COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS Plaintiff, 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, Defendants.	CIVIL ACTION NO. 1884-CV-01808(B)

REPLY MEMORANDUM OF LAW IN SUPPORT OF THE INDIVIDUAL DIRECTORS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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The fatal flaw in the AGO's Opposition filings is the failure to identify a single allegation or document showing that any Individual Director (or "**Director**") personally participated in or aimed any deceptive statement at Massachusetts.[1] That is dispositive of the jurisdictional issue. The AGO has millions of pages of Purdue documents and the deposition transcripts of two Individual Directors. *See* SA Aff. ¶3. With all this, the AGO cannot meet its burden of establishing specific jurisdiction, the form of jurisdiction it relies on (Opp. 32-42).

I. Exercising Jurisdiction Over the Individual Directors Would Violate Due Process

Due process requires a showing that the defendants "purposefully 'reach[ed] out beyond' their State and into another," *Walden*, 571 U.S. at 285, and that the claim against each defendant "arise[s] out of or relate[s] to the defendant's contacts with the forum," *Bristol-Myers Squibb*, 137 S. Ct. at 1780. The AGO argues it has met its burden by showing that "each [Individual Director] purposefully directed deceptive marketing at Massachusetts" and that its "claims relate to that deception." Opp. 32. But no factual allegations or documents support this argument.

A. No Factual Allegations or Evidence Show That Any Individual Director Participated in Allegedly Deceptive Marketing in Massachusetts

The AGO concedes it must establish *prima facie* jurisdiction by alleging "specific facts" supporting jurisdiction.[2] But its contention (Opp. 33) that it has alleged facts showing that the Individual Directors "purposefully directed deceptive marketing at Massachusetts" is not supported by its citations to the FAC (*see* Motion 5-22) or its supplemental exhibits, and is

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[1] All defined terms have the meaning set forth in the Individual Directors' opening memorandum in support of their Rule 12(b)(2) dismissal motion ("**Motion**"). The Commonwealth's June 19, 2019 brief in opposition and supporting affidavit and exhibits are "**Opposition,**" "**Opp.**," "**SA Aff.**" and "**SA Ex.**", respectively. "**Reply Ex.**" refers to exhibits annexed to the Affidavit of Annabel Rodriguez. Short form case citations in the Motion and Opposition are also used here.

[2] *Cepeda*, 62 Mass. App. Ct. at 738 (Opp. 40). *Cepeda* holds that the *prima facie* determination depends on factual allegations and supporting evidence, defined as "evidence which, standing alone and unexplained, maintains the proposition and warrants the conclusion to support which it is introduced." *Id.* (Opp. 1).

refuted by the Individual Directors' sworn declarations (Motion 10 n.12).

The Opposition relies on allegations that Directors assented to management's proposal to expand Purdue's national sales force and required sales people to make a certain number of sales visits. Opp. 3, 38. It is not improper to hire a sales force to promote FDA-approved medicine. Motion 14-15, 17, 41-42. Approving a budget to hire employees does not constitute personal participation in later conduct by those employees or subject a company's directors to jurisdiction wherever those employees may be or travel. *Id.* at, 23-24. *Ontel Prods., Inc. v. Project Strategies Corp.*, 899 F. Supp. 1144, 1149 (S.D.N.Y. 1995), rejected a similar argument:

> It is not enough that [the corporate President] likely possessed authority to direct all the activities that gave rise to this suit. If that were the case, the President of every company would be subject to jurisdiction in [the forum] based on activities with which he or she had no personal involvement and over which he or she exercised no decisionmaking [sic] authority.

While the Opposition (at 29) claims that "the Directors *decided* ... what th[e] deceptive marketing would say," it does not point to any "specific facts" or document specifying the role of any Director in any such decision, much less showing that any Director ever instructed anyone to say anything deceptive. Moreover, the AGO conspicuously fails to address unrefuted evidence—in documents cited in the FAC—showing that the Directors were repeatedly told that Purdue was in full compliance with its commitments under the 2007 Judgment, the CIA, and applicable law (Motion 2-4).

