

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CHEYENNE & ARAPAHO TRIBES,

Plaintiff,

CASE NO.: 20-143 L

vs.

UNITED STATES OF AMERICA

Defendant.

_____ /

COMPLAINT

Plaintiff, CHEYENNE & ARAPAHO TRIBES, complains and alleges against the United States of America, as follows:

PRELIMINARY STATEMENT

1. Plaintiff CHEYENNE AND ARAPAHO TRIBES (referred to herein as the “Tribe”) is a united, federally recognized tribe of Southern Arapaho and Southern Cheyenne people in western Oklahoma. These Native people currently face a crisis that threatens to destroy their lives, land, and history. An epidemic of prescription opioid abuse is devastating the people, babies, institutions, and resources of Indian Country, and causing the Cheyenne and Arapaho Tribes to suffer substantial loss of resources, economic damages, addiction, disability, and harm to the health and welfare of the Tribe, Tribe Members, and wholly-owned enterprises of the Tribe.

2. The Cheyenne and Arapaho Tribes are beneficiaries of several treaties entered into with the United States of America, including the Treaty of October 28, 1867, known as the Medicine Lodge Treaty, and the Treaty of May 10, 1868, known as the Fort Laramie Treaty

(collectively referred to as the “Treaties”). The Treaties were entered into between different tribes of Indians and “commissioners” of Defendant, the United States of America (the “United States”).

3. The United States pledged in the Treaties that “[i]f bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.” (Article 1, Treaty of October 28, 1867, 15 Stat. 593 (1867); Article 1, Treaty of May 10, 1868, 15 Stat. 635 (1868)).

4. The opioid epidemic that has devastated the Cheyenne and Arapaho Tribes and its members was caused by corporate pharmaceutical manufacturers, distributors, and their agents, who all engaged in a lengthy civil conspiracy, via fraud, misrepresentation, and intentional wrongful conduct, to cause as many people as possible to use and get addicted to opioid prescription pills in a maddened drive to profit billions of dollars and in a reckless disregard of the consequences to the American and Native American people. The corporate pharmaceutical manufacturers, distributors, and their agents are clearly “bad men” under the Treaties which entitles the Tribe to reimbursement for losses sustained as a result of the “bad men’s” actions.

PARTIES AND JURISDICTION

5. The Plaintiff, CHEYENNE AND ARAPAHO TRIBES (the “Tribe”), is a sovereign Indian Tribe. The Tribe currently occupies the territory in western Oklahoma that includes Beckham, Blain, Canadian, Custer, Dewey, Ellis, Kingfisher, Roger Mills, and Washita Counties. The Tribe’s headquarters are in Concho, Oklahoma, which is in Canadian County. The

Tribe exercises inherent governmental authority within the Reservation and on behalf of the health and welfare of the Tribe and Tribe Members, as well as their children, and grandchildren.

6. Members of the Tribe who primarily live on the Reservation were wronged by the actions and conduct of opioid manufacturers, distributors and their agents, including the individuals serving on their governing boards and in management (hereinafter collectively referred to as the “Opioid Bad Men”),¹ as alleged herein. The Tribe exercises inherent sovereign governmental authority within the Tribe’s Indian Lands and on behalf of the health and welfare of the Tribe and Tribe Members, their descendants, children, and grandchildren.

7. This action is brought by the Tribe in the exercise of its authority as a sovereign government and on behalf of the Tribe in its proprietary capacity and under its *parens patriae* authority in the public interest to protect the health, safety, and welfare of all Tribe Members as well as the non-Tribe Member inhabitants of its Indian Lands to stop the growing prescription opioid epidemic within the Tribe. The Tribe also brings this action to recover damages and seek other redress for harm caused by the improper, wrongful, fraudulent, and tortious conduct of the Opioid Bad Men with respect to the manufacturing, marketing, and sale of prescription opioids, which actions have caused, and continue to cause, a crisis that threatens the health, safety, and welfare of the Tribe.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28

¹ The Opioid Bad Men include the following: Purdue Pharma, LP; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; McKesson Corporation; Cardinal Health, Inc.; Amerisourcebergen Corporation; Amerisourcebergen Drug Corporation; CVS Health; Walgreens Boots Alliance, Inc.; Walmart, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc. f/k/a Actavis PLC; Allergan Finance, LLC; Teva Pharmaceuticals Industries, Ltd; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceutica Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Mallinckrodt, PLC, d/b/a Mallinckrodt, LLC and the officers, directors and agents of these entities.

U.S.C. 1491(a)(1) in that this is a civil action against the United States founded upon the Treaties that benefit the Cheyenne and Arapaho Tribes dated October 28, 1867, and May 10, 1868, which are Acts of Congress. This cause involves a claim against the United States founded on the Constitution, Acts of Congress, regulations of executive departments, and express or implied contracts with the United States and for liquidated or unliquidated damages in a case not sounding in tort.

9. The Plaintiff has made “proof to the agent” and has forwarded that proof to the Commissioner of Indian Affairs as required by the Treaty with response from the Commissioner or any agent of the United States government. All conditions precedent to the filing of this Complaint have been satisfied.

BACKGROUND FACTS

The Opioid Bad Men

10. The corporate pharmaceutical manufacturers, distributors, their agents, and the individuals serving on their governing boards and in management, who are responsible for the opioid epidemic that has harmed the Cheyenne and Arapaho Tribes and its members are the “bad men” who committed acts that under the Treaties entitle the Tribe and its members to reimbursement for losses sustained. The Opioid Bad Men include the entities and individuals identified in the following allegations.

