IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE COMMONWEALTH OF PENNSYLVANIA, BY AND THROUGH THE PHILADELPHIA DISTRICT ATTORNEY, LARRY KRASNER, Plaintiff, v. THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, Defendant.	:	NO. 233 M.D. 2021
THE COMMONWEALTH OF PENNSYLVANIA, BY AND THROUGH THE ALLEGHENY COUNTY DISTRICT ATTORNEY, STEPHEN A. ZAPPALA, JR., Plaintiff, v. THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, MCKESSON CORP., CARDINAL HEALTH, INC., and AMERISOURCEBERGEN DRUG CORP., Defendants.	:	NO. 250 M.D. 2021
THE COMMONWEALTH OF PENNSYLVANIA, BY AND THROUGH THE PHILADELPHIA DISTRICT ATTORNEY, LARRY KRASNER,	:	NO. 260 M.D. 2021

Plaintiff,	:	
v.	:	
THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA,	:	
Defendant.	:	
THE COMMONWEALTH OF PENNSYLVANIA, BY AND THROUGH THE ALLEGHENY COUNTY DISTRICT ATTORNEY, STEPHEN A. ZAPPALA, JR.,	:	NO. 261 M.D. 2021
Plaintiff,	:	
v.	:	
THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., and JANSSEN PHARMACEUTICA, INC..,	:	
Defendants.	:	

BRIEF OF THE COMMONWEALTH, BY AND THROUGH THE PHILADELPHIA AND ALLEGHENY COUNTY DISTRICT ATTORNEYS, IN OPPOSITION TO DEFENDANTS' PRELIMINARY OBJECTIONS

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Dated: December 3, 2021

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INTRODUCTION

This case arises out of the Pennsylvania Attorney General's negotiation of a national settlement relating to the ongoing opioid crisis. That settlement purports to release various manufacturers and distributors of prescription opioids from all claims arising out of the opioid epidemic, including claims brought by the Philadelphia and Allegheny County District Attorneys alleging violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 *et seq.* ("UTPCPL"). The Attorney General, however, lacks authority to unilaterally settle the District Attorneys' ongoing UTPCPL litigation.

The UTPCPL grants concurrent authority to the Attorney General and district attorneys to file civil enforcement actions in the name of the Commonwealth. Here, Philadelphia's District Attorney (followed by Allegheny County's District Attorney) exercised that statutory authority and has zealously litigated his UTPCPL action against Defendants for over three years, expending millions of dollars (through counsel) and tens of thousands of personnel hours (mostly, but not entirely, through counsel). Conversely, the Attorney General never filed a UTPCPL (or any other) action against Defendants. Because the Attorney General lacks the authority to render the District Attorneys' substantial investments in their UTPCPL claims wasted and eliminate any possibility of recovery on those claims, the District Attorneys filed declaratory judgment actions against the Attorney General seeking a

declaration that the Attorney General lacks authority to release their UTPCPL claims.

Pending before this Court now are preliminary objections filed by the Attorney General, the Distributors,[1] and Janssen[2] (together, "Defendants") seeking the dismissal of those declaratory judgment actions. Because Defendants have not met their burden of demonstrating with certainty that the District Attorneys' declaratory judgment actions are defective as a matter of law, this Court should overrule the objections and proceed with the actions.

COUNTER-STATEMENT OF THE SCOPE OF REVIEW AND STANDARD OF REVIEW

"In ruling on preliminary objections, this Court must accept as true all well-pleaded allegations . . . , as well as all inferences reasonably deducible therefrom." *FREMCO Assocs., LLC v. Dep't of Revenue of Pa. Unemployment Comp. Audit Div.*, 257 A.3d 794, 797–98 (Pa. Cmwlth. 2021) (citing *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007)). "To sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them." *Id.* (citing *Stanton-Negley*, 927 A.2d at 673).

[1] "Distributors" includes McKesson Corporation, Cardinal Health Corporation, and AmerisourceBergen Drug Corporation.

[2] "Janssen" includes Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; and Janssen Pharmaceutica, Inc.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Declaratory Judgments Act authorizes the District Attorneys to bring an action against the Attorney General to resolve uncertainty as to whether the Attorney General has authority to settle UTPCPL claims brought by the District Attorneys, in the name of the Commonwealth, pursuant to express statutory authority?

Suggested Answer: Yes.

2. Because the UTPCPL confers authority on the District Attorneys to file a civil enforcement action, whether the District Attorneys have implicit power to litigate related matters, including whether the civil enforcement action can be unilaterally settled by the Attorney General?

Suggested Answer: Yes.

3. Whether the District Attorneys' actions present ripe controversies when the Settlement Agreements set forth schedules that are moving forward and continue to threaten the District Attorneys' long-standing UTPCPL actions?

Suggested Answer: Yes.

4. Whether the District Attorneys can bring declaratory judgment actions in this Court to resolve the issue of the Attorney General's settlement authority without first litigating that issue in the Pennsylvania Coordinated Opioid Proceedings in the Delaware County Court of Common Pleas?

Suggested Answer: Yes.

5. Whether the District Attorneys' Complaints are specific enough for Defendants to prepare their defenses when Defendants negotiated the Settlement Agreements at issue, and the Complaints both reference the relevant provisions of those Settlement Agreements and attach the Settlement Agreements as exhibits?

Suggested Answer: Yes.

6. Whether the District Attorneys must allege actual injury (which they have) for this Court to exercise jurisdiction?

Suggested Answer: Yes.

COUNTER-STATEMENT OF THE CASE

District Attorneys Larry Krasner and Stephen A. Zappala, Jr. agree with the Attorney General that the opioid crisis has ravaged Pennsylvania. The jurisdictions they serve—Philadelphia County and Allegheny County, respectively—have been particularly hard hit. In 2020 alone, there were 1,214 drug overdoses in Philadelphia, 86 percent of which involved opioids. And Allegheny County suffered about 3,400 opioid-related deaths (about two per day) over the last five and a half years.

In an effort to stem these devastating losses, which were in part attributable to unfair and deceptive trade practices in the marketing, sale, and distribution of prescription opioids, District Attorneys Krasner and Zappala sued various manufacturers and distributors of prescription opioids in the name of the

Commonwealth pursuant to Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1 *et seq.* On February 2, 2018, District Attorney Krasner sued manufacturer Janssen, among others, and, on November 14, 2018, he amended the complaint to include the "Big 3" Distributors. District Attorney Zappala followed suit, filing his own action against the Distributors and Janssen on February 3, 2021.

Shortly after the complaint was filed, District Attorney Krasner's UTPCPL action was subsequently designated as one of the Track One opioid cases in the Pennsylvania Coordinated Proceedings in the Court of Common Pleas of Delaware County. As a result, District Attorney Krasner has been actively litigating his case for over three years as a "bellwether" for other district attorney cases throughout the Commonwealth. His office has spent millions of dollars and tens of thousands of hours: (1) collecting, reviewing, and producing documents from the District Attorney's office and fifteen City of Philadelphia agencies; (2) reviewing documents produced by defendants, including the Distributors and Janssen; and (3) working with experts to understand the nature of the Distributors' and Janssen's wrongdoing and the monetary relief that should be awarded in recompense.

