

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA**

<hr/> Commonwealth of Pennsylvania, acting by and through Philadelphia District Attorney Lawrence S. Krasner	:	
	:	CIVIL ACTION-LAW
	:	
PLAINTIFF,	:	NO. CV-2017-008095 (Consolidated)
	:	NO. CV-2018-003010
	:	
v.	:	
	:	
PURDUE PHARMA L.P., et al.,	:	Philadelphia CCP NO. 180105594
	:	
DEFENDANTS.	:	
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**ORDER DENYING PRELIMINARY OBJECTIONS OF DISTRIBUTOR
DEFENDANTS' AMERISOURCEBERGEN DRUG CORP., CARDINAL HEALTH INC.,
AND MCKESSON CORPORATION**

AND NOW, this 23 day of July 2019, after argument on June 18, 2019 on the Preliminary Objections of Distributor Defendants' AmerisourceBergen Drug Corp., Cardinal Health Inc., and McKesson Corporation to Plaintiff's Amended Complaint and Plaintiff's Response in Opposition, and Defendants' reply thereto, and review of the parties post-hearing submissions, it is hereby **ORDERED** and **DECREED** as follows;

On or about November 11, 2018, the Commonwealth of Pennsylvania, acting by and through Philadelphia District Attorney Lawrence S. Krasner amended their complaint to name as Defendants' three wholesale Distributors of pharmaceutical drugs; AmerisourceBergen Drug Corp., Cardinal Health Inc., and McKesson Corporation (the "Distributor Defendants") who allegedly created and enabled a field for a secondary market for prescription opioids by failing to effectively control the distribution of opioids while publicly misrepresenting their efforts to identify, block, and report suspicious orders of prescription opioids. This Order addresses the Distributors' Preliminary Objections.

LEGAL STANDARD

Pennsylvania is a fact-pleading jurisdiction and, therefore, a complaint must provide notice of the nature of the Plaintiff's claims and also summarize the facts upon which the claims are based. *Youndt v. First Nat'l Bank of Port Allegany*, 868 A.2d 539, 544 (Pa. Super. Ct. 2005). The material facts on which the cause of action is based should be "stated in a concise and summary form." Pa. R.C.P. 1019(a). But, "there is no requirement to plead the evidence upon which the pleader will rely to establish those facts." *Commonwealth ex rel. Shapiro v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1029 (Pa. 2018) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963)). "Averments of fraud or mistake shall be averred with particularity," while "[m]alice, intent, knowledge, and other conditions of mind may be averred generally." Pa. R.C.P. 1019(b). The purpose of a complaint is to disclose material facts sufficient to notify the adverse party of the claims it will have to defend against. *See Martin v. Lancaster*

Battery Co., 606 A.2d 444, 448 (Pa. 1992); *Landau v. W. Pa. Nat'l Bank*, 282 A.2d 335, 339 (Pa. 1971). To determine whether a claim has been pled with the required specificity, the allegations must be viewed in the context of the pleading as a whole. See *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. Ct. 2002) (en banc).

When considering preliminary objections, courts must accept as true all well pleaded allegations and any reasonable inferences drawn from those allegations. See *Bayada Nurses, Inc. v. Commonwealth, Dep't of Labor & Indus.*, 8 A.3d 866, 884 (Pa. 2010). The question presented by a demurrer "is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it." *Vattimo v. Lower Bucks Hosp., Inc.*, 465 A.2d 1231, 1232-33 (Pa. 1983) (citation omitted).

The Commonwealth of Pennsylvania, acting by and through the Philadelphia District Attorney Lawrence A. Krasner filed this action pursuant to his statutory authority under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, et seq. ("UTPCPL") against Manufacturer Defendants and Distributor Defendants, alleging that their violations of the UTPCPL contributed to the opioid crisis in the City of Philadelphia and nationwide. AC ¶¶ 18-20. The Commonwealth seeks injunctive relief, civil penalties and restoration/restitution. AC ¶¶ 483, 487-92. The Amended Complaint contains a single count against all defendants under the UTPCPL. AC ¶¶ 470-92.

