United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

Case No. 18-cv-07591-CRB

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING WALGREENS

The opioid epidemic has plagued San Francisco for over twenty years. The number of individuals who die annually from opioid overdoses continues to climb. Thousands of city residents, from all walks of life, struggle with addiction. Widespread opioid use has strained the city's hospitals. It has forced streets, parks, and public spaces to close. It has exacerbated crime and homelessness. Every year, San Francisco devotes significant resources to a multiprong fight against the opioid epidemic. That fight includes this case.

This case is part of a nationwide multidistrict litigation stemming from the ongoing opioid epidemic. Cities, counties, and states across the country have filed claims against manufacturers, distributors, and dispensers of prescription opioids. While the facts of each case vary, the claims center on the contention that each defendant has contributed to the opioid epidemic that has engulfed the country.

In this case, the People of the State of California, acting through the San Francisco City Attorney ("Plaintiff"), filed claims against dozens of defendants related to the opioid epidemic in San Francisco. By the time of trial, only four defendants remained. The Court

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held a bench trial from April 25, 2022 to June 27, 2022. Closing argument was held from July 12 to July 13, 2022. By the close of trial, Walgreens Co. ("Walgreens") was the sole remaining defendant. The other three defendants settled their claims.

At trial, Plaintiff brought a single public nuisance claim against Walgreens. The question for the Court is whether Plaintiff proffered sufficient evidence at trial to prove this claim. To carry its burden of proof, Plaintiff had to establish that it is more likely than not that Walgreens knowingly engaged in unreasonable conduct that was a substantial factor in contributing to the opioid epidemic in San Francisco. After careful consideration of the evidence, the Court finds that Plaintiff carried its burden.

Walgreens is the largest retail pharmacy chain in San Francisco. Between 2006 and 2020, Walgreens distributed and dispensed over one hundred million prescription opioid pills in the city. The Controlled Substances Act ("CSA") and its implementing regulations impose duties on distributors and dispensers of prescription opioids. In exchange for the privilege of distributing and dispensing prescription opioids, Walgreens has regulatory obligations to take reasonable steps to prevent the drugs from being diverted and harming the public. The evidence at trial established that Walgreens breached these obligations.

Until 2014, Walgreens distributed prescription opioids to its pharmacies in San Francisco. CSA regulations require distributors to implement and maintain a system for identifying suspicious orders of opioids. Suspicious orders of opioids must be halted and reported to the DEA. They cannot be shipped to the ordering pharmacy. The evidence at trial established that Walgreens violated this regulatory duty for several years. It did not maintain an effective system for identifying suspicious orders. It shipped thousands of suspicious orders to its pharmacies without investigation. In 2012, the DEA shut down one of Walgreens' three controlled substance distribution centers because the distribution center's failure to monitor for suspicious opioid orders posed an imminent threat of harm to public health and safety. Shortly thereafter, Walgreens stopped distributing opioids all together.

Walgreens pharmacies are the largest dispenser of opioids in San Francisco. To

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prevent diversion, CSA regulations require Walgreens to verify the medical legitimacy of opioid prescriptions before dispensing them. Fulfilling this duty requires Walgreens pharmacies to resolve "red flags" associated with a prescription before dispensing it. Red flags are well-established warning signs that raise questions about the legitimacy of a prescription. Medically legitimate prescriptions are prescribed for a patient's benefit, but medically illegitimate prescriptions are not. They are prescriptions that are misused and abused. Medically illegitimate prescriptions extend far beyond forged prescriptions and prescriptions that are written on a stolen prescription pad. Many illegitimate prescriptions come from unscrupulous doctors who write prescriptions in exchange for payment. It is not enough for a pharmacy to simply ascertain that a licensed prescriber wrote the prescription. Pharmacies have a corresponding duty to exercise independent judgment in determining whether the prescription was written for a legitimate medical purpose.

The evidence at trial established that from 2006 to 2020, Walgreens pharmacies in San Francisco dispensed hundreds of thousands of red flag opioid prescriptions without performing adequate due diligence. Tens of thousands of these prescriptions were written by doctors with suspect prescribing patterns. The evidence showed that Walgreens did not provide its pharmacists with sufficient time, staffing, or resources to perform due diligence on these prescriptions. Pharmacists experienced constant pressure to fill prescriptions as quickly as possible, and a shortage of resources to review them before dispensing. As a result of Walgreens' fifteen-year failure to perform adequate due diligence, Plaintiff proved that it is more likely than not that Walgreens pharmacies dispensed large volumes of medically illegitimate opioid prescriptions that were diverted for illicit use and that substantially contributed to the opioid epidemic in San Francisco.

