



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

June 22, 2015

DMS NOTICE  
QC - 15 - 05  
DISCARD: RETAIN

**TO:** WEIGHTS AND MEASURES OFFICIALS

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

Enclosed is a copy of the Final Judgment and Permanent Injunction Pursuant to Stipulation issued against CVS Pharmacy, Inc., a Rhode Island Corporation. The case was filed on May 20, 2015, by the District Attorney's office of Los Angeles County in conjunction with the District Attorneys' offices of Riverside and Ventura for overcharging consumers, in violation of California Business and Professions Code Section 12024.2.

The California Department of Food and Agriculture, Division of Measurement Standards (Department) worked with weights and measures investigators from over 14 counties on this case. The total settlement was for \$2,402,899. Civil penalties amounted to \$2,025,000, agency costs were \$102,504, filing costs were \$395, and cy pres restitution in the amount of \$275,000 was placed in the Consumer Protection Prosecution Trust Fund. Additionally, CVS Pharmacy, Inc. was ordered to institute a compliance program for a period of three years starting 45 days from the date of entry of the present judgment that includes special training for employees, a pricing accuracy protocol, price audits, and a \$4 incentive program for the consumer if they notify CVS Pharmacy, Inc., of an overcharge.

Los Angeles County should 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](mailto:katherine.decontreras@cdfa.ca.gov).

Sincerely,

Kristin J. Macey  
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



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14 Attorneys for Plaintiff, The People of the State of California

15 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

17 THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
18  
19 Plaintiff,  
20 vs.  
21 CVS PHARMACY, INC., a Rhode Island  
corporation,  
22  
23 Defendant.

Case No.: **BC 5 8 2 1 7 9**  
FINAL JUDGMENT AND PERMANENT  
INJUNCTION PURSUANT TO  
STIPULATION

Exempt bc 6103

REC'D  
MAY 18 2015  
FILING WINDOW

ORIGINAL FILED  
MAY 20 2015  
LOS ANGELES  
SUPERIOR COURT

25 1. Plaintiff, the People of the State of California, by and through its attorneys,  
26 Jackie Lacey, District Attorney of Los Angeles County, by Stanley Williams, Head Deputy and  
27

1 Leonard Torrealba, Deputy District Attorney; Michael A. Hestrin, District Attorney of  
2 Riverside County, by Elise Farrell, Senior Deputy District Attorney; and Gregory D. Totten,  
3 District Attorney of Ventura County, by Margaret J. Coyle, Senior Deputy District Attorney  
4 (collectively “District Attorneys”) and Defendant, CVS Pharmacy, Inc., a Rhode Island  
5 corporation, through its counsel Florence A. Crisp and outside counsel Peter S. Hecker and  
6 Meredith Jones-McKeown of Sheppard Mullin Richter & Hampton LLP, and having stipulated  
7 to the entry of this Final Judgment without the taking of proof, without this Judgment  
8 constituting evidence against or an admission of any party regarding any issue of law or fact  
9 alleged in the Complaint, all parties having waived the right to appeal, and having approved this  
10 Final Judgment as to form and content, and good cause appearing:

11 **JURISDICTION**

12 2. This action is brought under California law, and this Court has jurisdiction of the  
13 subject matter and the parties.

14 **APPLICABILITY**

15 3. This Final Judgment is applicable to CVS, its officers, directors, employees,  
16 representatives, successors, and assignees.

17 **DEFINITIONS**

18 4. For the purposes of this Final Judgment, the following definitions shall apply:

19 a. **“advertised price”** means the price that is posted or displayed on an item  
20 itself or on a shelf tag that corresponds to that item or the price for the item published in any  
21 manner, including, but not limited to, a flyer, newspaper, magazine, or direct mail publication.  
22 Nothing herein will be construed to mean that a consumer will be eligible for an advertised  
23 price if he or she fails to qualify under any limitations or terms disclosed in conjunction with the  
24 advertised price, so long as such terms are clearly and conspicuously disclosed. However, any  
25 advertised price posted on an item itself or on a shelf tag that corresponds to that item is subject  
26 to Business and Professions Code section 12024.2, subdivision (a) (2).





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- i. Price accuracy awareness.
- ii. How to ensure that the correct prices are consistently displayed and charged.
- iii. How to respond to price accuracy issues raised by customers.
- iv. The Scan Right Guarantee Program and how to implement the program.
- v. Compliance with Civ. Code section 1749.5.
- vi. All CVS employees receiving training under this subsection shall attest that they have received said training. Such attestation may be made by electronic means.

c. CVS shall keep records of the training sessions conducted pursuant to paragraph 6(b) for a period of three (3) years from the date of training. The records shall include, but are not limited to, completion records, training presentations or any other instructional material.

