superior access to information regarding who was ordering opioids, how many opioids were being ordered and where these opioids were going, had a duty as businesses registered to do business and distribute controlled substances in the State of Mississippi to ensure that the opioids ordered were not diverted. As HDMA itself has recognized, Defendants "have not only statutory and regulatory responsibilities to detect and prevent diversion of controlled prescription drugs, but undertake such efforts as responsible members of society." *See* Brief for Healthcare Distribution Management Association (HDMA) and National Association of Chain Drug Stores (NACDS) as Amici Curiae in Support of Neither Party, *Masters Pharmaceuticals, Inc. v. U.S. Drug Enforcement Admin.*, 2016 WL 1321983 (C.A.D.C.) (Apr. 4, 2016).

## C. Defendants Failed to Act to Prevent the Diversion of Opioids in the State of Mississippi

35. Defendants repeatedly and purposefully breached their duties under state and federal law. They sold prescription opioids, including hydrocodone and/or oxycodone, to retailers in the State of Mississippi and/or to retailers from which Defendants knew prescription opioids were likely to be diverted to the State of Mississippi.

36. Defendants developed and maintained extensive data on the opioids that they distributed and dispensed. Through this data, Defendants had direct knowledge of patterns and instances of improper distribution, prescribing, and use of prescription opioids in communities throughout the United States, and in Mississippi in particular. They then used that data to evaluate their own respective sales activities and workforce. On information and belief, Defendants also provided others with data regarding, *inter alia*, individual doctors in exchange for rebates or other

forms of consideration. This data is a valuable resource that could have been used to help stop diversion, however, the Defendants failed to use it to do so in violation of Mississippi law. *See* Miss. Code Ann. § 41-29-127.

**1. Defendants' conduct allowed massive quantities of opioids to be distributed throughout the State of Mississippi**

37. Statewide data from the DEA's ARCOS database confirms that the Defendants distributed and dispensed substantial quantities of prescription opioids throughout Mississippi. In addition, Defendants also distributed and dispensed substantial quantities of prescription opioids in other states, and these drugs were diverted from these states to Mississippi. Defendants failed to take meaningful action to stop this diversion, despite their knowledge that it was occurring, and, in doing so, contributed substantially to the diversion problem in violation of Mississippi law. *See* Miss. Code Ann. § 41-29-127.

38. Distributors of opioids placed over 1.3 billion dosage units of these dangerous and addictive drugs into the State of Mississippi between 2006 and 2014. During 2017 alone, distributors flooded the State of Mississippi with 182,882,444 dosage units or nearly 61 opioid pills for every man, woman, and child in the State of Mississippi.

39. This high volume of opioids alone should have alerted Defendants that they were filling suspicious orders, because the amount of opioids they each allowed to flow into the State of Mississippi far exceeded what could be consumed for medically necessary purposes. Defendants failed to halt those orders and instead increased the number of pills distributed, along with their market share, each year.

40. Not only should the volume of opioids being distributed have raised suspicion, but the places to which they were being distributed should have also raised red flags. The proximity

of the locations to which Defendants were shipping orders are of such close relation that it demonstrates a reasonable suspicion of diversion and undermining of the closed system.

41. Defendants failed to report "suspicious orders" originating from the State, or which Defendants knew were likely to be diverted to the State, to federal and state authorities, including the DEA and/or the state Board of Pharmacy.

42. Defendants unlawfully filled suspicious orders of unusual size, orders deviating substantially from a normal pattern, and/or orders of unusual frequency in the State of Mississippi, and/or in areas from which Defendants knew opioids were likely to be diverted to the State of Mississippi.

43. Defendants breached their respective duties to monitor, detect, investigate, refuse, and report suspicious orders of prescription opioids originating from the State of Mississippi, and/or in areas from which Defendants knew opioids were likely to be diverted to the State of Mississippi.

44. Defendants breached their respective duties to maintain effective controls against the diversion of prescription opioids into other than legitimate medical, scientific, and industrial channels in violation of Mississippi law. *See* Miss. Code Ann. § 41-29-127.

