

June 26, 2009

Hon. Peter Nickles
Attorney General of the District of Columbia
John A. Wilson Bldg.,
1350 Pennsylvania Ave., NW, Suite 409
Washington, DC 20009

Dear Attorney General Nickles:

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,"¹ 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 to consumers in Washington. In May, surveyors purchased expired dairy, infant formula and/or medications at 17 stores in the District, many of them significantly outdated. Examples of expired products purchased include:

- CVS brand Non-Drowsy Allergy Relief tablets that had been expired more than nine months when purchased May 12 at the CVS at 1716 G Street NW.
- Enfamil A.R. Lipil infant formula that was likewise over nine months outdated when bought at the CVS at 845 Benning Road NE on May 10.
- Shenandoah's Pride whole milk that had expired May 9 but was purchased May 12 at the 410 M Street NW CVS.

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

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

¹ 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

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

We believe our recent findings of expired goods on CVS shelves in the District of Columbia 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 Washington 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*.

² See <http://www.infantformula.org/faqs.html#10>

³ 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

⁴ See http://www.cvs.com/CVSAApp/health/consultation_corner_from_the_rx_article.jsp?content_id=600490&articleName=Safe+Medication+Storage+at+Home