Further, the AGO's allegations are both unsupported and jurisdictionally irrelevant:

- The Opposition (at 5) asserts that "[t]he Directors encouraged staff to target vulnerable patients without disclosing the heightened risks," but the cited support concerned staff reports to the Board (¶¶418, 575, 687) or management conduct (¶685 & SA Ex. 12 (management considering promoting Butrans to populations "for whom the product seems to be particularly important")—not any Director discouraging risk disclosure.
- The Opposition (at 5, citing ¶309) falsely states that the Directors encouraged staff to target osteoarthritis patients without disclosing a failed trial. In fact, ¶309 alleges only that "the Board" asked if sales representatives had to disclose the failed trial if asked

about Butrans use for osteoarthritis. The document cited by ¶309 (Ex. 53)—which dates from 2010, long before the limitations period—shows (i) disclosure was required and (ii) disclosure decisions were not made by the Board. *Id.* at -168 ("Sales and Marketing are currently working closely with Clinical, Legal and Regulatory" on answers to questions; the Butrans label disclosed the failed trial; and sales people were instructed to answer questions about prescribing Butrans for osteoarthritis by stating it was not an indicated use). Regardless, the Board posing a question to management is not tortious conduct.

- The Opposition (at 6) cites ¶¶163-164 for the proposition that "[t]he Directors directed staff to promote the highest doses of opioids without disclosing the increased risks." Those paragraphs conclusorily allege what the Individual Directors "knew and intended" (*id.*) but do not specify how any Director instructed Purdue's management to do anything.
- The Opposition (at 7 & 8, citing ¶196) makes conclusory assertions that "[t]he Directors ordered" staff to use unspecified "unlawful tactics to keep patients on opioids longer" and to "target the most prolific prescribers of opioids, even when sales reps feared that the doctors were writing inappropriate prescriptions and harming patients." These are unsubstantiated conclusions, not "specific facts." *See* Motion 25. No allegation or evidence shows that any Director ordered anyone to engage in such conduct.[3]

The AGO's failure to plead facts to show that its Claims arise out of conduct by any Director targeting Massachusetts is confirmed by its inability to identify any evidence supporting its conclusory assertions, despite access to millions of pages of Purdue discovery. *See* SA Aff. ¶3.

It is the AGO's burden to show that each Individual Director is subject to the jurisdiction of this Court, and the AGO has failed to meet this burden. The AGO relies on *Calder*, 465 U.S. at 789 (Opp. 33, 37), but *Calder* confirms that there is no jurisdiction here. *Calder* found that a reporter and editor—who wrote an article about "the California activities of a California resident," drawn from California sources and phone calls to California—"intentionally" targeted, and were

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[3] A careful review of the FAC paragraphs cited by the Opposition for the proposition that the Individual Directors collectively ordered Purdue to make misleading statements confirms that not one allegation shows that any Individual Director decided "what th[e] deceptive marketing would say." *See* Opp. 29; ¶¶161-67, 196 (summary paragraphs that do not allege that any Individual Director decided what the marketing would say); 221-23, 259, 298-302, 314-15, 368, 460-62 (addressing number of sales employees and sales visits, not what would be said); 226, 240, 261-62, 296, 347, 390, 399-400, 403 (allegations related to higher doses; no allegation that any Director decided what should be said on sales calls); 258-59, 347, 353, 409 (allegations related to targeting prolific prescribers; no allegation that any Director decided what should be said). As demonstrated at Motion 11-18, many of these do not allege any conduct by the Directors at all: they allege only that Purdue's staff or consultants reported something to the Board or specific Directors.

therefore subject to jurisdiction in, California because it was the "focal point" of their conduct. Here, there are no similar allegations or evidence that Massachusetts was the "focal point" of any Director's conduct. To the contrary, none of the hundreds of documents cited by the FAC show claim-related conduct of any kind by a single Individual Director.

B. Nationwide Marketing Is Not Directed at Massachusetts

The Opposition offers no response to the Motion's demonstration (at 41-42) that allegations about any Director's participation in Purdue's *nationwide* marketing are insufficient. It ignores *J. McIntyre Machinery*'s teaching that conduct aimed at the U.S. as a whole does not create jurisdiction in every state. 564 U.S. at 885-86 (plurality opinion); *id.* at 888 (Breyer, J., concurring).[4] It also ignores *Mouzon*'s holding that allegations that a CEO played a role in a marketing campaign aimed at multiple jurisdictions were insufficient to establish that he targeted a particular forum (the District of Columbia). 85 F. Supp. 3d at 372.

