

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JEAN COOPER	*	
	*	CIVIL ACTION
	*	
VERSUS	*	NUMBER
	*	
	*	DIVISION
CVS CAREMARK CORPORATION	*	MAGISTRATE
	*	

CLASS ACTION COMPLAINT

The complaint of Jean Cooper ("Plaintiff"), a person of the full age of majority and a resident of the State of Mississippi, appearing herein personally and on behalf of all other persons similarly situated, respectfully represents:

I.

The following party is made defendant:

CVS Caremark Corporation ("Defendant") is a Delaware corporation having its principal place of business in the state of Rhode Island. At all relevant times, Defendant was doing business in the Eastern District of Louisiana.

II.

Venue is proper in this court because the conduct complained of occurred in the Eastern District of Louisiana. This Court has jurisdiction over this lawsuit pursuant to 28 U. S. C. 1332 (d) as the matter in controversy exceeds \$5 million, the named plaintiff and members of the class of putative plaintiffs have diverse citizenship from Defendant, and there are more than 100 class members.

III.

On August 29, 2009, Plaintiff bought over-the-counter (“OTC”) medication from a CVS store located at 329 Superior Avenue in Bogalusa, Louisiana. The medication was displayed for purchase at the store, as if it were safe and appropriate for sale; instead it was expired.

IV.

Plaintiff did not know that CVS has a long history of selling out-of-date medications, baby formula, and food. Because CVS was selling out of date medications in the Bogalusa store, Plaintiff unknowingly purchased expired medication, which was no longer suitable for consumption, which exposed her to health risks, and which was, under federal law, an adulterated product which was not legal for sale. Had Plaintiff been aware that the product was beyond its expiration date, Plaintiff would not have purchased the product from CVS.

V.

Proper practice in the operation of a pharmacy is to not offer expired products for sale.

VI.

CVS knew that its failure to remove expired products from its shelves would mislead consumers into purchasing products no longer suitable for consumption. Further, it has been a policy of CVS to fail to remove and dispose of expired medications, baby formula and food, leading to consumer complaints and regulatory action in several areas.

VII.

On returning to the store, Plaintiff observed that expired products were systematically mixed with unexpired products. Plaintiff's experience purchasing expired OTC medication from CVS was not an isolated event. In fact, CVS's systemic failure to prevent the sale of expired products has been well documented.

VIII.

Once an OTC drug has passed its expiration date, there is no assurance that it is safe and effective. Indeed, the use of expired OTC drugs may have serious consequences. For example, the ingredients in allergy and sinus medicine may lose potency. Children's liquid medicine can evaporate over time, causing children to receive adult doses, and aspirin can lose its potency, which may critically affect adults with heart disease who take daily aspirin as a blood thinner. Expired baby formula loses necessary nutritional value, and expired food products lose nutrients and may cause illness.

VIX.

Moreover, the introduction or delivery for introduction into interstate commerce of any adulterated medicine is prohibited.

X.

The holding and sale of drug products past their expiration date constitutes the holding and sale of adulterated products under federal law.

XI.

Drugs must be “manufactured, processed, packed and held in accordance with current good manufacturing process.”

XII.

Moreover, the FDA has publicly stated that openly disclosing that drugs are expired is not a basis for an exemption from federal requirements that expired products not be offered for sale.

XIII.

The FDA has further stated that there is no assurance that drug products held past their expiration dates are safe and effective, even if they are OTC drugs.

XIV.

Based on the above, the expired OTC medications at issue are, by definition, “adulterated” pursuant to FDA guidelines, and the sale of such expired products violates the Food, Drug, and Cosmetic Act.

XV.

Expired infant formula poses danger to infant development because expired formula may not provide the nutrient levels required under federal laws and regulations. When infant formula does not meet certain prescribed federal nutrient and quality requirements, such infant formula is deemed “adulterated” and therefore prohibited from sale..

XVI.

Food products are date-stamped to help consumers purchase products before bacterial growth and decomposition lead to spoilage and nutritional deterioration. The probability of spoilage increases as food products are sold past their expiration or sell-by dates.

XVII.

Expired OTC drugs, food, and baby formula are unmerchantable and unfit for ordinary use. These are also unfit for their particular purpose, consumption by human beings.

XVIII.

Plaintiff seeks to maintain this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. A Rule 23(b)(2) class is appropriate because the primary and predominate relief sought is injunctive, i.e., Plaintiff seeks to compel Defendant to cease its harmful and unlawful practices described herein and to take such steps as described below to minimize the risk to the class. In addition, and/or in the event the Court elects not to certify a 23(b)(2) class, Plaintiff seeks certification under Rule 23(b)(3). The Class consists of all persons in the United States who purchased expired products from CVS (the "Class"). The Class does not include Defendant, or its officers, directors, agents or employees.

