

FILED

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Division of Consumer Affairs

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By: Jeffrey Koziar
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of
WALMART

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection and the New Jersey State Office of Weights and Measures (“OWM”) (collectively, “Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (“CFA”), the Unit Price Disclosure Act, N.J.S.A. 56:8-21 to -25, and the Unit Pricing Regulations, N.J.A.C. 13:45A-14.1 to 14.15 have been or are being committed by Walmart as well as by its owners, members, officers, directors, managers, employees, representatives, and agents, (“Respondent” or “Walmart”) (hereinafter referred to as the “Investigation”);

WHEREAS the Division alleges that Respondent violated the CFA, the Unit Price Disclosure Act and the Unit Pricing Regulations, by using the incorrect unit of measure for Consumer commodities including certain food products; (the “Covered Claims”)

WHEREAS Walmart takes seriously its obligations to provide accurate unit prices to enable customers to comparison shop;

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) without having admitted any violation of law and for good cause shown;

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

Capitalized words or terms not otherwise defined in the Consent Order shall have the following meanings:

2.1 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition shall apply to other forms of the word “Advertisement” Including, without limitation, “Advertise” and “Advertised.”

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.4 “Consumer commodity” shall be defined in accordance with N.J.S.A 56:8-22.

2.5 “Division” refers to the New Jersey Division of Consumer Affairs.

2.6 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

2.8 “New Jersey” and “State” shall refer to the State of New Jersey.

2.9 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.10 “Sale” shall be defined in accordance with N.J.S.A. 56:8-22.

3. REQUIRED BUSINESS PRACTICES

3.1 Respondent shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Unit Price Disclosure Act and the Unit Pricing Regulations.

3.2 Respondent shall utilize the approved unit of measure for every regulated Consumer Commodity sold, offered or Advertised for Sale, as set forth in the Unit Pricing Regulations, N.J.A.C. 13:45A-14.4.

3.3 Within 90 days of the execution of this Consent Order, Walmart shall incorporate training into the onboarding process for all new employees working in New Jersey retail stores who have pricing responsibilities regarding Walmart’s obligations to comply with New Jersey’s pricing laws and regulations.

3.4 Walmart shall keep records of the training sessions for a period of three years from the Effective Date of the Consent Order.

3.5 Walmart shall conduct internal audits for a period of three years such that New Jersey Walmart stores are audited at least once during the three-year period. Internal audits shall include the random sampling of 100 items of regulated consumer commodities and each audit shall generate a report that includes the following:

- a. The store location and store number;
- b. The number of items sampled by the auditor;
- c. The total number of unit pricing errors found by the auditor;
- d. For every unit pricing error found:
 - i. The name of the item sampled and the UPC code;
 - ii. The incorrect unit of measure used; and
 - iii. The correct unit of measure.

3.6 An internal audit that reveals unit pricing errors in more than 2% of the products sampled at any one store shall constitute a failed audit.

3.7 Semi-annually, Walmart shall submit to the Division a corrective action plan for failed audits during the preceding six-month period, along with a summary of likely reasons and efforts to prevent future unit pricing errors.

3.8 The first corrective action plan shall be submitted to the Division no later than one year after the Effective Date.

3.9 Walmart shall retain all reports and other records of every internal audit for a period of three years from the Effective Date of the Consent Order and shall produce all such reports or records to the Division upon request during the period for which the Consent Order is in place, provided that such request applies to reports and records for internal audits conducted during a six-month period for which Walmart has already submitted its semi-annual report.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement in the amount of One Million Six Hundred Forty-One Thousand Five Hundred and 00/100 Dollars (\$1,641,500.00) (“Settlement Payment”), which Respondent shall pay on or before the Effective Date.

4.2 Respondent shall pay One Million Six Hundred Sixteen Thousand Ninety-One and 00/100 Dollars (\$1,616,091.00) pursuant to N.J.S.A. 56:8-13. Respondent shall also pay Eighteen Thousand Five Hundred Nine and 00/100 Dollars (\$18,509.00) in reimbursement of the Division’s

investigative costs, pursuant to N.J.S.A. 56:8-11, and Six Thousand Nine Hundred and 00/100 Dollars (\$6,900.00) in reimbursement of the Division's attorneys' fees, pursuant to N.J.S.A. 56:8-19. The Settlement Payment shall be used by the Division in accordance with State law at the sole discretion of the Attorney General for future consumer protection enforcement, consumer education or for any other public purpose permitted by State law.

4.3 The Settlement Payment shall be made by certified or cashier's check, money order, wire transfer or credit card payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street-5th Floor
P.O. Box 45029
Newark, New Jersey 07101

4.4 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of this State.

5.3 The Parties have fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon the Respondent as well as its owners, members, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an admission

by Respondent of any liability or wrongdoing under the CFA, the Unit Price Disclosure Act, the Unit Pricing Regulations, or any other law or regulation. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind or for any purpose except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 The Parties represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

5.12 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13 ("OPRA"). In the event the Division receives an OPRA request, the Division will notify Walmart of the OPRA request as soon as is reasonably possible so that Walmart may seek a protective order. Walmart's counsel will be furnished a copy of all written materials pertaining to such request. The Division commits to provide Walmart with at least seven (7) days' advance notice before complying with any OPRA request for Confidential Material or material designated or marked as containing "Confidential" information, to the extent (and with any required lesser advance notice) that State law does not expressly prohibit such notice.

5.13 Respondent's obligations pursuant to sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 of this Consent Order shall terminate 3 years from the Effective Date.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment as specified in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the CFA, the Unit Price Disclosure Act and the Unit Pricing Regulations arising out of or concerning the Covered Claims (“Released Claims”).

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both; provided, however, that Respondent shall first be given a written Notice of Non-compliance and fifteen (15) days from receipt of the written Notice of Non-compliance in which to cure such non-compliance (“Cure Period”). If Respondent fails to cure the non-compliance during the Cure Period, the Division shall have the right to initiate an enforcement action for violating the terms of the Consent Order. Nothing in this provision shall prohibit the Division from issuing Notices of Violations for non-compliance with any of the laws that the Division enforces, which will not constitute violations of the Consent Order. The Notice and Cure provisions only apply to actions to enforce the Consent Order.

7.2 The Attorney General (or his designated representative) or the Division may not seek civil penalties for violations of the CFA, Unit Price Disclosure Act, or unit price regulations based on reports from Walmart regarding internal audits conducted pursuant to Section 3.5-3.9.

8. COMPLIANCE WITH ALL LAWS

8.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jeffrey Koziar, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law


124 Halsey Street – 5th Floor
Newark, New Jersey 07101

For Respondent:

Janet Goeking, Esq.
Lead Counsel
Walmart
702 SW 8th Street
Bentonville, Arkansas 72716

IT IS ON THE 18th DAY OF June, 2024 SO ORDERED.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 
CARI FAIS, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: Jeffrey Koziar Dated: May 28, 2024
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819

FOR WALMART:

By: Mark R. Herring (w/ express authorization) Dated: May 24, 2024
Mark R. Herring
Partner
Akin Gump Strauss Hauer & Feld LLP
2001 K Street N.W.
Washington, D.C., 20006
(202) 887-4023