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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, ex rel. Wayne Stenehjem, Attorney General Plaintiff-Appellant vs. Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company Inc.; and Does 1 through 100, Inclusive, Defendants-Appellees.	SUPREME COURT NO. 20190237 BURLEIGH CO. NO. 08-2018-CV-01300

APPEAL FROM THE DISTRICT COURT ORDER DATED MAY 10, 2019,
AND JUDGMENT DATED MAY 24, 2019.
HONORABLE JAMES S. HILL PRESIDING
BURLEIGH COUNTY DISTRICT COURT, CIVIL NO. 08-2018-CV-01300

AMENDED BRIEF OF THE STATE ATTORNEYS GENERAL OF ALABAMA, ALASKA, GEORGIA, HAWAI'I, IDAHO, IOWA, MAINE, MARYLAND, MINNESOTA, MISSISSIPPI, MONTANA, NEW MEXICO, OREGON, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, VIRGINIA, AND WASHINGTON, AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT THE STATE OF NORTH DAKOTA, EX REL. WAYNE STENEHJEM, ATTORNEY GENERAL

SUPPORTING REVERSAL OF THE LOWER COURT

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Interest of *Amici* and Introduction

[¶ 1] *Amici* are State Attorneys General for the states of Alabama, Alaska, Georgia, Hawai'i, Idaho, Iowa, Maine, Maryland, Minnesota, Mississippi, Montana, New Mexico, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington (collectively, "the State AGs"). All 50 states, the District of Columbia, and six territories have an office of attorney general (or its functional equivalent). A crucial part of an attorney general's work is to serve as the state's chief law enforcer to protect the health, safety, and welfare of its citizens. State attorneys general routinely promote these interests by enforcing state consumer protection statutes or acting pursuant to their *parens patriae* authority. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600, 602 (1982) (a state has "inherent" authority to pursue litigation to protect quasi-sovereign interests such as "the well-being of its populace").

[¶ 2] Like North Dakota, each of the *amici* State AGs has brought suit against various entities responsible for the opioid epidemic that is injuring each State's residents. Indeed, the State AGs represent communities with some of the highest opioid abuse rates in the country and whose citizens have suffered catastrophic injury to their health and welfare.

Each of those state actions seeks to recover the substantial costs the state has borne in attempting to mitigate and respond to the opioid crisis.

[¶ 3] The district court here, however, gave short shrift to North Dakota's substantial interest in protecting its citizens from the ravages of the opioid epidemic and *sua sponte* entered summary judgment against the State. The district court's decision deprived the State of any opportunity to prove its claims and vindicate its weighty interests. That was reversible error.

[¶ 4] The district court compounded its error in concluding that the State's action, which challenges Defendants' fraudulent marketing scheme to promote prescription opioids, was preempted by federal law. The district court likewise erred in granting summary judgment for Defendants on the State's claims under the state consumer fraud law and public nuisance statute. Similar challenges to state-law fraud and nuisance claims by these and similarly-situated Defendants have been resoundingly rejected by other courts in suits against opioid manufacturers and/or distributors.

[¶ 5] The State AGs urge reversal of the district court's erroneous decision. That decision impairs the ongoing litigation interests of *amici*, all of whom are currently litigating against Purdue (and/or other manufacturers, distributors, chain pharmacies, or other persons or entities involved in the opioid industry) in other fora. Many of the same (or similar) issues on appeal here are raised in those actions. Moreover, the defendants in these other actions have repeatedly cited and relied upon the district court's decision in this case. For that reason, the State AGs have a significant interest in ensuring that the district court's decision is corrected on appeal and not allowed to stand as a contrary ruling among a number of trial court decisions that have reached the opposite result. While the district court's decision

in this matter is certainly not binding on courts in other States, such a decision, if allowed to stand, will be used by defendants in those venues to try to jeopardize the State AGs' ability to protect the health and well-being of their residents.

Statement of Authorship and Funding

[¶ 6] No party's counsel authored any part of this brief, and no party, party's counsel, person, or entity other than the *amici* States, their Attorneys General, their staff, and their counsel contributed money toward the authorship or production of this brief.

Law and Argument

I. THE DISTRICT COURT ERRED IN *SUA SPONTE* GRANTING SUMMARY JUDGMENT FOR DEFENDANTS.

[¶ 7] The district court, based solely on the complaint and the briefing on the motion to dismiss, *sua sponte* granted summary judgment to Defendants. That was gross error. Without any notice to the State, the district court's decision prematurely curtailed the State's opportunity to conduct discovery or marshal evidence in its favor to demonstrate the existence of material factual disputes precluding summary judgment. The district court's decision should be reversed.