The Opposition's response to the fact that nationwide conduct is not targeted at Massachusetts is buried in a footnote and asserts, without authority, that jurisdiction is proper because the "Directors' alleged acts (*e.g.*, directing thousands of door-to-door sales visits in Massachusetts and a multi-million-dollar program at MGH) were more targeted, extensive, and dangerous for Massachusetts residents than a national advertisement." Opp. 40 n.17. As addressed below, the program at MGH is jurisdictionally irrelevant and the footnote's assertion that the Directors directed Purdue's conduct here simply assumes its conclusion without any authority or facts supporting it. Case after case holds to the contrary—national conduct does not

[4] The Opposition (at 37) cites, disingenuously, *J. McIntyre*'s observation that jurisdiction over defendants who commit "intentional tort[s]" might not require that the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 564 U.S. at 880 (plurality opinion). The later decision in *Walden* forecloses any argument that specific jurisdiction in intentional tort cases does not require the defendant to target the forum. *Walden*, 571 U.S. at 286, holds that the "same principles"—that a defendant cannot be subject to jurisdiction unless s/he "create[s] the necessary contacts with the forum"—apply to "intentional torts."

establish that a defendant has targeted every state in the nation.[5] A trial court in New York recently agreed, rejecting as insufficient allegations like the AGO's which asserted that some of these Directors oversaw Purdue's national marketing—because it was not aimed at New York:

> Although the plaintiffs claim that the Sacklers oversaw (and that some of them actively participated in) the deceptive marketing strategies and misinformation campaigns used to perpetuate the alleged fraud at the heart of this action, they do not claim that its effects in New York were anything but incidental. As it does not appear that the Sacklers expressly aimed their conduct at New York, the mere foreseeability or knowledge that allegedly tortious conduct would injure the plaintiffs in New York does not suffice to support the court's exercise of jurisdiction over them [under a provision of the New York long-arm statute].[6]

That the AGO cites statistics regarding the portion of sales visits or sales figures in Massachusetts from these nationwide activities confirms this point: the Directors did not target Massachusetts. The AGO's authorities confirm that jurisdiction over a defendant must be based on a showing that he or she specifically targeted the forum, not on national conduct:

- *Exxon Mobil Corp.* found jurisdiction over Exxon (not its directors) because the company had specifically targeted Massachusetts by entering into franchise agreement with "over 300 Exxon- and Mobil-branded service stations located throughout Massachusetts," through which it controlled marketing to Massachusetts consumers, and because "it created Massachusetts-specific advertisements for its products in print and radio." 479 Mass. at 321-22 (Opp. 29, 38-39). The FAC, by contrast, identifies no similar Claims-related activity by any Directors in the Commonwealth.

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[5] *See, e.g., Micheli v. Techtronic Indus.*, 2012 WL 6087383, at *14 (D. Mass. Mar. 1, 2013) ("At best, the evidence establishes general, national marketing. ... The law is clear that personal jurisdiction requires conduct directed at a specific state, rather than the nation as a whole."); *Corwin v. Swanson*, 2010 WL 11598013, at *4 (C.D. Cal. Apr. 27, 2010) (statements "directed at a nationwide audience" not aimed at California); *Bhd. of Locomotive Eng'rs & Trainmen v. United Transp. Union*, 413 F. Supp. 2d 410, 420 (E.D. Pa. 2005) (conduct "across the country" not aimed at Pennsylvania); *Ajax Enters., Inc. v. Szymoniak Law Firm, P.A.*, 2008 WL 1733095, at *5 & n.3 (D.N.J. Apr. 10, 2008) (website targeted at "a national audience" did not target New Jersey); *Binion v. O'Neal*, 95 F. Supp. 3d 1055, 1060 (E.D. Mich. 2015) (posts "meant for a national or even international audience" not targeted at Michigan).

[6] *In re Opioids*, Index No. 400000/2017 (Sup. Ct. Suffolk Cnty. June 21, 2019) (Reply Ex. 1) at 6. The New York court left open the question whether any of these Directors might be subject to jurisdiction under another provision of New York's long-arm statute on an agency theory (*id.* at 6-7) (which then would also have to be addressed under due process principles). The AGO does not advance an agency theory of jurisdiction, much less attempt to dispute the Individual Directors' arguments (*see* Motion 27-29) that any boilerplate attempts to plead agency by the Commonwealth are insufficient as a matter of law.

