

FARAHILAW FIRM, APC

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ALEXANDER FOROUZESH

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALEXANDER FOROUZESH, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

CVS PHARMACY, INC., a foreign business
corporation; and DOES 1-25 inclusive

Defendants

CASE NO.: 2:17-cv-8375

CLASS ACTION COMPLAINT FOR:

1. **Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);**
2. **Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500 *et seq.*);**
3. **Violation of Consumers Legal Remedy Act (Cal. Civ. Code §§ 1750 *et seq.*); and**
4. **Breach of Express Warranty**

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Alexander Forouzesh (“Plaintiff”) brings this action on behalf of himself and all others similarly situated against Defendant CVS PHARMACY, INC. COMPANY (“CVS Pharmacy”), and DOES 1-25 (collectively “Defendants”) and states:

NATURE OF ACTION

1
2 1. Defendants distributes markets and sells sunscreen products with an SPF of 100+
3 (“CVS” or “CVS Sport SPF 100+ Product”).

4 2. The SPF value indicates the level of sunburn protection provided by the
5 sunscreen product. All sunscreens must be tested according to a SPF test procedure. The test
6 measures the amount of ultraviolet (UV) radiation it takes to cause sunburn when a person is
7 using a sunscreen in comparison to how much UV exposure it takes to cause a sunburn when
8 they do not use a sunscreen. The product is then labeled with the appropriate SPF value
9 indicating the amount of sunburn protection provided by the product. Because SPF values are
10 determined from a test that measures protection against sunburn caused by ultraviolet B
11 (UVB) radiation, SPF values only indicate a sunscreen’s UVB protection

12 3. Consumers have become familiar with SPF values because SPF values have
13 appeared on sunscreen product labels for many decades. Consumers have learned to
14 associate higher SPF values with greater sun protection. Consumers reasonably assume that
15 a product with a SPF of 100+ (like CVS Sport 100+ Product Sunscreen) provides more
16 UVB protection than that of another sunscreen product with a SPF lower than 100. It does
17 not. Rather, the product provides an SPF 26 protection. In fact, the CVS Sport 100+ product
18 provides none of the protection that the labels on the containers claim to provide.

19 4. Defendants deception carried onto the CVS website in which Defendants claim,
20 “CVS Sport 100+ Product is equipped with Broad-Spectrum UVA and UVB protection”.

21 5. Defendants were aware, or should have been aware, for years that CVS
22 Sport 100+ sunscreen product does not contain the UV protection that the Defendants
23 advertise, leading the Plaintiff and Class members to trust on a product, which contains
24 inaccurate and significantly inflated SPF number that does not perform as advertised.

25 6. Defendants have employed numerous methods to convey its uniform, deceptive
26 UVB protection claims to consumers, including advertising inserts, the internet and,
27 importantly, on the CVS Sport 100+ products labels where they cannot be missed by

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1 consumers. The stated SPF value is the most pertinent information on a sunscreen label. The
2 information on the labels of CVS Sport 100+ are false and misleading, and have deceived the
3 public.

4 7. The only reason a consumer would purchase a product from the premium priced
5 CVS Sport 100+ products instead of less expensive, lower SPF value but otherwise
6 comparable sunscreen products, including the CVS products, is to obtain a sunscreen product
7 with a proportionally greater sunburn protection, which the CVS Sport 100+ products do not
8 provide. With notice and knowledge of its product misrepresentations or omissions,
9 Defendants have not offered to compensate its customer to remedy their damages.

10 8. Plaintiff brings this action on behalf of himself and other similarly situated
11 consumers who have purchased the CVS Sport 100+ product to halt the dissemination of this
12 false, misleading and deceptive advertising message, correct the false and misleading
13 perception it has created in the minds of consumers, and obtain redress for those who have
14 purchased this product.

