

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

217-2019-CV-00617

Docket No. \_\_\_\_\_

STATE OF NEW HAMPSHIRE

V.

RICHARD S. SACKLER;  
5310 NORTH OCEAN DRIVE #801  
RIVIERA BEACH, FL 33404

JONATHAN D. SACKLER;  
75 FIELD POINT CIRCLE  
GREENWICH, CT 06830

MORTIMER D.A. SACKLER;  
8 EAST 75TH STREET  
NEW YORK, NY 10021

KATHE A. SACKLER;  
76 CLAPBOARD HILL ROAD  
WESTPORT, CT 06880

**COMPLAINT**

NOW COMES the State of New Hampshire (“State”), by and through the Office of the Attorney General, and complains as follows against the above-captioned Defendants.

**I. PRELIMINARY STATEMENT**

1. The State brings this action pursuant to his statutory and common law authority to redress Richard S. Sacker’s, Jonathan D. Sackler’s, Mortimer D.A. Sackler’s, Kathe A. Sackler’s,

(together, “the Sacklers”) campaign to unlawfully promote and distribute opioids in New Hampshire through their control and use of Purdue Pharma, L.P.’s, Purdue Pharma Inc.’s, the Purdue Frederick Company (together, “Purdue”), and the fraudulent transfer of funds generated from such sales to the Sacklers.

2. Prescription opioid are dangerous drugs that have harmed the public health, safety and welfare affecting every community in our State causing the epidemic of opioid addiction and death.

3. At the direction of the Sacklers, Purdue created the epidemic and profited from it through a web of illegal deceit.<sup>1</sup> First, Purdue deceived New Hampshire doctors and patients to get more and more people on its dangerous drugs. Second, Purdue misled them to use stronger and more dangerous doses for longer periods of time. All the while, Purdue peddled falsehoods to keep patients away from safer alternatives. Even when Purdue knew people in New Hampshire were addicted and dying, Purdue treated doctors and their patients as targets to sell more drugs. At the top of Purdue, a small group of executives and board members led the deception and pocketed billions of dollars.

4. In an effort to redress the harms posed by the opioid epidemic created by Purdue, the State of New Hampshire filed a lawsuit against Purdue. *See State of New Hampshire v. Purdue Pharma, L.P., et al.*, Docket No. 217-2017-CV-00402, Complaint (N.H. Super. Aug. 8, 2017) (attached as Exhibit A). The factual allegations in Exhibit A are incorporated by reference as if

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<sup>1</sup> The State maintains that other Defendants also caused and contributed to the epidemic as set forth in *State of New Hampshire v. Cardinal Health, Inc. and McKesson Corp.*, Docket No. 217-2019-cv-00220, Complaint (N.H. Super. Apr. 3, 2019); *State of New Hampshire v. Johnson & Johnson, et al.*, Docket No. 217-2018-CV-00678, Complaint (N.H. Super. Oct. 18, 2018); *State of New Hampshire v. Mallinckrodt Enterprises, LLC*, Docket No. 217-2019-CV-00563, Complaint (N.H. Superior Court August 28, 2019).

fully set forth herein.

5. New Hampshire brings the instant action to hold Defendants accountable for their conduct; and seeks to void transfers or distributions of Purdue's fraudulently secured revenue, and disgorgement, restitution, abatement, damages, and injunctive and equitable relief to redress the harm and halt these unfair, deceptive, and unlawful practices.

## II. PARTIES

6. The State of New Hampshire brings this action through its Attorney General's Office. Under the Consumer Protection Act, the Attorney General may bring an action in the name of the State for injunctive relief, restitution, and penalties where, as here, he "has reason to believe that trade or commerce declared unlawful by this chapter has been, is being, or is about to be conducted" by any person, including natural persons, corporations, and partnerships. RSA 358-A:4, III; RSA 358-A:1, I.

7. The State also has standing *parens patriae* to protect the health and well-being, both physical and economic, of its residents and municipalities. Opioid use and abuse has affected a substantial segment of the population of New Hampshire.

8. The Defendants include former directors and officers of Purdue Pharma Inc. In New Hampshire, directors, officers, and employees of corporations are not immune from jurisdiction or liability when they break the law. Instead, every individual is accountable for his or her actions.

9. Defendants Richard Sackler, Jonathan Sackler, Kathe Sackler, and Mortimer D.A. Sackler controlled Purdue's misconduct. Each of them took a seat on the Board of Directors of Purdue Pharma Inc. Together, they always held the controlling majority of the Board, which gave them full power over both Purdue Pharma Inc. and Purdue Pharma L.P. They directed deceptive sales and marketing practices within Purdue, sending hundreds of orders to executives and line employees. From the money that Purdue collected selling opioids, they paid themselves and their family billions of dollars.

10. Jonathan Sackler and Kathe Sackler reside in Connecticut. Mortimer D.A. Sackler resides in New York. Richard Sackler resides in Florida.

11. The Sacklers, upon information and belief, have long held an ownership interest in Purdue, and continue to hold such an ownership interest. Through their decisions and directives, the Sacklers knowingly caused the promotion and sales of Purdue opioids in New Hampshire, from the sales messages passed directly to New Hampshire prescribers by Purdue sales representatives, to the third-party articles and webinars made available to New Hampshire prescribers by Purdue. Furthermore, the Sacklers also have interest in drugs developed by Purdue to treat opioid addiction and overdose. Having caused the opioid epidemic, the Sacklers, through their companies, are poised to profit off of its abatement.

### **III. JURISDICTION AND VENUE**

12. The Court has subject-matter jurisdiction over this action under RSA 491:7 and RSA 358-A:4.

13. This Court has personal jurisdiction over the Sacklers because they personally directed Purdue to conduct the deceptive, negligent, fraudulent acts or practices alleged herein that took place and caused harm in New Hampshire and/or because they have the requisite minimum contacts with New Hampshire necessary to permit this court to exercise jurisdiction. Through their decisions and directives, the Sacklers knowingly caused the promotion and sale of Purdue opioids in New Hampshire, including the deceptive sales messages given to New Hampshire prescribers by sales representatives and third parties. Business activities that the Sacklers directed include Purdue's employment of a substantial number of sales representatives nationwide, including in New Hampshire, to visit doctors in their local offices for the purpose of delivering marketing messages and encouraging such doctors to write prescriptions for Purdue's opioid products. Consequently, Purdue's opioids are prescribed throughout New Hampshire by prescribers who have been exposed to Purdue's deceptive marketing, and with the Sacklers'

knowledge and subject to their control, Purdue has caused its opioids to be distributed throughout New Hampshire and ultimately taken by consumers in New Hampshire.

14. Additionally, this Court has personal jurisdiction over the Sacklers because they directed Purdue's distribution of funds generated from sales of prescription opioids in New Hampshire. The Sacklers directed Purdue to distribute funds to themselves, either directly or indirectly, knowing that Purdue faced certain liabilities related to prescription opioids—including to the State of New Hampshire.

