

DEPARTMENT OF FOOD AND AGRICULTURE

Division of Measurement Standards
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A.G. KAWAMURA, Secretary



DMS Notice
QC – 07 – 3

December 27, 2007

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Walgreen Co. Settlement

The attached stipulated final settlement involving recent litigation against Walgreen Co. contains both perpetual and limited injunctive provisions. We are very pleased with the work done by an effective prosecution team and with the continued effectiveness of multi-county investigation efforts. Local officials should try to ensure each store implements these provisions per the agreement when inspecting Walgreen Co. stores.

Counties should also be sure to report reimbursements and penalties in the County Monthly Report (CMR). Our records indicate that Santa Cruz County first asked for a statewide surveillance and that the official filing was done in Santa Clara County. I am sure the participating counties will decide how best to report the total penalty portion of the settlement in the CMR. The numbers are not generally reported individually and it probably does not matter if one county reports the entire penalty or if it is split among primary participants. Other participating counties should remember to add any reimbursements received in their QC Program reimbursements.

Sincerely,

A handwritten signature in cursive script that reads "Dennis R. Johannes".

Dennis R. Johannes
Director

cc QC Special Investigators
Kevin Masuhara, Director, County Liaison Office
Ron Flores

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D. Wendel

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

WALGREEN CO.
An Illinois Corporation,

Defendant.

CIVIL NO. **107CV101843**

STIPULATED FINAL JUDGMENT

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys, DOLORES A. CARR, District Attorney for the County of Santa Clara by Robin B. Wakshull, Deputy District Attorney; CHRISTIE STANLEY, District Attorney for the County of Santa Barbara by B. Allan Kaplan, Senior Deputy District Attorney; JAMES P. FOX, District Attorney for the County of San Mateo by John E. Wilson, Deputy District Attorney in Charge; BOB LEE, District Attorney for the County of Santa Cruz by William R. Atkinson, Deputy District Attorney; and Defendant, WALGREEN CO., appearing through its attorneys, Rogers Joseph O'Donnell, by Renee D. Wasserman, Esq.; and

Plaintiff and Defendant having stipulated to the entry of this Stipulated Final Judgment (hereafter "Stipulated Judgment") without the taking of any proof and without this Stipulated Judgment constituting evidence or an admission by Defendant regarding any issue of fact or law alleged in the complaint and without Defendant admitting any liability herein; and

The Court having considered the pleadings and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

-1-

STIPULATED FINAL JUDGMENT

1 JURISDICTION

2 1. This action is brought under California law, and this Court has jurisdiction of the
3 subject matter and the parties.

4 2. This Stipulated Judgment, including the injunctive provisions, is applicable to
5 Walgreen Co, an Illinois corporation (hereinafter "WALGREEN" OR "DEFENDANT"), and
6 all persons and entities through whom WALGREEN may act, including each of its agents,
7 servants, employees, officers, directors, representatives, successors, assigns, and to all persons
8 who are acting in concert or participation with any of them who have actual or constructive
9 notice of this Stipulated Judgment as they relate to WALGREEN's retail drugstore locations in
10 California.

11 DEFINITIONS

12 3. For the purposes of this Stipulated Judgment, the following definitions shall
13 apply:

14 A. "**Advertised Price**" means the lowest price that is posted or displayed on the
15 commodity itself or on a shelf tag that corresponds to that commodity or the
16 price for a commodity published in a newspaper , magazine, direct mail
17 publication, or any other statement as defined by Business and Professions Code
18 section 17500, pursuant to the terms therein. Any advertised price posted on a
19 commodity itself or on a shelf tag that corresponds to that commodity is subject
20 to Business and Professions Code section 12024.2(a)(2).

21 B. "**Price Scanning System**" means an automated system by which a marking
22 or tag affixed to an item offered for sale to the public is electronically scanned at
23 the **Point of Sale** (hereinafter "**POS**") terminal to determine the identity of the
24 item and the price to be charged for the item.

