



August 22, 2011

DMS NOTICE  
QC-11-04

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

**SUBJECT: CVS Pharmacy, Inc. Settlement**

Attached is a final judgment pursuant to stipulation issued by the District Attorney's Office of Los Angeles County, in conjunction with the District Attorney's Offices of Ventura and Riverside Counties filed against CVS Pharmacy, Incorporated on August 17, 2011, for overcharging customers pursuant to California Business and Professions Codes 12024.2.

We both value and appreciate the fine work done on behalf of the people, by the prosecution team representing the various District Attorneys' Offices as well as the State and county investigators that documented and caused to be prosecuted these violations. CVS Pharmacy, Incorporated was assessed civil penalties and cost recovery of \$2,020,756.20 of which \$1,200,000 was for civil penalties, \$400,000 cy pres, and \$420,756.20 for court and weights and measures investigative costs. Cy Pres of \$300,000 was given to the Division of Measurement Standards to continue a Price Verification Program.

Los Angeles County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Kristin J. Macey  
Director

Cc: PQV Special Investigators  
Edmund Williams, Director, CDFA County Liaison Office



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19 Attorneys for Plaintiffs

20 SUPERIOR COURT OF STATE OF CALIFORNIA  
21 FOR THE COUNTY OF LOS ANGELES

22 PEOPLE OF THE STATE OF CALIFORNIA,  
23  
24 Plaintiff,

25 v.

26 CVS PHARMACY, INC., a Rhode Island corporation,  
dba CVS/pharmacy,  
27  
28 Defendant.

REC'D

AUG 11 2011

FLING WINDOW ORIGINAL FILED

AUG 17 2011

LOS ANGELES  
SUPERIOR COURT

BC 467427

Case No.:

FINAL JUDGMENT  
PURSUANT TO  
STIPULATION

1 Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, by and through its attorneys,  
2 Steve Cooley, District Attorney of Los Angeles County, by Stanley P. Williams, Head Deputy  
3 District Attorney, George E. Castello, Assistant Head Deputy District Attorney and Carolyn  
4 Nakaki, Deputy District Attorney; Gregory D. Totten, District Attorney of Ventura County, by  
5 Cheryl M. Temple, Chief Deputy District Attorney, and Linda S. Groberg, Senior Deputy  
6 District Attorney; and Paul Zellerbach, District Attorney of Riverside County, by Deborah  
7 Lucky, Supervising Deputy District Attorney and Elise Farrell, Deputy District Attorney,  
8 (collectively "District Attorneys") having filed its complaint therein; and defendant CVS  
9 PHARMACY, INC., a Rhode Island corporation, (hereinafter "CVS"), is now and, at all times  
10 mentioned in this complaint, was a corporation with its registered office at One CVS Drive,  
11 Woonsocket, Rhode Island, and is doing business in the State of California as CVS/pharmacy  
12 having acknowledged receipt thereof; and

13 Plaintiff appearing through its attorneys Steve Cooley, District Attorney of the County of  
14 Los Angeles, State of California, by Stanley P. Williams and Carolyn Nakaki; Gregory D.  
15 Totten, District Attorney of the County of Ventura, State of California by Cheryl M. Temple and  
16 Linda S. Groberg; and Paul Zellerbach, District Attorney of the County of Riverside, State of  
17 California, by Deborah Lucky and Elise Farrell; and defendant CVS, appearing by and through  
18 its attorneys, ReedSmith by Raymond Cardozo and John Hooper, and Howard Rice Nemerovski  
19 Canady Falk & Rabkin by Dirk Schenckan, and Dennis Palmer, Senior Vice President, West  
20 Coast Operations, CVS Pharmacy, Inc.;

21 IT APPEARING TO THE COURT that plaintiff and defendant, having stipulated and  
22 consented to the entry of this Final Judgment Pursuant to Stipulation prior to the taking of any  
23 proof, and without trial or adjudication of any fact or law herein, and without this Final  
24 Judgment Pursuant to Stipulation constituting any admission by defendant regarding any issue  
25 of fact or law alleged in said Complaint; and

26 The Court having considered the pleadings including the Stipulation of the parties;

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that plaintiff People of  
28 the State of California is awarded judgment against defendant CVS as follows:

1 **JURISDICTION**

2 1. This action is brought under California law and the Court has jurisdiction of the  
3 subject matter hereof and the parties hereto.