The Purdue Opioid Bad Men

11. Purdue Pharma L.P. is a limited partnership organized under the laws of Delaware. Purdue Pharma Inc. is a New York corporation with its principal place of business in Stamford, Connecticut, and The Purdue Frederick Company is a Delaware corporation with its principal place of business in Stamford, Connecticut. These three Purdue affiliates manufacture,

promote, sell, and distribute opioids such as OxyContin, MS Contin, Dilaudid/Dilaudid HP, Butrans, Hysingla ER, and Targiniq ER in the U.S. and Oklahoma. OxyContin is Purdue's best-selling opioid.

12. Rhodes Pharmaceuticals L.P. is a limited partnership organized under the laws of Delaware with its principal place of business in Coventry, Rhode Island and is an affiliate of Purdue. Rhodes Pharmaceuticals L.P. has one general partner, Rhodes Pharmaceuticals, Inc.; and one limited partner, Coventry Technologies L.P., which holds Rhodes Pharmaceuticals, L.P.'s shares. Coventry Technologies L.P. is a Delaware limited partnership with its principal place of business in Stamford, Connecticut. Its general partner is Purdue Pharma Inc. Rhodes Technologies Inc. is a corporation organized under the laws of Delaware with its principal place of business in Coventry, Rhode Island. Rhodes Technologies is a Delaware general partnership with its principal place of business in Coventry, Rhode Island. Rhodes Technologies Inc. is the general partner of Rhodes Technologies and is a subsidiary of Purdue Pharma, L.P. (Rhodes Technologies and Rhode Pharmaceuticals are collectively referred to as "Rhodes"). Rhodes manufactures and distributes generic opioids, including authorized generic versions of OxyContin and Burtrans. Rhodes Technologies also manufactures the active pharmaceutical ingredient in drugs including Purdue's OxyContin². Among the drug products manufactured by Rhodes is buprenorphine, a drug used to treat opioid dependence.

13. Although it is registered as a separate corporate entity than Purdue Pharma L.P. (PPL), Purdue Pharma, Inc. (PPI), and The Purdue Frederick Company Inc. (PFC) (collectively, "Purdue"), a former senior manager at Purdue described Rhodes Pharmaceuticals, L.P. (Rhodes), as "set up as a 'landing pad' for the Sackler family in 2007, to prepare for the possibility that

² At various times, Opioid Bad Man Mallinckrodt also supplied Purdue with oxycodone.

they would need to start afresh following the crisis then engulfing OxyContin.” Further, reporting by the *Financial Times* revealed that a 2017 manual showed that Rhodes and Purdue used the same employee handbook, and employees reported that “little distinction is made internally between the two companies.”³ Together, Rhodes and Purdue accounted for 14.4 million opioid prescriptions in the United States in 2016.⁴

14. PPL, PPI, PFC, Rhodes and their DEA registrant subsidiaries and affiliates (collectively, “Purdue Companies”) are engaged in the manufacture, promotion, distribution, and sale of opioids nationally and onto Plaintiff Tribes’ reservation lands, including the following:

Product Name	Chemical Name	Schedule ⁵
OxyContin	Oxycodone hydrochloride, extended release	Schedule II
MS Contin	Morphine sulfate, extended release	Schedule II
Dilaudid	Hydromorphone hydrochloride	Schedule II
Butrans	Buprenorphine	Schedule III
Hysingla ER	Hydrocodone bitrate	Schedule II
Targiniq ER	Oxycodone hydrochloride and naloxone hydrochloride	Schedule II

15. Purdue made thousands of payments to physicians nationwide ostensibly for

³ David Crow, *How Purdues’ ‘one-two-punch fueled the market for opioids*, *Financial Times*, (Sept. 9, 2018), <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>.

⁴ *Id.*

⁵ Since passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801 *et seq.* (“CSA” or “Controlled Substance Act”), opioids have been regulated as controlled substances. As controlled substances, they are categorized in five schedules, ranked in order of their potential for abuse, with Schedule I being the most dangerous. The CSA imposes a hierarchy of restrictions on prescribing and dispensing drugs based on their medicinal value, likelihood of addiction or abuse, and safety. Opioids generally has been categorized as Schedule II or Schedule III drugs; hydrocodone and tapentadol were recently reclassified from Schedule III to Schedule II. Schedule II drugs have a high potential for abuse and may lead to severe psychological or physical dependence. Schedule III drugs are deemed to have a lower potential for abuse, but their abuse still may lead to moderate or low physical dependence or high psychological dependence.

activities including participating on speakers' bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services, but in fact to deceptively promote and maximize the use of opioids.

16. Oxycontin is Purdue's largest-selling opioid. Since 2009, Purdue's national annual sales of OxyContin have fluctuated between \$2.47 billion and \$3.1 billion, up four-fold from 2006 sales of \$800 million. OxyContin constitutes roughly 30% of the entire market for analgesic drugs (*e.g.*, painkillers). Sales of OxyContin (launched in 1996) went from a mere \$49 million in its first full year on the market to \$1.6 billion in 2002.

17. In 2007, Purdue settled criminal and civil charges against it for misbranding OxyContin and agreed to pay the United States \$635 million - at the time, one of the largest settlements with a drug company for marketing misconduct. None of this stopped Purdue. In fact, Purdue continued to create the false perception that opioids were safe and effective for long term use, even after being caught, by using unbranded marketing methods to circumvent the system. In short, Purdue paid the fine when caught and then continued business as usual, deceptively marketing and selling billions of dollars of opioids each year.

18. Purdue's directors and officers are also Opioid Bad Men. Richard S. Sackler, M.D., is a natural person residing in Travis County, Texas. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s. Richard Sackler was President of Purdue Pharma from 1999 to 2003 and Co-Chairman in 2003 through 2014. Upon information and belief, Sackler joined Purdue in 1971 as an assistant to his father, Dr. Raymond Sackler who was then President of Purdue. Richard Sackler served as head of Purdue's Marketing and Research & Development Departments.

