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April 22, 2015

Mr. C.C. "Bud" Grisham, Individually
1 Meriwether Pond
Harrison, AR 72601

RE: McKesson v. Grisham Lawsuit
USDCWDA Case No. 15-3026

Mr. Grisham:

Enclosed you will find the following, to wit:

- Summons issued by the Clerk of the USDC of the Western District of Arkansas;
- Complaint file marked April 1, 2015, by the USDC Clerk.

Please review the contents of the Summons and govern your actions accordingly.

Respectfully Submitted,

Don A. Smith

Das/ns

RCD. 10 AM - MON. APRIL 27, 2015
ANSWER BY MON. MAY 18, 2015

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US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED
APR 22 2015
CHRIS R. JOHNSON, Clerk
By
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

MCKESSON CORPORATION, a Delaware corporation, **Plaintiff,** **v.** **C.C. "BUD" GRISHAM, an individual, and THE ESTATE OF MARY FAYE (BURKE) GRISHAM, C.C. "Bud" Grisham, Executor.** **Defendants**	**Case No.** 15-3026 **Judge:** **Complaint Filed:**

COMPLAINT AT LAW

NOW COMES the Plaintiff, MCKESSON CORPORATION, a Delaware corporation, by its undersigned counsel, SMITH, COHEN & HORAN PLC, and for its Complaint against Defendant, C.C. "BUD" GRISHAM, an individual whom resides in the State of Arkansas, and THE ESTATE OF MARY FAYE (BURKE) GRISHAM, an estate established in the State of Arkansas having C.C. "Bud" Grisham as Executor, states as follows:

PARTIES

1. Plaintiff, McKesson Corporation (hereinafter "McKesson" and/or "Plaintiff") is a corporation organized under the laws of the State of Delaware with its principal office located at One Post Street, San Francisco, California 94104.

2. Defendant, Mr. C.C. "Bud" Grisham (hereinafter "Bud Grisham") is a citizen of the United States of America and a citizen of the State of Arkansas, where he maintains a residence located at 1 Meriwether Pond, Harrison, Arkansas, 72601.

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3. Defendant, the Estate of Mary Faye (Burke) Grisham (hereinafter the "Grisham Estate"), is an Estate established in the State of Arkansas with Bud Grisham as Executor. Bud Grisham's residence and principle place of business is located at 1 Meriwether Pond, Harrison, Arkansas, 72601. Bud Grisham and the Grisham Estate shall collectively be referred to as "Defendants."

JURISDICTION

4. The district court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs, and this civil action is between citizens of different States.

5. Venue is proper in the United States District Court, Western District of Arkansas, pursuant to 28 U.S.C. §1391(b), as the acts and omissions which form the basis for Plaintiff's claims took place within this District of the State of Arkansas and the Defendants reside or have a principle place of business in this District of the State of Arkansas.

NATURE OF ACTION

6. This is an action for: declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202; compensatory damages suffered by Plaintiff as a result of the Defendants' breach of contract; and, permanent injunctive relief, enjoining the Defendants from future acts in breach of contract, which shall cause Plaintiff irreparable harm.

FACTS

Background and Civil Actions

7. Arkwood, Inc. was a pentachlorophenol (PCP) and creosote wood treating company and, during all times of its existence, its stockholders and officers included Bud Grisham and Ms. Hallie C. Ormond ("Hallie Ormond").

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8. From in or around 1962 to 1973, Arkwood, Inc. owned and operated the Arkwood Wood Treating Facility ("Arkwood Facility"), located on a parcel of land approximately 18 acres in size in Omaha, Boone County, Arkansas, which was owned by Hallie Ormond.

9. Upon information and belief, during the time period between 1962 and 1973, Bud Grisham assisted in the operation of the Arkwood Facility.

10. From in or around 1962 through 1970, during Arkwood, Inc.'s operation of the Arkwood Facility, wastes were reportedly dumped into a sinkhole adjacent to the Arkwood Facility. Waste was also reportedly placed in a ditch adjacent to the railroad that ran along the north boundary of the parcel of land.

11. In 1973, Mass Merchandisers, Inc. ("MMI") leased the parcel of land from Hallie Ormond, took over operation of the Arkwood Facility from Arkwood, Inc., and continued to operate the Arkwood Facility until June 1984, when MMI sold or removed its remaining inventory and materials from the parcel of land.

