



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

February 4, 2013

DMS NOTICE  
QC - 13 - 1  
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Walgreen Company Settlement

Enclosed is a judgment and permanent injunction pursuant to stipulation issued by the District Attorneys' Office of the County of Santa Clara in conjunction with the District Attorneys of Contra Costa, San Mateo, and Santa Cruz Counties filed against Walgreen Company, an Illinois Corporation on January 9, 2013. The judgment and injunction are for overcharging customers and misleading advertising, violations of California Business and Professions Code sections 12024.2 and 17500 respectively.

The investigation was led by Santa Clara County and the Division of Measurement Standards (DMS) with assistance from twenty-five additional county jurisdictions. Walgreen Company was ordered to pay a settlement of \$1,425,435, which included \$1,225,000 in civil penalties, \$200,435 for agencies' investigative costs.

Santa Clara County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

We appreciate the fine work done by the District Attorneys' Offices along with the State and county investigators who documented and caused these violations to be prosecuted. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Quantity and Weighmaster Programs, Enforcement Branch at (916) 229-3047, or [katherine.decontreras@cdfa.ca.gov](mailto:katherine.decontreras@cdfa.ca.gov).

Sincerely,

Kristin J. Macey  
Director

Enclosure

cc: Gary Leslie, Acting County/State Liaison, CDFA



(ENDORSED)

2013 JAN -9 AM 9:09

David H. Smith, Clerk of the Superior Court  
County of Santa Clara  
D. Smith  
Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
WALGREEN CO., an Illinois corporation,  
  
Defendant.

NO. 1-13-CV-239110  
**STIPULATED FINAL JUDGMENT**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys, Mark A. Peterson, District Attorney for the County of Contra Costa by Steven C. Bolen, Deputy District Attorney; Jeffrey Rosen, District Attorney for the County of Santa Clara by Martha J. Donohoe, Deputy District Attorney; Stephen M. Wagstaffe, 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 Atkinson, Deputy District Attorney; and Defendant, Walgreen Co., appearing through its attorneys, Rogers Joseph O'Donnell, by Renee D. Wasserman, Esq.; 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

1 constituting evidence or an admission by Defendant regarding any issue of fact or law alleged in the  
2 complaint and without Defendant admitting any liability herein; and

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

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 **JURISDICTION**

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

8 **APPLICABILITY**

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

15 **DEFINITIONS**

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

17 A. "Advertised Price" means the price that is posted or displayed on the  
18 commodity itself or on a shelf display that corresponds to that commodity or the price for a  
19 commodity published by WALGREEN in a newspaper, magazine, direct mail publication, or  
20 on WALGREEN's store specific internet site. Any Advertised Price posted on a commodity  
21 itself or on a shelf display that corresponds to that commodity shall be in compliance with  
22 Business and Professions Code section 12024.2. When more than one price for the same  
23 commodity is advertised, posted, marked, displayed or quoted, WALGREEN shall charge the  
24 lowest regular advertised price that applies to its California store sales or its California store  
25 specific internet price in accordance with Business and Professions Code section 12024.2 (e)-  
26 (f). Nothing herein will be construed to mean that a consumer will be eligible for an  
27 Advertised Price if he or she fails to qualify under any limitations or terms disclosed in  
28

1 conjunction with the Advertised Price, so long as such terms are clearly and conspicuously  
2 disclosed.

3 **B. "Price Scanning System"** means an automated system by which a marking or  
4 tag, or a device affixed to an item offered for sale to the public is electronically scanned ,  
5 detected or read in any manner at the Point of Sale (hereinafter "POS") terminal to determine  
6 the identity of the item and the price to be charged for the item. Price Scanning System  
7 includes, but is not limited to electronic or laser scanners, radio frequency identifications  
8 devices ("RFID"), and cell phone camera scanners.

9 **C. "Price Look Up" or "PLU"** means any marking, tag or code used by the Price  
10 Scanning System for the manual entry of a code to determine the identity of the item and the  
11 price to be charged for the item.

12 **D. "POS price"** means the price of an item when it is scanned at the POS using  
13 the Price Scanning System or PLU.