[¶ 8] North Dakota Rule of Civil Procedure 12(d) directs a court to treat a motion to dismiss as a motion for summary judgment "[i]f … matters outside the pleadings are presented to and not excluded by the court." If the court does so, however, that rule directs that "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* North Dakota's Rule 12(d) is virtually identical to Federal Rule of Civil Procedure 12(d).

[¶ 9] Defendants' motion to dismiss included six exhibits, each of which was a publicly available, government document that was referenced in the complaint. *See* Index # 13 at 7

& n.9. Based solely on these six exhibits, the district court concluded that "both parties have cited to multiple documents and sources outside of the pleadings," Index # 56 at 3, ¶ 11; *accord id.* at 4, and therefore stated that it would "treat Purdue's motion as a motion for summary judgment." *Id.*

[¶ 10] As the State correctly explains in its brief, ND Br. at 16-17, however, the parties did not present "matters outside the pleadings." Indeed, Defendants themselves recognized that these documents did not become "matters outside the pleadings" simply because they subsequently attached them to their motion to dismiss. *See* Index # 13 at 7-8 & n.9 (urging the court to take judicial notice of these documents because they were cited in the complaint and there was no question as to their authenticity); *see also Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 931 (8th Cir. 2012); *Brooks v. Midwest Heart Grp.*, 655 F.3d 796, 800 (8th Cir. 2011) (conversion to Rule 56 motion may not be necessary if court solely considers the initial pleadings and matters of public record).

[¶ 11] The decision in *Riemers v. State ex rel. Univ. of N.D.*, 2007 ND APP 4, ¶ 8, 739 N.W.2d 248, cited by Defendants in their motion to dismiss, Index # 13 at 7, is instructive. In that case, the complaint referenced a document that defendant subsequently attached to its motion to dismiss, as occurred here. *Riemers* concluded that the court could consider the document without converting the motion into a motion for summary judgment. 2007 ND APP 4, ¶ 8. Thus, because the exhibits at issue here were not "matters outside the pleadings," the district court was not authorized to treat Defendants' motion to dismiss as a motion for summary judgment.

[¶ 12] Even if the district court were correct that the six documents constituted "matters outside of the pleadings" such that conversion to a Rule 56 motion was appropriate, the

district court nevertheless erred because it failed to give the State notice and "a reasonable opportunity to present all the material" relevant to the motion for summary judgment. *See* N.D.R.Civ.P. 12(d). As the Eighth Circuit has explained,[1] "[t]o afford the opposing party an opportunity to rebut what has become a motion for summary judgment, the court must give all parties reasonable notice that conversion is coming." *Brooks*, 655 F.3d at 800 (internal quotation marks omitted). "That way, a party prejudiced by the conversion can produce affirmative evidence to counter the movant's allegations or file an affidavit under Rule 56(f) requesting more time to obtain such evidence in order to resist the motion." *Id.*

[¶ 13] The State was given no notice of the district court's intended conversion and no opportunity to oppose the motion for summary judgment. Rather, the district court simultaneously announced that it was converting Defendants' motion into a motion for summary judgment and granted the motion. *See* Index # 56 at 4, 27. That was a patent violation of Rule 12(d) and was plainly prejudicial to the State, against whom judgment was entered. *Cf. Ashanti*, 666 F.3d at 1151 (lack of notice was harmless because plaintiff was given adequate opportunity to respond to converted motion but nevertheless was unable to show any disputed material fact or that such facts were missing from the record). Indeed, plaintiffs in the federal opioid multi-district litigation pending in the United States District Court for the Northern District of Ohio, who are pursuing similar claims to those here, have successfully demonstrated that there are a plethora of genuine, material factual disputes such that summary judgment is not appropriate. *See, e.g., In re Nat'l Prescription*

[1] *See City of Bismarck v. McCormick*, 2012 ND 53, ¶ 12, 813 N.W.2d 599 (North Dakota courts may rely on "persuasive federal authority when interpreting [North Dakota] rules.").

Opiate Litig., Case No. 1:17-md-2084, Doc. Nos. 2564-69, 2578, 2580 (denying defendants' various motions for summary judgment).