15. Venue is proper in this Court because Defendants are all non-residents. RSA 507:9; RSA 358-A:4, III(a)

**IV. THE SACKLERS LED PURDUE'S MISCONDUCT ALL THE WHILE DISTRIBUTING PURDUE'S PROFITS TO THEMSELVES.**

16. The State incorporates each paragraph of Exhibit A as if fully set forth herein.

17. The Sacklers were the primary architects and beneficiaries of Purdue's deception and unlawful conduct.

18. The Sacklers controlled Purdue and directed Purdue's misconduct as described herein and in Exhibit A.

19. Each of the Sacklers directed sales representatives to promote opioids to prescribers in New Hampshire.

20. Each of the Sacklers knew and intended that the sales representatives in New Hampshire would promote opioid sales that are risky for patients, including by:

- falsely blaming the dangers of opioids on patients instead of the addictive drugs;
- pushing opioids for elderly patients, without disclosing the higher risks;
- pushing opioids for patients who had never taken them before, without disclosing the risks;

- pushing opioids as substitutes for safer medications, with improper comparative claims;
- falsely assuring doctors and patients that reformulated OxyContin was safe;
- pushing doctors and patients to use higher doses of opioids, without disclosing the higher risks;
- pushing doctors and patients to use opioids for longer periods of time, without disclosing the higher risks; and
- encouraging and failing to report prescribing by doctors that Purdue knew were writing dangerous prescriptions for its opioids.

21. Each of the Sacklers knew and intended that the sales representatives would not tell New Hampshire doctors and patients the truth about Purdue's opioids. Rather, they knew that these actions would achieve their purpose by concealing the truth.

22. Each of the Sacklers knew and intended that prescribers, pharmacists, and patients in New Hampshire would rely on Purdue's deceptive sales campaign to prescribe, dispense, and take Purdue opioids. Securing that reliance was the purpose of the sales campaign.

23. Each of the Sacklers knew and intended that staff reporting to them would pay top prescribers tens of thousands of dollars to encourage other doctors to write dangerous prescriptions in New Hampshire.

24. Each of the Sacklers knew and intended that staff reporting to them would reinforce these misleading acts through thousands of additional acts in New Hampshire, including by sending deceptive publications to New Hampshire doctors and deceptively promoting Purdue opioids to New Hampshire providers and patients.

25. Each of the Sacklers knowingly and intentionally took money from Purdue's

deceptive sales and marketing in New Hampshire.

26. Each of the Sacklers knowingly and intentionally sought to conceal his or her misconduct.

27. In 2007, the Sacklers and Purdue were given a second chance. Thus, the misconduct of Richard, Jonathan, Kathe, and Mortimer Sackler thereafter was particularly deceptive, unreasonable, and unlawful. From the 1990s until 2007, these individuals directed a decade of misconduct, which led to criminal convictions and commitments that Purdue would not deceive doctors and patients again. That context confirms that their misconduct following 2007 was knowing and intentional.

28. The Sackler family's first drug company was the Purdue Frederick Company, which they bought in 1952. In 1990, they created Purdue Pharma Inc. and Purdue Pharma L.P. Soon thereafter, Richard, Jonathan, Kathe, and Mortimer Sackler became members of the Board.<sup>2</sup>

29. The Sacklers demanded that their family control Purdue. From 1990 through 2018, their family held the majority of seats on the Board. In 1994, Jonathan Sackler issued a memorandum to Purdue staff insisting that the Sacklers receive "all Quarterly Reports and any other reports directed to the Board."<sup>3</sup>

30. In 1996, Purdue launched OxyContin, which became one of the deadliest drugs of all time.<sup>4</sup> The FDA scientist who originally evaluated OxyContin initially wrote: "Care should be

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<sup>2</sup> Purdue Pharma Inc.'s 1991 filings with the Secretary of State of Connecticut state that it was incorporated in New York on October 2, 1990. Richard, Jonathan, and Kathe Sackler are all listed as directors on the earliest (1991) report. Mortimer appears on the 1995 report.

<sup>3</sup> 1994-04-28 memo from Jonathan Sackler, PDD1701827936.

<sup>4</sup> *See, e.g.*, 2016-03-15 telebriefing by CDC Director Tom Frieden ("We know of no other medication that's routinely used for a nonfatal condition that kills patients so frequently ... those who got the highest doses of opioids, more than 200 MMEs per day had a 1 in 32 chance of dying in just 2 1/2 years ... almost all the opioids on the market are just as addictive as heroin."), available at <https://www.cdc.gov/media/releases/2016/t0315-prescribing-opioids-guidelines.html>.



taken to limit competitive promotion.”<sup>5</sup> The Sacklers disagreed. Rather, the Sacklers viewed restrictions on opioids as an obstacle to greater profits since the beginning. The Sacklers considered whether they could sell OxyContin in some countries as an uncontrolled drug in order to make more money. Staff reported to Richard Sackler that selling OxyContin as “non-narcotic,” without the safeguards that protect patients from addictive drugs, would provide “a vast increase of the market potential.”<sup>6</sup> The inventor of OxyContin, Robert Kaiko, wrote to Richard to oppose this dangerous idea. Kaiko wrote that he was “very concerned” about the danger of selling OxyContin without strict controls. Kaiko warned: “I don’t believe we have a sufficiently strong case to argue that OxyContin has minimal or no abuse liability.” To the contrary, Kaiko wrote, “oxycodone containing products are still among the most abused opioids in the U.S.” Kaiko predicted: “If OxyContin is uncontrolled, ... it is highly likely that it will eventually be abused.”<sup>7</sup> Richard Sackler responded: “How substantially would it improve your sales?”<sup>8</sup>

31. Richard Sackler spoke as the Senior Vice President responsible for sales at the launch party for OxyContin. He asked the audience to imagine a series of natural disasters: an earthquake, a volcanic eruption, a hurricane, and a blizzard. He said: “the launch of OxyContin Tablets will be followed by a blizzard of prescriptions that will bury the competition. The prescription blizzard will be so deep, dense, and white....”<sup>9</sup> Over the next twenty years, the Sacklers made Richard’s boast come true. They created a manmade disaster. Their blizzard of dangerous prescriptions buried children, parents, and grandparents throughout New Hampshire, and the burials continue with no end in sight.

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<sup>5</sup> 1995-10 Overall Conclusion to 1995 FDA review, Curtis Wright, #785793.1.

<sup>6</sup> 1997-02-27 email from Walter Wimmer, PDD1701346000.

<sup>7</sup> 1997-02-27 email from Robert Kaiko, PDD1701345999.

<sup>8</sup> 1997-03-02 email from Richard Sackler, PDD1701345999.

<sup>9</sup> PKY180280951.

32. The Sacklers were behind Purdue’s decision to deceive doctors and patients from the beginning. In 1997, Richard Sackler, Kathe Sackler, and other Purdue executives determined—and recorded in secret internal correspondence—that doctors had the crucial misconception that OxyContin was weaker than morphine, which led them to prescribe OxyContin much more often—even as a substitute for Tylenol.<sup>10</sup> In fact, OxyContin is more potent than morphine. Richard Sackler directed Purdue staff not to tell doctors the truth, because the truth could reduce OxyContin sales.<sup>11</sup>

33. From the beginning, the Sacklers also steered Purdue’s strategy to push opioids with the false promise that they create an enhanced “lifestyle.” In 1998, Richard Sackler instructed Purdue’s executives that OxyContin tablets provide more than merely “therapeutic” value and instead “enhance personal performance,” similar to Viagra.<sup>12</sup>

34. Most of all, the Sacklers were motivated by greed. Amassing millions of dollars was not enough—they sought billions. The Sacklers cared more about profits than about patients, their employees, or the truth. In 1999, when employee Michael Friedman reported to Richard Sackler that Purdue was making more than \$20,000,000 per week, Richard Sackler replied immediately, at midnight, that the sales were “not so great.” “After all, if we are to do 900M this year, we should be running at 75M/month. So it looks like this month could be 80 or 90M. Blah, humbug. Yawn. Where was I?”<sup>13</sup>

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<sup>10</sup> 1997-06-12 email from Richard Sackler, PDD8801141848 (Staff reported: “Since oxycodone is perceived as being a ‘weaker’ opioid than morphine, it has resulted in OxyContin being used much earlier for non-cancer pain. Physicians are positioning this product where Percocet, hydrocodone, and Tylenol with Codeine have been traditionally used. Since the non-cancer pain market is much greater than the cancer pain market, it is important that we allow this product to be positioned where it currently is in the physician’s mind.” Richard Sackler replied: “I think you have this issue well in hand. If there are developments, please let me know.”); 1997-05-28 email from Richard Sackler PDD1508224773; 1997-04-23 email from Richard Sackler, PDD1701801141.

