UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CITY OF SEATTLE, a municipal corporation,

Plaintiff,

v.

PURDUE PHARMA L.P.; PURDUE PHARMA INC.; THE PURDUE FREDERICK COMPANY, INC.; TEVA PHARMACEUTICALS INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS INC.; ALLERGAN PLC f/k/a ACTAVIS PLC; WATSON PHARMACEUTICALS, INC. n/k/a/ ACTAVIS, INC.; WATSON LABORATORIES, INC.; ACTAVIS LLC; ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC.; SEATTLE PAIN CENTER MEDICAL CORPORATION d/b/a SEATTLE PAIN CENTER; FRANK D. LI; AND DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

Case No. 2:17-cv-1577

DEFENDANTS' NOTICE OF REMOVAL

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Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendants Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. (collectively, "Endo"); Purdue Pharma L.P.; Purdue Pharma Inc.; the Purdue Frederick Company Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Watson Laboratories, Inc.; and Actavis LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. (collectively, "Removing Defendants") hereby give notice of removal of this action, captioned *City of Seattle v. Purdue Pharma L.P. et al.*, bearing case number 17-2-25504-1 SEA, from the Superior Court of Washington, in and for the County of King, to the United States District Court for the Western District of Washington. Pursuant to 28 U.S.C. § 1446(a), Removing Defendants provide the following statement of the grounds for removal:

BACKGROUND

1. On September 28, 2017, Plaintiff, the City of Seattle, a municipal corporation, filed a Complaint (attached hereto, with process papers served upon Endo, as **Exhibit 1**) in the Superior Court of Washington, in and for the County of King, against the following defendants, as well as unnamed, unidentified Doe Defendants:

(a) "Manufacturer Defendants" — Endo Pharmaceuticals Inc.; Endo Health Solutions Inc.; Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica Inc. n/k/a Janssen Pharmaceuticals, Inc.; Allergan plc f/k/a/ Actavis plc; Watson Pharmaceuticals, Inc. n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.

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(b) "Provider Defendants" — Seattle Pain Center Medical Corporation d/b/a Seattle Pain Center; and Frank D. Li.

2. The Complaint contains allegations relating to conduct by the Manufacturer Defendants, on the one hand, and separate alleged unlawful conduct by the Provider Defendants, on the other.

3. The thrust of the Complaint is that the Manufacturer Defendants engaged in a campaign of misrepresentations about the risks of FDA-approved prescription opioid medications. (Compl. ¶¶ 1-7, 25-35, 42-147.) Plaintiff alleges that the Manufacturer Defendants "falsely touted the benefits of long-term opioid use" (*id.* ¶ 4), "disseminated . . . messages to reverse the popular and medical understanding of opioids" (*id.* ¶ 5), "made claims that were not supported by or were contrary to the scientific evidence" (*id.* ¶ 97), and "deceptively trivialized and failed to disclose the risks of long-term opioid use . . . through a series of misrepresentations" in order to "convince doctors and patients that opioids are safe" (*id.* ¶ 98). All of the Manufacturer Defendants are citizens of states or foreign states other than Washington.

4. Plaintiff's claims against the Provider Defendants are entirely different and rely upon different alleged unlawful conduct. Unlike the claims against the Manufacturer Defendants, none of Plaintiff's claims against the Provider Defendants rely upon purported misrepresentations about opioid medications. Instead, Plaintiff alleges that the Provider Defendants—a Seattle-based "pill mill" and its former medical director whose medical license has been suspended—unlawfully prescribed opioid medications to consumers without a legitimate medical basis, "[p]ressured" their practitioners to "crank out opioid prescriptions," and became "'well known amongst opioid addicts and other drug seekers as an easy place to get

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drugs.'" (*Id.* ¶¶ 8-10, 36-37, 148-160.) The Provider Defendants are the only defendants in this case who are citizens of Washington.

