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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 1884CV01808

COMMONWEALTH OF MASSAHCUSETTS

vs.

PURDUE PHARMA L.P. & others[1]

MEMORANDUM OF DECISION AND ORDER ON THE DEFENDANT DIRECTORS' AND EXECUTIVES' RULE 12(b)(2) MOTIONS TO DISMISS p# 76 + 84

The Commonwealth brought this action against Purdue Pharma L.P. and Purdue Pharma Inc. (collectively, Purdue) seeking redress for harms that it claims were caused by Purdue's deceptive marketing and sale of its opioid products in Massachusetts. The First Amended Complaint (the Complaint) also names as defendants seventeen other individuals who worked at Purdue in high level positions or who served on its Board of Directors. All but one of those individual defendants (that exception being defendant Russell Gasdia)[2] now move to dismiss the claims against them pursuant to Mass. R. Civ. P. 12(b) (2). With the exception of Gasdia, none of the individual defendants resides in Massachusetts or has had any significant contact with the state apart from his or her role at Purdue. As to these defendants' activities at Purdue, they contend that it cannot support the assertion of personal jurisdiction over them in Massachusetts because they did not personally participate in any wrongdoing described in the Complaint that

[1] Purdue Pharma, Inc., Richard Sackler, Theresa Sackler, Kathe Sackler, Jonathan Sackler, Mortimer D.A. Sackler, Beverly Sackler, David Sackler, Ilene Sackler Lefcourt, Peter Boer, Paulo Costa, Cecil Pickett, Ralph Snyderman, Judith Lewent, Craig Landau, John Stewart, Mark Timney, and Russell J. Gasdia.

[2] Gasdia did move to dismiss pursuant to Rule 12(b)(6). In a separate Memorandum of Decision issued today, this Court denied that motion.

was directed at this state. After thorough review of the parties' submissions, which included affidavits and exhibits, this Court concludes that the Motions must **DENIED**.

BACKGROUND

For purposes of these Motions, this Court assumes that the allegations in the Complaint are true and views those allegations in the light most favorable to the Commonwealth. The Complaint is unusual both in its length and in its detail; it also cites to and quotes from hundreds of Purdue documents, many of which have been presented to this Court for review. The Complaint outlines what the Commonwealth claims to be years of unfair and deceptive conduct directed at residents in Massachusetts and in other states. The allegations of the Complaint have already been summarized in a Memorandum of Decision denying Purdue's Motion to Dismiss pursuant to Rule 12(b)(6), dated September 16, 2019. For purposes of the instant motions, this Court focuses only on those allegations that are relevant to the jurisdictional analysis.

Purdue is a pharmaceutical company that has been owned by certain members of the Sackler family since the 1950s. In 1990, Purdue Pharma Inc. was incorporated.[3] Sackler family members named as defendants in this case are: Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, Theresa, and David. With the exception of David (who joined in July 2012), all of them have been members of Purdue's Board of Directors (the Board) since Purdue Inc.'s inception. From 1999 to 2003, Richard was also Purdue's CEO, while Jonathan, Kathe, and Mortimer served from time to time as vice presidents. At all relevant times, the Sackler family held a majority of Board seats and have, as a result of their positions, received all quarterly reports and other information directed to the Board. Those reports contained detailed information about Purdue's business, its sales practices, and its marketing techniques.

[3] Purdue has several subsidiaries and/or related entities. For the purposes of this motion, the Court collectively refers to them as "Purdue."

The majority of Purdue's business derives from its manufacture and sale of prescription opioid pain medications, including OxyContin. Opioids, including Purdue's products, carry several risks to the user, including physical dependence, addiction, and related withdrawal symptoms. Opioids can also cause respiratory depression, which is life threatening. In the years following the release of OxyContin in 1996, opioid related deaths rose across the nation and in Massachusetts in particular: that number spiked in 2016 to 2,155 opioid-related deaths in Massachusetts alone. The Commonwealth alleges that Purdue and the individual defendants are responsible for this opioid epidemic.

In 2007, after multiple state and federal investigations, Purdue and three of its executives pleaded guilty to illegally misbranding OxyContin. That guilty plea included an agreed statement of facts where it was admitted that, for the previous six years, Purdue supervisors and employees intentionally deceived doctors about OxyContin's addictive properties. Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, and Theresa Sackler all voted as Board members to have Purdue plead guilty and thus were aware of what the company and its executives admitted to. Although the conduct at issue here took place after this guilty plea, it is reasonable to infer that all of the individual defendants knew of these criminal convictions and of the accusations leading to them.

The same year as the guilty plea, Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, and Theresa Sackler voted to have Purdue enter into a consent judgment with several states, including Massachusetts (the 2007 Judgment). The 2007 Judgment prohibited Purdue from making "any written or oral claim that is false, misleading, or deceptive" in the promotion or marketing of OxyContin. It also required that Purdue establish and follow an abuse and diversion detection program to identify high-prescribing doctors who showed signs of

inappropriate prescribing, stop promoting drugs to those doctors, and report them to authorities. The 2007 Judgment further required Purdue "to review news media stories addressing the abuse or diversion of OxyContin and undertake appropriate measures as reasonable under the circumstances to address abuse and diversion." Covered persons under the 2007 Judgment include all officers, employees, and certain contract sales representatives. It is reasonable to infer that all of the individual defendants knew of the 2007 Judgment and what it required of Purdue.

Around the same time as this 2007 Judgment, Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, and Theresa Sackler voted to have Purdue enter into a corporate integrity agreement (CIA) with the Office of the Inspector General of the United States Department of Health and Human Services. In the CIA, Purdue agreed to establish a corporate Compliance Program to prevent the deceptive marketing of its opioids. The Compliance Program was to include a dedicated compliance officer and committee, a written code of conduct, and training of all covered persons. Richard, Beverly, Ilene, Jonathan, Kathe, Mortimer, and Theresa Sackler each certified in writing to the government that he or she had read and understood the rules contained in the CIA and would obey them. It can be reasonably inferred that the other individual defendants were or became aware of the CIA and the importance of complying with it, as they received reports and information suggesting that there were compliance problems.

Following the guilty plea, the CIA, and the 2007 Judgment, several outside, non-Sackler directors joined the Board. In 2008, defendant Peter Boer became a director. In 2009, defendant Judith Lewent joined the Board until her resignation in 2013. In 2010, defendant Cecil Pickett joined the Board. In 2012, defendants Paulo Costa and Ralph Snyderman became directors. Snyderman ended his tenure in 2017 and Costa resigned in 2018.

