

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>CENTER FOR INQUIRY, INC.,</b>	)	
<b>1012 14th St., NW, Suite 205, Washington,</b>	)	
<b>DC, on behalf of the general public,</b>	)	<b>No.</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>CVS Health Corporation,</b>	)	
<b>One CVS Drive, Woonsocket, RI 02895;</b>	)	
<b>And CVS Pharmacy, Inc.,</b>	)	
<b>One CVS Drive, Woonsocket, RI 02895</b>	)	
<b>Defendants.</b>		

**COMPLAINT**

Plaintiff Center for Inquiry, Inc. ("Plaintiff"), by and through its counsel, brings this action against Defendants CVS Health Corporation and CVS Pharmacy, Inc. ("Defendants") on behalf of the general public, and alleges the following based upon information, belief, and the investigation of counsel:

**NATURE OF THE CASE**

1. Plaintiff brings this action on behalf of the general public of the District of Columbia to seek to redress a continuing pattern of fraudulent, deceptive, and otherwise improper marketing practices engaged in by Defendants in the District of Columbia, both through its physical, bricks and mortar stores, and through its online sales presence, regarding the marketing and sale of homeopathic products. Defendants use marketing, labeling, and product placement to falsely present homeopathic products as equivalent alternatives to science-based medicines, and to represent homeopathic products as effective treatments for specific diseases and symptoms.

## **JURISDICTION**

2. This Court has subject matter jurisdiction over this action and venue is appropriate in this Court pursuant to D.C. Code § 11-921 and § 28-3905(k)(1).

3. This Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423. This Court has personal jurisdiction over the parties because, *inter alia*, Defendants market and retail products in Washington, D.C. and are engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in Washington, D.C.

4. Plaintiff maintains an Executive Office and a membership branch in Washington, D.C.

5. A substantial part of the actions that give rise to Plaintiff's causes of action occurred in this jurisdiction.

## **PARTIES**

6. Plaintiff, The Center for Inquiry, Inc. (CFI) is a New York non-profit organization, authorized to do business in Washington, D.C., headquartered in the State of New York. The Center for Inquiry has over 30,000 members across the nation who have subscribed to its publications or donated to the organization. The Center for Inquiry operates an active branch in Washington D.C., holding regular meetings and events for its members and others. The Center for Inquiry operates an executive office in Washington, D.C., located at 1012 14th St. N.W., Suite 205, Washington, D.C. 20005.

7. Plaintiff's mission is to foster a secular society based upon science, reason, freedom of inquiry, and humanist values. Plaintiff's vision is a world where people value evidence and critical thinking, where superstition and prejudice subside, and where science and compassion guide public policy.

8. Plaintiff has long worked to counter the negative impact of pseudoscientific alternative medicine upon society. In the area of homeopathic products, Plaintiff has sought to ensure that such products are effectively tested to ensure consumer safety; that manufacturers and retailers are prevented from making claims as to the products' effectiveness without scientific evidence to support such claims; and that labeling and marketing materials properly inform customers of the nature of the products.

9. Defendant CVS Health Corporation ("CVS") is a corporation incorporated in Delaware, with its headquarters at One CVS Drive, Woonsocket, RI 02895. Its subsidiary, CVS Pharmacy, Inc. ("CVS Pharmacy") is a corporation incorporated in Delaware, with its headquarters at One CVS Drive, Woonsocket, RI 02895.

10. Defendant CVS Pharmacy operates more than 9,800 pharmacy stores, with 60 pharmacy stores within the District of Columbia.

11. Defendant CVS operates a website, <https://www.cvs.com/>, through which products including homeopathic products are marketed and sold direct to customers, including those within the District of Columbia.

### **THE INTERESTS OF CFI & THE GENERAL PUBLIC**

12. Defendants deceptively marketed homeopathic products, including both their own line of homeopathic products and those manufactured and sold under the labels of other producers to District of Columbia residents by deliberately fostering the impression through display and placement that they are effective to treat particular complaints, and that they are comparable in efficacy, and regulation to science-based medical products.

13. Upon information and belief, Defendants have caused damage and adverse effects to residents of this District.

14. Plaintiff acts for the benefit of the General Public as a Private Attorney General pursuant to District of Columbia Code §28-3905(k)(1).

15. CFI has worked diligently to promote accurate labeling and marketing of homeopathic products as part of its campaign to ensure that homeopathic products and other pseudoscientific alternative medical products are not presented to the public in a false and misleading manner.

16. CFI has petitioned the Food and Drug Administration (FDA) to better and more effectively regulate the trade in homeopathic products in the United States.<sup>1</sup>

17. CFI has repeatedly submitted comments to both the FDA<sup>2</sup> and the Federal Trade Commission (FTC)<sup>3</sup> regarding the regulation, testing, marketing, and labeling of homeopathic products.

