



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
Office of Consumer Protection
124 Halsey Street, 7th Floor, Newark, NJ 07102



GURBIR S. GREWAL
Attorney General

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Acting Director

July 13, 2020

Mailing Address:
P.O. Box 45025
Newark, NJ 07101
(973) 504-6200

VIA HAND DELIVERY

Linden Corner LLC
d/b/a Delta Food Mart
801 West Elizabeth Avenue
Linden, New Jersey 07036
Attn: Harinder Bhatia, President

NOTICE OF VIOLATION AND OFFER OF SETTLEMENT

Dear Mr. Bhatia:

The New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division") is charged with the enforcement of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -224 ("CFA"), including the portion of the CFA concerning the sale or attempted sale of merchandise without a tag or label with the total selling price, N.J.S.A. 56:8-2.5 to -2.6 ("Merchandise Pricing Statute"). On March 20, 2020, the Division conducted an inspection of Linden Corner LLC d/b/a Delta Food Mart ("You" or "Your") as a result of a complaint received by the Division (hereinafter "Investigation").

The Merchandise Pricing Statute, specifically N.J.S.A. 56:8-2.5, states:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign either affixed to the merchandise or located at the point where the merchandise is offered for sale.

In addition, the Merchandise Pricing Statute, specifically N.J.S.A. 56:8-2.6, provides:

For the purposes of this act, each day for which the total selling price is not marked in accordance with the provisions of this act for each group of identical merchandise shall constitute a separate violation of this act and the act of which this act is a supplement.

As a result of the Division's Investigation, You have been found to have attempted to sell or offer for sale merchandise at retail without the total selling price plainly marked. These facts are set forth in the attached Certification of Investigator Kristen Higgins. In so

doing, You have:

1. Attempted to sell or offer for sale merchandise without a tag or label indicating the total selling price, in violation of N.J.S.A. 56:8-2.5.

Each failure to comply with the requirements of the Merchandise Pricing Statute constitutes a separate violation of the CFA, subjecting You to civil penalties, pursuant to N.J.S.A. 56:8-13, as well as reimbursement of investigative costs and/or attorneys' fees, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED and wish to avail Yourself of this opportunity to settle the Investigation, within **fifteen (15)** days from the date of this Notice, You should sign and return the **enclosed Answering Certification** and agree to:

1. Cease and desist from engaging in any practices in violation of the CFA;
2. Cease and desist from selling, attempting to sell or offering for sale merchandise unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where the merchandise is offered for sale, as required by the Merchandise Pricing Statute, N.J.S.A. 56:8-2.5; and
3. Pay a civil penalty in the amount of \$500.00.

If the above-referenced payment in the total amount of \$500.00 is received by the Division within 15 days of the date of this Notice, along with your signed Answering Certification, You need not do anything further.

IF YOU DO NOT CONTEST THE VIOLATIONS ALLEGED, but want to present information to Division representatives about any mitigating circumstances in Your case that may persuade the Division to reduce the civil penalty, You may request an informal **Mitigation Conference**. If You request a Mitigation Conference, **You will waive Your right to an Administrative Hearing**. The Mitigation Conference date is **August 4, 2020 at 10:00 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102 with Investigator Kristen Higgins ("Investigator Higgins"), a representative of the Division. You may be accompanied by an attorney. Should you have any questions regarding this procedure, or seek an adjournment of this date, please contact Investigator Higgins at (973) 504-6332 or HigginsK@dca.njoag.gov. Alternatively, You may send written documentation to the Division concerning any mitigating circumstances that You believe may persuade the Division to reduce the civil penalty. To elect either of these options, You must return the enclosed Answering Certification within fifteen (15) days from the date of this Notice.** The Division will then review this material and respond to You.

IF YOU CONTEST THE VIOLATIONS ALLEGED, and do not wish to settle the matter consistent with the terms set forth above, **You may request a formal Administrative Hearing by returning the enclosed Answering Certification within**

fifteen (15) days from the date of this Notice to Investigator Higgins at the email address indicated above. In that event, this Notice will serve as notice of the violations against you. You should be aware that in making his final decision, the Director of the Division may, if violations of the above-referenced statute and regulations have been proven, order civil penalties and remedies other than the settlement offer above. **Specifically, You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay investigative costs and attorneys' fees to the Division, pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18.**


