

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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JAMES FAHERTY, LINDA FEIBEL, and MOE	:	Case No. _____
TARKINOW, on behalf of themselves, and those	:	
similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
CVS PHARMACY, INC.,	:	
	:	
Defendant.	:	
	:	
_____x		

CLASS ACTION COMPLAINT

Plaintiffs James Faherty, Linda Feibel and Moe Tarkinow, and (“Plaintiffs”), individually and on behalf of others similarly situated, bring this action against Defendant CVS Pharmacy, Inc. (“CVS”) demanding a trial by jury, and allege as follows:

NATURE OF THE CASE

1. CVS sells AirShield, a store-brand version of the popular cold remedy Airborne®. The packaging for CVS’s AirShield product mimics Airborne®’s packaging by claiming, just as Airborne® claims, that it provides a defense to the common cold and other airborne illnesses by boosting the immune system if the product is ingested prior to entering an airplane, theater, or similarly crowded area. Additionally, the packaging for CVS’s store-brand Airborne® equivalent is deliberately designed to be substantially the same as Airborne®’s packaging. For example, AirShield’s packaging, like Airborne®’s, has included cartoons of germs and individuals in public places surrounded by others who are sneezing and states that it contains an “effervescent” formula, which purportedly

offers faster absorption. Further, AirShield's packaging specifically has invited consumers to compare AirShield to Airborne® thereby incorporating by reference the representations made on Airborne®'s packaging. To make this comparison easier for consumers, AirShield is typically placed directly next to Airborne® in the Cold & Cough sections of CVS's stores.

2. Unfortunately for consumers who bought AirShield, Airborne® and its store-brand equivalents, including AirShield, have turned out to be a sham. The truth is that there is no cure for the common cold and that CVS's AirShield product, just like Airborne®, is actually nothing more than "snake oil" that takes advantage of consumers.

3. Plaintiffs now bring this action to stop Defendant's misconduct and misrepresentations.

THE PARTIES

Plaintiffs

4. Plaintiff and proposed class representative James Faherty is a resident of Norfolk County, Massachusetts. In 2008, Mr. Faherty purchased AirShield at a CVS store in Massachusetts. Mr. Faherty relied upon the written representations contained on the packaging that AirShield was comparable to Airborne® and would provide a defense to and cure for the common cold and other airborne illnesses. Had Mr. Faherty known the truth that the statements he relied upon were false, he would have not purchased the product.

5. Plaintiff and proposed class representative Linda Feibel is a resident of Norfolk County, Massachusetts. In 2008, Ms. Feibel purchased AirShield at a CVS store in Stoughton, Massachusetts. Ms. Feibel relied upon the written representations contained on the packaging that AirShield was comparable to Airborne® and would

provide a defense to and cure for the common cold and other airborne illnesses. Had Ms. Feibel known the truth that the statements she relied upon were false, she would have not purchased the product..

6. Plaintiff and proposed class representative Moe Tarkinow is a resident of Middlesex County, Massachusetts. In 2007 and 2008, Mr. Tarkinow purchased AirShield at a CVS store in Newton, Massachusetts. Mr. Tarkinow relied upon the written representations contained on the packaging that AirShield was comparable to Airborne® and would provide a defense to and cure for the common cold and other airborne illnesses. Had Mr. Tarkinow known the truth that the statements he relied upon were false, he would have not purchased the product.

Defendant

7. Defendant CVS Pharmacy, Inc., is a Delaware corporation headquartered in Woonsocket, Rhode Island. Defendant CVS operates retail drugstore chains that are engaged in the retail sale of prescription and non-prescription drugs, as well as the retail sale of general merchandise. Defendant CVS also sells merchandise via a proprietary website, *www.cvs.com*, accessible to consumers nationwide. During the relevant time period, Defendant CVS marketed and sold, including via its proprietary website, a store-brand Airborne® equivalent called “AirShield” that is displayed next to Airborne® in CVS stores and is marketed alongside Airborne® in the “Immune Support” section of its website. The packaging of CVS’s AirShield has directed consumers to “Compare [AirShield] to Airborne.” CVS’s AirShield packaging mimics that of Airborne® in that the AirShield packaging has stated that it is an “Effervescent Formula” that “Supports Healthy Immune System” or “Supports Your Immune System”.

