

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SPECTRUM PHARMACEUTICALS, INC.,

Plaintiff / Counterclaim
Defendant,

-against-

THE BUXTON HELMSLEY GROUP, INC.,
ALEXANDER ERWIN PARKER, and KELLIE
ANN MOORE,

Defendants.

THE BUXTON HELMSLEY GROUP, INC. and
ALEXANDER ERWIN PARKER,

Third-Party Plaintiffs,

-against-

ASSERTIO HOLDINGS, INC. and
BRENDAN P. O'GRADY,

Third-Party Defendants.

Case No.: 1:24-cv-12489

**THE BUXTON HELMSLEY
GROUP, INC. AND
ALEXANDER ERWIN
PARKER'S
COUNTERCLAIM AND
THIRD-PARTY
COMPLAINT WITH JURY
DEMAND**

COME NOW Defendants, The Buxton Helmsley Group, Inc. ("BHG") and Alexander Erwin Parker ("Mr. Parker") (collectively, the "Answering Defendants"), by and through their undersigned counsel of record, and state as follows for their Counterclaim¹ against Plaintiff Spectrum Pharmaceuticals, Inc. ("Spectrum"), and their Third-Party Complaint against Assertio Holdings, Inc. ("Assertio") and Brendan P. O'Grady ("O'Grady").

¹ The Answering Defendants stand by their initial responsive pleading dated December 30, 2024 (ECF No. 30), and do not repeat those responses and affirmative defenses here. To the extent necessary, the Answering Defendants incorporate the same by reference as if fully set forth herein.

THE PARTIES

1. BHG is an investment management firm incorporated under the laws of the State of New York, with its principal place of business located in New York, New York. BHG has a particular focus on: (i) ensuring public companies meet their disclosure obligations under applicable accounting standards and securities laws; and (ii) building shareholder value by taking an active role in corporate governance matters.

2. Mr. Parker is the Chief Executive Officer (“CEO”) and Senior Managing Director of BHG, and a resident of New York, New York.

3. Upon information and belief and based upon publicly available documents filed with the Securities and Exchange Commission (“SEC”), Spectrum is a Delaware corporation with its principal place of business located in Lake Forest, Illinois.

4. Upon information and belief and based upon publicly available documents filed with the SEC, Spectrum is a wholly owned subsidiary of Assertio, a Delaware corporation with its principal place of business located at 100 South Saunders Road, Suite 300, Lake Forest, Illinois 60045.

5. O’Grady is the CEO of Assertio and a member of Assertio’s board of directors.

JURISDICTION & VENUE

6. This Court has jurisdiction over the Answering Defendants’ Counterclaim against Spectrum and Third-Party Complaint against Assertio and O’Grady pursuant to 28 U.S.C. § 1332(a) and Federal Rules of Civil Procedure (“F.R.C.P.”) 13(a) and 14(a).

7. This Court has personal jurisdiction over Assertio and O’Grady because Assertio maintains its principal place of business in Lake Forest, Illinois and the harm complained of arose out of Spectrum’s, Assertio’s, and O’Grady’s forum-related activities.

8. This Court is the proper venue for the Answering Defendants' Counterclaim against Spectrum and Third-Party Complaint against Assertio and O'Grady pursuant to 28 U.S.C. § 1391(b) and F.R.C.P. 13(a) and 14(a).

FACTUAL BACKGROUND

9. Spectrum is a pharmaceutical company, and it developed, manufactures, and sells the cancer drug Rolvedon, which was approved by the federal Food and Drug Administration ("FDA") in 2022.² According to the FDA's website, Rolvedon "is a drug used to stimulate the growth of neutrophils, a type of white blood cell important in the body's fight against infection in patients with cancers."³

10. Assertio acquired Spectrum in July 2023. Upon information and belief, at the time of the acquisition and at present, Rolvedon was, and is, Spectrum's only FDA-approved product, and is Spectrum's primary asset.

11. BHG became an Assertio shareholder in April 2024.

12. On April 22, 2024, BHG sent a letter to Assertio's board of directors in which BHG articulated a number of concerns and requested further information about Assertio's public disclosures and due diligence regarding its acquisition of Spectrum. Assertio's SEC filings revealed that Assertio and Spectrum had overvalued Rolvedon by approximately seventy-five percent (75%) at the time of the 2023 acquisition, leading to an immediate massive write-down by Assertio of acquisition costs and a corresponding significant shareholder dilution.

13. In a May 6, 2024 letter response to BHG and again during a May 7, 2024 video

² "Drug Trials Snapshots: ROLVEDON," U.S. Food and Drug Administration, <https://www.fda.gov/drugs/drug-approvals-and-databases/drug-trials-snapshots-rolvedon> (last accessed March 18, 2025).

