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CIVIL BUSINESS OFFICE 13  
CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

*Attorneys for Plaintiff*

**No fee pursuant to Government Code  
Section 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

CASE NO: ~~37-2009-0000~~1517-CU-MC-CTL

PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff  
  
v.  
  
CVS PHARMACY, INC., A RHODE ISLAND  
CORPORATION,  
  
Defendant.

COMPLAINT FOR  
INJUNCTION, CIVIL  
PENALTIES AND OTHER  
EQUITABLE RELIEF

"Assign to Master Calendar"

Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr.,  
Attorney General of the State of California, is informed and believes and thereupon alleges as  
follows:

**INTRODUCTION**

1. California Civil Code section 1798.81 requires a business to take all reasonable steps  
to destroy or arrange for the destruction of a customer's records, within its custody or control,  
which contain personal information that is no longer to be retained by the business by (1)  
shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to  
make it unreadable or undecipherable through any means.

1 2. California Civil Code section 56.101 requires a pharmaceutical company that creates,  
2 maintains, preserves, stores, abandons, destroys, or disposes of medical records (which include  
3 medical information) to do so in a manner that preserves the confidentiality of the information  
4 contained therein.

5 3. The failure of CVS Pharmacy, Inc. (CVS) to provide the protections required by  
6 California Civil Code sections 1798.81 and 56.101 resulted in the mishandling and loss of the  
7 personal information of its customers, potentially exposing customers to the risk of identity theft.  
8 CVS' failure to provide such protections constitutes unfair business practices within the meaning  
9 of California Business and Professions Code section 17200.

10 4. CVS has sold and offered for sale infant formula, baby food, dairy products and over-  
11 the-counter medications after the "Expiration," "Use By," or "Best By" date stamped or embossed  
12 on such products' containers. Selling such products constitutes unfair business practices within  
13 the meaning of California Business and Professions Code section 17200.

#### 14 VENUE AND JURISDICTION

15 5. CVS, a Rhode Island Corporation, at all times mentioned herein has transacted  
16 business in the County of San Diego and elsewhere within the State of California. CVS has  
17 hundreds of stores in California. The violations of law described herein occurred in the County of  
18 San Diego and elsewhere in California.

19 6. Whenever reference is made in this Complaint to any act or transaction of any  
20 corporation, partnership, business or other organization, that allegation shall be deemed to mean  
21 that the corporation, partnership, business or other organization did or authorized the acts alleged  
22 in this Complaint through its principals, officers, directors, employees, members, agents and  
23 representatives while they were acting within the actual or ostensible scope of their authority.

24 7. At all relevant times, CVS committed the acts, caused or directed others to  
25 commit the acts, ratified the acts, or permitted others to commit the acts alleged in this Complaint.

#### 26 DEFENDANT'S BUSINESS PRACTICES

27 8. CVS has hundreds of retail stores throughout Southern California and is expanding  
28

1 its presence throughout California. These stores stocks thousands of different items, including  
2 infant formula, baby food, dairy products and over-the-counter medications. These stores also  
3 contain separate pharmacy sales locations from which prescription drugs are dispensed. The  
4 general public does not have access behind the counter of these pharmacy sales locations.  
5

6 9. In the course of its business operations, CVS collects personal information from  
7 customers, including information that identifies, relates to, describes, or is capable of being  
8 associated with, a particular individual, including his or her name, signature, social security  
9 number, physical characteristics or description, address, telephone number, passport number,  
10 driver's license or state identification card number, insurance policy number, education,  
11 employment, employment history, bank account number, credit card number, debit card number,  
12 or financial information, medical information and health insurance information.  
13

14 10. Although CVS collected personal information from consumers, it did not have  
15 adequate procedures in place in its store locations in California to ensure the proper storage and  
16 destruction of the information. As a result of these inadequate procedures, for example, CVS  
17 employees at CVS stores in California discarded medical records and other documents containing  
18 confidential information of its customers, without destroying the information and without  
19 ensuring the confidentiality of the information.  
20

21 11. The security procedures CVS had in place did not ensure the proper destruction of  
22 personal information as required by California Civil Code section 1798.81.