5. The Complaint asserts five causes of action against the Manufacturer Defendants: (1) statutory public nuisance; (2) common law public nuisance; (3) violation of Washington's Consumer Protection Act, RCW Chapter 19.86; (4) violation of Washington's Criminal Profiteering Act, RCW 9A.82; and (5) common law civil conspiracy.[1] (Compl. ¶¶ 205-279.) Plaintiff asserts only the nuisance claims against the Provider Defendants. (*Id.* ¶¶ 205-227.)

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on Removing Defendants is attached hereto as **Exhibit 1** (which contains all documents served by Plaintiff on Endo). A copy of the state court docket and all documents filed in the state court action (other than the Complaint) is attached hereto as **Exhibit 2**.

7. Opioid-related cases like this one are currently pending in many different federal courts across the county. On September 25, 2017, governmental plaintiffs from 46 such actions filed a motion (attached hereto as **Exhibit 3**) to coordinate all such actions in an MDL proceeding. On October 20, 2017, the Manufacturer Defendants filed a response to that motion (attached hereto as **Exhibit 4**), expressing support for the creation of an MDL that would include this action.

VENUE AND INTRADISTRICT ASSIGNMENT

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 128(b), 1391, 1441(a), and 1446(a) because the Superior Court of Washington, in and for the County of King, where the Complaint was filed, is a state court within the Western District of Washington.

[1] The Criminal Profiteering Act and civil conspiracy claims are asserted against the following Manufacturer Defendants only: Purdue, Janssen, Cephalon, and Endo. (Compl. ¶¶ 241-279.)

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9. Pursuant to Local Civil Rule 101(d), Removing Defendants identify the Seattle Division as the appropriate venue for these proceedings because Plaintiff is based in King County, Washington, and a substantial part of the alleged events giving rise to Plaintiff's claims occurred in King County, Washington.

JURISDICTION

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because (1) there is complete diversity of citizenship between Plaintiff and all properly joined defendants, (2) the amount in controversy exceeds $75,000, exclusive of interest and costs, and (3) all other requirements for removal have been satisfied.

I. THERE IS COMPLETE DIVERSITY BETWEEN PLAINTIFF AND ALL PROPERLY JOINED DEFENDANTS

11. There is complete diversity of citizenship here because Plaintiff is a Washington citizen and all of the Manufacturer Defendants are citizens of states or foreign states other than Washington, *see* Part I.A *infra*; the citizenship of unnamed, unidentified Doe Defendants is ignored for purposes of diversity jurisdiction, *see* Part I.B *infra*; and the citizenship of the Provider Defendants should be ignored for purposes of diversity jurisdiction, *see* Part I.C *infra*. This is because the Provider Defendants are dispensable parties subject to severance under Federal Rule of Civil Procedure 21 and are also fraudulently misjoined.

A. Plaintiff is Diverse From the Manufacturer Defendants

1. Plaintiff is a Citizen of Washington

12. The City of Seattle is a Washington citizen for purposes of diversity jurisdiction. *See Moor v. Alameda Cty.*, 411 U.S. 693, 717 (1973) ("[A] political subdivision of a State, unless it is simply 'the arm or alter ego of the State,' is a citizen of the State for diversity purposes."); *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1085 n.1 (9th Cir. 2003)

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("[T]he Spokane City Council is a 'citizen' of Washington for purposes of the diversity statute." (citation omitted)); *Hensley v. U.S. Drug Enf't Admin.*, No. 07-CV-0398 W(NLS), 2007 WL 4225565, at *4-5 (S.D. Cal. Nov. 28, 2007) (holding that the City of San Buenaventura is a California citizen for purposes of diversity jurisdiction).