45. Defendants breached their respective duties to design and operate a system to disclose suspicious orders of controlled substances to the registrant and failed to inform authorities of suspicious orders when discovered, in violation of their duties under the law.

46. Defendants breached their respective duties to exercise due diligence to avoid filling suspicious orders that might be diverted into other than legitimate medical, scientific, and industrial channels.

47. Defendants' respective violations of public safety statutes constitute *prima facie* evidence of negligence under State law. *See* Miss. Code Ann. § 41-29-127.

48. Defendants supplied prescription opioids to suspicious physicians and pharmacies, enabled the illegal diversion of opioids, aided criminal activity, and disseminated massive quantities of prescription opioids into the black market.

49. Upon information and belief, Plaintiff expects other egregious examples of Defendants failing to fulfill their statutory duty to prevent diversion will be discovered as additional ARCOS data and other relevant information is obtained as this litigation progresses.

**2. Defendants' breaches of duty in Mississippi are similar to their actions in other states**

50. Multiple law enforcement agencies have sanctioned these same Defendants for failing to control the diversion of controlled substances. Defendant Cardinal has paid a total of $98 million in fines and other amounts in multiple DEA and state actions relating to its improper management and distribution of opioids to pharmacies across the United States.

51. In 2008, Cardinal paid a $34 million penalty to settle allegations regarding opioid diversion taking place at seven of their warehouses around the United States. These allegations included failing to report thousands of suspicious orders for hydrocodone that Cardinal distributed to pharmacies that then filled illegitimate prescriptions originating from rogue internet pharmacy websites.

52. In connection with the 2008 settlement agreement, the DEA stated that "[d]espite [its] repeated attempts to educate Cardinal Health on diversion awareness and prevention, Cardinal engaged in a pattern of failing to report blatantly suspicious orders for controlled substances filled by its distribution facilities located throughout the United States." The DEA concluded that

"Cardinal's conduct allowed the 'diversion' of millions of dosage units of hydrocodone from legitimate to non-legitimate channels."

53. In 2012, Cardinal reached another settlement with the DEA relating to systemic opioid diversion in its Florida distribution center. Cardinal's Florida center received a two-year license suspension for supplying more than 12 million dosage units of oxycodone to only four area pharmacies, nearly fifty times as much oxycodone as it shipped to the rest of Florida and an increase of 241% in a mere two years. The DEA found Cardinal's own investigator had warned Cardinal against selling opioids to these pharmacies, but that Cardinal did nothing to notify the DEA or to halt the supply of drugs to the suspect pharmacies. Instead, Cardinal's opioid shipments to those pharmacies *increased*.

54. In the 2012 settlement agreement, Cardinal agreed that it had (i) failed to maintain effective controls against the diversion of controlled substances, including failing to conduct meaningful due diligence to ensure that controlled substances were not diverted; (ii) failed to detect and report suspicious orders of controlled substances as required; and (iii) failed to adhere to the provisions of the prior 2008 settlement agreement.

55. In December 2016, Cardinal payed a $44 million penalty to settle charges that it had again violated a prior settlement agreement by failing to prevent the diversion of oxycodone for illegal purposes. That settlement concerned allegations that Cardinal had failed to report suspicious orders across Washington, Maryland, New York, and Florida. The very same Florida distribution center that was at the center of the 2012 settlement was again implicated.

56. In January 2017, Cardinal paid $20 million to settle a lawsuit brought by West Virginia concerning its shipments of increasing amounts of opioids to numerous counties without utilizing proper controls.

57. Defendant McKesson has agreed to pay over $163 million to resolve government charges regarding diversion.

58. In May 2008, McKesson entered into a settlement agreement with the DEA concerning its failure to maintain effective controls against the diversion of controlled substances in Florida, Maryland, Colorado, Texas, Utah, and California. McKesson agreed to pay a $13.25 million fine for its failure to report suspicious orders from rogue internet pharmacies around the country that resulted in millions of doses of controlled substances being diverted.