15 **PARTIES**

16 9. Plaintiff Alexander Forouzesh resides in Los Angeles, California. In or around
17 November 2016, Plaintiff was exposed to and saw Defendants superior UVB protection claims
18 by reading the CVS Sport 100+ Sunscreen Spray label. In reliance on the superior UVB
19 protection claim, Plaintiff purchased CVS Sport 100+ Sunscreen Spray at a CVS, near his
20 home in the Los Angeles, California area. He paid approximately \$9.99 for the product that
21 would allow his niece and nephews to run around outside and be protected from harmful UVB
22 rays. The CVS Sport 100+ Sunscreen Spray Plaintiff purchased did not provide proportionally
23 greater sunburn protection as represented. As a result, Plaintiff suffered injury and lost money.
24 Had Plaintiff known the truth about Defendants misrepresentations and omissions, he would
25 not have purchased CVS Sport 100+ Sunscreen Spray.

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1 subject of the present complaint, in this District.

2 14. Defendants CVS Pharmacy, Inc. is a foreign business corporation
3 headquartered in Woonsocket, Rhode Island. From its headquarters in Rhode
4 Island, CVS Pharmacy, Inc. manufactures, distributes, markets and/or sells the
5 CVS Sport 100+ products to consumers nationwide and created the superior UVB
6 protections claims, which it caused to be disseminated to consumers nationwide.

7
8 **FACTUAL ALLEGATIONS**

9 15. Defendants distribute, market, and sell a variety of products for the skin and fact.
10 This lawsuit concerns the CVS Sport SPF 100+ product, a line of sunscreen products labeled
11 with SPF of 100+. The CVS Sport SPF 100+ product is sold online and at CVS retail
12 locations.

13 16. Since launching the CVS Sport SPF 100+ products, Defendants have consistently
14 conveyed the message to consumers throughout the United States, including California, that
15 the CVS Sport SPF 100+ products provides superior UVB protection compared to comparable
16 lower SPF valued products, including the CVS Sport SPF 100+ Products. They do not.
17 Defendant superior UVB protection claims are false, misleading and deceptive.

18 17. In November 2016, a 6oz. bottle of CVS Sport SPF 100+ sunscreen was purchased
19 by Plaintiff. The following is the product purchased.

20 **CVS Sport SPF 100+ Purchase by Plaintiff**



27 **Fig.1 Front of Tube Detail**



28 **Fig.2 Back of Tube Detail**

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1 18. As clearly illustrated by Figure 1, the bottle indicates that the content it contains
2 has UVA/UVB Protection in the form of sunscreen lotion with "Broad Spectrum SPF 100+".
3 In addition, the back of the container also states that its content is "quick and easy no-rub
4 coverage with broad-spectrum protection for people with active lifestyles".

5 19. The back of the container states, "if used as directed with other sun protective
6 measures decreases the risk of skin cancer and early skin aging caused by the sun"; however,
7 the level of SPF the product tested for puts it just above the minimum level of SPF
8 recommended. (see Fig. 2)

9 20. The purchase was conducted by Plaintiff, on the assumption that the product
10 contained the advertised SPF level of protection. Plaintiff, under reasonable belief, decided to
11 purchase the product. Had Plaintiff known the product did not contain the advertised SPF
12 level, he would not have purchased the sunscreen.

13 21. Plaintiff sustained injury through his purchase of the CVS Pharmacy SPF 100+
14 sunscreen as he was deceived into purchasing a product based on the Defendants claim that
15 the product provided superior UVB protection compared to less expensive, lower SPF value.

16 **Consumer Report Research of CVS Health Sport SPF 100+ Sunscreen**

17 22. A sunscreen's SPF value is calculated by comparing the time needed for a
18 person to burn unprotected with how long it takes for that person to burn wearing sunscreen.
19 So, a person who turns red after 20 minutes of unprotected sun exposure is theoretically
20 protected 15 times longer if they adequately apply SPF 15. Importantly, the SPF rating
21 system is non-linear. Also, importantly, scientific studies establish that sunscreen products
22 with SPF values over 50 provide no additional clinical benefit to consumers. SPF 100 blocks
23 99 percent of UV rays, while SPF 50 blocks 98 percent, an immaterial difference that yields
24 no clinical benefit to consumers.

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1 23. Defendants have not advised either Plaintiff or putative Class members that their
2 sunscreen products do not contain the UV protection that Defendants otherwise advertised,
3 allowing the Plaintiff and Class members to depend on the effectiveness of the product based
4 upon a false and inflated SPF

5 24. Defendants partook in the above-described actionable statement, omissions and
6 concealment that the representations were false and/or misleading, and with the intent that rely
7 upon such concealment, suppression and omissions.