[¶ 14] Moreover, even once the district court decided to treat the motion to dismiss as a Rule 56 motion, the district court failed to apply the proper summary judgment standard. Nowhere in its opinion did the district court discuss whether there was an absence of material factual disputes. Instead, it appears that there were factual disputes, but that the district court itself simply resolved those in Defendants' favor. *See, e.g.,* Index # 56 at 9 (finding Purdue's marketing practices "were consistent with the FDA-approved product labeling"); *id.* at 11 (finding that allegations "conflict with statement the FDA has specifically approved"); *id* at 17 (finding State's complaint requests money damages). That was improper.

II. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE STATE'S CLAIMS WERE PREEMPTED BY FEDERAL LAW.

[¶ 15] Like North Dakota, the State AGs have brought similar claims challenging Purdue's (or other opioid manufacturers') fraudulent marketing practices. Defendants in those actions, like Purdue here, have argued that those claims are preempted by federal law. That argument has been repeatedly rejected by courts around the country. *See, e.g., State of Ohio, ex rel. Dewine v. Purdue Pharma, LP*, No. 17 CI 261, 2018 WL 4080052 at *3 (Common Pleas Ct., Ross County, Ohio Aug. 22, 2018) (no preemption because "it is evident in the Plaintiff's complaint that its claims are based upon misrepresentations made by the Defendants concerning the use and safety of opioids which go far beyond labeling."); *Grewal v. Purdue Pharma, LP*, No. ESX-C-245-17, 2018 WL 4829660 at *16 (N.J. Super. Ch. Oct. 2, 2018) ("Here, the Court finds that the State's allegations do not conflict with federal law. The State does not claim that the FDA-approved labeling was

inadequate. Nor does the State seek to change the labeling. The State alleges that Purdue's marketing was inconsistent with or not covered by FDA approvals."); *City of Chicago v. Purdue Pharma, LP*, 211 F. Supp. 3d 1058 (N.D. Ill. 2016) (City's allegations primarily sound in fraud and do not challenge the labeling of opioids); *State of New Hampshire v. Purdue Pharma, LP*, Case No. 217- 2017-CV-00402, 2018 WL 4566129, at *2-4 (N.H. Super. Sep. 18, 2018) (denying defendants' motion to dismiss based on preemption because their preemption theory presupposed the marketing efforts were consistent with the drug labeling); *State of Washington v. Purdue Pharma, LP*, No. 17-2-25505-0 SEA ¶ 5 (Wash. Super. Ct. May 14, 2018) (manufacturer engaged in conduct that went beyond the labeling content); *State of Arkansas v. Purdue Pharma, L.P.*, Case No. 60CV-18-2018 ¶¶ 4-9 (Ark. Cir. Ct. Apr. 5, 2019) ; *Com. of Kentucky v. Johnson & Johnson*, Case No. 18-CI-00313, at 6 (Ky. Cir. Ct. Nov. 20, 2018) ("The Commonwealth does not challenge the warning labels on Janssen's products. Instead, the Commonwealth challenges the marketing tactics by Janssen in advertising their opioid pharmaceuticals."); *State of Tennessee, ex rel. Herbert H. Slattery III, Attorney General and Reporter v. Purdue Pharma, L.P.*, No. 1-173-18 at 2-5 (Tenn. Dist. Ct. Feb. 22, 2019); *In re Opioid Litig.*, Index No. 400000/2017 at 5-11 (N.Y. Sup. Ct. June 18, 2018); *State of Vermont v. Purdue Pharma, L.P.*, 757-9-18 CNCV at 3-4 (Vt. Super. Ct. Mar. 19, 2019); *State of Washington*, No. 17-2-25505-0 SEA at ¶¶ 4-5.

[¶ 16] Most recently, the preemption argument was also rejected by the U.S. District Court for the Northern District of Ohio in the federal opioid MDL ("the MDL court"). *See In re Nat'l Prescription Opiate Litig.*, 2019 WL 4178591 (Sept. 3, 2019). In that case, the MDL Court explained that the manufacturers' argument that plaintiffs' claims in the MDL were

all about labeling—the same argument the district court accepted here—was inaccurate, stating that the court had "*never* held that the term 'labeling' is so broad it encompasses the massive marketing campaign alleged here." *Id.* at *4. The MDL court further recognized that the district court's decision here is "by leaps and bounds, an outlier on the question of preemption," *id.* at *5, and refused to follow it, even though the MDL court recognized that the allegations in the MDL were similar to those asserted by North Dakota. *Id.* at * 5 (stating plaintiffs in MDL had not proposed any label changes and that there was no evidence FDA had approved the specific marketing messages that were challenged, such as that the risk of addiction was low or promoting the concept of pseudoaddiction).

