Case Number: PC-2023-02652
Filed in Providence/Bristol County Superior Court
Submitted: 10/11/2023 3:07 PM
Envelope: 4319058
Reviewer: Carol M.

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND, PETER F. NERONHA, in his capacity as Attorney General of the STATE OF RHODE ISLAND; and DR. UTPALA BANDY, in her capacity as Interim Director, RHODE ISLAND DEPARTMENT OF HEALTH, Plaintiffs,	)	
v.	)	C.A. No.: PC-2023-02652
PIONEER INVESTMENTS, L.L.C., ANURAG SUREKA Defendants	)	

DEFENDANTS PIONEER INVESTMENTS, L.L.C. AND ANURAG SUREKA'S MOTION TO DISMISS COUNTS I, II, IV, V, AND VI OF PLAINTIFFS' COMPLAINT

NOW COME the Defendants, Pioneer Investments, L.L.C. and Anurag Sureka, and hereby move this Honorable Court, pursuant to Superior Court Rule of Civil Procedure 12(b)(1) and 12(b)(6), to dismiss Count I (public nuisance), Count II (violations of the Lead Hazard Mitigation Act), Count IV (violations of the Residential Landlord and Tenant Act), Count V (Violations of the Rhode Island Property Maintenance Code & Housing Maintenance and Occupancy Code), and Count VI (Violations of the Deceptive Trade Practices Act) of the Complaint, for failure to state claims upon which relief may be granted, for lack of standing, and/or for lack of subject-matter jurisdiction. Defendants assert that they are entitled to this relief under Rhode Island law for the reasons set forth in the memorandum of law included herein.

FACTS ALLEGED IN THE COMPLAINT

The Plaintiffs—State of Rhode Island, the Attorney General, and the interim Director of the Rhode Island Department of Health ("the Director") (collectively, "the State" or "Plaintiffs")—have filed a 40-page Complaint, consisting of 163 numbered allegations. The bulk of the allegations in the Complaint consist of broad facts about the dangers of lead paint, descriptions of certain lead-related statutes in Rhode Island, and vague and conclusory allegations regarding the Defendants, but there are few details of specific acts or omissions of the Defendants. The Complaint generally asserts that Defendants, owners of numerous residential rental properties in Rhode Island, have not complied with certain "lead hazard laws, landlord-tenant laws, and housing code regulations," and have "engage[d] in unfair and deceptive trade practices." Plaintiffs' Complaint ("Compl."), ¶ 1. Plaintiffs claim that these alleged violations "pose risks to the health, safety, and livability of the public at large," id., ¶ 4, and that "[f]rom 2019 to the present, at least 5 children were lead poisoned while residing in Pioneer's properties." Id., ¶ 10. The Complaint does not identify any particular properties or allegedly harmed individuals.

LEGAL STANDARD

In assessing a motion to dismiss for failure to state a claim, the Court "examines the allegations contained in the plaintiff's complaint, assumes them to be true, and views them in the light most favorable to the plaintiff." Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009) (quoting Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008)). "Because 'the sole function of a motion to dismiss is to test the sufficiency of the complaint,' [the Court's] review is confined to the four corners of that pleading." Id. (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). "The grant of a Rule 12(b)(6) motion to dismiss is appropriate when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under

any set of facts that could be proven in support of the plaintiff's claim." Id. (quoting Palazzo, 944 A.2d at 149-50).

"A motion under Rule 12(b)(1) questions a court's authority to adjudicate a particular controversy before it." Jenkins v. City of E. Providence, 293 A.3d 1267, 1270 (R.I. 2023) (quoting Barnes v. R.I. Pub. Transit Auth., 242 A.3d 32, 36 (R.I. 2020)). The Rhode Island Supreme Court has stated that "subject matter jurisdiction is 'an indispensable ingredient of any judicial proceeding[.]'" Marzett v. Letendre, 246 A.3d 388, 389-90 (R.I. 2021) (quoting Sidell v. Sidell, 18 A.3d 499, 504 (R.I. 2011)).

DISCUSSION

I. Count I Must Be Dismissed Because The Presence of Lead Paint in Private Homes Is Not A Public Nuisance.

In 2008, the Rhode Island Supreme Court squarely determined that the presence of lead paint does not constitute a public nuisance. State v. Lead Indus. Ass'n, Inc., 951 A.2d 428, 452-55 (R.I. 2008). They arrived at this conclusion after conducting an exhaustive analysis of the history of public nuisance at common law and in this state, and surveying how other states have applied public nuisance law to lead paint cases. Id. at 443-52. The Court's analysis focused on two main deficiencies in the State's public nuisance claim against lead paint manufacturers: (1) there was no interference with a *public* right—"those indivisible resources shared by the public at large, such as air, water, or public rights of way," id. at 453, and (2) the manufacturers were not in control of the lead paint at the time it caused harm. Id. at 455. The issue of control may not apply to the circumstances of this matter, as Defendants allegedly own the properties where harm allegedly occurred. But the issue of whether lead paint in private residences implicates a "public right" for purposes of a public nuisance claim remains settled law and applies with the same force in this matter as it did in Lead Indus. Ass'n. The Court was very clear: the State's assertion "that

the public's right to be free from the hazards of unabated lead had been infringed . . . falls far short of alleging an interference with a public right as that term traditionally has been understood in the law of public nuisance." Id. at 453. In arguing otherwise in this case, Plaintiffs casually disregard "one of the highest profile decisions ever to come out of the State of Rhode Island." Matthew Watson, State v. Lead Industries Association, Inc., 951 A.2d 428 (R.I. 2008), 14 Roger Williams U. L. Rev. 509, 520-21 (2009).

Count I of the Complaint alleges that "[b]y depriving Rhode Island communities of lead-safe rental housing through their refusal to obtain lead safe certifications on their sizable portfolio of rental units, Pioneer is causing and contributing to a public nuisance and exacerbating safety risks to their consumer-tenants." Compl. ¶ 7. Plaintiffs also allege that "Pioneer has harmed the Rhode Island public by failing to maintain their properties, allowing them to continue to pose risks to the health, safety, and livability of the public at large. Pioneer's failure to obtain or maintain lead-safe certifications exacerbates the already-significant public health concern of lead poisoning by risking their hundreds of consumer-tenants' potential unwitting poisoning." Compl. ¶ 4.