The Attorney General never sued the Distributors or Janssen under the UTPCPL or any other cause of action. Instead, the Attorney General participated in an "investigation" of the opioid crisis by "a bipartisan group of Attorneys General."

On October 21, 2019, that group of Attorneys General announced a $48 billion "agreement in principle" to a national settlement with five opioid companies, including the Distributors and Janssen. That agreement, however, was ultimately rejected by a majority of state attorneys general, as well as by major municipalities across the United States.

Almost two years later, the Attorney General announced another settlement with the Distributors and Janssen. The settlement would pay states and municipalities across the United States *up to* $21 billion from the Distributors, to be paid over 18 years, and $5 billion from Janssen, to be paid over nine years. The terms of the Settlement Agreements purport to release *all* claims against Janssen and the Distributors, including the UTPCPL claims brought by District Attorneys Krasner and Zappala, as well as various actions brought by district attorneys across the Commonwealth. The Settlement Agreements provide:

> The releases provided for in this Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of each Settling State and its Attorney General to release claims. This Agreement shall be a complete bar to any Released Claim.

Compl. (233 M.D. 2021) Ex. B ¶ XI(A) (Distributor Settlement Agreement); *see also* Compl. (260 M.D. 2021) Ex. B ¶ IV(A) (Janssen Settlement Agreement)

(containing identical language).[3]

The Settlement Agreements specify a process and timeline for participation by States and their political subdivisions. *See* Compl. (233 M.D. 2021) Ex. B §§ II, VIII; Compl. (260 M.D. 2021) Ex. B §§ II, VIII. Following that process, Pennsylvania has signed on to the agreements. The settlements are now moving into the next phase, in which political subdivisions have until January 2, 2022, to decide whether to join the settlements.

Under the Settlement Agreements, there is no guarantee Philadelphia or Allegheny County will receive any money. In a best-case scenario, the combined settlements amount to under $11 million per year for Philadelphia and a few million per year for Allegheny County.

Because the Settlement Agreements purport to extinguish their UTPCPL claims and effectively resolve their claims against the Distributors and Janssen, District Attorneys Krasner and Zappala filed declaratory judgment actions seeking a declaration that the Attorney General lacks authority to do so. District Attorney Krasner filed one declaratory judgment action (233 M.D. 2021) against the Attorney General on July 22, 2021, opposing the settlement of the UTPCPL claim against the Distributors, and a second action (260 M.D. 2021) against the Attorney General on

[3] The actions by District Attorney Zappala reference these same provisions. *See* Compl. (250 M.D. 2021) Ex. B ¶ XI(A); Compl. (260 M.D. 2021) Ex. B ¶ IV(A).

August 4, 2021, opposing the settlement of the UTPCPL claim against Janssen. District Attorney Zappala filed a similar declaratory judgment action (250 M.D. 2021) on July 29, 2021, against the Attorney General and the Distributors, and a second declaratory judgment action (261 M.D. 2021) on August 5, 2021, against the Attorney General and Janssen.

On September 15, 2021, the Attorney General filed Preliminary Objections in all four declaratory judgment actions. On September 24, 2021, the Distributors filed Preliminary Objections in the Zappala suit, and Janssen joined the Attorney General's Preliminary Objections in District Attorney Zappala's action against it. The District Attorneys filed Answers to the Preliminary Objections on October 12, 2021.

On October 18, 2021, this Court granted the District Attorneys' applications for expedited briefing. By stipulation of the parties, the Court consolidated the four declaratory judgment actions. Oral argument is scheduled for December 13, 2021.

SUMMARY OF ARGUMENT

The District Attorneys' declaratory judgment actions, which seek to resolve whether the Attorney General has authority to release their consumer protection claims against Janssen and the Distributors, are authorized by the plain language of the Declaratory Judgments Act. Neither the Attorney General nor the Distributors

contend otherwise. For that reason alone, their preliminary objection regarding capacity to sue should be overruled.

The Attorney General and the Distributors likewise fail to establish with certainty that the District Attorneys lack standing to bring their declaratory judgment actions. The UTPCPL expressly confers standing on district attorneys to bring consumer protection claims against those engaged in unfair trade practices, and by implication the ability to settle those claims. The UTPCPL likewise confers statutory standing on district attorneys to litigate any related claims, which necessarily include the District Attorneys' declaratory judgment actions to prevent their consumer protection claims from being released by the Attorney General. Because the District Attorneys have statutory standing, they are not required to establish the traditional, common law standing elements, including injury. However, the District Attorneys have adequately alleged injury in the extinguishment of their UTPCPL claims, their lost financial and personnel costs, and loss of any potential recovery on those claims.

The remaining objections primarily contend that the District Attorneys' declaratory judgment actions may not proceed due to the Settlement Agreements. The Attorney General argues that the District Attorneys cannot plausibly allege any injury due to the substantial size of the settlements. Yet in the same breath, the Attorney General asserts that the District Attorneys' actions are not ripe because

there may be no settlement (and therefore no release of the UTPCPL claims), and that the Court should not even consider the terms of the Settlement Agreements. The Attorney General cannot have it both ways.

In any event, the Settlement Agreements and their precise terms are a distraction. The real controversy here is whether the Attorney General has authority to release the claims that the District Attorneys are statutorily empowered to bring, and to settle litigation that the District Attorneys brought—and the size of the settlement is irrelevant to either issue. Under the terms of the Settlement Agreements, the Attorney General will file a consent judgment purporting to release the District Attorneys' claims. The issue of the Attorney General's authority, therefore, presents (at a minimum) the "ripening seeds" of a controversy, in that it poses an imminent threat to the District Attorneys' ongoing consumer protection actions against Janssen and the Distributors (including any related recovery), as well as to the District Attorneys' general statutory authority to prosecute consumer protections actions. That undoubtedly satisfies the ripeness requirement for a declaratory judgment.

The Attorney General's and the Distributors' objection that the District Attorneys may not seek relief in this Court is also flawed. Neither the Attorney General nor the Distributors provide any authority to suggest the District Attorneys must first litigate whether the Attorney General has the power to release their

UTPCPL claims in the Pennsylvania Coordinated Opioid Proceedings. Similarly, the objection that the Complaints lack the required specificity is baseless. The Complaints are more than adequate to enable the Defendants, who negotiated these agreements for four years, to prepare a defense.

In sum, these actions present an actual controversy that requires this Court's prompt resolution. If the Attorney General has authority to release the District Attorneys' UTPCPL claims, the District Attorneys will need to decide now whether to continue to expend money and resources litigating claims that will likely be extinguished, either through the Settlement Agreements or subsequent settlements. If the Attorney General lacks such authority, then the District Attorneys may continue pursuing their consumer protection claims without any such risk. Delaying resolution of this dispute, therefore, would only exacerbate the District Attorneys' dilemma and risk wasting additional resources.

ARGUMENT

I. The Declaratory Judgments Act Authorizes The District Attorneys To Sue The Attorney General To Resolve Whether The Attorney General May Release Their UTPCPL Claims.