The Court's findings of fact and conclusions of law are set forth below. This ruling holds only that Walgreens is liable for substantially contributing to the public nuisance in San Francisco. A subsequent trial will determine the extent to which Walgreens must abate the public nuisance that it helped to create.

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I. FINDINGS OF FACT

In a bench trial, the court's findings of fact are presumed to be based on admissible evidence. Williams v. Illinois, 567 U.S. 50, 69 (2012); Harris v. Rivera, 454 U.S. 339, 465 (1981). To the extent that objections have been raised to the evidence cited in support of the Court's findings, the objections are overruled. See City of Huntington v. Amerisource Bergen Drug Corp., No. CV 3:17-01362, 2022 WL 2399876, at *1 (S.D.W. Va. July 4, 2022).

A. Background

1. The Science of Opioid Addiction

Opioid addiction is explained by a change in an opioid user's brain chemistry.[1] See Lembke (dkt. 1281) Decl. ¶ 3. Opioids bind to mu-pain receptors temporarily relieving pain. Lembke, May 9, 2022, Trial Tr. at 383:23–384:4. In addition, opioids cause the release of dopamine. Id. Dopamine is a naturally occurring neurotransmitter that causes feelings of pleasure and reward. See id.; Lembke, May 9, 2022, Trial Tr. at 383:23–384:9. In response to repeated additional releases of dopamine from opioid use, the brain begins to downregulate the amount of dopamine it naturally produces, a process known as neuroadaptation. Lembke Decl. ¶ 3. The result is a dopamine deficient state, in which the brain is producing less dopamine and the user is experiencing less pleasure and more pain than they were before opioid use began. Id.

In a dopamine deficient state, a user needs opioids to return to their previous dopamine baseline and to avoid the pain of prolonged dopamine deficiency. Lembke Decl. ¶ 3. Users "need opioids not to feel good but just to restore a level balance and feel normal." See Lembke, May 9, 2022, Trial Tr. at 384:10–386:3. Opioid users in this state are physically dependent on the drugs. See id. at 384:10–386:15. Someone taking opioids

[1] Opioid addiction is synonymous with opioid use disorder. See Colwell, April 28, 2022, Trial Tr. at 360. Opioid use disorder has a more precise medical definition set out in The Diagnostic and Statistical Manual of Mental Disorders ("DSM"), which defines the severity as mild, moderate, or severe, depending on the symptoms present. See Lembke Decl. ¶ 2. But both terms describe the same form of harmful behavior: the continued use of opioids despite deleterious effects to self or

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for "relatively short periods of time" can develop physical dependence and experience withdrawal if they stop taking opioids. Zevin, May 10, 2022, Trial Tr. at 640:21–641:1; Coffin (dkt. 1376) Decl. ¶ 55. Symptoms of withdrawal include anxiety, debility, insomnia, dysphoria, "and in the case of opioids, a very distinct and painful physical withdrawal syndrome, including full-body pain that can be experienced and is typically experienced in people who do not have a pain disorder." Lembke, May 9, 2022, Trial Tr. at 384:10–386:15.

Over time, opioid users generally require higher doses to experience the same effect that they initially experienced. Lembke, May 9, 2022, Trial Tr. at 386:12–387:15. This is the process of developing tolerance to the drug. Id. Dr. Lembke explained that "the brain adapts to the presence of the opioid molecule such that the individual needs more and more to get the same effect and ultimately is physically dependent and experiences painful withdrawal when they stop whether or not they have a pain condition." Id. at 387:11–15. Once the brain adapts to the presence of opioids, it can "take a very long time after the individual has stopped using their drug for the brain to reset itself to normal dopamine levels." Id. at 387:17–388:7; 391:25–392:18. Reducing opioid use requires tapering, which involves gradually progressing to lower doses of opioids. Lembke Decl. ¶¶ 39–41. The process of tapering off opioids "is time-intensive and requires substantial support from clinicians and other providers in the healthcare system." Coffin Decl. ¶ 55.

Opioid addiction affects people from all walks of life, regardless of age, ethnicity, or socioeconomic status. Colwell (dkt. 1284) Decl. ¶¶ 11–12. The neural pathways affected by opioid use are common across all people, which makes everyone vulnerable to opioid addiction. Lembke Decl. ¶ 4. Opioids carry risks of addiction even when prescribed by a medical professional. Keyes (dkt. 1386) Decl. ¶ 14, 40. Stronger dosages and longer durations of use increase the risk of addiction. Lembke, May 9, 2022, Trial Tr. at 398:5–16.

Opioid addiction can have devastating consequences. People suffering from the

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