59. In 2008, McKesson "recognized that it had a duty to monitor its sales of all controlled substances and report suspicious orders to DEA." Specifically, it agreed to "maintain a compliance program designed to detect and prevent the diversion of controlled substances, inform DEA of suspicious orders . . . and follow the procedures established by its Controlled Substance Monitoring Program." However, McKesson failed to do so. It was later revealed that McKesson's system for detecting "suspicious orders" from pharmacies was so ineffective and dysfunctional that, in a five-year period, it filled more than 1.6 million orders, but reported just 16 of those as suspicious—all of which were from one single consumer.

60. In January 2017, McKesson further admitted to its ongoing breach of duties to monitor, report, and prevent suspicious orders of oxycodone and hydrocodone by entering into a settlement agreement with the DEA and Department of Justice.

61. The 2017 agreement required McKesson to pay a record $150 million penalty for its operations in California, Colorado, Florida, Illinois, Massachusetts, Michigan, Missouri, Kentucky, Nebraska, New Jersey, Ohio, Washington, West Virginia, and Wisconsin. In that agreement, McKesson admitted that, between January 1, 2009 and January 17, 2017, it "did not identify or report to DEA certain orders placed by certain pharmacies which should have been

detected by McKesson as suspicious based on the guidance contained in the DEA letters." Despite its obligations, McKesson "failed to properly monitor its sales of controlled substances and/or report suspicious orders to DEA …" McKesson further admitted that it had "distributed controlled substances to pharmacies even though those [McKesson] Distribution Centers should have known that the pharmacists practicing within those pharmacies had failed to fulfill their corresponding responsibility to ensure that controlled substances were dispensed pursuant to prescriptions issued for legitimate medical purposes by practitioners acting in the usual course of their professional practice …" It also admitted that it had "failed to maintain effective controls against diversion of particular controlled substances into other than legitimate medical[,] scientific[,] and industrial channels by sales to certain of its customers…"

62. Defendant AmerisourceBergen has paid $16 million in settlements and had certain licenses revoked as a result of allegations related to the diversion of prescription opioids.

63. In 2007, AmerisourceBergen lost its license to send controlled substances from a distribution center amid allegations that it was not controlling shipments of prescription opioids to internet pharmacies. Over the course of one year, it had distributed 3.8 million dosage units of hydrocodone to "rogue pharmacies." The DEA suspended AmerisourceBergen's registration after determining that "the continued registration of this company constitutes an imminent danger to public health and safety."

64. In 2012, AmerisourceBergen was implicated for failing to protect against the diversion of particular controlled substances into non-medically necessary channels.

65. In January 2017, AmerisourceBergen paid West Virginia a $16 million penalty for knowingly shipping increasing amounts of opioids without sufficient monitoring or control, which facilitated six-fold increases in opioid consumption in some West Virginia counties.

66. Walgreens has been penalized for serious and flagrant violations of its duties to prevent diversion. Indeed, Walgreens agreed to pay $80 million to resolve allegations that it committed an unprecedented number of recordkeeping and dispensing violations, including negligently allowing controlled substances such as oxycodone and other prescription painkillers to be diverted for abuse and illegal black-market sales.[4] The settlement resolved investigations into violations in Florida, New York, Michigan, and Colorado that resulted in the diversion of millions of opioids into illicit channels.

67. As alleged, Walgreens' Florida pharmacies each allegedly ordered more than one million dosage units of oxycodone in 2011—more than ten times the average amount.[5] They increased their orders over time, in some cases as much as 600% in the space of just two years, including, for example, supplying a town of 3,000 with 285,800 orders of oxycodone in a one-month period. Yet Walgreens' corporate attorneys suggested, in reviewing the legitimacy of prescriptions coming from pain clinics, that "if these are legitimate indicators of inappropriate prescriptions perhaps we should consider not documenting our own potential noncompliance."[6]

68. Defendant Walgreens' settlement stemmed from an investigation into Walgreens' distribution center in Jupiter, Florida, which was responsible for significant opioid diversion in Florida. Walgreens' corporate headquarters pushed to increase the number of oxycodone sales to Walgreens' Florida pharmacies and provided bonuses for pharmacy employees based on number

[4] *Walgreens Agrees To Pay A Record Settlement Of $80 Million For Civil Penalties Under The Controlled Substances Act*, U.S. Dep't of Just. (June 11, 2013), https://www.justice.gov/usao-sdfl/pr/walgreens-agrees-pay-record-settlement-80-million-civil-penalties-under-controlled.

