IN THE DISTRICT COURT
OF THE 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

SPECIAL APPEARANCE AND MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND SUBJECT MATTER JURISDICTION OF DEFENDANT WALGREENS BOOTS ALLIANCE, INC.

Defendant Walgreens Boots Alliance, Inc. ("WBA"), appearing specially, and without waiving any defenses, hereby moves this Honorable Court to dismiss all of Plaintiff's claims against WBA because the Court lacks personal jurisdiction and subject matter jurisdiction.

I. RESERVATION OF RIGHTS

WBA appears specially to assert that this Court lacks personal jurisdiction and subject matter jurisdiction in this matter.[1] By filing this motion, WBA does not waive its right to assert – and indeed expressly reserves its right to assert – lack of personal jurisdiction, lack of subject

[1] As explained in Defendants' Motion to Stay, filed this date, Defendants herein, as Plaintiffs, filed a declaratory judgment action in the United States District Court for the Northern District of Oklahoma, 17-cv-00323, on June 8, 2017, requesting a judgment that this Honorable Court has no subject matter jurisdiction over the claims of the Cherokee Nation herein, asserting federal preemption of Plaintiff's claims related to the Controlled Substances Act ("CSA"), and requesting a permanent injunction against further proceedings in this Court. Defendants herein (Plaintiffs in 17-cv-00323) also have filed a Motion for Preliminary Injunction seeking to enjoin any further action in this Court. A copy of the Complaint for Declaratory Judgment and Motion for Preliminary Injunction are attached to Defendants' Motion to Stay.

matter jurisdiction, and any and all grounds for dismissal and affirmative defenses including, but not limited to, failure to state a claim upon which relief may be granted pursuant to CN Dist. Ct. Rules and the Federal Rules of Civil Procedure.[2]

II. INTRODUCTION

A. Parties

Plaintiff Cherokee Nation ("Plaintiff") filed this lawsuit in the District Court of the Cherokee Nation on April 20, 2017. It names six entities as Defendants: three "distributor defendants" (McKesson Corporation; Cardinal Health, Inc.; and AmerisourceBergen Drug Corporation) and three "pharmacy defendants" (CVS Health Corporation; Walgreens Boots Alliance, Inc.; Wal-Mart Stores, Inc.). WBA, however, is erroneously named. In fact, it is merely a holding company, which does not directly own or operate any pharmacies. *See*, Exhibit 1, Declaration of Collin Smyser.[3] Plaintiff makes no allegations suggesting any basis on which a holding company could be a proper defendant in this matter.

B. Plaintiff's Claims

Plaintiff bases its claim to personal jurisdiction over all six defendants on one vague and conclusory paragraph. Plaintiff asserts, without any factual support, that "each" defendant has "substantial contacts and business dealings" by virtue of, in the case of WBA and the other "pharmacy defendants," the alleged dispensing and sale of prescription opioids "within the Cherokee Nation territorial and political jurisdiction" in Oklahoma. *See* Petition, filed herein, ¶ 49.

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[2] In light of the fact that it has been named as a defendant in this matter erroneously, WBA makes its jurisdictional arguments on its own behalf and also as if the appropriate WBA subsidiary entity had been named instead.

[3] "Facts regarding jurisdictional questions may be determined by reference to affidavits." *Fed. Deposit Ins. Corp. v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992).

Plaintiff bases its claim that this Court has subject matter jurisdiction on the allegation that the Court has jurisdiction, under its constitution and certain treaties, over causes of action "arising in Indian country," and/or arising in the "Cherokee Nation jurisdictional area." Petition, ¶¶ 18 through 48. Plaintiff even asserts the federal Controlled Substances Act as a basis for its claims.

Plaintiff's allegations against WBA center around allegations of wrongful dispensing of opioid drugs through pharmacies to Cherokee Nation tribal members, allegedly in violation of the federal Controlled Substances Act, within the territory Plaintiff has described as the "Cherokee Nation jurisdictional area" (an area covering part of 14 Oklahoma counties) and negligent hiring and supervision of "its" employees to do so. *See* Petition, ¶¶ *16*, 30, 135-161. Plaintiff makes its claims in *parens patriae* and makes claims for damages for the alleged increased costs of medical care, counseling, rehabilitation services, treatment for infants with opioid-related medical conditions, welfare for children with parents of opioid-related disabilities, related law enforcement and public safety, as well as claims for, *inter alia*, civil penalties, restitution, and injunctive relief.

