



DMS Notice
QC – 09 – 6

May 14, 2009

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Wal-Mart, Inc. Settlement**

Attached is the stipulated final judgment involving recent litigation against Wal-Mart, Inc. for violations of the California Business and Professions Code Section 12024.2. We are pleased with the fine work done on behalf of the people, by the prosecution team representing the San Diego County District Attorney and the California Attorney General. The settlement specified more than \$1,440,000 and includes reimbursements for investigative costs.

San Diego County should report these penalties of \$1,200,000 in the County Monthly Report (CMR). All 29 participating counties should also separately record their individual investigative cost reimbursements in the appropriate columns in the report. We in weights and measures are pleased with the continued support and hard work from both the San Diego District Attorney and the Attorney General.

Sincerely,

Edmund E. Williams, Director

Cc QC Special Investigators
Kevin Masuhara
San Diego District Attorney, Bonnie M. Dumanis
Attorney General, Edmond G. Brown Jr.



F I L E D

Clerk of the Superior Court

NOV 24 2008

By: J. BELDEN, Deputy

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

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
WAL-MART, INC., a Delaware corporation,
Defendant.

Case No.: 37-2008-00096757-CU-BT-CTL

STIPULATED FINAL JUDGMENT

The People of the State of California, Plaintiff, by and through EDMUND G. BROWN JR., Attorney General of the State of California, by LORJ J. FORCUCCI, Deputy Attorney General; and BONNIE M. DUMANIS, San Diego District Attorney, by TRICIA PUMMILL, Deputy District Attorney; and Defendant WAL-MART STORES, INC., a Delaware corporation, ("Wal-Mart" or "Defendant") by and through its attorneys, DICKSTEIN SHAPIRO, LLP, by MARGARET FEINSTEIN, and GIBSON DUNN & CRUTCHER, LLP, by MARCELLUS A. MCRAE, (collectively, "the Parties") having stipulated that this Court has jurisdiction over them and this matter and that this Stipulated Final Judgment ("Judgment") may be signed without the taking of proof, without trial or adjudication of any issue of fact or law herein, and without the Parties' stipulation constituting evidence of an admission by Defendant of any liability or wrongdoing;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

2 **JURISDICTION**

3 1. This action is brought under California law and this Court has jurisdiction of its subject
4 matter and the Parties.

5 2. Consistent with the Stipulation for Entry of Final Judgment, this Judgment resolves the
6 above-captioned action filed by Plaintiff against the Defendant relating to price scanning
7 discrepancies, and is meant to resolve and is conclusive with respect to those matters set forth in
8 the allegations of the Complaint filed in this action regarding price scanning discrepancies
9 which occurred in the State of California before the date of entry of this Judgment.

10 **INJUNCTION**

11 3. The provisions of this injunction are applicable to Defendant Wal-Mart doing business as
12 Wal-Mart Discount Stores and Supercenters ("Wal-Mart Stores") in California, and to its
13 officers, directors, employees, agents and representatives who have responsibility for the Wal-
14 Mart Stores in California, when acting within the course and scope of their agency and
15 employment, and to the successors and assignees of Wal-Mart, and to all natural persons,
16 partnerships, corporations, and other entities acting for, under, by, through, on behalf of, or in
17 concert with Wal-Mart, who have responsibility for the Wal-Mart Stores in California, with
18 actual or constructive notice of this Judgment. All obligations imposed upon Defendant by the
19 terms of this Judgment are ordered pursuant to California Business and Professions Code
20 sections 17203 and 17535.

21 4. Wal-Mart and all persons and entities set forth in Paragraph 3 above are hereby
22 permanently enjoined and restrained, pursuant to California Business and Professions Code
23 sections 17203 and 17535, from:

24 A. Making or causing to be made to the public any statement representing a price for
25 an item offered for sale and charging a greater price at the time the item is purchased in
26 violation of the California Business and Professions Code sections 17200 and 17500;

27 B. At the time of sale of a commodity, charging an amount which is greater than the
28 price which is then advertised, posted, marked, displayed or quoted for that commodity,

1 in violation of California Business and Professions Code section 12024.2(a)(1); and

2 C. At the time of sale of a commodity, charging an amount greater than the lowest
3 price posted on the commodity itself or on a shelf tag that corresponds to the commodity,
4 notwithstanding any limitation of the time period for which the posted price is to be in
5 effect, in violation of California Business and Professions Code section 12024.2(a).