[5] Order to Show Cause and Immediate Suspension of Registration, *In the Matter of Walgreens Co.* (Drug Enf't Admin. Sept. 13, 2012).

[6] *Id.*

of prescriptions filled at the pharmacy in an effort to increase oxycodone sales. In July 2010, Defendant Walgreens ranked all of its Florida stores by number of oxycodone prescriptions dispensed in June of that year and found that the highest-ranking store in oxycodone sales sold almost 18 oxycodone prescriptions per day. All of these prescriptions were filled by the Jupiter Center.[7]

69. Walgreens has also settled with a number of state attorneys general, including West Virginia ($575,000) and Massachusetts ($200,000).[8]

70. The Massachusetts Attorney General's Medicaid Fraud Division found that, from 2010 through most of 2015, multiple Walgreens stores across the state failed to monitor the opioid use of some Medicaid patients who were considered high-risk.

71. In January 2017, an investigation by the Massachusetts Attorney General found that some Walgreens pharmacies failed to monitor patients' drug use patterns and did not use sound professional judgment when dispensing opioids and other controlled substances—despite the context of soaring overdose deaths in Massachusetts. Walgreens agreed to pay $200,000 and follow certain procedures for dispensing opioids.[9]

72. Walmart was or should have been on notice of these enforcement actions. Further, because of (among other sources of information) regulatory and other actions taken against other national retail pharmacies, actions taken against others pertaining to prescription opioids obtained from Walmart's retail stores, complaints and information from employees and other agents, and

[7] *Id.*

[8] *Walgreens to Pay $200,000 Settlement for Lapses with Opioids*, APhA (Jan. 25, 2017), https://www.pharmacist.com/article/walgreens-pay-200000-settlement-lapses-opioids.

[9] *Id.*

the massive volume of opioid prescription drug sale data that it developed and monitored, Walmart was well aware that its distribution and dispensing activities fell far short of legal requirements. Upon information and belief, Walmart failed to utilize this information to effectively prevent diversion, both as a distributor and as a national pharmacy.

73. Despite being repeatedly penalized by the DEA and having access to complete information regarding red flags of diversion in and around Mississippi, none of the Defendants have altered their conduct.

## D. Defendants Contributed to and Caused the Opioid Epidemic in the State of Mississippi

74. Defendants' failures to monitor, detect, investigate, refuse, and report suspicious orders are direct and proximate causes of the widespread diversion of prescription opioids for non-medical purposes into the State.

75. The unlawful diversion of prescription opioids is a direct and proximate cause and/or substantial contributing factor to the opioid epidemic, prescription opioid abuse, addiction, and death in the State of Mississippi. *See* Richard C. Dart, MD, *et al.*, *Trends in Opioid Analgesic Abuse and Mortality in the United States*, NEW ENGL. J. MED. 372:241-48 (Jan. 2015) (finding "parallel relationship between the availability of prescription opioid analgesics through legitimate pharmacy channels and diversion and abuse of these drugs and associated adverse outcomes"). The primary purpose of enacting the CSA was to prevent the known dangers associated with the diversion and abuse of controlled substances such as prescription opioids.

76. Defendants intentionally continued their conduct with the knowledge that such conduct was creating an opioid epidemic and causing the harms and damages alleged herein. Defendants knew or should have known, both explicitly and implicitly, that they each have

statutory and regulatory responsibilities to detect and prevent diversion of controlled prescription drugs and to undertake such efforts as businesses registered to do business and distribute controlled substances in the State of Mississippi.