4 **APPLICABILITY**

5 2. The provisions of this Judgment, including the injunction contained herein, are  
6 applicable to defendant CVS and Enjoined Persons as defined in section 3b of this Final  
7 Judgment Pursuant to Stipulation.

8 **DEFINITIONS**

9 3. For the purposes of this Final Judgment Pursuant to Stipulation, the following  
10 definitions shall apply:

11 a. **“Advertised Price”** means the price that is posted or displayed on the  
12 commodity itself or on a shelf tag that corresponds to that commodity or the price for the  
13 commodity published in any manner, including, but not limited to, a flyer, newspaper,  
14 magazine, television, direct mail publication or on the internet or on any website. Nothing herein  
15 will be construed to mean that a consumer will be eligible for an Advertised Price if he or she  
16 fails to qualify under any limitations or terms disclosed in conjunction with the Advertised  
17 Price, so long as such terms are clearly and conspicuously disclosed.

18 b. **“Enjoined Persons”** means CVS and its successors, assigns, and all  
19 persons, corporations or other entities acting in concert or participation with CVS, individually,  
20 who have actual knowledge of this judgment.

21 c. **“Price Scanning System”** means an automated system by which a  
22 marking or tag affixed to a shelf label or an item offered for sale to the public is electronically  
23 scanned at the Point of Sale ("POS") terminal to determine the identity of the item and the price  
24 to be charged for the item.

25 d. **“POS Price”** means the price of an item when it is scanned at the POS  
26 using the Price Scanning System.

27 e. **“Pricing Discrepancy”** means a variance between the Advertised Price  
28 and the POS Price. For purposes of this Final Judgment Pursuant to Stipulation, a Pricing



1 Discrepancy shall not include (1) situations where the variance between the Advertised Price  
2 and the POS Price is consistent with a clear and conspicuous price correction notice notifying  
3 customers of an incorrect Advertised Price; (2) any variance between an Advertised Price and  
4 the POS Price when merchandise has been correctly stocked but inadvertently moved,  
5 transferred or transported to the wrong rack, shelf, display, or fixture; or (3) any variance that  
6 results in a consumer being charged a price lower than the Advertised Price.

7 f. **“Report of Pricing Discrepancy”** means a report to CVS store personnel  
8 of a Pricing Discrepancy by any customer, CVS employee or employee or agent of a  
9 government agency.

10 g. **“Weights and Measures Official”** means any representative of (1) the  
11 State of California Division of Measurement Standards, (2) any California County Sealer, (3)  
12 any Director of a California County Department of Agriculture, (4) the California Attorney  
13 General, or (5) any California district or city attorney.

14 **INJUNCTIVE RELIEF**

15 4. Pursuant to Business and Professions Code sections 17203 and 17535, Enjoined  
16 Persons, and each of them, are permanently enjoined and restrained from directly or indirectly  
17 engaging in any of the following acts or practices:

18 a. Making or causing to be made to the public any statement representing a  
19 price for an item or items offered for sale, including, but not limited to, statements made  
20 on a store shelf or sign relative to the item, and charging a greater price at the time the  
21 item is purchased.

22 b. Charging at the time of sale of a commodity an amount greater than the  
23 lowest price that is advertised, posted, marked, displayed or quoted for that item, in violation of  
24 Business and Professions Code section 12024.2.

25 c. Violating Business and Professions Code section 17500.

26 d. Violating Civil Code section 1770(a)(17).

