

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: December 20, 2019)

STATE OF RHODE ISLAND, :
by and through, :
PETER NERONHA, :
Attorney General :
Plaintiff, :

v. : C.A. NO. PC-2018-4555

PURDUE PHARMA L.P.; PURDUE PHARMA INC.; :
THE PURDUE FREDERICK COMPANY, INC.; :
RHODES PHARMACEUTICALS L.P.; RHODES :
TECHNOLOGIES; RHODES TECHNOLOGIES :
INC.; RICHARD S. SACKLER; :
TEVA PHARMACEUTICALS USA, INC.; :
CEPHALON, INC.; MALLINCKRODT PLC; :
MALLINCKRODT, LLC; SPECGX, LLC; :
CARDINAL HEALTH, INC.; MCKESSON :
CORPORATION d/b/a MCKESSON DRUG :
COMPANY; and AMERISOURCEBERGEN DRUG :
CORPORATION, :
Defendants. :

DECISION

GIBNEY, P.J. Before this Court is the State’s Motion for Leave to File a Second Amended Complaint (Motion). The State seeks to amend the Complaint to add eleven new defendants, all generic opioid manufacturers who are subsidiaries of defendants Teva Pharmaceuticals USA, Inc. (Teva) and Cephalon, Inc. (Cephalon). The State also seeks to amend the Complaint to reflect the selection of Peter F. Neronha as Rhode Island Attorney General.

Rule 15(a) of the Rhode Island Superior Court Rules of Civil Procedure permits a party to “amend the party’s pleading once as a matter of course” prior to responsive pleadings, and

thereafter, the party “may amend [its] pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Super. R. Civ. P. 15(a). The Rhode Island Supreme Court has made clear that Rule 15(a) “liberally permits amendment absent a showing of extreme prejudice.” *Weybosset Hill Investments, LLC v. Rossi*, 857 A.2d 231, 236 (R.I. 2004) (quoting *Granoff Realty II, LP v. Rossi*, 823 A.2d 296, 298 (R.I. 2003) (*per curiam*)). Therefore, “leave to amend should be denied only when the nonmoving party can establish that it would be unduly prejudiced by the amendment.” *Id.*

The State seeks to include eleven new defendants to their action against manufacturers and distributors of opioids. Specifically, the State seeks to add defendants Watson Laboratories, Inc., Warner Chilcott Company LLC, Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.), Actavis South Atlantic LLC, Actavis Elizabeth LLC, Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis LLC, Actavis Kadian LLC, Actavis Laboratories UT, Inc. (f/k/a Watson Laboratories, Inc.—Salt Lake City), and Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc.—Florida). All eleven entities are subsidiaries of Teva Pharmaceuticals International Ltd., the parent company of Teva and Cephalon. The eleven new defendants were sold to Teva in 2016. The State further seeks to amend the Complaint to include current Rhode Island Attorney General Peter F. Neronha, who assumed office at the start of 2019.

In opposing the State’s Motion, Teva and Cephalon argue that granting the State’s Motion would cause them prejudice in the form of undue delay. Teva and Cephalon further contend that it would be futile to grant the State’s Motion because the State’s new claims are defective. While our Supreme Court has affirmed a trial court justice’s denial of a Motion to Amend based on “the lateness of [the party’s] motion, its proximity to trial, and the significant work [the non-moving party] would have needed to undertake to prepare for the new legal issue,” the Court finds those

issues are not present in the instant Motion. *Weybosset Hill Investments*, 857 A.2d at 237 (quoting *Granoff Realty*, 823 A.2d at 298). There is no trial date set for this action, and factual discovery is ongoing; therefore, Defendants have ample time to respond to the additional counts in the newly amended Complaint and are not unduly prejudiced by the timing of the State’s Motion.

Likewise, while “futility of the amendment . . . [may] warrant the denial of a motion to amend,” the Court does not find futility in the present amended Complaint. *IDC Properties, Inc. v. Goat Island South Condominium Association, Inc.*, 128 A.3d 383, 393 (R.I. 2015) (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962)). The State alleges that Teva manufactures generic opioids, that the eleven new defendants are included in the large amount of Teva’s opioid sale through their manufacture of generic opioids, and that “Teva’s misrepresentations concerning opioids as a class benefitted its sales of both branded and generic opioids.” *See* State’s Second Am. Compl. at ¶¶ 35-47; 203. Thus, the State alleges that the eleven new defendants contributed to Teva’s opioid manufacture and sale, and it is not clear that these claims are futile prior to factual discovery relevant to these new defendants.

For the foregoing reasons, this Court grants the State’s Motion for Leave to File a Second Amended Complaint. Counsel should prepare the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Purdue Pharma L.P., et al.

CASE NO: PC-2018-4555

COURT: Providence County Superior Court

DATE DECISION FILED: December 20, 2019

JUSTICE/MAGISTRATE: Gibney, P.J.

ATTORNEYS:

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For Defendant: See attached

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