19. From 1995-2003, Richard Sackler oversaw the launch of OxyContin. Richard

Sackler, upon information and belief, has long been the beneficiary of an ownership interest in Purdue and Rhodes, and continues to hold such an ownership interest. Through his decisions and directives, Richard Sackler knowingly caused and approved the promotion and sales of Purdue and Rhodes opioids. Richard Sackler is the listed inventor on a number of patents assigned to Purdue or Rhodes, including U.S. Patent 9,3861,628, *Buprenorphine-Wafer for Drug Substitution Therapy* (January 9, 2018), a patent issued, inter alia, to Sackler and assigned by Sackler and his co-inventors to Rhodes covering a drug for “drug substitution therapy in drug-dependent human subjects.” In other words, having played no small part in causing the opioid epidemic, Richard Sackler, through his companies, is poised to profit off of its abatement.

20. Kathe A. Sackler is a natural person residing in Fairfield County, Connecticut. Kathe Sackler began serving as Senior Vice President of Purdue by 2000. She resigned from her position in or about 2003. She has served as a member of the Board of Directors of Purdue and Purdue-related entities and on various Board committees since the 1990s and was instrumental in Purdue’s “Project Tango.”

21. Jonathan D. Sackler is a natural person residing in Fairfield County, Connecticut. Johnathan Sackler served as Senior Vice President of Purdue by 2000, until stepping down in 2003. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s.

22. Mortimer D.A. Sacker is a natural person residing in New York County, New York. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s.

23. Ilene Sackler Lefcourt is a natural person residing in New York County, New York. She has served as a member of the Board of Directors of Purdue and Purdue-related

entities since the 1990s.

24. Beverly Sackler is a natural person residing in Fairfield County, Connecticut. She has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s.

25. Theresa Sackler is a natural person residing in New York County, New York. She has served as a member of the Board of Directors of Purdue and Purdue-related entities since the 1990s.

26. David A. Sackler is a natural person residing in New York County, New York. He has served as a member of the Board of Directors of Purdue and Purdue-related entities since 2012.

27. Collectively, Richard, Kathe, Jonathan, Mortimer D.A., Ilene, Beverly, Theresa and David Sackler are referred to as the “Sackler Family.”

28. Together, the Sackler Family, upon information and belief, were not only aware of, but approved and exercised control over Purdue’s deceptive marketing. For example, in a deposition taken for prior litigation, a Purdue legal secretary named Maureen Sara testified that in late 1999, she sent a memorandum to the Sacklers, including Richard Sackler, about what she had learned on the internet about “crushing the tables [of OxyContin], taking the coating off, cooking it up. Shooting or snorting it.”

29. According to Barry Meier’s book Pain Killer, in early 2001, Purdue met with the DEA, which was starting to raise alarms over OxyContin overdoses. Defendant Sackler participated in this meeting and defended OxyContin as an extremely good drug. According to the book, the head of the DEA’s Office of Diversion Control leaned across to Defendant Sackler and stated: “People are dying. Do you understand that?” Evidently Richard Sackler either did not

understand or care, for Purdue did nothing to rein in Purdue's misleading promotion of OxyContin. Internally, Richard Sackler chose to stigmatize and blame those who became addicted or began to abuse opioids. In February of 2001, he wrote that: "we have to hammer on the abusers in every way possible. They are the culprits and the problem. They are reckless criminals."

30. Federal prosecutors came to suspect, however, that Purdue and certain of its executives were the criminals. In 2003, while a criminal investigation into Purdue and three other executives was underway, the Sackler Family all quietly resigned from their management positions. Nevertheless, the Sackler Family, upon information and belief, remained actively involved in Purdue's affairs and would also have been aware of deceptive marketing in their capacity as board members at all relevant times. This involvement is detailed in internal company documents obtained by the Massachusetts Attorney General, parts of which were made public in *Commonwealth of Mass. V. Purdue Pharma L.P., et al.*, C.A. No. 1884-cv-01808 (BLS2), First Amended Complaint, Complete Unredacted Corrected Version for the Public File Submitted According to Court Order January 31, 2019 (Mass. Super. Ct. Jan. 31, 2019) (hereinafter, the "MA AG Complaint"). For example, according to the MA AG Complaint, internal documents show that the Sackler Family contemplated selling Purdue after its criminal plea in 2007 and other strategies to allow them to "distribute more free cash flow" to themselves.

31. As another example, Purdue's Board, while the Sackler Family were members, voted to approve a criminal guilty plea by their company, including an Agreed Statement of Facts admitting, in 2007, that, for more than six years, supervisors and employees internationally deceived doctors about OxyContin: "Beginning on or about December 12, 1995, and continuing until on or about June 30, 2000, 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 and withdrawal than other pain medications.” Purdue’s Board, while the Sackler Family were members, also voted to enter a Corporate Integrity Agreement with the United States. The Sackler Family members each certified in writing to the U.S. government that he or she had read and understood the rules under that Agreement, including requirements to ensure that Purdue did not deceive doctors and patients again and to report any deception.

32. Yet, even after their company pled guilty to criminal charges, the Sackler Family still failed to follow the rules. For example, the Sacklers received reports that Purdue continued to mail out thousands of deceptive marketing materials in the first half of 2007 alone, with the single most-distributed material being volume #1 of Purdue’s “Focused and Customized Education Topic Selections in Pain Management” (FACETS), which falsely claimed that physical dependence on opioids is not dangerous and instead improves patients’ “quality of life.” Internal documents illustrate the detailed information provided to the Sackler Family concerning, for example, the hiring of sales representatives, the reports of concern the company received, and the “Region Zero” prescribers identified, internally, as suspicious.