8. Plaintiffs are informed and believe that the Airshield product sold by CVS was manufactured and packaged by non-party Leiner Health Products, Inc., (“Leiner”), a Delaware corporation headquartered in Carson, California. AirShield is a registered trademark of Leiner. Leiner described itself in its 2007 Form 10-K as “a leading supplier of store brand VMS [vitamin and mineral supplements] products and store brand OTC [over the counter] pharmaceuticals in the U.S.... Most of our products are manufactured for our customers to sell as their own store brands.” Leiner is currently under investigation by the Federal Trade Commission for its production of store-brand Airborne® equivalents. Leiner is not named as a defendant here for the sole reason that Leiner filed for bankruptcy protection on March 10, 2008. On or about June 10, 2008, NBTY, Inc., a Delaware corporation headquartered in Bohemia, Long Island, acquired certain assets of non-party Leiner, including Leiner’s production unit that makes AirShield. Plaintiffs are informed and believe that since acquiring Leiner NBTY has ceased to manufacture and sell the store-brand Airborne® equivalent at issue in this action.

JURISDICTION AND VENUE

9. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. §1332(d), because the aggregate claims of the Class (defined below) exceed the sum or value of \$5,000,000.00, and there is diversity of citizenship between proposed class members and Defendants. As set forth above, Plaintiffs are citizens of Massachusetts and CVS is a citizen of Delaware.

10. Venue is proper in this District under 28 U.S.C. §1391(a)(1) & (2). Substantial acts in furtherance of the alleged improper conduct occurred within this District.

GENERAL ALLEGATIONS

11. The common cold plagues millions of people each year. Accordingly, each year, consumers spend hundreds of millions of dollars on cold remedies and medicines in an effort to cure their colds.

12. During the relevant time period, Airborne® quickly became one of the most popular brands of cold remedies sold in the United States. Airborne® claimed to be different from typical cold treatments in that it promised to offer an actual cure for the common cold by preventing the cold in the first place, instead of just treating the symptoms of a cold.

13. CVS, looking to profit off of Airborne®'s success, quickly marketed a "copy-cat" version of Airborne® called AirShield, making the same claims as Airborne®.

14. CVS's AirShield product has claimed to be the equivalent of Airborne® and, like Airborne®, has claimed to be an effective cold remedy that will prevent the user from catching a cold in the first place.

15. Just like Airborne®, the packaging of CVS's AirShield product has represented that all a consumer need do to stave off a cold - either after a cold has begun to produce symptoms or to prevent one as a result of exposure to others - is to take the product at the first sign of a cold symptom or before entering crowded environments where germs are prevalent, like airplanes or offices.

16. Like Airborne®, AirShield's packaging credits its "effervescent formula" for its purported ability to prevent a cold so soon after it is consumed. As further explained on Airborne®'s packaging, which CVS directed consumers to compare with AirShield, either by name or as the "Leading Brand", "effervescent technology offers

faster absorption.” In other words, with respect to their marketing of their products as a shield against exposure to the cold virus in a crowded environment, Plaintiff is also informed and believes that the purpose of proclaiming that Airborne®’s and AirShield’s ingredients will be “absorbed” immediately is to explain that the products can prevent the user from catching a cold simply by taking them before entering “crowded environments.”

17. In addition to these statements that mimic Airborne®, the packaging AirShield has looked and felt nearly identical to Airborne®’s packaging. AirShield comes in the same shape and size box as Airborne®. The boxes for both products have been decorated with strikingly similar cartoons of germs and people in crowded, public places surrounded by individuals who are sneezing. The boxes containing Airborne® and AirShield both proclaim that the products are “for use in” an identical list of public places – airplanes, offices, schools, restaurants, health clubs, and theaters – and highlight the same five ingredients – 1,000 mg of Vitamin C, seven herbal extracts, antioxidants, electrolytes, and amino acids. Moreover, AirShield tablets come in the same distinctive, spring top cylinder in which Airborne® tablets are held. Examples of Airborne®’s and AirShield’s packaging are included in Exhibit A attached hereto.

18. CVS also places AirShield directly next to Airborne® in the Cough and Cold Remedy sections of its stores.

19. Recent litigation by the non-profit Center for Science in the Public Interest has revealed Airborne® to be a sham. *See Wilson v. Airborne Inc et al.*, Case no. EDCV07-770 VAP (C.D. Cal.). Notably, the makers of Airborne® agreed to settle the litigation against it for \$23.5 million, offering refunds to those who purchased its product.

Then, in August 2008, the makers of Airborne® agreed to pay an additional \$6.5 million in order to settle an FTC lawsuit charging that the makers of Airborne® did not have adequate evidence to support their advertising claims. Non-party Leiner has also disclosed in its bankruptcy filings that it is under investigation by the Federal Trade Commission for its production of store-brand Airborne® equivalents, including CVS's AirShield product at issue here.