III. FACTUAL BACKGROUND

WBA is a publicly traded corporation organized under the laws of Delaware with a principal place of business in Illinois. Declaration of Collin Smyser, ¶ 2, Exhibit 1, attached hereto. It does not directly own or operate any pharmacies within Oklahoma or within the parts of 14 Oklahoma counties which Plaintiff refers to as the "Cherokee Nation jurisdictional area." *Id.*, ¶ 3. WBA has never registered with the Oklahoma Secretary of State to do business in Oklahoma. *Id.*, ¶ 4. It has never maintained a registered agent for service of process in Oklahoma or in what Plaintiff has called the "Cherokee Nation jurisdictional area." *Id.*

WBA has never maintained any office or other physical location, a mailing address or a telephone number in Oklahoma or the so-called "Cherokee Nation jurisdictional area." *Id.*, ¶¶ 5-6.

WBA has never owned or leased any real or personal property in Oklahoma or in the alleged "Cherokee Nation jurisdictional area." *Id.*, ¶ 7. It does not direct advertising to Oklahoma or to what Plaintiff has called the "Cherokee Nation jurisdictional area." *Id.*, ¶ 8. It does not now, nor has it ever had any contracts, business relationships, or business or physical presence whatsoever in Oklahoma or in what Plaintiff has called the "Cherokee Nation jurisdictional area." *Id.*, ¶ 9. It is not a member of the Cherokee Nation or any other Indian tribe. *Id.*, ¶ 10.

In sum, WBA is a holding company. It performs none of the functions that Plaintiff alleges as the basis of its claims in this case. It has no "minimum contacts" with Oklahoma or the area Plaintiff refers to as the "Cherokee Nation jurisdictional area."

IV. ARGUMENT AND AUTHORITY

A. It is Plaintiff's Burden to Prove Jurisdiction

The party invoking the jurisdiction of the court has the duty to establish that jurisdiction exists. *Salzer v. SSM Health Care of Oklahoma Inc.*, 762 F.3d 1130, 1134 (10th Cir. 2014); citing, *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974). Tribal courts are courts of limited jurisdiction. *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1151 (10th Cir. 2011); *Nevada v. Hicks*, 533 U.S. 353, 367, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001). Where courts are of limited jurisdiction, there is a presumption against jurisdiction. *Salzer*, 762 F.3d at 1134; quoting, *Basso*, 495 F.2d at 909. "[W]hen the district court holds a pretrial evidentiary hearing to resolve factual disputes relating to jurisdictional questions, the plaintiff has the burden to prove facts supporting jurisdiction by a preponderance of the evidence." *Fed. Deposit Ins. Corp. v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992); citing, *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990); *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir.

1986). It is Plaintiff's burden to establish that exercising personal jurisdiction over WBA is proper under the laws of the forum and does not offend due process. *Fireman's Fund,* 703 F.3d at 492.[4]

B. This Court Lacks Personal Jurisdiction Over WBA

This Court lacks personal jurisdiction over WBA under tribal law or federal law. The Cherokee Nation statutes expressly extend jurisdiction only to include "Indian country" in the partial 14-county area. *See* 20 CNCA § 25. However, even the Cherokee Constitution acknowledges that due process limits the power of the Cherokee Nation. *See* Constitution of the Cherokee Nation, Art. III, Sec. 3.

A court may exert personal jurisdiction over a defendant only when that exercise is consistent with due process requirements of the United States Constitution. *See, Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 918-919 (2011). Those who live or operate primarily outside a state have a due process right not to be subjected to judgment in its courts as a general matter. *J. McIntyre Machinery, Ltd. v. Nicastro,* 564 U.S. 873, 879-880 (2011) (plurality opinion). Due process protects the Defendant's right not to be coerced except by lawful judicial power. *Id.* at 877.

In accord with those due process considerations, a court may exercise jurisdiction "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Goodyear*, 564 U.S. at 923, *citing. Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945). For personal jurisdiction to lie, WBA (or any properly named Walgreens' entity, for that matter, if any is named) must have sufficient contacts with the forum, such that having to defend a lawsuit there does not offend those principles. *Int'l Shoe*, 326 U.S. at 316. The

[4] Plaintiff must make a *prima facie* showing of personal jurisdiction if a court does not hold an evidentiary hearing, not just stand on unsupported allegations. *See, OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998). Plaintiff makes no factual allegation supporting any exercise of jurisdiction of WBA, a holding company which does not operate pharmacies.

requirement of minimum contacts is carried into effect through the concepts of specific jurisdiction and general jurisdiction. *Goodyear*, 564 U.S. at 923; *Fireman's Fund, Ins. Co. v. Thyssen Min. Const. of Canada*, 703 F.3d 488, 493 (10th Cir. 2012). Plaintiff cannot establish either type of jurisdiction as to WBA.