The Attorney General and the Distributors disingenuously argue that the District Attorneys have failed to identify any authority for their declaratory judgment actions in the name of the Commonwealth. *See, e.g.*, OAG Br. 14. But that argument

simply ignores the very statute, the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531–41, under which these cases were brought.

The Declaratory Judgments Act provides that "[*a*]*ny person* interested under a . . . written contract, . . . or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder." 42 Pa. C.S. § 7533 (emphasis added). "Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered." *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1218 (Pa. Cmwlth. 2018) (quoting 42 Pa. C.S. § 7541(a)).

The District Attorneys' declaratory judgment actions plainly fall within the scope of the Declaratory Judgments Act. The District Attorneys are "person[s]" who seek to resolve uncertainty as to whether the Attorney General has authority to settle or release the claims brought by the District Attorneys against Janssen and the Distributors pursuant to the UTPCPL.

This Court's precedent demonstrates that the District Attorneys may bring declaratory judgment actions against the Attorney General to resolve uncertainty as to his authority. For example, in *Stedman v. Lancaster County Board of*

Commissioners, 221 A.3d 747, 759 (Pa. Cmwlth. 2019), this Court acknowledged that a district attorney could bring a declaratory judgment action against the Attorney General where the action challenges the Attorney General's actions or authority. *Id.* ("Commonwealth officials," including the Attorney General, "may be proper parties when their authority to implement or enforce a statute is in question or when their own actions are at issue") (internal quotation marks omitted). Although this Court ultimately concluded that the Attorney General was not a proper respondent in *Stedman*, that was because petitioner's declaratory judgment action did "not involve any of the duties of the Attorney General." *Id.* at 758–60. Unlike *Stedman*, the District Attorneys' declaratory judgment actions here indisputably concern the Attorney General's authority. Similarly, in *County Commissioners Association of Pennsylvania v. Dinges*, this Court implicitly recognized that it was procedurally proper to bring a declaratory judgment action against the Attorney General. 935 A.2d 926, 931–32 (Pa. Cmwlth. 2007) (dismissing petitioners' declaratory judgment action on the merits).

Significantly, the Attorney General fails to address the Declaratory Judgments Act, which, as shown above, clearly authorizes the instant actions.[4] Instead, the

[4] Given the Attorney General's failure to explain why the Declaratory Judgments Act does not provide the District Attorneys with capacity to sue, despite the District Attorneys' obvious reliance on that Act, the Attorney General should be deemed to have waived any such argument. *Cf.* Pa. R.C.P. 1032(a). Permitting the Attorney

Attorney General points to two other statutes—the Commonwealth Attorneys Act and the UTPCPL—and contends that neither of those statutes authorizes the District Attorneys' declaratory judgment actions. But the District Attorneys' actions do not rely on either of those statutes. Moreover, neither of those statutes precludes the District Attorneys from bringing suit under the Declaratory Judgments Act.

A. The Commonwealth Attorneys Act Does Not Bar The District Attorneys' Declaratory Judgment Actions.

Section 732-204(c) of the Commonwealth Attorneys Act ("CAA") provides that the Attorney General "shall represent the Commonwealth . . . in any action brought by or against the Commonwealth." 71 P.S. § 732-204(c). The Attorney General asserts (OAG Br. 12–13) that, because that provision vests the *Attorney General* with statutory authority to represent the Commonwealth in civil litigation, *district attorneys* may not bring suit on behalf of the Commonwealth. The Attorney General's interpretation of that provision, however, is flatly inconsistent with section 201-4 of the UTPCPL, which expressly authorizes a district attorney to bring a UTPCPL action in the name of the Commonwealth. The Attorney General's interpretation of the CAA, therefore, cannot be sustained.

Section 732-204(c) does not apply here. The District Attorneys are not bringing an action "on behalf of" the Commonwealth. Instead, under the plain

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General to save any argument as to the Declaratory Judgments Act for his reply brief would unfairly deprive the District Attorneys of any opportunity to respond.

language of Section 201-4 of the UTPCPL, their actions are civil enforcement actions brought "in the name of" the Commonwealth. 73 P.S. § 201-4.

B. The District Attorneys Are Not Precluded From Suing The Attorney General.

The Attorney General contends (OAG Br. 14) that a district attorney may not file suit in the name of the Commonwealth against the Attorney General, because the Attorney General is the Commonwealth's chief law officer. The Attorney General provides no authority for that proposition, nor could he.

Indeed, the Attorney General's suggestion (OAG Br. 14–15) that, because he is the Commonwealth's chief law officer, he can displace a district attorney who brings an action that the district attorney is statutorily authorized to bring, is refuted by case law. Pennsylvania courts have rejected the notion that the Attorney General may supersede a district attorney, except in very limited circumstances, not applicable here. *See, e.g.*, *Commonwealth v. Schab*, 383 A.2d 819, 822 (Pa. 1978) (Attorney General has no common-law authority to supersede a district attorney in a criminal prosecution); *Carter v. City of Philadelphia*, 181 F.3d 339, 353 (3d Cir. 1999) ("[I]n Pennsylvania, unlike many other jurisdictions, the AG has no inherent authority to supersede a district attorney's decisions generally."). As the Pennsylvania Supreme Court explained, "It would be incongruous to place the district attorney in the position of being responsible to the electorate for the performance of his duties while actual control over his performance was, in effect,

in the Attorney General. To countenance such a separation of accountability and control undermines self-government and promotes centralization of law enforcement[,] precisely the approach rejected in Pennsylvania in 1850 and constitutionally in 1874." *Schab*, 383 A.2d at 822. Thus, the Attorney General's assertion that the District Attorneys cannot file a declaratory judgment action against the Attorney General to protect litigation they actually filed, solely because the Attorney General *could* have filed that litigation, is inconsistent with these principles.

The Attorney General's contention that he may effectively supersede a district attorney's UTPCPL action is also contrary to that statute's grant of concurrent authority to the Attorney General and district attorneys to bring suits for violations of that statute. *See* 73 P.S. § 201-4. For that reason, in the context of another statute that grants concurrent authority to the Attorney General and district attorneys to prosecute violations of that Act—the Gaming Act—the Pennsylvania Supreme Court rejected the argument that "the authority of a county district attorney . . . should be deemed to be subordinate to that of the Attorney General." *In re Dauphin Cty. Fourth Investigating Grand Jury*, 943 A.2d 929, 936 (Pa. 2007). The Court noted that "nothing in the [Gaming] Act renders the authority of the district attorneys subordinate to that of the Attorney General," and that, "if the General Assembly wanted the Attorney General to have exclusive or primary authority over criminal

violations of the Gaming Act, it easily could have done so explicitly." *Id.* at 937. Similarly here, the UTPCPL does not limit the District Attorneys' authority or subordinate their authority to that of the Attorney General.

