



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

THIS DOCUMENT APPLIES TO:

STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY, Attorney General,

Plaintiff,

v.

CIVIL ACTION NO. 19-C-150 BNE

MALLINCKRODT LLC and SPECGX LLC,

Defendants.

**ORDER**

Pending before the Panel is *Defendants Mallinckrodt LLC and SpecGX LLC's Motion to Dismiss the Attorney General's Complaint for Failure to State a Claim* (Transaction ID 65695237), pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.<sup>1</sup> The motion has been fully briefed by the parties.<sup>2</sup>

As explained by the Court in *John W. Lodge Distributing Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 604-606, 245 S.E.2d 157, 158-159 (1978):

The purpose of a motion under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure is to test the formal sufficiency of the complaint. For purposes of the motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true. Since common law demurrers have been abolished, pleadings are now liberally construed so as to do substantial

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<sup>1</sup> Plaintiff's *Complaint*, filed on November 19, 2019 (Transaction ID 65702079).

<sup>2</sup> To the extent a party re-states or relies on arguments previously stated in motions to dismiss filed in *Brooke County Commission, et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 17-C-248 MSH through 17-C-255 MSH ("*Brooke County*"), and *Monongalia County Commission, et al. v. Purdue Pharma L.P., et al.*, Civil Action Nos. 18-C-222 MSH and 18-C-233 MSH through 18-C-236 MSH ("*Monongalia County*"), the Court incorporates by reference the Orders denying motions to dismiss, entered on December 28, 2018, in *Brooke Co.*, petitions for writ of prohibition refused, June 6, 2019, Orders, *State ex. rel. Cardinal Health v. Honorable David W. Hummel, Jr., et al.*, No. 19-0204, *State ex. rel. Purdue Pharma, et al. v. Honorable David W. Hummel, Jr., et al.*, No. 19-0205, *State ex. rel. AmerisourceBergen Drug Corporation, et al. v. Honorable David W. Hummel, Jr., et al.*, No. 19-0210; and the Orders denying motions to dismiss entered on October 31, 2019, in *Monongalia County*, petition for writ of prohibition refused, February 3, 2020, Order, *State ex. rel. AmerisourceBergen Drug Corporation, et al. v. Honorable Alan D. Moats, et al.*, No. 19-1051.

justice. W.Va. R.C.P. 8(f). The policy of the rule is thus to decide cases upon their merits, and if the complaint states a claim upon which relief can be granted under any legal theory, a motion under Rule 12(b)(6) must be denied.

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In view of the liberal policy of the rules of pleading with regard to the construction of plaintiff's complaint, and in view of the policy of the rules favoring the determination of actions on the merits, the motion to dismiss for failure to state a claim should be viewed with disfavor and rarely granted. The standard which plaintiff must meet to overcome a Rule 12(b)(6) motion is a liberal standard, and few complaints fail to meet it. The plaintiff's burden in resisting a motion to dismiss is a relatively light one. *Williams v. Wheeling Steel Corp.*, 266 F.Supp. 651 (N.D.W.Va.1967)

A trial court considering a motion to dismiss under Rule 12(b)(6) must "liberally construe the complaint so as to do substantial justice." *Cantley v. Lincoln Co. Comm'n.*, 221 W. Va. 468, 470, 655 S.E.2d 490, 492 (2007) and West Virginia Rule of Civil Procedure, Rule 8(f). "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at Syl. pt. 2, *quoting* Syl. pt. 3, *Chapman v. Kane Transfer Company*, W.Va., 236 S.E.2d 207 (1977).

Having reviewed the above-listed Motion to Dismiss and all of the briefing, the Presiding Judges **FIND** that, construing the Complaint in the light most favorable to Plaintiff, and taking its allegations as true, the Complaint sufficiently states claims upon which relief can be granted, and the Defendants have not demonstrated that Plaintiff can prove no set of facts in support of their claims which would entitle them to relief. Accordingly, *Defendants Mallinckrodt LLC and*

*SpecGX LLC's Motion to Dismiss the Attorney General's Complaint for Failure to State a Claim*  
(Transaction ID 65695237) is **DENIED**.<sup>3</sup>

All exceptions and objections are noted and preserved for the record.

A copy of this Order has been electronically served on all counsel of record this day via  
File & Serve*Xpress*.

It is so **ORDERED**.

**ENTERED:** September 10, 2020.

/s/ Alan D Moats  
Opioid Litigation

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation

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<sup>3</sup> The Court adopts and incorporates its findings of fact and conclusions of law as set forth in its *Order Regarding Plaintiffs' Motion to Strike Defendants' Notices of Non-Party Fault* (Transaction ID 65807300), entered on July 29, 2020 (West Virginia's Apportionment Statutes are not applicable to Plaintiffs' claims for equitable abatement of public nuisance), and *Order Regarding the State's Motion to Strike Defendants' Notices of Non-Party Fault* (Transaction ID 65820504), entered on August 4, 2020 (West Virginia's Apportionment Statutes are not applicable to the States' claims, which are limited to equitable abatement of public nuisance and equitable relief and civil penalties for violation of West Virginia Consumer Credit and Protection Act).