1. The Court Lacks Specific Personal Jurisdiction Over WBA Because Plaintiff's Claims Do Not Arise out of or Relate to any Purported Contacts by WBA with the Forum

This Court lacks specific personal jurisdiction over WBA for Plaintiff's claims. Specific jurisdiction depends on a nexus between the defendant, the forum and the underlying controversy, generally an action or omission by the defendant which takes place in the forum and forms the basis of the plaintiff's claim. *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014). *See also Goodyear*, 564 U.S. at 919; *Hedges v. Trailer Express, Inc.*, 2015 WL 402857, *5 (W.D. Okla. Jan. 29, 2015). Importantly, the nexus between the defendant and the forum must arise out of contacts that the defendant itself creates. *Walden,* 134 S. Ct. at 1122. Because Plaintiff has alleged no facts that could possibly establish any nexus between WBA, Plaintiff's claims, and the so-called "Cherokee Nation jurisdictional area," this Court lacks specific person jurisdiction over WBA. *See, Hedges*, 2015 WL 402857 at *5.

Further, Plaintiff merely alleges in a conclusory fashion that WBA was "formerly" known as "Walgreens Co." [sic] and that at "all relevant times" sold and continues to sell prescription opioids within that area of Oklahoma it refers to as the "Cherokee Nation" or the "Cherokee Nation jurisdictional area." Plaintiff makes no allegations whatsoever regarding WBA's corporate structure or any reason that structure should be disregarded such that a holding company, which does not directly own or operate a single pharmacy, could be subject to jurisdiction in this Court. *See* Declaration of Smyser, Exhibit 1, attached hereto. The Court may not exercise jurisdiction

over a "parent" corporation without some proof that the parent exercises sufficient control over the subsidiary. *Pro Axcess, Inc. v. Orlux Distribution, Inc.*, 428 F.3d 1270, 1278 (10th Cir. 2005). The activities of a subsidiary corporation must be of such character as to amount to doing business of the parent to subject the parent to personal jurisdiction. *See, Home State Production C. v. Talon Petroleum Co.*, C.A. 907 F.2d 1012, 1020 (10th Cir. 1990). *See also,* p. 2, n. 2, *supra; Quarles*, 504 F.2d at 1364; *Harris v. American Int'l Group, Inc.*, 923 F.Supp. 2d 1299, 1305 (W.D. Okla. 2013).[5] Plaintiff has not alleged, much less supported with any factual allegations, any basis for jurisdiction against WBA.

2. The Court Lacks General Personal Jurisdiction Over WBA Because WBA Lacks Sufficient Contacts With the Forum

This Court also lacks general personal jurisdiction over WBA. General personal jurisdiction arises out of "instances in which the continuous corporate operations...within a state [are] so substantial" as to render the defendant "essentially at home" in the forum state. *Goodyear*, 564 U.S. at 919 (finding no factual basis to conclude that the defendant business could be "fairly regarded as at home" in the forum); *Daimler A.G. v. Bauman*, 134 S.Ct. 746, 754 (2014); citing, *Goodyear*, 564 U.S. at 920.

For a corporation, the place of incorporation and principal place of business are paradigmatic bases for general jurisdiction. *See id.* (quotations omitted). *See also, Monge v. R.G. Petro-Machinery (Group) Co. Ltd.*, 701 F.3d 598, 614-615 (10th Cir. 2012) (a products liability case relying on *Goodyear* and requiring continuous and systematic business contacts with the forum for general jurisdiction, as compared to Plaintiff's allegations herein of Defendants' wrongfully making illegal actions by others easier); *Shrader v. Biddinger*, 633 F.3d 1235, 1243

[5] In *Daimler*, 134 S.Ct. at 759, the Supreme Court rejected a less-stringent "agency" test for personal jurisdiction used by the Ninth Circuit on the proof in that case, again rejecting such a "sprawling" view of general jurisdiction, citing *Goodyear.*

(10th Cir. 2011) (contacts must be of a sort that approximate physical presence in the state, and engaging in commerce with residents of a forum state is not in and of itself the kind of activity that approximates a physical presence with the forum's borders).