6 5. Wal-Mart, and all persons and entities set forth in Paragraph 3 above, are ordered for a
7 period of four years from the entry of this Judgment to initiate and enforce in all existing Wal-
8 Mart Stores in California, and in every future Wal-Mart Store in California, before opening for
9 business, a program to promote pricing accuracy. Such program shall consist of at least the
10 following:

11 A. Wal-Mart shall designate a person or persons at its corporate headquarters who,
12 with assistance as needed, will be responsible for receiving and maintaining consumer
13 complaints and weights and measures inspection reports from all Wal-Mart Stores in
14 California. Wal-Mart has provided the names of the designated persons and their contact
15 information to Plaintiff. Wal-Mart will provide the name and contact information of any
16 individual who replaces or supplements the individuals currently designated within 30
17 calendar days of that assignment, by letter to the attention of Lori J. Forcucci, Office of
18 the Attorney General, 110 West A Street, Suite 1100, San Diego, California 92101.

19 B. Wal-Mart shall designate an employee or employees in every Wal-Mart Store in
20 California whose responsibilities shall include pricing accuracy. These efforts shall
21 include department managers among others, who shall scan features on a weekly basis,
22 office associates or asset protection personnel or others who shall review approximately
23 250 price changes weekly and sales floor assistant managers or others who shall be
24 responsible for implementation of the above program. Pricing errors discovered during
25 such reviews shall be promptly corrected in the Wal-Mart Store. These employees shall
26 also be responsible for transmitting the information to the person or persons designated
27 pursuant to Paragraph 5A above, at Wal-Mart's corporate headquarters within three hours
28 after learning that a price in the point of sale computer system is different from the

1 currently advertised price for the item in the store or in advertising, if the price
2 discrepancy will or is likely to affect other Wal-Mart Stores in California. Wal-Mart
3 shall ensure that there are backup employees trained to handle the responsibilities for
4 price accuracy. The employees described in this paragraph shall, among them, work a
5 minimum of 40 hours per week on price accuracy duties.

6 C. Whenever any employee of Wal-Mart becomes aware that a customer in a Wal-
7 Mart Store in California has been or is being charged a price for an item which is higher
8 than the lowest price currently listed on the shelf, store sign or advertisement, Wal-Mart
9 shall give the customer a three dollar (\$3.00) reduction from one of the items, or if the
10 item's lowest posted price or advertised price is three dollars or less, the customer shall
11 receive one such item for free. Wal-Mart shall charge that customer the lowest
12 advertised price on that item and on all remaining items purchased by that same customer
13 and the discrepant price shall be corrected. The cashier shall send a system notification
14 to inform the Wal-Mart employee in charge of implementing those changes in the Wal-
15 Mart Store in California of the price discrepancy promptly. If the merchandise has been
16 inadvertently moved to an incorrect shelf or display location, or the price or signage for
17 the item was fraudulently altered, the scanned price for the particular item shall apply.

18 D. Wal-Mart shall inform customers of the policy set forth in Paragraph 5C above by
19 posting a sign at every check-out stand in every Wal-Mart Store in California. The signs
20 shall state "IF AN ITEM SCANS AT A PRICE HIGHER THAN THE SHELF OR
21 ADVERTISED PRICE, WE WILL CORRECT THE ERROR AND DEDUCT \$3.00
22 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM. IF THE
23 LOWEST ADVERTISED PRICE IS \$3.00 OR LESS, YOU WILL RECEIVE THE
24 ITEM FOR FREE. YOU WILL BE CHARGED THE LOWEST ADVERTISED PRICE
25 FOR THAT ITEM AND ALL ADDITIONAL IDENTICAL ITEMS." English and
26 Spanish signs will be posted as appropriate. These signs shall be the size and in the font
27 of the document marked as Exhibit A to this Judgment.
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1 6. Nothing in this Injunction shall be a defense to an action by the People for a future
2 violation of the California Business and Professions Code.