XIX.

The Class consists of thousands of customers of CVS nationwide. The members of the Class are so numerous that joinder of all members is impracticable.

XX.

Common questions of law and fact exist among the members of the putative class, and those questions predominate over any individual issues. Among the common questions are whether CVS breached implied warranties in the sale of the expired products, including the warranties of merchantability and fitness for a particular purpose, and whether the members of the class are entitled to injunctive relief and/or money damages.

XXI.

Plaintiff's claims are typical of the claims of all members of the putative class, and she is an adequate class representative and has no conflicts which would prevent her from fully representing the interests of the members of the putative class. Further, plaintiff has retained counsel experienced in class action litigation.

XXII.

The common issues set out above predominate over any individual issues of the members of the putative class, and a class action is the superior method for adjudicating the claims of the members of the putative class.

XXIII.

The action may be maintained as a class action pursuant to Rule 23(b)(2) because injunctive relief is necessary to remedy Defendant's violations of law. Plaintiff seeks an order requiring Defendant to comply with the law by ceasing to sell expired products, notifying purchasers of the true characteristics of the products sold, and preserving all records (in whatever form maintained) evidencing the sale of expired products. The primary and predominating relief sought here is injunctive relief.

XXIV.

Plaintiff and Class Members have a substantial likelihood of success on the merits.

XXV.

Plaintiff and Class Members risk irreparable harm should the Court not grant injunctive relief as sought because Defendant continues to offer for sale and the Class continues to use products that were expired when sold by Defendant.

XXVI.

Defendant will incur little harm in being required to:

- A. comply with federal law and good practices;
- B. protect the Class from expired products;
- C. preserve records essential to the litigation, and which are necessary to determined compliance with this Court's orders;

Consequently, the balance of harm weighs heavily in favor of Plaintiff, the Class and the public at large.

XXVII.

Because the public may also suffer harm absent the granting of the injunctive relief sought by Plaintiff and the Class, granting of the injunctive relief would serve the public interest.

XXVIII.

Plaintiff and the Class are entitled to injunctive relief as outlined in the preceding paragraphs.

PRAYER

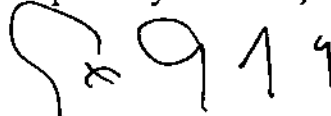
Plaintiff, individually and as a representative of the members of the putative class, prays for the following:

- A. that this matter be certified as a class action, that Plaintiff be confirmed as the representative of the putative class, and that undersigned counsel be appointed as Putative Class counsel and later Class counsel;
- B. that this Court enter judgment in favor of Plaintiff and the Class, against Defendant under the facts and legal theories set forth above;
- C. that this Court grant injunctive relief ordering Defendant to stop selling expired products;
- D. that this Court grant injunctive relief requiring Defendant to preserve records relative to the sale of expired products, including inventory, purchase and sales records, in whatever form maintained;
- E. that this Court grant injunctive relief requiring Defendant to alert CVS customers to the fact that they actually or potentially purchased expired products;
- F. that this Court grant injunctive relief directing Defendant to provide, under seal to the Court and counsel to this litigation, an accounting of: all expired products offered for sale and/or sold by CVS, and all expired products removed from CVS store shelves in compliance with this Court's order;
- G. that this Court award damages to Plaintiff and the Class ;
- H. for attorneys' fees, litigation expenses, costs, and prejudgment interest; and

I. for all other general and equitable relief.

WHEREFORE, Plaintiff prays that the Defendant be cited to appear, and, after due proceedings be had, that the Class be certified, that there be judgment in favor of Plaintiff and the members of the putative Class and against Defendant: for injunctive relief as prayed for, for an amount sufficient to compensate them for the damages and expenses set out above, for attorney's fees, for interest, for all costs of this action, and for all other general and equitable relief.

Respectfully submitted,



Gary J. Gambel (Bar No. 19864)
MURPHY, ROGERS, SLOSS & GAMBEL
One Shell Square
701 Poydras Street, Suite 400
New Orleans, Louisiana 70139
Telephone: (504)523-0400
Facsimile: (504) 523-5574

and

Jennifer N. Willis (Bar No. 14877)
WILLIS & BUCKLEY
3723 Canal Street
New Orleans, Louisiana 70119
Telephone: (504) 488-6300
Facsimile: (504) 488-6302

PLEASE SERVE:
CVS CAREMARK CORPORATION