20. CVS's claims regarding its AirShield product, just like those of Airborne®, are patently false. AirShield is not a preventative or a cure for the common cold: instead, the tablets themselves are nothing more than a multi-vitamin tablet, combined with a few minerals, amino acids and some herbs.

21. Consumers spend nearly \$3 billion a year on medications to treat colds, and CVS has capitalized on consumers' vulnerability to promises that an over-the-counter product can immunize them from catching a cold and cure it if they already have one. But CVS's AirShield product does neither. To the contrary, experts have said that "simply washing your hands during cold and flu season is a much more effective way of preventing colds." Nonetheless, based upon information and belief, CVS has made millions by making false representations to consumers about its AirShield product, and it continues to make millions through false advertising to this day.

THE FALSE AND MISLEADING NATURE OF AIRSHIELD'S PACKAGING

22. AirShield's packaging contains false statements that are intended to mislead consumers into believing that it can prevent the common cold or hasten recovery if the consumer already has a cold when they take it.

23. As stated above, AirShield compares itself to and is placed directly next to Airborne®, thereby incorporating by reference the representations made by Airborne®.

The Airborne® packaging makes numerous claims that are false or misleading. For example, Airborne® packaging claims that it is an “Effervescent Health Formula” that is an “immune-boosting tablet that helps your body fight germs.” According to the packaging, “effervescent technology offers faster absorption.” Airborne® packaging also states that it is for use in “Airplanes, Offices, Schools, Restaurants, Health Clubs, Theaters...” Airborne® packaging also states to “take AIRBORNE to boost your immune system. A healthy immune system helps your body fight germs. Take before entering crowded environments, like airplanes, offices and schools.” An example of Airborne® packaging is attached hereto as Exhibit A.

24. AirShield’s packaging has specifically enumerated the identical list of locations in which it is purportedly designed to be used as is found on Airborne®’s packaging – “Schools, Offices, Theaters, Airplanes, Restaurants, and Health Clubs.” AirShield’s packaging also states that it is an “effervescent formula” thereby parroting Airborne®’s claim of rapid absorption and near instantaneous effectiveness in combating germs.

25. Plaintiffs are informed and believe that the only way consumers could benefit from CVSs’ AirShield product prior to entering airplanes, offices, schools, restaurants, and other places where people with colds are likely to congregate is if the “supplement” is immediately absorbed to immunize the consumer from the “germs” that abound in such enclosed public places by boosting the immune system. Based upon information and belief, however, CVS’s AirShield product (1) is not immediately absorbed into the body; (2) does not boost the immune system in a manner that will ward

off a cold - in a crowded area or anywhere else; and (3) cannot prevent a consumer from contracting a cold in a crowded area if taken pursuant to the directions.

26. AirShield's packaging states that the product is a "dietary supplement" and that the statements made on the packaging "have not been evaluated by the Food and Drug Administration." In this action, Plaintiffs do not sue to subject CVS to the FDA pre-market approval process. Rather, because the inclusion of such a disclaimer does not cure the deceptive nature of the representations on AirShield's packaging, particularly where the deception concerns claims about health benefits of a product, as alleged in this Complaint, Plaintiffs seek to prosecute CVS's false advertising and other unlawful, deceptive, and unfair business practices in violation of Massachusetts law.

THE FTC ENFORCEMENT ACTION

27. After a comprehensive investigation, on August 14, 2008, the FTC announced that Airborne, Inc. and its founders, Victoria Knight-McDowell and Thomas John McDowell, had agreed to settle FTC charges of deceptive advertising with respect to Airborne®. According to the FTC's complaint, there was no competent and reliable scientific evidence to support the claims that Airborne® tablets can prevent or reduce the risk of colds, sickness, or infection in crowded places such as airplanes, offices, or schools. In settling the FTC charges, Airborne® and its founders agreed to refrain from making false and misleading claims regarding Airborne® that are not substantiated by competent and reliable scientific evidence, and to contribute an additional \$6.5 million to the settlement of the Wilson action, bringing the total settlement in that case to \$30 million.

28. Documents filed in connection with Leiner's bankruptcy proceeding disclosed that in April 2007, Leiner received a Civil Investigative Demand ("CID") from

the FTC seeking documents and other information related to Leiner's production of CVS's AirShield and other similar dietary supplement products sold or marketed as a brand equivalent to Airborne®.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The nationwide class that Plaintiffs seek to represent for purposes of asserting claims under Rhode Island law as set forth below is defined as follows:

All persons who purchased CVS's store-brand Airborne equivalent AirShield from August 1, 2004 to present (the "Class"). Excluded from the Class are officers and directors of the Defendant, members of the immediate families of the officers and directors of the Defendant, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest.