Before a determination is made with regard to whether an **Administrative Hearing** will be conducted before the Director of the Division or referred to the Office of Administrative Law, a **Pre-Hearing Conference** will be held. If You request an **Administrative Hearing**, your **Pre-Hearing Conference** will be scheduled **on August 4, 2020 at 10:00 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102** with **Investigator Higgins**, a representative of the Division. **You may be accompanied by an attorney.** Should You have any questions regarding this procedure, or seek an adjournment of this date, please contact **Investigator Higgins**, who may be reached at **(973) 504-6332 and HigginsK@dca.njoag.gov.** **Your attendance at this Pre-Hearing Conference is mandatory.** Any failure to appear without a satisfactory explanation may result in an order barring You from raising certain defenses at the **Administrative Hearing**, pursuant to **N.J.A.C. 1:1-14.4.** The purpose of this **Pre-Hearing Conference** is to discuss the issues in this matter and the defenses which You may wish to raise. You should be prepared to discuss the evidence You will propose to offer at the **Administrative Hearing.** It may be helpful if You bring to the **Pre-Hearing Conference** a copy of any documentation that supports Your position. If the Director of the Division determines that there are no material facts in dispute, You will have an opportunity to submit legal arguments and any documentation that may be relevant to the ultimate disposition of this matter. If there are material facts in dispute, an **Administrative Hearing** will be scheduled. During the **Administrative Hearing**, You, either personally or with the assistance of an attorney, will have an opportunity to respond to the alleged violations and submit evidence and present testimony as may be necessary for the Director of the Division to make a final determination. Pursuant to N.J.A.C. 1:1-5.1, and except as provided in N.J.A.C. 1:1-5.4, a corporation must be represented by an attorney.

IF YOU FAIL TO RESPOND to this Notice within fifteen (15) days of the date of this Notice, the settlement offer will be withdrawn, and You will be deemed in default. The allegations against You will be deemed uncontested. Thereafter, this Notice and the underlying proofs may be reviewed by the Director of the Division, and a **Final Decision and Order on Default ("Order")** will be issued, and **You may be ordered to: pay civil penalties in an amount up to \$10,000 for the first violation and up to \$20,000 for the second violation and each subsequent violation pursuant to N.J.S.A. 56:8-13; pay investigative costs and attorneys' fees to the Division pursuant to N.J.S.A. 56:8-11 and 56:8-19; and cease and desist from any act or practice in violation of the CFA, pursuant to N.J.S.A. 56:8-18.** **You will receive no further notice from the Division prior to issuance of an Order.** Once an **Order** has been entered, Your failure to pay any civil penalties, attorneys' fees, and/or investigative costs within the time allowed will result in the filing of a **Certificate of Debt.** **Any subsequent**

violation of an Order with a cease and desist provision may subject You to a penalty of up to \$25,000 per violation pursuant to N.J.S.A. 56:8-18. Service of an **Order** will be deemed effective if sent by first-class mail and certified mail, return receipt requested, to your last known mailing address.

Should You have any questions, please contact **Investigator Higgins** at **(973) 504-6332** and **HigginsK@dca.njoag.gov**.

New Jersey Division of Consumer Affairs
Office of Consumer Protection

By: 

Gregory K. Turner
Assistant Deputy of Enforcement

ANSWERING CERTIFICATION
Linden Corner LLC d/b/a Delta Food Mart

I, _____, hereby acknowledge that I have read and reviewed the Notice, regarding alleged violations of the CFA, N.J.S.A. 56:8-1 to -224, including the Merchandise Pricing Statute, N.J.S.A. 56:8-2.5 to -2.6.

PLEASE CHECK ONE OF THE OPTIONS BELOW:

(OPTION 1):

_____ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and acknowledge the conduct that has been alleged and **agree** to:

1. Cease and desist from engaging in any practices in violation of the CFA;
2. Cease and desist from selling, attempting to sell or offering for sale merchandise unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where the merchandise is offered for sale, as required by the Merchandise Pricing State, specifically N.J.S.A. 56:8-2.5; and
3. Pay a civil penalty in the amount of **\$500.00**.

I understand that if the above-referenced payment in the total amount of \$500.00 is received by the Division, along with my signed Answering Certification, I need not do anything further.

I am also aware that the action taken against Linden Corner LLC d/b/a Delta Food Mart by the Division herein is a matter of public record and that the Division's **Notice** and this **Answering Certification** are public documents. I am enclosing herewith a cashier's check or money order in the sum of **\$500.00** made payable to the "New Jersey Division of Consumer Affairs," which I am mailing or delivering to: New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Office of Consumer Protection, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101, ATTN: **Van Mallett**.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME

(OPTION 2)

_____ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and hereby waive any rights I may have to a hearing in this matter to defend Linden Corner LLC d/b/a Delta Food Mart against any alleged violations, **BUT** I ask the Division to consider mitigating circumstances before rendering its final decision.

____ I request a **Mitigation Conference** to present information to Division representatives; I understand that the Mitigation Conference will be held **on August 4, 2020, at 10:00 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07101. I am aware that I may be represented by an attorney at the Mitigation Conference.**

____ I am submitting **written documentation concerning mitigating circumstances**; I understand that the Division will consider this material before rendering a final decision.