33. From the time Purdue first developed OxyContin, the Sackler Family members were focused on sales. Richard Sackler had grand ambitions for Purdue; according to a long-time Purdue sales representative, “Richard really wanted Purdue to be big-I mean really big.” At the OxyContin launch party, Richard Sackler spoke as the Senior Vice President responsible for sales, and asking his listeners to envision natural disasters, went on to say: “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...” When sales appeared to slow, or

did not meet their expectations in later years, the Sackler Family expressed concern and looked for way to increase their sales (and by extension, the volume and dose of opioids being prescribed and used). For example, internal correspondence from 2011 reveals Jonathon Sackler writing to John Steward concerning sales that “this is starting to look ugly” and they needed to “talk,” after which Steward and the sales team planned a response and to set up a meeting with Jonathan. Similarly, in internal e-mails concerning OxyContin prescriptions, in 2008, Kathe asked for information on “pressures” and “quantification of their negative impact on projected sales.” In 2012, Jonathan Sackler pressed Sales VP Russell Gasdia for periodic updates on sales. Richard Sackler was deeply involved he even planned to go into the field with a sales representative. So intrusive was his involvement that an internal e-mail about his behavior reads: “Anything you can do to reduce the direct contract of Richard into the organization is appreciated.” During a deposition this past March, Richard Sackler was presented with numerous emails showing how often he asked staff for sales data. Yet, when asked if he ever requested data on OxyContin abuse or overdose rates, he responded “I don’t recall that.”⁶

34. This detailed attention and care given sales and profits contrasted sharply, as explained above, with the approach to addressing addiction, abuse, and diversion. For example, when Butrans sales were perceived as too low, internal documents described that Richard Sackler wrote: “This is Bad.” By contrast, when informed of 59 deaths from OxyContin in a single state, Richard Sackler wrote: “This is not too bad” and further explained that: “It could have been far worse.”

35. Kathe Sacker did pay close attention to opioid addiction, for profit, as part of a secret “Project Tango” which considered expanding Purdue’s business into addiction treatment.

⁶ Sara Randazzo, *In Newly Released Deposition, OxyContin Owner Defends Response to Reports of Abuse*, The Wallstreet Journal, May 25, 2019.

In connection with “Project Tango,” internal documents received by Kathe Sackler stated that “Pain treatment and addiction are natural linked.” A confidential presentation made as part of Project Tango highlighted, for example, the “[l]arge unmet need for vulnerable, underserved and stigmatized patient population.” Yet, Purdue continued to press its sales tactics.

36. According to internal documents, from the 2007 criminal convictions until 2018 , the Board, with the Sackler Family as members, voted to pay to out more than four billion dollars that would go to the Sackler family. Meanwhile, media reports described Purdue as considering a bankruptcy filing. In the wake of the 2007 guilty plea and Corporate Integrity Agreement, a 2007 settlement with state attorneys general, and more recent lawsuits by state and local governments, as well as other plaintiffs, the Sackler Family should, upon information and belief, have anticipated the liability Purdue faced at the time they voted to take money out of the company.

37. The wrongful actions of the Purdue Opioid Bad Men described above were directed to and against, among others, the Plaintiff and its Tribal members and were a proximate cause of the damages now claimed in this Complaint.

The Actavis Opioid Bad Men

38. Allergan Sales, LLC is incorporated in Delaware and headquartered in Irvine, California. Allergan Sales LLC is the current New Drug Application (“NDA”) holder for Kadian, and in 2016, Allergan Sales, LLC held the Abbreviated New Drug Applications (“ANDAs”) for Norco.⁷ Allergan Sales, LLC is the wholly-owned subsidiary of Allergan plc.

39. Allergan USA, Inc. is incorporated in Delaware and headquartered in Madison, New Jersey. Allergan USA, Inc. is currently responsible for Norco and Kadian sales. Allergan

⁷ The Norco ANDAs are currently held by Allergan Pharmaceuticals International Limited, which is incorporated in Ireland.

USA, Inc. is a wholly-owned subsidiary of Allergan plc.

40. Warner Chilcott Company, LLC is a limited liability company incorporated in Puerto Rico. Since 2015, Warner Chilcott Company, LLC has been the manufacturer of Norco. Warner Chilcott Company, LLC was a subsidiary of Warner Chilcott plc until Warner Chilcott plc became a wholly owned subsidiary of Allergan plc in 2013. Warner Chilcott Company LLC was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

41. Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.) is registered to do business with the West Virginia Secretary of State as a Delaware corporation with its principal place of business in New Jersey. Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.) was previously responsible for sales of Kadian and Norco. Actavis Pharma, Inc. was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

42. Actavis South Atlantic LLC is a Delaware limited liability company with its principal place of business in Sunrise, Florida. Actavis South Atlantic LLC was listed as the ANDA holder for oxymorphone and fentanyl transdermal. Actavis South Atlantic LLC was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

43. Actavis Elizabeth LLC is a Delaware limited liability company with its principle place of business in Elizabeth, New Jersey. From December 19, 2005, until it purchased the medication in December 2008, Actavis Elizabeth LLC served as the contract manufacturer of Kadian for Alpharma. Actavis Elizabeth LLC held the NDA for Kadian from 2008 to 2013. Actavis Elizabeth LLC was also the holder of ANDAs for the following schedule II opioid

products: oxycodone/acetaminophen; homatropine methylbromide/hydrocodone bitartrate; morphine sulfate capsule; morphine sulfate table; oxycodone/hydrochloride table; oxycodone/ibuprofen; and oxymorphone tablet. Actavis Elizabeth LLC was sold to Teva Pharmaceuticals Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

44. Actavis Mid Atlantic LLC is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. Actavis Mid Atlantic LLC has held the ANDA for homatropine methylbromide/hydrocodone bitartrate. Actavis Mid Atlantic LLC was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

45. Actavis Totowa LLC is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. Actavis Totowa LLC has held the ANDAs for the following Schedule II opioid products: oxycodone/acetaminophen; homatropine methylbromide; oxycodone/hydrochloride.

46. Actavis Kadian LLC is a Delaware limited liability company with its principal place of business in Morristown, New Jersey. Actavis Kadian LLC has been identified on Kadian's label as a manufacturer or distributor of Kadian. Actavis Kadian LLC was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva.