Between 2007 and the filing of the Complaint in 2018, Purdue has had three different CEOs: John Stewart, who was CEO from 2007 to 2013; Mark Timney, who served in that role from January 2014 to June 2017; and Craig Landau, who became CEO thereafter. Prior to becoming CEOs, both Stewart and Landau were long-time Purdue employees – Stewart since at least 1997, and Landau since 1999. Between 2007 and 2013, Landau was Purdue's Chief Medical Officer.[4] Stewart, Timney, and Landau are all named as defendants.

The Complaint alleges that, under the leadership and at the behest of the individual defendants, Purdue, driven by profit, did not substantively alter its deceptive and illegal marketing practices despite what was required of it by the 2007 Judgment, the CIA, and related agreements. Rather, it continued to downplay its opioids' propensities for addiction and abuse in its messaging to doctors. Purdue expanded its sales force in Massachusetts and increased the number of visits to doctors here with the intent of persuading them to prescribe Purdue opioids at greater frequency and at higher, more expensive doses. Sales representatives were encouraged to target "opioid naïve" patients or vulnerable populations like the elderly. They also went after the most prolific prescribers of opioids, including those suspected of overprescribing. This activity continued into 2018, and had enormous consequences for Massachusetts residents.

The Commonwealth's Memorandum in Opposition to these motions outlines in full the allegations contained in the Complaint as they pertain to the individual defendants. As to the level of specificity provided for each defendant, the Complaint varies quite a bit. For example, the Complaint goes on at considerable length regarding the role that Richard Sackler played in the company: he was constantly seeking information about opioid sales and pressuring staff to develop ways to increase those sales even as he brushed off concerns expressed by staff that

[4] The Complaint does not specify Landau's role between 2013 and 2017, when he became CEO.

patients were becoming addicted or dying. Special sections of the Complaint are also devoted to discussing the role of defendants Timney, Landau, and Stewart. The Complaint is less specific about the individual director defendants, describing what they did as a Board collectively rather than on a defendant-by-defendant basis. This is not surprising: according to the Complaint, all of the outside directors vote with the Sackler family at every Board meeting that the Complaint describes.

Rather than attempt to summarize all of the conduct that the Commonwealth alleges is relevant for jurisdictional purposes, this Court chooses to largely focus primarily on one particular category: the promotion and use of opioid savings cards. Quite apart from the allegations of the Complaint, the documents submitted to this Court show that the director defendants not only knew and approved of these cards but also understood that they were being promoted to Massachusetts doctors for use by Massachusetts patients.[5]

The Complaint states that Stewart presented the details of this savings card program to the Board in 2008, explaining that he hoped it would increase the portion of patients who used OxyContin by fifteen percent. Around this same time, it was becoming apparent that abuse of Purdue opioids was increasing: for example, the number of tips to Purdue's compliance hot line was going up. As early as 2009, the Board was informed that Purdue's compliance problems were the result OxyContin promotional materials, including the opioid savings cards. Complaint, ¶524. Yet the Board continued to approve and promote their use until at least 2013. The savings cards were an important part of the conduct that the Complaint alleges to be unfair and deceptive, since the program provided patients with financial incentives to use more opioids

[5] This Court focuses on the savings card program because all directors are alleged to have had some knowledge about that program and its use in Massachusetts. It is not, however, the only unfair and deceptive practice in which these defendants were involved, according to the Complaint.

over a longer period. According to the Complaint, the individual defendants (including the director defendants) knew throughout this time period that the longer a patient is on opioids, the greater the risk that the patient will become addicted. In effect, the savings cards acted as coupons to deceptively legitimize long-term opioid use, which posed a high risk to patients of becoming addicted to these drugs. The individual defendants also knew that the program was in use in Massachusetts and intended that the savings cards be used by Massachusetts patients.

The documents to which the Complaint refers do not directly implicate Timney in the savings card program since he joined Purdue in 2014, when the paper trail concerning savings cards disappears. However, he is alleged to have played a part in other aspects of Purdue's marketing campaign, which the Complaint likewise alleges to have been unfair and deceptive. For example, when some health care systems stopped allowing sales representatives to visit doctors' offices, Timney developed a "work around." Complaint, ¶¶755, 763. Under his direction, Purdue staff created call centers where sales representatives telephoned doctors or hospitals covered by these "no see" policies to encourage them to prescribe more opioids. Massachusetts was among four "high value geographies" for this initiative, since it included the Partners and Steward Hospital systems. Timney also continued strategies that had begun earlier under defendant Stewart to target the most prolific opioid prescribers, some of whom were in Massachusetts. Complaint, ¶759.

DISCUSSION

The Complaint asserts two causes of action: violations of G. L. c. 93A and public nuisance. The individual defendants argue that this Court does not have jurisdiction over them for these claims because they did not personally participate in conduct that was directed at

Massachusetts. In making that argument, they have submitted affidavits and exhibits disputing those allegations relating to their own personal liability and calling into question the factual basis for the Commonwealth's argument that jurisdiction is proper. Given these factual disputes, it is important to keep in mind the standard of proof this Court applies at this early stage in the proceedings. Under Appeals Court precedent, the court is to apply a "prima facie" standard of proof where the jurisdictional facts are in dispute. Cepeda v. Kass, 62 Mass. App. Ct. 732, 737-738 (2004) (Cepeda); see also Cannonball Fund Ltd. v. Dutchess Capital Mgmt., LLC, 84 Mass. App. Ct. 75, 97 (2013). Under the prima facie standard as outlined in Cepeda, this Court is to "take specific facts affirmatively alleged by the plaintiff as true (whether or not disputed) and construe them in the light most congenial to the plaintiff's jurisdictional claim." Cepeda, 62 Mass.App.Ct. at 738, quoting Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass'n, 142 F.3d 26, 34 (1st Cir. 1998). It is a burden of production, not persuasion, with the court acting more as "data collector, not as a fact finder." Cepeda, 62 Mass. App. Ct. at 738-739. That the individual defendants dispute the liability that gives rise to the assertion of jurisdiction is not enough to overcome a prima facie showing. Rather, it means only that the final determination of personal jurisdiction must be deferred until trial, where the Commonwealth will have to prove the relevant facts by a preponderance of the evidence. Id. at 738.

Here, the parties agree that, for purposes of these Motions, the Court takes as true the allegations in the Complaint. This Court concludes that those allegations are specific and detailed enough (and indeed supported by Purdue's own internal documents) to satisfy the prima facie burden of proof outlined in Cepeda.

