STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

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Deputy Attorney General
for Economic Justice

June 12, 2008

NOTICE OF PROPOSED LITIGATION PURSUANT TO NEW YORK EXECUTIVE LAW § 63(12) AND NEW YORK GENERAL BUSINESS LAW § 820

BY CERTIFIED MAIL
Zenon P. Lankowsky
General Counsel and Secretary
CVS Corporation
One CVS Drive
Woonsocket, RI 02895

Notice of Intention to Sue

Dear Mr. Lankowsky:

You are hereby notified that the Attorney General intends to commence litigation against CVS Corporation ("CVS") pursuant to New York General Business Law § 820 and Executive Law § 63(12) to enjoin repeated illegal acts and practices in which CVS has engaged and continues to engage, and to obtain additional injunctive relief, restitution, penalties, damages and such other relief as the court may deem just and proper.

Over the past three months, the Attorney General's Office has conducted a statewide investigation of pharmacies, including CVS stores. Investigators were directed to examine whether over-the-counter drugs, infant formula, eggs and milk were being sold past their expiration dates. The investigation revealed that CVS has, through its sale of expired products, persistently violated both state and federal laws, as well as the terms of its 2003 settlement agreement with this office.

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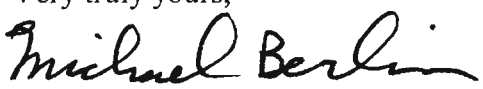
In over 140 CVS stores, located throughout the State of New York, CVS was found to have been selling expired products. These products included, among many others, cold medicines, pain relievers, baby formula, allergy medicine, milk and eggs (a full listing of both the stores and the expired products is attached as Exhibit A). In some cases, these items were more than two years past their expiration dates (i.e., as early as March of 2006). The widespread nature of these violations indicates that CVS maintains an implicit company policy to maximize profits through the selling of expired goods to the public.

These practices violate a host of laws intended to protect the general public including General Business Law § 820 (prohibiting the sale of expired over-the-counter medication), 21 U.S.C. §§ 331, 342, 350a and 21 C.F.R. 107.20 (prohibiting the sale of "adulterated" food and infant formula); New York City Health Code § 111.33 (prohibiting the sale of milk beyond its expiration date); New York City Administrative Code § 20-485 (perishable foods); Westchester County Consumer Protection Code, Article IV, Section 863.91(prohibiting sale of outdated perishable foods); and Regulatory Local Laws of Suffolk County, Chapter 301, Article I, Section 301-4 (prohibiting sale of perishable foods beyond their expiration date).

In addition, CVS, by selling expired over-the-counter medicines, has violated its prior agreement with this office. As you are aware, in 2003 CVS entered into an Assurance of Discontinuance under which it agreed to refrain from selling expired over-the-counter medications and to implement safeguards to prevent their sale. As Exhibit A demonstrates, however, CVS has violated the terms of that agreement.[1] This persistent and flagrant defiance of the settlement calls into question CVS's desire to alter its conduct. This office takes the disregard of its prior settlements very seriously and intends to seek a full range of penalties and sanctions in order to ensure that this time, a genuine change in CVS's behavior occurs.

Please be advised that, pursuant to New York General Business Law § 821.2, CVS is hereby afforded the opportunity to show in writing, within five business days after the receipt of this notice, why such proceedings should not be instituted.

Very truly yours,



Michael Berlin
Deputy Attorney General
for Economic Justice

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[1]Pursuant to Executive Law § 63(15), CVS's breach of this Assurance constitutes prima facie proof of a violation of General Business Law § 820 (prohibiting the sale of expired over-the-counter medication) and Executive Law § 63(12).

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