30. In the alternative, if the Court finds that Rhode Island law cannot be applied on a nationwide basis, Plaintiffs seek to represent a Massachusetts class defined as follows:

All persons who purchased CVS's store-brand Airborne equivalent AirShield from August 1, 2004 to present (the "Massachusetts Class"). Excluded from the Massachusetts Class are officers and directors of the Defendant, members of the immediate families of the officers and directors of the Defendant, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest.

31. For purposes of this Complaint, the phrase "Class Members" shall refer collectively to all members of the Class, including the named Plaintiffs. "Massachusetts Class Members" shall refer to members of the Massachusetts Class. The Class and the Massachusetts Class are sometimes collectively referred to herein as the "Classes."

32. This action has been brought and may properly be maintained as a class action against the Defendant pursuant to the provisions of Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

33. Numerosity: Plaintiffs do not know the exact size of the Classes, but it is estimated that each is composed of thousands of persons. The persons in the Classes are so numerous that the joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

34. Common Questions Predominate: This action involves common questions of law and fact to the potential Classes because each Class Member's claim derives from the same allegedly false, misleading, deceptive and/or unfair action. The common questions of law and fact involved predominate over questions that affect only individual Class Members. Thus, proof of a common or single set of facts will establish the right of each member of the Class to recover. Among the questions of law and fact common to the Classes are:

- Whether Defendant engaged in unfair and/or deceptive practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution and/or sale of its store-brand Airborne equivalent;
- Whether Defendant breached express warranties in connection with the promotion, marketing, advertising, packaging, labeling, distribution and/or sale of its store-brand Airborne® equivalent;

- Whether Defendant breached implied warranties in connection with the promotion, marketing, advertising, packaging, labeling, distribution and/or sale of its store-brand Airborne® equivalent;
- Whether Defendant intentionally or negligently made misrepresentations in connection with the promotion, marketing, advertising, packaging, labeling, distribution and/or sale of its store-brand Airborne® equivalent;
- Whether Defendant's practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution and/or sale of its store-brand Airborne® equivalent unjustly enriched Defendant at the expense of, and to the detriment of, Plaintiff and other Class members;
- Whether Defendant participated in and pursued the common course of conduct complained of herein;
- Whether Defendant's conduct as set forth above injured Plaintiff and other Class Members and, if so, the extent of the injury.
- The scope of injunctive relief that should be imposed against Defendant to prevent such conduct in the future.

35. Typicality: Plaintiffs' claims are typical of the Class because Plaintiffs bought CVS' store-brand Airborne® equivalent, AirShield, during the relevant time period. CVS' allegedly false, misleading, deceptive and/or unfair actions, concerns the same business practices described herein irrespective of where they occurred or were received. Thus, Plaintiffs and Class Members sustained the same injuries and damages

arising out of the Defendant's conduct in violation of applicable law. The injuries and damages of each Class Member were caused directly by the Defendant's wrongful conduct in violation of law as alleged herein.

36. Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class Members because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for the illegal conduct of which they complain. Plaintiffs also have no interests that conflict with or are antagonistic to the interests of Class Members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. No conflict of interest exists between Plaintiffs and Class Members because all questions of law and fact regarding the liability of the Defendant are common to Class Members and predominate over any individual issues that may exist, such that by prevailing on their own claims, Plaintiffs necessarily will establish Defendant's liability to all Class Members. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class Members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for Class Members.

37. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for the Defendant and result in the impairment of Class Members' rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum

simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the Class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

38. Plaintiffs and their counsel anticipate that notice to the proposed class will be effectuated by publication in major newspapers and in the Defendant's stores, and by individual notice to class members that purchased Defendant's AirShield product with a credit card, to the extent that information is available.

39. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as the Defendant has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

40. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(On behalf of the Class)

(Violation of Rhode Island Deceptive Trade Practices Act, R.I. G.L. § 6-13.1-1, *et seq.*)

41. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

42. This cause of action is brought on behalf of Plaintiffs and member of the Class pursuant to R.I. G.L. § 6-13.1-1, *et seq.* R.I.G.L. § 6-13.1-2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any

trade or commerce are declared unlawful.” R.I.G.I. § 6-13.1-5 permits “[a]ny person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by § 6-13.1-2” to bring an action, including a class action, for damages and injunctive relief.

43. Plaintiffs are informed and believe, and based on such information and belief, allege that CVS engaged in unfair and deceptive acts and/or practices in violation of R.I.G.I. § 6-13.1-2.