25 C. "**POS price**" means the price of an item when it is scanned at the POS using
26 the Price Scanning System.

27 D. "**Pricing Discrepancy**" means a variance between the Advertised Price and
28 the POS price. For purposes of this Stipulated Judgment, a Pricing Discrepancy

1 shall not include (1) situations where the variance between the Advertised Price
2 and the POS price is consistent with a clear and conspicuous price correction
3 notice in the area where the merchandise is located or by a sign that is clearly
4 and conspicuously visible and legible to a consumer standing at each POS
5 terminal in the store notifying customers of an incorrect Advertised Price; (2)
6 any variance between an Advertised Price and the POS price when merchandise
7 has been correctly stocked but inadvertently moved, transferred or transported to
8 the wrong rack, shelf, display, or fixture; (3) any variance between an
9 Advertised Price and the POS price when merchandise has been correctly priced
10 but the price tag is inadvertently removed from the rack, shelf, display, or
11 fixture; or (4) any variance which results in a consumer being charged a price
12 lower than the Advertised Price. Defendant shall bear the burden of proof in
13 establishing any exception under this subsection.

14 E. **"Report of Pricing Discrepancy"** means a report of a Pricing Discrepancy
15 by any customer, any employee or agent of a government agency, or any
16 employee of Walgreen.

17 F. **"Weights and Measures Official"** means any representative of (i) the State
18 of California Division of Measurement Standards, (ii) any California County
19 Sealer, (iii) any Director of a California County Department of Agriculture, (iv)
20 the California Attorney General, or (v) any California district or city attorney.

21 INJUNCTION

22 4. Pursuant to Business and Professions Code sections 17203 and 17535,
23 WALGREEN is permanently enjoined and restrained from directly or indirectly
24 engaging in any of the following acts or practices:

25 A. Making or causing to be made to the public any statement representing a
26 price for an item offered for sale, including but not limited to any statements
27 made in any newspaper or any other type of printed advertisements, on a store
28 shelf, or sign near the item, and charging a greater price at the time the item is

1 purchased;

2 B. Charging at the time of sale of a commodity, a value which is more than the
3 price which is advertised, posted, marked, displayed or quoted, in violation of
4 Business and Professions Code section 12024.2.

5 C. Making or causing to be made any false or misleading statement to the
6 public with respect to the price of items offered for sale in violation of Business
7 and Professions Code section 17500.

8 **COMPLIANCE PROGRAM**

9 5. Pursuant to Business and Professions Code sections 17203 and 17535,
10 WALGREEN shall, to the extent that it has not already done so, institute and
11 administer the following policies and procedures for a period of three (3) years
12 from the date of entry of this Stipulated Judgment, in every existing Walgreen
13 store in California, and in every new Walgreen store to be opened in California
14 during the three (3) year period beginning from the date of entry of this
15 Stipulated Judgment. This program shall include, but need not be limited to, the
16 following:

17 **A. POLICIES AND PROCEDURES.** WALGREEN shall promptly
18 implement written pricing accuracy policies and procedures ("Policies and
19 Procedures") that are designed to further compliance with the injunctive
20 provisions in the Stipulated Judgment.

21 **B. ACKNOWLEDGEMENT.** WALGREEN shall prepare and distribute that
22 portion of its Policies and Procedures concerning pricing accuracy which is
23 relevant to the respective job function of each of its pricing personnel (as
24 designated in paragraph 5.C. below) who shall receive written and/or live
25 training regarding the same. WALGREEN shall confirm its compliance with
26 this provision by maintaining a record of such distribution and training of
27 pricing personnel, including personnel name and date of distribution or training.
28 Such record shall be provided to Plaintiff within thirty (30) days of a written

1 request.