"A public nuisance is an unreasonable interference with a right common to the general public: it is behavior that unreasonably interferes with the health, safety, peace, comfort or convenience of the general community." Citizens for Pres. of Waterman Lake v. Davis, 420 A.2d 53, 59 (R.I. 1980) (citing Copart Indus., Inc. v. Consol. Edison Co. of N.Y., 362 N.E.2d 968, 971 (N.Y. 1977)). "Put another way, 'public nuisance is an act or omission which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all.'" Lead Indus. Ass'n, 951 A.2d at 446 (quoting Iafrate v. Ramsden, 190 A.2d 473, 476 (R.I. 1963)). Therefore, "under Rhode Island law, a complaint for public nuisance minimally must allege: (1) an unreasonable interference; (2) with a right common to the general public; (3) by a person or people

with control over the instrumentality alleged to have created the nuisance when the damage occurred; and (4) causation." Id. at 452-53.

Count I – public nuisance – must be dismissed because Attorney General has failed to allege an interference with any "right common to the general public." This is fatal to the Attorney General's public nuisance claim, because "[t]he interference with a public right [is] the *sine qua non* of a cause of action for public nuisance." Id. at 447 (quoting 58 Am. Jur. 2d Nuisances § 39 at 598-99 (2002)). The Rhode Island Supreme Court "has emphasized the requirement that 'the nuisance must affect an interest *common to the general public*, rather than peculiar to one individual, or several.'" Id. (emphasis added). "[A] public right is more than an aggregate of private rights by a large number of injured people." Id. at 448 (citing Restatement (Second) Torts § 821B, cmt. g at 92). "Rather, a public right is the right to a public good, such as 'an indivisible resource shared by the public at large, like air, water, or public rights of way.'" Id. (quoting City of Chi. v. Am. Cyanamid Co., 823 N.E.2d 126, 131 (Ill. App. Ct. 2005)). "The interference must deprive *all members of the community* of a right to some resource to which they otherwise are entitled." Id. at 453 (citing Restatement (Second) Torts § 821B, cmt. g at 92) (emphasis added). "Otherwise, every claim involving harm to a group of individuals could be brought on a public nuisance theory thereby negating the principle that tort liability, generally, is based on fault." Arriaga v. New Eng. Gas Co., 483 F. Supp. 2d 177, 186 (D.R.I. 2007). The Court in Lead Indus. Ass'n quoted an example from the Restatement that makes clear the distinction between interference with an "aggregate of private rights" and an indivisible, common resource:

> A public right is *one common to all members of the general public*. It is collective in nature and not like the individual right that everyone has not to be assaulted or defamed or defrauded or negligently injured. Thus the pollution of a stream that merely deprives fifty or a hundred lower riparian owners of the use of the water for purposes connected with their land does not for that reason alone become a public nuisance. If, however, the pollution prevents the use of a public bathing beach or

> kills the fish in a navigable stream and so deprives all members of the community of the right to fish, it becomes a public nuisance.

Lead Indus. Ass'n, 951 A.2d at 448 (quoting Restatement (Second) Torts § 821B, cmt. g at 92) (emphasis added by the Court in its decision). Compare id. (hazard posed by presence of lead paint in private homes was not common to the general public), with Friends of Sakonnet v. Dutra, 738 F. Supp. 623, 635-36 (D.R.I. 1990) (discharge of raw sewage into a river as a result of a failure of private septic system, causing closure of part of river to shellfishing, was a public nuisance).

At best, the Attorney General has alleged an "aggregate of private rights" rather than "an indivisible resource shared by the public at large." As was the case in Lead Indus. Ass'n, when the Attorney General alleged public nuisance against manufacturers of lead paint, "[a]bsent from the state's complaint is any allegation that defendants have interfered with a public right as that term long has been understood in the law of public nuisance." Id. at 453. Defendants' tenants are far more akin to the "fifty or a hundred lower riparian owners" whose individual properties were affected by pollution, than "all members of the community" who were deprived of a common fishing or bathing resource. As serious as the Attorney General's allegations may be, he has not alleged an interference with a public, indivisible resource "like air, water, or public rights of way." Id. (quoting Am. Cyanamid Co., 823 N.E.2d at 131); see also Arriaga, 483 F. Supp. 2d at 186-87 (mercury contamination at an apartment complex, which contaminated apartments and nearby residences where mercury apparently had been tracked, did not interfere with a right common to the general public).

Returning to the Attorney General's theory that "Pioneer has harmed the Rhode Island public by failing to maintain their properties, allowing them to continue to pose risks to the health, safety, and livability of the public at large" and that "Pioneer's failure to obtain or maintain lead-safe certifications exacerbates the already-significant public health concern of lead poisoning by

risking their hundreds of consumer-tenants' potential unwitting poisoning[,]" the Rhode Island Supreme Court squarely foreclosed this argument in Lead Indus. Ass'n: "Although the state asserts that the public's right to be free from the hazards of unabated lead had been infringed, this contention falls far short of alleging an interference with a public right as that term traditionally has been understood in the law of public nuisance. The state's allegation that defendants have interfered with the 'health, safety, peace, comfort or convenience of the residents of the [s]tate' standing alone does not constitute an allegation of interference with a public right." Id. at 453 (citing City of Chi. v. Beretta U.S.A. Corp., 821 N.E.2d 1099, 1114 (Ill. 2004)). Importantly, the Court emphasized the difference between a "public right" and the "public interest":

> That which might benefit (or harm) 'the public interest' is a far broader category than that which actually violates 'a public right.' For example, while promoting the economy may be in the public interest, there is no public right to a certain standard of living (or even a private right to hold a job). Similarly, while it is in the public interest to promote the health and well-being of citizens generally, *there is no common law public right to a certain standard of medical care or housing*.

Id. at 448 (citing Donald G. Gifford, Public Nuisance as a Mass Products Liability Tort, 71 U. Cin. L. Rev. 741, 815 (2003)) (emphasis added).

A faithful application of our state Supreme Court's landmark holding in Lead Indus. Ass'n requires that the Attorney General's public nuisance claim be dismissed for failing to allege an interference with a right common to the general public—an "element[] that [is] essential to establish public nuisance." Id. at 446.

II. Count IV Must Be Dismissed Because This Court Lacks Subject-Matter Jurisdiction and Plaintiffs Lack Standing to Bring Claims Under the Residential Landlord and Tenant Act.