[¶ 17] The district court's contrary preemption holding here cannot be sustained. The district court mischaracterized the State's allegations as challenging solely the labeling of prescription opioids, and concluded that the FDA had previously rejected such labeling changes. Index # 56 at 9-10. But the State's claims are not so narrow and plainly allege that Defendants engaged in a fraudulent marketing scheme to promote the sale of prescription opioids, which included misrepresentations that were inconsistent with FDA-approved labels. App.[2] 8, 19, 21-39, 53. Moreover, those claims encompassed unbranded advertising, which appeared to be produced by independent and objective sources, but were, in fact, funded by and developed or controlled by Purdue. App. 15-21. Those materials included scientific or academic journal articles, studies, educational or training materials, and treatment guidelines. App. 10, 15-21, 26. Thus, even if "labeling" is broadly construed to encompass all branded representations made to physicians or patients by Purdue, and is therefore preempted because that is controlled by the FDA, as the district

[2] "App." refers to the Appendix filed by North Dakota in support of its brief.

court here suggested, North Dakota's allegations about Purdue's marketing scheme extends to conduct that is not even regulated by the FDA and cannot possibly be preempted by federal law.

[¶ 18] This Court, therefore, should follow the weight of authority that has rejected the same preemption argument raised here and reverse the district court's preemption ruling. In the alternative, however, it is clear that, at a minimum, there were genuine disputes of material fact as to whether Defendants' alleged marketing scheme was consistent with or required by the FDA-approved labeling, as the district court found. *See* Index # 56 at 9, 15. Summary judgment on preemption grounds, therefore, was inappropriate.

III. THE DISTRICT COURT ERRED IN REQUIRING NORTH DAKOTA TO ALLEGE CAUSATION FOR ITS CLAIMS UNDER THE CONSUMER FRAUD LAW.

[¶ 19] Like North Dakota, all fifty States have enacted consumer protection laws that may be enforced by the State, usually through its Attorney General. These include laws prohibiting unfair or deceptive acts and practices ("UDAP statutes"). State AGs are authorized by these statutes to target deceptive business conduct and to seek an array of different relief, including injunctive relief, civil penalties, restitution, disgorgement, receivership, and more. *See* Jonathan Sheldon, et al., Nat'l Consumer Law Ctr., *Unfair and Deceptive Acts and Practices* §§ 1.1, 12.2.1, 13.1, 13.5.1.1, 13.5.3.1 (9th ed. 2016). The enforcement provision of North Dakota's Consumer Fraud Law, which authorizes the Attorney General to pursue relief, parallels the UDAP enforcement provisions in other states.[3]

[3] *See, e.g.* N.D.C.C. § 51-15-07 (North Dakota); NMSA 1978, §§ 57-12-8, -9, -11 (New Mexico); Ala. Code § 8-19-8(a), -8(b), -11 (Alabama); AS 45.50.501, 537(d), 551

[¶ 20] As to civil penalties and injunctive relief in particular, most States (including North Dakota) have eschewed including a general causation element in their UDAP statutes that must be proven before a State is entitled to judgment, and for good reason.[4] Courts have uniformly recognized that the purpose of sovereign enforcement actions is eliminating unfair or deceptive practices "to vindicate the public interest rather than to redress individual grievances," or to act as a proxy for individual citizens' private claims. *Mayton v. Hiatt's Used Cars, Inc.*, 262 S.E.2d 860, 863 (N.C. Ct. App. 1980); *see also In re Standard & Poor's Rating Agency Litig.*, 23 F. Supp. 3d 378, 407 (S.D.N.Y. 2014). Courts have routinely found that sovereigns need not prove reliance or proximate cause to obtain relief under state UDAP statutes. *See, e.g., Weinberg v. Sun Co.*, 777 A.2d 442, 445 (Pa. 2001) (under Pennsylvania's UDAP statute, private plaintiffs must show reliance and causation, but the State need only prove that a practice is unlawful and that proceedings would be in the public interest); *Elipas Enters. v. Siverstein*, 612 N.E. 2d 9, 12 (Ill. App. Ct. 1993) (private consumers could not prevail on claims under Illinois' UDAP statute without establishing reasonable reliance on deceptive conduct, but the State need not establish reasonable reliance); *Thiedemann v. Mercedes-Benz USA, LLC*, 872 A.2d 783, 790-92 (N.J. 2005) (recognizing that private plaintiffs must plead an "[ascertainable] loss attributable to conduct made unlawful by the [Consumer Fraud Act]" but AG need not).