<sup>11</sup> 1997-06-12 email from Richard Sackler, PDD8801141848; 1997-05-28 email from Richard Sackler PDD1508224773; 1997-04-23 email from Richard Sackler, PDD1701801141.

<sup>12</sup> 1998-09-28 email from Richard Sackler, PDD1701546497.

<sup>13</sup> 1999-06-17 email from Michael Friedman, #228728.1.

35. Richard Sackler became the CEO of Purdue in 1999. Jonathan, Kathe, and Mortimer Sackler were Vice Presidents.<sup>14</sup> Purdue hired hundreds of sales representatives, who were taught false claims to use while selling drugs.<sup>15</sup> Purdue managers tested the sales representatives on the most important false statements during training at company headquarters. On the crucial issue of addiction, which would destroy the lives of many, Purdue trained its sales representatives to misrepresent the risk of addiction. Specifically, they were trained to tell doctors that the risk of addiction was “less than one percent.”<sup>16</sup> Purdue mailed thousands of doctors promotional videos with that same false claim:

36. “There’s no question that our best, strongest pain medicines are the opioids. But these are the same drugs that have a reputation for causing addiction and other terrible things. Now, in fact, the rate of addiction amongst pain patients who are treated by doctors is much less than one percent. They don’t wear out, they go on working, they do not have serious medical side effects.”<sup>17</sup>

37. A sales representative told a reporter: “We were directed to lie. Why mince words about it? Greed took hold and overruled everything. They saw that potential for billions of dollars and just went after it.”<sup>18</sup>

38. In 2000, the Sacklers learned that a reporter was “sniffing about the OxyContin abuse story.”<sup>19</sup> The Sackler family put that topic on the agenda for the next Board meeting and began covering their tracks. They planned a response that “deflects attention away from the

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<sup>14</sup> 2000-03-26, Peter Healy, Opening the Medicine Chest: Purdue Pharma prepares to raise its profile, #24865.1.

<sup>15</sup> 2003-12-23 GAO Report, pg. 19, PKY183266843 (increase from 771 representatives in 1999 to 1,066 in 2001).

<sup>16</sup> Barry Meier, *Pain Killer* (1 ed. 2003) at 99.

<sup>17</sup> “I Got My Life Back” video, transcript, PDD9521403504.

<sup>18</sup> 2017-10-16, Christopher Glazek, “The Secretive Family Making Billions From The Opioid Crisis,” *Esquire Magazine* (quoting Purdue sales representative Shelby Sherman).

<sup>19</sup> 2000-11-30 email from Michael Friedman, PDD1706196247.

company owners.”<sup>20</sup>

39. Richard Sackler received a plea for help from a Purdue sales representative in January 2001. He described a community meeting at a high school, organized by mothers whose children fatally overdosed on OxyContin. “Statements were made that OxyContin sales were at the expense of dead children and the only difference between heroin and OxyContin is that you can get OxyContin from a doctor.”<sup>21</sup>

40. The next month, a federal prosecutor reported 59 deaths from OxyContin in a single state.<sup>22</sup> Knowing that the reports underestimated the destruction, Richard Sackler wrote to Purdue executives: “This is not too bad. It could have been far worse.”<sup>23</sup> A week later, on February 14, a mother wrote a letter to Purdue.<sup>24</sup>

“My son was only 28 years old when he died from Oxycontin on New Year’s Day. We all miss him very much, his wife especially on Valentines’ Day. Why would a company make a product that strong (80 and 160 mg) when they know they will kill young people? My son had a bad back and could have taken Motrin but his Dr. started him on Vicodin, then Oxycontin then Oxycontin SR. Now he is dead!”

41. A Purdue staff member noted: “I see a liability issue here. Any suggestions?”<sup>25</sup>

42. That same month, Richard Sackler memorialized his solution to the overwhelming evidence of overdose and death: blame and stigmatize people who become addicted to opioids. In fact, Richard Sackler wrote in a confidential email: “we have to hammer on the abusers in every way possible. They are the culprits and the problem. They are reckless criminals.”<sup>26</sup> Richard Sackler followed that approach for the rest of his career: collect the profits of addictive drugs and

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<sup>20</sup> 2000-12-01 email from Mortimer D. Sackler, PDD1706196246. Defendant Mortimer Sackler’s father, the late Mortimer D. Sackler, was also involved in Purdue Pharma during his lifetime.

<sup>21</sup> 2001-01-26 email from Joseph Coggins, #171855.1.

<sup>22</sup> 2001-02-08 email from Mortimer Sacker, PDD8801151727.

<sup>23</sup> 2001-02-08 email from Richard Sackler, PDD8801151727.

<sup>24</sup> 2001-02-14 email to Robin Hogen, #3072810.1.

<sup>25</sup> 2001-02-14 email from James Heins, #3072810.1.

<sup>26</sup> 2001-02-01 email from Richard Sackler, PDD8801133516.

blame the terrible consequences on the people who became addicted. Through their misconduct, the Sacklers harmed New Hampshire families, and the stigma they used as a weapon exacerbated the crisis.

43. Soon after the mother's February 14 letter, the Sackler's aspiration for OxyContin sales came true: the front page of the *New York Times* reported that "OxyContin's sales have hit \$1 billion, more than even Viagra's." The same article noted that "OxyContin has been a factor in the deaths of at least 120 people, and medical examiners are still counting."<sup>27</sup>

44. When *Time* magazine published an article about OxyContin deaths in New England, Purdue employees informed Richard Sackler that they were concerned. Richard responded with a message to his staff. He wrote that *Time*'s coverage of people who lost their lives to OxyContin was not "balanced," and the deaths were the fault of "the drug addicts," rather than Purdue. "We intend to stay the course and speak out for people in pain – who far outnumber the drug addicts abusing our product."<sup>28</sup>

45. That spring, Purdue executives met with the U.S. Drug Enforcement Agency ("DEA"). A senior DEA official, who sat across from Richard Sackler, leaned over the table and told him: "People are dying. Do you understand that?"<sup>29</sup>

46. Yet, at the direction of the Sacklers, Purdue kept pushing opioids and people kept dying. As a result, the company was engulfed in a wave of investigations by state attorneys general, the DEA, and the U.S. Department of Justice. In 2003, Richard Sackler left his position as President of Purdue. After a few more years of investigation, Jonathan, Kathe, and Mortimer

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<sup>27</sup> 2001-03-05 article in *New York Times*, PDD9316101737.

<sup>28</sup> 2001-01-08 letter from Richard Sackler, PDD1501720041.

<sup>29</sup> 2001 meeting described in *Pain Killer: A "Wonder" Drug's Trail of Addiction and Death* by Barry Meier, pg. 158 (2003). The DEA official was Laura Nagel, head of the DEA Office of Diversion Control.