44. CVS’s unfair and deceptive scheme to mislead consumers was comprised of countless unfair and deceptive acts or practices, including, but not limited to, misrepresenting on the product packaging that its AirShield product, like Airborne®, was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. These unfair and deceptive acts and practices have a capacity, tendency, and/or likelihood to deceive or confuse reasonable consumers in that such consumers had a good faith basis for believing AirShield had these qualities and abilities as promoted, marketed, advertised, labeled and sold by CVS.

45. Pursuant to R.I.G.I. § 6-13.1-5, Plaintiffs, on behalf of themselves and members of the Class, seek an order of this Court:

- (a) Enjoining CVS from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to its promoting,

marketing, advertising, packaging, labeling and sale of AirShield in such manner as set forth in detail above; and

(b) Disgorging and restoring all monies that may have been acquired by CVS as a result of such unfair and/or deceptive act or practices.

46. Plaintiffs and members of the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

47. Plaintiffs adequately represent the members of the Class, being similarly injured and situated persons per R.I.G.I. § 6-13.1-5.2.

48. The unfair and deceptive acts and practices of CVS, as described above, present a serious threat to Plaintiffs and members of the Class.

49. Based on the foregoing, Plaintiffs and the other members of the Class are entitled to all remedies available pursuant to R.I.G.I. § 6-13.1-5, including, but not limited to, refunds, actual damages, or statutory damages in the amount of two hundred dollars per violation, whichever is greater, attorneys' fees and other reasonable costs.

SECOND CAUSE OF ACTION
(On behalf of the Massachusetts Class)
(Violation of M. G. L. c. 93A §§ 2 and 9)

50. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

51. This cause of action is brought on behalf of Plaintiffs and members of the Massachusetts Class pursuant to M. G. L. c. 93A §§ 2 and 9. M.G.L. c. 93A §2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” M.G.L. c. 93A § 9

permits any consumer injured by a violation of M.G.L. c. 93A § 2 to bring a civil action, including a class action, for damages and injunctive relief.

52. Plaintiffs are informed and believe, and based on such information and belief, allege that CVS engaged in unfair and deceptive business acts and/or practices in violation of M.G.L. c. 93A §§ 2 and 9.

53. CVS's unfair and deceptive scheme to mislead consumers was comprised of countless unfair and deceptive acts or practices, including, but not limited to, misrepresenting on the product packaging that its AirShield product, like Airborne®, was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. These unfair and deceptive acts and practices have a capacity, tendency, and/or likelihood to deceive or confuse reasonable consumers in that such consumers had a good faith basis for believing AirShield had these qualities and abilities as promoted, marketed, advertised, labeled and sold by CVS.

54. CVS's acts and practices also violate M.G.L. c. 106 § 2-313, M.G.L. c. 106 § 2-314 and M.G.L. c. 106 § 2-315 and, as such, are unfair in violation of M.G.L. c. 93A § 2.

55. Pursuant to M. G. L. c. 93A § 9, Plaintiffs, on behalf of themselves and members of the Massachusetts Class, seek an order of this Court:

- (a) Enjoining CVS from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to its promoting,

marketing, advertising, packaging, labeling and sale of AirShield in such manner as set forth in detail above; and

(b) Disgorging and restoring all monies that may have been acquired by CVS as a result of such unfair and/or deceptive act or practices.

56. Plaintiffs and members of the Massachusetts Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

57. Plaintiffs are adequate and fair representatives of the Massachusetts Class, per M.G.L. c. 93A, § 9(2).

58. The unfair and deceptive acts and practices of CVS, as described above, present a serious threat to Plaintiffs and members of the Massachusetts Class.

59. Plaintiffs made a demand for relief, in writing, to CVS at least thirty (30) days prior to filing this complaint, as required by M.G.L. c. 93A § 9.

60. Based on the foregoing, Plaintiffs and the other members of the Massachusetts Class are entitled to all remedies available pursuant to M.G.L. c. 93A including, but not limited to, refunds, actual damages, or statutory damages in the amount of twenty five dollars per violation, whichever is greater, double or treble damages, attorneys' fees and other reasonable costs.

61. Pursuant to M. G. L. c. 231 § 6B, Plaintiffs and other members of the Massachusetts Class are further entitled to pre-judgment interest as a direct and proximate result of CVS's wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of calculation and Plaintiffs and Massachusetts Class Members are entitled to interest in an amount according to proof.

THIRD CAUSE OF ACTION
(On behalf of the Class)

(Breach of Express Warranty, R.I.G.L. § 6A-2-313)

62. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

63. CVS provided Plaintiffs and other members of the Class with written express warranties per R.I.G.L. § 6A-2-313 that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system

64. CVS breached these warranties in violation of, R.I.G.L. § 6A-2-313, which resulted in damages to Plaintiffs and other members of the Class, who overpaid for AirShield.