18. In April 2015, CFI delivered invited testimony regarding homeopathy to the FDA.<sup>4</sup>

19. In regard to this specific matter, CFI has requested that action be taken by the FTC. CFI further contacted Defendants and sought to resolve the matter through discussions. CFI also filed an official complaint with the D.C. Department of Consumer Protection.

### **FACTUAL ALLEGATIONS**

#### **A: Homeopathy is a Pseudoscience**

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[https://centerforinquiry.org/news/cfi\\_and\\_csi\\_petition\\_fda\\_to\\_take\\_action\\_on\\_homeopathic\\_drugs/](https://centerforinquiry.org/news/cfi_and_csi_petition_fda_to_take_action_on_homeopathic_drugs/)

<sup>2</sup> <https://goo.gl/CajXaN>

<sup>3</sup> [https://centerforinquiry.org/docs/opp/CFI\\_RDF\\_FTCCComments\\_Homeopathy.pdf](https://centerforinquiry.org/docs/opp/CFI_RDF_FTCCComments_Homeopathy.pdf)

<sup>4</sup> <https://www.fda.gov/downloads/Drugs/NewsEvents/UCM443495.pdf>

20. Pseudoscience is defined as “a system of theories, assumptions, and methods erroneously regarded as scientific.”<sup>5</sup>

21. Homeopathy is an alternative medical idea of treatment developed in the 18th century in Germany.

22. Central to the idea of homeopathy is the concept that “like treats like.” If something can be shown to cause a symptom in an individual, homeopathy holds that the same substance can be used to treat the symptom.<sup>6</sup>

23. Further to this notion is homeopathy’s belief in the supposed “law of minimum (or infinitesimal) dose.” Under this belief, the power of a substance in a homeopathic preparation is increased the greater the level of dilution.<sup>7</sup>

24. For this reason, homeopathic products are often massively diluted with water or other inert substances, often to the level where no molecules of the original substance can be found in the final product.

25. An example of a homeopathic product is Oscillococcinum, produced by the French company Boiron, which claims that it “relieves flu-like symptoms such as body aches, headache, fever, chills, and fatigue.”<sup>8</sup>

26. On Boiron’s corporate website, the ‘active ingredient’ of Oscillococcinum is listed as “Anas barbariae 200CK HPUS.”<sup>9</sup>

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<sup>5</sup> <https://www.merriam-webster.com/dictionary/pseudoscience>

<sup>6</sup> National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), available at <https://nccih.nih.gov/health/homeopathy#hed8>

<sup>7</sup> <https://medical-dictionary.thefreedictionary.com/law+of+minimum+dose>

<sup>8</sup> <https://www.oscillo.com/about/facts-about-oscillo/>

<sup>9</sup> *Id.*

27. This ingredient, in a form which can be understood by those without knowledge of the details of homeopathy, is the heart and liver of the Muscovy duck.

28. The notation ‘200CK’ refers to the level of homeopathic dilution – a 200C dilution constitutes one part duck offal to  $10^{400}$  water.

29. To place this level of dilution in an understandable perspective, current estimates place the number of atoms in the known universe at up to  $10^{82}$ .<sup>10</sup>

30. According to homeopaths, the potency of a particular product is preserved even at these staggering levels of dilution through the process of ‘succussion.’

31. In succussion, after each dilution, the resulting solution is shaken vigorously, and hit against an elastic surface, such as a leather covered book.<sup>11</sup>

32. In addition, homeopaths rationalize the extreme dilutions (to the extent of there not being sufficient atoms in the entire universe for a single trace of the original allegedly active ingredient to remain in the diluted product) through the concept of ‘water memory,’ or the idea that water can “physically remember the chemical properties of substances that have been diluted in it,” even after the dilution is such that not a single molecule of the original substance remains.<sup>12</sup>

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<sup>10</sup> John Carl Villanueva, *How Many Atoms are there in the Universe?* (December 24, 2015), available at <https://www.universetoday.com/36302/atoms-in-the-universe/>

<sup>11</sup> Judith Reichenberg-Ullman, *Homeopathy: The Unique Preparation of Homeopathic Medicines*, available at [http://www.healthy.net/Health/Article/The\\_Unique\\_Preparation\\_of\\_Homeopathic\\_Medicines/664](http://www.healthy.net/Health/Article/The_Unique_Preparation_of_Homeopathic_Medicines/664)

<sup>12</sup> Steven Novella, *The Memory of Water*, *Skeptical Inquirer* Vol. 35.3 (May/June 2011), available at [https://www.csicop.org/si/show/the\\_memory\\_of\\_water](https://www.csicop.org/si/show/the_memory_of_water)

33. Homeopathy is a pseudoscience because, despite dressing itself in the clothing of scientific language, there is not a shred of credible scientific evidence that it works, or indeed could possibly work.

34. The concepts on which homeopathy is based contradict the most fundamental understanding of science that is known.

35. Individual refutations of the notions of the law of minimum dose, of homeopathic succession, and of water memory can be found throughout scientific literature. They are no more accepted by the scientific community than the notion of a flat Earth.

