

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

Babineaux

Civil Action No. 16-00982

versus

Judge Rebecca F. Doherty

Janssen Pharmaceuticals, Inc, et al

Magistrate Judge Carol B. Whitehurst

ORDER

Before the Court is an unopposed Motion To Dismiss filed by Defendant Vintage Pharmaceuticals, LLC (incorrectly named in the Complaint as Endo Pharmaceuticals Inc.)¹ (hereinafter referred to as “Vintage”) [Rec. Doc. 12]. Oral argument is not necessary. Based on the record of this action, the Court will deny Vintage’s Motion To Dismiss as moot.

Shirley Babineaux, individually and on behalf of her minor child C.H. (“Plaintiffs”), bring this product liability suit alleging personal injuries from C.H.’s use of Risperdal® (risperidone), Risperdal Consta® (a long-acting injectable form of

¹ The record indicates that Endo Pharmaceuticals Inc was removed as a party-defendant on December 9, 2016.

risperidone), Invega® (paliperidone), and / or Risperidone.² *R. 1, ¶ 6.* Plaintiffs name as Defendants Vintage, Janssen Pharmaceuticals, Inc., Janssen Research & Development LLC, Patriot Pharmaceuticals, LLC and Johnson & Johnson.³ They further allege the same causes of action against all Defendants: (1) Construction or Composition Defect Pursuant to La. R.S. 9:2800.55; (2) Design Defect Pursuant to La. R.S. 9:2800.56; (3) Inadequate Warning (La. R.S. 9:2800.57); (4) Breach of Express Warranty (La. R.S. 9:2800.58); (5) Negligence; (6) Redhibition; (7) Breach of Warranty of Fitness for Ordinary Use; (8) Breach of Implied Warranty of Merchantability and Fitness; (9) Strict Liability; and (10) Violations of Federal Regulations. *R. 1.*

Vintage filed this Motion on December 12, 2016, asserting that Plaintiffs' claims should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim for any viable theory of recovery against it. Specifically, Vintage asserts that Plaintiffs' state law tort claims against it are preempted by federal law; claims under the Louisiana Products Liability Act ("LPLA") fail to allege sufficient facts to state a claim for relief; claim under the LPLA for "Violation of

² The named drugs are anti-psychotic prescription drugs used in the treatment of schizophrenia and bipolar mania. *R. 12-1.*

³ Brenn Distribution Inc., originally named as a defendant, was voluntarily dismissed by Plaintiff on October 14, 2016. *R. 6, 7.*

Federal Regulation” is barred by the exclusivity provisions of La.R.S. § 9:2800.52; and, claim for Redhibition fails because the nature of the alleged “defect” is open and obvious. *R. 12-1.*

On January 10, 2017, Vintage filed a Supplemental Memorandum in support of this Motion. *R. 21.* In its Supplement Memorandum Vintage represented to the Court that it previously filed a motion identical to the Motion at bar in the case of *Richard Glenn Pramann v. Endo Pharmaceuticals, Inc., et al*, Case No. 2:16-cv-12413, in which Judge Lance M. Africk granted the motion dismissing all of the plaintiff’s claims. *R. 21-1, Exh. A.*

On January 13, 2017, Plaintiff filed a Motion For Leave To File First Supplemental And Amending Complaint.⁴ *R. 22.* In the Amended Complaint Plaintiff stated that she “wishes to remove, any and all claims, against the defendant Vintage.” *R. 27.* Thereafter, on January 24, 2017, counsel for Plaintiff filed a Response To Motion To Dismiss Filed By Vintage stating that “he has no opposition” to Vintage’s Motion and “has filed a Supplemental Amending Complaint removing any and all claims for damages against Vintage.” *R. 26.*

As Plaintiffs’ causes of action against Vintage have been dismissed,

IT IS ORDERED that the Motion To Dismiss filed by Defendant Vintage

⁴ On February 6, 2017, the undersigned granted Plaintiff’s motion for leave after the notice of deficiency was resolved. *R. 24, R. 27.*

Pharmaceuticals, LLC [Rec. Doc. 12] is **DENIED AS MOOT**.

Thus done and signed in Lafayette, Louisiana on this 7th day of February,
2017.



CAROL B. WHITEHURST
UNITED STATES MAGISTRATE JUDGE