

DOCKET NO.: HHD-CV09-6005855-S : SUPERIOR COURT
: :
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF HARTFORD
: :
: :
: AT HARTFORD
v. :
: :
CONNECTICUT CVS :
PHARMACY, L.L.C. :

STIPULATED JUDGMENT

This action, by writ and complaint, claiming injunctive and other relief came to this Court on December 1, 2009, and thence to the present time when the Parties to this action (the "Parties") appeared and filed a written Stipulation, filed herewith, that judgment be entered as hereinafter set forth.

The Parties to this action and Stipulated Judgment are Plaintiff, State of Connecticut, by and through its Attorney General, George Jepsen, and Defendant Connecticut CVS Pharmacy, L.L.C. (the "Defendant" or "CVS"). As evidenced by their signatures below, the Parties consent to the entry of this Stipulated Judgment and its provisions without trial.

CVS denies the State's allegations, and is willing to consent to this Stipulated Judgment to resolve the State's concerns as to the matters addressed in this Stipulated Judgment and thereby avoid unnecessary expense, inconvenience, and uncertainty. CVS represents that it is consenting to this Stipulated Judgment solely for the purpose of settlement, and the Parties agree

that nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, by CVS.

This is a Stipulated Judgment for which execution may issue. The Parties consent to entry of this Stipulated Judgment without further notice.

By signature of their respective counsel below, and except as otherwise set forth herein, the Parties waive any right to appeal, petition for certiorari or writ of error, or move to reargue or otherwise be heard on any challenge, in connection with any judicial proceeding upon this Stipulated Judgment in the form originally signed and submitted to the Court by the Parties. Each of the Parties retains any right afforded by law to notice of, and to oppose, brief, and be heard on, any motion or other proceeding for modification, enforcement, or execution of this Stipulated Judgment, and the right to appeal any subsequent order of any court relating to this Stipulated Judgment.

This Stipulated Judgment shall bind the Defendant and shall be binding on any and all further purchasers, merged parties, inheritors, or other successors in interest of Defendant.

Now, therefore, before any testimony has been taken, without trial or adjudication on any issue of fact or law, and without any admission by the Defendant of any wrongdoing,

IT IS HEREBY AGREED AND ADJUDICATED AS FOLLOWS:

1. **JURISDICTION**

The Court has jurisdiction over the Subject Matter of this action and of the Parties hereto, pursuant to the Connecticut Unfair Trade Practices Act (“CUTPA”) and, more particularly, Connecticut General Statutes § 42-110m. Jurisdiction is retained by this Court for the purpose of enabling the Parties to this Stipulated Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, enforcement, execution, or satisfaction of this Stipulated Judgment.

2. **DEFINITIONS**

- 2.1 “Action” shall mean the instant civil action, captioned *State of Connecticut v. Connecticut CVS Pharmacy, L.L.C.*, HHD-CV-09-6005855-S.
- 2.2 “Attorney General” shall refer to George Jepsen, the Attorney General of the State of Connecticut, his successor(s) as Attorney General of the State of Connecticut, and/or the Office of the Attorney General of the State of Connecticut.
- 2.3 “Connecticut,” “State of Connecticut,” or the “State” shall refer to the State of Connecticut.

- 2.4 “Connecticut Store(s)” or “CVS Retail Store(s)” shall mean retail stores operated by CVS in the State of Connecticut.
- 2.5 “Consumer” shall mean any “person,” as that term is defined in CUTPA, Connecticut General Statutes § 42-110a(3) as of the Effective Date of this Stipulated Judgment.
- 2.6 “Covered Conduct” means any and all conduct or representations as alleged by the State in its Action.
- 2.7 “Covered Products” means dairy products, eggs, baby food, infant formula, and Over-the-Counter Drugs including children’s remedies.
- 2.8 “CUTPA” shall refer to the Connecticut Unfair Trade Practices Act, Connecticut General Statutes §§ 42-110a *et seq.*
- 2.9 “CVS” shall mean Connecticut CVS Pharmacy, L.L.C., and each of its directors, officers, agents, assigns, employees, and predecessors, subsidiaries, affiliates, and successors that operate CVS Retail Stores in the State of Connecticut.
- 2.10 “Expired Products” shall mean Covered Products whose Expiration or “Sell By” date has passed.
- 2.11 “Expired Products Policy” means a policy or policies, including the Expired Products Policy outlined in Section 5.1 of this Stipulated Judgment, regarding the

practices and procedures to be followed to provide reasonable safeguards that Expired Products are not offered for sale at CVS Retail Stores in Connecticut.