36. The National Center for Complementary and Integrative Health (NCCIH), a part of the National Institutes of Health and a federal body that researches alternative medicine,<sup>13</sup> notes on its website that “[t]here is little evidence to support homeopathy as an effective treatment for any specific condition.”<sup>14</sup>

37. An exhaustive meta-study performed by Australia’s National Health and Medical Research Council (NHMRC) in 2015 assessed more than 1,800 papers on homeopathy, finding 225 of them to meet the criteria for inclusion in the study.<sup>15</sup>

38. The study “found no good quality, well-designed studies with enough participants to support the idea that homeopathy works better than a placebo, or causes health improvements equal to those of another treatment.”<sup>16</sup>

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<sup>13</sup> <https://nccih.nih.gov/about>

<sup>14</sup> National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), available at <https://nccih.nih.gov/health/homeopathy#hed8>

<sup>15</sup> National Health and Medical Research Council, *NHMRC releases statement and advice on homeopathy* (March 11, 2015), available at <https://www.nhmrc.gov.au/media/releases/2015/nhmrc-releases-statement-and-advice-homeopathy>

39. The study’s conclusion was blunt. “There are no health conditions for which there is reliable evidence that homeopathy is effective.”<sup>17</sup>

40. In the United Kingdom, a 2010 House of Commons Science and Technology Committee report on homeopathy noted that homeopathic remedies performed no better than placebos, and concluded that “[t]he [British] government should stop allowing the funding of homeopathy on the NHS [National Health Service].”<sup>18</sup>

41. In July 2017, NHS England, the state provider of health care, announced it would no longer fund homeopathic prescriptions.<sup>19</sup>

42. Multiple U.S. governmental bodies have recognized the failure of homeopathy to provide effective treatment for specific conditions.

43. The NCCIH warns people that they should not “use homeopathy as a replacement for proven conventional care or to postpone seeing a health care provider about a medical problem.”<sup>20</sup>

44. The Food and Drug Administration (FDA) has issued warnings about the dangers of relying on homeopathic products to deal with serious conditions.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> House of Commons, *Science and Technology Committee Fourth Report: Evidence Check 2 – Homeopathy* (Feb 8, 2010), *available at* <https://publications.parliament.uk/pa/cm200910/cmselect/cmsctech/45/4502.htm>

<sup>19</sup> Nicola Davis and Denis Campbell, ‘*A misuse of scarce funds*’; *NHS to end prescription of homeopathic remedies*, The Guardian (July 21, 2017), *available at* <https://www.theguardian.com/lifeandstyle/2017/jul/21/a-misuse-of-scarce-funds-nhs-to-end-prescription-of-homeopathic-remedies>

<sup>20</sup> National Center for Complementary and Integrative Health, *Homeopathy* (April 2015), *available at* <https://nccih.nih.gov/health/homeopathy#hed8>

45. For example, in 2015, the FDA warned against over-the-counter homeopathic asthma products.<sup>21</sup>

46. More recently, the FDA announced it would crack down on “situations where homeopathic treatments are being marketed for serious diseases and/or conditions but where the products have not been shown to offer clinical benefits.”<sup>22</sup>

47. In October 2016, the Federal Trade Commission (FTC) issued an Enforcement Policy Statement Regarding Marketing Claims for Over-the-Counter Homeopathic Drugs, requiring that when a homeopathic product claims efficacy in particular medical situations without “competent and reliable scientific evidence” of such efficacy, such claims would be considered misleading in the absence of a warning informing consumers that “1) there is no scientific evidence that the product works; and 2) the product’s claims are based only on theories of homeopathy from the 1700s that are not accepted by most modern experts.”<sup>23</sup>

**B: The Harm Caused by Homeopathy**

48. Homeopathic products do not work and cannot work. There is no evidence they are any more effective than a placebo.

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<sup>21</sup> U.S. Food and Drug Administration, *Over-the-Counter Asthma Products Labeled as Homeopathic: FDA Statement – Consumer Warning About Potential Health Risks* (Mar. 19, 2015), available at <https://www.fda.gov/Safety/MedWatch/SafetyInformation/SafetyAlertsforHumanMedicalProducts/ucm439014.htm>

<sup>22</sup> U.S. Food and Drug Administration, *FDA proposes new, risk-based enforcement priorities to protect consumers from potentially harmful, unproven homeopathic drugs* (Dec. 18, 2017), available at <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm589243.htm>

<sup>23</sup> Federal Trade Commission, *FTC Issues Enforcement Policy Statement Regarding Marketing Claims for Over-the-Counter Homeopathic Drugs* (Nov. 15, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-issues-enforcement-policy-statement-regarding-marketing>

49. This ineffectiveness itself harms American consumers. They are paying money for products that do not effectively treat the ailments for which they are being taken.

50. Where those products are marketed as cures for illness, either directly or through suggestion, this is perpetrating a fraud on consumers.

