

Defendant's wrongful actions, customers purchased products which were ineffective or had diminished efficacy and/or were potentially unsafe.

2. Plaintiff primarily seeks to enjoin Defendant from continuing to sell expired products which are unsafe and/or ineffective and to require Defendant to offer Class members a right to return the expired products. In addition, Plaintiff seeks money damages for those Class members who can establish that they purchased expired goods.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1332(d), as the matter in controversy exceeds \$5 million, the purported Plaintiff class has members with diverse citizenship from Defendant, and there are more than 100 class members.

4. Venue in this Court is proper in that the Defendant transacted business in this county and the conduct complained of occurred in this district, as well as elsewhere in Pennsylvania. Additionally, Rite Aid is headquartered in Pennsylvania.

PARTIES

5. Plaintiff Terri A. Brennan resides in Bensalem, Pennsylvania. On June 16, 2008, Plaintiff purchased Rite Aid Nasal Decongestant PE from a Rite Aid at 1842 Brownsville Road, Trevoese, PA 19047. The Rite Aid Decongestant had an expiration date of August 2007.

6. Defendant Rite Aid is a Delaware corporation with its headquarters at 30 Hunter Lane, Camp Hill, Pennsylvania 17011. Rite Aid is the third largest retail drugstore chain in the United States based on revenue and number of stores.

OPERATIVE FACTS

7. Rite Aid purports to be the third largest retail drugstore chain in the United States based on revenue and number of stores, with over \$24 billion in revenues for the year ended March 1, 2008. Its stock trades on the New York Stock Exchange under the symbol RAD. As of March 1, 2008, the Company operated 5,059 stores. These stores are located in thirty one states, including Pennsylvania, and the District of Columbia.

8. On June 12, 2008, the New York State Attorney General announced that his office was taking legal action against Rite Aid after a statewide investigation into retail drug stores found that Rite Aid had sold expired products at stores across New York State. The Attorney General's press release stated, in relevant part:

In March, Attorney General Cuomo's Office began a statewide, undercover investigation of all major drug store chains in New York State. The probe uncovered an egregious pattern at two of the largest chains: CVS and Rite Aid. Statewide, **the Attorney General's investigation has so far uncovered that 142 CVS and 112 Rite Aid stores in over 41 counties sold expired products. This reflects 60 percent of the CVS stores visited and 43 percent of the Rite Aid stores visited.**

At these locations, undercover investigators were able to purchase more than 600 expired products, including milk, eggs, medicines, and baby formula. Several of the expired products were over one-year-old.

Because of the companies' failure to remove potentially dangerous products from their shelves, Attorney General Cuomo has sent the companies a five day notice letter, as required by statute, notifying both CVS and Rite Aid of the intent to commence litigation against them.

'My ongoing investigation has uncovered a shameful disregard for public health in these stores,' said Attorney General Cuomo. 'Families across New York State buy products from these establishments assuming that they're coming from a safe, reputable source. However, when the products pass their expiration dates, they become ineffective and potentially unsafe, threatening to put our loved ones at risk. These companies allowed personal profit to get ahead of their customers' health. I am committed to protecting New York consumers and we will continue to investigate this troubling practice.'

(Emphasis added).

9. On June 12, 2008, ABCNews.com reported that, according to Eric Corngold, the head of the economic justice unit in the New York Attorney General's Office, "[i]n some cases, over-the-counter medication was being sold **two years after** the expiration date" (emphasis added). Corngold also stated "[s]ince March, prompted by complaints from consumers, dozens of undercover investigators visited close to 1,000 stores and detected an 'egregious pattern at . . . Rite Aid' of selling expired products."

10. According to a New York Daily News article, dated June 13, 2008, "[t]he Daily News found lots of expired medicines on the shelves in New York drugstores Thursday - hours after officials accused two chains of selling outdated pills, milk and baby formula. Three months after they had expired, bottles of Tylenol allergy capsules were on the shelf at a Rite Aid . . . Not only are the products a waste of money, they could pose health risks."

11. Upon information and belief, and as evidenced by Plaintiff's own experience purchasing expired products from a Rite Aid in Pennsylvania, Defendant's unlawful conduct is not limited to stores within the State of New York, but rather, is a systemic problem effecting consumers throughout the country.

12. Plaintiff shopped at Rite Aid in Trevoise, Pennsylvania where as a result of Rite Aid's actions or failure to act, Plaintiff purchased expired medication, namely Rite Aid Nasal Decongestant PE, which was no longer suitable for consumption and which exposed her to risks.