47. Actavis Laboratories UT, Inc. (f/k/a Watson Laboratories, Inc.-Salt Lake City) is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. Actavis Laboratories UT, Inc. was the Kadian NDA holder from 2013 to 2016 and was listed as the NDA holder for morphine sulfate capsule. Actavis Laboratories UT, Inc. was sold to Teva

Pharmaceutical Industries Limited as part of Allergan plc's 2016 sale of its generic businesses to Teva. Prior to the sale, Actavis Laboratories UT, Ins. was a direct subsidiary of Actavis, Inc. (n/k/a Allergan Finance, LLC).

48. Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc.-Florida) is a Florida limited liability company with its principal place of business in Davie, Florida. Actavis Laboratories FL, Inc. was a Norco ANDA holder in 2015 and was the ANDA holder of the following Schedule II opioid products: hydrocodone/acetaminophen; hydrocodone/ibuprofen; oxycodone/aspirin; and hydromorphone tablet. Actavis Laboratories FL, Inc. was sold to Teva Pharmaceutical Industries Ltd. as part of Allergan plc's 2016 sale of its generic businesses to Teva. Prior to the sale, Actavis Laboratories FL, Inc. was a direct subsidiary of Andrx Corporation, which was a direct subsidiary of Actavis, Inc. (n/k/a Allergan Finance, LLC). Andrx Corporation was transferred to Teva as part of the 2016 sale.

49. Each of the entities identified in paragraphs 38-48 currently is or was previously owned by Opioid Bad Man Allergan plc, which uses them to market and sell its drugs in the United States. Collectively, these entities, and their DEA registrant subsidiaries and affiliates that manufacture, promote, distribute, and sell prescription opioids, are referred to as "Actavis Opioids Ba

50. The wrongful actions of the Actavis Opioid Bad Men described herein were directed to and against the Plaintiff and its Tribal members and were a proximate cause of the damages now claimed in this Complaint.

51. The Actavis Opioid Bad Men have engaged in the manufacture, promotion, distribution, and sale of the branded and generic prescription opioid drugs sold throughout the country, including into the Tribe's territory in western Oklahoma that includes Beckham, Blain,

Canadian, Custer, Dewey, Ellis, Kingfisher, Roger Mills, and Washita Counties.

52. Actavis manufactures or has manufactured the following drugs as well as generic versions of Kadian, Duragesic, and Opana in the United States:

Product Name	Chemical Name	Schedule
Kadian	Morphine sulfate, extended release	Schedule II
Norco	Hydrocodone bitartate and acetaminophen	Schedule II

The Janssen Opioid Bad Men

53. Johnson & Johnson (J&J) is a New Jersey corporation with its principal place of business in New Brunswick, New Jersey.

54. Tasmanian Alkaloids PTY LTD. (“Tasmanian Alkaloids”) is an Australian private company based in Westbury, Australia and incorporated in Tasmania, Australia. Tasmanian Alkaloids Pty Ltd. was a wholly owned subsidiary of J&J until July 2016 when J&J sold its interests to SK Capital Partners LP, a limited partnership incorporated in Delaware.

55. J&J, Janssen Pharmaceuticals, OMP, Janssen Pharmaceutica, Noramco, and Tasmanian Alkaloids Pty Ltd. (collectively, “Janssen”) are or have been engaged in the manufacture, promotion, distribution, and sale of opioids nationally. Among the drugs Janssen manufactures or manufactured are the following:

Product Name	Chemical Name	Schedule
Duragesic	Fentanyl	Schedule II
Nucynta ⁸	Tapentadol hydrochloride, immediate release	Schedule II
Nucynta ER	Tapentadol hydrochloride, extended release	Schedule II

⁸ Depomed, Inc. acquired the rights to Nucynta and Nucynta ER from Janssen in 2015.

56. Janssen made thousands of payments to physicians nationwide, ostensibly for activities including participating on speakers' bureaus, providing consulting services, assisting in post-marketing safety surveillance and other services, but in fact to deceptively promote and maximize the use of opioids. Together, Nucynta and Nucynta ER accounted for \$172 million in sales in 2014. Prior to 2009, Duragesic accounted for at least \$1 billion in annual sales.

57. Information from the U.S. Department of Justice's Office of the Inspector General shows that J&J made payments to prescribers, but does not indicate which drug was being promoted when J&J made these payments.

58. Prior to 2016, Janssen also had a global Active Pharmaceutical Ingredients (API) Manufacturing Network for opiate analgesics and antagonists and was among the largest narcotic API suppliers in the United States. Tasmanian Alkaloids created, manufactured and patented a new, more potent strain of poppy (high thebaine) and delivered it via intercompany transfer to Noramco. Part of the J&J Family of Companies, Noramco and Tasmanian Alkaloids are "sister companies"⁹ operating in a backward integration model to control the supply chain of opioid materials for production of "high-purity controlled substances."¹⁰ Noramco's product portfolio included Oxycodone (Oxycontin, Percocet, Roxicodone), Hydrocodone (Vicodin, Lortab), and Morphine (MS Contin).

59. The wrongful actions of the Jansen Opioid Bad Men described herein were directed to and against the Plaintiff and its Tribal members and were a proximate cause of the damages now claimed in this Complaint.

⁹ <https://www.noramco.com/our-capabilities/> (Last visited: May 15, 2019).

¹⁰ Backward integration is "a form of vertical integration in which a company expands its role to fulfill tasks.