51. The financial harm is far from *de minimis*. According to the *Economist* magazine in 2014, Americans spend \$3 billion annually on homeopathy.<sup>24</sup>

52. Consumers suffer greater harm than this financial loss.

53. Homeopathic products may be tainted, or contain harmful ingredients. In its 2012 report, the American Association of Poison Control Centers noted that there were 10,311 reported cases of poison exposure related to ‘homeopathic agents,’ with 8,788 of those cases attributed to children aged 5 years or younger. Of these cases, 697 required treatment in a healthcare facility.<sup>25</sup>

54. The FDA requested that Standard Homeopathic Company recall its Hyland’s Baby Teething Tablets after concluding that the products had “been found to contain inconsistent amounts of belladonna alkaloids that may differ from the calculated amount on the products’ labels.”<sup>26</sup>

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<sup>24</sup> *Why Homeopathy is Nonsense*, The Economist (Apr. 2, 2014), available at <https://www.economist.com/blogs/economist-explains/2014/04/economist-explains>

<sup>25</sup> James B Mowry, Daniel A. Spyker, Louis R. Cantilena, Jr., J. Elise Bailey, and Marsha Ford, *2012 Annual Report of the American Association of Poison Control Centers’ National Poison Data System (NPDS): 30th Annual Report* (2013), available at [https://aapcc.s3.amazonaws.com/pdfs/annual\\_reports/2012\\_NPDS\\_Annual\\_Report.pdf](https://aapcc.s3.amazonaws.com/pdfs/annual_reports/2012_NPDS_Annual_Report.pdf)

<sup>26</sup> U.S. Food and Drug Administration, *Standard Homeopathic Company Issues Nationwide Recall of Hyland’s Baby Teething Tablets and Hyland’s Baby Nighttime Teething Tablets Due to Mislabeling* (Apr. 13, 2017), available at <https://www.fda.gov/safety/recalls/ucm552934.htm>

55. Hundreds of adverse effects were reported.<sup>27</sup>

56. Homeopathy also harms consumers even when properly prepared, by encouraging them to rely on such products to the exclusion of proven scientific remedies.

57. As the Australian NHMRC study states, “[p]eople who chose homeopathy may put their health at risk if they reject or delay treatments for which there is good evidence for safety and effectiveness.”<sup>28</sup>

58. By eschewing effective treatment in place of homeopathic products, sick people suffer symptoms unnecessarily for longer. They may suffer long-term consequences, up to and including death.

59. This is particularly true for children, who, importantly, do not make the decision to use homeopathic products themselves. Most parents have seen the pain that a child suffers with an ear infection; this can often be treated rapidly and safely through the use of antibiotics. When a parent instead relies on belladonna (also known as deadly nightshade),<sup>29</sup> or through the use of the commercially sold homeopathic product Similisan Kids Ear Relief Drops, as sold at

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<sup>27</sup> Sheila Kaplan, *Hundreds of Babies Harmed by Homeopathic Remedies, Families Say*, Scientific American (Feb, 21, 2017), available at <https://www.scientificamerican.com/article/hundreds-of-babies-harmed-by-homeopathic-remedies-families-say/>

<sup>28</sup> National Health and Medical Research Council, *NHMRC releases statement and advice on homeopathy* (March 11, 2015), available at <https://www.nhmrc.gov.au/media/releases/2015/nhmrc-releases-statement-and-advice-homeopathy>

<sup>29</sup> Homeopathy Plus!, *Middle Ear Infection*, available at <https://homeopathyplus.com/middle-ear-infection/>

CVS stores,<sup>30</sup> not only does the child suffer unnecessarily, but the failure to properly treat may also result in long-term hearing damage or deafness.<sup>31</sup>

60. Reliance on homeopathic products to the exclusion of science-based medicines can therefore have serious consequences for both children and adults.

61. The website *What's the Harm* details many of such cases.<sup>32</sup>

62. For example, Isabella Denley, a toddler from Melbourne, Australia, was an epileptic whose neurologist prescribed her anti-convulsant medication; her parents, instead, chose to treat her with exclusively homeopathic products, and she died aged 13 months.<sup>33</sup>

63. Lucille Craven of New Hampshire was diagnosed in 1997 with a small, pea-sized carcinomatous breast tumor. Her doctor recommended mastectomy and lymphectomy, but instead Lucille sought homeopathic and other alternative medical treatments. She died within 36 months.<sup>34</sup>

64. Homeopathic products risk harming patients in three ways. Patients suffer a financial loss, by spending money on a product that does not perform in the way in which they have been lead to believe it will. They may suffer damage from adulterated and dangerously

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<sup>30</sup> <https://www.cvs.com/shop/similasan-kids-ear-relief-drops-0-33-oz-prodid-1010815?skuId=449150>

<sup>31</sup> American Academy of Otolaryngology-Head and Neck Surgery, *Middle Ear Infection (Chronic Otitis Media) and Hearing Loss* (2016), available at <http://www.entnet.org/content/middle-ear-infection-chronic-otitis-media-and-hearing-loss>

<sup>32</sup> <http://whatstheharm.net/homeopathy.html>

<sup>33</sup> Lucy Atkins, *When there's no real alternative*, The Guardian (Dec. 16, 2003), available at <https://www.theguardian.com/society/2003/dec/16/health.medicineandhealth>

<sup>34</sup> Richard Craven, *My Wife's Death from Cancer* (Feb. 27, 2002), available at <https://www.quackwatch.org/01QuackeryRelatedTopics/Victims/craven.html>

manufactured products. And they may suffer longer and greater harm from diseases that could have been adequately treated or cured by science-based medicine.

