



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

PAUL R. RODRÍGUEZ
Acting Director

August 10, 2020

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

VIA CERTIFIED AND REGULAR MAIL

950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta
946-956 Market Street
Paterson, New Jersey 07513
Attn: Kent Tavera, Registered Agent

NOTICE OF VIOLATION AND OFFER OF SETTLEMENT

Dear Kent Tavera:

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 -226 (“CFA”), including N.J.S.A. 56:8-108 to -109 (“Excessive Pricing Statute”). The Division has conducted an investigation of 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta (“You” or “Your”) as a result of consumer complaints received by the Division in connection with price gouging by You in the sale of Cheerios, Giant Size, 20 Oz., Universal Product Code (“UPC”) 1600012541 (hereinafter “Cheerios Giant Size”), (hereinafter “Investigation”).

As set forth in the attached Certifications of Investigator Walter Kaminski (“Investigator Kaminski”), You have been found to have engaged in price gouging in the sale of Cheerios Giant Size in violation of the CFA.

The CFA, specifically **N.J.S.A. 56:8-109**, prohibits excessive and unjustified price increases in the offer for sale and/or sale of certain merchandise, which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect or sustain life, health, safety or comfort of persons, including the offer for sale and/or sale of Cheerios Giant Size, when a declared State of Emergency results in abnormal disruptions of the market.

As a result of the Division’s Investigation, You have been found to have:

1. Engaged in the offer for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of a person or their property within the meaning of N.J.S.A. 56:8-109, specifically Cheerios Giant Size, at an “excessive price” within the meaning of N.J.S.A.

56:8-108 during the State of Emergency declared by Governor Philip S. Murphy on March 9, 2020 at 5:53 p.m. and within thirty (30) days after the declaration of the State of Emergency is terminated, or for such other period of time as the Governor may extend by executive order. Specifically, 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta sold or offered for sale, Cheerios Giant Size, between March 14, 2020 and at least March 20, 2020 at \$7.49 and \$9.19, prices more than ten percent (10%) higher than the prices at which Cheerios Giant Size was offered for sale and/or sold by You in the usual course of business immediately prior to the State of Emergency.

Each of these violations 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 the following:

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 at prices more than ten percent (10%) higher than the prices in the usual course of business immediately prior to the State of Emergency, as required by N.J.S.A. 56:8-109;
3. Pay a civil penalty in the amount of \$5,000.00; and,
4. Pay investigative costs in the amount of \$250.00.

If the above-referenced payment in the total amount of \$5,250.00 is received by the Division, 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 **September 9, 2020 at 10:00 a.m., and will be held via teleconference with Investigator Walter Kaminski ("Investigator Kaminski") a representative of the Division. The conference call in number is 856-288-3130 and the conference ID number is 937 624 092#. 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 Kaminski at 973-273-8047 or at KaminskiW@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.** In that event, this Notice will serve as notice of the violations against you. You should be aware that in making its 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 consumer restitution pursuant to N.J.S.A. 56:8-15; and 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 acts or practice in violation of 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 Acting 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 **September 9, 2020 at 10:00 a.m., and will be held via teleconference with Investigator Walter Kaminski ("Investigator Kaminski") a representative of the Division. The conference call in number is 856-288-3130 and the conference ID number is 937 624 092#.** 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 Kaminski at 973-273-8047 or at KaminskiW@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 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 Acting 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 consumer restitution pursuant to**

N.J.S.A. 56:8-15; and pay investigative costs and attorneys' fees to the Division pursuant to N.J.S.A. 56:8-11 and 56:8-19. 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, investigative costs and/or restitution 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 Kaminski at 973-273-8047 or at KaminskiW@dca.njoag.gov.

New Jersey Division of Consumer Affairs
Office of Consumer Protection

By: *GregoryTurner_*
Gregory K. Turner
Assistant Deputy of Enforcement

ANSWERING CERTIFICATION
950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta

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 Excessive Pricing Statute, N.J.S.A. 56:8-108 to -109.

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 at prices more than ten percent (10%) higher than the prices in the usual course of business immediately prior to the State of Emergency, as required by N.J.S.A. 56:8-109;
3. Pay a civil penalty in the amount of \$5,000.00; and
4. Pay investigative costs in the amount of \$250.00.

I understand that if the above-referenced payment in the total amount of \$5,250.00 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 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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 **\$5,250.00** 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 Mallet**.

