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**FILED**  
Superior Court of California  
County of Los Angeles

DEC 20 2017

\*

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ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
CVS PHARMACY, INC., a Rhode Island Corporation,  
  
Defendant.

Case No.: BC 582179  
  
FINAL JUDGMENT AND PERMANENT  
INJUNCTION PURSUANT TO  
STIPULATION TO MODIFY JUDGMENT  
OF MAY 20, 2015

12/22/2017

1           1.     THE PEOPLE OF THE STATE OF CALIFORNIA (the "People" or "Plaintiff")  
2 by and through its attorneys, Jackie Lacey, District Attorney of Los Angeles County, by Deputy  
3 District Attorney Leonard Torrealba; Jeffrey Rosell, District Attorney of Santa Cruz County, by  
4 Assistant District Attorney Edward T. Browne; and Michael Hestrin, District Attorney of  
5 Riverside County, by Senior Deputy District Attorney Elise Farrell; and Defendant, CVS  
6 PHARMACY, INC. ("Defendant" or "CVS"), by and through its attorney, Dana Barbeau , do  
7 hereby consent to the entry of this Final Judgment, all parties having waived the right to appeal,  
8 and having approved this Final Judgment as to form and content, and good cause appearing:

9   **BACKGROUND**

10           2.     On May 20, 2015, a Final Judgment (the "Original Final Judgment") was ordered  
11 based upon a Complaint filed by the People against Defendant CVS PHARMACY, INC. The  
12 People and the Defendant shall be referred to collectively as "Parties."

13           3.     Subsequent to the Original Final Judgment, the People discovered alleged violations  
14 of Business and Professions Code sections 17500 and 12024.2, and issues with the implementation  
15 of the Pricing Accuracy Program ordered in the Original Final Judgment. Defendant has  
16 implemented an enhanced Pricing Accuracy Program and the Parties have consented to modify the  
17 Original Final Judgment pursuant to the Stipulation for Entry of Final Judgment filed concurrently  
18 with this Final Judgment.

19   **JURISDICTION**

20           4.     This action is brought under California law, and this Court has jurisdiction of the  
21 subject matter and the parties.

22   **APPLICABILITY**

23           5.     This Final Judgment is applicable to CVS, its officers, directors, employees,  
24 representatives, successors, and assignees.

25   **DEFINITIONS**

26           6.     For the purposes of this Final Judgment, the following definitions shall apply:  
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1 a. “**advertised price**” means the price that is posted or displayed on an item  
2 itself or on a shelf tag that corresponds to that item or the price for the item published in any  
3 manner, including, but not limited to, a flyer, newspaper, magazine, or direct mail publication.  
4 Nothing herein will be construed to mean that a consumer will be eligible for an advertised  
5 price if he or she fails to qualify under any limitations or terms disclosed in conjunction with the  
6 advertised price, so long as such terms are clearly and conspicuously disclosed. However, any  
7 advertised price posted on an item itself or on a shelf tag that corresponds to that item is subject  
8 to Business and Professions Code section 12024.2, subdivision (a) (2).

9 b. “**Original Effective Date**” means May 20, 2015..

10 c. “**Modified Effective Date**” means the date this Final Judgment is entered  
11 by the Court.

12 d. “**CVS**” means CVS Pharmacy Inc.; Garfield Beach CVS, L.L.C.; and  
13 Longs Drug Stores California, L.L.C.

14 **INJUNCTION**

15 7. Pursuant to Business and Professions Code sections 17203 and 17535, CVS is  
16 permanently enjoined and restrained, with respect to any and all retail locations doing business as  
17 CVS/pharmacy in California (hereinafter “California Stores”), from committing, directly or  
18 indirectly, any or all of the following acts or omissions:

19 a. Violating Business and Professions Code section 12024.2, subdivision  
20 (a)(1) or subdivision (a)(2).

21 b. Violating Business and Professions Code section 17500.

22 c. Failing to comply with Civil Code section 1749.5.