12. In 1985, MMI became a wholly owned subsidiary of McKesson by way of a stock transfer.

13. In 1985, MMI's lease expired, and in 1986, the Arkwood Facility was dismantled.

14. The former Arkwood Facility and parcel of land are now known as the Arkwood, Inc. Superfund Site (the "Site"), which consists of approximately 18.076 acres and is described in detail in the May 29, 2014, Corrected Deed Notice and Restrictions filed in the office of the Boone County Circuit Clerk, Boone County, Harrison, Arkansas.

15. On information and belief, at some point prior to 1987, Mary Burke took title to the Site. Upon further information and belief, the current title owner of the Site is the Grisham Estate, of which Bud Grisham is the Executor.

16. On or about May 12, 1986, in response to the presence or suspected presence of hazardous substances at the Site sourced from the historical operations of the Arkwood Facility, McKesson, MMI and the United States Environmental Protection Agency, Region VI ("EPA") executed an Administrative Order on Consent, Docket Number CERCLA VI-6-86, whereby McKesson and MMI agreed to undertake a Remedial Investigation/Feasibility Study ("RI/FS") of the Site.

17. On or about September 19, 1986, MMI filed a Cross-Complaint in an action entitled Arkansas Department of Pollution Control and Ecology v. Ormond, et al., in the Chancery Court of Boone County, Arkansas, Action No. E-86-293, against certain members of the "Ormond Group," including Bud Grisham, concerning the environmental investigation and cleanup of the Site. MMI generally alleged that Bud Grisham and the other named members of the Ormond Group were liable for the environmental investigation and cleanup of the Site as prior owners and operators of the Arkwood Facility, during which time various hazardous substances were released, including but not limited to PCP, creosote and wood treating oils and their derivatives, including dioxin.

18. For purposes of this Complaint, the definition of the Ormond Group includes Bud Grisham, Hallie Ormond, Mary Jo Grisham, and Mary F. Burke (hereinafter the "Ormond Group").

19. On September 11, 1986, certain members of the Ormond Group, including Defendant Bud Grisham, filed a Cross-Complaint in Action No. E-86-293, against MMI and a third-party complaint against McKesson concerning the environmental investigation and cleanup of the Site.

20. Separately, the United States filed a complaint on or about April 28, 1987, and amended on June 3, 1987, against Bud Grisham, Hallie Ormond, and Mary F. Burke in the

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United States District Court, Western District of Arkansas, Harrison Division, Civil Action No. 87-3034, demanding that the defendants, who were the past and present Site owners, provide access to the United States so that its authorized representative could conduct the investigation and remediation of the Arkwood Facility and Site. Prior to the filing of that complaint, the defendants had refused to permit access to allow for the investigation and cleanup of the Site.

21. In that same action brought by the United States against Bud Grisham and others, on or about December 1, 1987, the court entered an Order granting the motion of MMI to intervene against the same defendants demanding access to the Site so that MMI could perform the RI/FS that it had agreed to perform in the Administrative Order on Consent, Docket Number CERCLA VI-6-86 that MMI had entered into with EPA on May 12, 1986.

22. By Consent Order dated July 11, 1988, the United States and defendants Bud Grisham, Hallie Ormond, and Mary F. Burke settled all claims in Civil Action No. 87-3034, the lawsuit initiated by the United States, with defendants agreeing to allow the United States and its authorized representatives onto the Site to perform the RI/FS and thereafter for the purpose of implementing, operating, maintaining and overseeing any subsequent response action.

Settlement Agreement between McKesson and Bud Grisham, Mary F. Burke and Others

23. On or about December 31, 1987, McKesson and MMI entered into a Settlement Agreement with the members of the Ormond Group, including Bud Grisham and Mary F. Burke, settling all state and federal claims in Action Nos. E-86-293 and 87-3034 ("Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**.

24. The Settlement Agreement, after indicating that McKesson and MMI are parties to it, defines them collectively as "MMI" and refers to them as such throughout the remainder of the Agreement.

25. Defendants are joint signatories to the Settlement Agreement and are co-obligors to the obligations set forth therein. On information and belief, Mary F. Burke died sometime after her execution of the Settlement Agreement, meaning her contractual obligations to MMI and McKesson under the Settlement Agreement passed into her estate, of which Bud Grisham is the executor.

26. Pursuant to the Settlement Agreement, the four individual members of the Ormond Group on the one hand, including the Defendants, and McKesson and MMI, on the other hand, mutually agreed to dismiss their respective Cross-Complaints in Action Nos. E-86-293 and 87-3034, related to the environmental investigation and cleanup of the Site, as well as Site access.

27. Pursuant to the Settlement Agreement, the Ormond Group, including Defendants, agreed to pay two hundred thousand dollars ($200,000) to, and release MMI and McKesson from, any and all claims, known or unknown, which they had, have, or which may arise in the future against MMI or McKesson "arising in whole or in part out of or in any way connected with the Site," along with other consideration in the form of specified obligations set forth in the Settlement Agreement. In exchange, McKesson and MMI agreed to release the claims against the Ormond Group members and indemnify them, with few exceptions, from and against claims brought by governmental entities for the investigation and cleanup of the contaminated Site, along with other consideration in the form of specified obligations set forth in the Settlement Agreement.

28. Section 9.2 of the Settlement Agreement sets forth several of the Ormond Group's specified obligations that were part of the valuable consideration provided by them to McKesson and MMI as part of the bargain reflected in the Settlement Agreement. In particular, the Ormond Group members, including Defendants promised to "cooperate with MMI [i.e. McKesson and

MMI], their counsel, experts, accountants, insurers and other representatives in connection with the Site by, among other things, . . . not conferring with regulatory agencies, or making statements to the press, without MMI's prior written consent."

29. In summary, the Ormond Group members, including Defendants, in exchange for being indemnified by MMI and McKesson against any regulatory agency demands for Site investigation and cleanup, which represented a huge potential liability, agreed: 1) to waive any claims for damage to or loss of use of the Site against MMI and McKesson; and 2) to not interfere with the performance of any required Site investigation and cleanup by MMI and McKesson by, among other actions, conferring with regulatory agencies without the prior consent of McKesson and MMI. Defendants, however, have breached their agreement, as set forth in detail below.

30. Section 9.3 of the Settlement Agreement provides that the Ormond Group members, including Defendants, "acknowledge that breach of their obligations under Sections 9.1 and 9.2 may cause irreparable loss to MMI [collectively, McKesson and MMI] and that damages may be impossible to ascertain, and hereby "consent to the granting of equitable relief by way of temporary, preliminary and permanent injunctive relief by a court of competent jurisdiction, to prohibit such breach and compel performance of such obligation."

31. Section 10.2 of the Settlement Agreement provides that "[t]his Agreement shall be binding on, and inure to the benefit of the successors and assigns of the parties."

McKesson's Compliance with Settlement Agreement

32. Pursuant, in part, to the Settlement Agreement, MMI commenced a remedial investigation and feasibility study concerning potential remedies at the Site in 1987. Upon completion of those reports and their acceptance by EPA, MMI subsequently entered into a Corrected Consent Decree ("Consent Decree") with the EPA in 1992 to implement the remedial

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action selected for the Site in the Record of Decision ("ROD") issued by the EPA in September 1990.

33. Pursuant to the Consent Decree, MMI, and McKesson as the successor to MMI's Site obligations and liabilities, have investigated and been continuously remediating the Site for over two decades under the EPA's constant oversight and approval, and additional oversight by the Arkansas Department of Environmental Quality ("ADEQ"). Per the Consent Decree, a McKesson employee is the designated Project Coordinator tasked with monitoring progress of the work and "to coordinate communication between Parties."

34. Article XVII(c) of the Consent Decree provides that MMI "shall reimburse the United States for all Costs associated with this Consent Decree incurred by the United States relating to the Site which are not inconsistent with the NCP." Costs are defined in the Consent Decree as "oversight, administrative, enforcement . . . costs . . . incurred or to be incurred by the United States relating to the Site . . ." (hereinafter, "Oversight Costs")

35. The Site remedy selected by EPA, largely consisting of soil excavation and offsite incineration, partial Site capping with clean soil, installation and operation of a groundwater treatment facility downgradient of the Site, and implementation of engineering (i.e. fencing) and institutional controls (i.e. deed restrictions limiting future Site use to industrial uses) was approved by the EPA in its 1990 Record of Decision for the Site, which was amended with an Explanation of Significant Differences on June 14, 1995. The soil remedy was implemented by McKesson in 1994 and 1995, and Site has been maintained by McKesson ever since. A groundwater treatment system was installed on a downgradient parcel in 1997 and continues to be operated by McKesson under the direction of the USEPA.

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36. Neither MMI nor McKesson have ever received a penalty, fine, or notice of violation of their remedial obligations under the Consent Decree in relation to the Site from the EPA, the ADEQ, or any other government agency.