Sackler resigned from their positions as Vice Presidents.<sup>30</sup> But the Sacklers kept control of the company: they still owned Purdue and they still controlled the Board. They paid themselves handsomely, all the while continuing to direct Purdue's deceptive marketing campaign.

47. By 2006, prosecutors found damning evidence that Purdue intentionally deceived doctors and patients about its opioids. The Sacklers voted that their first drug company, the Purdue Frederick Company, should plead guilty to a felony for misbranding OxyContin as less addictive, less subject to abuse and diversion, and less likely to cause adverse events and side effects than other pain medications. The Sacklers also voted that three Purdue executives (Michael Friedman, Paul Goldenheim, and Howard Udell) — but no member of the Sackler family — should plead guilty as individuals.<sup>31</sup> Purdue subsequently approved payments of millions of dollars in compensation for these same executives.

48. In May 2007, the Sacklers voted again to have their company plead guilty and enter a series of agreements, promising that Purdue would never deceive doctors and patients about opioids again. The Purdue Frederick Company confessed to a felony and effectively went out of business.<sup>32</sup> Yet, the Sacklers continued their opioid business through their two other companies: Purdue Pharma Inc. and Purdue Pharma L.P.

49. The Sacklers voted to admit in an Agreed Statement Of Facts that, for more than six years, supervisors and employees intentionally deceived doctors about OxyContin: "Beginning on or about December 12, 1995, and continuing until on or about June 30, 2000, certain Purdue supervisors and employees, with the intent to defraud or mislead, marketed and promoted OxyContin as less addictive, less subject to abuse and diversion, and less likely to cause tolerance

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<sup>30</sup> 2018-09-05 declaration of Jonathan Sackler; 2018-09-08 declaration of Kathe Sackler; 2018-09-06 declaration of Mortimer Sackler.

<sup>31</sup> 2006-10-25 Board minutes, PKY183307486; 2006-10-25 agreement, PPLP004031281.

<sup>32</sup> 2007-05-03 Board minutes, PKY183307494.

and withdrawal than other pain medications.”<sup>33</sup>

50. To remove any doubt, the Sacklers voted to enter into a plea agreement that stated: “Purdue is pleading guilty as set forth [above] because it is guilty of the crimes[.]”<sup>34</sup> Those intentional violations of the law happened while Richard Sackler was CEO; Jonathan, Kathe, and Mortimer Sackler were Vice Presidents; and Richard, Jonathan, Kathe, and Mortimer Sackler were all on the Board.

51. The Sacklers also voted for Purdue to enter a Corporate Integrity Agreement with the U.S. government. The agreement required that the Sacklers ensure that Purdue did not deceive doctors and patients again about Purdue opioids. The Sacklers promised to comply with rules prohibiting such and they were also required to complete training to ensure that they understood the rules. Notably, they were required to report any deception. Richard, Jonathan, Kathe, and Mortimer Sackler each certified in writing to the government that he or she had read and understood the rules and would obey them.<sup>35</sup>

52. Following the 2007 agreements, the Sacklers’ misconduct should have ceased. Instead, the Sacklers decided to break the law repeatedly, expanding their deceptive sales campaign to make more money from more patients on more dangerous doses of opioids.

53. From 2007 through 2018, the Sacklers controlled Purdue’s deceptive sales campaign. They directed the company to hire hundreds more sales representatives, who visited doctors thousands more times. They insisted that sales representatives repeatedly visit the most prolific prescribers. They directed representatives to encourage doctors to prescribe more of the highest doses of opioids. They studied unlawful tactics to keep patients on opioids longer and then

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<sup>33</sup> 2007-05-09 Agreed Statement of Facts, paragraph 20, *available at* <https://www.documentcloud.org/documents/279028-purdue-guilty-plea>

<sup>34</sup> *Id.*, at Plea Agreement.

<sup>35</sup> *Id.*; 2007-05-04 Associate General Counsel’s Certificate, PDD1712900054.

ordered staff to use them. They asked for detailed reports about doctors suspected of misconduct, how much money Purdue made from them, and how few of them Purdue had reported to the authorities. They sometimes demanded more detail than others in the entire company, so staff had to create special reports just for them. Richard Sackler even went into the field to promote opioids to doctors and supervise representatives personally.

54. The Sacklers' micromanagement was so intrusive that staff begged for relief. In fact, the Vice President of Sales and Marketing wrote to the CEO:

“Anything you can do to reduce the direct contact of Richard into the organization is appreciated.”<sup>36</sup>

55. The Sacklers' directions were followed. When the Sacklers berated sales managers, the managers turned around and delivered the message to the representatives in the field. When Richard Sackler wrote to managers, “This is bad,”<sup>37</sup> to criticize the sales of Purdue's Butrans opioid, the managers in turn drafted a warning for employees:

“Just today, Dr. Richard sent another email, ‘This is bad,’ referring to current Butrans trends.”<sup>38</sup>

56. The Sacklers cared most of all about profit. Upon information and belief, from 2007 to 2018, they voted to direct Purdue to pay their family billions of dollars, including profits from opioids sold in New Hampshire. These payments show the absolute control that the Sacklers exercised over Purdue. These massive payments were the motivation for the Sacklers' misconduct. Further, these payments were deliberate decisions to benefit from deception in New Hampshire, at great cost to the State, its communities, and its residents.

57. On Valentine's Day in 2008, the Sacklers voted to pay former CEO and criminal

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<sup>36</sup> 2012-02-07 email from Russell Gasdia, PPLPC012000368569.

<sup>37</sup> 2012-02-07 email from Richard Sackler, PPLPC012000368430.

<sup>38</sup> 2012-02-07 email from Windell Fisher, PPLPC012000368500.



convict Michael Friedman \$3,000,000.<sup>39</sup> It was one of several multi-million-dollar payments to the convicted executives by the Sackler family.

58. On April 18, 2008 Richard Sackler sent Kathe, Jonathan, and Mortimer Sackler a secret memo about how to keep money flowing to their family. Richard wrote that Purdue's business posed a "dangerous concentration of risk." After the criminal investigations that almost reached the Sacklers, Richard wrote that it was crucial to install a CEO who would be loyal to the family: "People who will shift their loyalties rapidly under stress and temptation can become a liability from the owners' viewpoint." Richard recommended John Stewart for CEO because of his loyalty. Richard also proposed that the family should either sell Purdue in 2008 or, if they could not find a buyer, milk the profits out of the business and "distribute more free cash flow" to themselves.<sup>40</sup>

59. That month, the Sacklers voted to have Purdue pay their family \$50,000,000. From the 2007 convictions until 2018, the Sacklers voted dozens of times to pay out Purdue's opioid profits to their family — in total more than four billion dollars.<sup>41</sup>

60. When the Sacklers directed Purdue to pay their family, they knew and intended that they were paying themselves from opioid sales in New Hampshire. Purdue and the Sacklers

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<sup>39</sup> 2008-02-14 Board minutes, PKY183212622.

<sup>40</sup> 2008-04-18 email and attached memo from Richard Sackler, PDD9316300629-631.