The Distributor Opioids Bad Men

60. McKesson Corporation (“McKesson”) is a publicly traded company headquartered in San Francisco, California and incorporated under the laws of Delaware. During all relevant times, McKesson has caused to be distributed substantial amounts of prescription opioids to providers and retailers near the Tribes and Tribal Members. McKesson has taken actions that have harmed the Tribes and Tribal Members, and it has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

61. Cardinal Health, Inc. (“Cardinal”) is a publicly-traded company headquartered in Ohio and incorporated under the laws of Ohio. During all relevant times, Cardinal has distributed substantial amounts of prescription opioids to providers and retailers located near the Tribes. Cardinal has taken actions that have harmed the Tribes and Tribal Members, and it has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

62. AmerisourceBergen Corporation is a publicly-traded company headquartered in Pennsylvania and incorporated under the laws of Delaware. AmerisourceBergen Drug Corporation is a Delaware corporation and subsidiary of AmerisourceBergen Corporation with its principal place of business in Chesterbrook, Pennsylvania. AmerisourceBergen Corporation and AmerisourceBergen Drug Corporation are collectively referred to herein as “AmerisourceBergen.” During all relevant times, AmerisourceBergen has distributed substantial amounts of prescription opioids to providers and retailers near the Tribes. AmerisourceBergen has taken actions that have harmed the Tribes and Tribal Members, has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

63. McKesson, Cardinal, AmerisourceBergen Corporation, and AmerisourceBergen Drug Corporation are collectively referred to hereinafter as “Distributor Opioids Bad Men.” The Tribes do not bring this action or state any claims as against any of the Distributor Opioids Bad Men pursuant to any contract that they have, may have, or have had with the United States Government, its agencies, and/or subdivisions, including but not limited to any contract with the Veterans Administration.

64. McKesson has publicly stated that it has a “best-in-class controlled substance monitoring program to help identify suspicious orders” and claimed it is “deeply passionate about curbing the opioid epidemic in our Country.” These assurances, on their face, of identifying and eliminating criminal activity and curbing the opioid epidemic create a duty for the Distributor Opioids Bad Men to take measures to do just that. McKesson wrongfully failed in that duty.

65. In addition to the obligations imposed by law, through their own words, representations, and actions, the Distributor Opioids Bad Men have voluntarily undertaken a duty to protect the public at large against diversion from their supply chains, and to curb the opioid epidemic. In this voluntary undertaking, the Distributor Opioids Bad Men have miserably and negligently failed.

66. The Distributors Opioids Bad Men have knowingly and wrongfully allowed diversion, and later admitted to it in many instances. That diversion is, and has been, a proximate cause of the damage now claimed in this Complaint by the Plaintiff and its Tribal members.

67. The Defendant Cardinal has paid a \$34 million penalty to settle allegations about opioid diversion taking place at seven of its warehouses in the United States. In 2012, Cardinal

reached an administrative settlement relating to opioid diversion between 2009 and 2012 in multiple states. Cardinal's own investigator warned Cardinal against selling opioids to a particular pharmacy that was suspected of opioid diversion. Cardinal did nothing to notify the Plaintiff or cut off the supply of drugs to any suspect pharmacies.

68. In May 2008, McKesson paid \$13.5 million in settlement on claims that McKesson failed to maintain effective controls against diversion of controlled substances. McKesson allegedly failed to report suspicious orders from rogue Internet pharmacies around the Country, resulting in millions of doses of controlled substances being diverted. McKesson's system for detecting "suspicious orders" from pharmacies was so ineffective and dysfunctional that at one of its facilities between 2008 and 2013, it filled more than 1.6 million orders, for tens of millions of controlled substances, but it reported just 16 orders as suspicious, all from a single consumer. In 2015, McKesson was in the middle of allegations concerning its "suspicious order reporting practices for controlled substances." In early 2017, it was reported that McKesson agreed to pay \$150 million to settle opioid diversion claims that it allowed drug diversion at 12 distribution centers in 11 states.

69. 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. Again in 2012, AmerisourceBergen was implicated for failing to protect against diversion of controlled substances into non-medically necessary channels.

The Pharmacy Opioids Bad Men

70. CVS Health is a publicly-traded Delaware corporation with its principal place of business in Rhode Island. During all relevant times, CVS Health has sold and continues to sell prescription opioids at locations near the Tribes, including in close proximity to hospitals, clinics

and other health care facilities serving Tribal Members. CVS Health has taken actions that have harmed the Tribes and Tribal Members, and it has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

71. Walgreens Boots Alliance, Inc., a/k/a Walgreen Co. (“Walgreens”) is a publicly-traded Delaware corporation with its principal place of business in Illinois. At all relevant times, Walgreens has sold and continues to sell prescription opioids at locations near the Tribes, including those in close proximity to the hospitals, clinics, and other healthcare facilities serving the Tribe Members. Walgreens has taken actions that have harmed the Tribes and Tribal Members, and it has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

72. Walmart, Inc., formerly known as Wal-Mart Stores, Inc. (“Walmart”), is a publicly-traded Delaware corporation with its principal place of business in Arkansas. At all relevant times, Walmart has sold and continues to sell prescription opioids at locations near the Tribes, including in close proximity to hospitals, clinics and other healthcare facilities serving the Tribe Members. Walmart has taken actions that have harmed the Tribes and Tribal Members and it has purposefully availed itself of the advantages of conducting business within the economic proximity of the Tribes.

73. CVS Health, Walgreens, and Walmart are collectively referred to hereinafter as the “Pharmacy Opioid Bad Men.” The Tribes do not bring this action or state any claims as against any of the Pharmacy Opioid Bad Men pursuant to any contract that they may have, or have had with the United States Government, its agencies, and/or subdivisions, including but not limited to any contract with the Veterans Administration.

74. At all relevant times, the Pharmacy Opioids Bad Men have engaged in improper

and wrongful dispensing practices, and continue to do so, despite knowing full well they could take measures to substantially eliminate their complicity in opioid diversion.

