Nos. 18-84 & 18-86

In the
# Supreme Court of the United States

CONAGRA GROCERY PRODUCTS COMPANY, ET AL.,

*Petitioners*,

v.

THE PEOPLE OF CALIFORNIA,

*Respondent*.

THE SHERWIN-WILLIAMS COMPANY,

*Petitioner*,

v.

THE PEOPLE OF CALIFORNIA,

*Respondent*.

On Petitions for Writ of Certiorari to the California Court of Appeal

## BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONERS


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## INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million businesses of every size, in every industry, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases raising issues of concern to the nation's business community.

The Chamber's membership includes many companies that are now subject to the new wave of abusive "public nuisance" lawsuits filed by local governments around the country. The Chamber and its members are deeply concerned about the California court's decision because its novel "public nuisance" theory radically departs from historical procedural safeguards against arbitrary deprivation of property in order to impose massive retroactive liability against American businesses for decades-old conduct that was lawful when it occurred.

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[1] The parties received timely notice of the Chamber's intent to file this brief and have consented to its filing. No counsel for any party authored this brief in whole or in part, and no person or entity other than the Chamber, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The California Court of Appeal ordered petitioners to pay hundreds of millions of dollars to look for and then abate any "deteriorated interior lead paint, lead paint on friction surfaces, and lead-contaminated soil" in about 1.5 million privately owned residences built before 1951. Pet. App. 17–21, 88. To arrive at this judgment, the court reimagined the "public nuisance" tort to retroactively fit the facts of this case and evade traditional defenses such as the absence of causation or reliance. The court applied the key elements of the public nuisance tort in an unprecedented manner: petitioners could not possibly have had fair notice a century ago that mere advertisement of a lawful product would be deemed an "unreasonable interference," much less that conditions in certain privately owned residences supposedly caused by the use of the product by individual homeowners or home-builders would be deemed to implicate a "public right" under nuisance law. The court below redefined these terms long after the fact to create liability, after all other tort theories had failed.

Certifying a class of 1.5 million individuals would not work because petitioners would have the right to present defenses to individual claims. Fraud claims would not work because there is no evidence of reliance. Product-liability claims would not work because the sellers of a century ago could not be identified. Private nuisance claims would not work because there is no proof of causation against any petitioner. And so on. So the court below indulged the

plaintiffs' effort to take their favorite parts of various claims and procedures without the protections that go along with those claims and procedures. The result is a jury-rigged claim foreign to Anglo-American jurisprudence imposing massive and entirely unforeseeable liability against petitioners almost a century after their lawful speech at issue.

The court's reimagining of this "public right" tort essentially resulted in the aggregation of 1.5 million individual, private right claims into a single class claim—but without the procedural safeguards available in aggregate litigation. The court's causation analysis amounts to a self-evidently baseless presumption that pre-1951 speech by petitioners—only a few out of the numerous companies that sold or spoke about lead-based paint over a period of decades in the first half of the last century—contributed to the presence of lead in *each and every* one of the 1.5 million potentially affected private homes. Worse, the court precluded petitioners from rebutting this presumption by refusing to join property owners and by refusing to allow petitioners to investigate the potential claims of any of the individual homeowners.

The Due Process Clause protects Americans from such baseless imposition of massive and retroactive liability. The decision below thus presents an important constitutional question, which is at the heart not only of this case but also of the scores of public nuisance cases recently filed by states and local governments seeking to hold American businesses liable for a host of societal ills without satisfying traditional elements of tort liability. Indeed, the massive judgment below has sparked a wave of copycat suits that

now threaten this country's businesses with arbitrary liability in violation of established procedural due process protections. This Court's intervention is urgently needed.

## ARGUMENT

### I. The Decision Below Violates Due Process

The Court should grant certiorari because the decision below imposes massive liability in violation of the Due Process Clause. The Fourteenth Amendment provides that no state shall "deprive any person of . . . property, without due process of law." U.S. Const. amend. XIV. This Clause "dictate[s] that a person receive fair notice" that certain conduct "will subject him" to monetary liability, *see BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996), and therefore prohibits states from "creat[ing] liability" "retroactively," *see William Danzer & Co. v. Gulf & S.I. R. Co.*, 268 U.S. 633, 637 (1925). After all, retroactive applications of new laws "compromise[]" the interests in "fair notice and repose" protected by the Clause and "raise particular concerns" of "arbitrary and vindictive" liability assessed "against unpopular groups or individuals." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994).