³ *Id.*

call between Mr. Parker, Sravan Emany (Assertio's Audit Committee Chair), and Ajay Patel (Assertio's Chief Financial Officer), Assertio simply directed the Answering Defendants back to Assertio's public filings. Because these filings gave rise to the Answering Defendants' disclosure and due diligence concerns about Assertio's acquisition of Spectrum, these responses were not satisfactory to the Answering Defendants.

14. BHG sent additional correspondence to Assertio. In this correspondence, BHG proposed the appointment of new directors to Assertio's board, and identified Mr. Parker as a potential director candidate. BHG expressly stated that, if appointed as a director of Assertio, Mr. Parker would not seek any compensation for that role.

15. On May 17, 2024, BHG published a press release containing the summary of a report from a Certified Public Accountant/Certified Fraud Examiner retained by BHG to analyze Assertio's public filings and other publicly available information regarding Assertio's acquisition of Spectrum. This report concluded that an independent investigation of the Spectrum acquisition was appropriate, in part because of the sudden write-off of Spectrum and Rolvedon.

16. The Answering Defendants were subsequently contacted by Kellie Ann Moore ("Ms. Moore"), a former Spectrum employee, who told Mr. Parker that she had been fired by Spectrum for internally reporting what she believed to be Spectrum's submission of fraudulent clinical trial data for Rolvedon. Ms. Moore put Mr. Parker in touch with another former Spectrum employee (with Ms. Moore, the "Spectrum Whistleblowers"), who also told Mr. Parker she had been fired for internally reporting concerns related to the Rolvedon clinical trials and Spectrum's apparent reliance on falsified clinical trial data in obtaining FDA approval for the drug.

17. BHG engaged its then-counsel, Blank Rome LLP, to communicate directly with the Spectrum Whistleblowers and independently investigate their fraud claims. Blank Rome did

so, and, at the conclusion of its investigation, sent a report to BHG essentially corroborating the Spectrum Whistleblowers' allegations.

18. In correspondence in June, July, and August 2024, BHG informed Assertio that it had been contacted by whistleblowers regarding the Rolvedon fraud allegations, summarized those allegations, and reiterated its prior requests for information and explanations surrounding the Spectrum acquisition, the sudden Spectrum acquisition write-off, and Rolvedon's corresponding depreciation. In response, Assertio falsely claimed that a good-faith investigation of the internal reports of fraud had been conducted, and it rejected BHG's repeated requests to further discuss the alleged fraud or Assertio's public disclosures surrounding the Spectrum acquisition, the write-off of that acquisition, and/or Rolvedon's corresponding depreciation.

19. Upon information and belief, at no point were the Spectrum Whistleblowers' allegations of fraud relating to the Rolvedon clinical trials investigated in good faith by Spectrum, Assertio, or any third party.

20. Upon information and belief, Spectrum's demand in this litigation for documents from Ms. Moore via its December 5, 2024 motion for a temporary restraining order and preliminary injunction (ECF No. 2) was the first time Spectrum requested any information whatsoever regarding the alleged Rolvedon fraud.

21. Upon information and belief, rather than fully and adequately investigating the internal reports of fraud, Spectrum simply fired the Spectrum Whistleblowers.

22. Upon information and belief, the Answering Defendants' statements regarding the Rolvedon clinical trial fraud, Rolvedon's sudden post-acquisition depreciation in value, and Assertio's disclosure and due diligence failures in connection with the Spectrum acquisition were never fully and adequately investigated by Spectrum, Assertio, or any third party.

23. Prior to a request for legal fees made during the context of ultimately unsuccessful settlement discussions between former counsel for the Answering Defendants and counsel for Spectrum and Assertio, the Answering Defendants never demanded money or compensation from Spectrum or Assertio.

24. On November 8, 2024, BHG published a press release (the “November BHG Release,” annexed hereto as Exhibit 1) linking to an open letter from BHG to Assertio’s shareholders. Both the November BHG Release and the open letter summarize: (i) the disclosure and due diligence failures relating to Rolvedon and the Spectrum acquisition; and (ii) the Rolvedon fraud allegations. The November BHG Release also notes BHG’s repeated (failed) attempts to substantively discuss those issues with Assertio.

25. On November 11, 2024, Assertio published a press release referencing BHG and Mr. Parker by name (the “November Assertio Release”). The November Assertio Release, which is annexed hereto as Exhibit 2, states, in relevant part: (i) “Over the course of the past six months, Mr. Parker has wasted management and the board’s resources with the same repeated and baseless allegations. His allegations were nevertheless taken seriously by Assertio and were investigated only to be found completely without merit.”; (ii) that, for six months, Mr. Parker “attempt[ed] to extract money and a board position from Assertio”; and (iii) that the November BHG Release contained “a number of false statements and baseless allegations against” Assertio.