2. None of the Manufacturer Defendants are Citizens of Washington

13. For purposes of diversity jurisdiction, a corporation is "a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business . . . ." 28 U.S.C. § 1332(c)(1). A partnership is a citizen of every state in which its partners are citizens. *See Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015 (2016); *Whitehurst v. Bank2 Native Am. Home Lending, LLC*, No. 2:14-cv-00318-TLN-AC, 2014 WL 12576239, at *1 (E.D. Cal. Aug. 8, 2014). A limited liability company is a citizen of every state in which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

14. Applying these principles, none of the Manufacturer Defendants are citizens of Washington.

15. Defendant Endo Health Solutions Inc. is a corporation organized under the laws of Delaware with its principal place of business in Malvern, Pennsylvania. (Compl. ¶ 32.)

16. Defendant Endo Pharmaceuticals Inc. is a corporation organized under the laws of Delaware with its principal place of business in Malvern, Pennsylvania. (*Id.*)

17. Defendant Purdue Pharma L.P. is a limited partnership organized under the laws of Delaware, none of whose partners are citizens of Washington. (*See id.* ¶ 25.)

18. Defendant Purdue Pharma Inc. is a corporation organized under the laws of New York with its principal place of business in Stamford, Connecticut. (*Id.*)

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19. Defendant The Purdue Frederick Company, Inc. is a corporation organized under the laws of Delaware with its principal place of business in Stamford, Connecticut. (*Id.*)

20. Defendant Teva Pharmaceutical Industries, Ltd. is a corporation organized under the laws of Israel with its principal place of business in Petah Tikva, Israel. (*Id.* ¶ 27.)

21. Defendant Teva Pharmaceuticals USA, Inc. is a corporation organized under the laws of Delaware with its principal place of business in Pennsylvania. (*Id.*)

22. Defendant Cephalon, Inc. is a corporation organized under the laws of Delaware with its principal place of business in Frazer, Pennsylvania. (*Id.*)

23. Defendant Johnson & Johnson is a corporation organized under the laws of New Jersey with its principal place of business in New Brunswick, New Jersey. (*Id.* ¶ 30.)

24. Defendant Janssen Pharmaceuticals, Inc. is a corporation organized under the laws of Pennsylvania with its principal place of business in Titusville, New Jersey. (*Id.*)

25. Defendant Ortho-McNeil-Janssen Pharmaceuticals, Inc. is a corporation organized under the laws of Pennsylvania with its principal place of business in Titusville, New Jersey. (*Id.*)

26. Defendant Janssen Pharmaceutica Inc. is a corporation organized under the laws of Pennsylvania with its principal place of business in Titusville, New Jersey. (*Id.*)

27. Defendant Allergan plc is a public limited company incorporated in Ireland with its principal place of business in Dublin, Ireland. (*Id.* ¶ 34.)

28. Defendant Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. is now known as Allergan Finance, LLC, a Nevada limited liability company. Its sole member is Allergan W.C. Holding Inc. f/k/a Actavis W.C. Holding Inc., a Delaware corporation with its principal place of business in Parsippany, New Jersey. (*Id.*)

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29. Defendant Watson Laboratories, Inc. is a corporation organized under the laws of Nevada with its principal place of business in Parsippany, New Jersey.

30. Defendant Actavis LLC is a limited liability company organized under the laws of Delaware with its principal place of business in Parsippany, New Jersey, none of whose members are citizens of Washington. (*See id.*)

31. Defendant Actavis Pharma, Inc. f/k/a Actavis, Inc. is a corporation organized under the laws of Delaware with its principal place of business in New Jersey. (*Id.*)

32. Accordingly, all of the Manufacturer Defendants are citizens of a state or foreign state other than Washington.

B. The Citizenship of Doe Defendants Should Be Ignored

33. The citizenship of the unnamed, unidentified Doe Defendants should be ignored for purposes of determining whether this action is removable based on diversity of citizenship. *See* 28 U.S.C. § 1441(b)(1) ("In determining whether a civil action is removable on the basis of [diversity jurisdiction], the citizenship of defendants sued under fictitious names shall be disregarded.").

C. The Citizenship of the Provider Defendants Should Be Ignored

1. The Provider Defendants Are Dispensable Parties Subject to Severance

34. Even where the face of a complaint shows a lack of complete diversity, removal based on diversity jurisdiction is nonetheless proper if the claims against the non-diverse defendants are severable under Federal Rule of Civil Procedure 21. Under Rules 19 and 21, parties are severable if they are either unnecessary or dispensable.

