

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

NANCY GIBSON
4739 Naomi Drive
Toledo, OH 43623,

Plaintiff,

v.

MEIJER, INC.
c/o Statutory Agent,
CT Corporation System
Carew Tower
Cincinnati, OH 45202,

and

Laura Bachmann
7619 Olympic Parkway
Sylvania, Ohio 43560,

Defendants.

) Case No. CI 02-06321
)
) Honorable Frederick H. McDonald
)
) **FIRST AMENDED COMPLAINT WITH**
) **JURY DEMAND AND PRAECIPE**

GENERAL ALLEGATIONS

1. Plaintiff Nancy Gibson is an individual residing in Lucas County, Ohio who became injured after Meijer negligently filled her prescription with the wrong drug.

2. Meijer, Inc. is a corporation organized and existing under the laws of the state of Michigan and operates pharmacies within its retail chains. Meijer as a whole, and each of its retail stores, is to be considered a defendant in this action, and shall be simply referred to as "Meijer." Laura Bachmann is the Meijer pharmacist who filled Ms. Gibson's prescription with Norvasc instead of Lasix.

3. On or about January 4, 2002, Meijer's pharmacy refilled Ms. Gibson's

prescription for Lasix. However, instead of providing Lasix, the pharmacy refilled the Lasix bottle with a low blood pressure drug commonly known as Norvasc.

4. The Meijer pharmacy presented the bottle labeled as Lasix, but containing Norvasc to Ms. Gibson. Over the course of the next 27 days, Ms. Gibson took her daily dose of “Lasix” that, unbeknownst to her, was in reality Norvasc. Meijer agent, Laura Bachmann, admits that Meijer routinely makes prescription errors and that its inventory management is lacking.

5. Because Ms. Gibson was prescribed Lasix by her doctor to prevent edema, and she, unknowingly and innocently, took Norvasc instead of her prescribed Lasix, Ms. Gibson experienced substantial and severe swelling of her hands, feet, arms, legs, and internal organs such that she had difficulty moving (partial paralysis) and breathing. She also developed chest pain and experienced a rash on her extremities. At the same time, she experienced headaches and extreme fatigue. These effects were directly caused by her taking of Norvasc instead of Lasix. In fact, Norvasc, a drug designed to treat high blood pressure, exacerbated Ms. Gibson’s condition of low blood pressure.

6. Laura Bachmann, testifying under oath, and as an agent of Meijer, admitted, in words or substance, that Meijer has a complete malicious, wanton and reckless disregard and indifference to the safety and health of its innocent and unsuspecting consumers; to wit, that:

- (a) Meijer routinely and repeatedly wrongfully fills prescriptions.
- (b) Meijer only verifies its inventory once a year, having abandoned its prior practice of inventorying once a week.
- (c) Meijer employs a computer system that has no reconciliation to its actual inventory, other than perhaps to the once a year inventory.
- (d) Meijer refuses to do more frequent inventory because it is too time consuming. Yet Meijer also admits that it only takes a few minutes to inventory a specific drug.
- (e) Meijer has failed to improve or take action to correct future problems, despite knowledge of the problems, and despite means to prevent them.

(f) Meijer attempts to employ a “triple check” system for first time prescriptions, but fails to do so for prescription refills.

(g) Meijer knows, or should know, of the risk of causing severe and substantial harm to unsuspecting consumers caused by prescriptions being wrongfully filled and thus the wrong drug being administered to a patient. Despite such knowledge, Meijer continues its inadequate inventory system that has fewer safeguards than those employed by pharmacists 200 years ago, primarily because it takes too much time and costs more money than Meijer cares to spend to ensure that prescriptions are correctly filled.

COUNT I
(Negligence as to Bachmann)

7. Plaintiff adopts and incorporates the previous paragraphs of her complaint as if fully re-stated herein.

8. Pharmacist Laura Bachmann had a duty of care to properly refill Ms. Gibson’s prescription.

9. By filling Ms. Gibson’s prescription for Lasix with Norvasc, Bachmann, acting for and on behalf of Meijer, Inc. and within the scope of her duties for Meijer, Inc., breached her duty of care to Ms. Gibson.