3 **MONETARY RELIEF**

4 7. Pursuant to California Business and Professions Code sections 17206 and 17536, Wal-
5 Mart shall on the date of the filing of this Stipulated Final Judgment, pay to Plaintiff one million
6 two hundred thousand dollars (\$1,200,000) in the form of two checks, one in the amount of six
7 hundred thousand dollars (\$600,000) payable to the "California Attorney General's Office," and
8 one in the amount of six hundred thousand dollars (\$600,000) payable to the "San Diego District
9 Attorney's Office."

10 8. Wal-Mart shall on the date of the filing of this Stipulated Final Judgment pay to Plaintiff
11 costs totaling one hundred ninety thousand six hundred twenty-one dollars (\$190,621) in the
12 form of 32 checks payable as follows:

13	California Attorney General	\$51,000
14	San Diego District Attorney	\$52,500
15	Butte County Weights & Measures	\$ 457
16	Calif. Dept. of Agriculture & Measurement Standards	\$16,615
17	Contra Costa County Weights & Measures	\$ 490
18	Del Norte County Weights & Measures	\$ 104
19	Fresno Dept. of Agriculture	\$ 565
20	Imperial County Agricultural Commissioner	\$ 355
21	Kern Dept. of Weights & Measures	\$ 616
22	Kings County Agriculture & Measurement Standards	\$ 480
23	Los Angeles County Agricultural Commissioner/Weights & Measures	\$14,115
24	Madera County Agriculture & Measurement Standards	\$ 142
25	Merced County Weights & Measures	\$ 588
26	Monterey County Weights & Measures	\$ 663
27	Napa County Weights & Measures	\$ 462
28	Orange County Weights & Measures	\$ 1,197
	Riverside County Weights & Measures	\$ 5,512
	Sacramento County Weights & Measures	\$ 2,543
	San Bernardino County Agriculture/Weights & Measures	\$ 5,781
	San Diego County Agriculture, Weights & Measures	\$14,567
	San Joaquin County Weights & Measures	\$ 1,418
	San Luis Obispo County Agriculture/Weights & Measures	\$ 2,436
	Santa Clara County Weights & Measures	\$ 4,595

1	Shasta County Agriculture/Weights & Measures	\$ 1,043
2	Siskiyou County Weights & Measures	\$ 787
3	Solano County Weights & Measures	\$ 1,046
4	Sonoma County Weights & Measures	\$ 340
5	Stanislaus County Agriculture/Weights & Measures	\$ 713
6	Sutter County Weights & Measures	\$ 367
7	Tulare County Weights & Measures	\$ 200
8	Tuolumne County Weights & Measures	\$ 464
9	Ventura County Weights & Measures	\$ 8,460

9. Wal-Mart shall, pursuant to California Business and Professions Code sections 17203 and 17535, pay *cy pres* restitution in the sum of fifty thousand dollars (\$50,000) in the form of one check payable to the "*Consumer Protection Prosecution Trust Fund*" established in the case, *People v. ITT, Consumer Financial Corporation* (Alameda Superior Court No. 656038-0).

10. All checks shall be delivered to the attention of Deputy District Attorney Tricia Pummill, at the San Diego District Attorney's Office, 330 West Broadway, Suite 750, San Diego, California 92101.

11. In the event of default by Wal-Mart as to any amount due pursuant to Paragraphs 7, 8 and 9, the whole amount shall be deemed immediately due and payable to the County of San Diego and the State of California, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulated Final Judgment. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid.

RETENTION OF JURISDICTION

12. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Judgment, for the modification of any of its injunctive provisions, and for the enforcement of and/or punishment of violations of this Judgment.

