

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

In re:	:	MDL Docket No. 4:03CV1507-WRW
	:	4:10CV00552-WRW
PREMPRO PRODUCTS LIABILITY LITIGATION	:	
	:	
SHERRIE LEWIS	:	PLAINTIFF
	:	
v.	:	
	:	
K MART CORPORATION, et. al.	:	DEFENDANTS

ORDER

Pending is Defendant Prasco, Inc's Motion to Dismiss (Doc. No. 61). Plaintiff has responded.¹

The Motion is GRANTED in PART and DENIED in PART. Plaintiff's claim for "Unlawful Sale of a Drug Not Approved by the FDA," a violation of 21 U.S.C. § 355, is DISMISSED because this is not an independent cause of action. It would seem to me that a violation of this statute might be "evidence of negligence" -- I don't know, so brief me if the parties wish. Additionally, Plaintiff conceded that she has no claim against Prasco, Inc. for Breach of Implied Warranty of Merchantability, so the claim is DISMISSED.

As for the remainder of the Complaint, Plaintiff has met the "short and plain statement" requirement of the Federal Rules of Civil Procedure.²

By 5 p.m., August 18, 2010, Plaintiff must file an amended complaint that removes the claims listed above. Additionally, Plaintiff must combine all her claims and background in the same document, rather than incorporating by reference, like Plaintiff did in the previous amended complaint.³

IT IS SO ORDERED this 4th day of August, 2010.

/s/ Wm. R. Wilson, Jr. _____
UNITED STATES DISTRICT JUDGE

¹Doc. No. 64.

²See Fed. R. Civ. P. 8.

³See Doc. No. 24.