37. To date MMI and McKesson have spent in excess of $20 million on the investigation and remediation of soil and groundwater remediation at and emanating from the Site since execution of the Settlement Agreement with the members of the Ormond Group. The remedy cost far more than the parties anticipated prior to execution of the Settlement Agreement. Indeed, its cost to date is more than 100 times the $200,000 paid by the Ormond Group members to McKesson and MMI under the Settlement Agreement. Yet neither McKesson nor MMI have requested Defendants to pay any more than that original $200,000. Instead, McKesson has asked only that Defendants comply with their non-monetary obligations in the Settlement Agreement, which Defendants have refused to do, despite the remedial cost windfall they have enjoyed since 1987 as a result of the broad indemnification provided to them by McKesson and MMI in that same Settlement Agreement.

38. Despite this windfall, Defendant Bud Grisham, either on his own accord or in his capacity as the Executor of the Grisham Estate, and his son Curtis C. Grisham, Jr. ("Curt Grisham") acting in concert with his father, have breached repeatedly, and continue to breach, the obligations as set forth in the Settlement Agreement. Specifically, Bud Grisham and Curt Grisham have repeatedly refused to cooperate with McKesson in relation to the environmental investigation and cleanup activities at the Site and instead have continuously conferred with regulatory agencies in relation to the Site for years without McKesson's consent, in clear violation of Sections 9.2 and 9.3 of the Settlement Agreement.

39. Since 2010, McKesson has spent in excess of $300,000.00 in EPA Oversight Costs alone. These costs have been rapidly escalating over the past 5-years, in part due to the Defendants' repeated breaches of the Settlement Agreement.

40. The purpose of Defendants' unauthorized and repeated communications with USEPA and ADEQ is transparent—to leverage their unauthorized contacts and harassment of the agencies and McKesson into having McKesson purchase, at a price greatly inflated over its fair market value, the approximately 18-acre Site. Although not legally required, McKesson has had appraisals of the fair market value of the Site as if clean (which is not true, since the Site is on the National Priority List and its use is subject to highly limiting deed restrictions), performed by qualified appraisers, and made repeated offers to buy the Site from Defendants based on those appraisals. Each of those fair market value offers to buy have been rejected by Defendants. In response, on information and belief, Defendants have commissioned no appraisal of the Site, clean or otherwise, by qualified appraisers, but nonetheless have demanded sale prices at least ten (10) times higher than the appraised fair market value of the Site.

Breaches of the Settlement Agreement

41. In or around 2010, Defendant Bud Grisham and his son, Curt Grisham, acting on his behalf, conferred with regulatory agencies, including the EPA and ADEQ, regarding the Site. On none of these occasions did Curt Grisham or Defendants seek the prior consent of McKesson as required by Section 9.2 of the Settlement Agreement.

42. In or around 2010, Curt Grisham represented to McKesson that he was a beneficiary of the Ormond Group and had a financial interest in the Site.

43. On or about September 13, 2010, McKesson's outside counsel, Mr. Don A. Smith, notified Bud Grisham that his son Curt's ongoing unauthorized interactions with the EPA and ADEQ was in direct breach of Section 9.2(b) of the Settlement Agreement and requested

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that Bud Grisham contact "all members, beneficiaries or other agents of the Ormond Group to cease contact with ADEQ and U.S. EPA." Mr. Smith further informed Defendant Bud Grisham that "McKesson is prepared to enforce [the] contractual obligations and ... obtain an injunction naming the members of the Ormond Group and seeking attorney's fees and costs incurred."

44. Nevertheless, in 2011, on behalf of and in concert with Defendants, Curt Grisham continued to confer with regulatory agencies, including the EPA and ADEQ, regarding the Site on numerous occasions. On none of those occasions did Curt Grisham or Defendants seek the prior consent of McKesson pursuant to the Settlement Agreement. Examples of these unauthorized interactions include but are not limited to:

a. In April 2011, Curt Grisham provided the EPA with comments and concerns regarding McKesson's cleanup and investigation of the Site.

b. On or about April 12, 2011 Curt Grisham requested and participated in a meeting with multiple EPA representatives in North Little Rock, Arkansas, and discussed McKesson's cleanup and investigation activities at the Site.

c. In October 2011, Curt Grisham corresponded on numerous occasions with multiple EPA representatives regarding McKesson's ongoing investigation and cleanup of the Site and, despite the fact that the EPA had approved all of McKesson's prior activities at the Site, Curt Grisham pushed to schedule another in-person meeting in order to confer with the EPA representatives regarding additional activities he wanted McKesson to perform at the Site.

d. On October 20, 2011, Curt Grisham sent the EPA an email specifically confirming that McKesson was excluded by EPA from participating in the scheduled in-person meeting between him and the EPA.

e. On November 9, 2011, Curt Grisham participated in an in-person meeting with over six (6) representatives from the EPA and ADEQ. At this meeting, from which McKesson

was excluded, the discussion focused on the EPA's future and ongoing contact with Curt Grisham regarding McKesson's continued sampling at the Site, Curt Grisham's efforts to have EPA delist the Site from the National Priority List, and his request that the EPA and ADEQ confer concerning McKesson's ongoing sampling at the Site and whether the Site is achieving compliance with relevant regulatory levels.

f. On November 30, 2011, Curt Grisham sent the EPA a letter questioning the "design and implementation of the groundwater remedy at the Arkwood site" and requesting assistance in researching multiple complex technical issues related to the Site.