65. As a proximate result of this breach of warranty by CVS, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it..

FOURTH CAUSE OF ACTION

(On behalf of the Massachusetts Class)

(Breach of Express Warranty, M.G.L. c. 106 § 2-313)

66. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

67. CVS provided Plaintiffs and other members of the Massachusetts Class with written express warranties per M.G.L. c. 106 § 2-313 that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system

68. CVS breached these warranties in violation of M.G.L. c. 106 § 2-313, which resulted in damages to Plaintiffs and other members of the Massachusetts Class, who overpaid for AirShield.

69. As a proximate result of this breach of warranty by CVS, Plaintiffs and Massachusetts Class Members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it..

FIFTH CAUSE OF ACTION

(On behalf of the Class)

(Breach of Implied Warranty of Merchantability, R.I.G.L. § 6A-2-314)

70. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

71. Plaintiffs and other Class members purchased AirShield, which was promoted, marketed, advertised, packaged and labeled as able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places

such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Pursuant to these sales, CVS impliedly warranted per R.I.G.L. § 6A-2-314 that AirShield would be merchantable, including that it would be fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in AirShield promotions, marketing, advertising, packaging and labels. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of AirShield, CVS warranted that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Plaintiffs and Class members bought AirShield from CVS, relying on CVS' representations that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. However, AirShield was not able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was not immediately absorbed and its ingredients did not act to boost the immune system, as set forth in detail above.

72. CVS breached the warranty implied at the time of sale in that Plaintiffs and Class members did not receive a product that was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places

such as airplanes, schools, offices, restaurants, health clubs and theaters, was immediately absorbed, and its ingredients did not act to boost the immune system, and thus the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as promoted, marketed, advertised, packaged, labeled or sold, in violation of R.I.G.L. § 6A-2-314.

73. As a proximate result of this breach of warranty by CVS, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it..

SIXTH CAUSE OF ACTION

(On behalf of the Massachusetts Class)

(Breach of Implied Warranty of Merchantability, M.G.L. c. 106 § 2-314)

74. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

75. Plaintiffs and other Massachusetts Class Members purchased AirShield, which was promoted, marketed, advertised, packaged and labeled as able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Pursuant to these sales, CVS impliedly warranted per M.G.L. c. 106 § 2-314 that AirShield would be merchantable, including that it would be fit for the ordinary purposes

for which such goods are used and conform to the promises or affirmations of fact made in AirShield promotions, marketing, advertising, packaging and labels. By its representations regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of AirShield, CVS warranted that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Plaintiffs and Massachusetts Class Members bought AirShield from CVS, relying on CVS's representations that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. However, AirShield was not able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was not immediately absorbed and its ingredients did not act to boost the immune system, as set forth in detail above.

76. CVS breached the warranty implied at the time of sale in that Plaintiffs and Massachusetts Class Members did not receive a product that was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was immediately absorbed, and its ingredients did not act to boost the immune system, and thus the goods were not merchantable as fit for the ordinary purposes for which such

goods are used or as promoted, marketed, advertised, packaged, labeled or sold, in violation of M.G.L. c. 106 § 2-314.

77. As a proximate result of this breach of warranty by CVS, Plaintiffs and Massachusetts Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it..

SEVENTH CAUSE OF ACTION

(On behalf of the Class)

(Breach of Implied Warranty of Fitness for Particular Purpose,
R.I.G.L. § 6A-2-315)

78. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

79. Plaintiffs and other Class members purchased AirShield, which was promoted, marketed, advertised, packaged and labeled as able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Pursuant to these sales, CVS impliedly warranted per R.I.G.L. § 6A-2-315 that AirShield would be fit for the purposes of preventing or curing airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system By its representations regarding the

reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of AirShield, CVS warranted that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Plaintiffs and Class members bought AirShield from CVS, relying on CVS' skill and judgment in furnishing suitable goods as well as CVS's representations that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. However, AirShield was not able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was not immediately absorbed, and its ingredients did not act to boost the immune system.

80. CVS breached the warranties implied at the time of sale in that Plaintiffs and Class members did not receive a product that was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system, and thus the goods were not fit for the purposes of preventing or curing airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes,

schools, offices, restaurants, health clubs and theaters, as promoted, marketed, advertised, packaged, labeled or sold, in violation of R.I.G.L. § 6A-2-315.

