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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Annaken, LLC

Plaintiff,

vs.

AmerisourceBergen Drug Corp.

Defendants.

No. _____

VERIFIED COMPLAINT

Plaintiff Annaken, LLC, dba Ken’s Sunflower Pharmacy, (hereinafter, “Sunflower Pharmacy” or “Plaintiff”), by way of Complaint against Defendants, AmerisourceBergen Drug Corp (hereinafter, “Supplier” or “Defendant”), hereby allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Sunflower Pharmacy operates a retail pharmacy located at 7222 West 80th Street; Overland Park, Kansas 66204 and, at all times relevant herein, has maintained its principal place of business in Johnson County, Kansas.
2. Sunflower Pharmacy is licensed to operate a retail pharmacy by the United States Department of Justice Drug Enforcement Agency and the Kansas State Board of Pharmacy.
3. Sunflower Pharmacy has a pharmacist named Ken Moyer, who is also an owner of Sunflower Pharmacy, and a number of part-time relief pharmacists.

4. On information and belief, Defendant, AmerisourceBergen Drug Corp. is a Delaware Corporation duly authorized to transact and actually transacting business in the State of Kansas as a foreign company.

5. On information and belief, Defendant, Supplier, has a shipping-from address of 11200 North Congress Ave., Kansas City, Missouri 64153 and a primary place of business at 1 W 1ST Ave Conshohocken, PA, 19428-1800.

6. On information and belief, Defendant Supplier operates under a state license number 2005017289 and a DEA number of RA0326276.

7. All acts alleged herein occurred in Johnson County, Kansas.

8. This Court has original jurisdiction of this case pursuant to 28 U.S.C. § 1332 because the value of the claims exceeds \$75,000 exclusive of interest and costs, and because this case involves citizens of different states.

9. Venue is proper in this district under 28 U.S.C. § 1391(b)(3).

BACKGROUND

The Agreement between Sunflower Pharmacy and Supplier

10. Sunflower Pharmacy has entered a number of agreements with Supplier to purchase pharmaceutical products from Suppliers.

11. Purchase agreements at least for the last ten years show Supplier agreed to permit Sunflower Pharmacy to purchase numerous dosage units combined of oxycodone at various strengths measured in milligrams of the drug.

12. Supplier has supplied similar amounts of oxycodone over the course of at least 20 years.

13. Supplier has supplied numerous other controlled medications in similar quantities over the same time period.

14. Sunflower Pharmacy has fully complied with all details of all agreements that exist between Sunflower Pharmacy and Supplier.

Supplier breaches Agreement

15. On or about early 2020 Duane Stickles sent notification to Sunflower Pharmacy notifying Sunflower Pharmacy, and Ken Moyer in particular, that Sunflower Pharmacy is in danger of having shipments of all substances suspend for one year.

16. In said notification, Supplier informed Sunflower Pharmacy that the reasons for suspension included at least: Sunflower Pharmacy had a percentage of total prescriptions filled that constituted controlled substances that was too high; that a particular doctor was prescribing to many controlled substances, which Sunflower Pharmacy subsequently filled; and that Sunflower Pharmacy had filled too many prescriptions containing medications that should not be taken together according to Supplier.

17. Said notification invited Sunflower Pharmacy to respond and fix the issues.

18. Sunflower Pharmacy, in response, explained the reasons for the percentage of controlled substances being as they were and offered to cease filling scripts from the particular doctor and scripts containing the medications Supplier indicated should not be taken together.

19. Without necessitating Sunflower Pharmacy to change any filling behavior, Supplier dropped the issue and continued to fill orders as normal for nearly 2 years.

20. On or about June 2022, Supplier again indicated Sunflower Pharmacy was in danger of losing medication deliveries.

21. The reasons were substantially the same as those noted in the previous message.

22. The message from Supplier again invited a response from Sunflower Pharmacy.

23. Sunflower Pharmacy again promptly responded to Supplier, offering to remedy any issues and requesting direction on what exactly to do to be in compliance with Supplier's new requests.

24. Supplier responded on or about July 1, 2022 by terminating Sunflower Pharmacy's supply of medications, effectively ending Sunflower Pharmacy's ability to do business.

25. Supplier terminated Sunflower Pharmacies supplies without addressing Sunflower Pharmacy's response in any way.

26. Supplier did not give Sunflower Pharmacy any opportunity to remedy or further explain what Supplier claimed was the basis for its decision to terminate distribution.

27. Prescriptions for controlled substances filled by Sunflower Pharmacy are processed through Kansas's Electronic Prescribing of Controlled Substances (EPCS) programs, in accordance with Kansas bill HB2119, signed by the Kansas Governor.

28. The EPCS provides safeguards, such as two-factor authentication for prescribers, insuring only valid prescriptions by licensed doctors are received by Sunflower Pharmacy. The system is much more secure than older, paper-based prescriptions because they cannot be stolen, tampered with, or lost and the prescriber's DEA number is no longer out in the community.

29. Sunflower Pharmacy also uses K-tracs, the Kansas state database that collects patient-specific prescription information, at the time of dispensing at the pharmacy. Sunflower Pharmacy uses the system before controlled substances are filled. The reliance on the system is designed to reduce diversion of controlled substances.

30. At no time before Supplier decided to stop distributions of medications to Sunflower Pharmacy did Supplier alleged that Sunflower Pharmacy constitutes "an unreasonable risk of diversion."

31. At no time before Supplier decided to stop distributions of medications to Sunflower Pharmacy did Supplier allege that there were any licensing problems for any pharmacists working at Sunflower Pharmacy.

32. Supplier has systematically refused to resume shipments of medications before a one-year period has elapsed without expanding on any reason for the termination.

33. Despite the request made by Sunflower Pharmacy, Supplier has refused to reinstate purchasing agreements and renew distribution of all controlled and non-controlled substances to Sunflower Pharmacy.

34. Due to the highly regulated nature of the pharmacy business, Sunflower Pharmacy cannot simply sign a distribution agreement with a new wholesaler and resume business immediately, but rather, must undergo lengthy review and scrutiny from any potential new wholesale distributor.

35. The review process from a new wholesale distributor can take a long time, during which Supplier would have no medications and would face immediate and irreparable harm from lost sales and lost customers.

36. There has never been any finding by any governmental agency or body that Sunflower Pharmacy was or is an unreasonable risk of being a company that diverts controlled substances.

COUNT ONE

(Declaratory Judgment)

37. Plaintiff hereby repeats and includes by reference all allegations set forth above as though fully set forth herein.

38. Pursuant to 28 U.S.C § 2201, after reasonable notice and hearing, a person interested in a contract, or whose rights, status, or legal relations are affected by a contract, may have the Court determine, among other things, any question of construction or validity under the contract and obtain a declaration of rights, status or other legal relations thereunder.

39. Sunflower Pharmacy and Supplier entered into various agreements for the purchase of pharmaceutical products.

40. On or about July 22, 2022, Defendants suspended shipments to Sunflower Pharmacy and ultimately terminated all agreements.

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