

June 29, 2009

Hon. Joseph R. Biden, III  
Attorney General of the State of Delaware  
Carvel State Office Building  
820 N. French St.  
Willmington, DE 19801

Dear Attorney General Biden:

As you may be aware, CVS/pharmacy, the country's largest drugstore chain, has recently settled charges by the California Attorney General that CVS "routinely sold expired baby formula, over-the-counter medication and dairy products long after the expiration date,"<sup>1</sup> in violation of California's consumer protection laws. CVS signed a stipulated judgment (enclosed) that gives Californians enhanced protections from the potential hazards of expired products.

Under the judgment, CVS is now required to check all its California stores for expired products at least twice a month; conduct random audits for expired products in California stores twice a year; and provide compensation to each consumer who locates expired goods on CVS shelves in California. CVS also paid penalties totaling almost \$1 million.

There is evidence that CVS's sale of expired products is a widespread problem for consumers around the country. Surveys in more than 2,000 CVS stores in 17 states and the District of Columbia have shown that CVS has a pattern of selling expired products. Surveyors have found expired products at over 800 CVS stores in every state checked. Journalists from Philadelphia<sup>2</sup> to Houston<sup>3</sup> have found expired products on CVS shelves in recent months.

We hope you agree that the people of Delaware deserve the same level of protection as California residents from CVS's pattern of offering expired products for sale.

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<sup>1</sup> Office of the Attorney General, "Brown Forces CVS Pharmacy to Provide Customers a \$2 coupon if they find expired products on shelves" (press release) June 10, 2009. Available online at

[http://ag.ca.gov/newsalerts/print\\_release.php?id=1752](http://ag.ca.gov/newsalerts/print_release.php?id=1752)

<sup>2</sup> Joyce Evans, Fox 29 News, Philadelphia, January 6, 2009, available online at:

<http://www.myfoxphilly.com/myfox/pages/Home/Detail;jsessionid=1FCB5441F235ADE66099AD39F9FEFCA2?contentId=8205523&version=2&locale=EN-US&layoutCode=VSTY&pageId=1.1.1&sflg=1> (last viewed February 15, 2009); Transcript available at <http://www.curecvsnow.com/blog/2009/01/expired-goods-on-cvs-shelves-in-philadelphia.html>

<sup>3</sup> Brad Woodard, "Study: CVS is selling expired products," KHOU/Channel 11 News, Houston, June 19, 2009. Available online at [http://www.khou.com/news/local/stories/khou090618\\_jj\\_cvs-dated-drugs.2c20765.html](http://www.khou.com/news/local/stories/khou090618_jj_cvs-dated-drugs.2c20765.html) (last viewed June 20, 2009).

The New York State Attorney General has also taken enforcement action to protect New York consumers from expired goods at CVS. The Attorney General has filed a lawsuit charging that CVS has repeatedly sold expired products in the state, violating federal, state and local laws and breaking a 2003 assurance of voluntary compliance stemming from charges that CVS had sold expired over-the-counter medications. The New York suit seeks restitution for consumers who have purchased expired goods, disgorgement of revenues from the sale of expired products, civil penalties and independent random compliance checks to ensure that CVS stops selling expired products. The complaint, as well as the 2003 Assurance of Voluntary Compliance, is enclosed.

The potential hazards of expired infant formula and medication are well documented. The website of the infant formula trade group, the International Formula Council, notes that "after the expiration date, some vitamin levels decrease,"<sup>4</sup> and Baylor College of Medicine Pediatrician Sara Rizzi says "Expired formula can accumulate moisture and have problems with spoilage and mold."<sup>5</sup> CVS's own website warns that "Expired medications may not work as well for you, or may even be harmful."<sup>6</sup>

We urge you to investigate the CVS stores in Delaware and require the company to meet the strict, judicially enforceable standards they now must operate under in California if you determine if CVS is exposing shoppers to expired medications, infant formula or food products.

Sincerely,



Ahmer Qadeer  
Director, Pharmacy Initiatives  
917/207-8515

Enclosures:

Stipulation for Entry of Final Judgment, *People of the State of California v. CVS Pharmacy Inc.*, Case No. 37-2009-00001517.

Complaint for Injunction, Civil Penalties and Other Equitable Relief, *People of the State of California v. CVS Pharmacy Inc.*, Case No. 37-2009-00001517.

Verified Petition, *People of the State of New York v. CVS Corp* Case No. 402931-08.

Assurance of Voluntary Compliance, *In the Matter of CVS Corporation*.

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<sup>4</sup> See <http://www.infantformula.org/faqs.html#10>

<sup>5</sup> Carolyn Canville, "Are Some Stores Carrying Expired Items?" March 25, 2009, Fox 26/Houston news broadcast. Available online at: [http://www.myfoxboston.com/dpp/news/consumer/090325\\_expired\\_baby\\_formula](http://www.myfoxboston.com/dpp/news/consumer/090325_expired_baby_formula)

<sup>6</sup> See [http://www.cvs.com/CVSApp/health/consultation\\_corner\\_from\\_the\\_rx\\_article.jsp?content\\_id=600490&articleName=Safe+Medication+Storage+at+Home](http://www.cvs.com/CVSApp/health/consultation_corner_from_the_rx_article.jsp?content_id=600490&articleName=Safe+Medication+Storage+at+Home)