

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

JOHN DALY and RAEVIN DOTSON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ALLERGAN USA, INC.,

Defendant.

Case No. **2026CH00826**

**CLASS ACTION
COMPLAINT**

JURY DEMANDED

FILED
1/28/2026 11:39 AM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2026CH00826
Calendar, 8
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Now comes the Plaintiff, John Daly and Raevin Dotson (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through his attorneys, and for his Class Action Complaint against the Defendant, ALLERGAN USA, INC. (“Defendant”), Plaintiff alleges and states as follows:

PRELIMINARY STATEMENT

1. This is an action for damages, injunctive relief, and any other available legal or equitable remedies, for violations of the Nevada Deceptive Trade Practices Act NRS 598, et seq., Illinois Consumer Fraud and Deceptive Businesses Practices Act (“ILCFA”), 815 ILCS 505/1 *et seq.*, common law fraud, and unjust enrichment, resulting from the illegal actions of Defendant, in intentionally labeling its products with false and misleading claims that they are “preservative free” when the products contain the preservative boric acid. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

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PARTIES

2. Plaintiff Dotson is an individual who was at all relevant times residing in Las Vegas, Nevada.

3. Plaintiff Daly is an individual who was at all relevant times residing in Chicago, Illinois

4. Defendant is a Delaware corporation, whose principal place of business is located in Irvine, California.

5. At all times relevant hereto, Defendant was engaged in the marketing, manufacturing, and sale of eye drops.

FACTS COMMON TO ALL COUNTS

6. Defendant manufactures, advertises, markets, sells, and distributes eye drops throughout the United States.

7. During the Class Period Defendant sold its Refresh Tears PF products (the “Products”) labeled, marketed, and advertised as “preservative free” that contain boric acid, a preservative.

8. Plaintiff, like any reasonable consumer, expects that products advertised as “preservative free” will not contain preservatives.

9. On or about June 27, 2025, Plaintiff Dotson purchased a Product from a amazon.com.

10. On or about November 6, 2025, Plaintiff Daly purchased a Product from a Walgreens located in Chicago, Illinois.

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11. Boric acid works as a preservative due to its acidic properties and nonselective in biological mediums. Boric acid is used as a preservative in multidose eyedrops.¹

12. As a result, boric acid is a preservative in the Products because it has bacteriostatic effects.

13. Persons, like Plaintiffs herein, have an interest in purchasing products that do not contain false and misleading claims with regards to the contents of the Products.

14. The following picture is an example of the Defendant's misleading labeling:



15. By making false and misleading claims about the Products, Defendant impaired Plaintiff's ability to choose the type and quality of products she chose to buy.

16. Therefore, Plaintiff has been deprived of her legally protected interest to obtain true and accurate information about his consumer products as required by law.

¹ Savić, S. D., Ćirić, A., & Pantelić, I. (2020). Boric acid, a Lewis acid with unique and unusual properties. *Journal of Pharmaceutical Sciences*, 109(12), 3574–3581.

17. As a result of Defendant's fraudulent labeling, Plaintiff and the Class have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products would contain no preservatives.

18. As a result of Defendant's fraudulent labeling, Plaintiffs and the Class paid a price premium for a premium Product, but instead received a non-premium Product with preservatives.

19. Producers of consumer products, like Defendant, use consumer product labeling to increase consumer demand for products based on the perceived features or benefits of the products thereby increasing the price producers can charge for their products and/or the quantity they can sell.

20. Defendant by including "preservative free" labeling increased consumer demand for the Products by incentivizing consumers to purchase them to receive desirable product features.

21. However, as described above, the "preservative free" label on Defendant's Products is misleading, and consumers have been therefore deprived of that product feature. As a result, Defendant has been able to sell the Products at a greater price and/or in greater quantity than if Defendant did not include the challenged labeling, but without providing consumers with the promised product feature. Stated otherwise, Defendant coerced consumers to base their purchasing decision in material part on false claims, thereby fraudulently, deceptively, and unfairly increasing consumer demand for the product. Defendant profited from these acts by extracting additional funds from consumers than otherwise would not have been paid for Class Products, and also harmed competitors by luring would-be consumers of competitive products away from law-abiding products that were not so falsely advertised.

22. Plaintiff and the Class purchased Defendant's Products because Defendant's advertising claimed that the Products are "preservative free".

23. Furthermore, due to Defendant's intentional, deceitful practice of falsely labeling the Products as "preservative free", Plaintiff could not have known that the Product contained a preservative.

24. Plaintiff was unaware that the Product contained a preservative when she purchased it.

25. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should have known that labeling, marketing, and selling the Products as preservative free was false, deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the Products they purchased contained preservatives unless Defendant expressly told them.

26. On information and belief, Defendant employs professional chemists to create the chemical formulas of Defendant's Products. Therefore, Defendant through its employees knew or should have known that boric acid is a preservative, and that by adding boric acid to its Products they would contain a preservative.

27. On information and belief, Defendant did know that Products contained a preservative but chose to label the Products as "preservative free" because it did not believe its customers were well educated enough to know the difference.

28. As a result of Defendant's acts and omissions outlined above, Plaintiff has suffered concrete and particularized injuries and harm, which include, but are not limited to, the following:

- a. Lost money as a result in a shift of the consumer demand curve which increases consumer demand, the number of units sold, and the price of the Products;
- b. Wasting Plaintiff's time; and

- c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of confidence in product labeling.

CLASS ALLEGATIONS

29. Plaintiffs brings this action on behalf of themselves and all others similarly situated, as a member of the proposed class (the “Class”), defined as follows:

All persons within the United States who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

30. Plaintiff Dotson also brings this action on behalf of herself and all others similarly situated, as a member of the proposed sub-class (the “Nevada Sub-Class”), defined as follows

All persons within the State of Nevada who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

31. Plaintiff Daly also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the “Illinois Sub-Class”) defined as follows:

All persons within the State of Illinois who purchased the Products within five years prior to the filing of the original Complaint through the date of class certification.

32. The Class and the Sub-Class satisfy all of the requirements of the Illinois Rules of Civil Procedure for maintaining a class action, specifically:

- a. Upon information and belief, the Class and the Sub-Class are so numerous that joinder of all members is impracticable. On information and belief there are hundreds, if not thousands of individuals in the United States and the State of Nevada who purchased the products within the applicable statute of limitations period.

- b. There are questions of fact and/or law which are common to the Class and the Sub-Class, and which predominate over questions affecting any individual Class or Sub-Class members. These common questions of fact and law include, but are not limited to:
- i. Whether Defendant disseminated false and misleading information by claiming the Products are “preservative free” when they contain preservatives;
 - ii. Whether the Class and Sub-Class members were informed that the Products contained a preservative;
 - iii. Whether the Products contain preservatives;
 - iv. Whether Defendant’s conduct was unfair and deceptive;
 - v. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
 - vii. Whether there should be a tolling of the statute of limitations; and
 - viii. Whether the Class and Sub-Class members are entitled to restitution, actual damages, punitive damages, and attorneys’ fees and costs.
- c. Plaintiff’s claims are typical of the Class and the Sub-Class, which all arise from the same operative set of facts and are based on the same legal theories
- d. Plaintiff has no interests adverse or antagonistic to the interests of the other members of the Class and the Sub-Class.
- e. Plaintiff will fairly and adequately protect the interests of the Class and the Sub-Classes and Plaintiff has retained experienced and competent attorneys to represent the Class and the Sub-Classes.

- f. This class action is a fair and efficient adjudication of the controversy alleged herein. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- g. This class action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. This class action will also permit the adjudication of relatively small claims by many Class and Sub-Classes members who would not otherwise be able to afford to seek legal redress for the wrongs complained of herein. Absent a class action, Class and Sub-Classes members will continue to suffer losses of legally protected rights, as well as monetary damages. If Defendants' conduct is allowed proceed to without remedy, Defendants will continue to benefit financially from such conduct.
- h. Defendants have acted on grounds generally applicable to the entire Class and Sub-Classes, thereby making it appropriate for the Court to order final monetary, injunctive, and declaratory relief with respect to the Class and the Sub-Classes as a whole.

33. Defendant, its employees and agents are excluded from the Class and Sub-Classes. Plaintiffs do not know the number of members in the Class and Sub-Classes, but believes the members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

34. The size and definition of the Class and Sub-Classes can be identified by Defendant's own records.

COUNT I
VIOLATIONS OF THE NEVADA DECEPTIVE TRADE
PRACTICES ACT, NRS 598, et seq.

35. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

36. Nev. Rev. Stat. § 598.0915 states:

A person engages in a “deceptive trade practice” if, in the course of his or her business or occupation, he or she:

5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.

7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model.

9. Advertises goods or services with intent not to sell or lease them as advertised.

37. Through its representation that the Products are “preservative free” Defendant made false representations as to the characteristics and ingredients of the Products.

38. Through its representation that the Products were preservative free Defendant made false representations that the Products were of a particular standard, specifically that the Products would not contain preservatives when Defendant, through its employees, knew or should have known that was not true.

39. Through its representation that the Products are preservative free, Defendant advertised the Products with intent not to sell them as advertised.

40. Nev. Rev. Stat. § 41.600 states:

1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

- (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive;
- 3. If the claimant is the prevailing party, the court shall award the claimant:
 - (a) Any damages that the claimant has sustained;
 - (b) Any equitable relief that the court deems appropriate; and
 - (c) The claimant's costs in the action and reasonable attorney's fees.

41. In taking the actions and omissions set forth above, and making the false representations of material facts set forth above, Defendant violated the Nev. Rev. Stat. § 598.0915. As a result, Plaintiff, and the class and subclass members are victims of consumer fraud as defined by Nev. Rev Stat. § 41.600.

42. By reason thereof, Plaintiff, the class, and sub-class, are entitled to a judgment against Defendant, declaring that Defendant's conduct violated Nev. Rev. Stat. § 598.0915, enjoining Defendant from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;

- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT II
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.

43. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

44. Plaintiff is a "person" as defined in 815 ILCS 505/1(c), as he is a natural person.

45. Defendant is a "person" as defined in 815 ILCS 505/1(c), as it is a company and a business entity and/or association.

46. 815 ILCS 505/2 states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

47. Through its representation that the Products was preservative free Defendant made false promises, misrepresentations, concealments, suppressions, and omissions of material facts, with the intent that Plaintiff rely upon said false promises, misrepresentations, concealments, suppressions, and omissions of material facts.

48. 815 ILCS 505/10a states:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

(c) [T]he Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

49. In taking the actions and omissions set forth above, and making the false promises, misrepresentations, concealments, suppressions, and omissions of material facts set forth above, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, including, but not limited to, 815 ILCS 505/2.

50. Defendant failed to comply with the requirements of the ILCFA, including, but not limited to, 815 ILCS 505/2 as to the Class and Sub-Class members with respect to the above-alleged transactions

51. By reason thereof, Plaintiff is entitled to a judgment against Defendant, declaring that Defendant's conduct violated 815 ILCS 505/2, enjoining Defendant from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;

- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT III
COMMON LAW FRAUD

52. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

53. Through its false statements that the Products were preservative free Defendant made false statements of material fact.

54. At the time Defendant made its statements to Plaintiff that the Products did not contain preservatives, it knew, or reasonably should have known, that the statements described above were false.

55. At the time Defendant made the statements to Plaintiff, Defendant intended to induce Plaintiff to purchase the Products.

56. Plaintiff relied upon the truth of the statements described above and purchased the Products, only to find that the Product he purchased contained preservatives.

57. As a result of their reasonable reliance upon Defendant's false statements of material fact as set forth above, Plaintiff and other members of the Class and Sub-Class have

suffered concrete and particularized injuries, harm, and damages which include, but are not limited to, the loss of money spent on products they did not want to buy, and stress, aggravation, frustration, inconvenience, emotional distress, mental anguish, and similar categories of damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT IV
UNJUST ENRICHMENT

58. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein

59. Plaintiff conferred monetary benefits to Defendant by purchasing the Products.

60. Defendant has been unjustly enriched by retaining the revenues derived from

Plaintiff's purchase of the Products based on the false statements that the Products were preservative free.

61. Defendant's retention of the revenue it received from Plaintiff, and the Class and Sub-Class members, is unjust and inequitable because Defendant's false statements caused injuries to Plaintiff, and the Class and Sub-Class members, as they would not have purchased the Products, or would not have paid a premium price, if they knew the Products contained a preservative.

62. Defendant's unjust retention of the benefits conferred on it by Plaintiff, and the Class and Sub-Class members, entitles Plaintiff, and the Class and Sub-Class members, to restitution of the money they paid to Defendant for the Products

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and

g. Any other relief deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands a trial by jury on all issues in this action so triable, except for any issues relating to the amount of attorneys' fees and costs to be awarded should Plaintiff prevail on any of her claims in this action.

RESPECTFULLY SUBMITTED,

JOHN DALY and RAEVIN DOTSON



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FILED DATE: 1/28/2026 11:39 AM 2026CH00826