There is no question that this Court has personal jurisdiction over Purdue, an entity that does business throughout the United States. As the Commonwealth concedes, however, this

Court may not assert jurisdiction over the individual defendants simply because they were officers and/or directors of the company. Kleinerman v. Morse, 26 Mass. App. Ct. 819, 824 (1989), citing Johnson Creative Arts, Inc. v. Wool Masters, Inc., 573 F. Supp. 1106, 1111 (D. Mass. 1983). Rather, personal jurisdiction over an individual corporate defendant is "based on the individual's actions, regardless of the capacity in which those actions were taken[,]" Rissman Hendricks & Oliverio, LLP v. MIV Therapeutics Inc., 901 F. Supp. 2d 255, 263 (D. Mass. 2012), and requires evidence of "direct personal involvement" in conduct that "is causally related to the plaintiff's injury" in the forum state. Hebb v. Greens Worldwide, Inc., 2007 WL 2935811 at *4 (Mass. Super. 2007) (Fabricant, J.), quoting Charles River Data Systems, Inc. v. Oracle Complex Systems Corp., 788 F. Supp. 54, 57 (1991). Within this framework, the individual defendants challenge personal jurisdiction on two grounds. First, they contend that, as Board members and CEOs, they did not personally participate in and/or direct the sales and marketing activity that is alleged in the Complaint as unfair and deceptive. Second, they argue that whatever conduct they did engage in was not sufficiently targeted to Massachusetts. Determining personal jurisdiction requires an analysis under the long-arm statute, G. L. c. 223A, § 3, and a constitutional analysis to ensure that any assertion of jurisdiction is consistent with the Due Process clause. This Court turns first to the statute.

A. Statutory Analysis

The Massachusetts long-arm statute, G. L. c. 223A, § 3, "sets out a list of specific instances in which a Massachusetts court may acquire personal jurisdiction over a nonresident defendant." Exxon Mobil Corp., 479 Mass. at 317, quoting Tatro v. Manor Care, Inc., 416 Mass. 763, 767 (1994). Because the Commonwealth relies primarily on subsection (c) of the statute,

the Court begins its analysis there. That subsection permits jurisdiction over a nonresident defendant who "cause[s] tortious injury by an act or omission in this commonwealth." None of the individual defendants now contesting jurisdiction came to Massachusetts on Purdue business, with the exception of defendants Stewart and Landau. They therefore argue that they have committed no act in this state which caused tortious injury within the meaning of § 3(c). In response, the Commonwealth contends that each of them has committed an act within this state for jurisdictional purposes because the allegations in the Complaint show that they sent or caused to be sent into Massachusetts fraudulent misrepresentations which caused injury to Massachusetts residents. The Commonwealth's position that such conduct can confer jurisdiction over a nonresident defendant is supported by the case law.

In Murphy v. Erwin–Wasey, Inc., 460 F.2d 661 (1st Cir. 1972), for example, the First Circuit was called upon to interpret and apply § 3(c) where the nonresident defendant was accused of sending fraudulent statements into Massachusetts by letter and in telephone conversations with the Massachusetts plaintiff. The court concluded that the defendants had committed an act within this state under that section, holding that "where a defendant knowingly sends into a state a false statement, intending that it should be relied upon to the injury of a resident of that state, he has for jurisdictional purposes acted within that state." Id. at 664. Relying on Murphy, the court reached the same result in Ealing Corp. v. Harrods Ltd., 790 F.2d 978, 982 (1st Cir. 1986); see also The Scuderi Grp., LLC v. LGD Tech., LLC, 575 F. Supp. 2d 312, 320-321 (D. Mass. 2008) (where the nonresident defendants were accused of misappropriation of trade secrets, fraud, and violations c. 93A). In Burtner v. Burnham, 13 Mass. App. Ct. 158, 159 (1982), the nonresident defendants made false statements, by mail and by telephone, regarding the acreage of certain land in New Hampshire that the defendants

conveyed to the Massachusetts plaintiffs. Following Murphy, the Appeals Court concluded that the defendants had committed a tortious act within the state, since the defendants intended that those statements be relied upon by the in-state plaintiff. Id. at 163-164.[6]

Here, the Commonwealth alleges that the individual defendants sent, or caused to be sent, into this state deceptive marketing materials, knowing and intending that doctors would rely on them and place more patients on dangerous opioids at higher doses for longer periods of time. Because the allegations in the Complaint must be taken as true, the Court assumes for the purposes of this motion that these sales and marketing efforts constituted intentional misrepresentations and deceptive acts in violation of c. 93A. Thus, the question for purposes of the instant motion is the extent to which any individual defendant was involved in or participated in these practices as they related to Massachusetts. In answering that question, this Court considers the context in which each of the individual defendants was operating.

Here, that context was not the typical "business as usual." During the relevant period following 2007, it should have been one of vigilance: each of the individual defendants was aware of the 2007 Judgment and related agreements that required Purdue to take certain affirmative steps to address and prevent opioid abuse. Indeed, compliance was a major requirement of those agreements. Accordingly, it is reasonable to infer that the individual defendants, in fulfilling their obligations, had a heightened, affirmative duty to be on notice of deceptive corporate conduct, and to report instances of abuse and diversion where applicable. For this reason, the Court rejects the individual director defendants' assertion that they could not

[6] The individual defendants' reliance on Roberts v. Legendary Marine Sales, 447 Mass. 860, 864 (2006), is misplaced. That case concerned monetary damages that were grounded in breach of contract and thus did not constitute "tortious injury" as contemplated under § 3(c).

have participated in any alleged misconduct because they were merely, in their capacity as Board members, casting votes that approved policies and practices carried out by others.

As already noted, the Complaint does not always speak with specificity in terms of which person or persons directed or approved of the conduct in question. For example, with regard to the director defendants' liability, the Complaint more often than not talks only about actions by the Board as a whole. Moreover, the Complaint speaks in generally conclusory terms about certain individual defendants' knowledge regarding the nature and extent of the practices at issue. Given the standard that this Court is applying at this stage in the case, this may be sufficient. This Court has nevertheless examined the documents – including Board minutes – relating to these allegations and is satisfied that the Commonwealth has met its burden of producing evidence showing that each of the named defendants participated in making or approving false representations knowingly sent into Massachusetts with the intent that Massachusetts residents rely on those misrepresentations, resulting in injury to them.

