

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Charles Edward Ramos
Justice

PART 53

Anonymous etc

INDEX NO.

2604804-99

MOTION DATE

MOTION SEQ. NO.

05

MOTION CAL. NO.

CVS Corp etc

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

to be decided in accordance with
accompanying memorandum decision. Gentle Order.

FILED
10 OCT 11 2001
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/4/01



J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

CLERK OF THE SUPREME COURT OF NEW YORK
NEW YORK, NY 10007-1474 — Room 148A

CLERK OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 53

-----x
ANONYMOUS, on behalf of himself and all
others similarly situated,

Plaintiff,

Index No.

-against-

604804/99

CVS CORPORATION, CVS COLUMBUS PLACE, L.L.C.,
TRIO DRUGS CORP. and GERALD HINDERSTEIN,

Defendants.
-----x

CHARLES EDWARD RAMOS, J.S.C.:

Plaintiff moves for leave to amend and supplement the
complaint and to add additional defendants.

Plaintiff brings this action--anonymously, to protect
against any further disclosure of personal information-- on his
own behalf and on behalf of all members of a class. The class
consists of all persons whose medical and/or prescription
information was purchased or acquired without their knowledge or
consent by defendant CVS Corporation, defendant CVS Columbus
Place, L.L.C. (hereinafter collectively known as "CVS"), or any
subsidiary or affiliate of CVS Corporation, from a pharmacy in
New York State, on or after October 20, 1993.

The original complaint alleged that CVS purchased, through
its "independent file buy program", the customer prescription
files and medical records of approximately 186 independent
pharmacies that were going out of business. Former local
independent pharmacist and pharmacy defendants, Gerald
Hinderstein and Trio Drugs Corporation (collectively "Trio
Drugs"), participated in CVS' File Buy Program, and allegedly

sold plaintiff's prescription and medical information to CVS without his knowledge or consent. Plaintiff, who is HIV and AIDS positive, complains that the information transferred to CVS included, not only the medications prescribed to Trio Drugs customers, but also their medical profiles. Those profiles contain information about a customer's allergies, chronic diseases and drug reactions.

The original complaint states that when Trio Drugs transferred its customers' information to CVS without their knowledge or consent, Trio Drugs breached its duty to keep customers' information confidential. CVS allegedly aided Trio Drugs and induced a breach of that duty, because under the terms of the File Buy Agreement, CVS required Trio Drugs not to give advance notice to Trio's customers. Plaintiff also asserted claims for violation of a pharmacist's alleged statutory and common law duty of confidentiality. In a decision and order dated March 1, 2001, this court dismissed all of plaintiff's statutory claims, except his claim for deceptive practices, under General Business Law ("GBL"), Section 349. In addition, the court refused to dismiss plaintiff's claims for breach of fiduciary duty, aiding and inducing a breach of duty, and breach of implied contract. In a decision and order dated March 28, 2001, this court certified the class action.

Plaintiff now moves for leave to amend and supplement his complaint and to add additional defendants. The original complaint alleged that dozens, if not hundreds, of independent

pharmacies registered in the State of New York had wrongfully sold or disclosed confidential medical and prescription information about the class members to CVS and/or its affiliates and subsidiaries. Plaintiff stated that he was unaware of the identity of such independent pharmacies, but intended to amend the complaint to add such additional defendants following discovery relating to that issue.

Plaintiff claims to have completed discovery and has the names of the CVS affiliates and subsidiaries, the independent pharmacies and pharmacists who participated in 185 file-buy transactions. He believes that complete relief can now be afforded to all class members in this one action as to all potentially liable parties. The proposed complaint amends the original complaint by adding the additional transactions and adding defendants to the action, and supplements the original complaint by setting forth transactions and occurrences subsequent to the October 20, 1999 commencement of this case. This complaint retains, solely for purposes of any appeal, several causes of action that this court dismissed in its decision and order dated March 1, 2001. Plaintiff asserts that there would be no prejudice or surprise to defendants if he were allowed to serve and file the proposed new complaint.

The motion is denied. Plaintiff's amendment is futile. Plaintiff does not claim to have been personally injured or otherwise impacted by the actions of the proposed defendants, he therefore lacks standing to bring any claims against them in his

own right, and those defendants would be entitled to move to dismiss the complaint on that basis.

Plaintiff's proposed amendment reveals that CVS has been significantly prejudiced in its ability to oppose plaintiff's motion for class certification. Had all of the proposed defendants been included in the original complaint or in an amended complaint served prior to plaintiff's motion for class certification, CVS would have been in the position to make additional arguments in opposition to class certification. In addition, the proposed defendants largely consist of pharmacies that have gone out of business.

Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the complaint is denied.

DATED: October 4, 2001

ENTER:

J.S.C.