Count IV of the Plaintiffs' Complaint alleges violations of the Residential Landlord and Tenant Act ("RLTA"). This count is fatally flawed for at least two reasons: (1) this Court lacks

original subject-matter jurisdiction to hear claims under the RLTA; and (2) the Plaintiffs lack standing to bring any such claim.

a. Subject-Matter Jurisdiction

Claims under the RLTA cannot be brought in Superior Court except on appeal from the District Court or local housing court. The R.I. Supreme Court recently made clear that R.I. Gen. Laws §§ 8-8-3 and 34-18-9 mandate that any claims under the RLTA should be "originally filed in the District Court." Marzett, 246 A.3d at 390. The Superior Court, as a "trial court of general jurisdiction," "is granted subject-matter jurisdiction over all cases *unless that jurisdiction has been conferred by statute upon another tribunal*." Dunn's Corners Fire Dist. v. Westerly Ambulance Corps, 184 A.3d 230, 234 (R.I. 2018) (quoting Chase v. Bouchard, 671 A.2d 794, 796 (R.I. 1996)) (emphasis added). The section of the RLTA entitled "Jurisdiction," § 34-18-9, states: "The *district or appropriate housing court* of this state shall exercise jurisdiction in both law and equity over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter." (emphasis added). Only after a judgment has been rendered by the "district or other appropriate court" may an aggrieved party make a claim of appeal in the Superior Court. § 9-12-10.1. There is no provision giving the Superior Court concurrent original jurisdiction over RLTA claims. Section 8-8-3 states that "[t]he district court shall have *exclusive* original jurisdiction of . . . [a]ll actions between landlords and tenants pursuant to chapter 18 of title 34."[1] (emphasis added). Because both § 8-8-3 and § 34-18-9 clearly confer jurisdiction over Residential Landlord and Tenant Act claims "upon another tribunal," the Superior Court lacks subject-matter jurisdiction to hear Count IV of the Complaint in the first instance. Dunn's Corners Fire District, 184 A.3d at 234.

[1] For reasons explained in the following subsection, only landlords and tenants have standing to bring any claims under the RLTA.

b. Standing

Aside from the Superior Court lacking subject-matter jurisdiction, Plaintiffs' Count IV is also fatally defective in that none of the Plaintiffs have standing to bring an action against Defendants under the RLTA. "Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit." Johnston Equities Assocs., LP v. Town of Johnston, 277 A.3d 716, 733 (R.I. 2022) (quoting Cruz v. Mortg. Elec. Registration Sys., Inc., 108 A.3d 992, 996 (R.I. 2015)). "When dealing with the issue of standing, 'the court must focus on the party who is advancing the claim rather than on the issue the party seeks to advance.'" Id. (quoting N & M Props., LLC v. Town of W. Warwick ex rel. Moore, 964 A.2d 1141, 1145 (R.I. 2009)). "The inquiry of whether a party has standing 'begins with the pivotal question of whether the party alleges that the challenged action has caused him or her injury in fact.'" Id. (quoting Cruz, 108 A.3d at 996). "An injury in fact must be 'an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.'" Id. (quoting Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997)).

The RLTA "applies to, regulates and determines rights, obligations, and remedies *under a rental agreement*, wherever made, for a dwelling unit located within this state." R.I. Gen. Laws § 34-18-7 (entitled "Application") (emphasis added). A rental agreement is a contract. "[I]n general, strangers to a contract lack standing to . . . assert rights under that contract[.]" Mruk v. Mortg. Elec. Registration Sys., Inc., 82 A.3d 527, 536 (R.I. 2013) (citing DePetrillo v. Belo Holdings, Inc., 45 A.3d 485, 492 (R.I. 2012)). Moreover, Plaintiffs have not asserted (and could not reasonably assert) that they enjoy standing as a third-party beneficiary of any rental agreement that Defendants are parties to. See Hexagon Holdings, Inc. v. Carlisle Syntec Inc., 199 A.3d 1034, 1039 (R.I. 2019) ("In order to prevail on a contract claim as a third-party beneficiary, the claimant

must prove that he or she is an intended beneficiary of the contract." (quoting Glassie v. Doucette, 157 A.3d 1092, 1097 (R.I. 2017))).

Relief under the RLTA is also explicitly limited to "aggrieved parties." Section 34-18-5, entitled "Administration of remedies—Enforcement," says that "[t]he remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages and injunctive relief . . . ." The RLTA is designed to allow aggrieved tenants and aggrieved landlords to privately enforce provisions of the Act, or of the applicable lease, by filing a civil action. The Plaintiffs in this matter cannot be "aggrieved parties" for purposes of establishing their standing, because they are not a party to any lease agreement with Defendants; nor have they suffered any "injury in fact" that is "concrete and particularized." Johnston Equities Assocs., LP, 277 A.3d at 733.

The only mentions of "attorney general" or "department of health" in the Act are found in § 34-18-58, a brand-new section which was not in effect at the time this Complaint was filed. The authority of the Attorney General or Department of Health under this section, which is effective June 20, 2023, is limited to seeking civil penalties (fines) or injunctive relief against landlords who fail to comply with this section's reporting and registration requirements.[2] Other than the limited powers granted to the Attorney General and Department of Health by § 34-18-58, the Act does not give any agency or government entity or officer any power to bring an action against a tenant or landlord to enforce provisions of the Act. Cf. O'Neil v. Code Comm'n for Occupational Safety and Health, 534 A.2d 606, 607-08 (R.I. 1987) (Attorney General may not be considered an

[2] However, landlords subject to this statute's reporting requirements are not required to register the required information until October 1, 2024. § 34-18-58(d). Also, "[n]o penalties shall be levied under this section prior to October 1, 2024." § 34-18-58(f). It is therefore clear that this new statute does not apply retroactively. See State v. Briggs, 58 A.3d 164, 168 (R.I. 2013) ("This Court repeatedly has held that 'statutes will be given prospective application unless otherwise provided.'" (quoting In re Alicia S., 763 A.2d 643, 646 (R.I. 2000))).

"aggrieved person" with power to *sua sponte* initiate civil action alleging violation of the Open Meetings Law). And the fact that § 34-18-58 speaks so explicitly about the enforcement powers granted to the Attorney General and Department of Health stands in stark contrast with the rest of the Act, which contains no similar language.[3]

III. Count V Must Be Dismissed Because the Court Lacks Subject-Matter Jurisdiction, Plaintiffs Have No Standing, and Plaintiffs Have Not Alleged That Applicable Enforcement Procedures Were Followed.

a. The Superior Court Lacks Subject-Matter Jurisdiction to Hear Violations Under the Housing Maintenance and Occupancy Code or Property Maintenance Code.