**C: CVS Health Retail Homeopathic Products Both Online and in its Physical Stores**

65. CVS Health, through CVS Pharmacy operates 9,800 physical stores nationwide, including 60 in the District of Columbia.

66. Within those stores, CVS Health retails a significant range of over-the-counter pharmaceutical products, including both science-based remedies and alternative medicines, including homeopathic products.

67. These homeopathic products include both “name brand” products, such as Boiron Oscillococcinum, and CVS “own-brand” products, such as CVS Health Homeopathic EarAche Ear Drops.

68. CVS Health also operates an internet site through which customers, including those in the District of Columbia, may order products for home delivery.<sup>35</sup>

69. This internet site also offers for sale to residents of the District of Columbia both science-based remedies and alternative medicines, including homeopathic products.

70. Residents of the District of Columbia may access the internet site and purchase both “name brand” products, such as Boiron Oscillococcinum,<sup>36</sup> and CVS “own-brand” products, such as CVS Health Homeopathic EarAche Ear Drops.<sup>37</sup>

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<sup>35</sup> <https://www.cvs.com/>

<sup>36</sup> <https://www.cvs.com/shop/oscillococcinum-quick-dissolve-pallets-prodid-1011994?skuId=926229>

<sup>37</sup> <https://www.cvs.com/shop/cvs-health-homeopathic-earache-ear-drops-0-33-oz-prodid-972673?skuId=972673>

**D: CVS Health Places Homeopathic Products Alongside Science-Based, Tested Medicine**

71. In a CVS retail store, over-the-counter medical products are arranged in labelled aisles, informing the customer of the symptoms and conditions for which that aisle contains relevant products.

72. The individual aisles are then broken down into individual sections.

73. For example, the CVS store located at 1199 Vermont Ave., Washington, D.C. 20005 displays products in the following way.



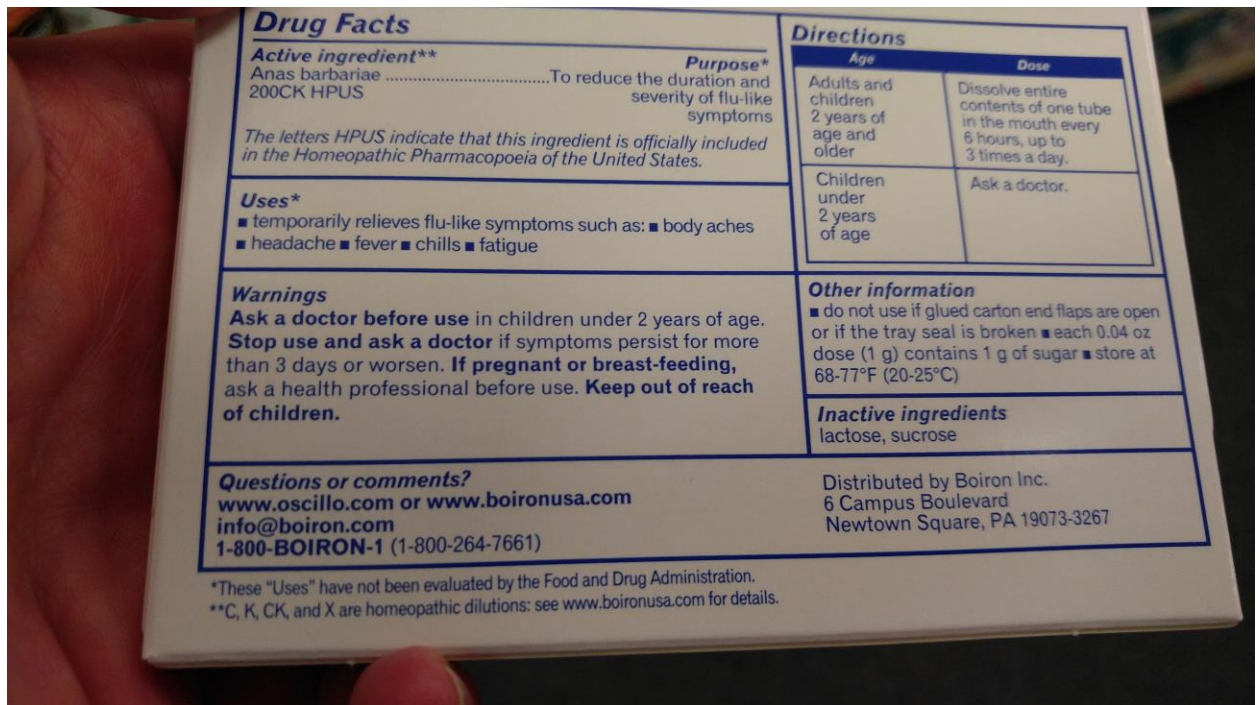


74. Within each individual section, homeopathic products are displayed alongside science-based medicines with no distinction drawn between them.