75. At all relevant times, the Pharmacy Opioid Bad Men engaged in these wrongful activities, and continue to do so, knowing full well that the Tribe, in its role of providing protection and care for its members, would provide or pay for additional medical services, emergency services, law enforcement, and other necessary services, as well as by the loss of substantial economic productivity that contributes to the health and well-being of the Tribe.

76. It is reasonably foreseeable to the Pharmacy Opioid Bad Men that the Tribe would be forced to bear substantial expenses as a result of the Pharmacy Opioid Bad Men's acts.

77. The Pharmacy Opioid Bad Men were on notice of their ongoing wrongful or intentional misconduct towards the Tribe in part because of their history of being penalized for violating their duties and legal requirements in other jurisdictions.

78. In 2013, Defendant CVS agreed to pay \$11 million to avoid civil charges relating to illicit sales of prescription opioids at pharmacies. Specifically, CVS violated the law by its failure to keep proper records required for tracking and dispensing prescription drugs including oxycodone and hydrocodone.

79. CVS, Walgreens, and Walmart each have one or more pharmacies ranked in the top ten pharmacies that fill prescriptions for opioids, some of which are operating in an area where Tribe Members fill their prescriptions. All have been prosecuted and disciplined for diversion of prescription opioids.

80. The Pharmacy Opioids Bad Men were also aware of the magnitude of the opioid diversion crisis based on investigations into their practices elsewhere.

Other Opioid Bad Men

81. Endo Health Solutions Inc. is a Delaware corporation with its principal place of business in Malvern, Pennsylvania. Endo Pharmaceuticals Inc. is a wholly-owned subsidiary of Endo Health Solutions Inc. and is a Delaware corporation with its principal place of business in Malvern, Pennsylvania. (Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. hereinafter are collectively referred to as “Endo.”) Endo develops, markets, and sells prescription drugs, including the opioids Opana/Opana ER, Percodan, Percocet, and Zydone, in the U.S. and Oklahoma. Endo also manufactures and sells generic opioids such as oxycodone, oxymorphone, hydromorphone, and hydrocodone products in the U.S. and Oklahoma, by itself and through its subsidiary, Qualitest Pharmaceuticals, Inc.

82. Endo’s direct and branded ads deceptively portrayed the benefits of opioids for chronic pain. For example, Endo distributed and made available on its website a pamphlet promoting Opana ER with photographs depicting patients with physically demanding jobs, misleadingly implying that the drug would provide long-term pain-relief and functional improvement. Endo agreed in 2015-16 to stop these particularly misleading representations in one state, yet continued to disseminate them in Oklahoma.

83. The State of New York, in a 2016 settlement agreement with Endo, found that opioid “use disorders appear to be highly prevalent in chronic pain patients treated with opioids, with up to 40% of chronic pain patients treated in specialty and primary care outpatient centers meeting the clinical criteria for an opioid use disorder.” Endo had claimed on its website that “[m]ost healthcare providers who treat patients with pain agree that patients treated with prolonged opioid medicines usually do not become addicted,” but there was no evidence to support that statement. Consistent with this, Endo agreed not to “make statements that . . .

opioids generally are non-addictive” or “that most patients who take opioids do not become addicted” in New York. This agreement, however, did not extend to benefit the Tribe in Oklahoma.

84. Mallinckrodt plc is a public limited company, headquartered in the United Kingdom, which does business as Mallinckrodt Pharmaceuticals with its principal place of business in the United States in Hazelwood, Missouri. Mallinckrodt, LLC is a Delaware limited liability company, also doing business as Mallinckrodt Pharmaceuticals, with its principal place of business in the United States in Hazelwood, Missouri. Mallinckrodt plc and Mallinckrodt LLC are collectively referred to herein as “Mallinckrodt.” Mallinckrodt is one of the largest manufacturers of the generic opioid oxycodone.

85. Mallinckrodt made and/or disseminated deceptive statements, including, but not limited to, the following: (a) promotion of use of opioids to treat chronic non-cancer pain to Oklahoma prescribers through in-person detailing; (b) advertising that opioids were safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improved quality of life; (c) advertising that concealed the risk of addiction in the long-term treatment of chronic, non-cancer pain.

Impact of the Actions of the Opioid Bad Men on the Tribe

86. The prescription opioids epidemic has been building for years and is a current and ongoing source of wrongful harm on the property and to the lives of the Tribal Members. The Tribe, and its members, have been damaged by the opioid epidemic and the activities of the Opioid Bad Men described in this Complaint. The Tribe and its members lack the financial resources to adequately abate the epidemic. This vast epidemic, the worst public health crisis in the 21st Century, has been intentionally concealed, minimized, denigrated, defended, and

otherwise misrepresented by the Opioid Bad Men, all of which have been fueling the epidemic in order to generate billions of dollars in profits, to the detriment of the Tribe and the lives of Tribe Members, including innocent, defenseless babies born addicted to opioids.

87. Within the Tribe, as everywhere in the United States, prescription opioids are more addictive than any other substance, and deadlier and more devastating than any prescription or non-prescription drug, including heroin. The devastation to the Tribe is pervasive. Child welfare costs associated with opioid-addicted parents have skyrocketed. The Tribe's medical costs are overwhelming due to the costs of the opioid epidemic. Foster care costs have substantially increased, and foster care resources have been exhausted. Education and addiction therapy costs have multiplied. The Tribe has suffered economic losses from the treatment and care of babies who are born addicted to opioids. The Tribe's housing has suffered major financial impact. The workforce of the Tribe has suffered. The Tribe's funding for the entire health and welfare of the Tribe has been imperiled.

88. Native Americans are at least two times more susceptible to opioid addiction than the rest of the U.S. population at large. Native American high school students are two to three times more likely to try opioid pills than U.S. teenagers in general. Native Americans are three (3) times more likely to die from a drug overdose than the rest of the U.S. population. Most of Indian Country is usually located in more rural parts of the U.S., where medically assisted addiction treatment is unavailable, underfunded, or overwhelmed by demand. Often, Native Americans cannot even find opioid addiction treatment within reasonably proximity.