77. The foreseeable harm resulting from a breach of these duties is the diversion of prescription opioids for non-medical purposes and the subsequent plague of opioid addiction. The sheer volume of prescription opioids distributed to pharmacies in the State of Mississippi, and/or to pharmacies from which the Defendants knew the opioids were likely to be diverted into the State, is excessive for the medical need of the community and facially suspicious. Some red flags are so obvious that anyone who engages in the legitimate distribution of controlled substances cannot reasonably claim ignorance of them.

78. While Defendants have profited greatly from the increased sales of opioids, Mississippi citizens have borne the associated costs. As a single measure of that harm, opioids are by far the most commonly prescribed class of controlled substances in Mississippi. During 2017, over 3.3 million opioid prescriptions were dispensed in Mississippi, meaning over half of a million dosage units (*e.g.*, pills) were dispensed every day. The rate of 110.5 opioid prescriptions per 100 persons is enough for each person in Mississippi to have an opioid prescription during 2017. In terms of dosage units, the rate was 6,119.1 opioid dosage units per 100 people - enough for each person in Mississippi to have a supply of 61 opioid dosage units during 2017 alone. The volume of opioids flooding the State has had tragic consequences measured in human lives. The Substance Abuse and Mental Health Services Administration (SAMHSA) estimates that 121,000 Mississippians are currently in need of substance use disorder treatment. The number of reported deaths due to overdose reached a total of 256 last year, with naloxone being administered 2,085 times by Emergency Medical Services. The human toll on

Mississippi's citizens is not only measured by these deaths, but by births as well. According to hospital data, from 2010 through 2015, there were 334 infants discharged from Mississippi hospitals with neonatal abstinence syndrome (NAS) related disorders.

## CLAIMS FOR RELIEF

### Count I

### Public Nuisance

79. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

80. This action is brought by the State to abate the public nuisance created by Defendants.

81. Defendants, individually and in concert with each other, have violated Mississippi law through their contribution to and/or assistance in creating and maintaining a condition that is harmful to the health of Mississippians and interferes with the comfortable enjoyment of life by its citizens.

82. The public nuisance created by Defendants' actions is substantial and unreasonable—it has caused and continues to cause significant harm to the community. The staggering rates of opioid abuse resulting from the Defendants' efforts have caused harm to the community that includes, but is not limited to:

a. Upwards of 30% of all adults have used opioids. This high rate of use has led to unnecessary opioid abuse, addiction, overdose, injuries, and deaths.

b. Children, too, have been harmed by opioids. They have been exposed to medications prescribed to family members or others, resulting in injury, addiction, and death. Easy access to prescription opioids has made opioids a recreational drug of choice among Mississippi teenagers; opioid use among teenagers is only outpaced by marijuana use. Infants have been born addicted to opioids due to prenatal exposure, causing severe withdrawal symptoms and lasting developmental impacts.

c. Mississippians who have never taken opioids have also suffered the costs of the Defendants' public nuisance. Many have endured both the emotional and financial burdens of caring for loved ones addicted to or injured by opioids and the loss of companionship, income, or other support from family members who have used, abused, become addicted to, overdosed on, and/or been killed by opioids.

d. More broadly, opioid use and misuse have driven Mississippians' health care costs higher.

e. Employers have lost the value of productive and healthy employees who have suffered from the adverse consequences of opioid use.

f. Defendants' success in flooding the market with opioids has also created an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury. The Defendants' scheme has created both ends of a new secondary market for opioids—providing both the supply of narcotics to sell and the demand of addicts to buy them.

g. This demand has also created additional illicit markets in other opiates, particularly heroin. The low cost of heroin has led some who initially became addicted to prescription opioids to migrate to cheaper heroin, fueling a new heroin epidemic in the process.

h. The diversion of opioids into the criminal market and the increase in the number of individuals who abuse or are addicted to opioids has increased the demands on emergency services and law enforcement in the State.

i. All of this has caused significant harm to the community—in lives lost; addictions endured; the creation of an illicit drug market and all its concomitant crime and costs; unrealized economic productivity; and broken families and homes.

j. These harms have taxed the State's human, medical, public health, law enforcement, and financial resources.

k. Defendants' interference with the comfortable enjoyment of the life of a substantial number of people is entirely unreasonable because there is little social utility to opioid use and any potential value is outweighed by the gravity of the harm inflicted by the Defendants' actions.

