

STATE OF MARYLAND

v.

PUBLICIS HEALTH, LLC,
375 Hudson Street
New York, NY 10014

Defendant.

* IN THE
* CIRCUIT COURT FOR
* FREDERICK COUNTY,
* MARYLAND
* C-10-CV-24-000075
* No. _____

* * *
COMPLAINT

The State of Maryland hereby commences this civil action to enforce the Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.* (“Act”), and to obtain injunctive and monetary relief redressing unfair, abusive, and deceptive trade practices in violation of the Act that Defendant, Publicis Health, LLC (“Publicis”, or “Defendant”) committed in the course of its work as a marketing consultant to Purdue Pharma, L.P. (“Purdue”), an opioids manufacturer that marketed and sold prescription opioids, including OxyContin, throughout the State of Maryland. In support thereof, the State pleads as follows:

I. JURISDICTION AND VENUE

1. This civil action is authorized by, *inter alia*, Md. Code Ann., Com. Law §§ 13-402(b), 13-406, and 13-410.
2. This Court’s subject-matter jurisdiction is conferred by Md. Code Ann., Courts & Judicial Proceedings § 1-501.
3. This Court has personal jurisdiction over the Defendant under Md. Code Ann., Courts & Judicial Proceedings § 6-103(a) & (b)(1)-(4) because Publicis designed unfair and deceptive marketing messages and materials that Purdue used to market and sell OxyContin and

other prescription opioids in Maryland, and thereby caused tortious injury in Maryland through acts and omissions both in and outside of Maryland.

4. Frederick County is an appropriate venue under Md. Code Ann., Courts & Judicial Proceedings § 6-201 because these marketing materials and messages were deployed in Frederick County.

II. DEFENDANT

5. Publicis is a Delaware limited liability company headquartered in New York, New York. Publicis' ultimate corporate parent is Publicis Groupe, S.A. ("Publicis Groupe"), a publicly-traded joint stock limited liability company organized under the laws of France.

6. Publicis engaged in the conduct described below by itself or through affiliates and subsidiaries, including Razorfish Health, LLC, Verilogue, Inc., Publicis Health Media, LLC, Rosetta Marketing Services, LLC, and Saatchi & Saatchi Healthcare Communications, Inc., d/b/a Razorfish Health.

III. FACTUAL ALLEGATIONS

A. The Opioid Crisis

7. The State of Maryland, like the United States generally, has been suffering for years from a devastating crisis of addiction and death created by the diversion, overuse, and abuse of prescription opioids. Hundreds of thousands of individuals have died across the United States from opioid-related overdoses, while millions more have suffered the devastating consequences of addiction to opioids that were wrongly prescribed for or diverted to them.

8. Maryland has had more than its share of overdose deaths. It has lost more than 26,666 lives since 2007, including now on average nearly 7 more each day. Hundreds of thousands

over time have struggled with opioids addictions, living disrupted lives and remaining, because of their addictions, at grave risk.

9. The State of Maryland has and will continue to expend billions of dollars to try to abate the opioid crisis and prevent the spread of death and addiction.

10. There is no question that the source of the opioid crisis is rooted in the unlawful distribution, marketing, and sale of prescription opioids, to which most people who ultimately become users of illicit opioids, like illicit fentanyl and heroin, originally became addicted. These unlawful marketing and sales activities led to and have facilitated the vast over-prescription and consequent overconsumption and diversion of opioids. Opioids have been consumed in the United States and Maryland far in excess of any legitimate medical need. They have wreaked havoc throughout the State.

11. Purdue Pharma, L.P, (“Purdue”) and many of its affiliates were central figures in the creation or expansion of the opioid crisis. Purdue developed and then unfairly and deceptively sold prescription opioids, seeking to push them to a market they consistently sought vastly to expand.

12. Purdue knew that its drugs were regularly addicting and often killing those who consumed them. In its marketing and promotion, however, Purdue deliberately minimized and concealed the extraordinary risks its opioids posed so that it could increase its sales and profits. It wanted more people on its opioids and wanted those already taking them to take more pills, at higher doses, and for longer than prescribers would otherwise have considered appropriate.

13. Purdue thereby plagued the nation and this State with prescription opioids – addicting and killing people while taking billions from the public. Purdue has now admitted at least some of this conduct, having pleaded guilty to federal charges in 2020.

B. Publicis' Unfair, Abusive, and Deceptive Marketing Practices

14. But as is typical in the pharmaceutical industry and elsewhere, Purdue hardly acted alone. Pharmaceutical manufacturing, marketing, and selling are complex practices that require, among other things, teams of highly specialized professionals with the experience and ability to shape and disseminate promotional campaigns, materials, messages, and interactions of multiple kinds at multiple levels – from advertising to face-to-face sales calls and speaker program events to electronic medical records platforms and software interactions and other mediums. Pharmaceutical manufacturers typically retain outside professionals to assist them in marketing and other specialized work, and Purdue was no exception. People and entities from around the country and the world worked with Purdue in the business of selling opioids, retained under contract to help design and carry out their illegal marketing and sales schemes and succeed alongside Purdue.