With regard to the director defendants, this Court turns to Purdue's promotion of the savings cards, which it highlighted above by way of example. The allegations of the Complaint, if true, show that the Board was regularly informed about these savings cards between 2008 and 2013 and that the director defendants knew that they were being used in Massachusetts among other states. For example, a July 23, 2013 quarterly report to the Board explained how the cards were being used to provide incentives to patients using OxyContin and how they were being promoted to health care providers in Massachusetts in particular. A later October 2013 "Analgesic Market Update" presentation to the Board notes the return on investment of the savings cards, and the percent of increased total prescriptions that it generated in 2013. Assuming (as I must) that Purdue's promotion of savings cards constitutes a c. 93A violation,

this Court concludes that the Board (and each individual director defendant) not only knew and approved of this tactic, but also understood that it was targeted at Massachusetts, with the result that any injury would be sustained here. I reach this conclusion taking into account the Board's heightened duty to remain vigilant against any practice that could be seen to conflict with the 2007 Judgment and related agreements. That the individual defendants did not themselves carry out the targeted conduct but simply approved and/or directed it, is irrelevant for jurisdictional purposes. See generally Townsends, Inc. v. Beaupre, 47 Mass. App. Ct. 747, 751 (1999) (a corporate officer is personally liable for a tort committed by the corporation that employs him, if he personally participated in the tort by, for example, directing, controlling, approving, or ratifying the act that injured the aggrieved party).

As to the individual defendant officers, this Court concludes that Stewart, as CEO, and Landau, as Chief Medical Officer, also were aware of and involved in the savings card promotion. Moreover, they engaged in other alleged conduct that involved sending false representations about Purdue opioids into Massachusetts, and that they intended local patients and doctors to rely on them. One such misrepresentation from Stewart involved the assertion that reformulated OxyContin was safer; sales representatives used this script in Massachusetts at least 100 times. Stewart directed that representatives should promote Purdue opioids for "moderate persistent pain" even though the FDA had removed moderate pain from the drug's indications. According to the Complaint, Stewart "led Purdue's strategy" to drive patients to take opioids at higher doses for longer periods, working with Gasdia to increase the sales force in Massachusetts and to have sales representatives visit Massachusetts prescribers more frequently. As to Landau, he helped develop and then oversaw Purdue sales strategy, repeatedly targeting Massachusetts in particular. See Complaint, ¶¶ 791, 793. As CEO, he ensured that sales staff

met their targets for prescriber visits and opioid sales in Maschseutss and elsewhere. He also made misleading statements about Purdue opioids by making calls into this state in defense of Purdue and appeared at opioid conferences in Massachusetts in 2012 and 2013. Complaint, ¶811, 814.

The Complaint and record before the Court do not provide information about Timney's knowledge of the savings card promotion or whether it continued into 2014 when his tenure at Purdue began. Like Landau and Stewart, however, he is implicated in other activities whereby false statements about Purdue opioids were allegedly directed into this state. In particular, he organized efforts to increase OxyContin sales by aggressively targeting existing high-volume prescribers, including those in Massachusetts. One way he did this was through the call centers initiative, which reached "no see" physicians in hospital networks that had policies restricting sales representative visits. As noted, Massachusetts was among four "high value geographies" for this initiative. In short, this Court concludes that the Complaint sufficiently alleges personal and direct involvement by Timney, Landau, and Stewart in the alleged conduct giving rise to the c. 93A claim.

Having concluded that the Commonwealth has met its prima facie statutory burden as to each of the individual defendants under § 3(c), this Court sees no need to address the other subsections of G. L. c. 223A, § 3 upon which the Commonwealth relies to support jurisdiction. It therefore turns to the relevant constitutional analysis.

B. <u>Constitutional Analysis</u>

"The constitutional touchstone of the determination whether an exercise of personal jurisdiction comports with due process remains whether the defendant established minimum

contacts in the forum state" (citations omitted). Bulldog Investors Gen. P'ship v. Secretary of the Commonwealth, 457 Mass. 210, 217 (2010). "The due process analysis entails three requirements. First, minimum contacts must arise from some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. . . . Second, the claim must arise out of or relate to the defendant's contacts with the forum. . . . Third, the assertion of jurisdiction over the defendant must not offend traditional notions of fair play and substantial justice" (citations omitted). Id.

The first prong, purposeful availment, "assure[s] that personal jurisdiction is not premised solely upon a defendant's random, isolated, or fortuitous contacts with the forum state . . , [but] on whether a defendant has engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just, or reasonable" (citations omitted). Sawtelle v. Farrell, 70 F.3d 1381, 1391 (1st Cir. 1995). In Calder v. Jones, 465 U.S. 783, 788-790 (1984), the United States Supreme Court held that for a state to exercise jurisdiction over a non-resident defendant, the defendant must aim his actions at the forum state, knowing that they will have a devastating impact on the plaintiff, and that the brunt of the injury will be felt in the forum state. In sum, "[t]he court looks to the voluntariness of the defendant's contacts with the forum and the foreseeability that he would be subject to a lawsuit there." Rissman Hendricks & Oliverio, LLP, 901 F. Supp. 2d at 265.

Here, where intentional misrepresentations and deceptive conduct are alleged to have occurred through marketing efforts targeted at and sent to Massachusetts, those requirements have been met. See Bulldog Investors Gen. P'ship, 457 Mass. at 217 (where "plaintiffs operated a Web site accessible in Massachusetts and sent a solicitation that is prohibited by Massachusetts

law to a Massachusetts resident, it was reasonable for the plaintiffs to anticipate being held responsible in Massachusetts"); Grice v. VIM Holdings Grp., LLC, 280 F. Supp. 3d 258, 274 (D. Mass. 2017) ("[w]hen the actual content of communications with a forum gives rise to intentional tort causes of action, this alone constitutes purposeful availment" [citations omitted]); Women, Action & the Media Corp. v. Women in the Arts & Media Coal., Inc., 2013 WL 3728414 at *3 (D. Mass. July 12, 2013) ("The evidence presented [including targeted solicitation] shows a voluntary decision by defendant to reach into Massachusetts").

In particular, the individual defendants, who held positions of control over Purdue's activities, reasonably were aware that Purdue had sales operations based in Massachusetts. Each, (with the exception of Timney) tacitly or explicitly approved sending tailored marketing materials, i.e., the savings card promotion emails, to Massachusetts doctors. This alleged conduct was knowing and purposeful, not merely negligent. As for Timney, as already described, he knowingly targeted Massachusetts via a telephonic call center and engaged in other conduct aimed at this state that is alleged to be unfair and deceptive. That these same practices occurred in other states as well does not change this Court's conclusion, since the contacts with Massachusetts were not random or fortuitous, but purposeful and voluntary. Johnson Creative Arts, Inc., 573 F. Supp. at 1110-1111. In short, the exercise of jurisdiction against the individual defendants on the facts alleged is reasonable and foreseeable.

The second prong, requiring the claim to arise out of or relate to the defendant's contacts with the forum, is also satisfied where the Complaint is related to and entirely premised on the alleged misrepresentations and deceptive conduct the individual defendants allegedly directed to Massachusetts.