83. Defendants knew or should have known that their overzealous distribution of opioids would create a public nuisance contrary to the public interest of the State of Mississippi and its citizens. *See* Miss. Code Ann. § 41-29-127.

84. Defendants have engaged in the distribution of a monumental number of opioids for use by the citizens of the State of Mississippi.

85. Defendants knew or should have known that their intrusive distribution of opioids would lead to addiction and other adverse consequences and that the larger community would suffer as a result in derogation of the public interest of the State of Mississippi and its citizens. *See* Miss. Code Ann. § 41-29-127.

86. Defendants' actions were, at the least, a substantial factor in opioids becoming widely available and widely used. Without these actions of the Defendants, opioid use would not have become so widespread, and the enormous public health hazard of opioid overuse, abuse, and addiction that now exists would have been averted.

87. The health and safety of the citizens of the State, 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 legitimate concern.

88. The public nuisance created, perpetuated, and maintained by Defendants can be abated, and further recurrence of such harm and inconvenience can be prevented.

89. Defendants' conduct has effected and continues to affect a considerable number of people within the State of Mississippi and is likely to continue to cause significant harm to chronic pain patients who use opioids, their families, and the community at large.

90. Defendants created or assisted in the creation of the epidemic of opioid use and injury, and each Defendant is jointly and severally liable for abating it.

**Count II**

**Negligence**

91. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

92. At all relevant times, Defendants had a duty to exercise reasonable care in distributing highly dangerous opioids in the State of Mississippi. Defendants had a duty to exercise reasonable care under the circumstances including not causing foreseeable harm to others.

93. By engaging in negligent conduct that created an unreasonable risk of harm to others, Defendants failed to exercise reasonable care to prevent harm to others. To the contrary, reasonably prudent distributors of opioids would have anticipated that the scourge of opioid addiction would wreak havoc on communities, and significant costs would be imposed upon the governmental entities of those communities. Reasonably prudent distributors know that failing to report and stop suspicious orders will lead to the diversion of the opioids they distribute.

94. Defendants are part of a limited and regulated class of entities authorized to legally sell and distribute controlled substances. This role places a great responsibility upon them in relation to the State of Mississippi and its citizens.

95. Upon information and belief, Defendants failed to exercise reasonable care in failing to prevent the diversion of opioids and therefore repeatedly negligently breached their respective duties.

96. The use, abuse, and diversion of opioids resulting in addiction, morbidity, and increased mortality in the State of Mississippi was a foreseeable harm of Defendants' breach of those duties.

97. The State has suffered damages as a direct and proximate result of the negligent failures by the Defendants and their employees and/or agents.

**Count III**

**Violations of Mississippi's Consumer Protection Act**

**(MISS. CODE ANN. § 75-24-1, *et seq*.)**

98. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

99. Defendants' actions, as complained of herein, constitute unfair methods of competition and unfair trade practices in violation of Miss. Code Ann. § 75-24-5. Specifically, and without limitation, the Defendants:

> knowingly, or with reason to know, and willfully used unfair trade practices in violation of Miss. Code Ann. § 75-24-5(1), in general, consisting of:
>
> > engaging, and continuing to engage, in unfair trade practices that are illegal, immoral, unethical, oppressive, unscrupulous, or substantially injurious to aggrieved consumers including misrepresenting, failing to state, concealing, suppressing and/or omitting facts regarding the charging and collection of fees.
>
> knowingly, or with reason to know, and willfully misrepresenting the source, sponsorship, approval, or certification of good or services in violation of Miss. Code Ann. § 75-24-5(2)(e), by, in general:
>
> > engaging, and continuing to engage, in misrepresentations that are immoral, unethical, oppressive, unscrupulous, or substantially injurious to aggrieved consumers including misrepresenting, failing to state, concealing, suppressing and/or omitting facts regarding the efficacy and usefulness of the opioids and collection of funds related to the sale of those opioids offered by the Defendants to consumers.