- *Grewal* denied a director's motion to dismiss for lack of jurisdiction without prejudice to renew, not based on national conduct, but because the complaint alleged that he "directed purposeful activity in [New Jersey] and maintained contact with New Jersey Insys employees to develop and execute the alleged fraudulent conduct." 2018 WL 7624871, at *4 (Opp. 36). There are no specific allegations that any Director directly communicated with Massachusetts employees regarding marketing, and there is sworn evidence to the contrary. Motion 10 n.12.
- In *Christie*, the defendants targeted New Jersey because they allegedly "knowingly hacked Plaintiff's computer in New Jersey." 258 F. Supp. 3d at 504 (Opp. 36). There is no remotely comparable allegation for any Individual Director.[7]

C. The AGO Does Not Argue That the Few Supposed Massachusetts Contacts Identified in the Opposition Relate to Its Claims

The AGO puts forth only a handful of allegations that specifically mention Massachusetts, and none actually relate to its Claims.

First, the AGO repeatedly (Opp. 9, 14, 27, 30, 32, 34, 39-40 n.17) refers to allegations that in 2010 or 2011 unspecified Individual Directors voted to continue Purdue's sponsorship of the *MGH Purdue Pharma Pain Program*. That sponsorship is jurisdictionally irrelevant because the FAC does not plead, and the Opposition does not identify, a single misleading statement about prescription opioids made by anyone in connection with this program, much less any

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[7] With one exception, the AGO's remaining authorities are pre-*Walden* cases, but even those involved conduct that courts concluded was targeted specifically at the forum. *Bulldog*, 457 Mass. at 219 (Opp. 33) (defendants participated in sending "advertising and offering materials through e-mail" to a Massachusetts resident); *Mass. Mut. Life Ins. Co.*, 843 F. Supp. 2d at 210 (Opp. 34) (participation in securities transactions in Massachusetts and signing related registration statements); *Harbourvest Int'l Private Equity Partners*, 2000 WL 1466096, at *5 (Opp. 35) ("active management" of transaction in Massachusetts); *Miller*, 571 N.W.2d at 7 (Opp. 35) ("primary participat[ion] in an alleged wrongdoing intentionally directed at [Iowa] resident[s]"); *Retail Servs. Software*, 854 F.2d at 22 (Opp. 36) (individual defendants targeted New York acting as "primary actor[s]" in franchise sales there); *Openwave*, 2009 WL 1622164, at *12 ("defendants intentionally directed their fraudulent scheme to California") (Opp. 36); *Reynolds*, 73 F. Supp. 2d at 304-05 (Opp. 36 n.14) (contract entered into with New York-based plaintiff concerning solicitation of New York customers); *Duke*, 496 So. 2d at 40 (Opp. 36 n. 14) (defendants "conspired to fraudulently conceal a material fact during the negotiations with" Alabama resident); *EEI Holding*, 947 F. Supp. 2d at 918-19 (Opp. 36 n.14) (breach of fiduciary duty was aimed at Illinois because the duty was owed to a company that defendants knew was based in Illinois). The remaining case, *Ott*, 65 F. Supp. 3d at 1058, based jurisdiction on allegations that "individual defendants designed, implemented, and ratified telemarketing practices that [the company] directed at Oregon residents." (Opp. 35).

statement attributable to a Director. The AGO's Claims therefore do not arise out of or relate to that program.[8] Indeed, the Opposition argues only that relatedness is satisfied because the AGO's Claims arise from Directors' alleged direction of deceptive marketing and does not even attempt to argue that the claims arise out of the MGH pain program. *See* Opp. 32, 39. Furthermore, the allegations about donations to MGH concern actions allegedly taken in 2010 and 2011, several years before the applicable limitations periods, which began in 2014 and 2015, as set forth in the Directors' Rule 12(b)(6) Motion at 37. Stale, pre-limitations period allegations are jurisdictionally irrelevant because the Claims cannot have arisen out of them.[9]

The allegations related to this program also cannot establish jurisdiction because:

- The FAC does not allege which Individual Director voted to approve the 2010 or 2011 donation, and cannot make the allegation at all for Paulo Costa, David Sackler and Ralph Snyderman, each of whom joined the Board after the vote (¶¶550, 172, 553).
- The AGO pleads that some Directors received copies of a July 2009 memorandum—a year before the alleged vote to fund the MGH program—in which David Haddox (a Purdue staff member, ¶781) opined to Purdue's CEO that allowing funding for MGH to lapse might aid efforts by some in the Massachusetts legislature to prohibit the sale of OxyContin as a "banned [controlled] substance." (Opp. 9; ¶277; SA Aff. Ex. 13). This speculation about what might happen if funding lapsed does not connect the subsequent alleged approval of MGH funding to any specific marketing activities.
- The AGO refers to a 2014 report written by consultants (years after the alleged vote to provide funding to MGH), but does not contend the report was shared with any Individual Director. That report notes that a "Dr. Sackler (owner) is a major donor to MGH." Opp. 9 (citing JW Decl. Ex. 23). The Opposition does not and cannot identify any misstatements about prescription opioids in this report. [10]

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[8] *Bristol-Myers Squibb*, 137 S. Ct. at 1780 ("[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction."). *See also Exxon*, 479 Mass. at 321 n.8 ("that there is personal jurisdiction over Exxon here rests not on Exxon's general Massachusetts-based activities, but on the nexus between certain of Exxon's Massachusetts-based activities and the Attorney General's investigation"); Motion 20-22.

[9] *See, e.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2019 WL 1331830, at *32 (S.D.N.Y. Mar. 25, 2019) (no jurisdiction based on "transactions that occurred before the relevant time period").

[10] The Directors reject the AGO's characterization of JW Decl. Ex. 23 (submitted by the AGO in opposition to the dismissal motion by former Purdue officers). The cited document does not on its face say that it was produced by "consultants analyzing how to sell more opioids;" that

Second, the AGO cites two emails with Richard Sackler, supposedly to refute *all* the Individual Directors' sworn statements that they did not target marketing at Massachusetts. SA Aff. at ¶6. Those emails do not show any conduct aimed at Massachusetts or any involvement in marketing:

- SA Ex. 15 is an email Richard Sackler sent to a Purdue staff member that contained a link to a news article. The email prompted a further exchange among staff, not including Richard Sackler, about whether to explain their "typical approach" for responding to legislation to Richard Sackler, confirming his lack of involvement. *See* Motion 18 & Ex. 98 at 3992.

- SA Ex. 16 includes an email from Richard Sackler describing as "[g]ood news" legislation that Massachusetts passed in order to stem opioid abuse by prohibiting "a non-abuse-deterrent formulation from being dispensed if an abuse-deterrent formulation is available." As discussed at Motion 18 & Ex. 103 at 6225, there is no allegation that Richard Sackler played any role in lobbying for that legislation or that the legislation is relevant to the Claims, and in any event, his opinion on legislation is not jurisdictionally relevant.

Emails sent by Richard Sackler of course cannot establish jurisdiction over the other Directors.[11]

II. The AGO Has Not Established Long-Arm Jurisdiction Over the Directors

No Section 3(a) Jurisdiction (Motion 24-29). The Opposition's §3(a) argument rests on the mistaken premise (refuted above and previously) that the Directors' alleged supervision of Purdue's national marketing was conduct "specifically" aimed at Massachusetts (Opp. 27). The Opposition's reference (at 27) to the donation to MGH does not support §3(a) jurisdiction because the AGO does not demonstrate that the Claims would not have existed "but for" that donation. *Pettengill*, 584 F. Supp. 2d at 356 (Motion 27). The Opposition's conclusory

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they viewed reaching out to a "Dr. Sackler"—who could well be the now-deceased Dr. Raymond Sackler—as "[a] next step for selling more opioids." (Opp. 9); or that they did reach out to any Individual Director or that any step thereafter relates to the present Claims. Nor can jurisdiction over the Individual Directors be premised on the conduct of third-parties. *Walden*, 571 U.S. at 291.

[11] Similarly, the Opposition (at 10) cites allegations that the Directors received reports about Massachusetts legislation, but does not contend that any Claims arise out of those allegations. *See* Motion 17-18.

assertions (at 29-32) that the Directors controlled Purdue's allegedly deceptive marketing is not supported by the FAC or supplemental exhibits. *See* Motion 24 n.29, 25.

