

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

RUBY ROSE
565 Mt. Hope Rd.
Cincinnati, OH 45204,

Plaintiff,

v.

R. MICHAEL REINSTATLER
4261 Victorian Green Dr.,
Unit 42
Cincinnati, OH 45211

and

THE KROGER COMPANY
d/b/a **KROGER PHARMACY**,
3609 Warsaw Ave.
Cincinnati, OH 45205

Defendants.

THE KROGER COMPANY
TO BE SERVED UPON:
CSC-LAWYERS
INCORPORATING SERVICE
(CORPORATION
SERVICE COMPANY)
50 W. BROAD Suite 1800
Columbus, Ohio 43215

CASE NO. A 1405335

JUDGE _____

COMPLAINT

FILED

2014 SEP 11 P 1:06
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

PARTIES

1. Plaintiff Ruby Rose is an adult and Ohio resident.
2. Defendant R. Michael Reinstatler is an adult and Ohio resident
3. Defendant The Kroger Company d/b/a Kroger Pharmacy (hereafter, Kroger) is an Ohio corporation.



D107747361 INI

W

JURISDICTION AND VENUE

4. Pursuant to Civ.R. 8, this Court has personal, subject matter, and monetary jurisdiction over the parties and legal claims in this Complaint.
5. Pursuant to Civ.R. 3(B), this Court has venue given the events giving rise to the claims alleged in this Complaint occurred in Hamilton County, Ohio, or because the defendants do business, or have committed tortious acts in Hamilton County, Ohio.

FACTUAL ALLEGATIONS

6. Plaintiff Rose has a history of esophagitis and has been prescribed Nexium by her physician Dr. Robert Thaler and took Nexium as part of her prescribed treatment.
7. On or about June 18, 2012, plaintiff Rose was prescribed Nexium by Dr. Thaler.
8. At all times relevant herein, R. Michael Reinstatler was an employee of Kroger, responsible for accurately filling prescriptions for Kroger customers or supervising those individuals filling prescriptions for Kroger customers.
9. On October 15, 2012 plaintiff Rose took her Nexium prescription to Kroger Pharmacy at 3609 Warsaw Ave., Cincinnati, Ohio 45205, to be filled by defendant Kroger's employees.
10. Rather than filling Rose's prescription with Nexium, defendant Kroger and its employees incorrectly filled Rose's prescription with Seroquel, a medicine for treating schizophrenia, bipolar disorders, or depression.
11. On October 18, 2012, plaintiff Rose took the medication in the Nexium bottle, which actually contained Seroquel.

12. Glen Belcher, plaintiff's son, called his mother at home on the morning of October 18, 2012 and noticed confusion and slurred speech. He went to plaintiff Rose's home as she was experiencing weakness and an inability to get out of bed. As a result of her symptoms, the family called emergency personnel and plaintiff was taken to the hospital.
13. Shortly thereafter, Danielle Woll, RN discovered the pills in the Nexium bottle were not Nexium, but instead, Seroquel.
14. Plaintiff has never been prescribed Seroquel.
15. Since ingesting Seroquel, plaintiff has shown symptoms of dementia, insomnia, headaches, imbalance, and visual hallucinations. Prior to taking Seroquel, plaintiff did not exhibit any of the above symptoms.

FIRST CLAIM - NEGLIGENCE

16. Plaintiff reincorporates the previous paragraphs as if fully rewritten herein.
17. Defendants owed a duty of care to plaintiff Rose to fill plaintiff's prescription accurately and make sure plaintiff was given proper instructions regarding warnings and side effects of the medication distributed.
18. Defendants breached said duty of care by not filling plaintiff's prescription with Nexium. Additionally, defendants did not give plaintiff Rose instructions regarding Seroquel and its associated warnings and side effects.
19. As a direct and proximate result of the error in filling the Nexium prescription and the breach of one or more of the legal duties owed by defendants, plaintiff Rose sustained medical expenditures, physical and mental injuries, physical pain and

mental anguish, a loss of the usual enjoyments of life, an interference with her normal activities, and will incur such damages in the future