Plaintiffs, in Count V, allege that Defendants have violated the Housing Maintenance and Occupancy Code, R.I. Gen. Laws § 45-24.3-1 *et seq*. ("HMOC") and the Property Maintenance Code, 510 RICR-00-00-6.1 *et seq.* ("PMC"). This count must be dismissed for the same fundamental reason that Count IV, regarding the RLTA must be dismissed: the Superior Court lacks subject-matter jurisdiction to hear violations under the HMOC or PMC.

With respect to the HMOC, according to R.I. Gen. Laws § 8-8-3(a)(4), "[t]he district court shall have *exclusive original jurisdiction* of: . . . [a]ll violations of minimum housing standards . . . established by chapter 24.3 of title 45 . . . ." (emphasis added). The only exception is that a municipal court, if established by Providence or North Providence "for the purpose of exercising jurisdiction over violations of minimum housing standards," shall have exclusive original jurisdiction over such violations in those municipalities. Id. Section 45-24.3-18 of the HMOC likewise states that "[t]he district court has exclusive original jurisdiction of all these violations as provided in § 12-3-1."

[3] For reasons stated in Section VI below, the Attorney General also cannot assert *parens patriae* standing in this action.

The Superior Court likewise lacks jurisdiction to hear violations under the PMC. The PMC is a regulatory code which falls under the broader umbrella of the State Building Code ("SBC"), enacted by the State Building Code Standards Committee pursuant to R.I. Gen. Laws § 23-27.3-100.0 *et seq.* See § 23-27.3-109.1 ("The committee is empowered to adopt codes and standards . . . which shall, in general, conform with nationally reorganized . . . model property maintenance codes[.]"). The PMC consists of the incorporated-by-reference "provisions of the International Property Maintenance Code, 2018 edition, as published by the International Code Council, Inc. (ICC)" ("IPMC"), subject to certain amendments spelled out in the PMC regulation itself. 510-RICR-00-00-6.1.[4]

The PMC, through the IPMC and the PMC's amendments thereto, contains its own comprehensive enforcement procedure which does not involve the Superior Court at any step. Enforcement starts with the locally-appointed[5] "enforcing officer"[6] issuing a notice of violation containing a correction order allowing a reasonable time to make the repairs necessary to bring the structure into compliance with the PMC. IPMC § 106.2, 107.1, 107.2. The *enforcing officer* (presumably only after that "reasonable time" has passed) is empowered to enforce the notice by "institut[ing] the appropriate proceeding at law or equity to restrain, correct or abate such

[4] The IPMC 2018 edition can be viewed online at https://codes.iccsafe.org/content/IPMC2018.
[5] "The appropriate local authority shall appoint an officer to administer the code." R.I. Gen. Laws § 23-27.3-107.1.
[6] The terminology for this official is slightly different across the SBC, IPMC, and the PMC's provisions amending the IPMC, but a sensible reading of these sections together forces the conclusion that they describe the same person, a locally-appointed official who is responsible for enforcing the PMC. Compare SBC, R.I. Gen. Laws § 23-27.3-108.1 ("The building official shall enforce all the provisions of this code and any other applicable state statutes, rules, and regulations, or municipal ordinances . . . relative to the . . . maintenance of all buildings and structures[.]"), with IPMC § 202 (defining "code official" as "[t]he official who is charged with the administration and enforcement of this code, or any duly authorized representative"), and PMC, 510-RICR-00-00-6.4 (amending IMPC § 202 and defining "enforcing officer" as "the official charged with the administration and enforcement of this Chapter, or the officials [sic] authorized representative"). Furthermore, the HMOC uses the term "enforcing officer," with the same definition used in the PMC. R.I. Gen. Laws § 45-24.3-5(12). For consistency, in this Motion we will use the term "enforcing officer" when discussing provisions of the SBC, IPMC, PMC, or HMOC.

violation[.]" IPMC § 106.4. The property owner may appeal the notice to the local "housing board of review." 510-RICR-00-00-6.3, § 111.1.1. The PMC only provides for "court proceedings" in the District Court, "instituted in the name of any of the several cities or towns," with the option for any aggrieved party to petition the Supreme Court for a writ of certiorari. 510-RICR-00-00-6.3, §§ 111.2.1, 111.3 ("All proceedings instituted in the names of the several cities and towns are exempt from the payment of the *district court* filing fees. Any person or persons jointly or severally aggrieved by the final judgment, decision, or order of the *district court* may seek review by the supreme court in accordance with R.I. Gen. Laws § 8-8-3.2(b).") (emphasis added). Furthermore, § 8-8-3(a)(4) vests the District Court (or a municipal court only in Providence or North Providence) with "exclusive original jurisdiction" over violations of the SBC. The bottom line is that the Superior Court plays no part in the enforcement or appeals process for violations under the PMC. As already stated, the Superior Court is a "trial court of general jurisdiction," "granted subject-matter jurisdiction over all cases unless that jurisdiction has been conferred by statute upon another tribunal." Dunn's Corners Fire District, 184 A.3d at 234. Because the District Court has exclusive original jurisdiction over violations under the HMOC and PMC, the Superior Court lacks subject-matter jurisdiction, and must dismiss Count V.

b. The Attorney General and Director of the Department of Health Have No Standing to Enforce the Housing Maintenance and Occupancy Code or Property Maintenance Code.

Count V must be dismissed for the additional reason that neither the Attorney General nor the Director have any enforcement authority under either the HMOC or the PMC, and therefore they lack standing to bring enforcement actions.

The "attorney general" is not mentioned anywhere in the HMOC, R.I. Gen. Laws § 45-24.3-1 *et seq.* The "department of health" is mentioned in five provisions in the HMOC which

merely reference Department of Health regulations but do not grant enforcement powers.[7] Rather, in creating the HMOC, the General Assembly provided detailed provisions delegating enforcement at the local level. See R.I. Gen. Laws § 45-24.3-5(8) (defining "corporate unit" as "a city or town, as the case may be, delegated with the powers to provide for the enforcement of this chapter"); § 45-24.3-16(a) ("The *local authority* is authorized to make, adopt, revise, and amend rules and regulations that it deems necessary for the carrying out of the purposes of this chapter.") (emphasis added).[8] Under the HMOC, it is not the Attorney General or the Director, but the locally-appointed housing "enforcing officer" who is charged with enforcing the HMOC. § 45-24.3-5(12). The enforcing officer has the powers to make inspections and prosecute violations. § 45-24.3-15(a), (i). It is up to the "local authority" to establish "enforcement agencies" "that may be required to enforce and administer the powers and duties authorized by" the HMOC, and also to create a local "housing board of review" to hear appeals of an enforcing officer's actions or decisions. § 45-24.3-16(b), (c).