27 5. **SCANNER ACCURACY.** Commencing within ninety (90) days from the date  
28 of entry of this Final Judgment Pursuant to Stipulation and continuing thereafter for a period of

1 three (3) years, to the extent it has not already done so, CVS will initiate and administer a price  
2 scanning accuracy program in its California CVS Pharmacy stores that has the following  
3 elements:

4           a.       **Policies and Procedures.** CVS shall adopt a written set of pricing  
5 accuracy policies and procedures ("Policies and Procedures") that incorporate the provisions of  
6 this Final Judgment Pursuant to Stipulation, as well as the provisions of Business and  
7 Professions Code section 17500, Business and Professions Code section 12024.2 and Civil Code  
8 section 1770(a)(17) which shall be maintained in a Pricing Compliance Binder ("PCB")  
9 maintained in each CVS store in California.

10           b.       **Signature and Acknowledgement.** All California CVS store managers  
11 and the individuals designated as the PAD and PACs (pursuant to subsections (c)(i) and (c)(ii)  
12 below) shall be required to read the Policies and Procedures and sign an acknowledgement that  
13 they have done so. CVS shall confirm its compliance with this provision by providing a sworn  
14 declaration to that effect, executed by the Area Vice President charged with responsibility for  
15 the California stores, to Carolyn Nakaki, Los Angeles County District Attorney's Office, 201 N.  
16 Figueroa Street, Suite 1200, Los Angeles, CA 90012, by certified mail no later than one hundred  
17 twenty (120) days from the entry of the Final Judgment Pursuant to Stipulation.

18           c.       **Appointment of Pricing Personnel.**

19           i.       **Corporate pricing personnel.** CVS shall designate one  
20 individual (the "Price Accuracy Director" or "PAD") who, in addition to any other  
21 duties, shall be responsible for overseeing with respect to all stores in California: (1) the  
22 maintenance of accurate prices in the Price Scanning System, (2) price changes, and (3)  
23 prompt reporting, research, and resolution of Pricing Discrepancies in the system or  
24 stores. The PAD may delegate duties to other CVS employees, appoint "back-up" PADs,  
25 or retain third-party providers as the PAD deems reasonable and appropriate to assist  
26 with the PAD's responsibilities.

27           ii.       **In-store pricing personnel.** The store manager of each California  
28 CVS store shall either act as the store's Price Accuracy Coordinator ("PAC") or shall

1 appoint other personnel to so act. The duties of a PAC shall be to oversee pricing  
2 accuracy in that store, including, but not limited to, the correction of signage errors and  
3 the conduct of in-store reviews, as well as promptly communicating pricing errors to  
4 appropriate personnel and the PAD. The PAC may delegate duties to other CVS  
5 employees, appoint "back-up" PACs or retain third-party providers as the PAC deems  
6 reasonable and appropriate to assist with the PAC's responsibilities.

7 d. **In-Store Price Inspections by CVS Personnel.** Every PAC shall have a  
8 program of in-store price inspections to be conducted by a CVS employee or employees on a  
9 weekly basis.

10 i. The in-store price inspection shall consist of no less than fifty (50)  
11 items selected without bias from items whose prices were altered in the previous seven  
12 (7) days.

13 ii. If any Pricing Discrepancy is uncovered, the employee(s) will take  
14 the necessary steps promptly to correct the Pricing Discrepancy.

15 iii. At the conclusion of the price check, the employee(s) shall inform  
16 the PAC of the results.

17 iv. Upon being informed of any Pricing Discrepancy found in the  
18 inspection, the PAC shall confirm that the necessary steps to correct it have been  
19 completed.

20 v. On a monthly basis, the PAC shall notify the PAD of any pricing  
21 errors found by reason of the price inspections, and the PAD shall act in good faith to  
22 ascertain that the appropriate action has been taken to determine the cause of the error(s)  
23 and correct them.

24 vi. The employee(s) conducting the price check shall record, and the  
25 PAC shall record and retain as provided in the "Retention of Records" provision herein,  
26 the following information (1) the date of inspection, (2) the name of the person  
27 conducting the inspection, and (3) the items found to be in error.  
28

1 e. **Sign Takedown Inspections.** On a weekly basis, the PAC shall conduct  
2 an inspection to verify that the promotional sign takedown process was properly completed. The  
3 inspection will consist of a review of all promotional signs in one aisle chosen arbitrarily from  
4 each quadrant of the store (i.e. a total of four (4) aisles will be inspected each week). The PAC  
5 shall record and retain as provided in the "Retention of Records" provision herein, the following  
6 information: (1) the date of the inspection and (2) the number of expired signs, if any, found.