2 **C. APPOINTMENT OF PRICING PERSONNEL.**

3 **1) CORPORATE PRICING PERSONNEL.** WALGREEN shall
4 appoint one person at the corporate level (hereinafter "CPP") who shall
5 be charged with overseeing, with respect to all stores in California: (a)
6 the maintenance of pricing accuracy in the Price Scanning System, (b)
7 price changes, and (c) resolution of Pricing Discrepancies in the system
8 or stores. The CPP may delegate duties to other Walgreen employees,
9 appoint "back-up" CPPs, or retain third-party providers as the CPP
10 deems reasonable and appropriate to assist with the CPP's
11 responsibilities. The WALGREEN Corporate and Regulatory Law
12 Department shall be the designated corporate contact for inquiries from
13 State of California Weights and Measures inspectors and/or any District
14 Attorney for counties representing The People of The State of California.
15 **2) STORE PRICING PERSONNEL.** Each WALGREEN store in
16 California shall designate an employee or employees to act as its store
17 price accuracy personnel (hereinafter "SPP") to oversee pricing accuracy
18 measures in that store, including the correction of signage errors and
19 random in-store audits. The SPP may delegate duties to other
20 WALGREEN employees, appoint "back-up" SPPs, or retain third-party
21 providers as the SPP deems reasonable and appropriate to assist with the
22 SPP's responsibilities.

23 **D. RANDOM IN-STORE AUDITS BY WALGREEN PERSONNEL.**

24 Every WALGREEN California SPP shall institute random in-store price-
25 checking audits to be conducted by a WALGREEN employee or employees.

26 1) Said employee(s) shall conduct such random in-store audit no
27 less than once every month.

28 2) Said employee(s) shall conduct such in-store audit on no less than

1 fifty (50) randomly selected products per month.

2 3) If any Pricing Discrepancy is uncovered, said employee(s) will
3 take the necessary steps to promptly correct the Pricing Discrepancy.

4 4) If the employee(s) conducting the audit determines that the
5 Pricing Discrepancy was caused by a pricing error which may extend
6 beyond a single store, the employee(s) will promptly notify the SPP
7 and/or CPP of the Pricing Discrepancy.

8 5) Said employee (s) shall record the results of each audit in a paper
9 or electronic format, and the SPP shall retain said results as provided in
10 paragraph 8. The recorded results of the audit shall be specific enough to
11 identify: (a) store audited; (b) the date of the audit, (c) the name,
12 employee number or other user identification of the person conducting
13 the audit, (d) the number of items audited, (e) a statement that the errors,
14 if any, were corrected.

15 **E. PRICE VERIFICATION OF ADVERTISED PRODUCTS.** Upon the
16 occurrence of any regular, sale or promotional price change covering one or
17 more products in any WALGREEN store in California, the SPP or other
18 qualified person at each store shall effectuate the price change(s) and as part of
19 that process shall verify that all affected shelf prices and in-store signs are
20 accurate. The SPP or other qualified person shall assure that any pricing
21 inaccuracies are corrected promptly.

22 **F. IN-STORE REPORTS OF PRICING DISCREPANCIES.** Whenever
23 a WALGREEN store employee receives a Report of Pricing Discrepancy, the
24 employee shall promptly investigate whether there is an error or request a store
25 SPP to investigate the error. Said employee or the SPP shall take appropriate
26 action to resolve the Pricing Discrepancy, including promptly correcting the in-
27 store price and, if necessary, by notifying the CPP if the error is likely to have
28 occurred in other stores as well. Each WALGREEN store in California shall

1 maintain a daily Price Discrepancy Report reflecting all pricing errors detected
2 at the POS. These reports shall be maintained and made available to the
3 Plaintiff as described in paragraph 8.

4 **G. REPORTS OF PRICING DISCREPANCIES TO THE CPP.** When
5 the CPP receives a Report of Pricing Discrepancy, the CPP shall promptly
6 investigate whether a system error at the corporate level occurred. If a system
7 error at the corporate level is verified, the CPP shall take appropriate action to
8 correct the system error as soon as reasonably practicable. The CPP shall use its
9 best efforts to correct a system error within twenty-four (24) hours of verifying
10 the error. WALGREEN shall make a good faith effort to take prompt interim
11 action, as necessary, pending the resolution of a Pricing Discrepancy or
12 correction of a Price Scanning System error.