Finally this Court concludes that exercising personal jurisdiction in these circumstances comports with fair play and substantial justice – the third prong of the analysis. "In determining whether fair play and substantial justice are satisfied, [the court] weigh[s] the Commonwealth's interest in adjudicating the dispute, the burden on the out-of-State party of litigating in Massachusetts, and the Commonwealth's interest in obtaining convenient and effective relief." Bulldog Investors Gen. P'ship, 457 Mass. at 218, citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 467-477 (1985). Here, the Commonwealth, which has brought this suit, has a significant interest in remediating the opioid crisis, which, no one disputes, has exacted a heavy toll in Massachusetts. See Exxon Mobil Corp., 479 Mass at 323 (personal jurisdiction comported with fair play and substantial justice where Attorney General, as chief law enforcement officer, "has a manifest interest in enforcing G. L. c. 93A"). On the other hand, the individual defendants make no particularized argument that litigating this case in Massachusetts would pose a hardship or other burden on them. Indeed, the Purdue headquarters are in Connecticut, a short distance away. The individual defendants also are persons of significant means. See Rissman Hendricks & Oliverio, LLP, 901 F. Supp. 2d at 266 (corporate individual defendant, who engaged in business from various international locations, had not shown hardship in having to litigate case in Massachusetts). Under these circumstances, jurisdiction is reasonable and notions of fair play and substantial justice are satisfied.[7]

[7] Because the prima facie burden has been met on the c. 93A claim, the Court need not address personal jurisdiction in relation to the public nuisance claim.

CONCLUSION AND ORDER

For the foregoing reasons and for other reasons articulated in the Commonwealth's Opposition, the individual defendants' Motions to Dismiss pursuant to Rule 12(b)(2) is hereby **DENIED**.

Janet L. Sanders
Justice of the Superior Court

Dated: October 8, 2019

Notify

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1884CV01808

COMMONWEALTH OF MASSACHUSETTS

vs.

PURDUE PHARMA L.P. & others[1]

MEMORANDUM OF DECISION AND ORDER ON THE DEFENDANT RUSSELL GASDIA'S MOTION TO DISMISS

The Commonwealth brought this action against Purdue Pharma L.P. and Purdue Pharma Inc. (collectively, Purdue) seeking redress for harms that it claims were caused by Purdue's deceptive marketing and sale of its opioid products in Massachusetts. The First Amended Complaint (the Complaint) also names as defendants seventeen other individuals; among them is defendant Russell Gasdia, who was Purdue's Vice President of Sales and Marketing beginning in 2007. Gasdia now moves to dismiss the claims against him pursuant to Mass. R. Civ. P. 12(b)(6). In support, he contends that the Attorney General has no legal grounds for pursuing the claims against him because there is no evidence that he has engaged in misconduct after his retirement from Purdue in December 2014. In the alternative, Gasdia argues that the claims are time-barred. For the following reasons, this Court concludes that the Motion to Dismiss must be **DENIED**.

BACKGROUND

For purposes of this Motion, this Court assumes as true all the allegations in the Complaint. Those allegations have already been summarized in this Court's Memorandum of

[1] Purdue Pharma, Inc., Richard Sackler, Theresa Sackler, Kathe Sackler, Jonathan Sackler, Mortimer D.A. Sackler, Beverly Sackler, David Sackler, Ilene Sackler Lefcourt, Peter Boer, Paulo Costa, Cecil Pickett, Ralph Snyderman, Judith Lewent, Craig Landau, John Stewart, Mark Timney, and Russell J. Gasdia.

Decision dated September 16, 2019, denying Purdue's Motion to Dismiss (the September 16 Decision). As to those allegations specific to Gasdia, he is described in the Complaint as one of four key executives who oversaw or promoted the activities alleged to be unfair and deceptive. Complaint, ¶596. In his position as Vice President of Sales and Marketing, he was defendant Richard Sackler's "voice in the field." Complaint, ¶ 706. He was involved in the "fundamentals of getting more patients on opioids at higher doses for longer periods" and of targeting the most prolific opioid prescribers. Complaint, ¶700. He worked to expand the number of sales representatives promoting opioids and drove them to visit prescribers more frequently. Complaint, ¶¶702-706. He engaged in these efforts even though he knew that higher doses of Purdue opioids put patients in danger. Complaint, ¶ 712. He also knew and intended that sales representatives would not warn doctors that higher doses put patients at risk. Complaint, ¶¶712-713, 719.

The Complaint gives some specifics as to Gasdia's involvement. In 2011, as the Sacklers looked for ways to increase sales, Gasdia reported to Richard Sackler that Purdue was instructing its sale representatives to focus on converting "opioid naïve patients" (those who had never been on opioids or who were on low doses of Vicodin or Percocet) to Purdue opioids, even though he knew that plan posed an increased risk to those patients. Complaint, ¶¶ 348-349. In 2013, he strategized with other staff on ways to market Purdue opioids directly to insurance companies and managed care formularies in an effort to convince them to cover opioids, using data that the FDA had never approved. Complaint, ¶566. Gasdia wrote scripts used to train Purdue sales representatives, including, for example, a plan to use fake patient profiles to encourage doctors to prescribe Butrans to patients not on opioids. Complaint, ¶ 707. He tracked his staff's adherence to sales targets, and placed sales representatives on "performance enhancement plans" if they

were not generating enough opioid prescriptions. Complaint, ¶350. Gasdia had a "special interest" in Massachusetts where he had started his career. Complaint, ¶742. He oversaw Purdue's negotiations with Massachusetts insurers and tracked Massachusetts regulations to ensure a growing market of opioids here. Complaint, ¶750.

In short, Gasdia (according to the Complaint) "worked at the heart of Purdue's deceptive sales campaign," carrying out the orders of Richard Sacker and other Sackler defendants to promote higher doses of opioids for longer periods of time. Complaint, ¶¶698, 747. Between 2007 and 2014, Purdue paid Gasdia millions of dollars for his efforts. Complaint, ¶ 752.

DISCUSSION

The Complaint asserts two causes of action against Gasdia: violations of G. L. c. 93A (Count I) and public nuisance (Count II). As to the c. 93A claim, Gasdia argues that G. L. c. 93A, § 4 makes clear that the Attorney General's authority can be wielded only where there is reason to believe that the defendant "is using or is about to use" an unfair and deceptive business practice. As the Complaint acknowledges, Gasdia stepped down from his positon as Purdue's Vice President of Sales and Marketing in June 2014, and left Purdue entirely in December of that year. Gasdia notes that there is nothing in the Complaint to suggest that he has had any association with the company since then, or that he has any intention of returning. Because he is not currently engaging in the acts on which the Complaint is based, Gasdia argues that the Attorney General has no standing to assert a c. 93A violation against him. Gasdia makes a similar argument as to the public nuisance claim: he contends that the Attorney General's remedy is limited to injunctive relief and that, with no allegations of ongoing misconduct on his part, there is nothing to enjoin. In the alternative, Gasdia argues that both Counts must be dismissed because the Commonwealth knew or had reason to know of Gasdia's misconduct well

before 2014, and that the statute of limitations for prosecuting him has run. This Court concludes that none of these arguments supports dismissal.