45. In or about November 2011, and during the same period that Curt Grisham was coordinating his in-person meeting with EPA and ADEQ, the EPA notified Bud Grisham that it considered Curt Grisham his "representative" and therefore the EPA would be including Curt Grisham in future negotiations and administrative proceedings regarding the Site. Upon information and belief, there is no record of Bud Grisham objecting to the EPA's notification that it deemed Curt Grisham to be his representative in relation to the Site or his advising Curt to not breach the Settlement Agreement by conducting such ongoing, unauthorized communications and meetings with the regulatory agencies without McKesson's consent.

46. On April 11, 2011, McKesson's outside counsel, Don Smith, sent a letter to Curt Grisham advising him that as a member of the Grisham family and a representative of Bud Grisham, he is "bound by the terms of the Settlement Agreement," and that he had violated those terms. The letter further informed Curt Grisham that McKesson is billed for the EPA's Oversight Costs caused by his unauthorized communication and that McKesson will seek reimbursement of same.

47. Despite the warnings set forth in Don Smith's April 2011 letter, Curt Grisham planned and coordinated a November 9, 2011, in-person meeting with the EPA and ADEQ, and expressly requested McKesson be excluded from same.

48. As a result, in or about November 2011, and despite McKesson's long history of environmental compliance at the Site at extraordinary cost, Curt Grisham emailed several EPA representatives and argued that "I [Curt Grisham] believe McKesson's actions and stated position as taken by its employees and representatives will be a major and unwarranted obstacle to achieving revitalization and redevelopment at Arkwood."

49. In 2012, on behalf of and in concert with Defendants, Curt Grisham continued to confer with regulatory agencies, including the EPA and ADEQ, regarding the Site on numerous occasions. On none of those occasions did Curt Grisham or Defendants seek the prior consent of McKesson as required pursuant to the Settlement Agreement. Examples of these unauthorized interactions with regulatory agencies include but are not limited to:

a. Multiple communications between the EPA and Curt Grisham almost entirely to the exclusion of McKesson, regarding, among other matters: 1) the proper scope of institutional and engineering controls at the Site (including deed restrictions); 2) development of a Ready for Reuse Determination for the Site; and 3) the Site's potential partial delisting from the National Priorities List.

b. On or about May 16, 2012, Curt Grisham sent a letter to the Arkansas Pollution Control and Ecology Commission seeking to influence the investigation and cleanup of the Site without the knowledge or consent of McKesson.

50. On or about March 17, 2012, Curt Grisham confirmed via a letter to McKesson that he was "authorized" by Defendant Bud Grisham to communicate with McKesson regarding the Site.

51. On or around April 17, 2012, McKesson's outside counsel, Don Smith notified Defendant Bud Grisham that his son Curt had been contacting and conferring with regulatory agencies with increased frequency and that on none of those occasions had McKesson been notified nor its consent sought; that this behavior was in breach of the Settlement Agreement; and that, indeed, Curt Grisham actively sought to exclude McKesson from these discussions, including the November 9, 2011, in-person meeting with the EPA and ADEQ.

52. Despite this warning, on or about May 24, 2012, Defendant Bud Grisham provided the EPA with written consent for his son, Curt Grisham, to communicate on the Defendants' behalf with the U.S. EPA. Specifically, Mr. Grisham signed a consent agreement stating that Curt Grisham "may communicate with my consent (as Landowner of the Site) with any EPA staff regarding any matter involving the Arkwood, Inc. Superfund Site."

