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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 **THE PEOPLE OF THE STATE OF
14 CALIFORNIA,**

15 Plaintiff,

16 v.

17 **PUBLICIS HEALTH, LLC,**

18
19 Defendant.

Case No. **24CV062231**

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

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22 Plaintiff, the State of California (“Plaintiff” or the “People”), acting by and through Rob
23 Bonta, Attorney General of the State of California, is informed and believes and thereupon
24 alleges as follows:

25 **I. PARTIES**

26 1. Plaintiff is the People of the State of California.
27 2. Plaintiff brings this action by and through Rob Bonta, Attorney General and the
28 state’s chief law officer under article V, section 13 of the California Constitution. The Attorney

1 General is authorized by California Business and Professions Code sections 17204 and 17535 to
2 obtain injunctive relief to halt violations of, and enforce compliance with, California Business and
3 Professions Code sections 17200 et seq. and 17500 et seq., respectively. The Attorney General is
4 authorized by Business and Professions Code sections 17206 and 17536 to obtain civil penalties
5 of up to \$2,500 for each violation of sections 17200 and 17500, respectively. The Attorney
6 General is authorized under Civil Code section 3494 to obtain preliminary and permanent
7 injunctions to abate any public nuisance present in the State of California as defined by Civil
8 Code sections 3479 and 3480.

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

18 II. JURISDICTION AND VENUE

19 4. This Court has original jurisdiction over this action pursuant to article VI, section
20 10 of the California Constitution.

21 5. This Court has jurisdiction over Publicis. Publicis transacted business within the
22 County of Alameda and elsewhere in the state of California at all times relevant to this
23 Complaint. Publicis intentionally availed itself of the California market so as to render the
24 exercise of jurisdiction over Publicis by the California courts consistent with traditional notions of
25 fair play and substantial justice.

26 6. Venue for this action properly lies in this Court pursuant to Code of Civil
27 Procedure section 395.5 because Defendant transacts business in California or some of the
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1 transactions upon which this action is based occurred in California, including the County of
2 Alameda.

3 III. FACTUAL ALLEGATIONS

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

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

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

18 10. From 2010 until 2019, Purdue was Publicis's top opioid client, and Publicis was
19 Purdue's number one marketing partner, serving as Purdue's "agency of record." Publicis worked
20 with Purdue to promote branded opioids OxyContin, Butrans, and Hysingla and helped develop
21 unbranded marketing campaigns.

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

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

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

13 14. Publicis also concocted a strategy to deploy Purdue’s sales force to increase opioid
14 sales through unbranded marketing including advising and assisting Purdue in deploying front
15 groups and key opinion leaders to disseminate messaging that prescription opioids were safe and
16 less addictive. Under the guise of neutrality, these groups and opinion leaders conveyed this
17 message to healthcare providers, patients, and policymakers without disclosing that they were
18 being paid or financed by Purdue.

19 15. In addition to the sales campaigns it created, Publicis facilitated Purdue’s
20 partnerships with other entities. Publicis coordinated and implemented Purdue’s work with
21 McKinsey and Company (“McKinsey”), Verilogue, Inc. (“Verilogue”), and Practice Fusion, Inc.
22 (“Practice Fusion”).

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

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

6 18. Publicis encouraged and facilitated Purdue’s partnership with Practice Fusion and
7 the use of Practice Fusion’s Clinical Decision Support alerts (“CDS alerts”). As early as 2012,
8 Publicis advocated that Purdue use Practice Fusion’s electronic medical records platform to grow
9 opioid prescriptions. Practice Fusion’s CDS alerts gave prescribers information about extended-
10 release opioids right at the point of prescribing, the exact time when a decision about treatment
11 was being made. The Practice Fusion alerts continued until the Spring of 2019. In 2020,
12 following an investigation by the United States Department of Justice into Practice Fusion’s CDS
13 alerts and Purdue, Practice Fusion paid a \$145 million fine and entered into a deferred
14 prosecution agreement admitting to an illegal kickback scheme in which Practice Fusion was paid
15 by Purdue to create and deploy the CDS alerts in electronic health records to increase
16 prescriptions of Purdue’s opioids.

17 19. Through its actions and inactions in connection with the marketing of opioids,
18 including those alleged above, Publicis materially contributed to the creation of an addiction
19 crisis that has injured, harmed, and otherwise disrupted the lives of tens of thousands of residents
20 of the State of California. Publicis knew, or in the exercise of reasonable care and diligence
21 should have known, that its actions and inactions would lead to this result.

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

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1 **IV. CLAIMS FOR RELIEF**
2 **FIRST CAUSE OF ACTION**
3 **Violations of Business and Professions Code**
4 **Section 17500 (Untrue or Misleading Representations)**

5 21. The People reallege and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as though fully set forth herein.

7 22. Defendant, in the course of its business, provided advertising and marketing
8 consulting services to opioid manufacturers for their unfair and deceptive marketing schemes, in
9 violation of the False Advertising Law, Business and Professions Code section 17500.

10 **SECOND CAUSE OF ACTION**
11 **Violations of Business and Professions Code**
12 **Section 17200 (Acts of Unfair Competition)**

13 23. The People reallege and incorporate by reference each and every allegation
14 contained in the preceding paragraphs as though fully set forth herein.

15 24. The Unfair Competition Law (“UCL”), Business and Professions Code section
16 17200 et seq., provides that unfair competition shall mean and include, among other acts, any
17 unlawful or unfair business act or practice and any act prohibited by Business and Professions
18 Code section 17500.