8 **CLASS DEFINITION AND ALLEGATIONS**

9 25. This action is brought and may be properly maintained as a class action under the
10 provisions of the Federal Rules of Civil Procedures Rule 23 (a)(1)-(4) and 23(b)(1), b(2) or
11 (b)(3). This action satisfies the community of interest, numerosity, ascertainability, typicality,
12 adequacy, superiority and common questions of law and fact requirements of those provisions.
13 It seeks certification of the following Class:
14

15 All California consumers who purchased a product in the CVS Sport
16 SPF 100+ product line, within the applicable statute of limitations, for
17 personal use until the date notice is disseminated.

18 Excluded from this Class are Defendants and its
19 officers, directors and employees and those who
20 purchased a Product in the CVS Sport SPF 100+
product line for the purpose of resale.

21 26. *Community of Interest.* There is a well-defined community of interest among
22 members of the Class, and the disposition of the claims of these members of the Class in a
23 single action will provide substantial benefits to all parties and to the Court.

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1 27. **Numerosity.** The members of the Class are so numerous that joinder of all members
2 of the Class is impracticable. Plaintiff is informed and believes that the proposed Class
3 contains thousands of purchasers of the CVS Sport SPF 100+ products who have been
4 damaged by Defendants conduct as alleged herein. The precise number of Class members is
5 unknown to Plaintiff.

6 28. **Ascertainability.** Names and addresses of members of the Class are available from
7 Defendants records. Notice can be provided to the members of the Class through direct
8 mailing, publication, or otherwise using techniques and a form of notice similar to those
9 customarily used in consumer class actions arising under California state law and federal law.

10 29. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class
11 because, *inter alia*, all Class members were injured through the uniform misconduct described
12 above and were subject to Defendants deceptive superior UVB protection claims that
13 accompanied each and every product in the CVS Sport SPF 100+ products. Plaintiff is
14 advancing the same claims and legal theories on behalf of himself and all members of
15 the Class.

16 30. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
17 interests of the members of the Class, Plaintiff has retained counsel experienced in complex
18 consumer class action litigation, and Plaintiff intends to prosecute this action vigorously.
19 Plaintiff has no adverse or antagonistic interests to those of the Class.

20 31. **Superiority.** A class action is superior to all other available means for the fair and
21 efficient adjudication of this controversy. The damages or other financial detriment suffered
22 by individual Class members is relatively small compared to the burden and expense that
23 would be entailed by individual litigation of their claims against Defendants. It would thus
24 be virtually impossible for Plaintiff and Class members, on an individual basis, to obtain
25 effective redress for the wrongs done to them. Furthermore, even if Class members could
26 afford such individualized litigation, the court system could not. Individualized litigation
27 would create the danger of inconsistent or contradictory judgments arising from the same
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1 set of facts. Individualized litigation would also increase the delay and expense to all parties
2 and the court system from the issues raised by this action. By contrast, the class action
3 device provides the benefits of adjudication of these issues in a single proceeding,
4 economies of scale, and comprehensive supervision by a single court, and presents no
5 unusual management difficulties under the circumstances here.

6 **32. Existence and Predominance of Common Questions of Law and Fact.** This action
7 involves common questions of law and fact, which predominate over any questions affecting
8 individual Class members. These common legal and factual questions include, but are not
9 limited to, the following:

- 10 (a) whether the claims discussed above are true, or are misleading, or objectively
- 11 reasonably likely to deceive;
- 12 (b) whether Defendants alleged conduct violates public policy;
- 13 (c) whether the alleged conduct constitutes violations of the laws asserted;
- 14 (d) whether Defendants engaged in false or misleading advertising;
- 15 (e) whether Plaintiff and Class members have sustained monetary loss and the proper
- 16 measure of that loss; and
- 17 (f) whether Plaintiff and Class members are entitled to other appropriate
- 18 remedies, including corrective advertising and injunctive relief.

19 **33.** The Class also may be certified because Defendants has acted or refused to act on
20 grounds generally applicable to the Class thereby making appropriate final declaratory
21 and/or injunctive relief with respect to the members of the Class as a whole.

