

IN THE DISTRICT COURT
OF THE CHEROKEE NATION

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THE CHEROKEE NATION,

Plaintiff,

v.

Case No. CV-2017-203
Judge T. Luke Barteaux

MCKESSON CORPORATION;
CARDINAL HEALTH, INC.;
AMERISOURCEBERGEN;
CVS HEALTH; WALGREENS BOOTS
ALLIANCE, INC.; WALMART STORES, INC.,

Defendants.

**DEFENDANT MCKESSON CORPORATION'S
SPECIAL ENTRY OF APPEARANCE AND MOTION TO DISMISS PETITION**

Defendant McKesson Corporation ("McKesson"), appearing specially,¹ pursuant to Rules for the District Court of the Cherokee Nation Nos. 123(1) and 123(2), which are analogs of Fed. R. Civ. P. 12(b)(1) and 12(b)(2), hereby requests the Petition of Plaintiff the Cherokee Nation (the "Nation") be dismissed on the basis that this Court lacks subject matter jurisdiction and personal jurisdiction over McKesson. In support thereof, McKesson states as follows:

1. The Nation filed its Petition against McKesson, *inter alia*, on April 20, 2017.
2. The Nation alleges that defendants have failed to comply with regulations the DEA promulgated under the federal Controlled Substances Act, 21 U.S.C. §§ 801-904 ("CSA") in an area comprising all or part of fourteen counties in Oklahoma. It further alleges that, by doing so, plaintiffs have contributed to the widespread abuse of opioids by the Tribe's citizens.

¹ By filing this and any other motion, McKesson does not waive and specifically reserves its right to assert the Nation's lack of jurisdiction, including the Court's lack of subject matter and personal jurisdiction.

3. The Court herein plainly lacks subject matter jurisdiction over McKesson because the causes of action herein did not occur within the territorial jurisdiction of the Cherokee Nation and McKesson has not submitted itself to the jurisdiction of the Court. The Court further lacks jurisdiction because the Nation cannot demonstrate that the conduct threatens either tribal governance or internal relations among the Nation's citizens, as required for either of the exceptions to the rule barring tribal regulation of non-Indians, found within *Montana v. U.S.*, 450 U.S. 544, 365 (1981), to apply.

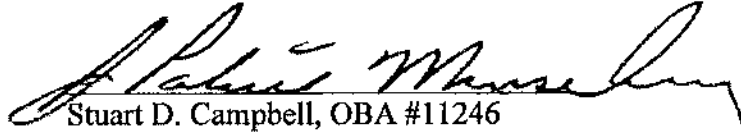
4. Additionally, the Nation lacks jurisdiction because the Petition is an attempt to civilly enforce a federal statute, the CSA, which may only be enforced by federal authorities in federal court.

5. An independent basis to dismiss this action is this Court has no personal jurisdiction over McKesson. McKesson does not have the continuous and systematic contacts with the Nation necessary to exercise general jurisdiction over it. Neither did McKesson purposefully avail itself of conducting business with the Nation or on the Nation's lands, nor do the Nation's claims arise from actions by McKesson that creates a substantial connection with the Nation's land, as required for this Court to have specific jurisdiction over it.

6. A memorandum detailing more particularly why this Court lacks subject matter jurisdiction and personal jurisdiction over McKesson is submitted contemporaneously herewith and incorporated by reference. Based upon this incorporated brief, this Court should dismiss the Nation's Petition against McKesson.

WHEREFORE, McKesson Corporation respectfully requests that this Court grant its *Motion to Dismiss*, dismiss the Cherokee Nation's Petition against McKesson with prejudice, and for any other relief to which McKesson may be entitled.

Respectfully submitted,



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(Cherokee Nation Bar application pending)

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CERTIFICATE OF MAILING

I hereby certify that on June 12, 2017, a true and correct copy of the above and foregoing instrument was mailed, with sufficient postage prepaid thereon, to:

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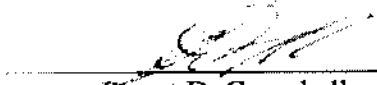
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