(Alaska); Idaho Code § 48-606 (Idaho); Minn. Stat. § 8.31, subds. 2b, 3, 3a (Minnesota); S.C. Code § 39-5-50, -110 (South Carolina); RCW 19.86.020, 080, 100, 140 (Washington).

[4] *See, e.g.* N.D.C.C. § 51-15-07 (North Dakota); NMSA 1978, § 57-12-2(D) (New Mexico); Ala. Code § 8-19-8(a) (Alabama); AS 45.50.551 (Alaska); *State ex rel. Kidwell v. Master Distributors, Inc.*, 615 P.2d 116, 122-23 (Idaho 1980); Minn. Stat. § 8.31, subd. 3 (Minnesota); S.C. Code § 39-5-20, -50, -110 (South Carolina); RCW 19.86.140 (Washington).

[¶ 21] The primary reason to assess civil penalties for violations of UDAP statutes is to "deter and punish deceptive trade practices." *Hall v. Walter*, 969 P.2d 224, 231-32 (Colo. 1998) (en banc). Civil penalties, like punitive damages, are awarded not to remediate harm, but to punish conduct. *See, e.g. Atherton v. Gopin*, 340 P.3d 630, 641 (N.M. Ct. App. 2015) ("treble damages and the [New Mexico Unfair Practices Act] civil penalties are forms of remedy intended to punish the wrongdoer.") (citation omitted); *BMW of N.A, Inc. v. Gore*, 517 U.S. 559, 569 (1996) ("Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition.") (citations omitted). Injunctions provide prospective relief "to prevent future harm." *May Dept. Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 978 (Colo. 1993). "Consequently, injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed." *Scripps Health v. Marin*, 85 Cal.Rptr.2d 86, 92 (Cal. Ct. App. 1999). Thus, both civil penalties and injunctions are aimed squarely at remedying the violation itself (*i.e.*, civil penalties punish the violation, injunctions prevent reoccurrence of the violation), rather than compensating for a resulting injury.

[¶ 22] North Dakota's claim under N.D.C.C. § 51-15-01 *et seq*., seeks injunctive relief, civil penalties, fees and costs. Index # 2, ¶¶ 186, 197. None of these categories of relief require North Dakota to prove that the violation of the consumer fraud statute *caused* an injury. Rather, the plain language of North Dakota's UDAP statute dictates that deceiving consumers about a product or service is an actionable violation of the law in and of itself, irrespective of whether it caused injury to a consumer. *See* N.D.C.C. § 51-15-02 (use of deceptive acts or practices unlawful "whether or not any person has in fact been misled,

deceived, or damaged thereby").[5] The violation is sufficient to subject the wrongdoer to civil penalties and injunctive relief. *See* N.D.C.C. § 51-15-07 (attorney general may seek an injunction and civil penalties). These penalties and injunctions are in addition to, and independent from, other consumer remedies that may be available. *See id.* (civil penalties imposed "[i]n addition to any other remedy authorized by this chapter").[6] Thus, pursuant to the statute, North Dakota may obtain a judgment against Purdue for civil penalties, injunctive relief, fees, and costs, without showing that the deceptive acts caused harm.

[¶ 23] The district court, however, granted judgment for Purdue because it concluded that North Dakota sought damages, and was therefore required to show causation. *See* Index # 56 at 16-17, 23. Even if North Dakota also sought other categories of recovery that may require causation to be pled and proved, it is irrefutable, as explained above, that North Dakota need not plead or prove causation for civil penalties or injunctive relief under its state UDAP statute.[7] The district court, therefore, improperly dismissed the State's claims

[5] *See also* NMSA 1978, § 57-12-2(D) (New Mexico); Ala. Code § 8-19-5 (Alabama); AS 45.50.471(b)(12) (Alaska); Minn. Stat. §§ 325F.69, 325D.44, subd. 2 (Minnesota); S.C. Code § 39-5-20 (South Carolina); *State v. LA Investors LLC*, 2 Wn.App.2d 524, 538, 410 P.3d 1183 (Wash. Ct. App. 2018).