10. As a direct and proximate result of Bachmann’s negligence, Ms. Gibson been damaged in an amount in excess of \$25,000, plus costs of suit.

COUNT II
(Respondeat Superior as to Meijer)

11. Plaintiff adopts and incorporates the previous paragraphs of their complaint as if fully re-stated herein.

12. Because Bachmann acted as an agent for and on behalf of her principal, Meijer incurs respondeat superior liability for her negligence.

13. As a direct and proximate result of Meijer’s respondeat superior liability, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit.

COUNT III

(Negligent Training, Supervision and Control as to Meijer)

14. Plaintiff adopts and incorporates the previous paragraphs of her complaint as if fully re-stated herein.

15. Meijer, Inc. had a duty to train and supervise its pharmacy personnel and implement sufficient inventory controls so as to safeguard the well-being of its customers. Meijer breached its duties to properly train and/or supervise its pharmacy personnel and breached its duty to implement sufficient inventory controls such that Ms. Gibson received the drug Norvasc in her Lasix refill bottle. Given the inadequate inventory controls, serious health risk, and reckless indifference to its customers, Meijer's actions are malicious. As a direct and proximate result of Meijer's conduct as aforesaid, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit, punitive damages, and attorney fees.

COUNT IV

(Strict Liability as to Meijer Pursuant to 402A of the 2nd Restatement of Torts, Failure to Warn, and Design Defect in the Process of Distribution as to Meijer)

16. Plaintiff adopts and incorporates the previous paragraphs of her complaint as if fully re-stated herein.

17. Meijer is in the business of selling pharmaceutical drugs, including Lasix, for use and consumption by the public, which is expected to reach the consumer without substantial change in the condition in which it is sold. By providing to Plaintiff a drug labeled as Lasix but was actually Norvasc, Meijer provided a defective product that was unreasonably dangerous to Ms. Gibson at the time it left Meijer's possession.

18. In addition and in aggregate, the process of distributing the product is defective in design, with inadequate controls for inventory management and a failure to warn, such that strict liability applies.

19. Knowing its inadequate inventory management system, and that errors in

prescriptions are repeatedly made, without taking any steps to reduce the danger thereof, constitutes a reckless indifference to the safety of its customers such that punitive damages are appropriate.

20. As a direct and proximate result of Meijer's acts and conduct, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit, punitive damages, and attorney fees.

COUNT V

(Breach of Express Warranty as to Meijer)

21. Plaintiff incorporates the previous paragraphs of her complaint as if fully restated herein.

22. Meijer provided an express warranty on its prescription label that the bottle contained Lasix. Meijer breached that express warranty when it proved to be Norvasc. Knowing its inadequate inventory management system, and that errors in prescriptions are repeatedly made, without taking any steps to reduce the danger thereof, constitutes a reckless indifference to the safety of its customers such that punitive damages are appropriate.

23. As a direct and proximate result of Meijer's conduct, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit, punitive damages, and attorney fees.

COUNT VI

(Breach of the Implied Warranty of Fitness for a Particular Purpose, RC 1302.28 as to Meijer)

24. Plaintiff incorporates the previous paragraphs of her complaint as if fully restated herein.

25. Inherent within the sale of prescription drugs by Meijer is the implied warranty of fitness for a particular purpose. Meijer knew or should have known that Lasix is a diuretic and that Nancy Gibson required it for that purpose. By providing Norvasc instead of Lasix, Meijer breached its warranty of fitness for a particular purpose. Knowing its inadequate inventory management system, and that errors in prescriptions are repeatedly made, without taking any steps to reduce the danger thereof, constitutes a reckless indifference to the safety of its customers such

that punitive damages are appropriate.

26. As a direct and proximate result of Meijer's breach of implied warranty for a particular purpose, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit, punitive damages, and attorney fees.

COUNT VII

(Violation of Consumer Sales Practices Act, O.R.C. 1345.01 et seq.)