7 f. **End Cap Inspections.** Once each week, the PAC shall conduct an end-  
8 cap pricing accuracy inspection. The inspection shall consist of at least six (6) end caps that  
9 have been changed in the past week in conjunction with the weekly advertisements and will be  
10 for the purpose of verifying that all items are priced accurately. The PAC shall record and retain,  
11 as provided in the "Retention of Records" provision herein, the following information: (1) the  
12 date of the inspection and (2) the number of errors, if any, found.

13 g. **In-Store Reports of Pricing Discrepancies.** Whenever a CVS store  
14 employee receives a Report of Pricing Discrepancy, the employee shall promptly investigate or  
15 cause to be investigated whether there is an error. If the employee investigating the Report of  
16 Pricing Discrepancy is someone other than the PAC and determines that a Pricing Discrepancy  
17 exists, the employee shall notify the PAC. The PAC shall take appropriate action to resolve the  
18 Pricing Discrepancy. CVS shall correct the Pricing Discrepancy within twenty-four (24) hours.  
19 The PAC shall keep a record of all Pricing Discrepancies reported by customers or employees,  
20 including a statement of the cause of the discrepancy, if known. The records shall be maintained  
21 as provided in the "Retention of Records" provision herein.

22 h. **Reports of Pricing Discrepancies to the PAD.** If a system error at the  
23 corporate level is verified, the PAD shall take reasonable steps to correct the system error within  
24 forty-eight (48) hours of verifying it and shall keep a record (which may be in electronic format)  
25 that s/he has done so. These records shall be maintained as provided in the "Retention of  
26 Records" provision herein.

27 i. **Records of Consumer Complaints.** Within thirty (30) business days of a  
28 written request to the PAD, any records of California consumer complaints regarding pricing

1 errors, as well as any corrective action taken by CVS regarding such complaints, for up to and  
2 including the preceding twelve (12) months, shall be made available to any Weights and  
3 Measures Official requesting it.

4           j.       **Employee Training.** All employees shall participate in training sessions  
5 not less than twice each year. The training will include at least the following topics to improve  
6 price accuracy:

7                   i.       Price accuracy awareness.

8                   ii       How to insure that the correct prices are consistently displayed  
9 and charged.

10                  iii.       How to respond to price accuracy issues raised by customers.

11                  iv.       Where to direct customers to find information on the details of the  
12 ExtraCare® program, Extra Bucks® rewards, or any similar discount program.

13       6.       **INCENTIVE PROGRAM.** Commencing within ninety (90) days and  
14 continuing for a period of three (3) years from the date of entry of this Final Judgment Pursuant  
15 to Stipulation, CVS shall implement a “Scan-right” guarantee program in its California stores as  
16 follows:

17           a.       Whenever CVS becomes aware at the time of sale that an item has  
18 scanned at a price higher than the lowest shelf or advertised price, CVS shall provide one of the  
19 following remedies to the customer:

20                   i.       If the item’s lowest advertised selling price is two dollars (\$2.00)  
21 or less, the item shall be given free to the customer.

22                   ii.       If the item’s lowest advertised selling price is greater than two  
23 dollars (\$2.00), the customer shall receive a two dollar (\$2.00) deduction from the item’s  
24 lowest advertised selling price.

25                   iii.       Where the transaction involves multiple same-item purchases, the  
26 customer shall receive the two dollar (\$2.00) reward on the first item only, and the  
27 lowest advertised, posted, marked or quoted price shall apply to the remainder of the  
28 items.

1           The program shall not apply to alcohol, tobacco, or dairy products, prescription  
2 drugs, or any other items where California law restricts the application of such discounts.