In the same vein, the Due Process Clause also proscribes radical departures from "well-established common-law protection[s] against arbitrary deprivations of property," *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 430 (1994), as well as "extreme applications" of state-law doctrines that are "inconsistent with a federal right that is fundamental in character," *see Richards v. Jefferson County, Ala.*, 517 U.S.

793, 797 (1996) (quotation marks omitted). "As this Court has stated from its first due process cases, traditional practice provides a touchstone for constitutional analysis." *Oberg*, 512 U.S. at 430; *accord Tumey v. Ohio*, 273 U.S. 510 (1927); *Murray's Lessee v. Hoboken Land & Improv. Co.*, 18 How. 272 (1856). Adherence to time-tested methods prevents "arbitrary and inaccurate adjudication" and is the very essence of due process. *Oberg*, 512 U.S. at 430. The Clause thus "safeguard[s] defendants against unjustified and unpredictable breaks with prior law . . . [through] judicial alteration of a common law doctrine." *Rogers v. Tennessee*, 532 U.S. 451, 462 (2001); *Bouie v. City of Columbia*, 378 U.S. 347, 352–54 (1964) ("unforeseeable" and "retroactive" ruling that departed from prior precedent violated due process).

To be sure, states are free to design their tort laws as they please—but only so long as they do so consistent with the Constitution. California may be able to change its conception of what constitutes a "public nuisance," but not without first providing "fair notice" that certain conduct will subject the actor to liability, *see Gore*, 517 U.S. at 574, and certainly not by drastically departing from "traditional practice," *Oberg*, 512 U.S. at 430, "retroactively" altering the law after the fact to impose "arbitrary" and grossly disproportionate liability, *Danzer*, 268 U.S. at 637; *Landgraf*, 511 U.S. at 266, and stripping a defendant of the procedural right "to present every available defense," *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007).

The decision below runs afoul of these due process principles. Indeed, it makes a mockery of them: the

novel public nuisance theory accepted by the Court of Appeal was crafted to circumvent the established defenses that should have protected petitioners against the arbitrary deprivation of property that occurred here. The plaintiffs tried to fit the same factual allegations into numerous legal doctrines, such as negligence and strict product liability—but those traditional theories failed before trial. Pet. App. 384. The same is true of the more traditional "public nuisance" claim that the plaintiffs originally asserted, which failed because it "was fully encompassed by products liability law." Pet. App. 371. But unwilling to follow established legal principles where they led, the court fashioned a new public nuisance claim designed to turn the facts of this case into a tort.

Historically, a public nuisance has been defined as conduct that obstructs or causes inconvenience or damage to the public in the exercise of rights common to all. *See* WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS, ch. 14, § 71 at 401 (2d ed. 1955). Courts in California, as elsewhere, have typically looked to the Restatement (Second) of Torts and outlined the following elements: (1) an interference with a right common to the public, (2) that is substantial and unreasonable and affects a considerable number of persons, and (3) that the defendant created or assisted in creating. *See People ex rel. Gallo v. Acuna*, 929 P.2d 596, 604–05 (Cal. 1997) (citing Restatement (Second) of Torts (1965)); 47 Cal. Jur. 3d Nuisances § 27. The requirements of a public right and a causal connection between the defendant's conduct and the alleged nuisance have always been critical to keeping this tort within non-arbitrary bounds. In this case, however, the court below redefined these elements in

unprecedented fashion to find a way to create liability and avoid petitioners' defenses:

**1**. *Public right.* For starters, a "public right" has always been considered "the right to a public good, such as an indivisible resource shared by the public at large, like air, water, or public rights-of-way." 58 Am. Jur. 2d Nuisances § 32. It is "more than an aggregate of private rights by a large number of injured people." *Id.* In other words, a "public right" is "collective in nature and not like the individual right that everyone has not to be assaulted or defamed or defrauded or negligently injured." Restatement (Second) of Torts § 821B, cmt. g. But the court below found an interference with a "public right" based on the promotion of legal consumer products that were "placed on *plaintiffs'* property by *plaintiffs* or with their consent" (Pet. App. 374) and now allegedly cause danger as a result of myriad unidentified third parties' conduct or neglect in certain private residences.

Until the decision below, no appellate court had ever held that interference with a "public right" includes circumstances in the homes of certain individuals—even "a large number" of them—supposedly caused by their purchase and use of a consumer product many decades earlier. To the contrary, appellate courts have concluded that these same facts do *not* implicate "a public right as that term has been understood in the law of public nuisance." *State v. Lead Indus., Ass'n, Inc.*, 951 A.2d 428, 448 (R.I. 2008) (quoting Donald G. Gifford, *Public Nuisance As A Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 743 (2003)); *City of Chicago v. Am. Cyanamid Co.*,

823 N.E.2d 126, 131 (Ill. App. Ct. 2005) (same). A person's purchase and use of a consumer product in her own private home simply has nothing to do with the exercise of a public right. Against this background, petitioners could not possibly have received "fair notice" that their conduct would subject them to liability based on a new and radically different definition of "public right." *See Gore*, 517 U.S. at 574. Violating basic notions of procedural due process, the court below redefined this key term in the early twenty-first century to "retroactively . . . create liability" against petitioners for speech in the early twentieth century. *Danzer*, 268 U.S. at 637.