81. As a proximate result of this breach of warranty by CVS, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it.

EIGHTH CAUSE OF ACTION

(On behalf of the Massachusetts Class)
(Breach of Implied Warranty of Fitness for Particular Purpose,
M.G.L. c. 106 § 2-315)

82. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

83. Plaintiffs and other Massachusetts Class members purchased AirShield, which was promoted, marketed, advertised, packaged and labeled as able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Pursuant to these sales, CVS impliedly warranted per M.G.L. c. 106 § 2-315 that AirShield would be fit for the purposes of preventing or curing airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system By its representations

regarding the reputable nature of its company and related entities, and by its promotion, marketing, advertising, packaging and labeling of AirShield, CVS warranted that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. Plaintiffs and Massachusetts Class members bought AirShield from CVS, relying on CVS's skill and judgment in furnishing suitable goods as well as CVS's representations that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system. However, AirShield was not able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was not immediately absorbed, and its ingredients did not act to boost the immune system.

84. CVS breached the warranties implied at the time of sale in that Plaintiffs and Massachusetts Class members did not receive a product that was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system, and thus the goods were not fit for the purposes of preventing or curing airborne illnesses such as the common cold if ingested prior to entering crowded public places

such as airplanes, schools, offices, restaurants, health clubs and theaters, as promoted, marketed, advertised, packaged, labeled or sold, in violation of M.G.L. c. 106 § 2-315.

85. As a proximate result of this breach of warranty by CVS, Plaintiffs and Massachusetts Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by CVS, were deprived of the benefit of their bargain and spent money on a product that did not have any value, had less value than warranted or that they would not have purchased and used had they known the true facts about it.

NINTH CAUSE OF ACTION
(On behalf of the Class)
(Unjust Enrichment/Rhode Island Law)

86. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

87. As a result of CVS's deceptive and misleading labeling, advertising, marketing and sales of its store-brand Airborne® equivalent, AirShield, CVS was enriched, at the expense of Plaintiffs, and all others similarly situated, through the payment of the purchase price for CVS's store-brand Airborne® equivalent.

88. Under the circumstances, it would be against equity and good conscience to permit CVS to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the store-brand Airborne® equivalent purchased by Plaintiffs, and all others similarly situated, were not what CVS represented them to be. Thus, it would be unjust or inequitable for CVS to retain the benefit without

restitution to Plaintiffs, and all others similarly situated, for the monies paid to CVS for its AirShield product.

TENTH CAUSE OF ACTION
(On behalf of the Massachusetts Class)
(Unjust Enrichment/Massachusetts Law)

89. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

90. As a result of CVS's deceptive and misleading labeling, advertising, marketing and sales of its store-brand Airborne® equivalent, AirShield, CVS was enriched, at the expense of Plaintiffs, and all other Massachusetts Class Members, through the payment of the purchase price for CVS's store-brand Airborne® equivalent.

91. Under the circumstances, it would be against equity and good conscience to permit CVS to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the store-brand Airborne® equivalent purchased by Plaintiffs, and all other Massachusetts Class Members, were not what CVS represented them to be. Thus, it would be unjust or inequitable for CVS to retain the benefit without restitution to Plaintiffs, and all others similarly situated, for the monies paid to CVS for its AirShield product.

ELEVENTH CAUSE OF ACTION
(On behalf of the Class)
(Deceit and/or Misrepresentation)

92. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

93. CVS, through its labeling, advertising and marketing of its store-brand Airborne® equivalent, AirShield, makes uniform representations and offers regarding the

quality of its product as described above. CVS engages and continues to engage in such misrepresentative, false and/or deceptive acts with full knowledge that such acts were, and are, in fact, misrepresentative, false or deceptive.

94. The aforementioned misrepresentations, deceptive, and/or false acts and omissions concern material facts that are essential to the analysis undertaken by Plaintiffs, and those similarly situated, in deciding whether to purchase CVS's store-brand Airborne® equivalent, AirShield.

95. Plaintiffs and members of the Classes would have acted differently had they not been misled – *i.e.*, they would not have paid money for the product in the first place.

96. CVS has a duty to correct the misinformation it disseminates through its advertising of its store-brand Airborne® equivalent, AirShield. By not informing Plaintiffs, and those similarly situated, of this misinformation, CVS breached this duty. CVS also gained financially from, and as a result of, this breach.

97. By and through such deceit, misrepresentations and/or omissions, CVS intended to induce Plaintiffs, and those similarly situated, to alter their position to their detriment.

98. Plaintiffs and members of the Classes justifiably and reasonably relied on CVS' misrepresentations, and, as such, were damaged by CVS.