Although the Attorney General concedes (OAG Br. 14) that the UTPCPL authorizes the District Attorneys' action in the name of the Commonwealth for violations of that statute, he asserts that the UTPCPL does not permit the District Attorneys' separate declaratory judgment actions against the Attorney General.[5] That argument is a red herring. Although the Krasner and Zappala suits are brought under section 201-4 of the UTPCPL, the instant declaratory judgment actions are not. As explained above, the District Attorneys' actions are brought under the Declaratory Judgments Act, to protect their interests in the underlying UTPCPL suits. The fact that the District Attorneys have express statutory authority to bring the underlying actions, 73 P.S. § 201-4, reinforces the conclusion that the District Attorneys must have the concomitant authority to seek relief when the Attorney General attempts to resolve those actions.

[5] The Attorney General's argument (OAG Br. 15) that, because the Attorney General is not a party to the District Attorneys' UTPCPL actions, the instant actions cannot arise from those suits, borders on frivolous. The instant actions ask for a declaration that the Attorney General may not settle or release the District Attorneys' UTPCPL claims.

II. The District Attorneys Have Standing To Bring These Declaratory Judgment Actions.

The Attorney General and Distributors contend that the District Attorneys lack standing because they have failed to allege that they are harmed by the Settlement Agreements. This is incorrect. As explained below, the District Attorneys have both statutory and common-law standing. The UTPCPL confers an interest in the District Attorneys to enforce the UTPCPL, which extends to the District Attorneys' declaratory judgment actions to protect their UTPCPL actions. The District Attorneys also have standing under traditional common law principles because they have a direct and substantial interest as to whether the Attorney General may extinguish their UTPCPL claims against the Distributors and Janssen, prevent any recovery in these actions, and render their efforts and resources wasted.

"The concept of 'standing' . . . is concerned only with the question of *who* is entitled to make a legal challenge to the matter involved." *Com. of Pa. Game Comm'n v. Com. of Pa. Dep't of Envtl. Res.*, 555 A.2d 812, 815 (Pa. 1989). "In Pennsylvania, the doctrine of standing . . . is a prudential, judicially created principle designed to winnow out litigants who have no direct interest in a judicial matter." *Com., Office of the Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014). To that end, a party generally must demonstrate that he has "a substantial, direct, and immediate interest in the outcome of the litigation." *Phantom Fireworks*, 198 A.3d at 1215.

Alternatively, a party may establish standing by statute. *In re Wilson*, 879 A.2d 199, 206 (Pa. Super. 2005); *Hous. Auth. of Cty. of Chester v. Pa. State Civil Serv. Comm'n*, 730 A.2d 935, 941 (Pa. 1999) (where a party relies on statutory standing, that party need not satisfy the traditional, common-law elements of standing). That is, "when the legislature statutorily invests an agency with certain functions, duties and responsibilities, the agency has a legislatively conferred interest in such matters. From this it must follow that, unless the legislature has provided otherwise, such an agency has an implicit power to be a litigant in matters touching upon its concerns. In such circumstances, the legislature has implicitly ordained that such an agency is a proper party litigant, *i.e.*, that it has 'standing.'" *Pa. Game Comm'n*, 555 A.2d at 815; *accord Corman v. Nat'l Coll. Athletic Ass'n*, 74 A.3d 1149, 1161 (Pa. Cmwlth. 2013) (hereinafter "*NCAA*").

Here, the District Attorneys have both statutory and common-law standing.

A. Section 201-4 of the UTPCPL Confers Statutory Standing On District Attorneys To Litigate Matters Related To Their Enforcement Of The UTPCPL.

Section 201-4 of the UTPCPL authorizes district attorneys to bring suit in the name of the Commonwealth for violations of that statute. *See* 73 P.S. § 201-4 ("[w]henever 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"). That section plainly confers standing on the District Attorneys to bring their underlying UTPCPL action against Janssen and the Distributors.

The legislative interest conferred on district attorneys in section 201-4, however, is not limited solely to initiating UTPCPL actions, but extends to matters related to that interest. *Pa. Game Comm'n*, 555 A.2d at 815 ("an agency has an implicit power to be a litigant in matters touching upon its concerns"). Because the District Attorneys' declaratory judgment actions seek to preserve their underlying UTPCPL actions and their authority to settle them, the declaratory judgment actions are indisputably related to the legislatively conferred interest in section 201-4, and the District Attorneys therefore have standing to litigate those actions. Pennsylvania courts have routinely found standing where a party seeks a declaratory judgment related to a statutory duty or right. *See, e.g.*, *Com., Office of the Governor*, 98 A.3d at 1229-31 (because Office of Governor had responsibility to comply with Right-to-Know Law, it had standing to challenge interpretation of that statute by agency responsible for enforcing it); *NCAA*, 74 A.3d at 1160–62 (Senator, who had statutory duty to oversee expenditures from fund, had standing to seek declaratory judgment that fine had to be deposited into the fund); *Cty. Comm'rs Ass'n*, 935 A.2d at 931 (county commissioners association had standing to bring declaratory judgment

action to establish the proper formula under the relevant statutes for calculating district attorneys' salaries).

The District Attorneys' declaratory judgment actions seek to resolve their statutory rights when they bring a UTPCPL action under section 201-4; they seek a determination as to whether the Attorney General may unilaterally usurp and settle a UTPCPL action brought by a district attorney. Such an action is akin to the declaratory judgment action in *NCAA*, where this Court concluded that both a Senator and the Commonwealth Treasurer had standing to bring declaratory judgment actions related to their statutory duties. This Court explained that the Treasurer had standing because the declaratory judgment action implicated his statutory duty to act as custodian for the funds at issue, 74 A.3d at 1159–60. The Court held that the Senator also had statutory standing because, as the Chair of the Senate Appropriations Committee, he was required to receive statutory notice before the funds could be spent. *Id*. at 1160–61 (concluding that Senator's "statutory duties for overseeing Fund expenditures is a matter touching upon his concerns").

Indeed, the hurdle for statutory standing is not high. As the Pennsylvania Supreme Court recognized in *Pennsylvania Game Commission*, a statute giving the Game Commission authority over game and wildlife "alone would be sufficient to give it standing to legally challenge *any* action which allegedly would have an adverse impact on those interests." 555 A.2d at 816 (emphasis added). Under this

precedent, the District Attorneys here clearly have standing to challenge the Attorney General's attempt to usurp their UTPCPL claims.

The Attorney General and the Distributors fail to even discuss statutory standing or make any argument as to why section 201-4 of the UTPCPL does not confer standing on the District Attorneys to bring the instant declaratory judgment actions. For that reason alone, the Attorney General's and the Distributors' preliminary objection as to standing should be overruled.

B. The District Attorneys Can Also Establish Common-Law Standing Because They Are Aggrieved By The Attorney General's Release Of Their UTPCPL Claims.

