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STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, EX REL. ANNE E.
LOPEZ, ATTORNEY GENERAL,

Plaintiff,

v.

PUBLICIS HEALTH, LLC,

Defendant.

CIVIL NO. _____

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
RELIEF; SUMMONS**

Trial Date: None

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the State of Hawai'i, brings this action pursuant to *Haw. Rev. Stat.* 480-1 *et seq.* ("HRS Chapter 480") against Defendant, Publicis Health, LLC ("Publicis" or "Defendant"). In support of this action, the State alleges:

I. PARTIES, JURISDICTION, AND VENUE

1. This enforcement action is brought by Attorney General Anne E. Lopez, in the name of the State of Hawai‘i and in the public interest pursuant to the authority granted by HRS §§ 480-2(d), 480-3.1, 480-15, 661-10, and under the State’s *parens patriae* authority, upon the ground that the Defendant has engaged in unfair or deceptive acts and practices in or affecting commerce as declared unlawful by HRS § 480-2(a) and by the common law of the State of Hawai‘i.

2. Defendant Publicis is a Delaware limited liability company headquartered in New York, New York. Publicis’s ultimate corporate parent is Publicis Groupe, S.A. (“Publicis Groupe”), a publicly-traded joint stock limited liability company organized under the laws of France. At all times relevant to this proceeding, Publicis did business in Hawai‘i. The term “Publicis” as used in this Complaint includes, collectively, Publicis Health, LLC and each of its American affiliated entities that worked on opioid related matters from 2010 through 2021: Razorfish Health, LLC, Verilogue, Inc., Publicis Health Media, LLC, Rosetta Marketing Services, LLC, Saatchi & Saatchi Healthcare Communications, Inc., d/b/a Razorfish Health.

3. At all times described below, Defendant and its agents have engaged in conduct affecting “commerce,” as used in HRS § 480-2(a).

4. Subject matter jurisdiction over this action is conferred upon this Court pursuant to HRS § 603-21.5(a)(3). Defendant is subject to personal jurisdiction in this Court pursuant to HRS § 634-35(a) and (b) because the causes of actions asserted herein arose from Defendant’s transaction of business in Hawai‘i and commission of tortious acts in Hawai‘i, including the City and County of Honolulu, State of Hawai‘i. Accordingly, Defendant is deemed to be doing business in the State of Hawai‘i, including the City and County of Honolulu, State of Hawai‘i, and are thereby subject to personal jurisdiction in this Court.

5. Venue is proper in this Court pursuant to HRS. §§ 661-10 and 480-21(b), because the Office of the Attorney General and the seat of the State Government are situated in the City and County of Honolulu, State of Hawai‘i, and the claims for relief asserted herein arose in large part in the City and County of Honolulu, State of Hawai‘i.

II. FACTUAL ALLEGATIONS

6. Beginning in the mid-1990s and continuing through the late 2010s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions across the United States. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

7. Publicis is one of the world’s largest healthcare advertising companies with 40 offices and 11 brands worldwide. Publicis advertises to potential clients that it can translate healthcare marketing into healthcare engagement.

8. The State brings this action against Publicis for the advertising and marketing consulting services it provided to opioid manufacturers, including Purdue Pharma L.P. (along with related entities Purdue Pharma Inc., and the Purdue Frederick Company, collectively “Purdue”). Publicis was in a Master Services Agreement with Purdue from 2010 to 2021. Over the decade of the Purdue-Publicis partnership, Purdue paid Publicis more than \$70 million for dozens of unfair and deceptive marketing schemes.

9. From 2010 until 2019, Purdue was Publicis’ top opioid client, and Publicis was Purdue’s number one marketing partner, serving as Purdue’s “agency of record.” Publicis worked with Purdue to promote branded opioids OxyContin, Butrans, and Hysingla and helped develop unbranded marketing campaigns.

10. Publicis's 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.

11. Publicis created many of the 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.

12. Publicis developed and created materials that deceptively promoted (i) physicians' "titration" of extended-release opioids to higher and more dangerous doses, increasing the likelihood of addiction; (ii) physicians' conversion of immediate-release opioid prescriptions to more dangerous extended-release OxyContin prescriptions; (iii) Purdue's false messaging that its abuse-deterrent OxyContin formulation was safe and prevented abuse, despite knowing that the formulation would not stop illicit use of OxyContin because the pills could still be abused orally; and (iv) Purdue's opioid drugs as safe and appropriate for medical conditions for which they are not approved.