53. Despite McKesson's continuing efforts to obtain Defendants' compliance with their Settlement Agreement obligations, in 2013, on behalf of and in concert with Defendants, Curt Grisham continued to confer with regulatory agencies, including the EPA and ADEQ, regarding the Site on numerous occasions. Again, on none of the occasions did Curt Grisham or Defendants seek the prior consent of McKesson as required by the Settlement Agreement. Examples of these unauthorized interactions with regulatory agencies include, but are not limited to:

a. On March 25, 2013, Curt Grisham requested a detailed update from the EPA regarding the investigation and cleanup of the site, to which the EPA responded on or about June 11, 2013.

b. On July 18, 2013, Curt Grisham requested an in-person meeting with the EPA in Dallas, TX with the "entire Arkwood team." Following this email, Curt Grisham conferred with EPA representatives on numerous occasions establishing the date and agenda for the meeting.

c. On September 5, 2013, Curt Grisham participated in an in-person meeting with approximately eight (8) EPA representatives at the EPA Headquarters in Dallas, TX. This meeting was held without the presence, knowledge, or consent of McKesson. At this meeting Curt Grisham questioned, among other things, the EPA's remediation standards and future remediation goals of the Site.

d. In or around September 2013, Curt Grisham, on behalf of and in concert with Defendants, conferred with congressional and state officials regarding the Site, including contacting the office of Congressman Steve Womack, and expressed concern about the differences between EPA and ADEQ regarding the remedial goals at the Site. Mr. Womack's office described Curt Grisham at that time as "having an open and ongoing dialogue with the EPA as a family intermediary on behalf of his father CC 'Bud' Grisham, Sr., executor of the Mary F. Burke Grisham Estate that owns the land where the Arkwood Site is located."

54. Despite McKesson's continual efforts to stop Defendants from contacting the EPA and/or ADEQ without McKesson's written consent, in 2014, Defendants and Curt Grisham, on behalf of and in concert with Defendants, continued to confer with regulatory agencies, including the EPA and ADEQ, regarding the Site on numerous occasions. On none of those occasions did Curt Grisham or Defendants seek the prior consent of McKesson pursuant to the Settlement Agreement. Examples of these unauthorized interactions with regulatory agencies include but are not limited to:

a. In September 2014, Curt Grisham sent emails and participated in telephone calls with EPA representatives, wherein he demanded a status update and copies of voluminous documentation concerning the Site and, in particular, McKesson's correspondence with the EPA and documents evidencing the work being performed.

b. In October 2014, Curt Grisham telephoned an EPA representative and demanded an update on McKesson's work at the Site and requested the ability to observe the work being done on Site by McKesson.

c. Multiple and persistent communications by the Defendants to the EPA throughout 2014 regarding delisting the Site from the National Priority List and other investigation and Site-specific remediation issues.

55. On or about March 25, 2014, the EPA notified McKesson by way of its outside counsel, John Edgcomb, that "the EPA does not consider the son of the landowner, Mr. Curt Grisham, to be just a member of the public. Rather, when Congressman Steve Womack's office identified Mr. Curt Grisham as representing his father concerning the Arkwood site in the Congressional inquiry to EPA, the Region decided that the status of Mr. Curt Grisham at EPA must be consistent with his deemed status outside the Region 6 EPA. The EPA therefore found that Mr. Curt Grisham represents his father, Mr. C.C. 'Bud' Grisham, and acts on his father's behalf in matters at the EPA concerning the Arkwood site."

56. On or about June 23, 2014, McKesson sent Defendant Bud Grisham another letter notifying him again that any communications by Defendants or any other person in active concert with Defendants, to the EPA or any other regulatory agency in connection with the Site is in breach of the Settlement Agreement.

57. In or around July 2014, Defendant Bud Grisham notified a McKesson representative via the telephone that he had communicated with the EPA on numerous occasions regarding delisting the Site from the NPL and that he intended to communicate with the EPA in the future regarding same.

58. On or about July 11, 2014, McKesson sent Defendant Bud Grisham another letter requesting that he cease all communication with the EPA and any other regulatory agency in breach of the Settlement Agreement.

59. Despite the decades of McKesson's compliance with EPA directives and oversight at the Site at a cost of over $20 million, on or about October 29, 2014, Curt Grisham sent an email to a McKesson representative, with courtesy copies to multiple EPA representatives, stating multiple disparaging remarks and arguing that McKesson's "intentions and actions are bad for Arkwood, bad for the local community, bad for public policy and — I would argue — bad for McKesson Corporation shareholders."

60. The evidence, including written statements to and from the EPA and McKesson, demonstrate that from in or around 2010 to the present, Curt Grisham has been acting in concert and on behalf of the Defendants concerning his unauthorized contacts with regulatory agency representatives with respect to all Site-related matters.

