

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION



APR 11 2018

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA,)
)
 Petitioner,)
)
 v.)
)
 JOHN PARKS TROWBRIDGE,)
)
 Respondent.)

CIVIL ACTION NO. 17-mc-1557

**RESPONDENT'S MOTION TO DISMISS FOR PETITIONER'S LACK OF STANDING,
PROPERLY BROUGHT UNDER RULE 12(b)(1) AND DECIDED UNDER RULE
12(b)(6) STANDARDS**

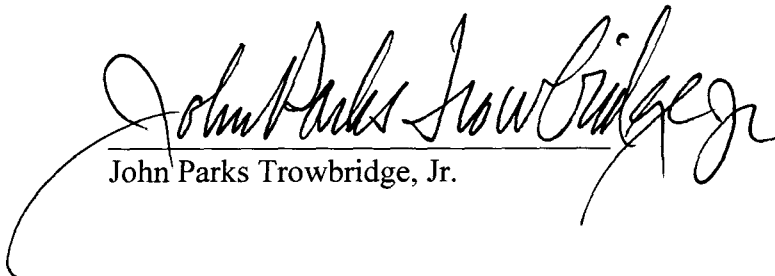
Respondent hereby moves the Court to dismiss with prejudice this case for petitioner's lack of standing to bring the instant suit against respondent.

In support of this Motion, respondent would show the Court the attached Memorandum of Law, made fully part hereof and included herein by reference as though set forth in full.

WHEREFORE, the Undersigned prays the Court:

1. That the petition be dismissed with prejudice;
2. That the cost of this action be taxed against petitioner; and
3. For such other and further relief that the Court may deem just and fair.

This, the 11th day of April 2018.


John Parks Trowbridge, Jr.

MEMORANDUM OF LAW

In re Schering Plough Corp. Intron/Temodar Consumer Class Action, 2012 U.S. App.

LEXIS 9832 (3d Cir. May 16, 2012) (Underline and bold emphasis added.):

Under Fed. R. Civ. P. 12(b)(1), a court must grant a motion to dismiss if it lacks subject-matter jurisdiction to hear a claim. “A motion to dismiss for want of standing is . . . properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter.” *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007). In evaluating a Rule 12(b)(1) motion, a court must first determine whether the movant presents a facial or factual attack. *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977). In reviewing a facial challenge, which contests the sufficiency of the pleadings, “the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.” *Gould Elec. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000). ***

In evaluating whether a complaint adequately pleads the elements of standing, courts apply the standard of reviewing a complaint pursuant to a Rule 12(b)(6) motion to dismiss for failure to state a claim: “Court[s] must accept as true all material allegations set forth in the complaint, and must construe those facts in favor of the nonmoving party.” *Ballentine*, 486 F.3d at 810 (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)); see also *Baldwin v. Univ. of Pittsburgh Med. Ctr.*, 636 F.3d 69, 73 (3d Cir. 2011) (“A dismissal for lack of statutory standing is effectively the same as a dismissal for failure to state a claim.”). ***

Article III of the Constitution limits the scope of the Federal judicial power to the adjudication of “cases” or “controversies.” U.S. Const. art. III, § 2. This “bedrock requirement,” *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982), protects the system of separated powers and respect for the coequal branches by restricting the province of the judiciary to “decid[ing] on the rights of individuals.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803). Indeed, “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976)).

The courts have developed several justiciability doctrines to enforce the case-or-controversy requirement, and “perhaps the most important of these doctrines” is the requirement that “a litigant have ‘standing’ to invoke the power of a federal court.” *Allen v. Wright*, 486 U.S. 737, 750 (1984). “[T]he standing question is whether the plaintiff has ‘alleged such a personal stake in the outcome of the controversy’ as to warrant his invocation of federal-court jurisdiction and to

justify exercise of the court's remedial powers on his behalf." Warth, 422 U.S. at 498-99 (citing Baker v. Carr, 369 U.S. 186, 204 (1962)).

The plaintiff bears the burden of meeting the "irreducible constitutional minimum" of Article III standing by establishing three elements:

First, the plaintiff must have suffered an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of— the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotations, alterations, and citations omitted).