13 **6. INCENTIVE PROGRAM.**

14 **A.** Whenever WALGREEN is notified by a consumer and verifies that a
15 Pricing Discrepancy has occurred during scanning at the POS in a California
16 store, whether or not the transaction has been completed, the customer shall be
17 charged the Advertised Price and shall be given a four dollar (\$4.00) reward on
18 one item to which the Pricing Discrepancy applies. If the item costs more than
19 four dollars (\$4.00), the customer will, at WALGREEN's discretion, receive the
20 award in the form of a four dollar (\$4.00) Merchandise Card or a POS discount.
21 If the item costs four dollars (\$4.00) or less, the customer will receive one unit
22 of the item for free. If the customer purchases additional quantities of the item to
23 which the Pricing Discrepancy applies, the price charged will be the Advertised
24 Price. The program shall not apply to alcohol, tobacco, dairy, prescription drug
25 products or other products to which California law restricts application of such
26 discounts.

27 **B.** The customer will not be entitled to this award if a WALGREEN's
28 employee corrects the price prior to the customer's complaint or notification of a

1 Pricing Discrepancy; if the merchandise had been inadvertently moved to an
2 incorrect shelf or display; if the price sign has been inadvertently removed from
3 the rack, shelf or display; if the error cannot be verified; or if a clear and
4 conspicuous price error notice was posted in the area where the merchandise is
5 stocked or in the cash register areas where it is clearly and conspicuously visible
6 and legible to consumers standing at each POS terminal at the time the purchase
7 was commenced.

8 C. WALGREEN's employees are not eligible for the incentive program.

9 D. WALGREEN shall post signage that is clearly and conspicuously visible
10 and legible to consumers standing at each POS location informing them of the
11 incentive program described herein.

12 E. At WALGREEN's discretion, the method of providing the incentive and
13 the wording of the sign shall be either of the two samples below:

14 1) WALGREENS SCANNER PRICE GUARANTEE: IF AN ITEM
15 SCANS AT A HIGHER PRICE THAN THE LOWEST ADVERTISED PRICE,
16 WE WILL DEDUCT FOUR DOLLARS (\$4.00) FROM THE LOWEST
17 ADVERTISED PRICE OF ONE SUCH ITEM. IF THE LOWEST
18 ADVERTISED PRICE IS FOUR DOLLARS (\$4.00) OR LESS, YOU WILL
19 RECEIVE ONE SUCH ITEM FOR FREE.

20 THIS DOES NOT APPLY TO ALCOHOL, TOBACCO, DAIRY,
21 PRESCRIPTION DRUGS, IF THE ITEM OR PRICE SIGN HAS BEEN
22 INADVERTENTLY MOVED, OR IF A CORRECTIVE NOTICE WAS
23 POSTED.

24 2) WALGREENS SCANNER PRICE GUARANTEE: IF AN ITEM
25 SCANS AT A HIGHER PRICE THAN THE LOWEST ADVERTISED PRICE,
26 WE WILL GIVE YOU ONE FOUR DOLLAR (\$4.00) MERCHANDISE
27 CARD. IF THE LOWEST ADVERTISED PRICE IS FOUR DOLLARS
28 (\$4.00) OR LESS, YOU WILL RECEIVE ONE SUCH ITEM FOR FREE.

1 THIS DOES NOT APPLY TO ALCOHOL, TOBACCO, DAIRY,
2 PRESCRIPTION DRUGS, IF THE ITEM OR PRICE SIGN HAS BEEN
3 INADVERTENTLY MOVED, OR IF A CORRECTIVE NOTICE WAS
4 POSTED.