23

24 **PRICING ACCURACY PROVISIONS**

25 8. Commencing within thirty (30) days of the Original Effective Date and continuing  
26 thereafter for a period of three (3) years after the Original Effective Date, to the extent it has not

27

1 already done so, CVS will initiate and administer a price scanning accuracy program in its  
2 California Stores that has the following elements:

3 a. CVS shall adopt a written set of pricing accuracy policies and procedures  
4 (“Policies and Procedures”) designed to ensure compliance with the provisions of this Final  
5 Judgment, as well as the provisions of Business and Professions Code section 17500 and  
6 Business and Professions Code section 12024.2, for use in California Stores.

7 b. All CVS employees working in California Stores shall participate in  
8 training sessions not less than twice each year. The training will include the following topics, at  
9 minimum, to improve price accuracy and ensure compliance with the provisions of this Final  
10 Judgment:

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

23 c. CVS shall keep records of the training sessions conducted pursuant to  
24 paragraph 8(b) for a period of three (3) years from the date of training. The records shall  
25 include, but are not limited to, completion records, training presentations or any other  
26 instructional material.

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

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

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

12                   ii.       Verification of Scan-Right Message: The audit shall include testing  
13 to determine whether the Scan-Right Message is visible on a store’s point-of-sale reader, and  
14 posted or displayed, as required by paragraph 11.

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

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

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

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

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1 e. Any records CVS creates or maintains pursuant to this Final Judgment  
2 shall not constitute a basis for a subsequent proceeding against CVS, except that such records  
3 shall be admissible in subsequent proceedings for the sole purpose of establishing compliance or  
4 failure of compliance with the requirements set forth in paragraphs 8(b) and 9(a)(i)-(ii) of this  
5 Final Judgment.

6 f. The Auditor shall conduct the Quarterly Audits for a period of three (3)  
7 years from the Modified Effective Date.

8 g. All Quarterly Audits must be unannounced. Stores shall not communicate  
9 with each other regarding Quarterly Audits, unless directed to do so by a Regional Manager.

10 h. Commencing within 90 days from the Modified Effective Date, Quarterly  
11 Audits shall document overcharges and undercharges separately for each store.

12 i. Commencing within 90 days from the Modified Effective Date and for a  
13 period of three (3) years from the Modified Effective Date, California Stores that receive notice  
14 of a weights and measures failed inspection with overcharges or that fail a Quarterly Audit with a  
15 percentage of greater than 2% overcharges shall be placed on a monthly audit schedule for six  
16 (6) months following the failed inspection or Quarterly Audit ("Monthly Audit"). The Monthly  
17 Audit shall follow the standard audit protocol used by CVS for non-California Stores.

18 10. Nothing in this Final Judgment shall in any way prevent CVS from developing,  
19 testing or implementing additional new or different systems or measures regarding the subjects  
20 covered by this Final Judgment in order to ensure compliance with the provisions of this Final  
21 Judgment.

22 11. Within 45 days after entry of this Final Judgment, pursuant to Business and  
23 Professions Code sections 17203 and 17535, and continuing for a period of three (3) years from the  
24 Original Effective Date, CVS shall implement and institute in all California Stores, a "Scan Right  
25 Guarantee Program" as follows:

26 If the price charged for an item priced at \$4.00 or less is higher than CVS's

27 lowest applicable advertised price, CVS shall immediately give the customer

1 the item for free or, if the item's lowest applicable advertised price is over  
2 \$4.00, give the customer \$4.00 cash and refund any excess amount collected  
3 for the item, if applicable.

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

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

7 b. As used herein, "lowest applicable advertised price" means the lowest price  
8 offered to the public for the item at the store at which the item is scanned, including applicable  
9 advertised CVS coupons and discounts, provided the customer qualifies for the advertised price  
10 under any limitations or terms disclosed in conjunction with the advertised price.

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

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

15 e. This program shall not include:

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

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

20 iii. Where CVS corrects the price prior to any attempt to charge the  
21 customer for the item.

22 With respect to subparagraph 11(e), Defendant bears the burden of establishing  
23 that the program was not applicable to the transaction.

24 f. The Scan-Right Guarantee shall be effective for a period of three (3)  
25 years from the Modified Effective Date.