Regarding the PMC, the "attorney general" is mentioned only once in the State Building Code statute (pursuant to which the PMC was promulgated), R.I. Gen. Laws § 23-27.3-100.0 *et seq.*, in a provision which states that "[t]he attorney general shall be informed of any failure of the appropriate local authority to appoint a local [enforcing officer] to enforce the code." § 23-27.3-107.3(b). As that provision suggests, enforcement of the PMC, and the larger SBC, is placed in the hands of a "local [enforcing officer]." Similar to the HMOC, the SBC and PMC empowers a

[7] Those five provisions are: R.I. Gen. Laws § 45-24.3-5(24) (defining "lead-based substances"); § 45-24.3-5(33) (defining "potential hazardous material"); § 45-24.3-10 (referring to RIDOH's definition of "lead-based substances"); § 45-24.3-10(4) (directing the local building official ("enforcing officer") to arrange lead inspections which conform to RIDOH regulations); § 45-24.3-10(5) (directing the local "enforcing officer" in appropriate circumstances to "identify necessary lead hazard reductions" pursuant to Department of Health regulations.).

[8] It is worth noting that the HMOC falls under Title 45 of Rhode Island General Laws, entitled "Towns and Cities."

local enforcing officer, appointed by the local authority, to issue notices of violation and where necessary, to bring actions in court in the name of the applicable city of town to enforce the PMC. R.I. Gen. Laws § 23-27.3-107.1; IPMC § 106.2, §106.4. The "department of health" is not mentioned anywhere in the SBC statute, and is only mentioned in the PMC in fleeting references to its regulations,[9] but it is not granted any enforcement authority.

The HMOC and PMC constitute "express statutory schemes" which vest enforcement powers specifically with a locally-appointed enforcing officer; there is no provision giving any other government official, including the Attorney General or the Director, enforcement authority under these codes.[10] Cf. Citizens for Pres. of Waterman Lake, 420 A.2d at 57 (because the "express statutory scheme" of the Fresh Water Wetlands Act vested all necessary enforcement powers in the director of the Department of Natural Resources, town lacked standing to initiate enforcement proceedings under the act); O'Neil, 534 A.2d at 607-08 (where the Legislature specifically limited recourse to the judicial branch to individual citizens under the Open Meetings Act, the Attorney General lacked standing to *sua sponte* initiate an enforcement action in Superior Court).

c. Plaintiffs Have Failed to Allege That Mandatory Enforcement Procedures in the HMCO and PMC Were Followed.

Even if the State can somehow surmount the constitutional deficiencies in Count V identified above, this count fails to state a claim because Plaintiffs have failed to allege that the detailed enforcement procedures in the HMOC or PMC have been followed in advance of bringing this enforcement action in court.

[9] See 510-RICR-00-00-6.4 (replacing IPMC § 201.3) (adopting same definitions of "lead-based substances" and "potential hazardous material" that are contained in the HMOC, R.I. Gen. Laws § 45-24.3-5).
[10] For reasons stated in Section VI below, the Attorney General also cannot assert *parens patriae* standing in this action.

To enforce a violation under the HMOC, the locally-appointed enforcing officer must issue a notice of violation, if she determines that a dwelling or structure violates the HMOC or local regulations established thereunder. R.I. Gen. Laws § 45-24.3-17(a). This will typically occur after the enforcing offer conducts an inspection in accordance with § 45-24.3-14 or -15. The notice must be in writing, identify the violation(s) and the dwelling, provide a reasonable time to correct the alleged violation, and be served upon the owner, occupant, operator, or agent of the dwelling by certified or registered mail. § 45-24.3-17(a). The enforcing officer then conducts a second inspection at the end of the period allowed for correction. § 45-24.3-17(d). If the alleged violation(s) has not been corrected, the enforcing officer will issue a "second notice of violation" which also constitutes an order requiring that the alleged violations be abated within a reasonable period of time, unless the owner petitions for a hearing before the housing board of review. § 45-24.3-17(e). Only if the owner does not appeal to the housing board of review, or if the owner receives an adverse final decision by the housing board of review, District Court, or Supreme Court (however far the owner pursues his appeal), is the owner then subject to the civil penalties described in § 45-24.3-18. § 45-24.3-17(g).

In the matter at hand, the Complaint does not allege that any of these steps prescribed by this express statutory scheme have been followed. The Complaint does not allege that any second notices of violation were issued and ignored. The closest the Complaint comes is where it alleges that "Pioneer properties have been subject to numerous code enforcement violations notices, which in some instances they have responded to in merely a superficial manner rather than substantively attempting to correct the hazards." Compl., ¶ 100. To say that unidentified properties have been "subject to" violations is not the same as alleging that written notices of violation, which adhered to the requirements of § 45-24.3-17(a), were properly served on Pioneer; that second inspections

were conducted; that *second* notices of violation were properly served on Pioneer; and that Pioneer nevertheless failed to abate the alleged violations after the reasonable amount of time provided.

The SBC (of which the PMC is one part) is enforced at the municipal level, by a "local building official" ("enforcing officer") appointed by "the appropriate local authority." R.I. Gen. Laws §§ 23-27.3-107.1, -108.1. The exact procedures for enforcing the State Building Code may vary from town to town, since the enforcing officer has authority "to formulate administrative procedures necessary to uniformly administer and enforce this code." § 23-27.3-108.1.6. Regarding enforcement of the PMC specifically, responsibility rests with the "code official" ("enforcing officer"). IPMC § 104.1. Similar to the HMOC, enforcing a suspected violation under the PMC starts with the enforcing officer issuing a "notice of violation" that must contain certain information, allow for a reasonable time to bring the alleged violation into compliance, and inform the owner of their right to appeal. IPMC §§ 106.2, 107.1, 107.2. The notice must be personally served, or sent by certified or first-class mail to the last known address of the owner (or owner's agent). IPMC § 107.3. "If the notice of violation is not complied with, the [*enforcing officer*] shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation . . . ." IPMC § 106.3 (emphasis in original). A property owner may contest a notice of violation by filing a petition with the local housing board of review. 510-RICR-00-00-6.3, § 111.1.1.[11] The housing board of review may grant or deny a hearing, and must inform the petitioner of its decision in writing. Id., § 111.1.3. If there is a hearing, the petitioner "shall be given an opportunity to show cause why the notice or order should be modified or withdrawn, or why the period of time permitted for compliance should be extended." Id., § 111.1.5. The housing board of review may "affirm, modify, or revoke the notice or order, and may grant an extension of

[11] Rhode Island has replaced Section 111 of the IPMC, dealing with appeals, in its entirety. See 510-RICR-00-00-6.3.

time, for the performance of any act required . . . ." Id., § 111.1.6. The PMC then provides for judicial review in the District Court, and then the Supreme Court by means of a petition for a writ of certiorari. Id., §§ 111.2, 111.3. Again, the Complaint does not allege that this procedure for enforcement by the local enforcing officer has taken place.

