



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 21-C-9000 PHARM

THIS DOCUMENT APPLIES TO ALL STATE CASES AGAINST PHARMACIES

**ORDER REGARDING MOTIONS TO DISMISS**

Pending before the Mass Litigation Panel is the *Pharmacy Defendants*<sup>1</sup> *Motion for Hearing on Motions to Dismiss or, In the Alternative, Motion for Ruling on the Briefs* (Transaction ID 67447693) requesting a ruling on the following motions to dismiss complaints filed against them by the State of West Virginia, acting through its Attorney General (“the State”)<sup>2</sup>

1. **CVS** – Motion to Dismiss Complaint (Transaction ID 66812516) and Motion to Dismiss First Amended Complaint (Transaction ID 67074618).
2. **Rite Aid** – Motion to Dismiss Complaint (Transaction ID 66805397)<sup>3</sup>, Rite Aid of Maryland’s Motion to Dismiss First Amended Complaint (Transaction ID 66898210), and Rite Aid of West Virginia’s Motion to Dismiss Second Amended Complaint (Transaction ID 67072600).
3. **Walgreens** – Motion to Dismiss Complaint (Transaction ID 66816944)<sup>4</sup>, and Motion to Dismiss First Amended Complaint (Transaction ID 67074136).
4. **Walmart** – Motion to Dismiss First Amended Complaint (Transaction ID 66979844).

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<sup>1</sup> CVS Pharmacy, Inc., CVS Indiana, L.L.C., CVS Rx Services, Inc., and CVS TN Distribution, L.L.C., West Virginia CVS Pharmacy, L.L.C. (collectively, “CVS”) Civil Action No. 20-C-131 PNM; Rite Aid of Maryland, Inc. (“Rite Aid of Maryland”), Rite Aid of West Virginia, Inc. (“Rite Aid of West Virginia”) (collectively, “Rite Aid”) Civil Action No. 20-C-83 PNM; Walgreens Boots Alliance, Inc., Walgreen Co., and Walgreen Eastern Co., Inc. (collectively, “Walgreens”) Civil Action No. 20-C-82 PNM; and Walmart, Inc. (“Walmart”) Civil Action No. 20-C-132 PNM.

<sup>2</sup> Because the Pharmacy Defendants provide a detailed recitation of the procedural history of their pending motions to dismiss in the motion for hearing or a ruling on the briefs (Transaction ID 67447693) the Panel will not repeat it here.

<sup>3</sup> Defendant Rite Aid Corporation (“RAC”) filed a separate motion to dismiss the Complaint for lack of personal jurisdiction (Transaction ID 66805303). RAC was subsequently dismissed without prejudice. (Transaction ID 66815276).

<sup>4</sup> Defendant Walgreens Boots Alliance, Inc. separately moved to dismiss the Complaint for lack of personal jurisdiction (Transaction ID 66817018), but subsequently withdrew the motion (Transaction ID 67304457).

The motions have been fully briefed by the parties, including the *Pharmacy Defendants'* *Notice of Supplemental Authority* filed on June 21, 2022 (Transaction ID 67746756), the State's *Response* filed on June 23, 2022 (Transaction ID 67755204), the *Pharmacy Defendants'* *Notice of Supplemental Authority* filed on July 8, 2022 (Transaction ID 67804904), and the State's *Response* filed on July 11, 2022 (Transaction ID 67806525). The Panel has determined that oral argument will not aid it in deciding the motions.

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 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 Motions to Dismiss and all of the briefing, the Presiding Judges **FIND** that, construing the State’s First Amended Complaints filed against CVS, Walgreens and Walmart, and the State’s Second Amended Complaint filed against Rite Aid in the light most favorable to the State, and taking the State’s allegations as true, the State’s First Amended Complaints filed against CVS, Walgreens and Walmart, and the State’s Second Amended Complaint filed against Rite Aid sufficiently state claims upon which relief can be granted, and the Pharmacy Defendants have not demonstrated that the State can prove no set of facts in support of its claims which would entitle the State to relief. Accordingly, the above-listed Motions to Dismiss pursuant to Rule 12(b)(6) are **DENIED**.

The Presiding Judges further **FIND** that rule 9(b) of the West Virginia Rules of Civil Procedure does not apply to the State’s claims under the West Virginia Consumer Credit and Protection Act (“WVCCPA”). Furthermore, even if Rule 9(b) did apply to the State’s WVCCPA claims, the Presiding Judges **FIND** the State’s detailed allegations of the Pharmacy Defendants’ failure to maintain effective controls against diversion of the opioids they distributed satisfy Rule 9(b). Therefore, the Pharmacy Defendants’ motions to dismiss pursuant to Rule 9(b) are also **DENIED**.

Defendants CVS and Rite Aid’s motions to dismiss pursuant to Rules 4(k) and 12(b)(4) are also **DENIED** for the reasons set forth in paragraph 10 of the State’s oppositions to CVS and Rite Aid’s motions (Transaction IDs 66994256 and 66994432).

The Panel Orders the State to file and serve a detailed proposed Order with findings of fact and conclusions of law, which shall also address the supplemental authority in the Pharmacy Defendants’ Notices filed on June 21, 2022 (Transaction ID 67746756) and July 8, 2022 (Transaction ID 67804904) **no later than July 25, 2022**.

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:** July 11, 2022.

/s/ Alan D. Moats  
Lead Presiding Judge  
Opioid Litigation

/s/ Derek C. Swope  
Presiding Judge  
Opioid Litigation