To establish standing under the traditional, common-law elements, a plaintiff must demonstrate that he has a direct, substantial, and immediate interest in the outcome of the litigation. *Phantom Fireworks*, 198 A.3d at 1215. "A substantial interest . . . is one that surpasses the common interest of all citizens in procuring obedience to the law." *Id.* "A direct interest requires a causal connection between the asserted violation and the harm complained of." *Id.* "An interest is immediate when the causal connection is not remote or speculative." *Id.*

The District Attorneys have a substantial interest in whether the Attorney General may release their UTPCPL claims against the Distributors and Janssen. The District Attorneys are statutorily authorized to pursue UTPCPL claims in the name of the Commonwealth and, pursuant to that authority, have filed UTPCPL actions

against Janssen and the Distributors and have invested substantial resources to litigate those claims. If the Attorney General may unilaterally decide to settle or release the District Attorneys' UTPCPL claims, the District Attorneys are at risk of having their actions dismissed and their resources wasted. To be sure, if this Court were to determine that the Attorney General has such a right in this case, that precedent could also affect how, or if, district attorneys enforce the UTPCPL in the future. If this Court were to hold that the Attorney General has an unfettered right to settle UTPCPL claims brought by district attorneys, then district attorneys might opt not to dedicate scarce resources to prosecute UTPCPL actions because the district attorneys would have no means of protecting a potential recovery. The District Attorneys' interest in the declaratory judgment actions, therefore, is not merely an interest common to all citizens, but implicates their decisions to pursue cases and allocate resources.

The District Attorneys also have a direct interest in the resolution of the declaratory judgment actions. If this Court determines that the Attorney General lacks authority to release the District Attorneys' UTPCPL claims, then the District Attorneys may continue to pursue those claims, including any potential recovery for the District Attorneys' jurisdictions. On the other hand, if the Attorney General may discharge the District Attorneys' UTPCPL claims, then the Settlement Agreements release those claims, and the District Attorneys will be unable to pursue those

actions. The Attorney General's release of the District Attorneys' UTPCPL claims will cause those claims to be extinguished.

The District Attorneys' interest is neither remote nor speculative because the settlements purport to release all claims against Janssen and the Distributors. Although the Attorney General has not yet filed a consent judgment releasing their claims, the District Attorneys nevertheless have an immediate interest in resolving whether the Attorney General has that authority so that the District Attorneys can determine how to best allocate their resources, including whether to continue prosecuting the UTPCPL actions. In addition, the District Attorneys have an immediate interest in being able to pursue their UTPCPL claims against Janssen and the Distributors, which they believe are meritorious and may result in a significant recovery for their jurisdictions.

The Attorney General (OAG Br. 17–18) and the Distributors (Dist. Br. 9–10) first suggest that standing should be analyzed from the *Commonwealth*'s (rather than the District Attorneys') perspective, and that the Commonwealth lacks standing because the Attorney General's settlement will not harm the Commonwealth. But analyzing standing from the perspective of the Commonwealth is inconsistent with the standing analysis performed by Commonwealth courts, which identifies the person who has the relevant interest (*e.g.*, the Attorney General or the District Attorney). *Pa. Game Comm'n*, 555 A.2d at 815. For similar reasons, in civil

enforcement actions brought by the Attorney General in the name of the Commonwealth under the UTPCPL, Pennsylvania courts have looked to whether the Attorney General has standing. *See Com. v. Chesapeake Energy Corp.*, 247 A.3d 939, 949 (Pa. 2021) (analyzing whether "OAG has standing to bring an action" under section 4 of the UTPCPL); *Com. ex rel. Zimmerman v. Nickel*, 26 Pa. D. & C. 115, 128–29 (Pa. C.C.P. Mercer Cty. 1983) (concluding that Pennsylvania Attorney General has standing under the UTPCPL). Thus, the Attorney General's argument that the *Commonwealth* is not "aggrieved" by the settlement is irrelevant as to whether the *District Attorneys* have standing to bring their declaratory judgment actions. Indeed, if the situation were in reverse and the District Attorneys purported to reach a settlement with Janssen and the Distributors releasing the Attorney General's UTPCPL claim, it seems unlikely that the Attorney General would concede that he could not challenge such a settlement because the Commonwealth was not harmed by the settlement.

Moreover, the Attorney General and the Distributors ignore the alleged harm to the District Attorneys, which is that their UTPCPL actions are usurped and settled by the Attorney General, resulting in a waste of the District Attorneys' resources and no potential recovery through their litigation against the Distributors and Janssen.

The Attorney General further argues (OAG Br. 19) that section 732-103 of the CAA, 71 P.S. § 732-103, deprives the District Attorneys of standing to challenge

the Attorney General's representation of the Commonwealth. Section 732-103 of the CAA, however, is inapplicable. That provision states that only Commonwealth agencies have standing to challenge the authority of their legal representation. *See* 71 P.S. § 732-103; *see also Com. v. Janssen Pharmaceutica, Inc.*, 8 A.3d 267, 274–75 (Pa. 2010); *GGNSC Clarion LP v. Kane*, 131 A.3d 1062, 1073–74 (Pa. Cmwlth. 2016). But the District Attorneys' declaratory judgment actions do not challenge the Attorney General's authority to represent the Commonwealth or negotiate settlements on its behalf. Rather, the District Attorneys' actions challenge the Attorney General's substantive authority to release the District Attorneys' UTPCPL claims, which is not the type of dispute encompassed by section 732-103. That section is therefore inapplicable and does not deprive the District Attorneys of standing.

III. The Complaints State A Controversy That Is Ripe For Determination.

Defendants' third preliminary objection and the Distributors' sixth preliminary objection assert that the District Attorneys' actions are not ripe controversies under the Declaratory Judgments Act. "The basic rationale underlying the ripeness doctrine is 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Phantom Fireworks*, 198 A.3d at 1217–18 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)).

Contrary to Defendants' objections, however, longstanding Pennsylvania case law holds that the Declaratory Judgments Act "provides a relatively lenient standard for ripeness." *Id.* (citations omitted). As this Court has explained, a case is ripe for a declaratory judgment as long as the District Attorneys allege "facts demonstrating the existence of an active controversy relating to the . . . threatened invasion of the petitioner's legal rights":

> While the subject matter of the dispute giving rise to a request for declaratory relief need not have erupted into a full-fledged battle, petitioner must at least allege facts demonstrating the existence of an active controversy relating to the invasion or threatened invasion of the petitioner's legal rights; there must emerge the "ripening seeds" of a controversy.

Clark, Inc. v. Hamilton Twp., 562 A.2d 965, 967–68 (Pa. Cmwlth. 1989). Accordingly, a declaratory judgment action is available if a plaintiff can allege sufficient facts to establish that a conflict regarding the plaintiff's legal rights is actually emerging and not merely speculative. Stated differently, an action is ripe for adjudication under the Declaratory Judgments Act when it presents "the ripening seeds of a controversy." *Wecht v. Roddey*, 815 A.2d 1146, 1150 (Pa. Cmwlth. 2002).

These declaratory judgment actions are ripe because the Settlement Agreements threaten the release of the District Attorneys' legal rights to their pending UTPCPL claims. Notably, neither the UTPCPL nor any other provision of law addresses whether the Attorney General may release claims brought by district

attorneys under the UTPCPL. *See* 73 P.S. § 201-4. Many Pennsylvania courts have allowed declaratory judgment actions to proceed where, as here, statutory ambiguity creates uncertainty as to the legal rights of entities or individuals. For instance, this Court held that sufficient uncertainty existed to maintain a declaratory judgment action with respect to the validity of statutory provisions that limited insurance reimbursements available to physicians. *Pa. Med. Soc'y v. Foster*, 585 A.2d 595, 600–01 (Pa. Cmwlth. 1991).