Furthermore, at least as applied to court proceedings filed by the enforcing official, the PMC dictates that such proceedings must be "instituted in the name of any of the several cities or towns." Id., § 111.2.1. The Complaint in this matter is not filed in the name of any town or city in Rhode Island.

Because the Complaint fails to allege that the mandatory enforcement procedures contained in the HMOC and the PMC have been followed, Count V should be dismissed for the additional reason that it fails to state a claim upon which relief may be granted.

IV. Count II Must be Dismissed Because Neither the Attorney General Nor The Director Have Standing to Enforce the Lead Hazard Mitigation Act.

Count II of the Complaint, alleging violations of the Lead Hazard Mitigation Act ("LHMA"), R.I. Gen. Laws § 42-128.1-1 *et seq.*, must be dismissed because neither the Attorney General nor the Director have any authority to enforce this law, and therefore, Plaintiffs lack standing to bring this claim. Furthermore, the Superior Court has no jurisdiction over enforcement of the LHMA through the procedures established in the HMOC and Minimum Housing Standards Act.

The LHMA provides for two methods of enforcement. First, the standards set forth in the LHMA are enforceable through the procedures established in the HMOC, R.I. Gen. Laws § 45-24.3.-1 *et seq.*, and in the Minimum Housing Standards Act, R.I. Gen. Laws § 45-24.2-1 *et seq.* ("MHSA"). § 42-128.1-11(a). Defendants hereby restate their arguments with respect to the deficiencies in Plaintiffs' claim under the HMOC (Count V). Plaintiffs' Complaint does not state

a valid claim for enforcement of the LHMA via the procedures of the HMOC for the same reasons stated in the previous section, addressing Plaintiffs' direct claim under the HMOC: (1) the Superior Court lacks subject-matter jurisdiction because exclusive original jurisdiction was granted to the District Court or municipal housing courts; (2) the HMOC does not provide the Attorney General or the Director with any enforcement powers; and (3) the Complaint fails to allege that the enforcement procedures, including proper notice and hearing requirements, were applied to Defendants' alleged violations. The Complaint fails to state a claim for enforcement of the LHMA via the procedures of the MHSA for precisely the same reasons: (1) the District Court and municipal housing courts, not the Superior Court, have subject matter jurisdiction over violations of minimum housing standards;[12] (2) the Attorney General and Director have no enforcement authority under the MHSA;[13] and (3) Plaintiffs do not allege in their Complaint that the enforcement procedures adopted by any particular town or city pursuant to this act were followed.[14]

[12] See R.I. Gen. Laws §§ 45-24.2-6 (providing for appeals of decisions of a housing board of review to the District Court); 45-24.2-7 (giving the District Court or municipal housing courts "exclusive original jurisdiction" of all minimum housing violations as provided in § 12-3-1); 45-24.2-8 (giving the District Court, "upon proceedings instituted in the name of any of the several cities or towns," power to "[r]estrain, prevent, enjoin, abate, or correct a violation"); 8-8-3(a)(4) (giving the District Court "exclusive original jurisdiction of . . . [a]ll violations of minimum housing standards . . . established by . . . any municipal ordinance, rule, or regulation passed pursuant to the authority granted either by chapter 24.2 of title 45 or by special act of the general assembly governing minimum housing standards").

[13] Instead, the power to enforce minimum housing standards violations rests with local enforcement agencies established by cities and towns. R.I. Gen. Laws § 45-24.2-4.

[14] The enforcement procedure for minimum housing standards violations under the MHSA is not spelled out as clearly as the procedure for violations under the HMOC or PMC. The MHSA largely leaves it to the individual towns and cities to pass "ordinances, rules, and regulations for the establishment and enforcement of minimum housing standards for dwellings," R.I. Gen. Laws § 45-24.2-3(a), and to establish their own departments or agencies to enforce such rules. § 45-24.2-4. At a minimum, the Minimum Housing Standards Act suggests that an "enforcing officer," who is the head of the enforcement agency established under § 45-24.2-4, should issue a "compliance order," and such order may be appealed to the housing board of review. §§ 44-24.2-2(d), 45-24.2-5(b)(2).

Second, the LHMA provides for a private right of action. Households which include an "at risk occupant" as defined by the LHMA have a "right of private action" to seek injunctive relief to enforce compliance with lead hazard mitigation standards. R.I. Gen. Laws § 42-128.1-10(b). But a private right of action does not encompass civil enforcement actions by the Attorney General or any other government agency. A "private right of action" is "[a]n individual's right to sue in a personal capacity to enforce a legal claim." Black's Law Dictionary (11th ed. 2019) ("Right of Action"). But there are no provisions which grant the Attorney General or the Director the authority to bring civil enforcement actions under the LHMA. See O'Neil, 534 A.2d at 607-08 (where the Legislature specifically limited recourse to the judicial branch to individual citizens under the Open Meetings Act, the Attorney General lacked standing to *sua sponte* initiate an action in Superior Court alleging violation of the act).

The LHMA does not purport to "establish rigorous, systematic enforcement of requirements for the reduction of lead hazards," which is among the purposes of the Lead Poisoning Prevention Act ("LPPA"). R.I. Gen. Laws § 23-24.6-3. Nor does it purport to grant the RIDOH or the Attorney General with any powers of enforcement, as does the LPPA. §§ 23-24.6-3, 23-24.6-23. The term "attorney general" is not mentioned in the LHMA. The "department of health" has a role in educating the public and reporting certain information to the legislature, but is not granted any enforcement authority.[15] Unlike the LPPA, the LHMA does not provide Plaintiffs with any standing to enforce its provisions.

[15] Under the LHMA, the RIDOH charged with reporting to the legislature on how many children are poisoned in two- or three-unit owner-occupied homes, which are exempt from the provisions of the LHMA. § 42-128.1-8. It also has a role in developing materials to educate the public about lead hazards and the rights and responsibilities of landlords and tenants. § 42-128.1-6. But it is given no enforcement authority.

