



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

October 10, 2014

DMS NOTICE
QC - 14 - 06
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – CVS Pharmacy, Inc., a Rhode Island Corporation

Enclosed is a copy of the Stipulation for Entry of Final Judgment issued against CVS Pharmacy, Inc., a Rhode Island Corporation. The case was filed on September 8, 2014, by the District Attorney's office of Fresno County in conjunction with the District Attorneys' offices of Yolo, Shasta, and Sacramento for deceptive packaging, in violation of California Business and Professions Code Sections 12606 (a) and 12606 (b).

The California Department of Food and Agriculture, Division of Measurement Standards (Department) worked with weights and measures investigators from Sacramento and Yolo counties on this case. The total settlement was for \$225,000. Civil penalties amounted to \$169,240 and agency costs were \$55,760.

Sacramento County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

The Department appreciates the fine work done by the District Attorneys' Offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Katherine de Contreras, Supervising Special Investigator, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



1 ELIZABETH A. EGAN
District Attorney, County of Fresno
2 EDWARD T. BROWNE, State Bar No. 167638
Deputy District Attorney
3 929 L Street
Fresno, California 93721
4 Telephone: (559) 600-3156

5 JEFF W. REISIG
District Attorney, County of Yolo
6 LAWRENCE BARLLY, State Bar No. 114456
Supervising Deputy District Attorney
7 301 Second Street
Woodland, CA 95695
8 Telephone: (530) 666-8180

9
10 STEPHEN S. CARLTON
District Attorney, County of Shasta
11 ANAND "LUCKY" JESRANI, State Bar No. 238252
Deputy District Attorney
12 1355 West Street
Redding, CA 96001
13 Telephone: (530) 245-6300

14 Attorneys for Plaintiff

15 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

16 THE PEOPLE OF THE STATE OF CALIFORNIA,
17 Plaintiff,
18 vs.
19 CVS PHARMACY, Inc., a Rhode Island Corporation,
20 Defendant.

FILED
SEP 25 2014
SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY _____ DEPUTY

NO. **14 CE CG 02845**
**STIPULATION FOR ENTRY
OF FINAL JUDGMENT**

21
22 IT IS HEREBY STIPULATED BETWEEN Plaintiff, THE PEOPLE OF THE STATE OF
23 CALIFORNIA, having filed its complaint herein, through its attorneys authorized to act on its
24 behalf, ELIZABETH A. EGAN, District Attorney of Fresno County, by EDWARD T. BROWNE
25 Deputy District Attorney; JEFF W. REISIG, District Attorney of Yolo County, by LAWRENCE
26 BARLLY, Deputy District Attorney; STEPHEN S. CARLTON, District Attorney of Shasta County,
27 by ANAND "LUCKY" JESRANI, Deputy District Attorney and Defendant CVS PHARMACY,
28

1 INC. ("CVS" or "Defendant"), a Rhode Island corporation, through its attorneys, REED SMITH,
2 LLP, by JOHN E. DITTOE, a member of the California State Bar, that the proposed Stipulated Final
3 Judgment ("Judgment"), a copy of which is attached hereto and incorporated by this reference as
4 Exhibit A, may be signed by the Court and entered as the Final Judgment in the above-entitled
5 matter.

6 IT IS FURTHER STIPULATED that the Judgment may be signed by the Court without the
7 taking of proof, without the Judgment constituting evidence or an admission of any liability by CVS
8 , with Defendant having waived its right of appeal and having approved the Judgment as to form and
9 content.

10 It is further stipulated that the Judgment has been entered into by the parties in good faith
11 and upon the representations presented to Plaintiff in this matter.

12 Defendant has received notice that it must pay the four hundred thirty-five dollars (\$435.00)
13 filing fee to the "Fresno Superior Court," to present the proposed Judgment to the Court.

14 DATED: 9/25/2014

Respectfully submitted,

ELIZABETH A. EGAN
DISTRICT ATTORNEY

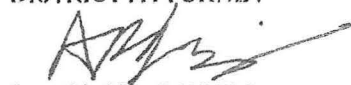


By: EDWARD T. BROWNE
Deputy District Attorney
Attorney for Plaintiff

20 DATED: 09/24/2014

Respectfully submitted,

STEPHEN S. CARLTON
DISTRICT ATTORNEY



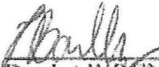
By: ANAND "LUCKY" JESRANI
Deputy District Attorney
Attorney for Plaintiff

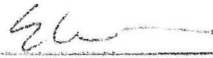
25 DATED: September 24, 2014

Respectfully submitted,

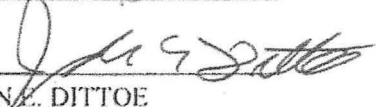
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JEFF W. REISIG
DISTRICT ATTORNEY


By: LAWRENCE BARILLY
Chief Deputy District Attorney
Attorney for Plaintiff

By: 
Officer Authorized to Act on Behalf
of CVS PHARMACY, INC.