The court's redefinition of "public right" allowed it to impose aggregate liability on petitioners without the procedural protections traditionally afforded in aggregate litigation. The new "public right" claim amounts to pooling 1.5 million individual, private right claims by potentially affected homeowners into one colossal class claim. Yet the plaintiffs did not have to satisfy the procedural prerequisites of class action litigation—such as showing that the grievances of the 1.5 million allegedly affected individuals have enough commonality to be litigated all at once. Those safeguards are necessary to ensure that the aggregation of claims does not "abridge a party's substantive rights." *Duran v. U.S. Bank Nat'l Ass'n*, 325 P.3d 916, 935 (Cal. 2014).

Compounding the problem, the court below prohibited petitioners from investigating the claims of any affected individual and thus from even attempting to mount individual causation defenses. Pet. App. 95–96, 158–59. This Court has recognized that

"a class cannot be certified on the premise that [the defendant] will not be entitled to litigate its statutory defenses to individual claims." *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011). This rule derives "from both class action rules and principles of due process." *Duran*, 325 P.3d at 935 (citing *Williams*, 549 U.S. at 353, and *Lindsey v. Normet*, 405 U.S. 56, 66 (1972)). If due process does not permit states to use the class action device to strip a defendant of defenses it would have in individual litigation, then it cannot permit California to strip petitioners of individual defenses by retroactively redefining "public right" to allow a quasi-class action disguised as a public nuisance claim without the procedural safeguards required in class actions.

**2**. *Unreasonable interference*. The decision below also redefined the traditional element of an "unreasonable interference." The only conduct giving rise to an "unreasonable interference" here was petitioners' pre-1951 promotion of lead-based paint, a legal product at the time. Pet. App. 364–65. The court found this promotion misleading because it "necessarily implied" that interior use of lead-based paint was safe. Pet. App. 49. As explained in the petitions, this theory of liability raises obvious First Amendment concerns. But equally fundamental, it is yet another unprecedented application of the public nuisance doctrine. Petitioners could not possibly have received fair notice a century ago that mere speech promoting a lawful use of a lawful consumer product could be deemed an "unreasonable interference" under nuisance law. *See Gore*, 517 U.S. at 574. No pre-1951 court would have thought of expanding this term to cover such lawful and common activities.

The Court of Appeal's redefinition of the "unreasonable interference" element also, and not coincidentally, defeated the defenses that would be available to petitioners against recognized claims that their speech was misleading. The plaintiffs abandoned their fraud claim before trial, stipulating that there was no evidence of reliance. *See* Stipulation, at ¶1, *Cty. of Santa Clara v. Atl. Richfield Co.*, No. 1-00-CV-788657 (Cal. Sup. Ct. Aug. 13, 2012). But the same fraud allegations are now packaged into the newly-created nuisance claim, without the need for proof that anyone relied on the supposedly misleading statements. Pet. App. 298. This ignores the time-tested concept that a seller's "lies matter only if customers are deceived," *see Int'l Broth. of Teamsters, Local 734 Health & Welfare Tr. Fund v. Philip Morris Inc.*, 196 F.3d 818, 823 (7th Cir. 1999) (Easterbrook, J.), and essentially imposes class-wide liability for speech without proof of reliance by even a single consumer, *see Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1302–03 (2010) (Scalia, J., in chambers) (expressing due process concerns about eliminating requirement to prove individual reliance). It is an understatement to say that California's new speech-based nuisance is a radical departure from "traditional practice[s]," *Oberg*, 512 U.S. at 430, and it smacks of "arbitrary and vindictive" liability assessed *post hoc* against "unpopular" defendants, *see Landgraf*, 511 U.S. at 266.

**3**. *Creating the nuisance.* Equally arbitrary is the Court of Appeal's application of the causation element in deciding that petitioners "created or assisted in creating" the nuisance. Pet. App. 46–73. Proof of causation has always been a requirement in a public

nuisance case, and not even the court below was adventuresome enough to openly abolish that requirement. Instead, the court redefined it out of existence, finding it satisfied on the rationale that petitioners' speech "played at least a 'minor' role in creating the nuisance that now exists." Pet. App. 65. But that minor role led to major liability because the court then held petitioners jointly and severally liable for abating *all* lead-based paint that may be found in any pre-1951 home on the theory that the presence of lead-based paint in 1.5 million separate homes is an "indivisible injury." Pet. App. 92–94.

