

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Christian Piescik, on Behalf of Himself Case No.
and All Others Similarly Situated,

Plaintiff,

vs.

CLASS ACTION COMPLAINT

CVS HEALTH, a Rhode Island
corporation,

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff, Christian Piescik (“Plaintiff”), by and through his attorneys, brings this action on behalf of himself and all others similarly situated against Defendant CVS Health (“Defendant” or “CVS”). Plaintiff hereby alleges, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

NATURE OF CASE

1. This is a consumer Class Action against CVS Health for its false advertising, unfair and deceptive marketing practices, and materially misleading claims employed and disseminated in connection with the sale of its hand sanitizer (the “Product”).
2. On the front of each Product, Defendant represents that the Product would kill virtually all germs. The CVS Original Scent Moisturizing Hand Sanitizer and related CVS brands advertise on their bottles, “Kills 99.99% of Germs.” Defendant’s germ fighting representation is false, misleading, and reasonably likely to deceive the public.

3. CVS's marketing strategy has been successful, and the hand sanitizer is a popular product. However, that success is built around messaging that is materially misleading and deceptive to consumers, lacks a factual basis, and recklessly omits material information.

4. As a result of Defendant's marketing claims and messaging, Plaintiff and other consumers reasonably and justifiably relied upon and attributed credence and value to the asserted benefits of the Product.

5. These statements, in that they are made with a degree of certainty to the hundredth digit, necessarily imply that a scientific study proves that the Product in fact kills 99.99% of germs. Accordingly, they are each false statements, as no scientific study supports them.

6. In fact, it is scientifically proven that alcohol-based hand sanitizer does not kill many types of germs. It does not kill many non-enveloped viruses, such as norovirus. "Norovirus is the leading cause of foodborne illness in the United States. It causes 58% of foodborne illnesses acquired in the United States." <https://www.cdc.gov/norovirus/trendsoutbreaks/burden-US.html>. It is hard to believe that Defendant's hand sanitizer kills 99.99% of all germs, while excluding the family of viruses that causes more than half of all food borne illnesses in the country. It also does not kill bacterial spores, protozoan cysts, some parasites like Giardia, and the diarrhea-causing bacterium Clostridium difficile. Moreover, studies have shown that some bacteria are becoming alcohol resistant. For these reasons, no scientific study proves with any degree of certainty the overall percentage of germs which alcohol-based hand sanitizer kills.

7. CVS knew or should have known its claims were not backed by scientific studies to validate its 99.99% claims. However, CVS continues to make those false statements on the Product labels. The Product labels are therefore materially misleading, in that they plainly state, in a manner giving the impression that it has been scientifically proven, that the Product kills 99.99% of germs, when studies show that it does not kill many types of germs. Thousands of consumers have purchased these Products, particularly during the ongoing COVID-19 pandemic, in the false belief that they have been proven to kill 99.99% of germs. The claims are false and consumers have been deceived.

8. As a result of Defendants' deceptive and misleading practices, Plaintiff and the Class Members were induced to purchase hand sanitizer which does not perform as advertised. Defendant has made millions of dollars in fraudulent sales to individuals who Defendant told were receiving a Product which had been proven, with a high degree of certitude, to kill almost every

germ. Defendant's customers did not receive the benefit of their bargain. The Products do not kill many types of germs.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), as the amount in controversy exceeds \$5 million, exclusive of interests and costs; it is a class action of over 100 members; and the Plaintiff is a citizen of a state different from at least one Defendant.

10. This Court has personal jurisdiction over Defendant. Defendant has sufficient minimum contacts with the state of Florida and purposefully availed itself, and continues to avail itself, of the jurisdiction of Florida through the privilege of conducting its business ventures in the state of Florida, thus rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice.

11. Venue is proper in this district under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district, as Defendant does business throughout this district, and Plaintiff made his purchase of the CVS hand sanitizer in this district and his purchased Product was delivered to, and used, in this district.

PARTIES

12. Plaintiff Christian Piescik ("Plaintiff") is a natural person and a citizen of Palm Beach County, Florida, residing in West Palm Beach. Plaintiff purchased the hand sanitizer Product from a local West Palm Beach CVS store in March of 2020. Prior to his purchase, Plaintiff saw and reviewed Defendant's advertising claims on the packaging and labeling itself, and he made his purchase of the hand sanitizer in reliance thereon. Plaintiff specifically relied upon representations made by Defendant that the hand sanitizer would kill germs as advertised. Plaintiff did not receive the promised benefits or receive the full value of his purchase.

