

**THE DISTRICT COURT  
OF THE CHEROKEE NATION**

FILED  
2017 JUN 12 PM 3:35  
DISTRICT COURT  
CHEROKEE NATION

THE CHEROKEE NATION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MCKESSON CORPORATION; )  
 CARDINAL HEALTH, INC.; )  
 AMERISOURCEBERGEN; CVS )  
 HEALTH; WALGREENS BOOTS )  
 ALLIANCE, INC.; WAL-MART STORES, )  
 INC., )  
 )  
 Defendants. )

Case No. CV-2017-203

**DEFENDANTS' MOTION TO STAY  
DURING PENDENCY OF FEDERAL COURT ACTION**

Defendants McKesson Corporation; Cardinal Health, Inc.; AmerisourceBergen Drug Corporation (named herein as "AmerisourceBergen"); CVS Health Corporation (named herein as "CVS Health"); Walgreens Boots Alliance, Inc.; and Wal-Mart Stores, Inc., appearing specially and without waiving their objection to this Court's or the Nation's jurisdiction, respectfully move the Court to stay the above-captioned action pending resolution of litigation in the United States District Court for the Northern District of Oklahoma (the "Federal Court").

On June 8, 2017, Defendants in the above-captioned litigation filed a Complaint in the Federal Court, styled *McKesson Corporation, et al. v. Todd Hembree, et al.*, No. 17-CV-00323-TCK-FHM (the "Federal Action"), seeking declaratory judgment and a preliminary and permanent injunction enjoining Attorney General Hembree and the Court from taking any action or steps to proceed with the above-captioned litigation.

One of the grounds for bringing the Federal Action is that this Court lacks jurisdiction to hear claims premised upon violations of the federal Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.* Such claims may only be brought by the United States in federal court.

This issue of exclusive jurisdiction in federal courts is something that, in all instances, should be first determined by the Federal Court. If the Federal Court determines that this Court lacks jurisdiction, any proceedings in this Court will have been wasteful and will not conserve judicial resources.

Moreover, jurisdiction is further lacking, because Plaintiff is seeking to regulate the alleged conduct of Defendants, all non-Indians, outside of Indian country, and, in any event, none of the exceptions under *Montana v. United States*, 450 U.S. 544 (1981), apply. Accordingly, as articulated further in the Federal Action, there is no jurisdiction. Given this lack of jurisdiction, Defendants face the prospect of irreparable harm should the proceedings in this Court continue. A stay of all proceedings here is necessary to prevent the unrecoverable waste of Defendants' time and resources.

**RESERVATION OF RIGHTS**

Defendants here reserve and will continue to reserve their right to assert the Nation's lack of jurisdiction, including the Court's lack of personal or subject-matter jurisdiction. As set forth in the filings in the Federal Action, jurisdiction is plainly lacking herein and tribal exhaustion is not required.

**GROUND FOR RELIEF**

In support of this motion, Defendants further show the Court as follows:

1. Counsel for AmerisourceBergen Drug Corporation has conferred with counsel for Plaintiff, Cherokee Nation Attorney General Todd Hembree, and states that Plaintiff opposes this motion.
  
2. On May 19, 2017, Defendants filed an unopposed application for extension of time to answer, file motions, or otherwise respond to the Petition, which the Court granted on

May 22, 2017, extending the deadline to June 12, 2017. Defendants have today filed motions to dismiss for lack of jurisdiction.

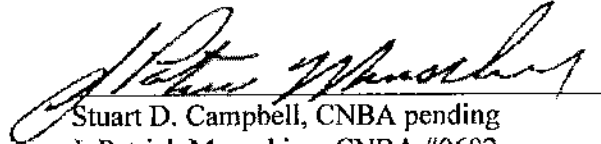
3. On June 8, 2017, Defendants herein initiated the Federal Action, asking the Federal Court to declare that Attorney General Hembree lacks authority to pursue and this Court lacks jurisdiction to hear the above-captioned action, that exhaustion of tribal remedies is not required, and seeking injunctive relief. A copy of the Complaint in the Federal Action is attached hereto as Exhibit "A". Defendants have also filed a Motion for Preliminary Injunction in the Federal Action, a copy of which is attached hereto as Exhibit "B".

4. As noted in detail in the attached federal filings, the federal CSA does not allow for the action asserted by Attorney General Hembree on behalf of the Nation. The CSA may be enforced only by the U.S. Attorney General, who has delegated that authority only to the U.S. Department of Justice, and it may be enforced by those federal officials only in federal courts. No Indian tribe or its private citizens has the ability to enforce the CSA, and this Court lacks jurisdiction to hear such claims. Resolution of that issue could eliminate the above-captioned action, and the Court should await the ruling of the Federal Court before allowing the proceedings in this case to continue.

5. Moreover, jurisdiction is further lacking, because Plaintiff is seeking to regulate Defendants' alleged conduct outside of Indian country and, in any event, none of the exceptions under *Montana v. United States*, 450 U.S. 544 (1981), apply. As set forth in the federal filings, tribal exhaustion of these issues of federal law is not required and the Federal Court is the appropriate tribunal to hear those questions in this case. The Federal Court should have an opportunity to address Defendants' declaratory judgment action to avoid the risk of contradictory rulings and duplicative efforts from this Court and the Federal Court.

WHEREFORE, Defendants respectfully request that the Court stay the above-captioned litigation pending the determination of the Federal Action by the Federal Court.

Respectfully submitted,



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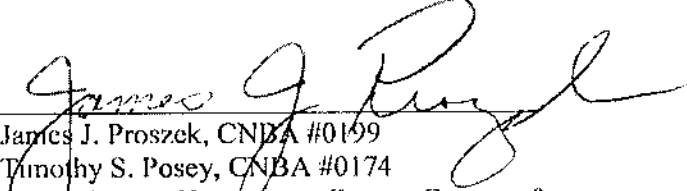
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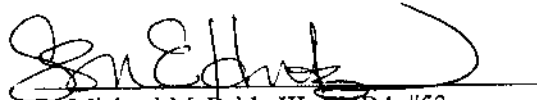
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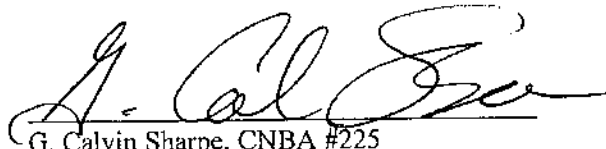
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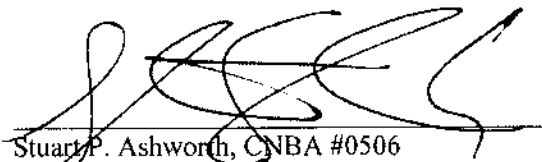
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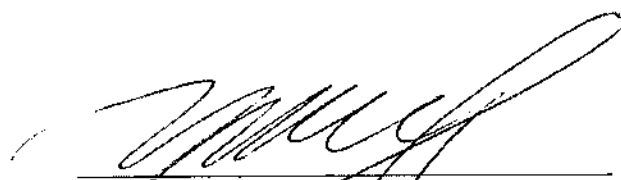
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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 12<sup>th</sup> day of June, 2017, I deposited a true and exact copy of the foregoing in the United States Mail, postage pre-paid addressed to the following:

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John Young  
Chad Harsha  
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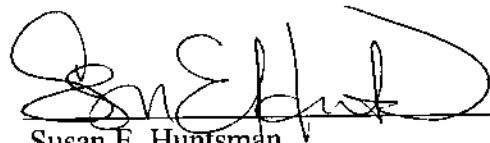
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