100. Defendants' unfair acts and practices impacted commerce and proximately caused injury to the State and/or consumers. As a result of the Defendants' unfair conduct, consumers, including the State of Mississippi, have incurred millions of dollars for products that were either illegal, misrepresented, unfair, and/or harmful to consumers in derogation of the public interest of the State of Mississippi and its citizens.

101. Defendants' actions as alleged herein were an inequitable assertion of their power, position, and/or knowledge to the detriment of consumers, including the State of Mississippi, through the Defendants' unfair and deceptive practices.

102. Because of these violations and Defendants' involvement in the actions described herein, consumers paid for goods that were illegal, deceptive, usurious, oppressive, and the products of an illegal and fraudulent scheme involving Defendants and others.

103. As a result of Defendants' knowing and willing violations described herein, consumers suffered substantial injuries and damages for which the State of Mississippi is entitled to restitution and other relief under Miss. Code Ann. § 75-24-11 and § 75-24-23.

104. Additionally, the State seeks a permanent injunction against the Defendants' future unfair trade practices under Miss. Code Ann. § 75-24-9.

105. The State of Mississippi is also entitled to civil penalties of up to $10,000.00 for each violation resulting from each Defendants' unlawful conduct, investigative costs, and attorneys' fees under Miss. Code Ann. § 75-24-19 (1)(b). Under Mississippi law, these penalties will not only deter future similar conduct from Defendants and others, but will also benefit consumers in the future by funding "for consumer fraud education and investigative and enforcement operations of the Office of Consumer Protection."

**Count IV**

**Unjust Enrichment**

106. Plaintiff repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

107. As a direct and proximate result of the unlawful conduct described above, Defendants have been and will continue to be unjustly enriched.

108. Defendants have benefited from their unlawful acts by causing millions of illegal and suspicious orders to be distributed in violation of their legal duties. It would be inequitable and not in good conscience for Defendants to retain any ill-gotten gains earned as a result of the

conduct alleged herein, which gains would not exist but for the payments made by the State and other payors.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays:

A. That the acts alleged herein be adjudged and decreed to be unlawful in violation of State statutory and common law;

B. That Plaintiff recover all measures of damages, including injunctive relief, allowable under the State statutes identified herein and the common law, and that judgment be entered against Defendants in favor of Plaintiff;

C. That Plaintiff recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorneys' fees as provided by law;

D. That Defendants be ordered to pay civil penalties for violations of applicable statutes;

E. That Defendants be ordered to abate the public nuisance they created in violation of State law; and

F. That the Court order such other and further relief as the Court deems just, necessary, and appropriate.

DATED this the 12th day of September, 2019.

Respectfully submitted,
STATE OF MISSISSIPPI
JIM HOOD, ATTORNEY GENERAL

*/s/ Donald L. Kilgore*
Donald L. Kilgore (MSB No. 3758)
Jacqueline H. Ray (MSB No. 100169)
G. Garland Lyell, III (MSB No. 1653)

Special Assistant Attorney General
Office of the Mississippi Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Tel: (601) 359-3680
Fax: (601) 359-2003
dkilg@ago.state.ms.us
jacra@ago.state.ms.us
glyel@ago.state.ms.us

OF COUNSEL:

John L. Davidson (MSB No. 9073)
DAVIDSON BOWIE, PLLC
1062 Highland Colony Parkway
200 Concourse, Suite 275
Ridgeland, Mississippi 39157
Tel: (601) 932-0028
jdavidson@dbslawfirm.net

Joe Tatum (MSB No. 10308)
TATUM WADE, PLLC
124 East Amite Street
Jackson, Mississippi 39201
Tel: (601) 948-7770
Fax: (601) 948-1551
jntatum@aol.com