13. Defendant CVS Health is a Rhode Island corporation with its principal business offices located at 1 CVS Drive, Woonsocket, Rhode Island. CVS is licensed to conduct business in Florida. Defendant is an American multinational consumer goods corporation. The company reported annual revenue of more than \$268 billion in 2020.

14. Plaintiff reserves the right to amend this Complaint to add different or additional defendants, including without limitation any officer, director, employee, supplier, or distributor of

Defendant who has knowingly and willfully aided, abetted, or conspired in the false and deceptive conduct alleged herein.

FACTUAL ALLEGATIONS

15. Plaintiff is an individual who purchased CVS brand alcohol-based hand sanitizer from one of Defendants' stores. When Plaintiff purchased the hand sanitizer, the label on the bottle of hand sanitizer stated prominently that the Product would "kill 99.99% of germs."

16. On the Product label, there is an asterisk next to the above statements, which leads to the following statement written in a much smaller font, or a statement similar to the following statement, on the back label: "Effective at eliminating 99.99% of many common harmful germs and bacteria in as little as 15 seconds." Plaintiff did not read this disclaimer.

17. Further, a reasonable consumer who read this language would not understand it to take back the promise on the front of the bottle, to kill 99.99% of all germs.

18. Plaintiff read these statements on the Product labels and relied on them when purchasing the Products. Plaintiff believed that this statement meant that a scientific study proved that the Product would kill 99.99% of all known germs. That is because the statement included an exact figure for the percentage of germs that would be killed—99.99%. The statement did not read, "kills most germs," it read "kills 99.99% of germs," which indicates that some evidence supports the figure 99.99%.

19. The statement created a false impression. No scientific study indicates that alcohol-based hand sanitizers kill 99.99% of germs. In fact, many scientific studies show that hand sanitizers do not kill many prominent and harmful germs, and that they are less effective than washing one's hands.

20. Recent studies show that some types of bacteria are becoming alcohol resistant due to the use of hand sanitizers. For instance, the bacterium *Enterococcus faecium* has been found to have become ten times more alcohol tolerant in the years after 2010 than it was in the years before 2010. <https://www.forbes.com/sites/brucelee/2018/08/04/how-thisbacteria-may-ecoming-more-resistant-to-hand-sanitizer/#138e8d1722dd>.

21. Further, it is known that alcohol-based hand sanitizers do not kill many nonenveloped viruses, such as norovirus. *See* <https://www.medicalnewstoday.com/articles/232708#1>. As noted above, norovirus accounts for over half of the food-borne illnesses in the country.

22. The science now shows that alcohol-based hand sanitizers do not kill bacterial spores, which are a leading cause of illness.

(https://www.researchgate.net/publication/43353621_Effectiveness_of_Alcohol-Based_Hand_Rubs_for_Removal_of_Clostridium_difficile_Spores_from_Hands)

23. These studies further show that alcohol-based hand sanitizers do not kill protozoan cysts, which grow to become invasive parasites, such as Giardia. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4510183/>

24. The science shows that countless types of germs are not killed by alcohol-based hand sanitizers which makes the math finding these sanitizers kill 99.99% of all germs impossible to reconcile. Certainly, no study shows that the sanitizers kill any given number of germs such that an exact percentage of germs killed could be stated. Yet that is exactly what Defendants have done. Defendants made false statements.

25. Plaintiff purchased the hand sanitizer in reliance on these representations, believing that it had in fact been scientifically proven that the hand sanitizer killed 99.99% of all germs. Plaintiff received a Product that was not in fact proven to kill 99.99% of germs. Plaintiff did not get the Product that was advertised.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of himself, and all similarly situated consumers pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure as a member of the Class defined as follows (collectively, the “Class”). The Class of persons whom Plaintiff seeks to represent is defined as:

All persons in Florida who, from the beginning of the applicable limitations period through the date of trial, purchased one or more of CVS brand hand-sanitizers for personal use and not for resale.

27. Excluded from the class are the Defendant, any parent, subsidiary or affiliate of the Defendant, any entity in which the Defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

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