5 7. In the event that the People seek to initiate an enforcement action for non-
6 compliance with the Compliance Program or the Incentive Program provisions
7 of this Stipulated Judgment based upon the allegation that WALGREEN has
8 violated or breached any part of Paragraphs 5, 6 or 8 herein, the People shall
9 first notify WALGREEN Corporate and Regulatory Law Department in writing.
10 The parties shall meet and confer to address and resolve the People's concerns,
11 and, if correction is necessary, give WALGREEN reasonable time to correct
12 such alleged violation prior to initiating enforcement proceedings. This
13 paragraph shall not be applicable to the investigation and prosecution of any
14 new violation of any statute or regulation occurring after the date of entry of this
15 Stipulated Judgment.

16 8. **RETENTION OF RECORDS.** Walgreen shall establish procedures to retain
17 in-store audit records and Price Discrepancy Reports for at least three (3) years
18 from the date each audit or report is done. Such records may be retained in a
19 computerized system or other method that is commercially practicable and shall
20 be made available for inspection not later than thirty (30) days from the date of
21 the written request of any Weights and Measures Official to the Walgreen Co.
22 Corporate and Regulatory Law Department.

23 9. **INADMISSIBILITY OF RECORDS.** The records of Walgreen's internal
24 procedures performed in accordance with the terms of paragraphs 5 and 6 of this
25 Stipulated Judgment, including records of audits and Reports of Pricing
26 Discrepancies, shall not be admissible as evidence against Walgreen in any
27 subsequent law enforcement activity by the People of the State of California,
28 except such records shall be admissible in court proceedings to establish

1 compliance or a failure to comply with the provisions of the Compliance
 2 Program described in paragraphs 5, 6 and 8 of the Stipulated Judgment. The
 3 People shall not disclose information obtained from the records of
 4 WALGREEN's internal procedures which are required pursuant to this
 5 Stipulated Judgment to non-law enforcement parties except pursuant to court
 6 process, in which event Plaintiff shall notify WALGREEN prior to disclosure.
 7 10. The Compliance Program in paragraphs 5, 6 and 8 shall be implemented not
 8 later than forty-five (45) days after the date of entry of this Stipulated Judgment.
 9 The obligations under paragraphs 5 and 6 shall terminate three (3) years after the
 10 date of implementation of each requirement. The obligations under paragraph 8
 11 shall terminate three (3) years after the creation of the last report required under
 12 paragraphs 5 and 6.

13 **MONETARY RELIEF**

14 11. Defendant WALGREEN shall pay to Plaintiff, upon signing of the Stipulation
 15 for Entry of Stipulated Judgment, as reimbursement of investigative costs to the State
 16 and County Weights and Measures offices, pursuant to Business and Professions Code
 17 section 12015.5, the sum of \$68,892.36, by checks made payable as follows:

18	Santa Clara County Dept of Agriculture & Envr. Mgmt.	\$24,429.00
19	Santa Cruz County Dept. of Weight and Measures	\$7,020.01
20	Santa Barbara County Dept. of Weights and Measures	\$1,800.00
21	San Mateo County Dept. of Weights and Measures	\$4,545.34
22	Fresno County Dept. of Weights and Measures	\$163.13
23	Contra Costa County Dept. of Agriculture	\$1,995.00
24	Tulare County Dept. of Weights and Measures	\$240.00
25	Marin County Dept. of Weights and Measures	\$1,358.92
26	Monterey County Dept. of Weights and Measures	\$298.54
27	Kings County Dept. of Weights and Measures	\$256.24