7. CVS shall retain the services of a third-party auditor or auditors ("Auditor"), such Auditor(s) to be identified to Plaintiff within 45 days of the Effective Date, who for a period of two (2) years will conduct quarterly audits of California Stores as provided herein.

a. The Auditor(s) and CVS will develop and, as appropriate, revise an audit protocol to assist in improving pricing accuracy within California Stores. The audit protocol shall include, but not be limited to:

- i. Price Accuracy Verification: The audit protocol shall include a program involving the random selection of fifty (50) items including sale and non-sale items. The audit shall take place in approximately 25% of California Stores during each quarter, such that all California Stores are audited at least once during the year.

1                   ii. Verification of Scan-Right Message: The audit shall include testing to  
2                   determine whether the Scan-Right Message is visible on a store's POS  
3                   reader, and posted or displayed, as required by paragraph 11.

4                   iii. The audit reports shall identify pricing accuracy errors and failures  
5                   with respect to posting or display of the Scan-Right Message.

6                   b.        Within 45 days after receipt of each audit report, CVS shall cause each  
7 store that failed an audit to create a written plan to correct any deficiencies raised in the audit  
8 report.

9                   c.        CVS stores that failed an audit shall implement the written plan within 45  
10 days of receipt of creation of the written plan.

11                  d.        CVS shall retain copies of all audit reports at its corporate headquarters for  
12 a period of three (3) years after the date of the audit and shall make said records available for  
13 inspection and copying to any District Attorney, City Attorney, any authorized representative of  
14 the State of California Division of Measurement Standards, or any representative of the County  
15 Sealer or Director of a County Agricultural Commissioner within 45 days of a written request by  
16 any person/entity listed in this subsection.

17                  e.        Any records CVS creates or maintains pursuant to this Final Judgment  
18 shall not constitute a basis for a subsequent proceeding against CVS, except that such records  
19 shall be admissible in subsequent proceedings for the sole purpose of establishing compliance or  
20 failure of compliance with the requirements set forth in paragraphs 6(b) and 7(a)(i)-(ii) of this  
21 Final Judgment.

22                  8.        Nothing in this Final Judgment shall in any way prevent CVS from developing,  
23 testing or implementing additional new or different systems or measures regarding the subjects  
24 covered by this Final Judgment in order to ensure compliance with the provisions of this Final  
25 Judgment.

26                  9.        Within 45 days after entry of this Final Judgment, pursuant to Business and  
27 Professions Code sections 17203 and 17535, and continuing for a period of three (3) years from the

1 Effective Date, CVS shall implement and institute in all California Stores, a “Scan Right  
2 Guarantee Program” as follows:

3 If the price charged for an item priced at \$4.00 or less is higher than CVS’s  
4 lowest applicable advertised price, CVS shall immediately give the customer  
5 the item for free or, if the item’s lowest applicable advertised price is over  
6 \$4.00, give the customer \$4.00 cash and refund any excess amount collected  
7 for the item, if applicable.

8 This policy shall be subject to the following terms and conditions:

9 a. This program shall exclude purchases of fuel, alcoholic beverages, dairy,  
10 tobacco products, and pharmacy products.

11 b. As used herein, “lowest applicable advertised price” means the lowest price  
12 offered to the public for the item at the store at which the item is scanned, including applicable  
13 advertised CVS coupons and discounts, provided the customer qualifies for the advertised price  
14 under any limitations or terms disclosed in conjunction with the advertised price.

15 c. Where the transaction involves multiple same-item purchases, this program  
16 shall apply to the first qualifying item in a given transaction. Any other items will be charged at the  
17 lowest applicable advertised price, with any refunds as appropriate.

18 d. CVS employees shall not be eligible for this program.

19 e. This program shall not include:

20 i. Situations where the price charged is consistent with a clear and  
21 conspicuous price correction notice notifying customers of an incorrect advertised price;

22 ii. Where an item has been correctly stocked but inadvertently  
23 moved, transferred or transported to the wrong rack, shelf, display, or fixture; or

24 iii. Where CVS corrects the price prior to any attempt to charge the  
25 customer for the item.

26 With respect to subparagraph 9(e), Defendant bears the burden of establishing that  
27 the program was not applicable to the transaction.

1           10.     By no later than forty-five (45) days after entry of this Final Judgment, CVS shall  
2 communicate the Scan-Right Guarantee in the manner and locations described in paragraph 11 at  
3 all California Stores as follows:

4                     If any item\* scans higher than advertised, you'll receive:

5                     Items \*up to \$4: FREE

6                     Items\* over \$4: Get \$4 OFF. \*First item only on multiple-same  
7 item purchases. Excludes alcohol, dairy, co-pays, Rx and items  
8 with posted error notice. Questions? Call 1-800-SHOP-CVS.

9     Within 240 days of the entry of this Judgment, CVS shall create a database that uniquely tracks  
10 point-of-sale price modifications (including the store location, person complained to, product, and  
11 resolution of the complaint) resulting from alleged overcharges or scanning errors in California  
12 Stores (the "Records"). CVS shall retain the Records for at least two (2) years and shall produce  
13 the Records within 60 days of a request from Plaintiff or any California Weights and Measures  
14 official.