35. It is settled law that Rule 21 "grant[s] . . . discretionary power [to a federal court] to perfect its diversity jurisdiction by dropping a nondiverse party provided the nondiverse party

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is not indispensable to the action under Rule 19." *Cuviello v. Feld Entm't, Inc.*, 304 F.R.D. 585, 593 (N.D. Cal. 2015) (quoting *Kirkland v. Legion Ins. Co.*, 343 F.3d 1135, 1142 (9th Cir. 2003)); *see also Sams v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir. 1980) (same); *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832 (1989) ("[I]t is well settled that Rule 21 invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time."); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1154 (9th Cir. 1998) (affirming dismissal of non-diverse party to preserve diversity jurisdiction).

36. In deciding remand motions, courts have repeatedly severed non-diverse defendants under Rule 21 to retain diversity jurisdiction over diverse defendants. *Sutton v. Davol, Inc.*, 251 F.R.D. 500 (E.D. Cal. 2008) (attached hereto as **Exhibit 5**), is particularly instructive. There, two California citizens filed a personal injury action in state court arising from the implant of a medical device. *Id.* at 502. Plaintiffs asserted products liability claims against the out-of-state device manufacturer, as well as medical malpractice claims against the doctor who performed the procedure and the hospital, both California citizens. *Id.* The manufacturer removed the action to federal court based on diversity jurisdiction, arguing that the non-diverse doctor and hospital were not properly joined. *Id.* Despite the presence these non-diverse defendants, the court denied plaintiffs' motion to remand the entire case. *Id.* at 505.

37. The court explained that "Plaintiffs' claims based on strict products liability against the [manufacturer] are separate from Plaintiffs' claims of medical malpractice against the [doctor and hospital] in implanting a previously recalled [medical device] in Plaintiff." *Id.* Unlike the claims against the manufacturer, the claims against the doctor and hospital were "not based on the allegedly negligent testing and manufacture of the" device. *Id.* Accordingly, the court explained, "Plaintiffs' claims against the [doctor and hospital] are severed and remanded

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pursuant to Rule 21 . . . so as to preserve the [manufacturer's] right to removal" based on diversity jurisdiction. *Id.*

38. *Greene v. Wyeth*, 344 F. Supp. 2d 674 (D. Nev. 2004) (attached hereto as **Exhibit 6**), is in accord. There, several users of a diet drug filed a state court action against the out-of-state manufacturer and two non-diverse defendants—a doctor who prescribed the drug to a plaintiff and a sales representative who promoted the drug. *Id.* at 677, 679. The manufacturer removed the case to federal court based on diversity jurisdiction, contending that the two non-diverse defendants were improperly joined and subject to severance. *Id.* at 679. Despite the presence of the non-diverse doctor and sales representative, the court denied plaintiffs' motion to remand the entire case. *Id.* at 685.

39. The court reasoned that, "[a]lthough each of the Plaintiffs' claims against the [manufacturer] may regard the 'same transaction or occurrence'—i.e., the manufacture and marketing of [the drug]—this characterization of the complaint would not apply equally to the physician and sales representative who are joined as Defendants." *Id.* at 683. "[T]he only common attribute among the Plaintiffs' claims against the [manufacturer] and those against the non-diverse Defendants is that each Plaintiff ultimately ingested [the drug] due to the alleged actions of one or more of these Defendants. Individual circumstances, actions, and omissions were involved in each Plaintiff's choice to ingest the medication, as well as each Defendant's role in, and responsibility for, that decision." *Id.* at 683-84. The court, "mindful of its authority under . . . Rule 21[] to add or drop parties," held that the manufacturer's "right of removal ha[d] been frustrated by Plaintiffs' improper joinder," warranting severance of the non-diverse defendants. *Id.* at 685; *see also Cuviello*, 304 F.R.D. at 594 ("Because the Court finds that Taylor is a nondiverse, not indispensable party, the Court elects, in its discretion, to dismiss

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Taylor as a defendant from the case in order to perfect its diversity jurisdiction.") (citation and internal quotation marks omitted).