1. Chapter 93A Violation

Section 4 of Chapter 93A states:

> Whenever the attorney general has reason to believe that any person *is using or is about to use* any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. . . .

(italics added). Gasdia has seized on the phrase "is using or is about to use" and argues that it prevents the Attorney General from pursuing a c. 93A claim against any individual or entity who has ceased engaging in the suspect conduct. This argument, however, reads § 4 too narrowly and without regard to other sections of c. 93A, which clearly give the Attorney General the power to investigate and prosecute those who are no longer engaged in the alleged misconduct. See DiFiore v. American Airlines, Inc., 454 Mass. 486, 491 (2009) ("Where possible, [the court] construe[s] the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction"). Perhaps most important, this argument also has been rejected by the Supreme Judicial Court in Lowell Gas Co. v. Attorney General, 377 Mass. 37 (1979) (Lowell Gas).

The phrase in Section 4 on which Gasdia relies is used in conjunction with the Attorney General's power to obtain injunctive relief. Section 4, however, goes on to describe other remedies that the Attorney General can seek, all with reference to past conduct. The court may issue any order or judgment "as may be necessary to restore any person who *has suffered* any ascertainable loss" because of the unfair or deceptive act or practice. G. L. c. 93A, §4 (italics added). If the court concludes that the defendant "*has employed*" any such practice and the

defendant knew or should have known that the conduct was unfair or deceptive, the court may order a civil penalty of up to $5,000 for each violation. Id. (italics added). In authorizing restitution and civil penalties in addition to injunctive relief, § 4 by its own terms contemplates that the statute is not limited to those situations where the alleged misconduct is ongoing. See id.

Section 4 also must be read together with other provisions of c. 93A. DiFiore, 454 Mass. at 491. Section 6 authorizes the Attorney General to issue civil investigative demands where she believes that any person "*has engaged in* or is engaging in" an unfair or deceptive practice. G. L. c. 93A, §6 (italics added.) Section 5 allows the Attorney General to "accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or *to have been engaged in* such method, act or practice" "in lieu" of instituting an action or proceeding in court. G. L. c. 93A, §5 (italics added). Chapter 93A claims also have a four-year statute of limitations. G. L. c. 260, §5A (expressly applying to c. 93A action brought by the Attorney General). If the Attorney General could prosecute only ongoing conduct, there would be no need for a time limit.

More generally, this Court takes into account the legislature's intent in enacting c. 93A, which has been described as a "statute of broad impact." Exxon Mobil Corp. v. Attorney General, 479 Mass. 312, 315 (2018), quoting Slaney v. Westwood Auto, Inc., 366 Mass. 688, 693-694 (1975). Section 4 in particular was intended "to provide an efficient, inexpensive, prompt and broad solution" to the Attorney General in the event that she discovers unfair or deceptive practices that have caused widespread harm. Commonwealth v. DeCotis, 366 Mass. 234, 245 (1974); see also Auto Flat Car Crushers, Inc. v. Hanover Ins. Co., 469 Mass. 813, 824-825 (2014) ("General Laws c. 93A is a broad remedial statute; the Legislature's manifest purpose in enacting it was to deter misconduct, and to encourage vindicative lawsuits" [internal

citations and quotations omitted]). Construing the statute as a whole and keeping in mind this legislative purpose, this Court does not construe § 4 as a prohibition against the prosecution of unfair and deceptive business practices that have ceased. Such a construction would frustrate the remedial purposes of c. 93A by broadly exempting from liability anyone who stopped the wrongdoing before the Attorney General filed a claim, no matter how grave the damages inflicted.

Finally and perhaps most important, this Court's construction of § 4 is in line with the Supreme Judicial Court's interpretation of that section. In Lowell Gas, the Attorney General brought a complaint against two gas companies alleged to have unfairly passed on certain costs to consumers. 477 Mass. at 37. The companies moved to dismiss, asserting among other things that the Attorney General was not authorized to bring the action pursuant to G. L. c. 93A, §4 because the companies had terminated the practices complained of. Id. at 46-47. Although the court noted that the complaint could be construed as targeting practices that were continuing, it went on to reject the companies' argument on broader grounds. Reading § 4 together with § 6, as well as the relevant statute of limitations, G. L. c. 260 §5A, the court concluded that "the broad remedial language of § 4 cannot be read to preclude suits by the Attorney General against parties who have engaged in, but recently suspended, practices violative of c. 93A." Lowell Gas, 377 Mass. at 47-48. That is, there was no basis to dismiss the action simply because the companies had ceased their practice of passing on the costs alleged to be unlawful. Although Lowell Gas was decided forty years ago, this Court is aware of no Massachusetts case that questions its reasoning.

In an attempt to avoid the implications of Lowell Gas, Gasdia looks to cases interpreting the Federal Trade Commission (FTC) Act. In particular, he relies on FTC v. Shire ViroPharma,

Inc., 917 F.3d 147 (3rd Cir. 2019). In that case, the court held only that the FTC could not, pursuant to the express language of Section 13(b) of the Act, 15 U.S.C. §53(b), seek injunctive relief against the defendant company for conduct that took place five years before the suit and that related to a drug that the company no longer sold. The court noted, however, that the FTC could have proceeded under Section 5 of the Act, 15 U.S.C. §45(b). In reaching its conclusion regarding G. L. c. 93A, § 4, the court in Lowell Gas relied on those federal cases that interpreted Section 5 of the FTC Act. 377 Mass. at 47. It cites, for example, Goodman v. FTC, 244 F.2d 584, 593 (9th Cir. 1957). Id. Indeed, G. L. c. 93A, § 2(b) directs the courts to look for guidance in FTC and federal court interpretations of Section 5, "as from time to time amended." Gasdia contends that one of those amendments is Section 13 of the FTC Act, which was added to that statute only recently and well after the Lowell Gas decision. This Court is not convinced, however, that the Supreme Judicial Court today interpreting G. L. c. 93A, §4 would reach a different result than it did in Lowell Gas.[2]

2. Public Nuisance

Count II of the Complaint asserts a claim of public nuisance. Although it is based on the common law and not on a statute, Gasdia makes an argument quite similar to that which he asserts with respect to the c. 93A claim — namely, that there is no legal basis to bring this claim because it targets conduct that has ceased. Specifically, Gasdia contends that a public nuisance claim can proceed only if there is an immediate need for injunctive relief; since Gasdia has long

[2] [2] Cases interpreting the FTC Act are in any event not controlling, since the comparison between the provisions that Act and Chapter 93A is not a perfect one. For example, as the court explained in FTC v. Shire ViroPharma, the FTC Act from its inception provides for an administrative process to remedy unfair methods of competition. 917 F.3d at 155. Section 13 was added to allow the FTC to skip this administrative process and go direct to court where there was a need to act quickly to enjoin ongoing illegal conduct. By contrast, Chapter 93A does not have built into it an administrative regime.

since left Purdue, it necessarily follows that Count II fails to state a claim upon which relief may be granted. This Court disagrees.