1	San Francisco County Dept. of Weights and Measures	\$560.00
2	Merced County Dept. of Weights and Measures	\$1,189.00
3	San Joaquin County Dept. of Weights and Measures	\$548.72
4	Riverside County Dept. of Weights and Measures	\$6,577.64
5	Los Angeles County Dept. of Weights and Measures	\$8,584.10
6	Ventura County Dept. of Weights and Measures	\$1,068.00
7	San Luis Obispo County Dept. of Weights and Measures	\$648.00
8	Sonoma County Dept. of Weights and Measures	\$1,360.00
9	San Bernardino County Dept. of Weights and Measures	\$2,578.00
10	Stanislaus County Dept. of Weights and Measures	\$463.73
11	Shasta County Dept. of Weights and Measures	\$192.00
12	Imperial County Dept. of Weights and Measures	\$179.46
13	California Dept. of Food and Agriculture - Cashier	\$2,837.53
14	12. Pursuant to Business and Professions Code section 17206 and 17536, upon	
15	signing of the Stipulated Judgment, Defendant WALGREEN shall pay to	
16	Plaintiff as civil penalties the sum of \$698,107.64, which shall be distributed,	
17	pursuant to Government Code section 26506 in equal portions by four separate	
18	checks made payable as follows:	
19	District Attorney of Santa Clara County	\$174,526.91
20	District Attorney of Santa Barbara County	\$174,526.91
21	District Attorney of San Mateo County	\$174,526.91
22	District Attorney of Santa Cruz County	\$174,526.91
23	13. Defendant WALGREEN shall deliver to Plaintiff, upon signing of the	
24	Stipulation for Entry of Stipulated Judgment, the sum of \$320.00 payable to	
25	Clerk of the Court for filing fees.	
26	14. All checks described in paragraphs 11 through 13 above shall be delivered to	
27	Robin B. Wakshull, Deputy District Attorney, Office of the District Attorney,	
28	70 West Hedding Street, West Wing, San Jose, California 95110.	

1 15. Defendant shall bear its own attorney's fees and costs.

2 **RETENTION OF JURISDICTION AND FINALITY**

3 16. This Stipulated Judgment is intended to supersede the injunctive provisions of
4 the Stipulated Judgments entered in *People v. Walgreen Co.*, San Mateo County
5 Superior Court, Case No. 344230 and *People v. Walgreen Co.*, Santa Clara
6 County Superior Court, Case No. 725968. With regard to the Santa Clara
7 Superior Court, Case No. 725968, the injunctive terms of that judgment are
8 superseded by the injunctive provisions of this Stipulated Judgment. With
9 regard to San Mateo Superior Court Case No. 344230 ("Prior San Mateo
10 Stipulated Judgment"), the parties shall request the San Mateo Superior County
11 Court to modify the injunctive provisions of its prior judgment in conformance
12 with this Stipulated Judgment such that the injunctive provisions of the Prior
13 San Mateo Stipulated Judgment are also superseded by the injunctive provisions
14 of this Stipulated Judgment.

15 17. The Court retains jurisdiction for the purpose of enabling any party to this Final
16 Judgment to apply to the Court at any time for such further orders and directions
17 as may be necessary and appropriate for the construction or carrying out of this
18 Stipulated Judgment; for the modification or termination of any of its injunctive
19 provisions; and for the enforcement of, compliance with, and punishment of
20 violations of the Stipulated Judgment. The parties waive the right to appeal this
21 Stipulated Judgment as to form and content.

22 18. All parties to this action agree not to seek any further relief relating to the
23 matters alleged in the complaint herein pertaining to pricing accuracy. This
24 paragraph is intended to, among other things, make clear that Plaintiff shall not
25 seek further relief or penalties for the consumer overcharges or advertising
26 violations of Business and Professions Code section 17200, 17500 and 12024.2
27 which occurred prior to the date of filing this Stipulated Judgment.

28 19. The parties agree that this Stipulated Judgment is intended to provide full, fair

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and adequate relief to protect the interests of Plaintiff and members of the public who may have been overcharged during the period from January 1, 2003 through the date of entry of this Stipulated Judgment and that the terms of this Stipulated Judgment shall have the maximum permitted *res judicata* effect.

EFFECTIVENESS

- 20. This Stipulated Judgment shall take effect immediately upon its filing and without the filing of a Notice of Entry of Stipulated Judgment.
- 21. The Clerk of the Court is directed to immediately enter this Stipulated Judgment.

Kevin E. McKenney

DATED: DEC 26 2007

JUDGE OF THE SUPERIOR COURT