Similarly, in *Phantom Fireworks*, this Court allowed a fireworks vendor to maintain a declaratory judgment action against high-ranking government officials to determine whether recent amendments to Pennsylvania fireworks law removed certain safety standards. 198 A.3d at 1205. According to the Court, the claim was ripe for adjudication due, in large part, to Phantom Fireworks' alleged business losses created by its continued compliance with previous safety regulations, as compared to other vendors. *Id.* at 1217–18.

Finally, this Court has also allowed the Treasurer of the Commonwealth to maintain a declaratory judgment action against the Pennsylvania Gaming Control Board to determine whether the Treasurer or his designee had the authority to attend executive sessions of the Gaming Board, even though the Treasurer had yet to be barred from any session. *McCord v. Pa. Gaming Control Bd.*, 9 A.3d 1216, 1220 (Pa. Cmwlth. 2010) ("[W]here, however, the claims of the several parties in interest,

while not having reached the active stage, are nevertheless present, and indicative of threatened litigation in the immediate future, which seems unavoidable, the ripening seeds of a controversy appear.").

In this case, there can be no question that the Settlement Agreements represent the "ripening seeds" of a controversy threatening the District Attorneys' legal rights. Under the terms of the Settlement Agreements, the Attorney General will file a consent judgment purporting to release the District Attorneys' claims. Even if the Settlement Agreements are not yet "final," as Defendants suggest, OAG Br. 20, Dist. Br. 15, they are nevertheless operative and moving forward. Specifically, the Settlement Agreements must comply with schedules set forth therein, which provide for "Preliminary Agreement[s]" when the Distributors and Janssen decide enough Settling States are participating (*e.g.*, Compl. (233 M.D. 2021, 260 M.D. 2021) Ex. B § II), followed by a second determination in which the Distributors and Janssen decide whether there are enough Participating Subdivisions to finalize the Settlement Agreements (*e.g.*, Compl. (233 M.D. 2021, 260 M.D. 2021) Ex. B § VIII).[6] As the

[6] The Attorney General asserts that this Court should not consider facts related to the progression of the Settlement Agreements because they are outside the pleadings. OAG Br. 20. But these timelines are written into the Settlement Agreements attached to the Complaints. Moreover, the Distributors admit that, "[o]n September 4, 2021, the Distributors determined that enough states had agreed to participate in the proposed settlement to continue to the next stage of the settlement process. The subdivision sign-on period is currently ongoing and expected to end in January 2022.

Settlement Agreements proceed on schedule, the District Attorneys' legal rights remain threatened.

The Attorney General's next argument, that the controversy is not ripe because the Complaints do not indicate "whether Philadelphia or Allegheny County plan to join the Settlement Agreements" (OAG Br. 21), is a red herring. The issue in these cases is not whether Philadelphia or Allegheny County plan to join the Settlement Agreements. In fact, the City of Philadelphia and Allegheny County are each maintaining their own cases in the Pennsylvania Coordinated Opioid Proceeding—separate from the cases brought by the Philadelphia and Allegheny County District Attorneys in the name of the Commonwealth. Rather, the issue in these cases is whether the Attorney General has the authority to settle claims already brought by the Philadelphia and Allegheny County District Attorneys in the name of the Commonwealth.[7]

During this time, political subdivisions of participating states, such as Pennsylvania, can elect to participate in the proposed settlement." Dist. Br. 14.

[7] In addition, even if Philadelphia and Allegheny County join the Settlement Agreements, they cannot settle the District Attorneys' UTPCPL claims. The UTPCPL specifically authorizes the District Attorneys' claims thereunder and does not grant their respective counties (i) authority to pursue claims under the UTPCPL or (ii) the authority to control UTPCPL claims by their respective District Attorneys. *See* 73 P.S. § 201-4. Thus, whether Philadelphia and Allegheny County join the Settlement Agreements is irrelevant to the ripeness of this action.

The Distributors also contend that there is no controversy between them and the District Attorneys. Dist. Br. 11–12. Although the Distributors correctly note that the Allegheny County District Attorney joined them as parties "solely out of an abundance of caution," they neglect to note that such was done pursuant to the Declaratory Judgments Act's requirement that "all persons . . . who have or claim any interest which would be affected by the declaration" must "be made parties." 42 Pa. C.S. § 7540(a). For this reason, District Attorney Zappala joined the Distributors "to the extent that they are deemed to have 'any interest which would be affected by the declaration.'" Compl. (250 M.D. 2021) ¶ 16 (quoting 42 Pa. C.S. § 7540(a)).

Here, the Distributors seek to have it both ways: they argue that they should be dismissed because there is no controversy between them and the District Attorneys, while also purporting not to be bound by a declaration if they are dismissed. Dist. Br. 11 & n.4. These paradoxical positions can be reconciled only if the Distributors do not maintain a legal interest in their Settlement Agreement at all. Accordingly, this Court may conclude that there is no controversy between the District Attorneys and the Distributors (and subsequently dismiss the Distributors from these actions) *only if* the Distributors do not "have or claim any interest which would be affected by the declaration." 42 Pa. C.S. § 7540(a). Otherwise, the Distributors are necessary parties and must remain in the case.

Because the Distributors likely have an interest in enforcing the Settlement Agreements against the District Attorneys in the future, the Distributors cannot be dismissed. For example, in *Phantom Fireworks*, this Court refused to dismiss the Secretary of the Department of Revenue and the Secretary of the Department of Agriculture as necessary parties because their agencies were "responsible for implementing a statute and defending it against constitutional challenges," even as it dismissed the Governor from the action because he was not a necessary party. *Phantom Fireworks*, 198 A.3d at 1217.

The Distributors cite three cases (Dist. Br. 15) to support their unfounded assertion that "[t]his Court routinely rejects as unripe challenges to settlement agreements and legislative acts in similar circumstances." But none of the cases cited by the Distributors involve circumstances similar to those at issue here. For example, in *Home Builders Association of Chester and Delaware Counties v. Commonwealth, Department of Environmental Protection*, 828 A.2d 446 (Pa. Cmwlth. 2003), an association of homebuilders sought to enjoin a settlement agreement between the Pennsylvania Department of Environmental Protection ("DEP") and a coalition of environmental groups. After noting "the settlement of litigation is an agreement between private parties binding only upon those parties," this Court deemed the declaratory judgment action unripe "because there is no allegation that DEP has attempted to apply the conditions in the Settlement

Agreement to the Association or any of its members[.]" *Id*. at 455. Here, there is no dispute that the Settlement Agreements purport to apply to, and would release, the District Attorneys' UTPCPL claims.

Similarly, in *Commonwealth v. Philip Morris, Inc.*, 40 Pa. D. & C.4th 225, 227 (Pa. C.C.P. Phila. Cty. 1999), sixteen not-for-profit hospitals sought a declaratory judgment as to whether a Master Settlement Agreement between the Commonwealth and the defendant would create a contractual defense in other legal proceedings involving the hospitals. As aptly noted by the *Philip Morris* court, "What [the hospitals] are seeking is determination of an issue that is not actual: whether a contractual defense *might* be raised against them in a different proceeding." *Id*. at 247 (emphasis in original). The court noted that there were multiple contingencies as to whether the court would ever need to determine the effect of the settlement agreement. *Id.* Here, however, the question of whether the Attorney General may release the District Attorneys' UTPCPL claims in the Settlement Agreements is presently before the Court and does not depend on any contingencies.