Print Name: Elizabeth Ferguson
Title: Supervisor

DATED: September 24, 2014 By: 
JOHN E. DITTOE
Attorney for Defendant
California State Bar No. 088244
REED SMITH, LLP
101 Second Street Suite 1800
San Francisco, CA 94105

1 ELIZABETH A. EGAN
District Attorney, County of Fresno
2 EDWARD T. BROWNE, State Bar No. 167638
Deputy District Attorney
3 929 L Street
Fresno, California 93721
4 Telephone: (559) 600-3156

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District Attorney, County of Yolo
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7 301 Second Street
Woodland, CA 95695
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13 Attorneys for Plaintiff

14 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

15 THE PEOPLE OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 vs.

18 CVS PHARMACY, Inc., a Rhode Island Corporation,

19 Defendant.

NO.

**STIPULATED FINAL
JUDGMENT**

20
21 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA (hereafter "Plaintiff" or the
22 "PEOPLE"), having filed its complaint herein, by and through its attorneys authorized to act on
23 behalf of the PEOPLE, ELIZABETH A. EGAN, District Attorney of Fresno County; by EDWARD
24 T. BROWNE, Deputy District Attorney; JEFF W. REISIG, District Attorney of Yolo County, by
25 LAWRENCE BARLLY, Supervising Deputy District Attorney; STEPHEN S. CARLTON, District
26 Attorney of Shasta County; by ANAND "LUCKY" JESRANI, Deputy District Attorney; and
27 Defendant CVS PHARMACY, INC. ("CVS" or "Defendant"), a Rhode Island corporation
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1 appearing through its attorneys, REED SMITH, LLP, by JOHN E. DITTOE, Attorney at Law; with
2 the parties having waived their right of appeal; and the Court having considered the pleadings and
3 good cause appearing therefore;

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

5 **JURISDICTION**

6 1. This Court has jurisdiction over the subject matter hereof and the parties hereto.

7 **APPLICABILITY**

8 2. To the extent permitted by law, this Stipulated Final Judgment (“Final Judgment”) is
9 applicable to the Defendant who is defined to include CVS, its officers, directors, representatives,
10 successors, assignees, and all persons, partnerships, corporations, and other entities acting under, by
11 through, on behalf of, or in concert with CVS, with actual or constructive knowledge of this Final
12 Judgment. This Final Judgment is also applicable to any and all subsidiaries of CVS and its
13 respective officers, directors, representatives, successors, assignees and all persons, partnerships,
14 corporations, and other entities acting under, by through, on behalf of, or in concert with any such
15 subsidiary with actual or constructive knowledge of this Final Judgment.

16 **INJUNCTION**

17 3. Pursuant to Business and Professions Code sections 17203 and 17535, CVS is
18 permanently enjoined and restrained from packaging or causing CVS Private Label Products
19 (defined below) to be packaged in violation of California Business and Professions Code §§ 17200
20 and 17500, which includes, but is not limited to, the following:

21 a) Packaging products in violation of California Business and Professions Code section
22 12606(a).

23 b) Packaging products in violation of California Business and Professions Code section
24 12606(b).

25 c) Packaging products in violation of Health and Safety Code section 110375(a).

26 d) Packaging products in violation of Health and Safety Code section 110375(b).

1 4. CVS shall use its good faith efforts to make available and fully and clearly explain
2 the injunctive language of this Final Judgment, including the terms and conditions thereof, to its
3 management involved in supervising packaging designs for CVS Private Label Products which is
4 defined as those packages that are offered for sale to California consumers and are labeled with
5 CVS's name, logo, trademark, and/or brand.

6 **RELEASE**

7 5. Subject to CVS's compliance with the terms of this Final Judgment, CVS, its
8 officers, directors, representatives, successors, assignees, and all persons, partnerships, corporations,
9 and other entities who have acted under, by, through or on behalf of, or in concert with CVS, are
10 released from any and all liabilities arising from allegations set forth in the complaint which involve
11 the sales of the eleven (11) specified products identified in Exhibit A to this Final Judgment

12 **COMPLIANCE PERIOD**

13 6. CVS shall be permitted 24 months from the date of Entry of this Final Judgment to
14 bring the packaging of its Private Label Products into compliance with the terms of this Final
15 Judgment. CVS shall also be permitted to sell in California any of the products identified in Exhibit
16 A to this Final Judgment in their existing packaging if such products and packaging have been
17 manufactured prior to the date of January 1, 2015.