- 2.12 “Over-the-Counter Drugs” or “OTC Drugs” shall mean non-prescription drugs regulated by the United States Food and Drug Administration (“FDA”), as well as vitamins and dietary supplements, that have Expiration or “Sell By” dates.
- 2.13 “Stipulated Judgment” shall refer to this document, together with any appendices and attachments hereto, entitled Stipulated Judgment, in this Action.
- 2.14 “Store Employee(s)” shall mean all persons employed at CVS Retail Stores, including but not limited to store managers, assistant store managers, supervisors, cashiers, and any other person responsible for handling store inventory, retail sales, and merchandise stocking.
- 2.15 “Subject Matter” shall mean all claims that may have been brought by the State under CUTPA for alleged Covered Conduct relating to the Action.

3. APPLICATION

- 3.1 This Stipulated Judgment shall take effect on the latest date on which it has been executed by the Parties and entered by the Court (the “Effective Date”).

3.2 This Stipulated Judgment applies only to acts or practices within the State of Connecticut.

4. **PROHIBITIVE INJUNCTIVE PROVISIONS**

Pursuant to General Statutes § 42-110m(a), CVS is hereby enjoined from selling or offering to sell Expired Products to any Consumer at its Connecticut Stores.

5. **AFFIRMATIVE INJUNCTIONS**

CVS agrees to do the following:

5.1 **Expired Products Policy**

5.1.1 Within sixty (60) days before or after the Effective Date of this Stipulated Judgment, CVS shall implement, or if already existing, shall review and, if necessary revise, written policies and procedures that are reasonably designed to ensure that Expired Products are not sold or offered for sale at CVS Retail Stores (“Expired Products Policy”).

5.1.2 Within sixty (60) before or after the Effective Date of this Stipulated Judgment, CVS shall disseminate its Expired Products Policy to all Store Employees involved in the stocking and rotation of Covered Products. This dissemination may be made electronically, which may include distribution via an interactive voice response (“IVR”) system.

5.1.3 All Store Employees who receive a copy of the Expired Products Policy must complete a written, IVR, or electronic certification confirming receipt of such policies, within thirty (30) days of such receipt.

5.1.4 CVS shall maintain its Expired Products Policy in a form and location accessible by all Store Employees.

5.2 **Employee Training**

5.2.1 Within sixty (60) days before or after the Effective Date of this Stipulated Judgment, CVS shall provide all Store Employees with training regarding its Expired Products Policy and at least once a year thereafter. New Store Employees shall receive their first training within thirty (30) days of their date of employment, except that new employees acquired by CVS as part of an acquisition of an existing store shall receive training within ninety (90) days of their date of employment.

5.2.2 All Store Employees who receive the training regarding the Expired Products Policy must complete a written, IVR, or electronic certification confirming completion of the training, within thirty (30) days of such completion.

5.3 **Product Inspection By Retail Store Employees**

5.3.1 No later than ninety (90) days of the Effective Date of this Stipulated Judgment, CVS shall implement and maintain a program of compliance checks of Covered Products to ensure that their “Expiration” or “Sell By” dates have not passed, which shall include at least the following:

- (a) Daily inspections by Store Employees and/or third-party suppliers of all dairy products offered for sale at that time by Connecticut Stores and removal of any expired dairy products; and
- (b) Regular inspections by Store Employees and/or third-party suppliers of Covered Products offered for sale by Connecticut Stores in the following categories to ensure that such products are removed sixty (60) days prior to their “Expiration” or “Sell By” date: baby food, infant formula, and OTC Drugs.

5.3.2 The program of compliance checks may be implemented as part of CVS’s regular product rotation procedures.

5.4 **Aisle Signs**

5.4.1 Within sixty (60) days of the Effective Date of this Stipulated Judgment, CVS shall prominently post notices in the aisles where Covered Products are offered for sale, reminding Consumers to check the Expiration and

“Sell By” dates of these Covered Products and asking them to notify a Store Employee if they find Expired Products.

5.4.2 Such aisle signs shall remain in place for a period of three (3) years from the initial posting.

5.5 **Practices And Policies Regarding Third-Party Vendors**

5.5.1 Within sixty (60) days after the Effective Date of this Stipulated Judgment, CVS shall implement or, if already existing, shall review and, if necessary, revise policies regarding the practices of third-party vendors who supply Covered Products to CVS Retail Stores.