This runs afoul of due process in numerous ways. As an initial matter, the court reached these conclusions without requiring evidence that the presence of lead-based paint in any particular home is linked to petitioners' pre-1951 speech. No home was examined; indeed, the court prohibited petitioners from doing so, in violation of the basic tenet that courts must afford an "opportunity to present every available defense." *Williams*, 549 U.S. at 353 (quotations omitted).

As a result of the court's approach, petitioners will have to pay for the abatement of lead in countless homes where its existence has nothing to do with their speech. (In fact, petitioners first will have to pay to go looking for the "nuisance" they have been ordered to abate.) Petitioners are but a few of the numerous companies that promoted or sold lead-based paint for interior use in California in the decades-long period at issue. The notion that petitioners could have caused the presence of *all* the lead-based paint that may be present in those 1.5 million homes

is absurd. The court's application of the indivisible injury principle amounts to a presumption that petitioners' speech is responsible for *any* presence of interior lead-based paint in *all* of those pre-1951 homes, with no evidence to support it and no opportunity to rebut it.

If such an outlandish prospect had crossed petitioners' minds at the time of the relevant conduct, they would have taken comfort in this Court's admonition that "a presumption that is arbitrary, or that operates to deny a fair opportunity to repel it, violates the due process clause." *W. & Atl. R.R. v. Henderson*, 279 U.S. 639, 642 (1929). The procedure employed below turns traditional practice on its head. A state cannot employ the indivisible injury rule to impose joint and several liability *before* determining where and what the injury actually is and without evidence that the defendant actually caused some of it; such a backwards approach would create too high a risk of error, violating the right to be free from arbitrary deprivations of property. The truth is that the alleged injury in this case is not one giant public nuisance in the "community" writ large, as the lower court pretended. Pet. App. 83–84. If anything, it is a collection of private nuisances that supposedly exist in the homes of more than a million individuals, with no evidence that petitioners' pre-1951 speech contributed to each or any of them. *See In re Fibreboard Corp.*, 893 F.2d 706, 710–11 (5th Cir. 1990) ("[O]ne-on-one 'traditional' modes [of adjudication] . . . find expression in defendants' right to due process").

It would be hard to get more arbitrary than conclusively presuming something that is almost certainly untrue and then prohibiting any rebuttal. The consequence of the Court of Appeal's bizarre procedure is that petitioners face enormous liability for harms that may or may not exist and that petitioners may or may not have caused. *See Paroline v. United States*, 134 S. Ct. 1710, 1729 (2014) (defendants should be liable only for the consequences "of their own conduct, not the conduct of others"). Traditional procedures relating to causation would have prevented such "arbitrary and inaccurate adjudication." *See Oberg*, 512 U.S. at 430. Dispensing with traditional procedures so that 1.5 million individual, private nuisance claims could all be decided together was patently unfair and disregarded petitioners' due process rights.

## II. Left Undisturbed, The Decision Below Will Continue To Spawn Abusive Litigation

This Court's intervention at this stage is critical. The decision below itself inflicts massive liability on petitioners, but its impact has already spread beyond this case. Just in the last twelve months, in federal courts alone, at least 80 new public nuisance cases of this sort have been filed by states and other government entities against American businesses, all seeking to impose sweeping liability based on similarly novel theories. *Amicus* App. 1–18. For example, the success in this case has apparently encouraged other local governments in California to file a string of copycat actions against various industries. *See People of the State of Cal. v. BP P.L.C.*, Nos. 3:17-CV-06011 & 3:17-CV-06012 (N.D. Cal. filed Oct. 20, 2017) (fossil-

fuel companies allegedly liable for climate change); *City of Long Beach v. Monsanto Co.*, No. 2:16-cv-03493 (C.D. Cal. filed May 19, 2016) (manufacturers of PCBs allegedly liable for water contamination committed by others); *Cty. of Mariposa v. Amerisourcebergen Drug Corp.*, No. 1:18-cv-00626 (E.D. Cal. filed May 7, 2018) (manufacturers and distributors of pain medication allegedly liable for harms caused by opioid abuse). And, unsurprisingly, government entities from around the country have followed suit, asserting public nuisance claims against American businesses for all sorts of problems in society. *See Port of Portland v. Monsanto Co.*, No. 17-CV-00015 (D. Or. Jan. 4, 2017); *West Virginia v. McKesson Corp.*, No. 16-CV-01772 (S.D. W. Va. Feb. 23, 2016); *see also* Bloomberg News, *Is the Public Nuisance Universe Expanding*, available at https://www.bna.com/public-nuisance-universe-n57982083122/; *Amicus* App. 1–18.

