

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**GENBIOPRO, INC.**

**PLAINTIFF**

**V.**

**C.A. NO. 3:20-CV-00652-HTW-LRA**

**DR. THOMAS DOBBS, STATE HEALTH OFFICER  
OF THE MISSISSIPPI DEPARTMENT OF HEALTH,  
IN HIS OFFICIAL CAPACITY**

**DEFENDANTS**

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**GENBIOPRO, INC.’S RESPONSE IN OPPOSITION  
TO DEFENDANT’S MOTION TO DISMISS**

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Plaintiff, GenBioPro, Inc. (“GBP”), by and through counsel, hereby files this Response in Opposition to Defendant’s Motion to Dismiss. In support of its Response, Plaintiff respectfully represents to the Court as follows:

1. Plaintiff’s arguments and authorities in support of its Response in Opposition to Defendant’s Motion to Dismiss are fully set forth in the accompanying Memorandum Brief in Support of Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss.

2. Defendant Dr. Thomas Dobbs, State Health Officer of the Mississippi Department of Health, seeks to dismiss the Complaint on the grounds that GBP lacks standing because it failed to allege an injury-in-fact traceable to Mississippi’s restrictions on the use and sale of GBP’s product. Defendant further alleges that the Complaint must be dismissed because GBP has failed to state a claim for conflict preemption or under the dormant Commerce Clause. But this is simply a refusal to accept, as the Court must on a motion to dismiss, that the actual allegations in the Complaint meet the well-established legal requirements for standing and state a claim for implied preemption and dormant Commerce Clause.

3. GBP pleaded in its Complaint that (1) GBP is the only company in the United States approved by the FDA to market and sell the generic version of the prescription drug mifepristone, an FDA-approved medication; (2) Congress granted the FDA the exclusive authority to regulate GBP's product under a detailed and thorough statutory scheme, which the FDA has done, that balances the public health benefits of the medication with its risks; (3) Mississippi enacted restrictions that conflict with the FDA's carefully constructed balance and frustrate the purpose of the federal regulatory scheme; and (4) Mississippi's draconian restrictions have severely curtailed the sale and use of GBP's product within the state of Mississippi, causing financial harm to GBP.

4. Nothing more is required at this stage. Because GBP plainly alleges that Mississippi's regulatory scheme conflicts with the FDA's regulatory scheme and frustrates its purpose, and that Mississippi's restrictions have caused and will continue to cause GBP to lose sales, the motion to dismiss must be denied.

WHEREFORE, Plaintiff respectfully requests that the Defendant's Motion to Dismiss be denied.

Dated: November 20, 2020

Respectfully submitted,

GENBIOPRO, INC.

By Its Attorneys,

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CALDWELL & BERKOWITZ, PC

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J. CARTER THOMPSON, JR.

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**CERTIFICATE OF SERVICE**

I certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which served a copy upon all counsel of record who have registered with that system.

This the 20th day of November, 2020.

/s/ J. Carter Thompson, Jr.

J. CARTER THOMPSON, JR.