As to the elements of this claim, Massachusetts follows the Restatement (Second) of Torts § 821B, which defines a public nuisance "as an unreasonable interference with a right common to the general public." See Sullivan v. Chief Justice for Admin. & Mgmt. of Trial Court, 448 Mass. 15, 34 (2006). "In determining whether there has been an unreasonable interference with a public right, a court may consider, inter alia, '[w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience.'" Id., quoting Restatement (Second) of Torts § 821B. This Court already has concluded that the Complaint supports a public nuisance claim against Purdue, see September 16 Decision, pp. 8-10, and reaches the same conclusion as to Gasdia: the Complaint, if true, alleges conduct on his part involving a significant interference with the public health and safety of Massachusetts residents.

Gasdia argues that, even assuming these allegations are true, the public nuisance claim is equitable nature, and the court's jurisdiction is limited to those public nuisances requiring "immediate judicial interposition." In support of this proposition, Gasdia relies on a case handed down 140 years ago, Attorney General v Metro. R.R.Co., 125 Mass. 515 (1878). Quoting that case, Gasdia contends that, because there is no ongoing conduct on his part, there is no need for immediate judicial action and the Attorney General thus has no authority to bring a public nuisance claim. This Court finds this argument puzzling — and ultimately unpersuasive.

If Gasdia is arguing that this action is one in equity, he ignores the fact that the court's equitable powers also extend to abatement orders. Count II would appear to seek this kind of relief in asking the court to require the defendants to reimburse the Commonwealth for the

expenses incurred in abating the nuisance. Gasdia nevertheless maintains that, because the underlying conduct that created the nuisance has ceased, there is "no nuisance to abate," and this Count thus fails to state a claim. This position is not supported by the case law, however. For example, in Taygeta Corp. v. Varian Assoc. Inc., the Supreme Judicial Court concluded that the continuing seepage of pollutants on the plaintiff's property gave rise to an actionable nuisance claim even though the dumping of the hazardous material that caused the contamination had stopped many years before. 436 Mass. 217, 231-232 (2002). [3] See also Restatement (Second) of Torts §834 comment e, at 150-151 (a person who substantially participated in creating a nuisance condition remains subject to liability "even though he is no longer in a position to abate the condition and stop the harm"). In the instant case, the Complaint contains sufficient allegations to show that Gasdia participated in conduct which significantly interfered with the public health and safety. That is enough.

Although this Court need not determine on a motion to dismiss precisely what relief the Commonwealth would be entitled to receive, this Court would note that an abatement order in a public nuisance case could include a requirement that the defendants expend the money necessary to abate the nuisance. That is precisely what the Supreme Judicial Court decided in Attorney General v. Baldwin, 361 Mass. 199, 208 (1972). In that case, the court upheld the lower court's order that the defendants remove debris that they had caused to be dumped into a Massachusetts waterway, even though the cleanup would necessarily require a "large expenditure of money." Id.[4]

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[3] It is true that Taygeta involved a private nuisance. But this Court does not see why the same principles should not also apply to a public nuisance claim this like one.

[4] In support of his position that the Commonwealth cannot seek such reimbursement costs, Gasdia relies on In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCP Pollution, 712 F. Supp. 994, 1004 (D. Mass. 1989). However, the court there ruled only that the Commonwealth's claim for public nuisance abatement expenses presented issues that had to be tried to a jury.

3. Statute of Limitations

The Attorney General filed her initial complaint June 12, 2018; the First Amended Complaint adding Gasdia as a defendant was filed on December 21, 2018. A four-year statute of limitations applies to the c. 93A claim. G. L. c. 260, §5A. A three-year statute of limitations applies to the public nuisance claim. G. L. c. 260, §2A. Gasdia, who stepped down from his sales and marketing position at Purdue in June 2014, argues that both claims are time-barred. This Court concludes that the limitations issue cannot be decided on a Rule 12(b)(6) motion.

Both statutes of limitations are subject to the discovery rule, which states that "a cause of action accrues when the plaintiff discovers or with reasonable diligence should have discovered that (1) he has suffered harm; (2) his harm was caused by the conduct of another; and (3) the defendant is the person who caused that harm." Harrington v. Costello 467 Mass. 720, 727 (2014). When the cause of action "accrues" for statute of limitations purposes is ordinarily a question of fact that cannot be determined from the pleadings alone. See Riley v. Presnell, 409 Mass. 239, 247 (1991) (reversing summary judgment against plaintiff on statute of limitations grounds). Rarely can the issue be determined on a Rule 12(b)(6) motion. See Commonwealth v. Tradition (North America), Inc., 91 Mass. App. Ct. 63, 70 (2017) (dismissal pursuant to Rule 12(b)(6) based on statute of limitations is appropriate only where "it is undisputed from the face of the complaint that the action was commenced beyond the applicable deadline").

In the instant case, the Complaint alleges that the defendants (including Gasdia) concealed their conduct, and that determining the nature and extent of that conduct required a complex investigation, including civil investigative demands that continued until March 2018. That is enough to prevent dismissal on statute of limitations grounds. Gasdia cites various lawsuits filed against Purdue and others in other jurisdictions as early as 2013 that contain

allegations quite similar to those asserted against Gasdia here: indeed, one lawsuit (filed in South Carolina) actually names Gasdia as a defendant. That only underscores the fact intensive nature of the inquiry, however. See, e.g., In re Massachusetts Diet Drug Litig. 338 F. Supp. 2d. 198, 205-206 (D. Mass. 2004) (that there was extensive publicity regarding diet drugs at issue was not enough to determine that plaintiffs' claims were time-barred as a matter of law). In short, it would be premature for this Court to resolve this question before any discovery has taken place.