75. For example, in the 'cold & flu' section, FDA approved and tested over-the-counter remedies such as Tylenol Sinus & Headache are not separated nor distinguished from homeopathic remedies such as Oscillococcinum.

76. Oscillococcinum can be seen here on the bottom shelf.



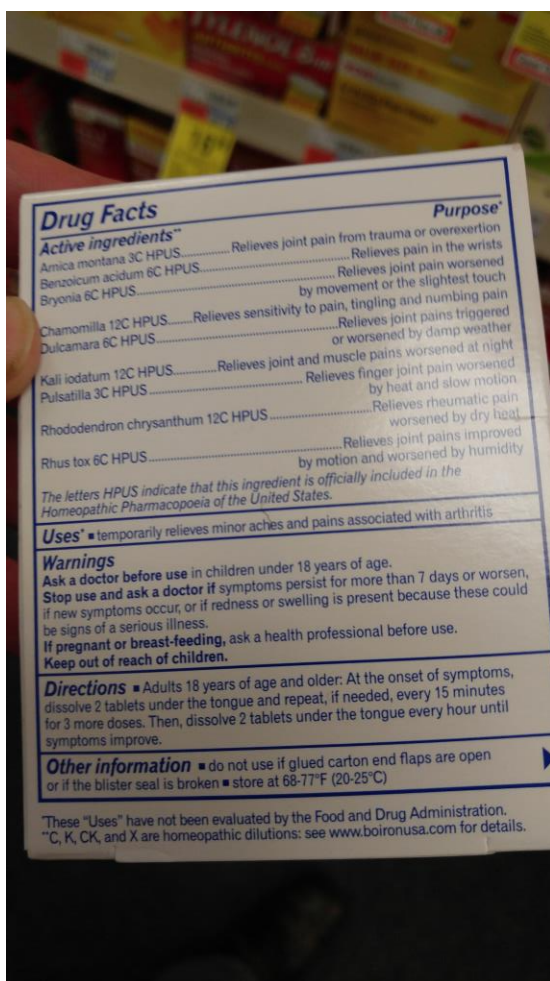


77. The same situation can be found in the pain relief section of CVS stores.

78. Science-based remedies such as Tylenol and Advil are found alongside homeopathic products including Arnicare, which contains multiple homeopathic claimed active ingredients (see back of box, below) without any indication to the potential consumer of the difference between the products.







79. The situation is as bad, if not worse, on CVS's website which offers homeopathic products for sale and delivery to residents of the District of Columbia.

80. The homeopathic products Oscillococcinum Quick Dissolve Pallets is nested for sale under the following category path: Health and Medicine > Cough, Cold, & Flu >Flu Remedies.<sup>38</sup>

81. The science-based, tested remedy, Tylenol Cold + Flu SevereCaplets, 24 CT, is nested under the same path: Health and Medicine > Cough, Cold, & Flu >Flu Remedies.<sup>39</sup>

<sup>38</sup> <https://www.cvs.com/shop/oscillococcinum-quick-dissolve-pallets-prodid-1011994?skuId=926229>

82. However, the science-based remedy, while listed on the website, is only available for purchase in the physical store.

83. Similarly, Arnicare Arthritis Tablets are nested as follows: Health & Medicine > Pain & Fever > Arthritis Relief.<sup>40</sup>

84. The science-based remedy, Tylenol 8 Hour Arthritis Pain Caplets 650 mg is nested in the same path: Health & Medicine > Pain & Fever > Arthritis Relief.<sup>41</sup>

85. The children's homeopathic cough syrup, Hyland's 4Kids Cold'n Cough Syrup is sold by CVS on its website under the path: Health & Medicine > Cold, Cough, & Flu > Cold & Cough For Children.<sup>42</sup>

86. The science-based remedy, Mucinex Children's Multi-Symptom Nighttime Cold Liquid Very Berry is nested under the same path: Health & Medicine > Cold, Cough, & Flu > Cold & Cough For Children.<sup>43</sup>

87. If a search is entered on CVS's internet site for the term "Flu treatment," a series of products is suggested, including on the first page the homeopathic products NaturaBio

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<sup>39</sup> <https://www.cvs.com/shop/tylenol-cold-flu-severe-caplets-24ct-prodid-1011799?skuId=897402>

<sup>40</sup> <https://www.cvs.com/shop/arnicare-arthritis-tablets-60ct-prodid-1012203>