15. *Enter Publicis.* Publicis is one of the world's largest healthcare marketing agencies, with offices, agencies, brands, expertise, and influence across the world. On its current website, Publicis describes its business, *inter alia*, as providing clients with “the power of [its] creativity” and as offering “innovative solutions [that] optimize every opportunity for better outcomes” in healthcare marketing and communications.

16. Publicis had multiple engagements over time with Purdue, working closely with Purdue executives to help design and carry out messages and campaigns about OxyContin and Purdue's other opioids – including Butrans and Hysingla – that would convince prescribers to prescribe them and consumers to take them. Publicis was party to a Master Services Agreement with Purdue from 2010 to 2021, earning more than \$70 million for dozens of unfair and deceptive marketing campaigns and schemes.

17. Publicis' projects covered all aspects of Purdue's marketing and sales, including designing sales strategies and tactics, maximizing the reach and influence of Purdue's sales force, using electronic media, designing content, developing promotional messaging, drafting scripts and other materials for Purdue sales representatives to use with prescribers, helping with internal operations and sales activities, targeting prescribers who would be most likely to prescribe large amounts of opioids, recording intimate discussions between prescribers and patients about opioids, and a variety of other marketing, consulting, and sales activities.

18. Publicis created many of the sales materials that Purdue's sales representatives used when they met with prescribers, including an OxyContin Patient Essentials Kit which contained an OxyContin Savings Card. These kits and savings cards were designed to – and did – lure prescribers and patients into extending the length of opioid prescriptions.

19. Publicis also developed materials for Purdue that encouraged physicians to increase the doses that patients were prescribed and the length of therapy on Purdue's opioids, while also assisting Purdue in disseminating false messages that OxyContin had been made abuse-deterrent and could be safely prescribed and consumed, including off-label (*i.e.*, for unapproved and inappropriate uses). Like Purdue, Publicis was aware that increasing doses and the lengths of therapy would exacerbate the risks of addiction, abuse, and death. And Publicis employees also were aware from real-world data that OxyContin's so-called abuse-deterrent features might not have any identifiable real-world impact.

20. In addition to the sales campaigns it created, Publicis facilitated Purdue's partnerships with other entities. Publicis coordinated and implemented Purdue's work with McKinsey and Company, Verilogue, Inc., and Practice Fusion, Inc.

21. Publicis enabled Purdue's work with another Publicis subsidiary, Verilogue, that provided prescribers small digital recording devices to record intimate conversations with patients. These were then used by Verilogue and Purdue to figure out how to best overcome patients' concerns about taking opioids. Purdue then implemented Verilogue's recommendations in its marketing materials.

22. From 2012 to 2019, Publicis also encouraged and facilitated Purdue's payment of kickbacks to the electronic medical records ("EMR") software provider Practice Fusion so that it could use Practice Fusion's software to increase the market for its opioids. Purdue paid Practice Fusion to place unfair and deceptive messages within the Practice Fusion's software's Clinical Decision Support alerts ("CDS alerts") that the software ostensibly generated by analyzing patient data and making seemingly objective recommendations to prescribe opioids at the precise point at which the doctors were making treatment decisions. Millions of CDS alerts were generated through this process. Purdue and Practice Fusion ultimately have pleaded guilty to criminal charges arising from this scheme.

23. By helping Purdue develop and implement these and other unfair and deceptive schemes, Publicis willfully participated in Purdue's illegal conduct. It too is responsible for illegally contributing to the crisis of addiction and death that has impaired, ended, or otherwise disrupted the lives of hundreds of thousands of residents of Maryland who have struggled with opioid addictions and the more than 26,666 who have died.

IV. COUNT I

(Consumer Protection Act)

24. The State incorporates and adopts by reference the allegations contained in Paragraphs 9 through 23.

25. In its engagement with Purdue, Publicis created and carried out the schemes to market and sell Purdue's opioids as set forth above.

26. These practices constituted unfair, abusive, or deceptive acts and practices in the sale or offer for sale of consumer goods in violation of the Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-301 & 13-303.

V. REQUEST FOR RELIEF

WHEREFORE, the State of Maryland respectfully requests that this Court enter an Order:

- a. Issuing a permanent injunction prohibiting Publicis from engaging in deceptive acts and practices in violation of the Consumer Protection Act;
- b. Issuing a permanent injunction mandating that Publicis take affirmative steps to provide relief to consumers injured by its conduct and to prevent further instances of its conduct or further harm;
- c. Awarding economic damages;
- d. Ordering Publicis to disgorge all ill-gotten gains;
- e. Imposing civil penalties for each violation of the Consumer Protection Act;
- f. Awarding the costs of this action; and
- g. For any such other and further relief as the nature of this cause may require.

Respectfully submitted,

February 1, 2024

ANTHONY G. BROWN
Attorney General of Maryland

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CERTIFICATE OF SERVICE

I hereby certify on this February 1, 2024, I caused a copy of the foregoing Complaint and the attached proposed Consent Judgment to be filed on MDEC and to be served via first class mail, postage prepaid, and e-mail, upon:

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