WBA is even more removed from this forum than the defendants in the cited cases: it did not own or operate the pharmacies where the alleged actions or omissions that form the basis of Plaintiff's claims allegedly took place.

Here, Plaintiff has not alleged and cannot demonstrate that WBA had such substantial contacts with Oklahoma or the parts of Oklahoma described in the Petition to establish that WBA was "at home" in Oklahoma. Not only does WBA not have such extensive contacts with the forum, it has no contacts with the forum whatsoever. Accordingly, the Court lacks general personal jurisdiction over WBA.

C. There is no Subject Matter Jurisdiction Under Applicable Federal Law Against WBA

WBA adopts and incorporates by reference the factual assertions, argument, and authority set out in the federal court filings made by the Defendants herein as Plaintiffs in 17-cv-00323, which are attached as Exhibits A and B to Defendants' Motion to Stay, filed concurrently herewith. As those filings explain in great detail, the alleged acts and omissions underlying Plaintiff's claims against the Defendants did not occur in "Indian country" as defined by 28 U.S.C. § 1151. This Court does not have jurisdiction over activities of non-Indians that do not take place in "Indian country." WBA is not a member of the Cherokee Nation or of any tribe. *See* Declaration of Smyser, Exhibit 1, attached hereto. The presumption of the lack of jurisdiction against WBA, a non-member of the tribe, cannot be overcome. Further, the Plaintiff's allegations based on alleged violations of the federal Controlled Substances Act are preempted by federal law.

1. The Alleged Conduct Underlying Plaintiff's Claims Did Not Occur in Indian Country

The limits of "Indian country" are set forth at 28 U.S.C. § 1151 as:

(a). All land within the limits of any Indian reservation under the jurisdiction of the United States Government notwithstanding issuance of any patent and, including right-of-way running through the reservation,
(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
(c) All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same.[6]

Inherent tribal sovereignty, including the jurisdiction of tribal courts (where a tribe is attempting to regulate the conduct of non-Indians) is unique and limited, cabined by geographical limits of tribal boundaries. *See, Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 327 (2008); *Phillip Morris USA, Inc. v. King Mountain Tobacco Co.. Inc.*, 569 F.3d 932, 937-938 (9th Cir. 2009).

WBA is not a member of the Cherokee Nation or of any tribe, so any conduct ascribed to it is, by definition, non-Indian conduct. The alleged conduct of WBA underpinning Plaintiff's claims -- filling prescriptions; negligent hiring and supervision did not occur in Indian country, but rather at the subject pharmacies (none of which were owned or operated by WBA) on non-Indian fee-owned land outside of Indian country. *See* Declarations of Cathleen Norman and Collin Smyser, Exhibits 2 and 3 attached hereto. *See, Plains Commerce Bank*, 54 U.S. at 330; *Jackson v.*

[6] In *DeCoteau v. Dist. Cty. Ct. for Tenth Judicial Dist.*, 420 U.S. 425, 427 n. 2 (1975), the Supreme Court recognized that § 1151 generally applies to questions of civil jurisdiction. *See also. Christian Children's Fund v. Crow Creek Sioux Tribal Court*, 103 F.Supp. 2d 1161, 1166 (D.S.D. 2000) (holding that the tribal court plainly had no jurisdiction where alleged conduct did not occur within the reservation; *Progressive Specialty Ins. v. Burnette*, 489 F.Supp. 2d 955, 958, (D.S.D. 2007) (Indian tribes are not permitted to exercise jurisdiction over the activities or conduct of non-Indians occurring outside the reservation); *Yankton Sioux Tribe Head Start Concerned Parents v. Longview Farms, LLP*, 2009 WL 891866, *3 (D.S.D. March 31, 2009)(the tribe does not have regulatory authority over the construction of a farrowing facility by the defendant, a non-Indian entity, because such facility is located on land which is not within reservation boundaries.)

Payday Fin., LLC, 764 F.3d 765, 782, 786 (7th Cir. 2014); *Atty's Process & Investig. Svces, Inc. v. Sac & Fox Tribe of the Miss, in Iowa*, 809 F.Supp. 2d 916, 928 (N.D. Iowa 2011). *See also, Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087, 1091-1093 (8th Cir. 1998) (claims concerning off-reservation manufacturing, distribution, and sale of a product which allegedly harmed the tribe's health and welfare were not subject to tribal jurisdiction.)