CONCLUSION AND ORDER

For these reasons and for other reasons set forth in the Commonwealth's Memorandum in Opposition, Gasdia's Motion to Dismiss is **DENIED.**

Janet L. Sanders
Justice of the Superior Court

Dated: October 8, 2019

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
C.A. NO. 1884-cv-01808-BLS2

COMMONWEALTH OF MASSACHUSETTS,

v.

PURDUE PHARMA L.P., PURDUE PHARMA INC., RICHARD SACKLER, THERESA SACKLER, KATHE SACKLER, JONATHAN SACKLER, MORTIMER D.A. SACKLER, BEVERLY SACKLER, DAVID SACKLER, ILENE SACKLER LEFCOURT, PETER BOER, PAULO COSTA, CECIL PICKETT, RALPH SNYDERMAN, JUDITH LEWENT, CRAIG LANDAU, JOHN STEWART, MARK TIMNEY, and RUSSELL J. GASDIA

HEARING REQUESTED

INDIVIDUAL DIRECTOR DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO MASSACHUSETTS RULE OF CIVIL PROCEDURE 12(b)(2)

Pursuant to Massachusetts Rule of Civil Procedure 12(b)(2), defendants Peter Boer, Paulo Costa, Ilene Sackler Lefcourt, Judith Lewent, Cecil Pickett, Beverly Sackler, David Sackler, Jonathan Sackler, Kathe Sackler, Mortimer D.A. Sackler, Richard Sackler, Theresa Sackler, and Ralph Snyderman (the "**Individual Directors**" of Purdue Pharma, Inc.), through undersigned counsel, respectfully move the Court to dismiss the Commonwealth's First Amended Complaint ("**FAC**") as specifically directed at them personally for lack of personal jurisdiction. As explained in greater detail in the accompanying Memorandum in support of this Motion, the supplemental memorandum, the declarations by each of the Individual Directors, the affidavit of Robert J. Cordy, and its exhibits, dismissal is warranted because the Commonwealth has not pled facts sufficient to satisfy the Massachusetts long-arm statute, G.L. c. 223A, §3, or to demonstrate that the exercise of personal jurisdiction would be consistent with the constitutional

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS,	:	
Plaintiff,	:	Civil Action No. 18-1808-BLS2
v.	:	
PURDUE PHARMA L.P, et al,	:	**HEARING REQUESTED**
Defendants.	:	

2019 JUL -3 P 1:07

DEFENDANTS CRAIG LANDAU, JOHN STEWART AND MARK TIMNEY'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Defendants Craig Landau, John Stewart, and Mark Timney (the "Officers") hereby move this Court pursuant to Rule 12(b)(2) of the Massachusetts Rules of Civil Procedure for an order dismissing the First Amended Complaint. The grounds for this motion are fully set forth in the accompanying memorandum of law. In short, the First Amended Complaint should be dismissed because this Court lacks personal jurisdiction over each of the Officers.

In the event that the Court determines that it has jurisdiction over Defendant John Stewart, he also moves this Court pursuant to Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure for an order dismissing the First Amended Complaint because it fails to state any claim against him.[1]

[1] Defendant Stewart moves on this additional ground solely for purposes of efficiency and, in doing so, does not concede that the Court has personal jurisdiction over him or waive his personal jurisdiction defense. See Mass. R. Civ. P. 12(b) ("No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion."); Ross v. Ross, 371 Mass. 439, 443 n.2 (1976) (the inclusion of a 12(b)(6) argument in a motion to dismiss "did not constitute a waiver of the assertion that the court lacked jurisdiction").

Notice Sent 10.08.19 WDW QE WTS RJC MLK AR MWHELP EPT MAK DJD COS JHALL SRG MKM JS DPHP PEG NR DCTCLP CRB CWD STHP MJC JLT HATSLP ICHM JAD DLLC JBP JSP RAB PLTP EMC AAG GF AAG KJ LGA ALP

SBA AAG JTW AAG JTL JDB JD DLP JDT

Mtd Cite Memorandum of Reasons and Order 10/8/19

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
C.A. No. 1884-cv-01808 (BLS2)

COMMONWEALTH OF MASSACHUSETTS,)
)
vs.) Oral Argument Requested
)
PURDUE PHARMA, L.P., *et al.*)

DEFENDANT RUSSELL J. GASDIA'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Defendant Russell J. Gasdia respectfully submits this Motion to Dismiss the First Amended Complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure. Mr. Gasdia contends that the Attorney General for the Commonwealth does not have the legal authority to bring claims against him under G. L. c. 93A or for alleged public nuisance. The Attorney General is empowered to bring actions under the Massachusetts Unfair and Deceptive Acts and Practices statute, and to enjoin or abate public nuisances, only when there is ongoing or imminent misconduct. Mr. Gasdia retired from Purdue over four years ago. The Commonwealth does not, and could not, allege that he is engaging in any misconduct that this Court can enjoin. Further, the statute of limitations has run on the claims that the Commonwealth seeks to bring against Mr. Gasdia. Both counts against Mr. Gasdia should be dismissed for failure to state a claim, pursuant to Massachusetts Rule of Civil Procedure 12(b)(6).

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COMMONWEALTH OF MASSACHUSETTS (LAT)

SUFFOLK, ss. SUPERIOR COURT
BUSINESS LITIGATION SESSION

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PURDUE PHARMA L.P, et al,

Defendants.

Civil Action
No. 18-1808-BLS2

SERVED VIA EMAIL

DEFENDANTS CRAIG LANDAU, JOHN STEWART AND MARK TIMNEY'S PARTIAL JOINDER IN DEFENDANT RUSSELL GASDIA'S MOTION TO DISMISS

Defendants Craig Landau, John Stewart, and Mark Timney (the "Officers") hereby join in part in Defendant Russell Gasdia's Motion to Dismiss the Commonwealth of Massachusetts' First Amended Complaint, served April 1, 2019. Specifically, the Officers adopt the arguments and authorities presented in Defendant Gasdia's memorandum of law served therewith that (i) the Commonwealth only has authority to sue under M.G.L. c. 93A § 4 where the Attorney General "has reason to believe that any person is using or is about to use" a method that violates Chapter 93A, and (ii) the Commonwealth does not have authority to assert a public nuisance claim where there is no immediate need for injunctive relief and may not recover reimbursement of costs incurred in abating any alleged public nuisance. As with Defendant Gasdia, the Commonwealth has no reasonable basis to believe that any of the Officers "is using or is about to use" any method that violates Chapter 93A or that there is any immediate need for injunctive relief against any of the Officers. Accordingly, the Commonwealth lacks standing to

Denied for the same reasons set forth in the Memorandum of Decision on Defendant Gasdia's Motion to Dismiss
Court
Justice
10/17