<sup>41</sup> <https://www.cvs.com/shop/tylenol-8-hour-arthritis-pain-caplets-650mg-prodid-1080137?skuId=313546>

<sup>42</sup> <https://www.cvs.com/shop/hyland-s-4kids-cold-n-cough-syrup-natural-grape-flavor-4-oz-prodid-1710277?skuId=236259>

<sup>43</sup> <https://www.cvs.com/shop/mucinex-children-s-multi-symptom-nighttime-cold-liquid-very-berry-4-oz-prodid-1011662?skuId=939534>

Children’s Cold and Flu Liquid and Oscillococcinum, alongside science-based treatments such as Infants Tylenol Oral Suspension and Mucinex Fast Max.<sup>44</sup>

**D: CVS Health’s Product Placement of Homeopathic Products Makes Material False and Misleading Claims Regarding the Effectiveness of Those Products**

88. CVS Health portrays itself as a partner in the health care decisions made by its customers. It publicly announces its purpose as “Helping people on their path to better health.”<sup>45</sup>

89. CVS Health announces that its aim is to reinvent “pharmacy to have a more active, supportive role in each person’s unique health experience and in the greater health care environment – from advising on prescriptions to helping manage chronic and specialty conditions to providing quality walk-in medical care and pharmacy benefits management.”<sup>46</sup>

90. CVS Health emphasizes its important role in an individual customer’s health care and lifestyle choices: “Because we’re present in so many moments, in ways that are more affordable and effective, we’re able to positively influence health behavior and shape the future of health care for people, businesses, and communities.”<sup>47</sup>

91. CVS Health’s role in assisting customers with health decisions goes far beyond filling prescriptions. It is also a major retailer of over-the-counter medicines, for which no prescription is required.

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<sup>44</sup>

<https://www.cvs.com/search?cp=%5B%7B%22key%22:%22source%22,%22value%22:%22sayt%22%7D%5D&searchTerm=Flu%20treatment>

<sup>45</sup> <https://cvshealth.com/about/purpose-statement>

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

92. When a person is suffering an ailment and does not wish to go to the doctor, they will often turn to their neighborhood drug store for relief, whether it is from headaches, cold and flu symptoms, constipation, or ear pain.

93. In all of these categories and many more, CVS Health offers a wide range of products to treat the problem or relieve the symptoms, both on its internet site and in its physical stores.

94. In its physical stores, CVS Health displays products in aisles and sections broken down by the symptoms to be treated.

95. On its website, CVS Health organizes its products in categories, nested according to the symptoms to be treated.

96. Through its marketing and product placement, both in its physical stores and on its internet site, CVS is sending a clear and false message to its consumers.

97. This message is that homeopathic products are no different than science-based medicines.

98. A customer suffering from flu-like symptoms is informed by CVS that Tylenol Cold and Flu medicine, containing acetaminophen, tested and approved by the FDA, is an equivalent solution to Oscillococcinum (containing the organs of a Muscovy duck diluted to the power of  $10^{400}$ ).

99. By displaying the product Oscillococcinum under a sign reading “cold & flu” and alongside science-based remedies for cold and flu symptoms, CVS is actively claiming to customers that Oscillococcinum treats cold and flu symptoms.

100. Oscillococcinum does not provide relief for cold and flu symptoms at any level greater than a placebo.

101. For the relief for the pain from arthritis, CVS's marketing and product placement indicates to customers that ibuprofen, as listed on the World Health Organization's Model List of Essential Medicines,<sup>48</sup> is no more effective than the homeopathic remedy displayed beside it, Arnicare Arthritis.<sup>49</sup>

102. By displaying Arnicare Arthritis under a sign reading "pain relief" and alongside science-based remedies for arthritis pain, CVS is actively claiming that Arnicare Arthritis provides relief for arthritis pain.

103. Arnicare Arthritis does not provide relief for arthritis pain at any level greater than a placebo.

104. Similar comparisons can be made for each homeopathic product sold by CVS Health both in its physical stores and on its internet site.

105. CVS's own marketing indicates it views itself as a partner in the health care decisions of its customers.

106. When a customer enters a CVS store in the District of Columbia, or visits CVS's internet site, he or she is relying on CVS to provide adequate and accurate information about the products on display.

107. By intermingling homeopathic products, which have no scientific basis and no demonstrable efficacy, with science-based medicines, CVS Health is deliberately sending a message that they are equally efficacious in the treatment of the conditions for which CVS Health labels that section of the store or internet site.

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<sup>48</sup> World Health Organization, *WHO Model Formulary* (2008), available at <http://apps.who.int/medicinedocs/documents/s16879e/s16879e.pdf>

<sup>49</sup> <http://www.arnicare.com/about/arnicare-arthritis/>

108. CVS Health is advertising homeopathic products to the public as effective treatments for particular symptoms and diseases but is failing to inform the public that there is no scientific evidence that the products have any value in treating those symptoms and diseases.