13. This Judgment, the Stipulation for Entry of Judgment, and the Exhibits to each, represent the full and complete terms of the settlement entered into by the parties hereto. In any subsequent action undertaken by the People or Wal-Mart, no prior versions of any of its terms, that were not entered by the Court in this Judgment, may be introduced for any purpose

1 whatsoever.

2 14. This Judgment may be modified only by order of this Court.

3 15. The clerk is directed to immediately enter this Judgment.

4 IT IS SO ORDERED.

5 Dated: NOV 24 2008

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8 **RAFAELA ARREOLA**

9 JUDGE OF THE SUPERIOR COURT

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IF AN ITEM SCANS AT A PRICE HIGHER THAN THE SHELF OR ADVERTISED PRICE, WE WILL CORRECT THE ERROR AND DEDUCT \$3.00 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM. IF THE LOWEST ADVERTISED PRICE IS \$3.00 OR LESS, YOU WILL RECEIVE THE ITEM FOR FREE. YOU WILL BE CHARGED THE LOWEST ADVERTISED PRICE FOR THAT ITEM AND ALL ADDITIONAL IDENTICAL ITEMS.

Check Policy: We accept personal and payroll checks with proper ID.

Please show one of the following ID's: **Sorry, we cannot accept:**

- Driver's license
- Non-driver's state ID card
- Military ID
- Social Security Card and a picture ID
- Third-party checks
- Checks made out to "cash"
- Post-dated checks
- Multiple-payee checks
- Handwritten payroll checks

You may write a check for up to \$20 over the amount of your purchase upon ID verification.

When you provide a check as payment, you authorize us to use information from your check to process a one-time Electronic Funds Transfer (EFT) or a draft drawn from your account, or to process the payment as a check transaction. When we use information from your check to make an EFT, funds may be withdrawn from your account as soon as the same day you make your payment, and your financial institution will not return your check.

If your check is returned unpaid, you also authorize us to collect your payment and a return fee of

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by an EFT(s) or draft(s) drawn from your account.

Exhibit A

SI UN ARTÍCULO ESCANEA A UN PRECIO MÁS ALTO QUE EL PRECIO DE LA ESTANTERÍA O EL PRECIO ANUNCIADO, NOSOTROS CORREGIREMOS EL ERROR Y DEDUCIREMOS \$3.00 DEL PRECIO MÁS BAJO ANUNCIADO DEL ARTÍCULO. SI EL PRECIO MÁS BAJO ANUNCIADO ES \$3.00 O MENOS, USTED RECIBIRÁ EL ARTÍCULO GRATIS. A USTED SE LE COBRARÁ EL PRECIO MÁS BAJO ANUNCIADO POR ESE ARTÍCULO Y POR TODOS LOS ARTÍCULOS IDÉNTICOS ADICIONALES.

Norma de Cheques: Aceptamos cheques personales y de nómina con identificación apropiada.

Por favor presente una de las siguientes identificaciones: Lo sentimos, pero no podemos aceptar:

- Licencia de conducción
- Tarjeta de identificación estatal no apta para conducir
- Identificación militar
- Tarjeta de Seguro Social y una identificación con foto
- Cheques de terceros
- Cheques girados al portador o a "cash"
- Cheques postfechados
- Cheques pagaderos a varias personas
- Cheques de nómina girados a mano

Usted puede girar un cheque por hasta \$20 más que la cantidad de su compra tras verificación de su identificación.

Cuando usted provee un cheque como pago, nos autoriza a nosotros a usar información de su cheque para procesar una única Transferencia Electrónica de Fondos (EFT) o a extraer un retiro de su cuenta, o a procesar el pago como una transacción de cheque. Cuando nosotros usamos información de su cheque para efectuar una EFT, se pueden extraer fondos de su cuenta tan pronto como el mismo día que usted hace su pago, y su institución financiera no le retornará su cheque.

Si su cheque es devuelto sin pagar, usted también nos autoriza a cobrar su pago y una tarifa de devolución de

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mediante una o más EFT(s) o retiro(s) extraído(s) de su cuenta.

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