89. Prescription opioids killed over 40,000 Americans in 2017 alone. Prescription opioids kill twice as many people in the U.S. as heroin. Prescription opioids and related drug overdose deaths exceed the number of car accident deaths in the United States. Nearly 150

Americans die every day from opioids overdoses. Almost 91% of persons who have a non-fatal overdose of opioids are prescribed opioids again within one year. One third (1/3) of all children who go into foster parent care do so because of the opioids addiction of their parent(s). Seven (7) in ten (10) opioids overdoses that are treated in an emergency room due to abuse of prescription opioids. An opioid-addicted baby is born every thirty (30) minutes in America. Tribal Nations within the United States have suffered in greater proportion when compared to these general statistics.

90. The Tribe and the Native American community have been left out of major initiatives by state governments, municipal governments, and county governments in attempts to remedy the opioid crisis. The Tribe, in particular, has not obtained any settlements or civil penalties with any of the opioid manufacturers and distributors as have many states. Moreover, the Tribe, in particular, has not until recently had access to the ARCOS database, as have state, county, and municipal authorities. The Tribe, unlike states, does not have the same criminal prosecutorial powers and investigative resources of state, county, and municipal governments as against the opioid manufacturers, distributors, their agents, and their activities. The Tribe has yet to be successful in pursuing civil actions against these Opioid Bad Men.

91. The Opioid Bad Men, in reckless disregard for the consequences, increased prescription drug marketing and sales, and flooded the Tribe and tribal communities with prescription opioids. These facts and others as alleged in this Complaint have only recently come to light, despite the Opioid Bad Men's efforts to conceal the truth.

92. A substantial number of the Tribe's Members have fallen victim to the opioid epidemic, becoming addicted to prescription opioids or coping with family members who are addicted. As a result, there has been a substantial increase in the caseload of counselors working

in the Tribe's social and family services department. The Tribe's foster care program has also been strained by the opioids epidemic. The Tribe has seen an increase in babies born addicted to opioids due to their mother's consumption of opioids during pregnancy. Many have to be placed in foster care adding to the overload on the Tribe's program.

93. The Tribe has incurred significant costs in an attempt to abate the opioid epidemic that continues to plague its members and Indian Lands, providing medical services and opioid-related treatments to those in need. The Tribe has incurred extraordinary costs, damages, and financial impact to every department of its Tribe government: housing, education, security, services, medical, labor, operations, waste treatment, foster care, after school care, etc. The Tribe brings this suit, in part, to recover these costs and procure the additional financial resources required to combat and abate opioid addiction, opioid-related injuries, and other problems caused by the opioid crisis.

94. While prescription opioid use has decreased slightly in the U.S. in the past two years, deaths have continued to rise. The great wrongful conduct of the Opioid Bad Men remains unabated and is not likely to be abated except via civil litigation. This wrongful conduct is rampant within the Tribe, and harms Tribal Members, and the Tribe's reservation lands.

95. The Opioid Bad Men manufacturers had and have a duty to prevent opioids from being overly and improperly prescribed. Opioid Bad Men woefully failed in these duties, instead consciously ignoring known or knowable problems and manufacturing volumes data.

96. Each of the Opioid Bad Men, individually and in conspiracy with all or some of the other Opioid Bad Men, intentionally and wrongfully created an opioid drug market for the masses in which vast amounts of opioids flowed freely from drug manufacturers to innocent patients who became addicted, to babies in pregnant mothers, to opioid abusers, and even to

illicit drug dealers.

97. Opioid Bad Men have foreseeably caused damages to the Tribe including the costs of providing: (a) medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths; (b) counseling and rehabilitation services; (c) treatment of infants born with opioid-related medical conditions; (d) welfare and foster care for children whose parents suffer from opioid-related disability or incapacitation; and (e) law enforcement and public safety relating to the opioid epidemic within the Tribe. The Tribe has also suffered substantial damages relating to the lost productivity of the Tribe, as well as increased administrative costs.

98. The Tribe brings this action for damages to the Tribe and Tribe Members, and for any other relief allowed by law against the Defendant for the actions of the Opioid Bad Men, who by their actions, knowingly and wrongfully have manufactured, distributed and dispensed prescription opioid drugs to and within the economic proximity of the Tribe in a manner that foreseeably injured, and continues to injure, the Tribe and its members.

COUNT I
(“Bad Men” Among the Whites)

99. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 98.

100. The Cheyenne and Arapaho Tribe obtained from the United States the solemn pledge that “[i]f bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.” (Article 1, Treaty of October 28, 1867, 15 Stat. 593(1867); Article 1, Treaty of May 10, 1868, 15

Stat. 635 (1868)).

101. As shown by and as a result of the wrongful acts of the set forth in this Complaint, the corporate pharmaceutical opioid manufacturers, distributors, and their agents, referred to herein as the Opioid Bad Men, are “bad men” among the whites or among other people subject to the authority of the United States.

102. The Tribe is entitled to, and demands pursuant to the Treaties, compensation for the damages which it has incurred in the past and for those damages which it will incur in the future all as a result of the wrongful acts of the Opioid Bad Men set forth in this Complaint and further demands such other relief as may be allowed by law.

PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiff, CHEYENNE AND ARAPAHO TRIBES, prays that the Court grant the following relief:

- (a) Compensation for damages sustained by the Tribe as alleged herein to include money damages as compensation and reimbursement to the Plaintiff for the harm and loss it has sustained in the past and which it will sustain in the future as a result of the wrongful conduct of the Opioid Bad Men;
- (b) For such other relief as the Court deems just and proper.

Dated this 10th day of February, 2020.

Respectfully Submitted,

CHEYENNE AND ARAPAHO TRIBES,

PLAINTIFF

By Its Attorneys:

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