26. The aforementioned false statements of fact in the November Assertio Release quote O’Grady, who was speaking in his capacity as Assertio’s CEO from Assertio’s headquarters in Lake Forest, Illinois. *See* (Ex. 2).

COUNT I: DEFAMATION *PER SE*
(As against Spectrum, Assertio, and O’Grady)

27. The Answering Defendants repeat and re-allege the preceding paragraphs as though the same were fully set forth herein.

28. The November Assertio Release contains the following statements: (i) “Over the course of the past six months, Mr. Parker has wasted management and the board’s resources with the same repeated and baseless allegations. His allegations were nevertheless taken seriously by Assertio and were investigated only to be found completely without merit.”; (ii) that, for six months, Mr. Parker “attempt[ed] to extract money and a board position from Assertio”; and (iii) that the November BHG Release contained “a number of false statements and baseless allegations against” Assertio.

29. The aforementioned statements in the November Assertio Release are provably false statements of fact, intended to cause harm to Mr. Parker and BHG. The November BHG Release and BHG’s correspondence to Assertio were based on independent reviews and investigations of Assertio’s public filings and the Spectrum Whistleblowers’ reports of fraud relating to the Rolvedon clinical trials. BHG merely suggested that Mr. Parker be considered as a director candidate and expressly stated he would serve for zero compensation. Further, Assertio and Spectrum did not bother to fully and adequately investigate any of the statements made or issues raised in the November BHG Release, any of the statements made or issues raised in BHG’s prior correspondence to Assertio, or the Spectrum Whistleblowers’ allegations of fraud. In fact, with respect BHG’s statements, Assertio either ignored BHG, issued a blanket denial of wrongdoing, or referred BHG to its public disclosures.

30. The November Assertio Release is a press release that was published to and is accessible by the general public.

31. Upon information and belief, the November Assertio Release is not subject to or protected by any applicable privilege, and Spectrum, Assertio, and their officers, directors, and employees are private parties whose statements of fact are not subject to or protected by any applicable privilege.

32. The aforementioned false statements of fact in the November Assertio Release impute a lack of integrity in the Answering Defendants' discharge of their investment management duties.

33. The aforementioned false statements of fact in the November Assertio Release have prejudiced the Answering Defendants, and impute a lack of ability in their trade, profession, or business.

34. The aforementioned false statements of fact in the November Assertio Release explicitly identify the Answering Defendants.

35. The aforementioned false statements of fact in the November Assertio Release cannot reasonably be innocently interpreted; the statements expressly (though baselessly) discredit the Answering Defendants, and falsely accuse them of seeking only personal profit. Such statements are ruinous to a firm like BHG, which attracts investors with its "activist" mindset focused entirely on maximizing shareholder value and protecting the public.

36. The November Assertio Release is therefore defamatory *per se*. While the Answering Defendants' damages are presumed, upon information and belief, the November Assertio Release was motivated by malice: Spectrum, Assertio, and O'Grady intended to cause reputational harm to the Answering Defendants, as evidenced by the fact that the November Assertio Release simply attacks the Answering Defendants rather than substantively responds to the November BHG Release or any prior correspondence between the parties.

37. The Answering Defendants are entitled to damages, including punitive damages, in an amount to be determined at trial.

JURY DEMAND

The Answering Defendants request and demand a jury trial for any and all claims, counterclaims, defenses, and/or other matters that may be lawfully submitted to a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Defendants The Buxton Helmsley Group, Inc. and Alexander Erwin Parker (the “Answering Defendants”) request and pray for judgment against Plaintiff Spectrum Pharmaceuticals, Inc. and Third-Party Defendants Assertio Holdings, Inc. and Brendan O’Grady in favor of the Answering Defendants in an amount to be determined at trial, along with: (i) costs, expenses, and attorneys’ fees incurred by the Answering Defendants; (ii) punitive damages; and (iii) any other and further relief the Court deems just and proper.

Dated: March 20, 2025

Respectfully submitted,

LUCOSKY BROOKMAN LLP

/s/ Samuel L. Blatnick

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***ATTORNEYS FOR DEFENDANTS
AND THIRD-PARTY PLAINTIFFS
THE BUXTON HELMSLEY
GROUP, INC. AND ALEXANDER
ERWIN PARKER***

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing: (i) was electronically filed using the Court's electronic filing system this 20th day of March, 2025, and served upon all counsel of record via the same; and (ii) was served via first-class mail upon *pro se* Defendant Kellie Ann Moore at the address listed below.

Kellie Ann Moore
10522 Covington Circle
Villa Park, CA 92861

Dated: March 20, 2025

/s/ Samuel L. Blatnick
Samuel L. Blatnick