These circumstances call for this Court's swift intervention to resolve the constitutional questions presented by the petitions now. As one appellate court observed, "giving a green light to [this type of] common-law public nuisance cause of action today will . . . likely open the courthouse doors to a flood of limitless, similar theories of public nuisance, not only against these defendants, but also against a wide and varied array of other commercial and manufacturing enterprises and activities." *People ex rel. Spitzer v. Sturm*, *Roger & Co., Inc.*, 761 N.Y.S.2d 192, 196 (App. Div. 2003). Doing so would lead to "a proliferation of lawsuits" against manufacturers "of liquor, anti-depressants, SUVs, or violent video games—in order to address a myriad of societal problems." *Ash-*

*ley Cty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 672 (8th Cir. 2009). The decision below has done just that.

The enormous judgment obtained here entices plaintiffs' attorneys to offer their services to other governmental entities for similar suits. Even jurisdictions that may disagree with California's radical expansion of the public nuisance doctrine have little choice but to join the new wave. After all, no state or municipality can afford to sit on the sidelines of a cash-grab while California uses its novel expansion to mulct America's businesses—mostly out-of-state businesses—to the tune of billions of dollars for the benefit of its own residents. *See Blankenship v. Gen. Motors Corp.*, 406 S.E.2d 781, 783 (W. Va. 1991) (explaining that West Virginia had no choice but to follow other states in expanding its tort laws, because failing to do so would "only punish our residents severely without, in any regard, improving the system for anyone else").

Without this Court's intervention, the impact on commerce will be severe. The recent avalanche of public nuisance claims under the new California doctrine will bury American business in even greater litigation costs and burdens. Even if defendants manage to prevail, the cost of having to defend these massive suits is substantial and will add to the eight-figure amounts most large American businesses must already spend each year just in litigation expenses. *See Litigation Cost Survey of Major Companies*, U.S. Chamber Institute for Legal Reform For Presentation to Committee on Rules of Practice and Procedure Judicial Conference of the United States, 2010 Conference on Civil Litigation, Duke Law School (May 10–

11, 2010) p. 2, available at http://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf.

In the end, the decision below, if left to stand, will turn public nuisance law into "a monster that . . . devour[s] in one gulp the entire law of tort." *In re Lead Paint Litig.*, 924 A.2d 484, 505 (N.J. 2007) (quotation marks omitted). States are of course free to enact new laws and promulgate new regulations and to apply them prospectively to address societal ills. But drastically altering established law to deprive defendants of well-settled procedural protections, avoid long-accepted defenses, and retroactively impose massive liability for lawful speech occurring nearly a century ago is a due process (and First Amendment) violation of the most basic sort. *See Oberg*, 512 U.S. at 430; *Rogers*, 532 U.S. at 462; *Danzer*, 268 U.S. at 637; *Gore*, 517 U.S. at 574; *Landgraf*, 511 U.S. at 266. As then-Alabama Attorney General William Pryor once put it, the new wave of policy-focused government suits like this one "is the greatest threat to the rule of law today." William H. Pryor, Jr., Att'y Gen. of Ala., Address at the Reagan Forum: Fulfilling the Reagan Revolution by Limiting Government Litigation 2 (Nov. 14, 2000).

The enormous size of the judgment below, its significant practical impact on commerce, and its spawning of copycat suits all make immediate review urgent. And it would be perverse to allow the questions presented to escape the Court's review just because of the sheer radicalness of the Court of Appeal's departures from "well-established common law protection[s]." *Oberg*, 512 U.S. at 430.

## CONCLUSION

The Court should grant the petitions.

Respectfully submitted.

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# APPENDIX

# APPENDIX

## TABLE OF APPENDICES

*Appendix A*

| Examples of Similar Public Nuisance Matters Filed in Federal Court Since August 1, 2017 | | | |
|---|---|---|---|
| **No.** | **Name** | **Case No.** | **Venue** |
| 1 | *Alleghany County v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-00129 | U.S. District Court, Western District of North Carolina |
| 2 | *Amite County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 5:18-CV-00009 | U.S. District Court, Southern District of Mississippi |
| 3 | *Benton County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 3:18-CV-00007 | U.S. District Court, Northern District of Mississippi |
| 4 | *Birmingham, City of v. Amerisource-bergen Drug Corporation, et al.* | 2:17-CV-01360 | U.S. District Court, Northern District of Alabama |

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| 5 | *Bland County, Virginia v. Amerisourcebergen Drug Corporation, et al.* | 7:18-CV-00307 | U.S. District Court, Western District of Virginia |
| 6 | *Broward County, Florida v. Purdue Pharma L.P., et al.* | 0:18-CV-60535 | U.S. District Court, Southern District of Florida |
| 7 | *Brunswick County v. AmerisourceBergen Drug Corporation, et al.* | 4:18-CV-00017 | U.S. District Court, Eastern District of North Carolina |
| 8 | *Buncombe County v. AmerisourceBergen Drug Corporation, et al.* | 1:17-CV-00310 | U.S. District Court, Western District of North Carolina |
| 9 | *Calhoun County South Carolina v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-01526 | U.S. District Court, District of South Carolina |

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| 10 | *Campbell County v. Amerisourcebergen Drug Corporation, et al.* | 3:18-CV-00006 | U.S. District Court, Eastern District of Tennessee |
| 11 | *Cherokee County, Alabama v. Amerisourcebergen Drug Corporation, et al.* | 4:18-CV-00172 | U.S. District Court, Northern District of Alabama |
| 12 | *City of Alexandria, et al. v. Purdue Pharma L.P., et al.* | 1:18-CV-00123 | U.S. District Court, Southern District of Indiana |
| 13 | *City of Delray Beach v. Purdue Pharma L.P., et al.* | 9:17-CV-81384 | U.S. District Court, Southern District of Florida |
| 14 | *City of Detroit, Michigan, A Municipal Corporation v. Purdue Pharma L.P., et al.* | 2:17-CV-14075 | U.S. District Court, Eastern District of Michigan |

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| 15 | *City of Elyria v. Purdue Pharma L.P., et al.* | 1:18-CV-00017 | U.S. District Court, Northern District of Ohio |
| 16 | *City of Fort Payne, Alabama v. Amerisourcebergen Drug Corporation, et al.* | 4:17-CV-01877 | U.S. District Court, Northern District of Alabama |
| 17 | *City of Greenwood, Indiana v. Amerisourcebergen Drug Corporation, et al.* | 1:18-CV-00047 | U.S. District Court, Southern District of Indiana |
| 18 | *City of Henderson v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-00278 | U.S. District Court, Eastern District of North Carolina |
| 19 | *City of Indianapolis, et al. v. Purdue Pharma L.P., et al.* | 1:17-CV-04231 | U.S. District Court, Southern District of Indiana |

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| 20 | *City of Jacksonville v. Amerisource-Bergen Drug Corporation, et al.* | 7:18-CV-00002 | U.S. District Court, Eastern District of North Carolina |
| 21 | *City of Jasper, Indiana v. AmerisourceBergen Drug Corporation, et al.* | 3:18-CV-00140 | U.S. District Court, Southern District of Indiana |
| 22 | *City of Marion, Alabama v. Actavis, LLC, et al.* | 2:18-CV-00053 | U.S. District Court, Southern District of Alabama |
| 23 | *City of Princeton, Illinois v. Actavis LLC, et al.* | 4:18-CV-04088 | U.S. District Court, Central District of Illinois |
| 24 | *City of Tuskegee, Alabama v. Purdue Pharma L.P., et al.* | 3:18-CV-00423 | U.S. District Court, Middle District of Alabama |

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| 25 | *The City of Winfield, Alabama v. Purdue Pharma LP, et al.* | 6:18-CV-00800 | U.S. District Court, Northern District of Alabama |
| 26 | *County of Dallas v. Cardinal Health Inc., et al.* | 3:18-CV-00426 | U.S. District Court, Northern District of Texas |
| 27 | *County of Genesse v. Purdue Pharma LP, et al.* | 4:17-CV-14074 | U.S. District Court, Eastern District of Michigan |
| 28 | *County of Harris v. Purdue Pharma L.P., et al.* | 4:18-CV-00490 | U.S. District Court, Southern District of Texas |
| 29 | *County of Huerfano v. Purdue Pharma L.P., et al.* | 1:18-CV-00219 | U.S. District Court, District of Colorado |

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| 30 | *County of Marin v. Purdue Pharma L.P., et al.* | 3:18-CV-02730 | U.S. District Court, Northern District of California |
| 31 | *County of Riverside, et al. v. Purdue Pharma L.P., et al.* | 5:18-CV-01372 | U.S. District Court, Central District of California |
| 32 | *County of Siskiyou v. Amerisource-bergen Drug Corporation, et al.* | 2:18-CV-01167 | U.S. District Court, Eastern District of California |
| 33 | *Crip County Georgia v. Amerisource-bergen Drug Corporation, et al.* | 1:18-CV-00036 | U.S. District Court, Middle District of Georgia |
| 34 | *Darke Cty. Comm'rs v. Amerisource-bergen Drug Corp., et al.* | 2:17-CV-01064 | U.S. District Court, Southern District of Ohio |

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| 35 | *Delaware County Board of County Commissioners v. AmerisourceBergen Drug Corporation, et al.* | 2:18-CV-00172 | U.S. District Court, Southern District of Ohio |
| 36 | *Eastern Band of Cherokee Indians v. AmerisourceBergen Drug Corporation, et al.* | 1:18-CV-00004 | U.S. District Court, Western District of North Carolina |
| 37 | *Elbert County Georgia v. AmerisourceBergen Drug Corporation, et al.* | 3:18-CV-00038 | U.S. District Court, Middle District of Georgia |
| 38 | *Fairfield Board of County Commissioners v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-01012 | U.S. District Court, Southern District of Ohio |
| 39 | *Fiscal Court of Greenup County v. Amerisourcebergen Drug Corporation, et al.* | 0:17-CV-00105 | U.S. District Court, Eastern District of Kentucky |

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| 40 | *Flandreau Santee Sioux Tribe, et al. v. Purdue Pharma L.P., et al.* | 4:18-CV-04003 | U.S. District Court, District of South Dakota |
| 41 | *Floyd County, Kentucky v. Purdue Pharma L.P., et al.* | 7:17-CV-00186 | U.S. District Court, Eastern District of Kentucky |
| 42 | *Forrest County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 2:18-CV-00009 | U.S. District Court, Southern District of Mississippi |
| 43 | *Franklin County Board of County Commissioners v. AmerisourceBergen Drug Corporation, et al.* | 2:18-CV-00077 | U.S. District Court, Southern District of Ohio |
| 44 | *Hancock County v. Amerisourcebergen Drug Corporation, et al.* | 2:18-CV-00010 | U.S. District Court, Eastern District of Tennessee |

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| 45 | *Harrison County, Indiana v. Cardinal Health, Inc., et al.* | 4:18-CV-00003 | U.S. District Court, Southern District of Indiana |
| 46 | *Humphreys County, Mississippi v. Purdue Pharma, L.P., et al.* | 4:17-CV-00190 | U.S. District Court, Northern District of Mississippi |
| 47 | *Jackson County Board of County Commissioners v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-00680 | U.S. District Court, Southern District of Ohio |
| 48 | *Jefferson County Commission v. Purdue Pharmaceutical Products, LP, et al.* | 3:17-CV-00144 | U.S. District Court, Northern District of West Virginia |
| 49 | *Jefferson Davis County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-00200 | U.S. District Court, Southern District of Mississippi |

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| 50 | *Jennings County v. Purdue Pharma, L.P., et al.* | 4:18-CV-00006 | U.S. District Court, Southern District of Indiana |
| 51 | *Johnson County v. Amerisourcebergen Drug Corporation, et al.* | 2:18-CV-00003 | U.S. District Court, Eastern District of Tennessee |
| 52 | *Lawrence County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-00199 | U.S. District Court, Southern District of Mississippi |
| 53 | *Leslie County Fiscal Court v. Amerisourcebergen Drug Corporation, et al.* | 6:17-CV-00249 | U.S. District Court, Eastern District of Kentucky |
| 54 | *Lexington-Fayette Urban County Government v. Amerisourcebergen Drug Corporation, et al.* | 5:17-CV-00442 | U.S. District Court, Eastern District of Kentucky |

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| 55 | *Licking County Board of County Commissioners v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-00904 | U.S. District Court, Southern District of Ohio |
| 56 | *Logan County Board of County Commissioners v. Amerisourcebergen Drug Corporation, et al.* | 2:17-CV-01097 | U.S. District Court, Southern District of Ohio |
| 57 | *Madison County Fiscal Court v. Amerisourcebergen Drug Corporation, et al.* | 5:17-CV-00371 | U.S. District Court, Eastern District of Kentucky |
| 58 | *Marshall County v. Purdue Pharma LP, et al.* | 3:18-CV-00046 | U.S. District Court, Northern District of Indiana |
| 59 | *Monroe County Georgia v. Amerisourcebergen Drug Corporation, et al.* | 5:18-CV-00167 | U.S. District Court, Middle District of Georgia |