CLASS ACTION ALLEGATIONS

13. Plaintiff seeks to maintain the 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

predominating relief sought is injunctive, i.e., Plaintiff seeks to compel Defendant to cease its unlawful practices described herein. Alternatively, to the extent a 23(b)(2) class would raise insurmountable due process concerns, Plaintiff seeks certification under Rule 23(b)(3). The Class consists of all persons in the United States who purchased expired products from Rite Aid and who were damaged thereby (“the Class”). The Class does not include Defendant, or its officers, directors, agents or employees.

14. The Class is believed to consist of thousands of customers of Rite Aid. The members of the Class are so numerous that joinder of all members is impracticable.

15. Common questions of law and fact exist as to all members of the Class, and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendant breached any implied warranties in selling expired products;
- b. whether Defendant breached implied contracts in selling expired products;
- c. whether the Class is entitled to injunctive relief and/or money damages.

16. Plaintiff’s claims are typical of the claims of the members of the Class, as the claims all arise from the same set of facts, namely Defendant’s failure to ensure that expired products were not being sold.

17. Plaintiff will fairly and adequately protect the interests of the members of the Class, and has retained counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic to, or in conflict with, those of the Class.

18. The action may be maintained as a class action pursuant to Rule 23(b)(2) because the Defendant violated the law by selling expired products. Requiring Defendant to comply with the law by ceasing to sell expired products and offering a right of return to Class members is appropriate, and the primary and predominating relief sought here is injunctive relief.

19. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, since joinder of all members is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class individually to redress the wrongs done to them.

20. There will be no difficulty in the management of this action as a class action. Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action, in that it is likely to avoid the burden which would be otherwise placed upon the judicial system by the filing of thousands of similar suits. There are no obstacles to effective and efficient management of the lawsuit as a class action.

COUNT I

BREACH OF IMPLIED CONTRACT

21. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

22. When buying products from Defendant, Plaintiff and the Class entered into implied contracts with Rite Aid such that Rite Aid would sell them products which were unexpired and not ineffective and/or harmful.

23. Without such implied contracts, customers (including Plaintiff and the Class) would not have purchased such products from Defendant.

24. Rite Aid breached these implied contracts, and, as a result of these breaches, Plaintiff and the Class have been harmed as alleged herein.

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

25. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein. Defendant is a merchant pursuant to sections 2-104 and 2-314 of the Uniform Commercial Code.

26. Through Defendant's marketing and sales, Defendant impliedly warranted that the products, which were sold to Plaintiff and Class members, were fit for the ordinary purpose for which they were intended, namely, consuming food and beverages and treating various medical conditions, pursuant to section 2-314 of the Uniform Commercial Code.

27. Through Defendant's marketing and sales, Defendant knew that Plaintiff and Class members would purchase the products at issue for the ordinary purpose of consuming food and beverages and treating various medical conditions.

28. Defendant manufactured, advertised, sold, and/or distributed the products at issue for the ordinary purpose for which they were purchased by Plaintiff and the Class.

29. Plaintiff and Class members purchased and used the products for the ordinary purposes for which such goods are sold, namely the consumption of food and beverages and treating various medical conditions.

30. Plaintiff and Class members relied upon Defendant's express and/or implied representations in purchasing the products.

31. The products purchased by Plaintiff and Class members were unfit for their ordinary purpose when sold. In fact, such products often had expired over a year prior to their being purchased by Class members and were ineffective or had diminished efficacy and/or were potentially unsafe. Therefore, Defendant breached the implied warranty of merchantability in the sale of the products at issue.

32. Plaintiff and members of the Class sustained damages as a proximate result of said breach of warranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests the following relief:

A. that this Court certify this action as a Class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and, alternatively, (b)(3) and appoint Plaintiff and her counsel to represent the Class;

B. that this Court enter judgment in favor of Plaintiff and the Class, and against Defendant Rite Aid under the legal theories alleged herein;

C. that this Court issue an injunction ordering Defendant Rite Aid to stop selling expired products;

D. That this Court issue an injunction ordering Defendant Rite Aid to offer Class members a right to return the offending products for a full refund;

E. that this Court award damages resulting from Defendant's conduct, if any, to Plaintiff and the Class under the legal theories alleged herein;

F. that this Court award attorneys' fees, expenses, and costs of this suit;

G. that this Court award Plaintiff and the Class pre-judgment and post-judgment interest at the maximum rate allowable by law; and

H. that this Court award such other and further relief as it may deem just and appropriate.

JURY TRIAL DEMAND

Plaintiff, on behalf of herself and the Class, demands a trial by jury on all issues so triable.

Dated: June 25, 2008

Respectfully Submitted,

s/ Sherrie R. Savett, Esq.

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