

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

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

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

10 Walgreens is the largest retail pharmacy chain in San Francisco. Between 2006 and  
11 2020, Walgreens distributed and dispensed over one hundred million prescription opioid  
12 pills in the city. The Controlled Substances Act (“CSA”) and its implementing regulations  
13 impose duties on distributors and dispensers of prescription opioids. In exchange for the  
14 privilege of distributing and dispensing prescription opioids, Walgreens has regulatory  
15 obligations to take reasonable steps to prevent the drugs from being diverted and harming  
16 the public. The evidence at trial established that Walgreens breached these obligations.

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

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

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

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

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

## 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.<sup>1</sup> 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

---

<sup>1</sup> 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

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

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

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

27 Opioid addiction can have devastating consequences. People suffering from the

28 most severe forms of addiction “commit all available resources to obtaining more of the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.