<sup>41</sup> 2008-04-18 Board minutes, PKY183212631-633; 2008-06-27 Board minutes. PKY183212647; 2008-09-25 Board minutes. PKY183212654; 2008-11-06 Board minutes. PKY183212662; 2009-03-05 Board minutes. PKY183212705; 2009-06-26 Board minutes, PKY183212742; 2009-09-23 Board minutes. PKY183212772; 2010-02-04 Board minutes. PKY183212818; 2010-04-01 Board minutes. PKY183212829; 2010-09-10 Board minutes. PKY183212844; 2010-12-02 Board minutes, PKY183212869-70; 2011-04-06 Board minutes. PKY183212896-97; 2011-06-24 Board minutes. PKY183212924-25; 2011-09-01 Board minutes. PKY183212927-28; 2012-07-27 Board [report](#). pg. 44. PPLP004367403; 2012-03-05 email from Edward Mahony, PPLPC012000368627; 2013-11-01 Board report, pg. 3. PPLPC002000186913; 2014-12-03 November flash report. slide 8. PPLPC016000266403; 2015-06-05 mid-year strategic review. slide 55, PPLPC011000036000; 2017-09-14 10 year plan spreadsheet. page "CF — Internal." PPLPCO21000904588.

tracked revenue from New Hampshire.

61. In addition, upon information and belief, Purdue transferred corporate entities in and out of its ownership structure in the United States to avoid settlements or to obtain releases, as suited the Sacklers' financial interests.

#### **V. DEFENDANTS FRAUDULENTLY CONCEALED THEIR MISCONDUCT**

62. At all times relevant to this Complaint, the Sacklers took steps to avoid detection of and to fraudulently conceal their tortious conduct. They hid behind Purdue as the bad actor and disguised their own central role in the deceptive marketing of chronic opioid therapy. They further remained hidden by funding and working through biased science, unbranded marketing, third-party advocates, and professional associations. They hid behind the assumed credibility of these sources and relied on them to establish the accuracy and integrity of false and misleading messages about the risks and benefits of long-term opioid use for chronic pain.

63. The Sacklers thus successfully concealed from the medical community, patients, and the State facts sufficient to arouse suspicion of the claims that New Hampshire now maintains. New Hampshire did not know of the existence or scope of these Defendants' activities and could not have acquired such knowledge earlier through the exercise of reasonable diligence.

64. As a result of Defendants' efforts to conceal their misconduct, any statutes of limitation otherwise applicable to any claims asserted herein against all Defendants have been tolled by the discovery rule.

## VI. CAUSES OF ACTION

### COUNT ONE CONSUMER FRAUD—DECEPTIVE AND UNFAIR ACTS AND PRACTICES

#### Violations of the Consumer Protection Act, RSA 358-A

65. The State realleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and in Exhibit A as though fully alleged herein.

66. The Consumer Protection Act makes it unlawful for any person to engage in “any unfair or deceptive act or practice in the conduct of any trade or commerce within this state.” RSA 358-A:2.

67. The Sackler’s conduct as described herein and in Exhibit A violated RSA 358-A:2 because it was intended to, and likely did, deceive consumers in the course of opioid marketing activities within New Hampshire.

68. At all times relevant to this Complaint, the Sacklers violated RSA 358-A:2 by engaging in or directing the following deceptive acts or practices:

- a) making and disseminating false or misleading statements about the use of opioids to treat chronic pain;
- b) causing false or misleading statements about opioids to be made or disseminated;
- c) making statements to promote the use of opioids to treat chronic pain that omitted or concealed material facts; and
- d) failing to correct prior misrepresentations and omissions about the risks and benefits of opioids.

69. The Sackler’s directed or made statements about the use of opioids to treat chronic pain, which were not supported by or were contrary to the scientific evidence, as confirmed by the CDC and FDA based on that evidence.

70. Further, the Sacklers directed or made omissions that were false and misleading in their own right and rendered even seemingly truthful statements about opioids false and misleading.

71. At the time they made or disseminated its false and misleading statements or caused these statements to be made or disseminated, the Sacklers knew or recklessly disregarded that the statements were false or misleading and therefore likely to deceive the public. In addition, the Sacklers knew or recklessly disregarded that its false and misleading marketing, including their omissions, created a false or misleading impression of the risks and benefits of long-term opioid use.

72. At all times relevant to this Complaint, the Sacklers also violated RSA 358-A:2 by engaging in or directing the following unfair acts or practices:

- a) untrue, false, unsubstantiated, and misleading marketing in violation of 21 C.F.R. § 202.1(e);
- b) promoting purported advantages of its opioids, including but not limited to decreased risk of abuse or addiction and 12-hour duration of pain relief, without substantial scientific evidence to support its claims, in violation of FDA regulations, including 21 C.F.R. § 202.1(e);
- c) failing, despite the known, serious risks of addiction and adverse effects posed by opioids, to present a fair balance of benefit and risk information in its promotion of opioids, in violation of FDA regulations, including 21 C.F.R. § 202.1(e);
- d) promoting high doses for extended periods of time, in contravention of longstanding public policy to avoid and minimize the risk of addiction and abuse

of controlled substances and the standards of practice expressly stated in Med. 502.05, which mandates that prescriptions of opioids for chronic pain be “for the lowest effective dose for a limited duration”;

- e) frustrating prescribers’ ability to ensure informed consent by accurately explaining the risk of addiction, overdose, and death and outlining the risks and benefits of opioid use, as required under the standards expressed in RSA 318-B:41 and Med. 502.05;
- f) frustrating the public policy in favor of, and the State’s efforts to reduce the overprescribing, overuse, misuse, and abuse of addictive prescription opioids, as reflected in the State’s Prescription Drug Monitoring Program and Comprehensive Response to the opiate/opioid public health crisis; failing to report its knowledge regarding suspicious prescribing in New Hampshire to law enforcement or the Board of Medicine.

73. These acts or practice were unfair in that they offend public policy, reflected in federal law, that requires the truthful and balanced marketing of prescription drugs, 21 C.F.R. § 202.1(e), and the monitoring and reporting of suspicious orders of controlled substances, 21 C.F.R. § 1301.74(b).

74. These acts or practices were unfair in that they offended the State’s public policy, expressed in the Act itself, to protect consumers and competitors from deceptive marketing and to ensure an honest marketplace.

75. These acts or practices were unfair in that they offended public policy, reflected in state legislation and standards of practice, to minimize the risk of addiction to and abuse of controlled substances by limiting opioid prescriptions to the lowest effective dose for a limited

time and requiring that patients be provided full information regarding the risks and benefits of using opioids to treat chronic pain, see RSA 318-B:41; Med. 502.05, as well as the State's other efforts to prevent and address opioid abuse and addiction.

76. These acts or practices were unfair in that they immorally and unethically deprived prescribers of the information they needed to appropriately prescribe—or not prescribe—these dangerous drugs. Patients who use opioids can quickly become dependent or addicted, such that neither the patient nor the prescriber could avoid injury by simply stopping or choosing an alternate treatment. The Sacklers also immorally and unethically withheld or directed Purdue to immorally and unethically withhold information from authorities that they could have used to reduce opioid abuse and diversion in New Hampshire.

77. These acts or practices were unfair in that the Sacklers directed Purdue to make continuous misrepresentations in an ongoing effort to avoid enforceable obligations and obtain benefits by touting the use of opioids for chronic pain, twice-daily dosing of “12-hour” OxyContin, and the use of AD formulations as providing benefits they knew opioids would not deliver. This course of conduct immorally and unscrupulously placed New Hampshire consumers in continuous peril and caused substantial injury.

78. These acts or practices were unfair in that they have resulted in substantial injury to New Hampshire consumers. At the direction of the Sacklers, Purdue's marketing has caused New Hampshire consumers to suffer opioid addiction, abuse, overdose, death, and associated economic loss, and there is no countervailing benefit of such unsubstantiated and unbalanced marketing. Further, at the Sackler's direction, Purdue's failure to report suspicious prescribing has resulted in continued illicit prescribing of opioids by physicians who could have been investigated by law enforcement or the Board of Medicine.