40. Numerous other courts have followed the same approach and retained diversity jurisdiction over diverse defendants after a motion to remand. *See, e.g.*, *Joseph v. Baxter Int'l, Inc.*, 614 F. Supp. 2d 868, 872-74 (N.D. Ohio 2009); *McElroy v. Hamilton Cty. Bd. of Educ.*, No. 1:12-cv-297, 2012 WL 12871469, at *2-3 (E.D. Tenn. Dec. 20, 2012); *Mayfield v. London Women's Care, PLLC*, No. 15-19-DLB, 2015 WL 3440492, at *5 (E.D. Ky. May 28, 2015); *Loeffelbein v. Milberg Weiss Bershad Hynes & Lerach, LLP*, No. Civ.A. 02-2435-CM, 2003 WL 21313957, at *5-6 (D. Kan. May 23, 2003).[2]

41. Likewise, this Court should sever the Provider Defendants and deny remand as to the Manufacturer Defendants, because the Provider Defendants are both unnecessary and dispensable. Alleged joint tortfeasors like the Provider Defendants are unnecessary parties as a matter of settled law. *See Temple v. Synthes Corp.*, 498 U.S. 5, 7-8 (1990) (holding that joint tortfeasors are not necessary parties under Rule 19); *Maxtor Corp. v. Read-Rite (Thailand) Co.*, No. C-03-3064, 2003 WL 24902406, at *9 (N.D. Cal. Dec. 4, 2003) (citing *Temple* and explaining that "the Supreme Court has held that joint tortfeasors are not necessary parties under Rule 19."); *Coldani v. Hamm*, No. 2:07-cv-0660, 2008 WL 4104292, at *2 (E.D. Cal. Sept. 3, 2008) ("Tortfeasors facing joint and several liability are not parties who must be joined in a single lawsuit.") (citation omitted).

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[2] *See also Kelly v. Aultman Physician Ctr.*, No. 5:13CV0994, 2013 WL 2358583, at *3 (N.D. Ohio May 29, 2013) (severing non-diverse healthcare provider defendants and thus denying remand as to diverse manufacturer defendants); *DeGidio v. Centocor, Inc.*, No. 3:09CV721, 2009 WL 1867676, at *3-4 (N.D. Ohio July 8, 2009) (same); *Lucas v. Springhill Hosps., Inc.*, No. 1:09HC60016, 2009 WL 1652155, at *2 (N.D. Ohio June 11, 2009) (denying motion to remand following severance of non-diverse defendants by Judicial Panel on Multidistrict Litigation).

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42. Moreover, just like in *Sutton* and *Greene*, where the claims against the diverse and non-diverse defendants relied upon separate and distinct factual allegations, Plaintiff's claims here against the Manufacturer and Provider Defendants rely on separate and distinct factual allegations. Specifically, Plaintiff alleges that the Manufacturer Defendants misrepresented the benefits and risks of FDA-approved opioid medications. (Compl. ¶¶ 1-7.) By contrast, Plaintiff alleges that the Provider Defendants unlawfully prescribed opioid medications to consumers without a legitimate medical basis. (*Id.* ¶¶ 8-10, 36-37, 148-160.)

43. The distinct nature of the factual allegations forming the basis of Plaintiff's claims against the Manufacturer and Provider Defendants is underscored by Plaintiff's causes of action. Plaintiff asserts three claims—consumer protection act, criminal profiteering, and civil conspiracy—against *only* Manufacturer Defendants. (*Id.* ¶¶ 228-279.) There is no material overlap between the factual allegations against the Manufacturer Defendants, and the factual allegations against the Provider Defendants, as would make the Provider Defendants necessary or indispensable parties under Rule 19.