26 g. All employees must be trained on the Scan-Right Guarantee on a semi-  
27 annual basis.

1           12. By no later than forty-five (45) days after the Original Effective Date, 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 Original Effective Date, 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           13. The Scan-Right Guarantee Program pursuant to paragraphs 11 and 12 shall be  
16 communicated by:

17                   a. Effective 90 days from the Modified Final Judgment, posting at each point-  
18 of-sale that is in use, a notice substantially in the form attached hereto as Exhibit A and containing  
19 the Scan-Right Guarantee. Notwithstanding the foregoing, this Final Judgment shall not be  
20 construed as an endorsement or approval of the additional policies included in such notice.

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

24                   c. In the event that at some future date, CVS implements retail check-out  
25 procedures which do not utilize an electronic medium that reasonably accommodates the Scan  
26 Right Guarantee, CVS shall provide notice of the Scan-Right Guarantee in a manner that is clear  
27 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  
2 store or posting a sign at least 8" x 10" on a side panel directly adjacent to the entry door of the  
3 store, 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  
5 display a poster near the entry door of the store that is clearly viewable by customers entering the  
6 store or display a notice at each point of sale.

7 14. California Pricing Coordinators:

8 a. For a period of three (3) years following the Effective Date of the Modified  
9 Judgment, CVS shall employ two people who shall have the responsibility to oversee pricing in  
10 stores throughout California. There shall be a person designated for Northern California as the  
11 Northern California Pricing Coordinator (NCPC) and a person designated for Southern California  
12 as the Southern California Pricing Coordinator (SCPC). The NCPC shall be a Northern California  
13 Regional Manager and the SCPC shall be a Southern California Regional Manager.

14 b. All store managers of California Stores shall be responsible for pricing  
15 accuracy in their stores and shall receive a copy of the Injunctive provisions of this Final Judgment.

16 c. For a period of three (3) years following the Effective Date of the Modified  
17 Judgment, CVS shall require the person or persons at its corporate headquarters responsible for  
18 receiving and maintaining Quarterly Audit results, consumer complaints, and weights and  
19 measures violations from all CVS Stores in California to report to the NCPC and the SCPC any  
20 store that fails a Quarterly Audit for any reason is issued any notice of violation from a weights and  
21 measures official resulting from overcharges, or consumer complaints regarding pricing accuracy  
22 in a CVS Store in California.

23 d. For a period of three (3) years following the Effective Date of the Modified  
24 Judgment, with respect to their respective regions, in addition to any other duties, the NCPC and  
25 the SCPC shall review (a) every two weeks, a report prepared by CVS's customer relations team of  
26 consumer complaints regarding pricing discrepancies in California Stores, (b) monthly, notices of  
27

1 violation resulting from overcharges from any California weights and measures official, and (c)  
2 quarterly, California Stores that had overcharges of 2% or more in a Quarterly Audit.

3 e. For a period of three (3) years following the Effective Date of the Modified  
4 Judgment, CVS shall require the NCPC and the SCPC to review the written plan contemplated by  
5 subparagraph 7(b) with the relevant district and store managers for any store that (a) had more than  
6 2% overcharges in a Quarterly Audit or (b) is issued any notice of violation resulting from  
7 overcharges from a weights and measures official, to ensure that all issues are corrected.

8 f. The names and contact information for the NCPC and SCPC shall be sent  
9 to each of the District Attorney's Office that are a party to this matter, attention to the Consumer  
10 Protection Unit c/o Leonard J. Torrealba at Los Angeles District Attorney's office; Edward T.  
11 Browne at the Santa Cruz District Attorney's office; and Elise J. Farrell at the Riverside District  
12 Attorney's office within 90 days of the entry of this Modified Judgment. Should personnel  
13 change, all information required by this paragraph shall be updated within 60 days of the  
14 personnel change.