61. From in or around 2010 to the present, Defendant Bud Grisham's actions, individually and as the Executor of the Grisham Estate, and the actions of his son, Curt Grisham, have interfered with the activities of the EPA and McKesson in connection with the investigation and remediation of the Site and denied McKesson the ability to direct the investigation and cleanup activities without interference, which it bargained for and obtained in the Settlement Agreement. At no time have Defendants or their agent, Curt Grisham, sought the prior written approval of McKesson pursuant to the Settlement Agreement before engaging in their repeated improper communications with EPA and ADEQ regarding the Site.

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Current Status of Site

62. MMI and McKesson have consistently complied with all investigation and remediation requirements at the Site under the Consent Decree under EPA and ADEQ oversight and with those agencies' approval.

63. Following the completion of the active portion of the required remedial action, which included excavation and offsite incineration of soils, and capping of much of the Site, McKesson, the EPA, and the ADEQ jointly held a ribbon cutting ceremony at the site on July 18, 1996. The event commemorated the successful completion of the soil remedy two years ahead of the Consent Decree schedule.

64. In February 2001, EPA performed its first "Five-year Review" of the Site, and in March 2001, placed it in the Site repository. A second Five-year Review was completed in March 2006, and a third Five-year Review was completed in July 2011. The July 2011 Five-year Review concluded that the remedy for the Arkwood site is protective of human health and the environment and will remain so provided that the previously recorded deed restriction is corrected. This correction was completed and filed with Boone County on May 29, 2014. The next Five-Year review is scheduled for July 2016.

65. In February 2012, EPA released Volume 1 of a two-volume Dioxin Reassessment manual. Volume 1 addresses the non-cancer component of the dioxin reassessment. Volume 2, which will address the cancer component, is still under development and has not yet been released. Volume 1 provides hazard identification and dose-response information on dioxin. It also includes a description of the data and analyses used in the reassessment of dioxin at existing sites. On information and belief, as a consequence of this new Dioxin Reassessment manual, all sites with residual dioxin contamination, including the Arkwood Site, are being reevaluated by EPA to determine their compliance with the stricter dioxin standards now being applied by EPA.

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66. The EPA notified McKesson in or around 2012 that it would be reassessing the dioxin levels at the Site earlier than the Five-Year review scheduled for 2016. The EPA is currently undertaking an evaluation of potential effects on the Site remediation from EPA's dioxin reassessment.

67. During 2014 and early 2015, McKesson contracted with a third-party consultant to perform additional dioxin sampling at the Site pursuant to the EPA's directive(s) and oversight. In or about March 2015, McKesson submitted the dioxin reassessment results to the EPA and provided a copy of same to Defendants.

68. Defendants and Curt Grisham's persistent breaches of the Settlement Agreement have been extremely disruptive to the investigation and remediation process at the Site. Given the dioxin reassessment activities that are currently underway at the Site, McKesson expects that breaches of the Settlement Agreement by the Defendants and their agent, Curt Grisham will continue and not only cause McKesson to suffer the incurrence of additional EPA Oversight Costs, but will disrupt the reassessment process and affect future investigation and remedial activities related to the Site, all in breach of Defendants' obligations under the Settlement Agreement.

Damages

69. Per the 1992 Consent Decree, McKesson is responsible for reimbursing the EPA for its Oversight Costs.

70. The EPA Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2008 to February 28, 2009 were $2,619.69.

71. The EPA Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2009 to February 28, 2010 were $3,368.12.

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72. The EPA Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2010 to February 28, 2011 were $11,168.22.

73. The EPA Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2011 to February 29, 2012 were $55,273.73.

74. The increase in EPA Oversight Costs from 2010 to 2011 was caused, in part, by Defendants' unauthorized correspondence and communications with the EPA. To the best of McKesson's knowledge, information, and belief, this increase was in excess of $15,000.

75. The EPA Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2012 to February 28, 2013 were $101,484.41.

76. The increase in Oversight Costs from 2011 to 2012 was caused, in part, by Defendants' unauthorized correspondence and communications with the EPA. To the best of McKesson's knowledge, information, and belief, this increase was in excess of $15,000.

77. The Oversight Costs invoiced to and paid by McKesson for the period of March 1, 2013 to February 28, 2014 were $175,837.07.

78. The increase in Oversight Costs from 2012 to 2013 was caused, in part, by Defendants' unauthorized correspondence and communications with the EPA. To the best of McKesson's knowledge, information, and belief, this increase was in excess of $50,000.

79. The oversight costs for the period of March 1, 2014 to February 28, 2015 will not be received by McKesson until 2015 and therefore McKesson reserves the right to amend this pleading at that time to add those costs to its complaint.