No Section 3(c) Jurisdiction (Motion 29-32). The Opposition (at 12-14) relies on the premise—refuted above and in the Motion—that the Directors' alleged control of Purdue's national conduct was aimed at Massachusetts. Moreover, the FAC does not plead facts showing any Director's "direct personal involvement" in any alleged deceptive practices. *See New World Techs.*, 1995 WL 808647, at *2 (Motion 30-31) (§3(c) is not satisfied absent "direct personal involvement by the corporate officer in some action which caused the tortious injury"). Finally, the Opposition does not dispute that jurisdiction under §3(c) is limited to intentional torts. *See* Motion 31. The AGO's argument that a public nuisance claim *can* be predicated on intentional conduct (Opp. 16-17 n.2 citing CEO Opp. 16 n.4) misses the point—in this case the AGO has expressly pled its public nuisance Claims in negligence terms. *See* Motion 30 (citing ¶¶902, 910). Stripped of the Claims based on failure to supervise, negligence, and recklessness, all that remains is the FAC's conclusory assertion that the Directors intentionally sent false statements into Massachusetts—and this argument fails because the FAC does not plead facts showing that any Director participated in any deceptive conduct in or aimed at the Commonwealth.

No Section 3(d) Jurisdiction (Motion 32-37). The AGO cites no Massachusetts case holding that the employees or owners of an out-of-state corporation are subject to jurisdiction because they derive revenue from a corporation that does business in Massachusetts and applicable case law rejects this (Motion 34).[12] Nor do any of the §3(d) cases cited by the AGO

[12] Such a holding would make all employees of national companies that derive revenue from Massachusetts and investors in such companies subject to jurisdiction under §3(d). The AGO's cases do not support such a radical expansion of §3(d). *Heins*, 26 Mass. App. Ct. at 19-20 (Opp. 21), held only that a manufacturer that regularly sold machines that were purchased by end users in Massachusetts was subject to §3(d) because the manufacturer literally derived revenue from its goods (the machines) that were sold here. It says nothing about the

(Opp. 26 n.8) address the question whether §3(d) is a form of general or specific jurisdiction. They therefore do not undermine the Motion's point (at 36-37) that the cases that have addressed this issue tend to support the view that the provision contemplates general jurisdiction.

III. This Court Should Dismiss this Case Based on the AGO's Failure to Make a *Prima Facie* Showing of Jurisdiction or Hold an Evidentiary Hearing

This Court can and should dismiss the AGO's Claims on the instant record because, even taking the "specific facts affirmatively alleged by the plaintiff as true," they do not plead the requisite "*prima facie*" basis for jurisdiction. *Cepeda*, 62 Mass. App. Ct. at 738. The AGO's alternative request for jurisdictional discovery "if . . . the Court finds it appropriate to resolve factual disputes" at this stage (Opp. 41-42) is baseless: The AGO already has access to millions of pages of Purdue's documents, yet it has failed to identify claim-related contacts by any Individual Director. And the AGO has not identified what it expects to establish with further discovery.[13] However, if the Court permits jurisdictional discovery, the Individual Directors respectfully request that the Court hold an evidentiary hearing—where disputed jurisdictional allegations would be entitled to no presumptive weight—to resolve jurisdiction. *Cepeda*, 62 Mass. App. at 738-39.

CONCLUSION

The AGO's claims against the Individual Directors should be dismissed.

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manufacturer's owners or employees. Similarly, *Philip Morris Inc.*, 1998 WL 1181992, at *6 (Opp. 21-22), limited its holding to "whether a corporation may be sued" based on "revenue obtained indirectly via subsidiaries."

[13] The New York trial court's decision in *In re Opioids* permitted limited jurisdictional discovery because it concluded that the plaintiffs had made a "sufficient start" in alleging jurisdiction. Reply Ex. 1 at 4, 7. The "sufficient start" standard is a lower standard than a *prima facie* standard—which the AGO concedes applies here (Opp. 1-2, 40). *See, e.g.*, *Marist College v. Brady*, 84 A.D.3d 1322, 1323 (2d Dep't 2011) (plaintiff had made "a sufficient start to warrant further discovery" but had "failed to demonstrate, *prima facie*, that the appellants were subject to the Supreme Court's long-arm jurisdiction"). The "sufficient start" standard does not apply in Massachusetts. The AGO's failure to make a *prima facie* jurisdictional showing compels dismissal.

Respectfully submitted,

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