

June 26, 2009

Hon. Greg Abbott  
Attorney General of the State of Texas  
Capital Station, P.O. Box 12548  
Austin, TX 78711-2548

Dear Attorney General Abbott:

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.

Change to Win has recently documented that CVS has sold expired products in Texas. In February, surveyors observed expired dairy, infant formula and/or over-the-counter medications at 31 of 34 CVS stores visited in the Greater Houston – over 90% of those visited. Examples include:

- A container of Nesquik Strawberry milk that was over two weeks past its February 11, 2009 expiration date at the CVS at 2700 W. Main Street in League City.
- At the CVS store at 9522 Broadway Street in Pearland, a container of Nutramigen Lipil infant formula that had expired over a year before, on January 1, 2008.
- A box of CVS-brand Non-Drowsy Nasal Decongestant that was two years past its March 2007 'sell by' date, purchased at the CVS at 5510 W. Orem Drive in Houston.

In early June, after community activists warned consumers about CVS's problems with expired products in Greater Houston, surveyors visited 20 CVS stores to investigate whether CVS had removed expired goods from its shelves. Expired infant formula or medications were found on the shelves of all 20 stores. Products found included a package of CVS Non-Drowsy Allergy Relief over *three years* past its expiration date (October 2005), purchased at the CVS store at 6161 Telephone Road in Houston.

We hope you agree that the people of Texas 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)

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>2</sup> and Baylor College of Medicine Pediatrician Sara Rizzi says, "Expired formula can accumulate moisture and have problems with spoilage and mold."<sup>3</sup> CVS's own website warns that "Expired medications may not work as well for you, or may even be harmful."<sup>4</sup>

We believe our recent findings of expired goods on Houston-area CVS shelves suggest that now is the time for a full-scale investigation by your office to secure for consumers the same protections afforded by the strict, judicially enforceable standards CVS now must operate under in California. Please contact me if you would like to review a full list of the products purchased during our Texas surveys or samples of the actual 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>2</sup> See <http://www.infantformula.org/faqs.html#10>

<sup>3</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>4</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)