

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JASMINE LERNER, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

CVS HEALTH CORPORATION,

Defendant.

Case No: 1:22-CV-01013-LJL

**ANSWER TO PLAINTIFF’S PUTATIVE  
CLASS ACTION COMPLAINT**

Defendant, CVS Pharmacy, Inc., erroneously sued as CVS Health Corporation (“Defendant” or “CVS”),<sup>1</sup> by and through its counsel of record, answers the Putative Class Action Complaint (the “Complaint”) of Plaintiff Jasmine Lerner (“Plaintiff”) as follows:

All factual allegations are denied unless expressly admitted. Admissions are limited to specific facts addressed, and not to any characterizations, conclusions, or inferences from those facts, or to the relevance of any admission of facts relative to the merits of the action or claims purportedly set forth in the Complaint.

Much of the Complaint consists of material that goes beyond the required short plain statement of the case to plead what may or may not ultimately prove to be evidence. At this point, Defendant is unable to ascertain the authenticity of much of this content; that is the purpose of discovery. Thus, of necessity, Defendant is not in a position specifically to admit or deny averments based upon unauthenticated documents, and therefore such averments are denied for

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<sup>1</sup> CVS Pharmacy, Inc., is the correct defendant, but it was erroneously sued as CVS Health Corporation. All responses in this Answer are made on behalf of CVS Pharmacy, Inc. In responding on behalf of CVS Pharmacy, Inc., Defendant does not waive any rights or arguments as to jurisdiction or venue it otherwise has.

lack of information and belief. Plaintiff's inferences and conclusions drawn from those unauthenticated documents are denied. Any acknowledgement that a document speaks for itself is merely a statement of the obvious, and not an admission as to the authenticity of any document (except as to documents created, adopted, or used by Defendant), nor an adoption of its contents, nor an admission of any other fact or conclusion averred by Plaintiff.

**FACTS COMMON TO ALL CLAIMS**<sup>2</sup>

1. Defendant ADMITS that from time to time it has sold CVS After-sun Aloe Vera Soothing Spray and After-Sun Aloe Vera Moisturizing Gel (the "Products") through its CVS brand and ADMITS that Plaintiff is purporting to bring this action on behalf of a putative class, but DENIES that this lawsuit is appropriate for class certification. Defendant DENIES that the Products' labels were false or misleading. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of any of the other statements concerning the purported levels of benzene in the Products. The remaining allegations in paragraph 1 do not require a response, because the allegations in paragraph 1 do not state factual allegations, but are legal conclusions, and Defendant DENIES those allegations on that basis. Any allegations not expressly admitted are therefore DENIED.

2. Defendant ADMITS that the articles and/or websites cited in paragraph 2 speak for themselves and DENIES or LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2 and respectfully refers the Court to the articles and/or websites cited and quoted by Plaintiff in paragraph 2 for a complete and accurate statement of their contents. To the extent an allegation does not contain a citation to the

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<sup>2</sup> All of the headings used in Plaintiff's Complaint are reproduced herein for organizational purposes only. To the extent any heading or subheading in Plaintiff's Complaint purports to make any allegation with respect to Defendant, Defendant DENIES those allegations.

information Plaintiff is citing/quoting, Defendant LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of those allegations. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of any of the articles and/or websites cited in paragraph 2.

3. Defendant ADMITS the website cited in paragraph 3 speaks for itself and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 and respectfully refers the Court to the website quoted by Plaintiff in paragraph 3 for a complete and accurate statement of its contents. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of the website cited in paragraph 3.

4. Defendant ADMITS the website cited in paragraph 4 speaks for itself and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 and respectfully refers the Court to the website quoted by Plaintiff in paragraph 4 for a complete and accurate statement of its contents. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of the website cited in paragraph 4.

5. Defendant LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5.

6. Defendant ADMITS the article quoted in paragraph 6 speaks for itself and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 and respectfully refers the Court to the article quoted by Plaintiff in paragraph 6 for a complete and accurate statement of its contents. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of the article cited in this paragraph, and LACKS KNOWLEDGE OR INFORMATION as to the truth or falsity of the remaining allegations in paragraph 6.

7. Defendant ADMITS the article cited in paragraph 7 speaks for itself and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 and respectfully refers the Court to the article cited by Plaintiff in paragraph 7 for a complete and accurate statement of its contents. Defendant also LACKS KNOWLEDGE OR INFORMATION as to the accuracy of the article cited in this paragraph, and LACKS KNOWLEDGE OR INFORMATION as to the accuracy of the test studies conducted by third-party Valisure. Defendant further DENIES that all lots of its Products were tested by Valisure and further DENIES that even all of the lots Valisure did test showed any benzene. Plaintiff does not allege that the lot of the particular product she bought has been tested by Valisure and shown to contain any amount of benzene.

8. Defendant ADMITS that it halted the sale of the Products on or around July 15, 2021, and ADMITS that the article quoted in paragraph 8 speaks for itself. Defendant LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the article quoted by Plaintiff in paragraph 8 and respectfully refers the Court to the article quoted by Plaintiff in paragraph 8 for a complete and accurate statements of its contents. Defendant further DENIES that all lots of its Products were tested by Valisure and further DENIES that even all of the lots Valisure did test showed any benzene.

9. Defendant ADMITS that benzene is not listed as an ingredient on the Products' labels, or in any advertising or website promoting the Products, but Defendant DENIES that its Products' labels, advertisements or websites promoting the Products are false or misleading in any way.

10. The allegations in paragraph 10 do not require a response, because the allegations in paragraph 10 do not state factual allegations, but are legal conclusions, for which no response

is required. To the extent a response is required, Defendant ADMITS that the website cited by Plaintiff in paragraph 10 speaks for itself, but LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the website quoted by Plaintiff in paragraph 10 and respectfully refers the Court to the website quoted by Plaintiff in paragraph 10 for a complete and accurate statement of its contents. Defendant also DENIES that the statute cited by Plaintiff in paragraph 10 (21 U.S.C. § 361) contains the language quoted by Plaintiff in paragraph 10, and states that the statute speaks for itself.

11. The allegations in paragraph 11 do not require a response, because the allegations in paragraph 11 do not state factual allegations, but are legal conclusions, for which no response is required.

12. The allegations in paragraph 12 do not require a response, because the allegations in paragraph 12 do not state factual allegations, but are legal conclusions and arguments, for which no response is required. To the extent a response is required as to some of the allegations, Defendant DENIES that it disregarded any laws and regulations and DENIES that it did not take reasonable efforts to test its Products. Defendant further LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of third-party Valisure's purported testing results. Defendant ADMITS that its Products' labels, advertising, packaging and/or marketing materials did not list benzene as an ingredient, but DENIES that its Products' labels, advertising, packaging, and/or marketing materials were misleading in any way. Any other allegation not expressly admitted or denied does not require a response, because it is a legal conclusion and argument for which no response is required, and it is therefore DENIED.

13. The allegations in paragraph 13 do not require a response, because the allegations in paragraph 13 do not state factual allegations, but are legal conclusions and arguments, for which

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