Dated: _____

By: _____
SIGN NAME

Name: _____
PRINT NAME

(OPTION 2): 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta

_____ **I DO NOT CONTEST THE VIOLATIONS ALLEGED** and hereby waive any rights I may have to a hearing in this matter to defend 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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 September 9, 2020 at 10:00 a.m., via teleconference. 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 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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 at prices more than ten percent (10%) higher than the prices in the usual course of business immediately prior to the State of Emergency, as required by N.J.S.A. 56:8-109;
3. Pay a civil penalty in the amount of \$5,000.00; and
4. Pay investigative costs in the amount of \$250.00.

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 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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): 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta

I CONTEST THE VIOLATIONS ALLEGED and request a formal Administrative Hearing. I understand that I am required to attend a **Pre-Hearing Conference on September 9, 2020 at 10:00 a.m., via teleconference**, 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 950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta 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 Acting 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, consumer restitution, 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

950 Meat & Grocery Inc. d/b/a Food Fair La Gran Marqueta
946-956 Market Street
Paterson, New Jersey 07513

INVESTIGATIVE CERTIFICATION

I, Walter Kaminski, 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, 7th Floor, Newark, New Jersey 07102, and have held that position at all times relevant to this Certification.
2. On March 13, 2020, the Division commenced an Investigation with respect to 950 Meat & Grocery, Inc. d/b/a Food Fair La Gran Marqueta (“Food Fair”), located at 946-956 Market Street, Paterson, New Jersey 07513, after receiving consumer complaints regarding price gouging of 20 oz. box of Cheerios for \$7.49 each.
3. On March 20, 2020, a site inspection of Food Fair was completed, at the inspection Investigator S.H. Mercer identified a 20 oz. box of Cheerios being offered for sale for \$9.19. Investigator Mercer noted that the box was previously priced at \$7.49, and that the cost to Food Fair was \$5.05.
4. On March 20, 2020, a subpoena *duces tecum* (the “Subpoena”) was served on Food Fair requesting the prices, costs and quantities sold of its Cheerios, Giant Size, 20 Oz., Universal Product Code (“UPC”) 1600012541 (“Cheerios 20 Oz.”). A copy of the Subpoena is attached hereto as **Exhibit A**.
5. On April 6, 2020, Food Fair provided point-of-sale printouts and weekly tallies for all of its sales of Cheerios 20 Oz. from February 17, 2020 to March 28, 2020. A copy of the documents produced are attached hereto as **Exhibit B**.
5. A review of the above-listed documents reveals incidents of price gouging with respect to Cheerios 20 Oz. at Food Fair, as defined by N.J.S.A. 56:8-109. A summary of the price increases are as follows:
 - Beginning on February 17, 2020, Cheerios 20 Oz. sold for \$5.99.
 - On February 29, 2020, the price of Cheerios 20 Oz. was reduced to \$4.97.
 - On March 7, 2020, the price of Cheerios 20 Oz. increased to \$5.99.
 - On March 14, 2020, the price of Cheerios 20 Oz. increased to \$9.19.
 - On March 16, 2020, at approximately 8:00 PM, the price of Cheerios 20 Oz. was reduced to \$3.99.
 - On March 18, 2020 there were two transactions of Cheerios 20 Oz. priced at \$9.19.
 - On March 20, 2020 the price of Cheerios 20 Oz. increased to \$9.19

- On March 20, 2020, at approximately 12:30 PM, the price of Cheerios was reduced to \$7.49 and has remained at that price.
 - There were a total of 18 transactions of Cheerios 20 Oz. at the \$7.49 sales price.
 - There were a total of 12 transactions of Cheerios 20 Oz. at the \$9.19 sales price.
6. The pre-Declaration sale price (\$5.99) of the Cheerios 20 Oz. compared to the post-Declaration sale prices (\$7.49 and \$9.19) shows a \$1.50 to \$3.20 increase in prices, which equates to 25.04% and 53.42%, respectively. These increases in sale price are not attributable to any documented additional costs charged by Food Fair's supplier as no documents were produced evidencing Food Fair's costs under the Subpoena during this period.
7. This analysis shows price gouging under the CFA, N.J.S.A. 56:8-109, because the 25.04% and 53.42% increases in price exceed the statutorily permitted 10% price increase.

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.

Walter Kaminski

Walter Kaminski

Dated: August 10, 2020
Newark, New Jersey