80. As a direct and foreseeable consequence of Defendants' unauthorized correspondence and communications with the EPA and ADEQ between 2010 and the present, McKesson has incurred and continues to incur attorney's fees and costs in an effort to enforce its

rights under the Settlement Agreement, as well as respond to the Defendants' unauthorized actions in breach of the Settlement Agreement.

Injunctive Relief Required

81. The persistent actions of the Defendants and Curt Grisham, in concert with the Defendants, in breach of the Settlement Agreement, and in complete disregard to McKesson's warnings, unequivocally pose an imminent likelihood of continuing irreparable harm if a permanent injunction is not issued.

82. An award of money damages alone will not restore the threatened loss to McKesson from the continued unauthorized communications of the Defendants and their agent, Curt Grisham, with the regulatory agencies regarding the Site.

83. Pursuant to Section 9.3 of the Settlement Agreement, Defendants "acknowledged that breach of their obligations under Sections 9.1 and 9.2 may cause irreparable loss to MMI [collectively, McKesson and MMI] and that damages may be impossible to ascertain, and hereby "consent to the granting of equitable relief by way of temporary, preliminary and permanent injunctive relief by a court of competent jurisdiction, to prohibit such breach and compel performance of such obligation."

84. The history of cooperation between McKesson on one hand, and EPA and ADEQ on the other, in relation to the Site, including the consistent approval by the EPA of McKesson's investigation and remediation of the Site, unequivocally demonstrates that the threatened harm to McKesson outweighs any possible harm to Defendants; nor will the granting of an injunction enforcing the Settlement Agreement contravene the public interest because the Site will continue to be investigated and remediated pursuant to federal and state oversight and directives.

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COUNT ONE

(Declaratory Relief – 28 U. S. C. §§ 2201 and 2202)

85. Plaintiff incorporates by reference paragraphs 1 through 84, inclusive, of this Complaint as if fully set forth herein.

86. This matter involves an actual and substantial controversy between McKesson and Defendants concerning the interpretation and application of clauses in a contract.

87. This matter is within this Court's jurisdiction and it therefore may declare the rights and other legal relations of any interested party seeking a declaration.

88. The Defendants' continued and pervasive breaches of the Settlement Agreement will continue to cause damage to plaintiff McKesson in the future. As such, there is a sufficient immediacy and reality to warrant the issuance of a declaratory judgment concerning the future effect and enforceability of Section 9.2 of the Settlement Agreement.

COUNT TWO

(Breach of Contract – Settlement Agreement)

89. Plaintiff incorporates by reference paragraphs 1 through 88, inclusive, of the Complaint as if fully set forth herein.

90. The Settlement Agreement is a valid contract between competent parties with a mutuality of obligations and adequate consideration.

91. Section 9.2, of the Settlement Agreement provides that Defendants shall "cooperate with MMI [collectively, McKesson and MMI], their counsel, experts, accountants, insurers and other representatives in connection with the Site by . . . not conferring with regulatory agencies, or making statements to the press, without MMI's prior written consent."

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92. Curt Grisham, a non-signatory to the Settlement Agreement, was acting in concert with Defendants during his improper acts set forth above that are in violation of the Settlement Agreement.

93. The actions of Defendants and of Curt Grisham in concert with Defendants, all as set forth above, breached Defendants' obligations to McKesson pursuant to Section 9.2 of the Settlement Agreement.

94. Defendants' multiple breaches of the Settlement Agreement have caused Plaintiff damage in the form of increased EPA Oversight costs, increased consulting and legal fees, increased internal administrative costs, and as-yet unquantified costs associated with the EPA's dioxin reassessment.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, McKesson Corporation, requests that the Court enter judgment against Defendants, Bud Grisham and the Grisham Estate, as follows:

95. For declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202.

96. For the actual damages suffered by Plaintiff, McKesson Corporation, in an amount to be determined at trial, but no less than Eighty Thousand Dollars ($80,000.00).

97. For an order directing Defendants Bud Grisham and the Grisham Estate; and Defendants' officers, agents, servants, employees, and attorneys; and those persons in active concert or participation with Defendants, including but not limited to Curt Grisham, who receive actual notice of the order by personal service or otherwise, to permanently cease and desist from conferring with regulatory agencies about the Site without McKesson's prior written consent.

98. For such further and other relief as the Court deems just.

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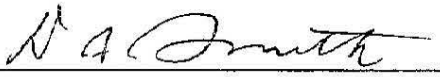
Respectfully Submitted,

SMITH, COHEN & HORAN PLC



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