5.5.2 Such policies must contain adequate safeguards to provide that third-party vendors remove from CVS Retail Stores’ shelves dairy products and eggs with Expiration or “Sell By” dates before such dates occur, and must provide that CVS cannot sell dairy products and eggs with Expiration or “Sell By” dates that have passed.

5.5.3 At a minimum, the policies must provide that a Store Employee or a third-party vendor employee must check the shelves where dairy products and eggs are offered for sale upon each delivery of products from third-party

vendors to the CVS Retail Store, and must remove any dairy products and eggs that will expire prior to the next delivery date.

5.5.4 The policies must further prohibit third-party vendors from delivering any Covered Products that will expire prior to the next delivery date.

5.6 **Distribution Center Policies**

5.6.1 Within sixty (60) days after the Effective Date of this Stipulated Judgment, CVS shall implement or, if already existing, shall review and, if necessary, revise written policies regarding CVS distribution center practices and procedures for any CVS distribution centers that supply CVS Retail Stores and the training program implementing these policies, to ensure that CVS does not accept Covered Products with imminent Expiration dates from manufacturers.

5.7 **Reporting of Expired Products**

5.7.1 Within 90 days of the Effective Date of this Stipulated Judgment, CVS shall designate, if not already existing, a toll-free number (which may be a general customer service and/or employee complaint number) at which Store Employees and Consumers may report instances in which Expired Products are found for sale in any Connecticut Store.

6. COUPON PROGRAM

6.1 No later than ninety (90) days after the Effective Date of this Stipulated Judgment, CVS shall implement a program whereby Consumers shall be entitled to receive coupons in the amount of \$2.00 off of any purchase at any CVS Retail Store if they (a) find an Expired Product(s) offered for sale while shopping at a CVS Retail Store; (b) notify a Store Employee that they have found an Expired Product(s); and (c) give the Expired Product(s) to the cashier. Store Employees shall advise Consumers of the availability of the coupon if presented with an Expired Product. This program is limited only to one coupon per expired item presented to a Store Employee. There is no limit to the number of coupons a Consumer can receive.

After three years from the date of the commencement of the coupon program, CVS may request that the State allow it to amend or terminate this coupon program. The State agrees to examine and act upon such a request and the State shall not unreasonably withhold its consent to a request to amend or terminate the program.

7. PAYMENT TO THE STATE

7.1. No later than thirty (30) days of the Effective Date of this Stipulated Judgment, CVS shall pay the sum total of One Hundred and Five Thousand Dollars

(\$105,000.00) to the State of Connecticut, which shall be deposited, into the State's General Fund.

- 7.2. The payment required under Section 7.1 may be made by wire transfer to the State of Connecticut, pursuant to wire instructions to be provided by the Attorney General.
- 7.3. Upon making the payment specified in Section 7.1, CVS shall be fully divested of any interest in, or ownership of, any monies paid and any interest in the monies, and the monies and any subsequent interest or income derived therefrom shall inure entirely and solely to the benefit of the State pursuant to the terms of this Stipulated Judgment.

8. CURE PROVISIONS

- 8.1. If, after the Effective Date of this Stipulated Judgment, the State believes that CVS has engaged in a practice that violates a provision of this Stipulated Judgment, the Attorney General shall provide written notice to CVS of the specific objection, and identify with particularity the provisions that the practice appears to violate. Upon receipt of the written notice from the Attorney General, CVS shall have thirty (30) days to provide a good-faith written response to the Attorney General, containing either an explanation of why CVS believes it is in

compliance with the Stipulated Judgment, or an explanation of how the alleged violation occurred and an explanation of how CVS intends to remedy the alleged violation. The Attorney General may agree to provide CVS with additional time beyond thirty (30) days to respond to the written notice.