3           b.       CVS shall inform customers of its program by posting signage that is  
4 clearly visible and legible to customers in the check stand areas. The signs shall state in words  
5 or substance: **“CVS SCAN-RIGHT GUARANTEE. CVS IS COMMITTED TO**  
6 **ACCURATE PRICING! IF AN ITEM SCANS HIGHER THAN THE ADVERTISED**  
7 **PRICE, WE WILL DO THE FOLLOWING\*: ITEMS UP TO \$2 WILL BE YOURS**  
8 **FREE. ITEMS OVER \$2 WILL BE \$2 OFF.** \*Includes only first item on multiple same-item  
9 purchases, and does not apply if a price error notice was already posted. Excludes alcohol,  
10 tobacco, dairy products, and prescription drugs.”

11           c.       CVS employees will not be eligible for the incentive program. In  
12 addition, the customer will not be entitled to any of these remedies if a CVS employee corrects  
13 the price prior to the customer complaint or notification; if the merchandise had been  
14 inadvertently moved to an incorrect shelf or display; or if a clear and conspicuous price error  
15 notice was posted prior to the customer presenting the item at the check-out counter.

16           7.       **RETENTION AND USE OF RECORDS.** Commencing within ninety (90)  
17 days and continuing for a period of three (3) years from the date of entry of this Final Judgment  
18 Pursuant to Stipulation, CVS shall:

19           a.       Establish procedures to retain records required by this Stipulated Final  
20 Injunction for at least one (1) year. Such records may be retained centrally and electronically  
21 maintained rather than in hard copy, and shall be made available by to any requesting Weights  
22 and Measures Official within ten (10) business days if feasible, but no later than thirty (30)  
23 business days from the date of the request.

24           b.       Defendants shall maintain a sample of all ad copy and advertisements  
25 placed in any advertising medium in California, whether mail solicitation, newspaper, radio or  
26 television for a period of three (3) years from the date the ad is placed or disseminated.

27           c.       Any records CVS creates or maintains pursuant to this Final Judgment  
28 Pursuant to Stipulation shall not constitute a basis for a subsequent proceeding against any



1 Enjoined Persons absent independently obtained evidence of the specific violation(s) charged,  
2 except that such records shall be admissible in subsequent proceedings by the People of the  
3 State of California for the sole purpose of establishing compliance or failure of compliance with  
4 the provisions of Paragraphs 5.

5 **TIMING**

6 8. Unless otherwise delineated in the Final Judgment Pursuant to Stipulation, all  
7 corrective action with respect to advertising must be completed no later than October 30, 2011.

8 **MONETARY RELIEF**

9 9. CVS shall pay to Plaintiff the total amount of TWO MILLION TWENTY  
10 THOUSAND SEVEN HUNDRED FIFTY SIX AND 20/100 DOLLARS (\$2,020,756.20),  
11 allocated as follows: civil penalties in the amount of ONE MILLION TWO HUNDRED  
12 THOUSAND DOLLARS (\$1,200,000); *cy pres* restitution in the amount of FOUR HUNDRED  
13 THOUSAND DOLLARS (\$400,000); and court fees and costs of investigation in the amount of  
14 FOUR HUNDRED TWENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 20/100  
15 DOLLARS (\$420,756.20) as enumerated below:

16 a. Civil penalties totaling ONE MILLION TWO HUNDRED THOUSAND  
17 DOLLARS (\$1,200,000) to the following entities:

18 Los Angeles County District Attorney's Office	\$400,000
19 Ventura County District Attorney's Office	\$400,000
20 Riverside County District Attorney's Office	\$400,000

21 b. Recognizing the infeasibility of identifying consumers who suffered  
22 actual loss, the impracticality of providing direct restitution to said consumers, and the  
23 disproportionate cost of making restitution to individual consumers, which would far exceed the  
24 benefit consumers would gain, the parties agree that defendant shall pay, pursuant to Business  
25 and Professions Code sections 17203 and 17535, *cy pres* restitution in the sum of FOUR  
26 HUNDRED THOUSAND DOLLARS (\$400,000), the purpose of this \$400,000 *cy pres*  
27 payment is remedial and not punitive, with THREE HUNDRED THOUSAND DOLLARS  
28 (\$300,000) to be paid to the California Department of Food and Agriculture, Division of