The third case cited by the Distributors, *Brown v. Commonwealth, Liquor Control Board*, 673 A.2d 21 (Pa. Cmwlth. 1996), did not even consider a settlement agreement. Rather, the *Brown* court dismissed a petitioner's request for a declaration regarding the applicability of sovereign immunity statutes to a hypothetical award

of damages. The court held that the question of those statutes' application was not ripe because the petitioner had not yet established liability or obtained a judgment. *Id*. at 24. Conversely, the issue of whether the Attorney General may settle the District Attorneys' UTPCPL actions is squarely before this Court, as explained above.[8]

In sum, contrary to the unripe issues considered by the courts in the three cases cited by the Distributors, the Settlement Agreements threaten the District Attorneys' long-standing UTPCPL actions and create a ripe controversy as to whether the Attorney General has authority to settle them. This Court should therefore overrule the preliminary objection.

IV. The District Attorneys May Bring These Actions Without First Litigating The Issue In The Pennsylvania Coordinated Opioid Proceedings.

Defendants' next preliminary objection incorrectly contends that the District Attorneys' actions here are premature because the Delaware County Court of Common Pleas overseeing the Pennsylvania Coordinated Opioid Proceedings must first determine whether the Settlement Agreements release the District Attorneys' UTPCPL claims. OAG Br. 22–23; Dist. Br. 13. Contrary to Defendants' mischaracterization, nothing in the Declaratory Judgments Act or case law

[8] The Distributors' argument here is more appropriately considered in their preliminary objection for premature appeals, which are distinguished in Section IV *infra*.

forecloses the District Attorneys from bringing their declaratory judgment actions simply because their underlying actions are currently pending in the Pennsylvania Coordinated Opioid Proceedings.

Although the Declaratory Judgments Act prohibits declaratory relief if the subject issue is on appeal before a different tribunal, *see* 42 Pa. C.S. § 7541(c)(3), that provision is not at issue here. Defendants' cases confirm as much. OAG Br. 22. In *Aboud*, this Court declined to make a declaratory judgment ruling because the appellant failed to exhaust administrative procedures (including an appeal) that were required under the controlling zoning laws. *Aboud v. City of Pitt. Dep't of Planning*, 17 A.3d 455, 466 (Pa. Cmwlth. 2011). Similarly, in *Pittsburgh Palisades Park*, this Court denied an action seeking declaratory judgment upon determining it did not have original jurisdiction to rule under the Declaratory Judgments Act because petitioner had already sought and lost an administrative appeal before the Pennsylvania State Horse Racing Commission. *Pitt. Palisades Park, LLC v. Pa. State Horse Racing Comm'n*, 844 A.2d 62, 67 (Pa. Cmwlth. 2004).

Here, there is no controlling Pennsylvania law that requires the District Attorneys, prior to bringing a declaratory judgment action, to litigate their challenge to the Attorney General's authority to settle their UTPCPL claims in the trial court where those claims are pending. To the contrary, these actions are appropriately before this Court now in its original jurisdiction. This Court—not the Delaware

County Court of Common Pleas—is the tribunal best suited to address this "sort of controversy of statewide significance." *Twp. of Derry v. Pa. Dep't of Labor & Indus.*, 932 A.2d 56, 60 (Pa. 2007).

V. The Complaints Are Sufficiently Specific For Defendants To Prepare Their Defenses.

Contrary to the Defendants' preliminary objections, the Complaints meet all the specificity requirements of the Pennsylvania Rules of Civil Procedure. Pennsylvania is a fact-pleading jurisdiction, "meaning that its 'courts are presumed to know the law, and plaintiffs need only plead facts constituting the cause of action, and the courts will take judicial notice of the statute involved.'" *All State Signz Co. v. Burgettstown Borough*, 154 A.3d 416, 421 (Pa. Cmwlth. 2017) (quoting *Heinly v. Com.*, 621 A.2d 1212, 1215 n.5 (Pa. Cmwlth. 1993)). Instead of pleading a particular legal theory, a plaintiff need only allege "the material facts which form the basis of a cause of action." *Young v. Lippl*, 251 A.3d 405, 419 (Pa. Super. 2021) (citing *Schreiber v. Republic Intermodal Corp.*, 375 A.2d 1285, 1291 (Pa. 1977); and quoting *Lampus v. Lampus*, 660 A.2d 1308, 1312 n.2 (Pa. 1995)).

Under Pennsylvania Rule of Civil Procedure 1028(a)(3), "the *sole question*" raised in "[p]reliminary objections in the nature of a motion for a more specific pleading" is "whether the pleading is sufficiently clear to enable the defendant to prepare a defense." *Unified Sportsmen of Pa. v. Pa. Game Comm'n*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008) (emphasis added) (citing *Paz v. Dep't of Corr.*, 580 A.2d

452 (Pa. Cmwlth. 1990)). There is no requirement "to produce evidence at this point in the proceedings to prove . . . allegations." *Podolak v. Tobyhanna Twp. Bd. of Supervisors*, 37 A.3d 1283, 1289 (Pa. Cmwlth. 2012). Against this standard, Defendants' preliminary objections for lack of specificity must fail.

The Attorney General further asserts that the District Attorneys failed to identify which provision of the Settlement Agreements releases their UPTPCL claims. OAG Br. 23. The Attorney General is wrong. The District Attorneys' Complaints specifically identify two different provisions in the Settlement Agreements. Compl. (233 M.D. 2021) ¶¶ 29–30; Compl. (250 M.D. 2021) ¶¶ 33–34; Compl. (260 M.D. 2021) ¶¶ 28–29; Compl. (261 M.D. 2021) ¶¶ 33–34. These provisions purport to release claims to the broadest extent allowed by law:

> **XI. Release**
>
> A. *Scope*. . . . The releases provided for in this Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities *the broadest possible bar against any liability relating in any way to the Released Claims and extend to the full extent of the power of each Settling State and its Attorney General to release claims*. This Agreement shall be a complete bar to any Released Claim.

E.g., Compl. (233 M.D. 2021) Ex. B ¶ XI(A) (Distributor Settlement Agreement); *see also* Compl. (260 M.D. 2021) Ex. B ¶ IV(A) (Janssen Settlement Agreement) (containing identical language) (emphasis added).

Tellingly, the Attorney General *never* asserts that the Settlement Agreements do *not*, in fact, release the District Attorneys' UTPCPL claims. This demonstrates precisely why the instant actions for declaratory relief are necessary: to determine whether the Attorney General's power includes the ability to release the District Attorneys' pending UTPCPL claims. If Defendants agreed that the Settlement Agreements do not release the District Attorneys' claims, then declaratory relief would be unnecessary.