- 8.2. The State may assert a claim that CVS has violated this Stipulated Judgment or may seek other relief afforded by law, but only after providing CVS an opportunity to respond to the notification described in the preceding paragraph; provided, however, that the Attorney General may take any action if the Attorney General concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

9. GENERAL PROVISIONS

- 9.1. This Stipulated Judgment resolves the above-captioned Action, and is a complete settlement of all claims regarding alleged violations of CUTPA based on the acts or practices alleged in the Complaint in this Action that occurred prior to the Effective Date of this Stipulated Judgment.
- 9.2. Nothing in this Stipulated Judgment shall be construed as relieving CVS of its obligations to comply with all state and federal laws, regulations, and rules, or as

granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

- 9.3. Any notices required to be sent to the State or to CVS by this Stipulated Judgment shall be sent by United States certified mail return receipt requested. The documents shall be sent to the following addresses:

For the State:

Phillip Rosario
Assistant Attorney General
Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Tel: (860) 808-5400 / Fax: (860) 808-5593

For CVS:

Connecticut CVS Pharmacy L.L.C.
Attn: Legal Department
One CVS Drive
Woonsocket, RI 02895

- 9.4. If any portion of this Stipulated Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Stipulated Judgment shall not be affected.
- 9.5. The Parties have negotiated, jointly drafted, and fully reviewed the terms of this Stipulated Judgment, and therefore the rule that uncertainty or ambiguity is to be

construed against the drafter shall not apply to the construction or interpretation of this Stipulated Judgment.

- 9.6. Failure by a Party to insist upon the strict performance of any of the provisions of this Stipulated Judgment shall not be deemed a waiver of any of the provisions of this Stipulated Judgment, and that Party shall, notwithstanding such failure, have the right thereafter to insist upon the specific performance of any and all of the provisions of this Stipulated Judgment.
- 9.7. This Stipulated Judgment shall not establish or create a third party beneficiary interest on behalf of any Consumer or other third party that does not otherwise exist at law. Nothing in this Stipulated Judgment shall be interpreted to affect any private claim, right, debt, or cause of action that any Consumer or other third party may have against any CVS. No part of this Stipulated Judgment shall create a private right of action or confer any right to any Consumer or other third party for violation of any federal or state law or regulation.
- 9.8. This Stipulated Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind, and shall have no res judicata, collateral estoppel or preclusive effect against CVS in any other proceedings. No part of this Stipulated Judgment, including its statements and commitments, shall

constitute evidence of any liability, fault, or wrongdoing by CVS. It is the intent of the Parties that this Stipulated Judgment not be admissible in other cases or be binding on CVS in any respect other than in connection with the enforcement of this Stipulated Judgment. This Stipulated Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to CVS in any action, or of CVS's right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Stipulated Judgment. Notwithstanding the foregoing, the State may seek to enforce the terms of this Stipulated Judgment.

- 9.9. Effective upon payment by CVS of the amount required under Section 7 of the Stipulated Judgment, the State releases and discharges CVS and all of its past and present subsidiaries, affiliates, predecessors and successors from all claims under CUTPA related to the allegations in the Complaint that occurred through the date that the parties hereto signed the Stipulated Judgment.

[Signatures on Next Page]

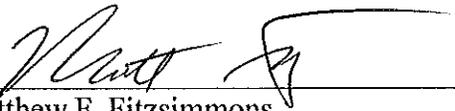
THE PARTIES DO HEREBY CONSENT:

PLAINTIFF:

For the State of Connecticut:

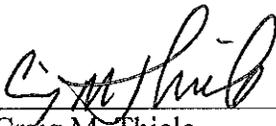
GEORGE JEPSEN,
ATTORNEY GENERAL

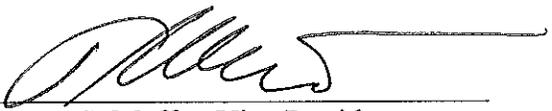
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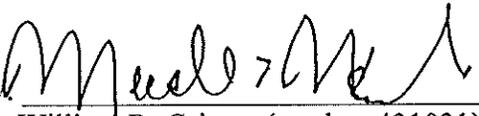

Matthew F. Fitzsimmons
Assistant Attorney General
Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105
Tel: (860) 808-5400 / Fax: (860) 808-5593

DEFENDANT:

For Connecticut CVS Pharmacy, L.L.C.

By: 
Craig M. Thiele
Vice President, Store Operations

By: 
Thomas S. Moffatt Vice President,
Assistant Secretary, and Assistant
General Counsel

By: 
William R. Grimm (pro hac 431021)
Michael T. McCormack
Hinckley, Allen & Snyder LLP
Juris No. 428858
20 Church Street
Hartford, CT 06103
Tel: (860) 725-6200/Fax:(860) 278-3802
Attorneys for Defendant

SO ORDERED:

(_____), Judge of the Superior Court