FINDINGS AND CONCLUSIONS

1. The Case Management Order No.1 in these coordinated proceedings ordered that the Commonwealth of Pennsylvania, acting by and through Philadelphia District Attorney Lawrence S. Krasner, be one of four "test cases" for Preliminary Objections and included Delaware County, Carbon County, (two counties/municipal plaintiffs) and the Carpenters Health and Welfare Fund of Pennsylvania as additional test cases. This Court has recently entered Scheduling Orders for the three (3) other test cases.
2. The Amended Complaint sufficiently puts all Defendants on Notice of the nature of all claims against them and summarizes the facts upon which these claims are based.
3. The Plaintiff sufficiently pleads the capacity to bring this suit and the Amended Complaint sufficiently pleads potential liability for the part of each of the Distributor Defendants.
4. The Amended Complaint sufficiently pleads and provides the Defendants notice of allegations of false and deceptive statements, conduct, deceptive acts and practices.
5. The Commonwealth sufficiently alleges that as of a direct result of the foregoing acts and practices, for the alleged violation of the Pennsylvania Uniform Trade Practices and Consumer Protection Law (UTPCPL), the Distributor Defendants have caused the public agencies represented by the Plaintiff to incur and continue to incur costs and expenses related to the purchase and use of opioids and the consequences of dealing with the opioid epidemic.
6. Subject to proof, the Amended Complaint sufficiently avers that misrepresentations, deception, conduct, and alleged false statements sufficiently states a Pennsylvania Uniform Trade Practices and Consumer Protection Law (UTPCPL) claim.
7. The Commonwealth sufficiently pleads Pennsylvania Uniform Trade Practices and Consumer Protection Law (UTPCPL) violations and pleads actionable statements, conduct, acts, and practices.

8. As to the Defendants' alleging that the Plaintiff has failed to plead proximate cause and causation is not alleged, this Court finds the pleaded allegations are more than sufficient at this stage and causation remains a question of fact for the fact finder and should not be resolved at the Preliminary Objection stage.
9. This Court also notes that when the Commonwealth brings a public law enforcement action under the UTPCPL, it is not required to allege proximate causation. Subsection 4 of the UTPCPL, 73 P.S. § 201-4, which provides the Commonwealth the right to bring this action, as follows:

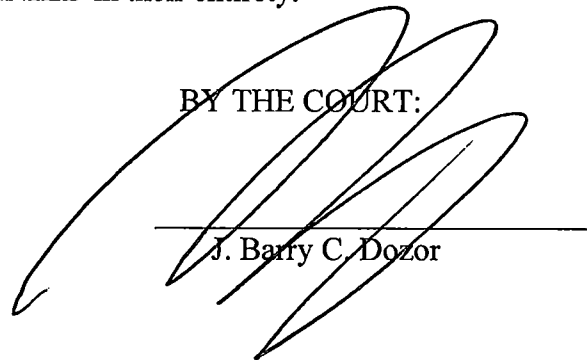
Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by Section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

The plain language of this Subsection contains no requirement that the Attorney General or District Attorney plead proximate cause. Similarly, Subsection 8(b) of the UTPCPL, 73 P.S. § 201-8(b), which provides the Commonwealth the right to seek civil penalties, provides that if the Court finds that a defendant willfully used "a method, act or practice declared unlawful by section 3" the Commonwealth may recover civil penalties not exceeding \$1,000 per violation in addition to other relief that may be granted under sections 4 and 4.1. Again, the plain language of this Subsection contains no requirement that the Attorney General or District Attorney plead or prove proximate cause in order to establish their right to relief.

10. Subject to this Court's review of any Motions in Limine that may or may not be filed prior to trial, and upon completion of discovery, the Court reserves decision on the immunity of Congressional testimony, or and whether the Noerr-Pennington Doctrine precludes the Plaintiff from relying on legislative testimony by Distributor executives.
11. Subject to this Court's review of any Motions in Limine that may or may not be filed prior to trial, and upon completion of discovery, the Court reserves decision of Defendants' claim that the Learned Intermediary Doctrine bars the Commonwealth's claims. Preliminarily this Court finds the doctrine does not apply because the Commonwealth has not alleged that the Defendants failed to warn of the risks of their opioid products; instead, it alleges that the Defendants affirmatively misrepresented the risks and benefits of using the opioid products for chronic pain.
12. Subject to discovery and evidence presented, the Distributor Defendants' alleged misrepresentation statements are actionable under UTPCPL and not mere "puffery," and are events at issue for the fact finder to determine, thus Preliminary Objections referring thereto fail.
13. Assuming discovery and evidence presented collaborates the Commonwealth's UTPCPL claims for relief, the Commonwealth, acting by and through Philadelphia District Attorney, may recover the remedies it seeks, and the Preliminary Objections referring thereto fail.

For the foregoing reasons and the reasons set forth above the Distributor Defendants' AmerisourceBergen Drug Corp., Cardinal Health Inc., and McKesson Corporation Preliminary Objections to the Amended Complaint are **DENIED** in their entirety.

BY THE COURT:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

J. Barry C. Dozor