Even if a Walgreens party was properly named as a defendant in this matter, the partial 14-county area claimed as "tribal" by the Plaintiff is not "Indian country" (not reservation land, not a dependent Indian community on land set aside by the federal government for the use of the tribe as Indian land under federal superintendence, not a restricted allotment.) In other words, it is not trust land of any kind. *See* Declaration of Cathleen Norman, Exhibit 2, *see also* 28 U.S.C. § 1151.

2. Plaintiff Cannot Overcome the Presumption Against Tribal Jurisdiction

The inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the tribe. *Montana v. United States*, 450 U.S. 544, 565 (1981). This restriction is particularly strong when, as here, the non-member's activity occurred on non-Indian fee land. *Plains Commerce Bank*, 554 U.S. at 328; citing, *Strate v. A-1 Contractors*, 520 U.S. 438, 446 (1997). The actions or omissions Plaintiff ascribes to WBA, even if true, did not occur on non-Indian fee land "within the reservation." In *Montana*, the court explained that, as a general principle, tribes cannot exercise power beyond what is necessary to protect tribal self-government or control internal relations. *Montana*, 540 U.S. at 564.

In applying that general principle, the court explained there were two general exceptions. First, a tribe may "regulate" (through taxation, licensing, or "other means") the activities of non-members who enter consensual relationships with the tribe or its members. Second, a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within

its reservation when that conduct *threatens* or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Id.* at 565-566. Plaintiff's allegations do not satisfy either of those two exceptions.

With regard to the general principle that tribes cannot exercise power beyond what is necessary to protect tribal self-government or control internal relations, the alleged actions of WBA underlying Plaintiff's claims (even if WBA operated pharmacies, which is expressly denied) did not take place within the reservation (no reservation exists here, as Plaintiff acknowledges; see Petition. ¶¶ 30-36) or within Indian country. *See* Exhibit 2, Declaration of Cathleen Norman of Walgreen Co.

Of course, even if any of WBA's alleged actions did take place within Indian country, which is expressly denied, the alleged actions do not remotely approach the level of affecting tribal sovereignty required under *Montana*. Plaintiff has long stated that it has a thriving three-branch government and functioning elections. *See* Constitution of the Cherokee Nation. The allegations regarding wrongful dispensing or distribution of opioids do not implicate tribal self-government or "control" of internal relations and the relief requested is certainly not necessary to those sovereignty goals.

a. The first *Montana* Exception of Consensual Relationship Does Not Apply

WBA does not own or operate pharmacies in the "Cherokee Nation jurisdictional area" and has no "consensual" or contractual relations with the tribe or its members. *See* Declaration of Collin Smyser, Exhibit 1 attached hereto. Even if the correct Walgreens party was named as a defendant in this matter, Plaintiff's allegations would nonetheless represent an impermissible attempt to regulate conduct by means of tort claims, which does not meet the standard for "other means" to regulate consensual relationship. *Montana*, 450 U.S. at 565. Tort claims determine

appropriate conduct after the fact, leaving a tort defendant "at the mercy of chance regarding the nature and extent of the liability to which he may be exposed." *UNC Res., Inc. v. Benally*, 514 F.Supp. 358, 363 (D.N.M. 1981). This chance exposure to liability is antithetical to consent. Accordingly, WBA cannot be deemed to have consented to after the fact tort liability, especially true in view of the fact that Plaintiff asserts support for its claims in a statute that was just made effective in late August, 2016. *See*, CNCAJA, 12 CNCA §§ 1-30.

Furthermore, Plaintiff's allegations involving wrongful torts are inherently not based on a consensual relationship. The required causal nexus to an alleged consensual relationship is simply absent. *See Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1151-52 (10th Cir. 2011). The petition's claims arise not from a consensual relationship with the tribe or any tribal member but rather from allegations of wrongful non-consensual dispensing of opioids, which is insufficient. *See, Phillip Morris*, 569 F.3d at 941-42. Generalized threats posed by torts do not fall within the "consensual" *Montana* exception. *Id.* at 943.

b. The Second *Montana* Health and Welfare Exception Does Not Apply

Plaintiff also cannot satisfy *Montana's* second exception, a threat to the Cherokee Nation's political integrity, economic security, or health and welfare. To meet that requirement, the Court must find that the Plaintiff has proved more than that the conduct caused injuries to the tribe; it must prove that the alleged conduct imperils the subsistence of the tribal community and poses a threat to tribal sovereignty. *Plains Commerce Bank*, 554 U.S. at 341; *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 658 and n. 12 (2001); *Phillip Morris*, 569 U.S. at 943. *See*, Defendants' Complaint for Declaratory Judgment and Motion for Preliminary Injunction, Exhibits to Defendants' Motion to Stay, filed herein.