79. The Sackler's conduct, as described in this Complaint, meets and exceeds a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.

80. By reason of the Sackler's conduct, New Hampshire consumers have suffered substantial injury as described above.

81. As a direct result of the foregoing deceptive and unfair acts and practices, the Sacklers obtained income, profits and other benefits that it would not otherwise have obtained.

82. Pursuant to RSA 358-A:4, III, the State requests an order permanently enjoining the Sacklers from engaging in or directing their companies to engage in these deceptive and unfair acts and practices.

83. Pursuant to RSA 358-A:4, III(a), the State requests an order directing restitution of money the Sacklers acquired by virtue of these deceptive and unfair acts and practices.

84. Pursuant to RSA 358-A:4, III(b), the State requests an order assessing a civil penalty of \$10,000 against each of the Sacklers for each violation of the Consumer Protection Act.

85. Pursuant to RSA 358-A:6, IV, the State requests and order awarding to the State all legal costs and expenses.

## **COUNT TWO CONSUMER FRAUD—UNFAIR COMPETITION**

### **Violations of the Consumer Protection Act, RSA 358-A**

86. The State realleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and in Exhibit A as though fully alleged herein.

87. The Consumer Protection Act makes it unlawful for any person to engage in "any unfair method of competition . . . in the conduct of any trade or commerce within this state." RSA 358-A:2. The Act specifies that one such unfair method of competition is "[r]epresenting that

goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.”

88. The Sackler’s conduct as described in the Complaint violated RSA 358-A:2 because at the direction of the Sacklers, Purdue, minimized and misstated the risks of opioids and overstated their benefits, and/or has represented, and continues to represent, that its opioids have characteristics and benefits they do not have in the course of Purdue’s marketing activities within New Hampshire. In particular, at the direction of the Sacklers, Purdue has stated or implied that:

- a) Twice-daily dosing of OxyContin provides 12 hours of pain relief with each dose, when Purdue knew or recklessly disregarded that for many patients the pain relief lasts well short of 12 hours; and
- b) AD formulations of its opioids make the drugs less likely to be abused or less addictive, when no evidence exists for such statements;

89. At the time it made or disseminated these statements, the Sacklers knew or recklessly disregarded that there was no scientific evidence to support the statements or that available science contradicted the statements.

90. At the direction of the Sacklers, Purdue promoted OxyContin as providing 12 hours of pain relief, and promoted AD formulations of its opioids as more difficult to abuse and less addictive, as means of maintaining a competitive advantage against other opioid pharmaceuticals.

91. By reason of the Sackler’s conduct, New Hampshire consumers have suffered substantial injury, including but not limited to pain and suffering from inappropriate dosing, opioid addiction, injury, overdose, death, and economic loss.

92. By reason of the Sackler’s conduct, its cities, towns, and counties have suffered substantial injury, including but not limited to costs associated with administering first responder



services and support care for the families of individuals suffering drug overdoses.

93. As a direct result of the foregoing deceptive acts and practices, the Sacklers obtained income, profits, and other benefits that it would not otherwise have obtained.

94. Pursuant to RSA 358-A:4, III(a), the State requests an order permanently enjoining the Sacklers from engaging in or directing their companies engage in unfair methods of competition as described herein.

95. Pursuant to RSA 358-A:4, III(a), the State requests an order directing restitution of money the Sacklers acquired by virtue of the unfair methods of competition described herein.

96. Pursuant to RSA 358-A:4, III(b), the State requests an order assessing a civil penalty of \$10,000 against the Sacklers for each violation of the Consumer Protection Act.

97. Pursuant to RSA 358-A:6, IV, the State requests and order awarding to the State all legal costs and expenses.

### **COUNT THREE FALSE CLAIMS**

#### **Violations of the Medicaid Fraud and False Claims Act, RSA 167:61-b**

98. The State realleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and in Exhibit A as though fully alleged herein.

99. RSA 167:61-b is violated when any person:

- a) Knowingly presents, or causes to be presented, to an officer or employee of the [New Hampshire] department [of Health and Human Services], a false or fraudulent claim for payment or approval.
- b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the department. (c) Conspires to defraud the department by getting a false or fraudulent claim

allowed or paid. . . .

N.H. Rev. Stat. Ann. § 167:61-b(I). 241.

100. RSA 167:61-b(V)(a) defines a claim as: any request or demand, whether under a contract or otherwise, for money or property that is made to an officer, employee, agent, or other representative of the department or to a contractor, grantee, or other person, if the department provides any portion of the money or property that is requested or demanded, or if the department will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

101. Defendants' practices, as described in the Complaint, violated RSA 167:61-b. Defendants, through their direction of deceptive marketing of opioids for chronic pain, presented or caused to be presented false or fraudulent claims and knowingly used or caused to be used a false statement to get a false or fraudulent claim for payment approved by the State.

102. Defendants knew that the doctors, pharmacists, other health care providers, and/or agents of the State Medicaid program to whom they deceptively marketed prescription opioids had treated and would continue to treat New Hampshire Medicaid patients.

103. Defendants knew, deliberately ignored, or recklessly disregarded, at the time of making or disseminating these statements, or causing these statements to be made or disseminated, that such statements were untrue, false, or misleading and were made for the purpose of getting the State's Medicaid program to pay for opioids for long-term treatment of chronic pain. In addition, Defendants knew, deliberately ignored, or recklessly disregarded, that their marketing and promotional efforts created an untrue, false, and misleading impression about the risks, benefits, and superiority of opioids for chronic pain.

104. Defendants knew such false statements were material to healthcare providers'

decision to prescribe opioids to New Hampshire Medicaid patients. Indeed, Defendants intended such statement to be material to encourage additional opioid prescriptions.

105. Defendants' scheme caused doctors to write prescriptions for opioids to treat chronic pain that were presented to the State's Medicaid program for payment. The State only covers the cost of prescription drugs that are medically necessary. Specifically, New Hampshire's rules governing the Medicaid program define "medically necessary" services as: health care services that a licensed health care provider, exercising prudent clinical judgment, would provide, in accordance with generally accepted standards of medical practice, to a recipient for the purpose of evaluating, diagnosing, preventing, or treating an acute or chronic illness, injury, disease, or its symptoms, and that are:

- a) Clinically appropriate in terms of type, frequency of use, extent, site, and duration, and consistent with the established diagnosis or treatment of the recipient's illness, injury, disease, or its symptoms;
- b) Not primarily for the convenience of the recipient or the recipient's family, caregiver, or health care provider;
- c) No more costly than other items or services which would produce equivalent diagnostic, therapeutic, or treatment results as related to the recipient's illness, injury, disease, or its symptoms; and
- d) Not experimental, investigative, cosmetic, or duplicative in nature. PART He-W 530.01(e). In addition, under He-W 570.09, practitioners or pharmacists must certify specific brand drugs as "brand necessary" or "brand medically necessary." Doctors, pharmacists, other health care provides, and/or agents of the State Medicaid program expressly or impliedly certified to the State that

opioids were medically necessary to treat chronic pain because they were influenced by the false and misleading statements disseminated by Defendants about the risks, benefits, and superiority of opioids for chronic pain. Moreover, many of the prescriptions written by physicians or other health care providers and/or authorized by the State Medicaid program and submitted to the State were for uses that were misbranded and/or not otherwise approved by the FDA.

106. Defendants knew, deliberately ignored, or recklessly disregarded that, as a natural consequence of their actions, governments such as the State would necessarily be paying for long-term prescriptions of opioids to treat chronic pain, which were dispensed as a consequence of Defendants' fraud or Defendants' direction of fraud.