27. Plaintiff adopts and incorporates the previous paragraphs of her complaint as if fully re-stated herein.

28. Meijer is a supplier of consumer goods, including prescription drugs. Nancy Gibson is a consumer.

29. Meijer claimed that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have; including providing the proper drug to plaintiff Nancy Gibson when it did not.

30. Meijer claimed that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have; including providing reliable safeguards and inventory control in the proper distribution of drugs to plaintiff Nancy Gibson when it did not.

31. Meijer's claimed that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not; including providing the proper drug to plaintiff Nancy Gibson when it did not.

32. Meijer's claimed that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not; including providing reliable safeguards and inventory control in the proper distribution of drugs to plaintiff Nancy Gibson when it did not.

Knowing its inadequate inventory management system, and that errors in

prescriptions are repeatedly made, without taking any steps to reduce the danger thereof, constitutes a reckless indifference to the safety of its customers such that punitive damages are appropriate.

33. As a direct and proximate result of Meijer's violation of Ohio's consumer protection laws, plaintiff has been damaged in an amount in excess of \$25,000, plus costs of suit, punitive damages, treble damages, and attorney fees.

COUNT VIII

(Punitive Damages)

34. Plaintiff adopts and incorporates the previous paragraphs of her complaint as if fully re-stated herein, and for the purposes of punitive damages, explicitly pleads additional allegations as follows:

35. As admitted, in words or substance, Meijer routinely and repeatedly wrongfully fills prescriptions.

36. As admitted, in words or substance, Meijer only verifies its inventory once a year, having abandoned its prior practice of inventorying once a week.

37. As admitted, in words or substance, Meijer's employs a computer system that has no reconciliation to its actual inventory, other than the once a year inventory.

38. As admitted, in words or substance, Meijer refuses to do more frequent inventory because it is too time consuming. Yet Meijer's also admits, in words or substance, that it only takes a few minutes to inventory a specific drug.

39. As admitted, in words or substance, Meijer has failed to improve or take action to correct future problems, despite knowledge of the problems, and despite means to prevent them.

40. As admitted, in words or substance, Meijer attempts to employ a "triple check" system for first time prescriptions, but fails to do so for prescription refills.

41. Each year, thousands, and perhaps tens of thousands are injured, or die, from pharmacy errors. Meijer knows, or should know, of the risk of causing severe and substantial harm

to unsuspecting consumers caused by prescriptions being wrongfully filled and thus the wrong drug being administered to a patient. Despite such knowledge, Meijer continues its inadequate inventory system that has fewer safeguards than those employed by pharmacists 200 years ago, primarily because it takes too much time and costs more money than Meijer cares to spend to ensure that prescriptions are correctly filled.

42. As shown above, Meijer has a complete malicious, wanton and reckless disregard and indifference to the safety and health of its innocent and unsuspecting consumers. Accordingly, punitive damages are proper.

43. As a direct and proximate cause of Meijer's malicious, wanton and reckless disregard and indifference to the safety and health of its innocent and unsuspecting consumers, punitive damages of at least \$500,000 should be assessed against Meijer.

WHEREFORE, each and every plaintiff respectfully prays to the court for damages in an amount in excess of \$25,000, plus costs of suit, attorney fees and punitives of at least \$500,000.

Respectfully submitted,

Mark A. Davis (0070983)
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury on all legal issues raised in the pleadings.

An Attorney for Plaintiff

PRAECIPE

TO THE CLERK OF COURTS:

Request is hereby made that the appropriate Summons and a copy of the foregoing First Amended Complaint be served upon the Defendants at their addresses set forth in the caption by Certified U.S. Mail, Return Receipt Requested, in accordance with the Ohio Rules of Civil Procedure. If service comes back unclaimed, then pursuant to the Ohio Rules of Civil Procedure, you are hereby requested to send the appropriate Summons and a copy of the foregoing First Amended Complaint to the Defendants at their addresses set forth in the caption by Ordinary U.S. Mail.

An Attorney for Plaintiff