15           11.     The Scan-Right Guarantee Program pursuant to paragraphs 9 and 10 shall be  
16 communicated by:

17                     a.     Including the Scan-Right Guarantee on an electronic medium that displays  
18 price to the consumer at check out.

19                     b.     Where applicable, posting at each CVS drive-thru window, facing the  
20 driver, an 8" x 10" sign with red lettering on a white background that contains the Scan-Right  
21 Guarantee.

22                     c.     In the event that at some future date, CVS implements retail check-out  
23 procedures which do not utilize an electronic medium that reasonably accommodates the Scan  
24 Right Guarantee, CVS shall provide notice of the Scan-Right Guarantee in a manner that is clear  
25 and conspicuous to the consumer, as follows:

1 i. posting a sign at least 8" x 10" on the entry door or doors of the store or  
2 posting a sign at least 8" x 10" on a side panel directly adjacent to the entry door of the store,  
3 provided such signs are clearly viewable by customers entering through the door;

4 ii. if an option listed in subsection (i) is not feasible, then CVS must display a  
5 poster near the entry door of the store that is clearly viewable by customers entering the store or  
6 display a notice at each point of sale.

7 CVS currently posts signs in California Stores describing the Scan-Right Guarantee  
8 as required by the Final Judgment Pursuant to Stipulation entered on August 17, 2011 in Los  
9 Angeles Superior Court, Case No. BC467427. CVS will use reasonable efforts to remove  
10 existing signs; however, any residual signs that may remain posted in any California Stores  
11 shall not constitute a violation of this Final Judgment or the basis for any proceeding or claim  
12 against CVS.

13 **MONETARY RELIEF**

14 12. Pursuant to California Business and Professions Code sections 17203, 17206,  
15 17207, 17356.5 and 17535, CVS shall pay the People upon filing of this Judgment, civil penalties,  
16 costs and restitution by checks made payable to the following entities and agencies in the amounts  
17 set forth below:

18 a. The total amount of \$102,504.31 shall be paid as costs to the below-listed  
19 agencies as follows:

<u>Agency Costs</u>	<u>Amount</u>
State of California Department of Agriculture, Division of Measurement & Standards	\$6,000.00
Contra Costa County Department of Weights & Measures	\$11,390.00
El Dorado County Department of Weights and Measures	\$767.08
Humboldt County Division of Weights & Measures	\$100.00
Los Angeles County Department of Weights and Measures	\$7,400.75
Nevada County Department of Weights and Measures	\$443.18

1	Orange County Department of Weights and Measures	\$8,694.00
2	Placer County Department of Weights and Measures	\$6,458.73
3	Riverside County Department of Weights and Measures	\$30,554.54
4	San Bernardino County Department of Weights and Measures	\$2,690.35
5	San Diego County Department of Weights and Measures	\$856.88
6	Santa Clara County Department of Weights & Measures	\$ 22,022.79
7	Santa Cruz County Department of Weights & Measures	\$ 649.00
8	Stanislaus County Department of Weights and Measures	\$367.16
9	Ventura County Department of Weights & Measures	\$14,310.45

10           b.       The total amount of \$2,025, 000 (Two million twenty five thousand  
11 dollars) shall be paid as civil penalties by equal checks made payable to the following District  
12 Attorneys' Offices: Los Angeles County, Riverside County and Ventura County.

13           c.       The sum of \$395.00 made payable to the "Court Clerk" for filing fees  
14 that would have been paid or deposited by Plaintiff upon filing the Complaint but for the  
15 exemption provided by Government Code section 6103, and which are due and payable within  
16 45 days of collection pursuant to Government Code section 6103.5, subdivision (b).

17           d.       The parties having stipulated, and the Court hereby finds, that it is  
18 impractical and impossible to identify or to provide direct restitution to consumers such that  
19 other forms of direct restitution are too impractical, costly, and would far exceed any benefit to  
20 individual consumers. Thus, CVS shall pay pursuant to Business and Professions Code sections  
21 17203 and 17535, *cy pres* restitution in the sum of \$275,000. Said *cy pres* restitution is to be  
22 paid to the Consumer Protection Prosecution Trust Fund established in the case of *People v. ITT*  
23 *Consumer Financial Corporation* (Alameda Superior court No. 656038-0). The payment  
24 required under this paragraph shall be made by check payable to the Trust Fund.

25           e.       All payments and checks required under the terms of this Final Judgment  
26 shall be delivered to Leonard Torrealba, Los Angeles County District Attorney's Office, 201 N.  
27 Figueroa Street, Suite 1600, Los Angeles, CA 90012.





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19. As of the Effective Date, this Final Judgment supersedes the Final Judgment Pursuant to Stipulation entered on August 17, 2011 in Los Angeles Superior Court, Case No. BC467427, in all respects.

20. The Clerk shall enter this Judgment, consisting of 11 pages forthwith.

DATED: MAY 20 2015

Elizabeth Allen White  
JUDGE OF THE SUPERIOR COURT