19 25. Defendant has engaged in the following unlawful and unfair acts and practices,
20 among others, each of which constitute acts of unfair competition in violation of Business and
21 Professions Code section 17200:

- 22 (a) Defendant’s actions constitute multiple violations of Business and
23 Professions Code section 17500 as alleged in the First Cause of Action,
24 which allegations are incorporated herein as if set forth in full; and
25 (b) Defendant’s actions helped create a continuing nuisance throughout
26 California pursuant to Civil Code sections 3479 and 3480 in violation of
27 Civil Code section 3494 as alleged in the Third Cause of Action, which
28 allegations are incorporated herein as if set forth in full.

THIRD CAUSE OF ACTION
Violations of Civil Code Section 3494
(Public Nuisance)

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3 26. The People reallege and incorporate by reference each and every allegation
4 contained in the preceding paragraphs as though fully set forth herein.

5 27. A “nuisance” is defined in section 3479 of the Civil Code as “[a]nything which is
6 injurious to health, including, but not limited to, the illegal sale of controlled substances, or is
7 indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere
8 with the comfortable enjoyment of life or property”

9 28. A “public nuisance” is defined in section 3480 of the Civil Code as a nuisance
10 “which affects at the same time an entire community or neighborhood, or any considerable
11 number of persons, although the extent of the annoyance or damage inflicted upon individuals
12 may be unequal.”

13 29. Pursuant to Code of Civil Procedure section 3494, “a public nuisance may be
14 abated by any public body or officer authorized thereto by law.” Courts have recognized that the
15 Attorney General has authority to maintain an action in the name of the People of the State of
16 California to abate a public nuisance.

17 30. Civil Code section 3490 states that “[n]o lapse of time can legalize a public
18 nuisance, amounting to an actual obstruction of public right.”

19 31. Defendant, individually and acting through their employees and agents, through
20 the unlawful, unfair or fraudulent business acts of practices described herein, engaged in conduct
21 that was a substantial factor in creating and maintaining the opioid epidemic that threatens public
22 health and safety and constitutes a continuing nuisance throughout the State pursuant to
23 California Civil Code sections 3479 and 3480.

24 32. Defendant’s conduct is injurious to the public health and has interfered with the
25 comfortable enjoyment of life or property.

26 33. Defendant created a substantial and unreasonable threat to public health and
27 safety. Defendant’s conduct has caused significant harm and its social utility is outweighed by the
28 gravity of the harm inflicted.

1 34. The public health hazard affects and/or interferes with an entire community's
2 and/or a considerable number of persons' right to health, safety, peace, comfort, and convenience
3 in the State of California—including, but not limited to, addiction, illness, and death—thereby
4 constituting a public nuisance pursuant to California Civil Code section 3480.

5 35. Defendant is liable for public nuisance in that Defendant created and/or
6 contributed to the creation of and/or assisted in the creation and/or were a substantial contributing
7 factor in the creation of the public nuisance described herein through the conduct described
8 herein, including, but not limited to, the deceptive marketing that led to an epidemic of opioid
9 addiction, resulting in substantial public injuries.

10 36. Defendant knew the public health hazard posed by its conduct and affirmatively
11 directed and engaged in the widespread, deceptive promotion and over-promotion of the use of
12 extended-release opioids with knowledge of the public health hazard.

13 37. Defendant's conduct is a direct and proximate cause of the public nuisance. In the
14 absence of Defendant's conduct, the public health hazard would have been avoided or much less
15 severe.

16 38. The threat to the public health and safety posed by the public nuisance in the State
17 of California will continue unless Defendant is ordered to abate, and do abate the nuisance.
18 Defendant created or assisted in the creation of the nuisance, and therefore must abate the
19 nuisance.

20 39. The People of the State of California are entitled to preliminary and permanent
21 injunctions from this Court requiring Defendant to abate the nuisance present in the State of
22 California.

1 **V. REQUEST FOR RELIEF**

2 WHEREFORE, the People pray for judgment as follows:

3 1. That pursuant to Code of Civil Procedure section 3494, Defendant be ordered and
4 enjoined to abate the public nuisance that exists within the State of California.

5 2. That the Court assess a civil penalty of \$2,500 against Defendant for each
6 violation of Business and Professions Code section 17500 in an amount according to proof, under
7 the authority of Business and Professions Code section 17536.

8 3. That the Court assess a civil penalty of \$2,500 against Defendant for each
9 violation of Business and Professions Code section 17200 in an amount according to proof, under
10 the authority of Business and Professions Code section 17206.

11 4. In addition to any penalty assessed under Business and Professions Code section
12 17206, that the Court assess a civil penalty of \$2,500 against Defendant for each violation of
13 Business and Professions Code section 17200 perpetrated against a senior citizen or disabled
14 person, in an amount according to proof, under the authority of Business and Professions Code
15 section 17206.1.

16 5. That pursuant to Business and Professions Code section 17535, Defendant be
17 permanently enjoined from making any false or misleading statements in violation of Business
18 and Professions Code section 17500 as alleged in this Complaint.

19 6. That the Court make such orders or judgments as may be necessary to prevent the
20 use or employment by any Defendant and their agents, employees, and all other persons or
21 entities, corporate or otherwise, in active concert or participation with any of them, of any
22 practice that constitutes unfair competition under the authority of Business and Professions Code
23 section 17203.

24 7. That Plaintiff recovers its costs of suit herein, including costs of investigation and
25 attorneys' fees.

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Dated: January 31, 2024

Respectfully submitted,

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