99. As a direct and proximate result of CVS's deceit and/or misrepresentations, Plaintiffs and members of the Classes have suffered damages in an amount equal to the amount they paid for CVS' store-brand Airborne® equivalent, AirShield. The exact amount of this difference will be proven at trial.

100. CVS acted with intent to deceive, or with reckless or negligent disregard of the rights of, Plaintiffs, and those similarly situated.

101. Plaintiffs, and those similarly situated, are entitled to punitive damages.

TWELFTH CAUSE OF ACTION
(On behalf of the Class)
(Negligent Misrepresentation)

102. Plaintiffs repeat and reallege all preceding paragraphs, as if fully set forth herein.

103. CVS represented to the public, including Plaintiffs and the Classes, by promoting, marketing, advertising, packaging, labeling and other means, that AirShield was able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters because it was immediately absorbed and its ingredients acted to boost the immune system.

104. CVS's representations were false in that AirShield was not able to prevent or cure airborne illnesses such as the common cold if ingested prior to entering crowded public places such as airplanes, schools, offices, restaurants, health clubs and theaters, was not immediately absorbed, and its ingredients did not act to boost the immune system

105. CVS made the false representations herein alleged with the intention of guiding the consuming public to purchase AirShield.

106. Plaintiffs and members of the Classes believed and relied on CVS's promoting, marketing, advertising, packaging and labeling of AirShield, and, in justifiable reliance thereon, purchased AirShield.

107. At the time CVS made the misrepresentations herein alleged, CVS had no reasonable grounds for believing the representations to be true.

108. As a proximate result of CVS's negligent misrepresentations, Plaintiffs and other members of the Classes were induced to spend an amount to be determined at trial on the Airborne® equivalent manufactured, distributed, and sold by CVS, and thereby lost money by purchasing CVS's AirShield product, which was not what it was represented to be, and was worth less than what consumers paid for it and which they would not have purchased but for the misrepresentations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- Certification of the Class or Massachusetts Class, certifying Plaintiffs as the representatives of the Class or Massachusetts Class, and designating their counsel as counsel for the Class or Massachusetts Class;
- Declaring that CVS's acts and practices, as described herein, constitute unfair and deceptive acts and practices that are unlawful under R.I.G.I. § 6-13.1-2 and/or M.G.L. c. 93A §§ 2 and 9;
- Awarding Plaintiffs and the Class or Massachusetts Class permanent injunctive relief prohibiting, restraining and enjoining CVS from engaging in the conduct complained of herein, including, *inter alia*, manufacturing, promoting, marketing, advertising, selling and/or distributing AirShield in the manner described herein;
- Ordering CVS to issue corrective advertising;

875 Avenue of the Americas, 18th Floor
New York, New York 10001
Telephone: (212) 579-4625
Facsimile: (212) 253-4272
Michael@reeserichman.com

D'ANGELO & HASHEM, LLC
Jay M. Wolman (BBO#: 666053)
6 Beacon Street, Suite 505
Boston, Massachusetts 02108
Telephone: (617) 624-9777
Facsimile: (617) 624-0999
jay.wolman@lawyeradvocates.com

Attorneys for Plaintiffs

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS James Faherty, Linda Feibel and Moe Tarklow</p> <p>(b) County of Residence of First Listed Plaintiff <u>Norfolk</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Patrick J. Sheehan, Whatley Drake & Kallas, LLC 80 State Street, 7th Floor, Boston, MA 02109 (617.573.5118)</p>	<p>DEFENDANTS CVS Pharmacy, Inc.X</p> <p>County of Residence of First Listed Defendant: _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known): _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES(Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> PTF</td> <td><input type="checkbox"/> DEF</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> PTF</td> <td><input type="checkbox"/> DEF</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 243 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p>PERSONAL INJURY</p> <input type="checkbox"/> 363 Personal Injury - Mod. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Arbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Landing <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 310 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 533 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Rugs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainees <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1958) <input type="checkbox"/> 862 Black Long (923) <input type="checkbox"/> 863 D/WC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitrat <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 (d)
 Brief description of cause: Unfair and deceptive trade practices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ >\$5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/11/09 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Faherty v. CVS Pharmacy, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 185, 196, 358, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 462, 463, 465, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 163.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES NO
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES NO

- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division Central Division Western Division
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (if yes, submit a separate sheet identifying the motions)
YES NO

(PLEASE TYPE OR PRINT)
ATTORNEY'S NAME Patrick J. Sheehan
ADDRESS Whatley Drake & Kallas, LLC, 60 State Street, 7th Floor, Boston, MA 02109
TELEPHONE NO. (617) 573-5118