44. While the Complaint alleges that certain Manufacturer Defendants (Janssen and Purdue) bought "multiple meals" for the Provider Defendants (*id.* ¶ 171), that is too thin a reed on which to establish proper joinder, particularly because the only common claims against the Manufacturer and Provider Defendants (statutory and common law nuisance) rely upon separate conduct by the Manufacturer Defendants (alleged misrepresentations) and the Provider Defendants (unlawful prescribing of opioids). Notably, Plaintiff asserts its civil conspiracy claim only against certain Manufacturer Defendants, and does not assert that claim against the Provider Defendants (*id.* ¶¶ 272-279), presumably because of the separate and distinct nature of the

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material factual allegations underpinning the claims against the Manufacturer and Provider Defendants.

45. Beyond Rule 19, the claims against the Provider Defendants are also misjoined under Rule 20 because they do not "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" as the claims against the Manufacturer Defendants. Fed. R. Civ. P. 20(a)(1)(A); *see Loeffelbein*, 2003 WL 21313957, at *5 ("Rule 21 is a mechanism for correcting . . . the misjoinder . . . of parties or claims" which "arises when the claims and parties fail to satisfy any of the conditions of permissive joinder under Rule 20(a)."") (citation omitted); *accord DirectTV, Inc. v. Beecher*, 296 F. Supp. 2d 937, 945 (S.D. Ind. 2003) (severing misjoined claims under Rule 21 where plaintiff "allege[d] that many individuals have wronged it in the same way, but in separate transactions or occurrences"); *Randleel v. Pizza Hut of Am., Inc.*, 182 F.R.D. 542, 543 (N.D. Ill. 1998) (severing misjoined claims where "the factual scenarios underlying each incident are different, the times are different, and the people involved are different") (footnote omitted). Because of the distinct factual underpinnings of the claims against the diverse and non-diverse defendants here, these claims cannot properly be joined together.

46. That Plaintiff asserts two of its five causes of action against "all Defendants" changes nothing. Severance is appropriate because the *factual basis* for Plaintiff's claims against the Manufacturer Defendants (alleged misrepresentations) is separate and distinct from the factual basis giving rise to Plaintiff's claims against the Provider Defendants (alleged unlawful prescribing of opioids to consumers without legitimate medical basis). *See Loeffelbein*, 2003 WL 21313957, at *6 ("While plaintiffs do not distinguish between each of the defendants in the individual counts of the petition, the counts clearly arise from two different sets of facts."); *Nelson v. Aim Advisors, Inc.*, No. 01-CV-0282-MJR, 2002 WL 442189, at *3 (S.D. Ill. Mar. 8,

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2002) ("Although Plaintiffs' claims against all Defendants are pled under the same legal theory, it is only in this abstract sense that Plaintiffs' claims share anything in common . . . [and] does not mean that there are common issues of law and fact sufficient to satisfy Rule 20(a)."). If Plaintiff truly wants to pursue claims against the Provider Defendants, Plaintiff has an adequate remedy in state court. *See Baxter*, 614 F. Supp. 2d at 872.

47. A common thread in many of the dozens of opioid-related cases brought against these same Defendants is plaintiffs tacking on unrelated non-diverse doctors or medical centers, typically individuals who have a public record of engaging in criminal violations with respect to the sale or prescribing of FDA-approved opioid medications. That is the case here. Federal jurisdiction should not be thwarted by the simple expedient of finding judgment-proof non-diverse parties, plainly added in an effort to defeat federal jurisdiction over the real targets of these lawsuits.