13. Publicis also concocted a strategy to deploy Purdue's sales force to increase opioid sales through unbranded marketing including advising and assisting Purdue in deploying front groups and key opinion leaders to disseminate messaging that prescription opioids were safe and less addictive. Under the guise of neutrality, these groups and opinion leaders conveyed this

message to healthcare providers, patients, and policymakers without disclosing that they were being paid or financed by Purdue.

14. 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.

15. Publicis worked alongside McKinsey to strategize, develop, and implement Purdue's "Evolve to Excellence" marketing scheme. The "Evolve to Excellence" scheme was intended primarily to—and did—flood the most prolific prescribers of OxyContin with additional sales representative calls and messaging, including messaging involving the purported "abuse deterrent" aspects of OxyContin as well as the claimed benefits of converting patients to OxyContin and titrating them up to higher doses.

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

17. Publicis encouraged and facilitated Purdue's partnership with Practice Fusion and the use of Practice Fusion's Clinical Decision Support alerts ("CDS alerts"). As early as 2012, Publicis advocated that Purdue use Practice Fusion's electronic medical records platform to grow opioid prescriptions. Practice Fusion's CDS alerts gave prescribers information about extended-release opioids right at the point of prescribing, the exact time when a decision about treatment was being made. The Practice Fusion alerts continued until the Spring of 2019. In 2020, following an investigation by the United States Department of Justice into Practice Fusion's CDS alerts and

Purdue, Practice Fusion paid a \$145 million fine and entered into a deferred prosecution agreement admitting to an illegal kickback scheme in which Practice Fusion was paid by Purdue to create and deploy the CDS alerts in electronic health records to increase prescriptions of Purdue's opioids.

18. Publicis distributed hundreds of millions of dollars up the corporate chain to its foreign corporate parent, Publicis Groupe, during the time period that Publicis worked with Purdue to deceptively promote opioids. These distributions from Publicis continued—and there are indications that the amounts increased—as Purdue and Publicis faced increasing public and governmental scrutiny for their deceptive conduct.

III. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION (Violation of HRS Chapter 480)

19. Plaintiff realleges and incorporates by reference each allegation contained in the preceding paragraphs as if they were set out herein.

20. Defendant, during its conduct described above, engaged in unfair or deceptive acts and practices that are prohibited by HRS Chapter 480.

21. These acts and practices above are unfair because they offend public policy and are oppressive, unethical, immoral, unscrupulous, and/or substantially injurious to consumers.

22. Upon information and belief, the Defendants knew, or should have known, that at the time of making their representations or omissions, or causing those representations or omissions to be made, that such representations or omissions were material and likely to mislead the public.

23. Defendant's unfair or deceptive acts or practices described above constitute multiple, separate violations of HRS Chapter 480, but also collectively constitute an ongoing, continuing violation by Defendant.

24. Defendant's violations of HRS Chapter 480 justify penalties of up to \$10,000 for each violation pursuant to HRS § 480-3.1.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

A. Adjudging and decreeing that Publicis has engaged in the acts or practices complained of herein, and that such constitute unfair acts or practices in violation of HRS Chapter 480;

B. Issuing a permanent injunction prohibiting Publicis, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair trade practices, as outlined in the Consent Judgment that will be filed shortly after this Complaint;


C. Ordering Publicis to pay an amount of damages or restitution for violating of the laws set forth above of Hawai'i;

D. That the Court enter the Consent Judgment that will be filed shortly after this Complaint as an Order of the Court; and

E. Ordering such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawai'i; February 1, 2024.

/s/ Christopher T. Han
BRYAN C. YEE
CHRISTOPHER T. HAN
Attorneys for Plaintiff
STATE OF HAWAI'I

STATE OF HAWAII CIRCUIT COURT OF THE FIRST <input checked="" type="checkbox"/> CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER			
PLAINTIFF'S NAME & ADDRESS, TEL. NO. STATE OF HAWAII 425 Queen Street Honolulu, Hawaii 96813 808-586-1180			
PLAINTIFF STATE OF HAWAII		VS.	DEFENDANT(S) PUBLICIS HEALTH, LLC
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to file with the court and serve upon Deputy Attorney General Christopher T. Han plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.			
DATE ISSUED	CLERK	CIRCUIT COURT CLERK	
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokuia at: http://www.courts.state.hi.us			
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402; MAUI- Phone No. 808-244-2929, FAX 808-244-2777; HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411; KAUAI- Phone No. 808-482-2365, TTY 808-482-2533, FAX 808-482-2509, at least ten (10) working days prior to your hearing or appointment date.			