

Federal Magistrate Judge Recommends Certifying Nationwide Prevacen Class Action in Florida

By **Michael A. Mora**

Adam Moskowitz, among the lawyers representing the plaintiffs, alleges Prevacen is “worthless.”

A federal magistrate judge recommended certifying a nationwide class action in a federal court

(<https://drive.google.com/file/d/1OOYG9hDSMic38NxVh7MFNXD27Q--Ncch/view?usp=sharing>) in Miami, which is scheduled for trial Oct. 26 and alleges a pharmaceutical company sold a “worthless” product that was designed to help with memory loss.

On Thursday, U.S. Magistrate Judge Jonathan Goodman of the the Southern District of Florida recommended certifying a class of consumers who purchased Prevacen over the last four years. The Moskowitz Law Firm and Searcy Denney will represent the plaintiffs at trial.

Two purchasers of Prevacen, Juan Collins and John Fowler, contend that Quincy Bioscience used deceptive marketing practices to sell its product, Prevacen, which is supposed to provide memory enhancement. The main ingredient of Prevacen is protein apoaequorin, and Quincy said it is “safe and uniquely supports brain function,” according to the class certification motion.

However, plaintiffs argue that Prevacen’s memory enhancement benefits are false and inconceivable due to body chemistry. Protein apoaequorin, they said in the complaint, is “merely a protein that, once digested, is completely and rapidly digested and transformed into common amino acids (and possibly small peptides) no different than those derived from other dietary proteins and cannot cross the blood-brain barrier to reach the brain or affect its functioning.” A single dose of Prevacen has trace amounts of protein an average person would consume in a day, making it have “no measurable effect on the brain,” according to the complaint.

Plaintiffs are suing the company for violations of the Florida Deceptive and Unfair Trade Practices Act in two counts and unjust enrichment in one count. [Adam Moskowitz](#), among the lawyers representing the plaintiffs, said the opinion was well written and the product was “worthless.”

“Judge Cooke entered an Order last week setting it for trial October 26 of this year,” Moskowitz said in an email. “Tens of thousands of Florida consumers purchased this drug and the opinion spends a great detail of time explaining all of Florida’s deceptive and unfair practices law cases.”

Quincy did not respond to request for comment.

Goodman denied plaintiffs' bid to expand the class to include those who purchased the dietary supplement when it first hit shelves in 2007, noting Prevagen's box and label did not mention memory improvement for the first couple of years.

Plaintiffs filed their class certification motion about two months after an original complaint was served. They relied on discovery in similar class actions involving the product in the U.S. District Court for the Northern District of California, along with "experts" their counsel retained in the lawsuit, according to the order.

Quincy's attorneys from Kelley Drye & Warren and Genovese Joblove & Battista argued that plaintiffs' fraudulent concealment claim was too vague, and Goodman agreed, ruling that plaintiffs failed to include a required allegation to support a fraudulent concealment theory.

Plaintiffs filed their class certification motion before they obtained discovery from Quincy in the case and prior to a ruling on the motion to dismiss, and the magistrate judge said their "rush to seek certification" could be to blame for their lack of an allegation.

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