I understand that, if, after considering the mitigation evidence presented, the Division is not persuaded that any reduction in the amounts set forth above and in the **Notice** is warranted or that any of the other terms or conditions should be modified, the following terms may be ordered and Linden Corner LLC d/b/a Delta Food Mart will be obligated to:

1. Cease and desist from engaging in any practices in violation of the CFA;
2. Cease and desist from selling, attempting to sell or offering for sale merchandise unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where the merchandise is offered for sale, as required by the Merchandise Pricing Statute, N.J.S.A. 56:8-2.5; and
3. Pay a civil penalty in the amount of **\$500.00**.

If a modification in these terms is accepted by the Division, I will be notified of the amounts that I must pay. I am also aware that the action taken against Linden Corner LLC d/b/a Delta Food Mart by the Division herein is a matter of public record and that the Division's **Notice** and this **Answering Certification** are public documents. I am further aware that failure to comply may subject Linden Corner LLC d/b/a Delta Food Mart to further enforcement proceedings and any failure to make a required payment will result in the filing of a **Certificate of Debt**.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME

(OPTION 3)

_____ **I CONTEST THE VIOLATIONS ALLEGED** and **request a formal Administrative Hearing**. I understand that I am required to attend a **Pre-Hearing Conference on August 4, 2020, at 10:00 a.m., at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102**, at which the issues in this matter will be discussed. **I am aware that I may be represented by an attorney at the Pre-Hearing Conference.**

If the Division and I agree upon any essential settlement terms at the **Pre-Hearing Conference**, I understand that:

1. These terms will be included in a document ("Pre-Hearing Settlement Sheet");
2. The Division representative and I will sign the Pre-Hearing Settlement Sheet and Linden Corner LLC d/b/a Delta Food Mart will be bound by it; and
3. The Division will send me a **Consent Order**, which will include all settlement terms. I also understand that **I must sign and return the Consent Order and any required payment to the Division within thirty (30) days** of the date that the Division sends it to me.

I further understand that if I fail to do so, the Division will present this matter to the Director of the Division based upon the **Notice**, and a **Final Decision and Order After NOV ("Order")** will be issued. **I will receive no further notice from the Division prior to issuance of an Order.**

If the Division and I do not agree upon settlement terms at the **Pre-Hearing Conference**, I will thereafter be advised of the time, date and place for the **Administrative Hearing** if a determination has been made that there are material facts in dispute. **I am aware that I may be represented by an attorney at the Administrative Hearing.** I am also aware that at the time of the **Administrative Hearing**, I may offer testimony, documentation and legal argument relevant to the alleged violations. **I understand that in making a final decision, the Director of the Division may, if unlawful activity has been proven, assess civil penalties, attorneys' fees and investigative costs and/or issue a cease and desist order exceeding the settlement offer in the Notice**, and may order such other remedies as deemed appropriate. I am also aware that this proceeding is a matter of public record and that the **Notice** and this **Answering Certification** are public documents.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME


LINDEN CORNER LLC d/b/a DELTA FOOD MART
801 West Elizabeth Avenue
Linden Corner, New Jersey 07036
Attn: Harinder Bhatia, President

INVESTIGATIVE CERTIFICATION

I, Kristen Higgins, being of full age, do hereby certify as follows:

1. I am employed as an Investigator by the Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection ("Division"), located at 124 Halsey Street, Newark, New Jersey 07101, and have held that position at all times relevant to this Certification.
2. In March 2020, the Division commenced an Investigation with respect to Linden Corner LLC d/b/a Delta Food Mart located at 801 West Elizabeth Avenue, Linden Corner, New Jersey 07036 ("Linden Corner"), after receiving a complaint.
3. On March 20, 2020, I conducted an inspection of all merchandise being offered for sale to ensure that a tag/label containing the total selling price was affixed to each item or at the point where the merchandise was offered for sale. After an inspection of the merchandise, I identified and photographed numerous items that did not have the total selling price affixed to the item or at the point where the merchandise was offered for sale, including: (1) Milwaukee N95 Masks – Uniform Product Code ("UPC") 045242552535; (2) Bounty Paper Towel single roll – UPC 037000983972; (3) Palmolive – UPC 035000450937; (4) Hydrogen Peroxide – UPC 036800267114; (5) Elegant Toilet Paper – UPC 018026964008; (6) Poland Spring single bottle – UPC 075720481279; and (7) Poland Spring 35 pack – UPC 075720966721. I noted in my Inspection Report that "[n]o items were priced." My Inspection Report, which includes the photographs of the items without pricing, is attached as Exhibit A. See pages 5 and 9-16 of Exhibit A.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



KRISTEN HIGGINS

Dated: July 13, 2020
Newark, New Jersey