Even if WBA were a correctly named party, Plaintiff's allegations would be insufficient to satisfy this exacting standard.

D. The Federal Controlled Substances Act Preempts Plaintiff's Claims

Plaintiff's attempt to use this lawsuit to enforce the federal Controlled Substances Act must fail. By its own express terms, that federal statute is enforceable only by the United States Attorney General and, by delegation, the United States Department of Justice. *See*, *Smith v. Hickenlooper*, 164 F.Supp.3d 1286, 1290 (D. Colo. 2016), aff'd, *Safe Streets Alliance v. Hickenlooper*, ___ F.3d ___, 2017 WL 2454359 (10th Cir. June 7, 2017). Only federal district courts (or other courts designated, not including the Cherokee Nation tribal court) have authority to enjoin CSA violations. 21 U.S.C. § 882(a), or register or revoke registrations on statutory grounds. 21 U.S.C. § 823(b), § 824. The CSA creates no private right of action by its own terms. 21 U.S.C. § 882(c)(1), (5). The United States Attorney General and Department of Justice maintain control. *See also,* 21 U.S.C. §§ 802(52)(B)(iv); 822(a)(1) and (b); § 872(a) and (c); § 878 (the latter defining and limiting the role of tribal agencies to cooperation with the United States Attorney General.) Superior federal interests control. *UNC Resources, Inc.*, 518 F.Supp. at 1052. *See also, Nevada v. Hicks*, 533 U.S. 355, 367-68 (no provision in 42 U.S.C. § 1983 providing for tribal court jurisdiction over civil rights claims.)

3. Plaintiff's Reliance on Treaties or Tribal Statutes Does Not Trump *Montana's* and *Plains Commerce Bank's* Acknowledgment of Curtailment of Inherent Tribal Jurisdiction

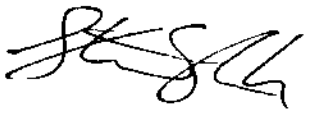
In *Plains Commerce Bank*, 554 U.S. at 328, the Supreme Court held that the tribes, by virtue of their incorporation into the American republic, have lost the right of governing persons within their limits except for themselves. The inherent sovereign powers of the tribes do not extend to non-members' activities. *Montana*, 540 U.S. at 565. In *Alberty v. United States* 162 U.S. 499,

502 (1896), the Supreme Court traced the history of treaties with the Cherokee and the elimination of courts referenced in the earlier 1898 treaty. Plaintiff's reference to multiple federal and state statutes, which reference or allow cooperation or outreach between the Cherokee Nation and other entities for specific narrow purposes do not apply. *See*, Petition ¶¶ 31-36. The same is true as to the Cherokee Nation's own law. Even the Cherokee Nation's "territorial jurisdiction statute," 20 CNCA § 25 acknowledges that "Indian country" as defined by federal law is a smaller "cabined" area of the partial 14-county jurisdictional area, and "Indian country" is necessary for territorial jurisdiction. *Id.*

V. CONCLUSION

WBA has been erroneously named as a Defendant in this lawsuit. This Honorable Court has neither personal jurisdiction nor subject matter jurisdiction over WBA. Plaintiff's claims against WBA should be dismissed with prejudice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2017, a true and correct copy of the above and foregoing instrument was served on the parties as follows:

√ Via U.S. Mail □ Via Facsimile Mail

□ Via Federal Express □ Via Hand Delivery

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IN THE DISTRICT COURT
OF THE 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

DECLARATION OF COLLIN SMYSER IN SUPPORT OF NAMED DEFENDANT WALGREENS BOOTS ALLIANCE, INC.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, Collin Smyser, declare as follows:

1. I am Vice President & Corporate Secretary for Walgreens Boots Alliance, Inc., which is a named defendant in this lawsuit. I have been in that position for more than one year and have knowledge of the facts herein from my position with Walgreens Boots Alliance, Inc.

2. Walgreens Boots Alliance, Inc. is a publicly traded corporation organized under the laws of Delaware with a principal place of business in Illinois.