15 **MONETARY RELIEF**

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

20 a. The following amounts shall be paid as costs to the below-listed agencies as  
21 follows:

<b><u>Investigation Costs</u></b>	<b><u>Amount</u></b>
Santa Cruz County Department of Weights and Measures	\$620.00
Los Angeles County Department of Weights and Measures	\$25,759.48
Contra Costa County Department of Weights and Measures	\$5,206.00
Orange County Department of Weights and Measures	\$5,000.00
Riverside County Department of Weights and Measures	\$10,352.00

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1 Ventura County Department of Weights and Measures \$4,750.00

2 All checks pursuant to this paragraph shall be sent to the Riverside County District Attorney's  
3 office, attn.: Heather White, SPS unit, 3960 Orange Street, Riverside, CA, 92501.

4 b. The total amount of \$485,000.00 shall be paid as additional civil penalties  
5 by equal checks made payable to the District Attorney's Office of Riverside, Santa Cruz, and Los  
6 Angeles Counties. All checks pursuant to this paragraph shall be sent to the Riverside County  
7 District Attorney's office, attn.: Heather White, SPS Unit, 3960 Orange Street, Riverside, CA,  
8 92501.

9 c. The parties having stipulated, and the Court hereby finds, that it is  
10 impractical and impossible to identify or to provide direct restitution to consumers such that  
11 other forms of direct restitution are too impractical, costly, and would far exceed any benefit to  
12 individual consumers. Thus, CVS shall pay pursuant to Business and Professions Code sections  
13 17203 and 17535, *cy pres* restitution in the amount of \$15,000 to the Consumer Protection  
14 Prosecution Trust Fund created by the Stipulated Final Judgment and Permanent Injunction in the  
15 case of *People v. ITT Consumer Financial Corporation* (Alameda Superior court No. 656038-0).  
16 This payment shall be sent to the Riverside District Attorney's office, attn.: Heather White, SPS  
17 Unit, 3960 Orange Street, Riverside, CA 92501 upon entry of this Final Judgment.

18 **RETENTION OF JURISDICTION**

19 21. The failure of the People to enforce any provision of this Final Judgment shall  
20 neither be deemed a waiver of such provision or its enforceability, nor shall it in any way affect the  
21 validity of this Final Judgment. The failure of the People to enforce any provision shall not  
22 preclude the People from later enforcing the same or other provisions of this Final Judgment.

23 22. Except as otherwise expressly provided herein, each party shall bear its own  
24 attorney's fees and costs.

25 23. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment  
26 to apply to the Court for such further orders and directions as may be necessary and appropriate for  
27 the construction and carrying out of this Final Judgment, for the modification or dissolution of any

1 injunctive provisions hereof, for enforcement of compliance herewith, or for the punishment of  
2 violations hereof.

3 24. Nothing in this Final Judgment shall be construed as relieving Defendant of its  
4 obligation to comply, or prohibit Defendant from complying, with all applicable state and  
5 federal laws, regulations or rules; nor shall any of the provisions of this Final Judgment be  
6 deemed to be permission to engage in any acts or practices prohibited by such law, regulation,  
7 or rule.


8 26. This Final Judgment provides full, fair and adequate relief to protect the interest  
9 of Plaintiff and members of the public who may have been affected by the violations alleged in  
10 the Complaint through the date of entry of this Final Judgment.

11 26. This Final Judgment is in full and final settlement of and release of all civil claims  
12 by or on behalf of the People of the State of California that were or could have been brought  
13 against CVS, Garfield Beach CVS, L.L.C. and Longs Drug Stores California, L.L.C. under  
14 Business and Professions Code sections 17500 and 17200 et seq. and other consumer protection  
15 statutes that pertain in any way to their compliance with Business and Professions Code section  
16 12024.2 or Civil Code section 1749.5, as alleged in the Complaint, up to and including the date  
17 of entry of this Final Judgment.

18 27. As of the Modified Effective Date, this Final Judgment supersedes the Final  
19 Judgment Pursuant to Stipulation entered on August 17, 2011 in Los Angeles Superior Court,  
20 Case No. BC467427, and the Original Final Judgment entered on May 20, 2015, Court Case No.  
21 BC582179, in all respects.

22 28. The Clerk shall enter this Judgment, consisting of 12 pages forthwith.

23 DATED: 12/20/17

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
Elizabeth Allen White

12/22/2017

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