We have recognized that of the three required elements of constitutional standing, "the injury-in-fact element is often determinative." Toll Bros., Inc. v. Twp. of Readington, 555 F.3d 131, 138 (3d Cir. 2009). To satisfy this requirement, the alleged injury must be "particularized," in that it "must affect the plaintiff in a personal and individual way." Lujan, 504 U.S. at 560 n.1. "[T]he 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." Id. at 563 (quoting Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972)). The injury must also be "an invasion of a legally protected interest." Id. at 560. Since "standing is not dispensed in gross," Lewis v. Casey, 518 U.S. 343, 358 n.6 (1996), a plaintiff who raises multiple causes of action "must demonstrate standing for each claim he seeks to press." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352 (2006). **Furthermore, "the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." Allen, 468 U.S. at 752.**

Whereas: Secretary of the Treasury and Commissioner of Internal Revenue are private-sector businessmen (no congressional statutory requirement to take an oath of office), neither of the organizations of which they are the respective senior executive or over which they administer, i.e., Department of the Treasury and Internal Revenue Service, respectively, is an agency, department, commission, board, instrumentality or other entity of petitioner United States of America's (*see* Documents 32, 36); and

Whereas: The actual / threatened injury in this matter is alleged by a private-sector business and third party, Internal Revenue Service; and

Whereas: Petitioner United States of America has alleged neither any concrete nor particularized nor actual nor imminent injury to petitioner; and

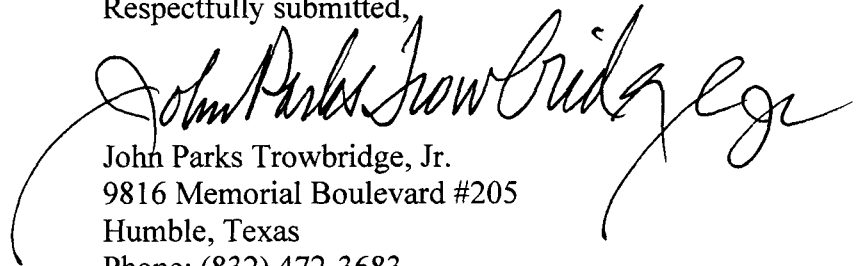
Whereas: There being no actual or threatened injury to petitioner, petitioner has failed to meet the “irreducible constitutional minimum,” *In re Schering, supra*, page 3, of Article III-standing by establishing all three elements enumerated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), *id.*; and

Whereas: Petitioner is not entitled to an adjudication of the particular claims asserted in the petition, *id.*,

Wherefore: This case must be dismissed with prejudice under Rule 12(b)(1) of the Federal Rules of Civil procedure and decided under Rule 12(b)(6) standards for petitioner’s lack of standing to bring the instant suit against respondent.

Date: April 11, 2018

Respectfully submitted,

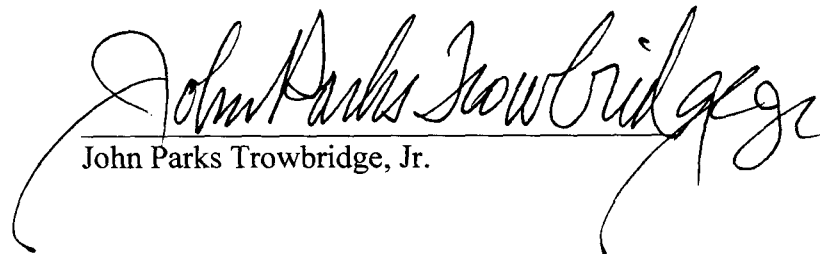


John Parks Trowbridge, Jr.
9816 Memorial Boulevard #205
Humble, Texas
Phone: (832) 472-3683
Fax: (281) 540-4329
Email:
dr.john.parks.trowbridge.jr@earthlink.net

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I served a complete copy of RESPONDENT'S MOTION TO DISMISS FOR PETITIONER'S LACK OF STANDING, PROPERLY BROUGHT UNDER RULE 12(b)(1) AND DECIDED UNDER RULE 12(b)(6) STANDARDS by First Class mail on the following parties:

LEWIS A. BOOTH
Special Assistant
United States Attorney
8701 S. Gessner, Ste. 710
Houston, Texas 77074


John Parks Trowbridge, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 17-mc-1557
)	
JOHN PARKS TROWBRIDGE,)	
)	
Respondent.)	

ORDER

The court, having considered RESPONDENT’S MOTION TO DISMISS FOR PETITIONER’S LACK OF STANDING, PROPERLY BROUGHT UNDER RULE 12(b)(1) AND DECIDED UNDER RULE 12(b)(6) STANDARDS, and any response or reply thereto, it is hereby ORDERED that:

1. The Motion of Respondent John Parks Trowbridge, Jr. is GRANTED.
2. This Case is DISMISSED WITH PREJUDICE.

SIGNED, this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE