

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Kroessler v. CVS Health Corp.

387 F. Supp. 3d 1064 (S.D. Cal. 2019) · Decided May 16, 2019

OPINION

PER CURIAM.

2 The CVS Health Glucosamine products at issue include the following variations: (1) CVS Health Glucosamine Chondroitin Tablets; (2) CVS Health Glucosamine Chondroitin Capsules; (3) CVS Health Glucosamine Maximum Strength Tablets; (4) CVS Health Glucosamine MSM Caplets; (5) CVS Health Glucosamine Chondroitin with MSM Tablets; (6) CVS Health Glucosamine Chondroitin with Vitamin D Caplets.

[Id. at ¶ 14.] 3 Each of the CVS Health Glucosamine Products contains 1500mg of glucosamine. However, some of the Products in issue contain other primary ingredients in combination with glucosamine. [Doc. No. 1 at ¶¶ 15-16; Doc. No. 1 at note 1-6.] 4 For purposes of this Order, the Representations are only in reference to the statements on the Glucosamine Chondroitin Tablets product that Plaintiff viewed and relied upon.

5 Plaintiff preliminarily avers other states with similar consumer fraud laws under the facts of this case include, but are not limited to: Florida (Fla. Stat. §§ 501.201, et seq.); Illinois (815 Ill. Comp. Stat. Ann. §§ 505/1, et seq.); Massachusetts (Mass. Gen. Laws Ch. 93A, et seq.); Michigan (Mich. Comp. Laws §§ 445.901, et seq.); Minnesota (Minn. Stat. §§ 325F.67, et seq.); Missouri (Mo.

Rev. Stat. §§ 407.010, et seq.); New Jersey (N.J. Stat. §§ 56:8-1, et seq.); New York (N.Y. Gen. Bus. Law §§ 349), et seq.; and Washington (Wash. Rev. Code §§ 19.86.010, et seq.) (collectively, the "Class States"). 6 The Court does not find that any amendment to this claim could possibly cure the deficiency.

As a general rule, a court freely grants leave to amend a complaint which has been dismissed. Fed.R.Civ.P. 15(a). However, leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (citing *Bonanno v. Thomas*, 309 F.2d 320, 322 (9th Cir. 1962)).