22 **34.** Plaintiff seeks preliminary and permanent injunctive and equitable relief on
23 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
24 and prevent Defendants from engaging in the acts described, and requiring Defendants to
25 provide full restitution to Plaintiff and Class members.

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1 35. Unless a Class is certified, Defendants will retain monies received as a result of its
2 conduct that was taken from Plaintiff and Class members. Unless a Class-wide injunction is
3 issued, Defendants will continue to commit the violations alleged, and the members of the
4 Class and the general public will continue to be misled.

5 **COUNT I**

6 **Violation of Business & Professions Code §17200, et seq.**

7 36. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
8 above, as if fully set forth herein.

9 37. Plaintiff brings this claim individually and on behalf of the Class.

10 38. As alleged herein, Plaintiff has suffered injury in fact and lost money or
11 property as a result of Defendants' conduct because he purchased a product from the
12 CVS Sport SPF 100+ products in reliance on Defendants UVB protection claims, but did not
13 receive a product that provides superior UVB protection as compared to comparable lower
14 valued SPF products, including the CVS Sport products.

15 39. The Unfair Competition Law, Business & Professions Code §17200, et seq.
16 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any
17 false or misleading advertising. In the course of conducting business, Defendants committed
18 unlawful business practices by, *inter alia*, making the UVB protection claims (which also
19 constitutes advertising within the meaning of §17200 and omissions of material facts, as set
20 forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and
21 Business & Professions Code §§17200, et seq., 17500, et seq., and the common law.

22 40. As alleged herein, Plaintiff has suffered injury in fact and lost money or
23 property as a result of Defendants conduct because she purchased a product from the CVS
24 Sport SPF 100+ products in reliance on Defendants UVB protection claims, but did not
25 receive a product that provides superior UVB protection as compared to comparable lower
26 valued SPF products, including the CVS Sport products.

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1 41. The Unfair Competition Law, Business & Professions Code § 17200, et seq.
2 (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and any
3 false or misleading advertising. In the course of conducting business, Defendants committed
4 unlawful business practices by, *inter alia*, making the UVB protection claims (which also
5 constitutes advertising within the meaning of §17200 and omissions of material facts, as set
6 forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and
7 Business & Professions Code §§17200, et seq., 17500, et seq., and the common law.

8 42. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as
9 a result of Defendants conduct because he purchased a product from the CVS Sport 100+
10 products in reliance on Defendants UVB protection claims, but did not receive a product that
11 provides superior UVB protection as compared to comparable lower valued SPF products,
12 including the CVS Sport 100+ products.

13 43. The UCL prohibits any “unlawful,” “fraudulent” or “unfair” business act or
14 practice and any false or misleading advertising. In the course of conducting business,
15 Defendants committed unlawful business practices by, *inter alia*, making the UVB protection
16 claims (which also constitutes advertising within the meaning of §17200 and omissions of
17 material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709,
18 1711, 1770 and Business & Professions Code §§17200, et seq., 17500, et seq., and the
19 common law.

20 44. Plaintiff and the Class reserve the right to allege other violations of law,
21 which constitute other unlawful business acts or practices. Such conduct is ongoing and
22 continues to this date.

23 45. Defendants actions also constitute “unfair” business acts or practices because, as
24 alleged above, *inter alia*, Defendants engaged in false advertising, misrepresented and
25 omitted material facts regarding the CVS Sport SPF 100+ product, and thereby offended an
26 established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous
27 activities that are substantially injurious to consumers.

1 53. Plaintiff, on behalf of himself, all others similarly situated, and the general
2 public, seeks restitution and disgorgement of all money obtained from Plaintiff and the
3 members of the Class collected as a result of unfair competition, an injunction prohibiting
4 Defendants from continuing such practices, corrective advertising and all other relief this
5 Court deems appropriate, consistent with Business & Professions Code §17203.

6 **COUNT II**

7 **Violation of Business & Professions Code §17500, et seq.**

8 54. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
9 above, as if fully set forth herein.

10 55. Plaintiff brings this claim individually and on behalf of the Class.

11 56. California Business and Professions Code section 17500 prohibits "unfair,
12 deceptive, untrue or misleading advertising."