[6] Other state statutes are similar. *See, e.g.,* NMSA 1978, § 57-12-10(D) (New Mexico); AS 45.50.471(c) (Alaska); Minn. Stat. § 8.31, subds. 3 and 3a (Minnesota); S.C. Code § 39-5-140(c) (South Carolina); RCW 19.86.080, 140 (Washington).

[7] North Dakota also sought restitution and disgorgement. Index # 2 ¶¶ 214(E)-(F). Even if the court determines that these categories of relief (and only these categories) may require proof of causation, such categories are severable from the other relief sought, and the inclusion of discreet categories of relief that may require proof of causation is not a legally sufficient reason to dismiss both of North Dakota's consumer claims in their entirety, especially at the motion to dismiss phase; *State v. LA Investors LLC*, 2 Wn.App.2d at 538-47 (Affirming civil penalty of $2,569,980) (citation omitted).

for civil penalties and injunctive relief for failure to plead or prove causation, and should be reversed.[8]

IV. THE DISTRICT COURT ERRED IN REJECTING THE STATE'S PUBLIC NUISANCE CLAIM AS A MATTER OF LAW.

[¶ 24] The district court rejected the State's public nuisance claim on the ground that North Dakota's public nuisance statute does not apply to the sale of goods, and that the State's complaint only challenged the "overprescribing and sale" of opioids. Index # 56 at 25-27. That was error.

[¶ 25] As explained in the State's brief, the plain statutory language of the state's public nuisance law does not exclude conduct involving the sale of goods. *See* N.D. Br. at 38-42. Even assuming, *arguendo*, that North Dakota's public nuisance law does not apply to the sale of goods, North Dakota's complaint, read in the light most favorable to the non-moving party,[9] plainly alleges a public nuisance caused by "'an aggressive and successful marketing scheme that relied on intentional deception and misrepresentation regarding the benefits, safety and efficacy of prescription opioids,'" as the district court itself recognized. Index # 56 at 25 (quoting North Dakota's response brief and complaint). *See* Index # 2, ¶ 2. Those allegations are not based on sales of a good, but on deceptive conduct and misrepresentations.

[¶ 26] Other courts presiding over opioid litigation have refused to dismiss (or decide as a matter of law) public nuisance claims based on similar allegations to those in the State's

[8] It is unclear whether the district court evaluated the State's consumer fraud claims under the motion to dismiss standard or the summary judgment standard. Although the court indicated that it was treating Defendants' motion as a Rule 56 motion, the court's analysis discusses "allegations" and "fail[ure] to plead." *See, e.g.,* Index # 56 at 19.

[9] As noted above, the motion to dismiss standard should be applied, not the summary judgment standard.

complaint here. *See In re Nat'l Prescription Opiate Litig.*, Case No. 1:17-md-2084 (N.D. Ohio Sept. 9, 2019) (denying manufacturers' summary judgment motion on public nuisance claims); *State of Minnesota v. Purdue Pharma, L.P.*, Ct. File No. 27-CV-18-10788 (Hennepin Cty. Ct., Minn. Jan. 4, 2019) (denying Purdue's motion to dismiss nuisance claim); *Staubas v. Purdue Pharma, L.P.*, 2018 WL 3349093, Case. No. 1-173-18 (Tenn. Cir. Ct. June 12, 2018) (same); *but see State of Delaware v. Purdue Pharma, L.P.*, 2019 WL 446382 at *12, Case no. N18C-01-223 MMJ CCLD (Del. Super. Ct. Feb. 4, 2019) ("In Delaware, public nuisance claims have not been recognized for products."). This Court should likewise reverse the dismissal of the public nuisance claim.

Dated: September 17, 2019.

Respectfully Submitted,

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, ex rel. Wayne Stenehjem, Attorney General Plaintiff-Appellant vs. Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company Inc.; and Does 1 through 100, Inclusive, Defendants-Appellees.	SUPREME COURT NO. 20190237 BURLEIGH CO. NO. 08-2018-CV-01300 **Certificate of Compliance**

[¶ 1] The undersigned certifies that pursuant to N.D.R.App.P. Rule 29(a)(5), that the text of the Amended Brief of Amicus contains no more than 19 pages.

[¶ 2] The Amended Brief of Amicus has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 word processing software in Times New Roman 12 point font.

[¶ 3] Respectfully submitted on September 17, 2019.

Respectfully submitted,

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