107. These misrepresentations and omissions were material because if the State had known of the false statements disseminated by Purdue and their third-party allies that doctors, pharmacists, and other health care providers or agents of the State Medicaid program, health plan, and workers' compensation program were relying on to certify and/or determine that opioids were medically necessary, the State would have undertaken efforts to avoid its payment of false claims and to rein in the harm from the inappropriate prescribing of opioids.

108. Alternatively, the misrepresentations were material because they would have a natural tendency to influence or be capable of influencing whether the costs of long-term prescriptions of opioids to treat chronic pain were paid by the State.

109. By virtue of the above-described acts, Defendants knowingly made, used or caused to be made or used false records and statements, and omitted material facts, to induce the State to approve and pay such false and fraudulent claims.

110. But for these false statements, the false claims at issue would not have been

submitted for payment and would not have been paid by the State's Medicaid program.

111. To the extent that such prescribing is considered consistent with generally accepted standards of medical practice, clinically appropriate and/or consistent with established treatment, it is only because standards of practice have been tainted by Purdue's deceptive marketing, which was directed by the Sacklers.

112. The State, unaware of the falsity of the records, statements and claims made, used, or presented or caused to be made, used or presented by Purdue, paid claims that would not be paid but for the illegal business practices described herein.

113. By reason of these unlawful acts, the State has been damaged, and continues to be damaged, in a substantial amount to be determined at trial. The State's damages from false claims submitted, or caused to be submitted, by Purdue exceed \$5,000 in value. From 2011-2015, the State's Medicaid program spent \$3.5 million to pay for some 7,886 prescriptions and suffered additional damages for the costs of providing and using opioids long-term to treat chronic pain.

114. Because the unbranded marketing caused doctors to prescribe and the State to pay for long-term opioid treatment using opioids manufactured or distributed by other drug makers, Defendants caused and are responsible for those costs and claims as well.

115. Pursuant to RSA 167:61-b(I), the State requests an order compelling Defendants to pay three times the amount of damages sustained by the State for each violation of RSA 167:61-b.

116. Pursuant to RSA 167:61-b(I), the State requests an order assessing a civil penalty of not less than \$5,000 and not more than \$10,000 against Defendants for each violation of RSA 167:61-b.

117. Pursuant to RSA 167:61-b(II)(b), the State requests an order compelling

Defendants to pay the State's costs and attorneys' fees arising from this action

**COUNT FOUR**  
**PUBLIC NUISANCE**

118. The Sacklers through the actions described in the Complaint, has created—or was a substantial factor in creating— a public nuisance by unreasonably interfering with a right common to the general public that harms the health, safety, peace, comfort, or convenience of the general community.

119. The State and its citizens have a public right to be free from the substantial injury to public health, safety, peace, comfort, and convenience that has resulted from the Sacklers' direction of illegal and deceptive marketing of opioids for the treatment of chronic pain.

120. This injury to the public includes, but is not limited to (a) widespread dissemination of false and misleading information regarding the risks and benefits of opioids to treat chronic pain; (b) a distortion of the medical standard of care for treating chronic pain, resulting in pervasive overprescribing of opioids and the failure to provide more appropriate pain treatment; (c) high rates of opioid abuse, injury, overdose, and death, and their impact on New Hampshire families and communities; (d) lost employee productivity; (e) the creation and maintenance of a secondary, criminal market for opioids; (g) greater demand for emergency services, law enforcement, addiction treatment, and social services; and (h) increased health care costs for individuals, families, and the State.

121. At all times relevant to the Complaint, the Sacklers' direction of deceptive marketing substantially and unreasonably interfered in the enjoyment of this public right by the State and its citizens. At the Sacklers' direction, Purdue engaged in a pattern of conduct that (a) overstated the benefits of chronic opioid therapy, including by misrepresenting OxyContin's duration of efficacy and by failing to disclose the lack of evidence supporting long-term use of

opioids; and (b) obscured or omitted the serious risk of addiction arising from such use. This conduct effected and maintained a shift in health care providers' willingness to prescribe opioids for chronic pain, resulting in a dramatic increase in opioid prescribing and the injuries described above. At the Sacklers' direction, Purdue also interfered with enjoyment of the public right by failing to report suspicions of illicit prescribing to law enforcement and the Board of Medicine.

122. At all times relevant to the Complaint, the Sacklers exercised control over the instrumentalities constituting the nuisance—i.e., Purdue's marketing as conveyed through sales representatives, other speakers, and publications, and its program to identify suspicious prescribing. As alleged herein, the Sacklers' direction of Purdue created, or was a substantial factor in creating, the nuisance through multiple vehicles, including (a) making in-person sales calls; (b) recruiting physician speakers; (c) disseminating advertisements and publications; (d) sponsoring and creating flawed and biased scientific research and prescribing guidelines; (e) sponsoring and collaborating with third parties to disseminate false and misleading messages about opioids; and (f) failing to report suspicious prescribing to law enforcement and the Board of Medicine. To the extent the Sacklers directed Purdue to work through third parties, they adopted their statements as Purdue's own by disseminating their publications, and/or exercised control over them by financing, reviewing, editing, and approving their materials.

123. The Sacklers' actions were, at the very least, a substantial factor creating the public nuisance by directing Purdue to deceive prescribers and patients about the risks and benefits of opioids and distort the medical standard of care for treating chronic pain. Without Defendants' actions, opioid use would not have become so widespread, and the opioid epidemic that now exists in New Hampshire would have been averted or would be much less severe.

124. The public nuisance was foreseeable to the Sacklers, which knew or should have

known of the harm it would cause. As alleged herein and in Exhibit A, at the direction of the Sacklers, Purdue engaged in widespread promotion of opioids in which it misrepresented the risks and benefits of opioids to treat chronic pain. The Sacklers knew that there was no evidence showing a long-term benefit of opioids on pain and function, and that opioids carried serious risks of addiction, injury overdose, and death. A reasonable person in the Sacklers' position would foresee not only a vastly expanded market for chronic opioid therapy as the likely result of their conduct—that was the Sacklers' goal—but also that widespread problems of opioid addiction and abuse would result. In fact, the Sacklers were on notice and aware of signs that the broader use of opioids was causing just the kinds of injuries described in this Complaint.

125. This public nuisance can be abated through health care provider and consumer education on appropriate prescribing, honest marketing of the risks and benefits of long-term opioid use, addiction treatment, disposal of unused opioids, and other means.

126. The State therefore requests an order providing for abatement of the nuisance that the Sacklers created or was a substantial factor in creating, and enjoining the Sacklers from further conduct contributing to the nuisance.

## **COUNT FIVE**

### **FRAUDULENT OR NEGLIGENT MISREPRESENTATION**

127. The State realleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and in Exhibit A as though fully alleged herein.

128. As alleged in the Complaint, the Sacklers engaged in or directed Purdue to engage in false representation and concealment of material facts about the use of opioids to treat chronic pain.

129. The Sacklers knew, deliberately ignored, or recklessly disregarded, that:

- a) statements about the use of opioids to treat chronic pain were false or misleading;



- b) statements about opioids that it caused to be made or disseminated were false or misleading;
- c) statements made to promote the use of opioids to treat chronic pain omitted or concealed material facts; and
- d) they failed to correct prior misrepresentations and omissions about the risks and benefits of opioids.
- e) For many patients the pain relief of “12-hour” OxyContin dosing lasts well short of 12 hours; and
- f) there is no evidence to support statements that AD formulations of Purdue’s opioids make the drugs less likely to be abused or diverted or less addictive; and
- g) it lacked the commitment it professed to reducing or deterring abuse and to cooperating with law enforcement, as evidenced by their failure to report suspicious prescribers as required by law.