Under the Pennsylvania Rules, the District Attorneys' Complaints are sufficiently clear for Defendants to prepare a defense. Defendants do not point to any requirement in the Pennsylvania Rules for the District Attorneys to reference specific provisions in the Settlement Agreements—because there is none. To the contrary, the District Attorneys attached the Settlement Agreements at issue to the Complaints in compliance with Pennsylvania Rule of Civil Procedure 1019(i). Moreover, *Defendants* drafted the Settlement Agreements and must be presumed to know their content.

The Attorney General also asserts, without further argument, that the Complaints are insufficiently specific because "they do not specify . . . how [a] declaratory judgment or an injunction could be crafted to carve out a release of the Krasner Suit or Zappala suit." OAG Br. 23–24. But that also is not required by Pennsylvania law. The District Attorneys' claims are either encompassed within the

Settlement Agreements or they are not—there is nothing to "carve out." Moreover, the Attorney General fails to cite any authority explaining how the ability to craft a declaratory judgment is fatal to a declaratory judgment action. Rather, under the Declaratory Judgments Act, the court's "declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree." 42 Pa. C.S. § 7532. Such authority can most certainly provide the relief sought by the District Attorneys: declaring whether the Attorney General may release their UTPCPL claims.

Finally, the Distributors argue that the Complaints do not "plead with sufficient specificity as to the Distributors." Dist. Br. 12. As discussed above, the Complaints named the Distributors as required by the Declaratory Judgments Act. Compl. (250 M.D. 2021) ¶ 16 (quoting 42 Pa. C.S. § 7540(a)). Accordingly, all Defendants have sufficient notice that any interest they might have in the Settlement Agreements could be affected by a declaration in these actions. Consequently, there is no basis to dismiss Defendants from these declaratory judgment actions for lack of specificity.

VI. This Court Does Not Lack Subject Matter Jurisdiction for Lack of Actual Injury.

For their seventh preliminary objection, the Distributors contend the District Attorneys' declaratory judgment actions should be dismissed for lack of subject matter jurisdiction, or that the Court should decline jurisdiction over them, because

the Complaint alleges "no actual injury sufficient to confer standing." *See* Dist. Br. 16. According to the Distributors, "whether viewed as lack of actual injury, standing, or ripeness, the Court should find it lacks subject matter jurisdiction over the action due to the inchoate and speculative nature of the dispute postulated by the Petition." *Id*. Neither the facts nor Pennsylvania law support the Distributors' arguments.

Importantly, as a threshold matter, lack of traditional, common-law standing due to an absence of injury does *not* automatically deprive this Court of subject matter jurisdiction. As recognized by the Pennsylvania Supreme Court in *Housing Authority of County of Chester v. Pennsylvania State Civil Service Commission*:

> [I]f a statute properly enacted by the Pennsylvania legislature furnishes the authority for a party to proceed in Pennsylvania's courts, *the fact that the party lacks standing under traditional notions of our jurisprudence will not be deemed a bar to an exercise of this Court's jurisdiction*, since the Pennsylvania legislature constitutionally may enhance or diminish the scope of this Court's jurisdiction. Consistent with the text of the Pennsylvania Constitution, we have repeatedly recognized that the fact that a party lacks standing does not by itself deprive this Court of jurisdiction over the action, as it necessarily would under Article III of the federal Constitution.

730 A.2d at 941 (emphasis added); *see also Pa. Game Comm'n*, 555 A.2d at 815 (standing may be conferred by statute). As the UTPCPL provides the District Attorneys with statutory standing to proceed with their declaratory judgment actions

(*see supra* Argument II), a lack of common-law standing would *not* deprive this Court of subject matter jurisdiction under Pa. R. C. P. 1028(a)(1).

In any event, the District Attorneys also possess common-law standing. Specifically, the District Attorneys' declaratory judgment actions allege that the Attorney General—by entering into the Settlement Agreements with the Distributors and Janssen—improperly seeks to release UTPCPL claims that have been actively litigated for more than three years, which would preclude any potential recovery pursuant to those claims. *See, e.g.*, Compl. (233 M.D. 2021) ¶¶ 2, 9–10, 28, 32–33. Notably, the Philadelphia District Attorney's action further alleges that his office has "spent millions of dollars and tens of thousands of hours" collecting, reviewing, and producing documents from its office and fifteen Philadelphia agencies, while also reviewing Defendants' documents and working with experts to understand the nature of Defendants' wrongdoing and the monetary relief that should be awarded in recompense. *Id*. ¶ 8. As detailed in Argument II *supra*, the District Attorneys have demonstrated a "substantial, direct, and immediate interest in the outcome of the litigation." *Phantom Fireworks,* 198 A.3d at 1215. Consequently, this Court does not lack subject matter jurisdiction under Pennsylvania Rule of Civil Procedure 1028(a)(1).[9]

[9] To the extent the Distributors contend the District Attorneys' declaratory judgment actions allege no actual injury because they purportedly fail to identify an *existing*

Finally, as an alternative to dismissal, the Distributors urge this Court to exercise its discretion to decline jurisdiction, purportedly owing to "circumstances that undermine [the District Attorneys'] standing here." *See* Dist. Br. 16. As addressed herein, *no circumstances* undermine the District Attorneys' standing in relation to their declaratory judgment actions and there is no basis, therefore, for this Court to decline jurisdiction. Moreover, the cases the Distributors rely upon (at 16–17) are distinguishable in that the facts and claims at issue here present a real controversy that can only be resolved by a declaratory judgment. *See Gulnac v. S. Butler Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991) ("The presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be of practical help in ending the controversy are essential to the granting of relief by way of declaratory judgment. . . . Only where there is a real controversy may a party obtain a declaratory judgment."). A resolution of the controversy at hand will undoubtedly affect the

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injury, it should be noted that Pennsylvania courts routinely confer common-law standing when an aggrieved plaintiff alleges only *prospective* harm. *See, e.g.*, *Bergdoll v. Kane*, 731 A.2d 1261, 1268 (Pa. 1999) (concluding that attorneys and the Pennsylvania Bar Association had standing to challenge a ballot question proposing changes to the Constitution relating to the conduct of criminal trials); *Com., Office of Governor*, 98 A.3d at 1230 (concluding the Officer of the Governor possesses standing and noting "we have recognized the justiciability of declaratory judgment of actions seeking pre-enforcement review of an administrative agency's interpretation and enforcement of a governing statute").

rights of Pennsylvania Attorneys General, District Attorneys, and citizens for decades to come. Accordingly, this Court should exercise its discretion and entertain this unique and worthy legal dispute.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Plaintiffs, the Commonwealth, by and through the Philadelphia and Allegheny County District Attorneys, respectfully request this Court overrule the preliminary objections and grant such further relief as this Court deems appropriate.

Dated: December 3, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the page limitation of Pennsylvania Rule of Appellate Procedure 2135(a)(1) because this Brief contains 9,750 words, excluding the parts exempted by Rule 2135(b). This certificate is based upon the word count of the word processing system used to prepare this Brief.

Dated: December 3, 2021

/s/ *Timothy J. Ford*
Timothy J. Ford

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 3, 2021

/s/ *Timothy J. Ford*
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