2. The Provider Defendants Are Also Fraudulently Misjoined

48. The citizenship of the Provider Defendants alternatively should be ignored because the claims against them are fraudulently misjoined in this action. Fraudulent misjoinder, also called procedural misjoinder, "refers to the joining of claims into one suit in order to defeat diversity jurisdiction where in reality there is no sufficient factual nexus among the claims to satisfy the permissive joinder standard." *Reed v. Am. Med. Sec. Grp., Inc.*, 324 F. Supp. 2d 798, 803 n.8 (S.D. Miss. 2004) (citation and internal quotation marks omitted); *see also Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996) ("Misjoinder may be just as fraudulent as the joinder of a resident defendant against whom a plaintiff has no possibility of a cause of action.") (footnote omitted), *abrogated on another ground in Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000).

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49. While the Ninth Circuit has not yet adopted fraudulent misjoinder, district courts in this Circuit have applied the doctrine. *E.g.*, *Sutton*, 251 F.R.D. at 504-05 (finding misjoinder and describing defendants' "legal and factual position" for applying the fraudulent misjoinder doctrine as "compelling"); *Greene*, 344 F. Supp. 2d at 684-85 ("Although the Ninth Circuit has not yet published an opinion addressing the fraudulent misjoinder rule, this Court agrees with the Fifth and Eleventh Circuits that the rule is a logical extension of the established precedent that a plaintiff may not fraudulently join a defendant in order to defeat diversity jurisdiction in federal court.") (footnotes omitted); *Ellis v. Amerigas Propane, Inc.*, No. 1:16-CV-1184, 2016 WL 8673036, at *2 (E.D. Cal. Nov. 18, 2016) ("[F]raudulent misjoinder has been explicitly applied twice by district courts within the jurisdiction of the Ninth Circuit.") (citing *Sutton* and *Greene*).[3] As explained above, Plaintiff's claims against the Manufacturer and Provider Defendants rely upon separate and distinct factual allegations.

50. Notably, in opioid-related cases like this one, federal district courts recently relied on the fraudulent misjoinder doctrine to ignore the citizenship of non-diverse defendants and deny remand based on diversity jurisdiction. *See Cty. Comm'n of McDowell Cty. v. McKesson Corp.*, No. 1:17-00946, 2017 WL 2843614, at *5 (S.D. W. Va. July 3, 2017) (attached hereto as **Exhibit 7**); *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362, 2017 WL 3317300, at *4-5 (S.D. W. Va. Aug. 3, 2017) (attached hereto as **Exhibit 8**). In *McKesson Corp.*, the plaintiff filed suit in state court against diverse distributors of opioid products for allegedly "flood[ing] McDowell County with opioids well beyond what was necessary to address pain and other [legitimate] reasons," and also against a non-diverse doctor for allegedly

[3] Other courts in this Circuit have declined to apply the doctrine. *See Sutton*, 251 F.R.D. at 504-05 (describing the "split").

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"provid[ing] written opioid prescriptions for patients, knowing that the drugs were likely to be abused, diverted or misused." 2017 WL 2843614, at *1. The court found that these claims were fraudulently misjoined and accordingly denied remand because "plaintiff's claims against the [distributors] and the claims against [the doctor]" lacked "common questions of law or fact" and were "separate and distinct." *Id.* at *5. In *AmerisourceBergen Drug Corp.*, the court reached the same conclusion for substantially the same reasons. 2017 WL 3317300, at *5 (claims against diverse and non-diverse defendants were "separate and distinct").

51. Even if the Court finds that the Provider Defendants are not dispensable parties subject to severance, it should find the claims against them misjoined under the fraudulent misjoinder doctrine.

52. In sum, because Plaintiff is a Washington citizen, and because none of the properly joined defendants are Washington citizens, there is complete diversity of citizenship. *See* 28 U.S.C. § 1332(a).

II. THE AMOUNT IN CONTROVERSY EXCEEDS $75,000

53. "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). "[W]hen a defendant seeks federal-court adjudication, the defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court." *Id.* at 553. In determining whether the amount in controversy is satisfied, the Court may consider compensatory and statutory damages, as well as punitive damages. *See Campbell v. Hartford Life Ins. Co.*, 825 F. Supp. 2d 1005, 1008-09 (E.D. Cal. 2011).