3. Walgreens Boots Alliance, Inc. does not operate any pharmacies directly within any state of the United States or in any nation. It is a holding company.

4. Walgreens Boots Alliance, Inc. has never registered with the Oklahoma Secretary of State to do business in Oklahoma. It has never maintained a registered agent for service of process in Oklahoma or what Plaintiff has called the "Cherokee Nation jurisdictional area."

5. Walgreens Boots Alliance, Inc. has never maintained any office or other physical location in Oklahoma or what Plaintiff has called the "Cherokee Nation jurisdictional area."

6. Walgreens Boots Alliance, Inc. has never maintained a mailing address or telephone number in Oklahoma or what Plaintiff has called the "Cherokee Nation jurisdictional area."

7. Walgreens Boots Alliance, Inc. has never owned or leased real or personal property in Oklahoma or what Plaintiff has called the "Cherokee Nation jurisdictional area."

8. Walgreens Boots Alliance, Inc. does not direct advertising to Oklahoma or what Plaintiff has called the "Cherokee National jurisdictional area."

9. Walgreens Boots Alliance, Inc. does not now and has never had any contracts, business relationships, or business or physical presence whatsoever in Oklahoma or what Plaintiff has called the "Cherokee Nation jurisdictional area."

10. Walgreens Boots Alliance, Inc. is not a member of the Cherokee Nation or any other Indian tribe.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 12, 2017

COLLIN SMYSER
Vice President & Corporate Secretary
Walgreens Boots Alliance, Inc.
Deerfield, Illinois

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

(1) MCKESSON CORPORATION; (2) CARDINAL HEALTH, INC.; (3) AMERISOURCEBERGEN DRUG CORPORATION; (4) CVS HEALTH CORPORATION; (5) WALGREENS BOOTS ALLIANCE, INC.; and (6) WAL-MART STORES, INC., Plaintiffs, vs. (1) TODD HEMBREE, ATTORNEY GENERAL OF THE CHEROKEE NATION, in his official capacity; (2) JUDGE CRYSTAL R. JACKSON, in her official capacity; and (3)-(7) DOE JUDICIAL OFFICERS 1-5; Defendants.	No. _____

DECLARATION OF CATHLEEN NORMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Cathleen Norman, declare as follows:

1. I am the Property Manager for Walgreen Co. My statements herein are based on my personal knowledge and involvement in my position with Walgreen Co.

2. Based on my review of property records and lease agreements, Walgreen Co. does not lease any stores, facilities or land from the Cherokee Nation located in the following Oklahoma counties: Adair, Cherokee, Craig, Delaware, Mayes, McIntosh, Muskogee, Nowata, Ottawa, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

EXHIBIT
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3. Based on my review of property records and lease agreements, it is my understanding and belief that none of the Walgreen Co. stores located in the aforementioned counties are located on trust land.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 6/7/2017

Cathleen Norman
Deerfield, Illinois

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

(1) MCKESSON CORPORATION; (2) CARDINAL HEALTH, INC.; (3) AMERISOURCEBERGEN DRUG CORPORATION; (4) CVS HEALTH CORPORATION; (5) WALGREENS BOOTS ALLIANCE, INC.; and (6) WAL-MART STORES, INC., Plaintiffs, vs. (1) TODD HEMBREE, ATTORNEY GENERAL OF THE CHEROKEE NATION, in his official capacity; (2) JUDGE CRYSTAL R. JACKSON, in her official capacity; and (3)-(7) DOE JUDICIAL OFFICERS 1-5; Defendants.	No. _____

DECLARATION OF COLLIN SMYSER IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Collin Smyser, declare as follows:

1. I am Vice President & Corporate Secretary for Walgreens Boots Alliance, Inc. The statements herein are based on my personal knowledge and involvement in my position with Walgreens Boots Alliance, Inc.

2. Walgreens Boots Alliance, Inc. is a publicly-traded Delaware corporation headquartered in Illinois. Walgreens Boots Alliance, Inc. is a holding company that does not operate in Oklahoma.

3. Walgreens Boots Alliance, Inc. has no contracts, business contacts, ties, or relations with the Cherokee Nation.

EXHIBIT
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4. Walgreens Boots Alliance, Inc. is not a member of the Cherokee Nation. It is also not incorporated under the laws of the Cherokee Nation.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 7, 2017

Collin Smyser
Deerfield, Illinois