109. In both its physical stores in the District of Columbia and its online presence, CVS Health is marketing homeopathic products to customers as being treatments for specific conditions.

110. There is no scientific evidence that these homeopathic products have any beneficial effect on these conditions, and CVS Health is aware of this.

111. Absent this credible scientific evidence, CVS Health is not permitted to make such claims regarding the efficacy of homeopathic products for particular uses.

112. CVS Health, by its marketing and placement of these products, is deceiving customers and deliberately creating the impression that homeopathic products can be used interchangeably with science-based medicines for the treatment of specific conditions.

113. This violates D.C. customers' "enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." D.C. Code § 280-3901(c). CVS Health retails homeopathic products in both its physical stores and its internet site to residents of the District of Columbia.

114. There is no scientific evidence that these homeopathic products have any effect above that of a placebo

115. Defendants are aware, or should be aware, that there is no scientific basis to claim that these products are effective for the treatment of specific symptoms and diseases.

116. Despite this, Defendants displays homeopathic products both in their physical stores and on their internet site underneath signs listing specific symptoms and diseases, and alongside science-based remedies containing active ingredients tested by the FDA and scientifically demonstrated to have beneficial effects.

117. A reasonable consumer would purchase these homeopathic products believing that they were equally as effective for the treatment of the listed symptoms or diseases as the science-based remedies displayed beside them.

118. Defendants deliberately take advantage of the reputation and effectiveness of the science-based medicines to imply to customers that the homeopathic products have a similar efficacy.

119. There is no scientific evidence of efficacy of homeopathic products.

### **CAUSE OF ACTION**

#### **D.C. CONSUMER PROTECTION ACT – D.C. OFFICIAL CODE §§ 28-3901, *et seq.***

120. Plaintiff incorporates by reference and realleges all previous paragraphs.

121. This Count is brought pursuant to the District of Columbia Consumer Protection Procedures Act (CPPA). D.C. Code § 28-3901 *et seq.* This Count is alleged against the Defendants on behalf of the General Public of the District of Columbia pursuant to District of Columbia Code § 28-3905(k)(1)(A)-(D).

122. Each Defendant is a “person” within the meaning of D.C. Official Code § 28-3901(a)(1), and provides “goods” within the meaning of § 28-3901(a)(7).

123. Plaintiff is a “non-profit organization” within the meaning of § 28-3901(a)(14) and a “public interest organization” within the meaning of § 28-3901(a)(15).

124. D.C. Code § 28-3904 makes it an “unlawful trade practice ... whether or not any consumer is in fact misled, deceived or damaged thereby,” to, among other things:

- (a) Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- (b) Represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (c) Misrepresent as to a material fact which has a tendency to mislead;
- (d) Fail to state a material fact if such failure tends to mislead;
- (e-l) Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; and
- (u) Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

125. Defendants violated these provisions by, *inter alia*, intentionally representing homeopathic products, including those listed *supra*, as medicines that can treat and improve specific diseases and symptoms by displaying them in sections labelled for those diseases and symptoms.

126. Defendants violated these provisions by deliberately and intentionally placing homeopathic products in the same sections as science-based medicines, thereby implying to customers there is no difference between them.

127. Defendants knew or should have known that its placement of homeopathic products beside science-based medicines and under labels referring to specific diseases and symptoms would result in consumers considering the products to be equivalents.

128. Defendants knew or should have known that no scientific evidence exists to show homeopathic remedies have any effect on specific diseases or symptoms other than those of a placebo.

129. Defendants knew or should have known that consumers would be led to believe by its product placement and shelf labelling that homeopathic products were effective in the treatment of specific diseases and symptoms.

130. Defendants knew or should have known of the likelihood of confusion created by its product placement and labeling between homeopathic products and science-based medicines.

131. Defendants knew or should have known that the organization of its internet site would create the same effects as listed *supra*, creating confusion among customers between homeopathic and science-based medications and creating a false impression that homeopathic products are efficacious in the treatment of specific diseases and remedies.

132. Although reliance is not required by the CPPA, customers in the District of Columbia have nevertheless reasonably relied on Defendants' misrepresentations and omissions when purchasing healthcare products from Defendants.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that this Court grants judgment against the Defendants, and in favor of the Plaintiff and the District of Columbia General Public, and grant the following relief:

a. Declaring that Defendants' conduct is in violation of the D.C. Consumer Protection Procedures Act;

b. Enjoining Defendants' conduct found to be in violation of the D.C. Consumer Protection Procedures Act and ordering corrective advertising, marketing, labeling and product placement;.

c. Granting Plaintiff and the General Public of the District of Columbia restitution, treble damages or statutory damages in the amount of \$1,500 per violation, whichever is greater;

d. Granting Plaintiff its costs of prosecuting this action, including attorneys' fees, experts' fees and costs together with interest; and

e. Granting such other relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 29th day of June, 2018.

s/Nicholas J Little

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