130. The statements the Sacklers made, or caused to be made about the use of opioids to treat chronic pain, the duration of pain relief provided by 12-hour dosing of OxyContin, and AD formulations of its opioids, were not supported by or were contrary to the scientific evidence, as confirmed by the CDC and FDA based on that evidence.

131. Further, the Sacklers’ omissions or Purdue’s omissions made at the Sackler’s direction, which were false and misleading in their own right, rendered even seemingly truthful statements about opioids false and misleading.

132. The Sacklers intended that healthcare providers and patients would rely on the misrepresentations and deceptive marketing regarding the use of opioids to treat chronic pain, the characteristics of Purdue’s branded opioids, and Purdue’s efforts to cooperate with law

enforcement and assist in avoiding addiction, abuse, and overdose.

133. The Sacklers had a duty to the State and its citizens to exercise due care in the advertising, marketing, promotion, and sale of opioid drugs.

134. The Sacklers had a duty to the State and its citizens not to make false, misleading, or deceptive statements about opioids and treatment for chronic pain.

135. The Sacklers had a duty, as one who volunteered information to others not having equal knowledge, with the intention that they would act upon it, to exercise reasonable care to verify the truth of their statements before making them.

136. The Sacklers had a duty to the State and its citizens to report suspicious prescribers and to refrain from providing opioids to providers and pharmacies it believed, or had reason to believe, were dispensing its opioids illegally.

137. At the Sacklers' direction, Purdue so negligently, carelessly, and recklessly advertised, marketed, promoted, and sold its opioid drugs and the use of opioids to treat chronic pain, and so negligently, carelessly, and recklessly misrepresented the risks and benefits of using opioids to treat chronic pain that they breached their duties and directly and proximately caused New Hampshire consumers to suffer opioid addiction, abuse, overdose, death and associated economic damage, resulting in the damages alleged in this Complaint.

138. The Sacklers knew, or should have known, that prescribers and patients would rely on its misrepresentations and deceptive statements, and would be misled by its material omissions.

139. At the Sacklers' direction, Purdue identified many prescribers or pharmacists engaged in suspicious prescribing of its opioids, but failed to report its suspicions, as required by law, and failed to stop supplying the prescribers it suspected of illegal activity with more drugs.

140. The Sacklers knew, or should have known, that as an inevitable consequence of the

conduct described herein, New Hampshire citizens would suffer opioid addiction, overdose, death, and associated economic loss, and the State would suffer economic loss. Further, the Sacklers knew, or should have known, that its failure to report suspicious prescribing has resulted in continued illicit prescribing of opioids by physicians who could have been investigated and stopped.

141. In light of the facts alleged herein, Defendants breached their duty to use due care in the advertising, marketing, promotion, and sale of opioids.

142. In addition, Defendants' and Purdue's false representations and concealments were reasonably calculated to deceive the State and health care providers who treated patients whose care was paid for or reimbursed by the State.

143. Prescribers and the State relied to their detriment on these misrepresentations and concealment of material fact.

144. But for Defendants' misrepresentation and concealment of material facts or direction thereof, the State would not have incurred damages in paying for medically unnecessary prescriptions and in addressing the public health crisis that Defendants' actions have created.

145. As a direct and proximate result of Defendants' acts and omissions as alleged herein, the State has sustained and will sustain substantial expenses and damages, described in this Complaint.

146. Defendants' conduct, as alleged herein, was wanton, malicious, and/or oppressive.

## **COUNT SIX FRAUDULENT TRANSFERS**

### **Violation of RSA 545-A:4 , 545-A:5**

147. The State realleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint and in Exhibit A as though fully alleged herein.

148. The State's litigation against Purdue constitutes a claim against Purdue rendering the State a creditor of Purdue within the meaning of RSA 545-A:1, III; RSA 545-A:1, IV; RSA 545-A:4; and RSA 545-A:5.

149. The State's claim arose when Purdue repeatedly violated the law. At no time did Purdue and the Sacklers conduct their business within the law.

150. Despite knowing that Purdue faced certain liabilities based on its conduct, including to New Hampshire, the Sacklers continued to pay themselves hundreds of millions of dollars each year in distributions for no consideration and in bad faith. As a result of these distributions, assets are no longer available to satisfy Purdue's creditors and Purdue has threatened bankruptcy proceedings.

151. Purdue, at the direction of the Sacklers, distributed Purdue's profits for the benefit of the Sacklers for no consideration, the purpose and effect of which has been to place hundreds of millions of dollars in assets beyond the reach of creditors, including the State of New Hampshire in its opioids litigation. The Sacklers gave no regard to Purdue's inability to pay creditors like New Hampshire or even negotiate a settlement in good faith, given the hundreds of millions of dollars each year hidden away by distributing those funds to the Sacklers.

152. All of the transfers of assets from Purdue to the Sacklers constituted transfers pursuant to RSA 545-A:1, XII and were made with actual intent to hinder, delay, or defraud present and/or future creditors of Purdue, including the State of New Hampshire.

153. Furthermore, all of the transfers of assets from Purdue to the Sacklers were made without receiving a reasonably equivalent value in exchange for the transfer, and Purdue was engaged in or about to engage in a business transaction for which the remaining assets of Purdue were unreasonably small in relation to the business or transaction, or, in the alternative, intended

to incur, or believed or reasonably should have believed that Purdue would incur, debts beyond its ability to pay as they became due.

154. In addition or in the alternative, those conveyances were made at a time when Purdue was insolvent.

155. In addition or in the alternative, Purdue became insolvent as a result of the transfer or obligation.

156. Accordingly, the State is entitled to the relief provided by RSA 545-A:4; RSA 545-A:5; and 545-A:7.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the State prays for an order:

- a. awarding judgment in its favor and against defendants on each cause of action asserted in the Complaint; permanently enjoining the Sacklers from engaging in or directing others to engage in the deceptive acts and practices and unfair methods of competition described in the Complaint;
- b. directing disgorgement of money the Sacklers wrongfully and unjustly acquired by virtue of the conduct described in the Complaint;
- c. awarding restitution and damages, including enhanced compensatory damages, as appropriate, for the costs incurred by the State, cities, counties, and consumers in paying for the prescribing of opioids and their direct costs in abuse, addiction, abuse, overdose, injury, and death;
- d. assessing civil penalties of \$10,000 for each violation of the Consumer Protection Act;
- e. requiring the Sacklers to abate the public nuisance its conduct has created; voiding

- all transfers from Purdue to Defendants and the return of all value transferred from Purdue to Defendants in accordance with RSA 545-A:7, I(a);
- f. attaching the value transferred to the Sacklers, or other property of the Sacklers, in accordance with RSA 545-A:7, I(b);
  - g. permanently enjoining the further disposition by the Sacklers of the value transferred or other property of the Sacklers, in accordance with RSA 545-A:7, I(c)(1).
  - h. appointing a receiver to take charge of the value transferred to the Sacklers, or other property of the Sacklers, in accordance with RSA 545-A:7, I(c)(2)
  - i. requiring the Sacklers to pay the costs of the suit, including attorneys' fees; and
  - j. awarding such other, further, and different relief as this Court may deem just.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury in this action.

THE STATE OF NEW HAMPSHIRE

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Dated: September 13, 2019

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