1 Measurement Standards, to be used for the “price verification” program, and ONE HUNDRED  
 2 THOUSAND DOLLARS (\$100,000) to be paid to the Consumer Protection Prosecution Trust  
 3 Fund established in the case of *People v. ITT Consumer Financial Corporation* (Alameda  
 4 Superior Court Case No 656038-0) payable as follows:

5	California Department of Measurement Standards	\$300,000
6	ITT Consumer Protection Trust Fund	\$100,000

7 c. Court fees and costs of investigation in the amount of FOUR HUNDRED  
 8 TWENTY THOUSAND SEVEN HUNDRED FIFTY-SIX AND 20/100 DOLLARS  
 9 (\$420,756.20) to the following entities by remitting separate and individual checks payable to  
 10 the listed entities in the amounts described below:

11 Filing fees:

12	Los Angeles County Superior Court	\$ 395.00
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13 Costs of Investigation:

14	Amador County Division of Weights and Measures	\$ 199.88
15	CDFA , Division of Measurement Standards	\$ 24,675.00
16	Contra Costa County Division of Weights and Measures	\$ 7,267.50
17	Glenn County Division of Weights and Measures	\$ 155.68
18	Humboldt County Department of Agriculture	\$ 650.80
19	Lake County Division of Weights and Measures	\$ 165.91
20	Los Angeles County Division of Weights and Measures	\$ 223,196.95
21	Madera County Division of Weights and Measures	\$ 255.15
22	Marin County Division of Weights and Measures	\$ 3,108.08
23	Orange County Agricultural Commissioner	\$ 8,694.00
24	Riverside County, Division of Weights and Measures	\$ 25,967.06
25	Sacramento County, Division of Weights and Measures	\$ 4,800.00
26	San Bernardino County, Division of Weights and Measures	\$ 19,572.00
27	San Diego County, Division of Weights and Measures	\$ 26,704.67
28	San Joaquin County, Division of Weights and Measures	\$ 1,381.60

1	San Luis Obispo County Dept of Agriculture/Weights and Measures	\$	1,590.00
2	San Mateo County, Dept of Agriculture/Weights and Measures	\$	1,725.94
3	Santa Barbara County Division of Weights and Measures	\$	5,960.00
4	Santa Clara County Weights and Measures Division	\$	31,954.33
5	Santa Cruz County Department of Weights and Measures	\$	1,196.00
6	Shasta County Department of Weights and Measures	\$	864.16
7	Solano County, Dept of Agriculture/Weights and Measures	\$	348.00
8	Sonoma County Sealer of Weights and Measures	\$	2,111.50
9	Stanislaus County Sealer of Weights and Measures	\$	1,728.99
10	Tulare County Weights and Measures	\$	552.00
11	Ventura County Weights and Measures	\$	25,536.00
12	<b>TOTAL COURT FEES AND COSTS OF INVESTIGATION:</b>	<b>\$</b>	<b>420,756.20</b>

13           d.       At the time the Final Judgment Pursuant to Stipulation is presented to the  
14 court, defendant shall submit corporate, certified or cashier's checks representing full payment  
15 of civil penalties and fees. Within ten days of entry of the Final Judgment Pursuant to  
16 Stipulation, defendant shall submit the costs of investigation and *cy pres* restitution identified in  
17 paragraphs 9(b) and (c). The penalties, *cy pres* restitution, and costs of investigation to be  
18 deposited only upon the signing of the Final Judgment Pursuant to Stipulation, and returned if  
19 the Final Judgment Pursuant to Stipulation is not signed. Said checks shall be submitted to  
20 Carolyn Nakaki, Deputy District Attorney, Los Angeles County District Attorney's Office,  
21 Consumer Protection Division, 201 North Figueroa Street, Suite 1200, Los Angeles, California  
22 90012.

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**JURISDICTION RETAINED**

10. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment Pursuant to Stipulation to apply to the Court at any time, for such further orders and direction as may be necessary and appropriate for the construction, modification or carrying out of the injunctive provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

Dated: AUG 17 2011, at Los Angeles, California.

**MAUREEN DUFFY-LEWIS**

\_\_\_\_\_  
Judge of the Superior Court  
County of Los Angeles