V. Count VI Must Be Dismissed Because Tenants of the Defendants Are Not "Consumers" Under the Deceptive Trade Practices Act.

The Attorney General in Count VI of the Complaint alleges that Defendants have committed violations of the Deceptive Trade Practices Act ("DTPA").[16] To state a claim under the DTPA, "a plaintiff must establish that he or she is a consumer, and that defendant is committing or has committed an unfair or deceptive act while engaged in a business of trade or commerce." Kelley v. Cowesett Hills Assocs., 768 A.2d 425, 431 (R.I. 2001). In Kelley, the R.I. Supreme Court considered the applicability of the DTPA in the context of a landlord-tenant relationship. Plaintiff tenant claimed that defendant landlord violated the DTPA for failing to remediate asbestos in the kitchen floor of her rental unit. Id. In affirming summary judgment for the landlord, the Court was "satisfied that plaintiff is not a consumer entitled to protection under the Act." Id. Explaining further, the Court stated:

> The role of the respective parties in this case cannot reasonably be construed to establish a consumer/vendor relationship necessary to invoke the Act. Save for the lease, the parties did not enter into any contractual relationship concerning the repair of the floor. Kelley did not contract with Cowesett Hills for the work and no consideration was exchanged. *A tenant's request that his or her landlord make repairs to her apartment does not elevate the tenant to the status of a consumer entitled to a remedy under the Act*. Rather, a tenant may have an action for breach of the lease covenant if the work was negligently performed.

Id. (emphasis added). In the matter now before the Court, Plaintiffs raise similar claims under the same statute, except that instead of a landlord/tenant dispute over asbestos remediation, Plaintiffs raise claims involving late fees, lead disclosures, lead conformance certificates, maintenance, and the safety of properties, *inter alia*, all of which solely arise in the context of a landlord/tenant relationship. As such, these claims are governed by the RLTA and the District Court has exclusive original jurisdiction to hear and adjudicate these claims.

[16] Also known as the "Unfair Trade Practice and Consumer Protection Act." R.I. Gen. Laws 6-13.1-11.

In the Complaint, Plaintiffs repeatedly refer to Defendants' tenants as consumers. However, Plaintiffs' complaint does not allege anything other than a typical landlord-tenant relationship between the tenants and Defendants. In fact, nothing in the Complaint even remotely suggests that the tenants and Defendants were involved in some type of consumer/vendor relationship necessary to invoke the protections of the DTPA. The fact that Plaintiffs describe the tenants as "consumer-tenants" is of no consequence: regardless of the artful descriptor, the Kelley court made clear that, as a matter of law, tenants are not "consumers" within the meaning of the DTPA simply because they enter a lease agreement. See Peerless v. Viegas, 667 A.2d 785, 789 (R.I. 1995) ("A plaintiff, by describing his or her cat to be a dog, cannot simply by that descriptive designation cause the cat to bark."). In light of the Complaint alleging nothing more than a typical landlord-tenant relationship between the Defendants and their tenants, Count IV must be dismissed.

VI. ***Parens Patriae* Does Not Give The Attorney General Standing In This Case.**

Perhaps in tacit recognition of their lack of statutory authority to file enforcement actions under the Lead Hazard Mitigation Act, Residential Landlord and Tenant Act, Property Maintenance Code, and Housing Maintenance and Occupancy Code, Plaintiffs fall back on the assertion that the "Attorney General is authorized to pursue this action . . . through his powers *parens patriae*." Compl., ¶ 54. However, the doctrine of *parens patriae* has never been recognized by the Rhode Island Supreme Court as applicable outside the context of protecting the rights of children and others who lack the capacity to protect their own interests. Even if the doctrine does have more general applicability in Rhode Island, it would not grant the Attorney General standing under the facts alleged in this case.

The First Circuit and U.S. Supreme Court have explained the boundaries of modern *parens patriae* standing:

> "Parens patriae means literally 'parent of the country.'" Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 600, 102 S.Ct. 3260, 73 L.Ed.2d 995 (1982). The doctrine has developed as to States of the United States. It creates an exception to normal rules of standing applied to private citizens in recognition of the special role that a State plays in pursuing its quasi-sovereign interests in "the well-being of its populace." Id. at 602, 102 S.Ct. 3260; see also Georgia v. Tennessee Copper Co., 206 U.S. 230, 237, 27 S.Ct. 618, 51 L.Ed. 1038 (1907) (a State "has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain"). It is a judicially created exception that has been narrowly construed.

Estados Unidos Mexicanos v. DeCoster, 229 F.3d 332, 335 (1st Cir. 2000).

> In order to maintain [a parens patriae] action, the State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party. The State must express a quasi-sovereign interest. Although the articulation of such interests is a matter for case-by-case development—neither an exhaustive formal definition nor a definitive list of qualifying interests can be presented in the abstract—certain characteristics of such interests are so far evident. These characteristics fall into two general categories. First, a State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general. Second, a State has a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.

Id. at 336 (quoting Snapp, 458 U.S. at 607).

The R.I. Supreme Court has never recognized the concept of *parens patriae* as described above. When it has mentioned the term, it sounds more like the older "common-law approach" which is rooted in the sovereign prerogative of the State (or of a court) to prevent "injury to those who cannot protect themselves" rather than asserting a quasi-sovereign interest in preserving the common rights or resources of the public as a whole. Snapp, 458 U.S. at 600 (quoting Mormon Church v. U.S., 136 U.S. 1, 57 (1890)) (distinguishing this "common-law approach" from "the concept of *parens patriae* standing that has developed in American law"); see also *Parens patriae*, Black's Law Dictionary, (11th ed. 2019) (defining it as "the state in its capacity as provider of protection to those unable to care for themselves"). For example, the R.I. Supreme Court has

recognized the doctrine as the basis for the State's "power and obligation" to protect the basic rights of children to physical security and "the basic necessities of life," In re Lester, 417 A.2d 877, 880 (R.I. 1980), and to protect "all of its citizens who may be under a legal disability." Petition of Loudin, 219 A.2d 915, 918 (R.I. 1966) (citing Fontain v. Ravenel, 58 U.S. 369 (1854)) (discussing orphaned minors).[17]

Additionally, *parens patriae* standing has been granted to the Attorney General by the General Assembly as a means of enforcing certain statutes.[18] See Siena v. Microsoft Corp., No. C.A. 00-1647, 2000 WL 1274001, at *4 (R.I. Super. Ct. Aug. 21, 2000) (Silverstein, J.) (describing the Attorney General's *parens patriae* power to commence a civil action on behalf of state residents to enforce the R.I. Antitrust Act as a "legislatively granted role"). The fact that the General Assembly has bestowed this power on the Attorney General to enforce some, but not all, statutes should give this Court pause before presuming that the concept grants the Attorney General standing to enforce every law on the books.