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54. Here, Plaintiff alleges that it has "shouldered a heavy burden" and spent "significant resources to address the opioid crisis[,]" including spending "millions" on "special training" for police officers "to address the opioid-related crises occurring . . . across the city," $906,000 on fire department responses to "opioid-related medical emergencies in the last three months[,]" and "$600,000 annually on . . . treatments . . . for adults with opioid abuse disorders." (Compl. ¶ 202.) Plaintiff seeks to recover "all measures of damages allowable[,]" as well as civil penalties, and punitive and treble damages. (*Id.* Prayer, ¶¶ C-G.) It is thus clear that the amount in controversy exceeds $75,000, exclusive of interest and costs.

III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED

A. This Notice of Removal Is Timely

55. This Notice of Removal is timely filed. The Complaint was filed on September 28, 2017. Because Removing Defendants filed the Notice of Removal on October 24, 2017, removal is timely. *See* 28 U.S.C. § 1446(b)(1).

B. All Properly Joined and Served Defendants Consent to Removal

56. For purposes of removal based on diversity jurisdiction under 28 U.S.C. § 1332(a) and pursuant to 28 U.S.C. § 1446(b), all defendants who have been properly joined and served must consent to removal. In this Circuit, "[o]ne defendant's timely removal notice containing an averment of the other defendants' consent and signed by an attorney of record is sufficient." *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009).

57. The following properly joined and served Defendants consent to removal: Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica Inc.

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n/k/a Janssen Pharmaceuticals, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.

58. The following properly joined Defendants have not been properly served, and thus their consent to removal is not required: Allergan plc f/k/a/ Actavis plc; Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc. n/k/a Allergan Finance, LLC; and Teva Pharmaceutical Industries, Ltd. Nevertheless, they consent to removal but expressly reserve all defenses related to personal jurisdiction and service of process.

59. The state court docket and all papers filed in the state court (**Exhibit 2**) do not reflect any service of the Complaint on either of the Dealer Defendants, Seattle Pain Center Medical Corporation d/b/a Seattle Pain Center, and Frank D. Li. Because the Dealer Defendants are neither properly joined nor properly served, their consent to removal is not required. *See* 28 U.S.C. § 1446(b)(2)(A).

60. By filing this Notice of Removal, neither Removing Defendants nor any other defendant waives any defense that may be available to them and reserves all such defenses. If any question arises as to the propriety of the removal to this Court, Removing Defendants request the opportunity to present a brief and oral argument in support of their position that this case has been properly removed.

C. Notice of Removal

61. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants will give written notice of the filing of this Notice of Removal to all parties of record in this matter, and will file a copy of this Notice with the clerk of the state court.

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CONCLUSION

WHEREFORE, Removing Defendants hereby remove this action from the Superior Court of Washington, in and for the County of King, to the United States District Court for the Western District of Washington.

Dated: October 24, 2017.

By: *s/ Curt Roy Hineline*

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Dated: October 24, 2017.

By: */s/ Thomas D. Adams*

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Attorneys for Defendants PURDUE PHARMA L.P.; PURDUE PHARMA INC.; and THE PURDUE FREDERICK COMPANY INC.

Dated: October 24, 2017.

By: */s/ Angelo J. Calfo*

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Dated: October 24, 2017.

By: */s/ Steven A. Reed**

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WRITTEN CONSENT OF OTHER DEFENDANTS

Consent to removal on behalf of Defendants ALLERGAN PLC f/k/a/ ACTAVIS PLC; ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC. n/k/a ALLERGAN FINANCE, LLC

By: */s/ Jennifer G. Levy, P.C.**

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Consent to removal on behalf of Defendant TEVA PHARMACEUTICAL INDUSTRIES, LTD.

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CERTIFICATE OF SERVICE

I hereby certify that on October 24 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, and a copy of such filing was sent to the following via U.S. Mail:

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Tel: (206) 684-8200
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Defendants:

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c/o Frank Li
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Seattle, WA 98122

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s/Serita Smith
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