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| 60 | *Montgomery County, Kansas v. AmerisourceBergen Drug Corporation, et al.* | 2:18-CV-02311 | U.S. District Court, District of Kansas |
| 61 | *Morgan County, Alabama v. Amerisourcebergen Drug Corporation, et al.* | 5:18-CV-00170 | U.S. District Court, Northern District of Alabama |
| 62 | *City of Nashua, NH, v. Purdue Pharma, L.P., et al.* | 1:17-CV-00730 | U.S. District Court, District of New Hampshire |
| 63 | *Orange County v. Amerisourcebergen Drug Corporation, et al.* | 1:18-CV-00192 | U.S. District Court, Middle District of North Carolina |
| 64 | *People of the State of Illinois, et al. v. Amerisourcebergen Drug Corporation, et al.* | 3:17-CV-01342 | U.S. District Court, Southern District of Illinois |

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| 65 | *Perry County Fiscal Court v. Amerisourcebergen Drug Corporation, et al.* | 6:17-CV-00265 | U.S. District Court, Eastern District of Kentucky |
| 66 | *Pulaski County Fiscal Court v. Amerisourcebergen Drug Corporation, et al.* | 6:17-CV-00264 | U.S. District Court, Eastern District of Kentucky |
| 67 | *Randolph County v. Amerisourcebergen Drug Corporation, et al.* | 1:18-CV-00157 | U.S. District Court, Middle District of North Carolina |
| 68 | *Saginaw County v. Purdue Pharma L.P., et al.* | 1:17-CV-14076 | U.S. District Court, Eastern District of Michigan |
| 69 | *Shelby County Fiscal Court v. Amerisourcebergen Drug Corporation, et al.* | 3:17-CV-00072 | U.S. District Court, Eastern District of Kentucky |

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| 70 | *Smyth County Virginia v. Amerisourcebergen Drug Corporation, et al.* | 1:18-CV-00028 | U.S. District Court, Western District of Virginia |
| 71 | *St. Joseph County v. Purdue Pharma LP, et al.* | 3:18-CV-00243 | U.S. District Court, Northern District of Indiana |
| 72 | *St. Martin Parish v. AmerisourceBergen Drug Corporation, et al.* | 3:18-CV-00569 | U.S. District Court, Middle District of Louisiana |
| 73 | *Stokes County v. AmerisourceBergen Drug Corporation, et al.* | 1:18-CV-00070 | U.S. District Court, Middle District of North Carolina |
| 74 | *Stone County, Mississippi v. Amerisourcebergen Drug Corporation, et al.* | 1:18-CV-00175 | U.S. District Court, Southern District of Mississippi |

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| 75 | *Talladega County, Alabama, et al. v. Cardinal Health Inc., et al.* | 1:18-CV-00152 | U.S. District Court, Northern District of Alabama |
| 76 | *The Menominee Indian Tribe of Wisconsin v. Purdue Pharma LP, et al.* | 1:18-CV-00414 | U.S. District Court, Eastern District of Wisconsin |
| 77 | *The Nicholas County Commission v. Amerisource-Bergen Drug Corporation, et al.* | 2:18-CV-00421 | U.S. District Court, Southern District of West Virginia |
| 78 | *The People of the State of California v. BP P.L.C., et al.* | 3:17-CV-06012 | U.S. District Court, Northern District of California |
| 79 | *The People of the State of California v. BP P.L.C., et al.* | 3:17-CV-06011 | U.S. District Court, Northern District of California |

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| 80 | *Town of Palmer, Massachusetts v. Amerisourcebergen Drug Corporation, et al.* | 3:18-CV-30079 | U.S. District Court, District of Massachusetts |
| 81 | *Twiggs County Georgia v. Amerisourcebergen Drug Corporation, et al.* | 5:18-CV-00101 | U.S. District Court, Middle District of Georgia |
| 82 | *Vance County v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-00277 | U.S. District Court, Eastern District of North Carolina |
| 83 | *Washington County, Mississippi v. Purdue Pharma, L.P., et al.* | 4:17-CV-00191 | U.S. District Court, Northern District of Mississippi |
| 84 | *Watauga County v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-00064 | U.S. District Court, Western District of North Carolina |

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| 85 | *Wilkinson County Georgia v. AmerisourceBergen Drug Corporation, et al.* | 5:18-CV-00169 | U.S. District Court, Middle District of Georgia |
| 86 | *Williams County Board of County Commissioners v. AmerisourceBergen Drug Corporation, et al.* | 3:18-CV-00602 | U.S. District Court, Northern District of Ohio |
| 87 | *Williamson County, Tennessee v. AmerisourceBergen Drug Corporation, et al.* | 3:18-CV-00008 | U.S. District Court, Middle District of Tennessee |