[17] The Attorney General could not invoke this "common-law" understanding of *parens patriae* standing either, as children in Rhode Island may enforce their legal rights via their parent or guardian, and there has been no allegation in this matter that any of the allegedly affected children lack parents or guardians who could represent their interests in court.

[18] There are only four such statutes: R.I. Gen. Laws § 6–36–12 (Rhode Island Antitrust Act) ("The attorney general may bring a civil action in superior court in the name of the state, as parens patriae on behalf of persons residing in this state, to secure monetary relief as provided in this section for injuries sustained by the persons to their property by reason of any violation of this chapter."); § 40–8.2–6 (Medical Assistance Fraud) (same language as § 6-36-12); § 46–12.3–5 (Environmental Injury Compensation Act) (same language as § 6-36-12); § 42–9.1–1 (Office of Health Care Advocate) ("The department of attorney general, as the state's legal advisor, advocate parens patriae, and protector of the public trust and charitable assets, and by constitution and statute for the people of the state, has the authority to advocate for and on behalf of the citizens of Rhode Island to assure that quality health care standards are met").

Even if we assume that the more modern approach to *parens patriae* has life in Rhode Island law,[19] [20] it would not give the Attorney General standing under the facts alleged in this case. Even the more expansive concept of *parens patriae* distilled in Snapp does not give a state attorney general carte blanche to enforce any state statute in the absence of an injury to a "quasi-sovereign interest." Snapp, 458 U.S. at 601; see O'Neil v. Code Comm'n for Occupational Safety & Health, 534 A.2d 606, 608 (R.I. 1987) (attorney general could not sua sponte initiate a complaint in the superior court alleging a violation of the Open Meetings Law). There is a similar limiting principle to *parens patriae* standing as that which applies to defining a public nuisance: to validly assert a quasi-sovereign interest that is independent of the private interests of individual citizens, "more must be alleged than injury to an identifiable group of individual residents."[21] Snapp, 458 U.S. at 607. The State must "allege[] injury to a sufficiently substantial segment of its population." Id. "Although the American concept of *parens patriae* is broad, it 'does not involve the States stepping in to represent the interests of particular citizens who, for whatever reason, cannot represent themselves.'" LG Display Co., Ltd. v. Madigan, 665 F.3d 768, 771 (7th Cir. 2011) (quoting Snapp, 458 U.S. at 607). But the Complaint in this action fails to realistically allege that Defendants have caused harm to "health and well-being . . . of [Rhode Island's] residents *in general*." Snapp, 458 U.S. at 607 (emphasis added); cf. Lead Indus. Ass'n, 951 A.2d, at 455 (state's public nuisance

[19] A justice of the Superior Court discussed the doctrine in his decision denying defendant lead paint manufacturers' motion to dismiss, which was later reversed on other grounds. State v. Lead Indus. Ass'n, Inc., No. 99-5226, 2001 WL 345830, at *3-4 (R.I. Super. Ct. Apr. 2, 2001), *rev'd*, Lead Indus. Ass'n, 951 A.2d 428 (R.I. 2008).

[20] In the end, such an assumption is not warranted. Although "the attorney general is vested with all the powers that that office possessed at common law," Lead Indus. Ass'n, 951 A.2d at 471, the U.S. Supreme Court has made clear that the "common-law approach" to *parens patriae* "has relatively little to do with the concept of *parens patriae* standing that has developed in American law." Snapp, 458 U.S. at 600.

[21] This is no surprise because, as the Snapp court observed, the modern "American" version of *parens patriae* was developed in large part through cases of states attempting to abate public nuisances. 458 U.S. at 602-05.

claim based on widespread incidence of lead paint in public and private properties throughout the state failed to "adequately allege[] an interference with a right common to the general public"). Rather, it concerns the alleged lead paint violations of a single landlord, which have allegedly affected the health of five residents. Compl., at ¶ 10. There is no comparison between the circumstances of this case, and those cases cited by the Snapp court as stating valid quasi-sovereign interests in the wellbeing of the *general population* of a state. See, e.g., Georgia v. Pennsylvania R. Co., 324 U.S. 439, 450 (1945) (allegation that 20 railroad companies conspired to fix freight rates in way that discriminated against Georgia shippers, if true, caused "the economy of Georgia and the welfare of her citizens" to "seriously suffer[]"); Pennsylvania v. West Virginia, 262 U.S. 553, 591-92 (1923) (cutting off of natural gas produced in West Virginia would jeopardize the health, comfort and welfare of private consumers in Pennsylvania, which constituted a "substantial portion of the State's population"); Georgia v. Tenn. Copper Co., 206 U.S. 230, 236 (1907) (allegation that discharge of noxious gas from copper works was causing "wholesale destruction of forests, orchards, and crops"); see also Rhode Island v. Atl. Richfield Co., 357 F. Supp. 3d 129, 133, 143-44 (D.R.I. 2018) (Rhode Island had *parens patriae* standing to assert trespass action against oil and chemical companies based on allegation that the release of a hazardous gasoline additive was causing "widespread contamination of the State's waters"); Lead Indus. Ass'n, 2001 WL 345830, at *3-4, 6, *rev'd*, Lead Indus. Ass'n, 951 A.2d 428 (R.I. 2008) (Rhode Island, through its attorney general, had *parens patriae* standing to assert public nuisance action where it alleged lead paint manufacturers were responsible for presence of lead "in public and private buildings throughout the State," "causing a public health crisis," and "caus[ing] the State to incur substantial damages").

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Submitted: 10/11/2023 3:07 PM
Envelope: 4319058
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Lastly, even if the Attorney General could establish *parens patriae* standing on the facts alleged in the Complaint, which it hasn't, that would not resolve the subject-matter jurisdictional issues discussed above.

CONCLUSION

WHEREFORE, for all the aforementioned reasons, Defendants hereby request that their Motion be Granted, and that Counts I, II, IV, V, and VI of the Complaint be dismissed with prejudice.

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ANURAG SUREKA,
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2023, I electronically filed and served this document through the electronic filing system with notice to the following parties. The document electronically filed and service is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

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