18 **MONETARY PROVISIONS**

19 7. Defendant shall pay a total of \$225,000.00 in settlement of this matter as set forth
20 below and pursuant to Business and Professions Code sections 12015.5, 17206 and 17536. Delivery
21 shall be made, on or before the expiration of sixty (60) days following Entry of Judgment, to the
22 Office of the Fresno County District Attorney, 929 L Street, Fresno, CA 93721, attention Edward T.
23 Browne. Payment shall be made as follows:

24 a) A check for \$54,810.00 payable to the Fresno County District Attorney's Office of
25 which \$42,310.00 is for civil penalties and \$12,500.00 is for costs;

26 b) A check for \$54,810.00 payable to the Yolo County District Attorney's Office of
27 which \$42,310.00 is for civil penalties and \$12,500.00 is for costs;

1 c) A check for \$54,810.00 payable to the Shasta County District Attorney's Office of
2 which \$42,310.00 is for civil penalties and \$12,500.00 is for costs;

3 d) A check for payable \$54,810.00 to the Sacramento County District Attorney's Office
4 of which \$42,310.00 is for civil penalties and \$12,500.00 is for costs.

5 e) As reimbursement for the costs of investigation, Defendant shall make checks
6 payable to the following agencies in the following amounts:

7 Sacramento County Department of Weights & Measures: \$3,000.00

8 Yolo County Agricultural Commissioner: \$1,560.00

9 State of California, Department of Agriculture

10 Division of Weights and Measures: \$1,200.00

11 8. Except as otherwise expressly provided herein, each party shall bear its own
12 attorneys' fees and costs.

13 9. The language used for the obligations set forth in the Stipulated Final Judgment are
14 solely for the purposes of settlement and compromise and are in no way intended to be an alteration
15 of California law in any other action. If an ambiguity arises regarding any provisions of the
16 Stipulated Final Judgment that requires interpretation, there is no presumption that documents
17 should be interpreted against any party. The presumption set forth in Civil Code section 1654 is not
18 applicable.

19 10. The failure of the Plaintiff to enforce any provision of this Stipulated Final Judgment,
20 shall neither be deemed a waiver of such provision, nor shall it in any way affect the validity of this
21 Final Judgment. The failure of the Plaintiff to enforce any provision shall not preclude it from later
22 enforcing the same or other provisions of this Final Judgment.

23 11. Jurisdiction is retained for the purpose of enabling any party to the Stipulated Final
24 Judgment to apply to the Court for such further orders and directions as may be necessary and
25 appropriate for the construction and carrying out of the Stipulated Final Judgment, for the
26 modification or dissolution of any injunctive provisions hereof, for enforcement of compliance
27 herewith, or for the punishment of violations hereof.

1 12. The parties waive the right to appeal this Stipulated Final Judgment as to both form
2 and content and the serving and filing of a notice of Entry of Judgment.

3 13. As to the matters alleged in the Complaint as further described in Exhibit A, the
4 Parties agree that this Final Judgment is intended to provide full, fair and adequate relief to protect
5 the interests of Plaintiff and members of the public who may have been misled by the packaging of
6 CVS Private Label Products at any time prior to, and including the date of entry of this Final
7 Judgment.

8 14. This Judgment has been reviewed by the Court, and based upon the representations of
9 the parties, the Court finds that it has been entered in good faith and is, in all respects, fair, just, and
10 equitable to protect the public and the individuals who may have been affected by the issues related
11 as more fully described in the Complaint.

12 15. Except as otherwise expressly provided herein, each party shall bear its own
13 attorney's fees and costs.

14 16. The clerk is directed to enter this Stipulated Final Judgment forthwith.

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16 DATED: _____

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18 JUDGE OF THE SUPERIOR COURT

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EXHIBIT A
CVS PRODUCT LIST

CVS Products:	SKU/UPC:
1. Accelerated Wrinkle Repair Moisturizer, Day,	50428405475
2. Accelerated Wrinkle Repair Moisturizer, Night,	50428584903
3. Age Refine Eye Cream, 0.5 ounces	50428443255
4. Age Refine Day Cream (2.5 ounces)	50428452127
5. Anti-Wrinkle And Firming Cream	50428122464
6. Healthy Complexion Anti-Wrinkle Moisturizer Acne Treatment Cream, Clear Skin	50428641187
7. Frizz-Defy Hair Serum	50428463253
8. Moisturizing Face Cream Hair Remover	50428655528
9. Preventin -AT 2 In 1 Dark Circle And Wrinkle Eye Treatment	50428483398
10. Maximum Scalp Relief	50428142738
11. Ultra Firm And Lift Eye Duo	50428740477