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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