13 57. Defendants violated California Business and Professions Code section 17500 by, by
14 advertising that the CVS Sport SPF 100+ products provide superior UVB protection compared
15 to comparable lower SPF valued products, including the CVS Sport SPF 100+ products.

16 58. In fact, Defendants representation regarding the CVS Sport SPF 100+ products
17 were false. The CVS Sport SPF 100+ products do not provide superior UVB protection as
18 compared to comparable lower valued SPF products.

19 59. Defendants deceptive practices were specifically designed to induce Plaintiff
20 and members of the Class to purchase the CVS Sport SPF 100+ products over those of their
21 competitors.

22 60. Plaintiff and members of the Class would not have purchased and used the CVS
23 Sport SPF 100+ products had it not been for Defendants misrepresentations and concealment
24 of material facts.

25 61. The content of the advertisements, as alleged herein, were of a nature likely to
26 deceive a reasonable consumer.

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(5) Representing that [the Products] have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . .

* * *

(7) Representing that [the Products] are of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the Products have] been supplied in accordance with a previous representation when [they have] not.

70. Defendants violated the Act by representing and failing to disclose material facts on the CVS Sport SPF 100+ collection labeling and packaging and associated advertising, as described above, when they knew, or should have known, that the representations was false and misleading and that the omissions were of material facts they were obligated to disclose.

71. At this time, Plaintiff seeks only injunctive relief under this cause of action. Under section 1782 of the CLRA, Plaintiff will notify Defendants in writing of the particular violations of section 1770 of the CLRA and demand that Defendants rectify the problems associated with the behavior detailed above, which acts, and practices are in violation of California Civil Code section 1770.

72. If Defendants fail to respond adequately to Plaintiff s above-described demand within 30 days of Plaintiff s notice, under California Civil Code section 1 782(b), Plaintiff will amend the Complaint to request damages and other relief permitted by California Civil Code section 1780.

73. Plaintiff also has filed a Declaration of Venue in accordance with Civil Code section 1780(d).

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1 would conform to the stated promise. Plaintiff placed importance on Defendants
2 representations.

3 82. All conditions precedent to Defendants liability under this contract have been
4 performed by, Plaintiff and the Class.

5 83. Defendants were provided notice of these issues by, inter *alia*, the instant
6 Complaint.

7 84. Defendants breached the terms of this contract, including the express warranties,
8 with Plaintiff and the Class by not providing a product that provides superior UVB protection
9 as represented.

10 85. As a result of Defendants breach of its contract, Plaintiff and the Class have been
11 damaged in the amount for the price of the Products they purchased.

12
13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for a judgment:

15 A. Certifying the Class as requested herein;

16 B. Awarding Plaintiff and the proposed Class member's damages;

17 C. Awarding restitution and disgorgement of Defendants revenues to Plaintiff the
18 proposed Class members;

19 D. Awarding injunctive relief as permitted by law or equity, including enjoining
20 Defendants from continuing the unlawful practices as set forth herein, and require Defendants to
21 Identify, with Court supervision, victims of its conduct and pay the money they are required
22 to pay;

23 E. Ordering Defendants to engage in a corrective advertising campaign;

24 F. Awarding attorney's fees and costs; and

25 G. Providing such further relief as may be just and proper.

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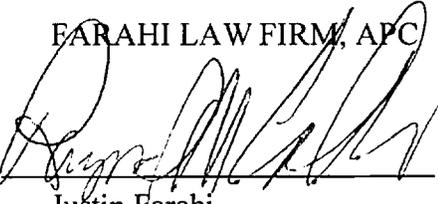
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1 Dated: November 14, 2017

FARAHI LAW FIRM, APC

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3 By:



4 Justin Farahi
5 Raymond M. Collins
6 Attorneys for Plaintiff,
7 Alexander Forouzesh

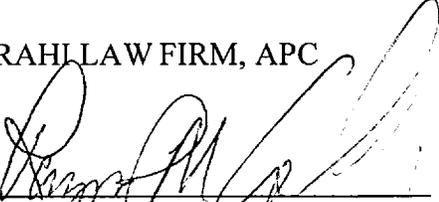
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: November 14, 2017

FARAHILAW FIRM, APC

By: 

Justin Farahi
Raymond M. Collins
Attorneys for Plaintiff,
Alexander Forouzesh

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