SECOND CLAIM - PRODUCT DEFECT

20. Plaintiff reincorporates the previous paragraphs as if fully rewritten herein.
21. Defendants sold and marketed Nexium under Kroger's label or tradename, and the pills given to plaintiff were represented to plaintiff to be Nexium.
22. Defendants had a statutory and common law duty to supply pills that conformed to defendants' representations.
23. The pills in the bottle given to plaintiff Rose did not conform to the representations by defendants and were therefore defective.
24. Defendants breached duty to provide pills that conformed with defendants' representations when dispensing Seroquel pills to plaintiff Rose.
25. As a direct and proximate result of the product's nonconforming pills, defendants are strictly liable for said injuries and damages suffered by plaintiff.

THIRD CLAIM – FAILURE TO WARN

26. Plaintiff reincorporates the previous paragraphs as if fully rewritten herein.
27. Defendant Kroger, at all times material to this action, supplied, designed, manufactured, distributed and/or sold Nexium and placed such product into the market.
28. Plaintiff purchased what she thought was Nexium, which was sold by defendant Kroger.
29. The Nexium pills supplied, designed, manufactured, distributed, and/or sold by Defendant Kroger were defective and unreasonably dangerous when sold.

30. The defective Nexium reached Plaintiff without substantial change in the condition in which the products were supplied, designed, manufactured, distributed, and/or sold by defendant Kroger.
31. Defendants had a statutory and common law duty to warn plaintiff Rose of the dangers and possible side effects of the drug Seroquel when dispensing Seroquel to plaintiff Rose.
32. Defendants breached duty to warn of the dangers and possible side effects of the drug Seroquel when dispensing it to plaintiff Rose.
33. As a direct and proximate result of the product's defect and failure by defendants to warn of the dangers and side effects, plaintiff Rose suffered injuries and damages described herein, and defendants are strictly liable for said injuries and damages suffered by plaintiff.

FOURTH CLAIM – IMPROPER LABELING

34. Plaintiff reincorporates the previous paragraphs as if fully rewritten herein.
35. Defendants and Kroger employees dispensed a substance to be used by plaintiff Rose.
36. Defendants had a statutory and common law duty to affix a label showing the name and side effects of the prescription drug on the bottle containing the prescription drug.
37. Defendants breached the duty to label the prescription bottles showing contents and side effects of the prescription drug containing Seroquel.

38. As a direct and proximate result of improper labeling of the bottles by defendants, plaintiff suffered the injuries and damages described herein, and defendants are strictly liable for injuries and damages suffered by plaintiff.

FIFTH CLAIM – PUNITIVE DAMAGES

39. Defendants' procedures and processes regarding distributing Seroquel failed to protect elderly customers who are more at risk to its risky and deadly side effects.

40. By failing to properly protect plaintiff Rose and other elderly customers, Defendants acted willfully, wantonly, and with conscious disregard for her health, welfare and safety of others, and causing damages to plaintiff.

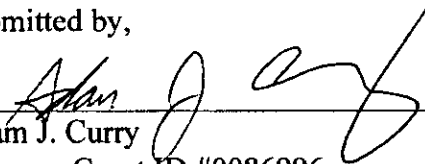
41. Defendants' willful and wanton conduct was a direct and proximate cause of plaintiff's injuries and damages described herein.

42. Plaintiffs are entitled to an award of punitive damages.

WHEREFORE, Plaintiff Rose hereby demands judgment on her Complaint as follows:

1. Direct and consequential damages in an amount in excess of \$25,000,
2. Punitive Damages,
3. An award of attorneys' fees and costs, and
4. All other relief this Court deems just and proper.

Submitted by,


Adam J. Curry

Supreme Court ID #0086996

4953 Delhi Pike

Cincinnati, Ohio 45238

Telephone: (513) 560-2326

Fax: (513) 451-4934