23 12. Further, CVS did not maintain reasonable security procedures and practices to  
24 ensure the confidentiality of the personal information contained in the medical records it creates,  
25 maintains, preserves, stores, abandons, destroys or disposes of, as required by California Civil  
26 Code section 56.101.  
27

28 13. Although CVS has sold and offered for sale infant formula, baby food, dairy

1 products and over-the-counter medications which carry an "Expiration," "Use By," or "Best By"  
2 date stamped or embossed on the products' containers, CVS did not have adequate procedures in  
3 place in all of its store locations to properly check and remove from the shelves products that  
4 were available for sale to the public and whose "Expiration," "Use By," or "Best By" date had  
5 passed.  
6

7 **FIRST CAUSE OF ACTION**  
8 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
9 **(UNFAIR COMPETITION)**

10 14. Plaintiff realleges and incorporates by reference paragraphs 1 - 13 above, as  
11 though they are set forth in full.

12 15. Beginning at an exact date unknown to Plaintiff, CVS engaged in unfair  
13 competition as defined in California Business and Professions Code section 17200.

14 16. CVS' acts and practices of unfair competition include the following:

15 A. CVS violated California Civil Code section 1798.81 by failing to take all  
16 reasonable steps to destroy, or arrange for the destruction of customers' records, within its  
17 custody or control, which contain Personal Information that is no longer to be retained by  
18 the business by (1) shredding, (2) erasing, or (3) otherwise modifying the personal  
19 information in those records to make it unreadable or undecipherable through any means;

20 B. CVS violated California Civil Code section 56.101 by failing to maintain  
21 reasonable security procedures and practices to preserve the confidentiality of the  
22 information contained in the medical records it creates, maintains, preserves, stores,  
23 abandons, destroys or disposes of;

24 C. CVS violated the expectation of privacy that California consumers have in  
25 the security of their Personal Information, and is guaranteed to them by Article I, Section I  
26 of the California Constitution, by failing to safeguard and properly destroy Personal  
27  
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1 Information it obtained from consumers who made purchases at CVS; and

2 D. CVS committed the unfair practice of selling and offering for sale infant  
3 formula, baby food, dairy products and over-the-counter medications which carry an  
4 “Expiration,” “Use By,” or “Best By” date stamped or embossed on such products’  
5 containers, after the “Expiration,” “Use By,” or “Best By” date had passed on certain  
6 specific individual products. In doing so, CVS violated consumers’ expectations that the  
7 products they were purchasing: (i) would be useable for their intended purpose without the  
8 consumer having to worry that the product would spoil more quickly than it should; (ii)  
9 would have the expected potency that a “current” product would have and thus be useable  
10 for the purposes for which it was purchased; (iii) would not be “expired” because CVS  
11 would have adequate procedures in place in all of its store locations to properly check and  
12 remove from the shelves and available sale to the public, all products whose “Expiration,”  
13 “Use By,” or “Best By” date had passed, when in fact CVS did not.  
14  
15

16 **WHEREFORE**, Plaintiff prays for judgment as follows:

17 1. That pursuant to California Business and Professions Code section 17203, CVS,  
18 its successors, agents, representatives, employees, and all persons who act in concert with CVS  
19 be permanently enjoined from committing the acts of unfair competition alleged in the First  
20 Cause of Action.

22 2. That pursuant to California Business and Professions Code section 17206, CVS be  
23 ordered to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500) for  
24 each violation of California Business and Professions Code section 17200 by CVS, as proved at  
25 trial.

26 3. That Plaintiff recover its costs of suit herein, including costs of investigation.

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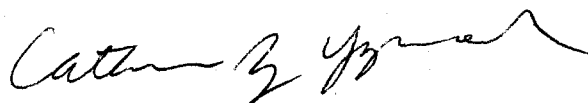
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4. For such other and further relief as the Court may deem just and proper.

Dated: June 9, 2009

Respectfully submitted,

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