14 **E. "Pricing Discrepancy"** means a variance between the Advertised Price and  
15 the POS price. For purposes of this Stipulated Judgment, a Pricing Discrepancy shall not  
16 include (1) situations where the variance between the Advertised Price and the POS price is  
17 consistent with a clear and conspicuous price correction notice in the area where the  
18 merchandise is located in the store notifying customers of an incorrect Advertised Price; (2)  
19 any variance between an Advertised Price and the POS price when merchandise has been  
20 correctly stocked but inadvertently moved, transferred or transported by a customer to the  
21 wrong rack, shelf, display, or fixture; or (3) any variance that results in a consumer being  
22 charged a price lower than the Advertised Price. Walgreen would have the burden of proof in  
23 any subsequent enforcement action that any of these exceptions apply.

24 **F. "Report of Pricing Discrepancy"** means a report of a Pricing Discrepancy by  
25 any customer, any employee or agent of a government agency, or any employee of  
26 WALGREEN.

27 **G. "Weights and Measures Official"** means any representative of (1) the State  
28

1 of California Division of Measurement Standards, (2) any California County Sealer,  
2 (3) any Director of a California County Department of Agriculture, (4) the California  
3 Attorney General, or (5) any California district or city attorney.

4 **INJUNCTIVE RELIEF**

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

8 A. Making or causing to be made to the public any statement representing a price  
9 for an item offered for sale, including but not limited to statements made in any newspaper or  
10 any other type of printed advertisements, in-store pricing advertised via the internet, on a  
11 store shelf, or via a sign near the item, and charging a greater price at the time the item is  
12 purchased;

13 B. Using an arithmetic formula in a California or California store specific  
14 internet advertisement for the Register Rewards program unless the price to be charged at the  
15 time of purchase is clearly and conspicuously disclosed in the advertisement.

16 C. Using a Price Simile in a California advertisement unless the price to be  
17 charged at the time of purchase is clearly and conspicuously stated, in larger print size than  
18 the Price Simile.

19 D. Charging at the time of sale of a commodity, an amount greater than the  
20 lowest price that is advertised, posted, marked, displayed or quoted for that item, in violation  
21 of Business and Professions Code section 12024.2.

22 E. Making or causing to be made any false or misleading statement to the public  
23 with respect to the price of items offered for sale in violation of Business and Professions  
24 Code section 17500.

25 F. Violating Civil Code section 1770(a)(17).

26 **COMPLIANCE PROGRAM**

27 5. Pursuant to Business and Professions Code sections 17203 and 17535, WALGREEN  
28

1 shall, to the extent that it has not already done so, institute and administer the following policies and  
2 procedures for a period of three (3) years from the date of entry of this Stipulated Final Judgment, in  
3 every existing WALGREEN store in California, and in every new WALGREEN store to be opened  
4 in California during the three (3) year period beginning from the date of entry of this Stipulated Final  
5 Judgment. This program shall include, but need not be limited to, the following:

6           **A.     POLICIES AND PROCEDURES.** WALGREEN shall promptly implement  
7 written pricing accuracy policies and procedures (“Policies and Procedures”) that are  
8 designed to further compliance with the injunctive provisions in this Stipulated Final  
9 Judgment.

10           **B.     ACKNOWLEDGEMENT.** WALGREEN shall prepare and distribute that  
11 portion of its Policies and Procedures concerning pricing accuracy which is relevant to the  
12 respective job function of each of its pricing personnel (as designated in paragraph 5.C.  
13 below) who shall receive written and/or live training regarding the same on a regular basis.  
14 WALGREEN shall confirm its compliance with this provision by compiling and maintaining  
15 a record of such distribution and training of pricing personnel, including personnel name and  
16 date of distribution or training. Such record shall be provided to Plaintiff within thirty (30)  
17 days of a written request.

18           **C.     APPOINTMENT OF PRICING PERSONNEL.**

19           **1)     CORPORATE PRICING PERSONNEL.** WALGREEN shall  
20 appoint one person at the corporate level (hereinafter, “STORE COMPLIANCE  
21 DIRECTOR”) who shall be charged with overseeing, with respect to all stores in  
22 California: (a) the maintenance of pricing accuracy in the Price Scanning System,  
23 including the pricing of items within an advertised brand when the entire brand is  
24 advertised, (b) price changes, and (c) prompt reporting, research and resolution of  
25 Pricing Discrepancies in the system or stores. The STORE COMPLIANCE  
26 DIRECTOR may delegate duties to other WALGREEN employees, appoint “back-  
27 up” personnel, or retain third-party providers as he/she deems reasonable and  
28

1 appropriate to assist with the STORE COMPLIANCE DIRECTOR's responsibilities.  
2 WALGREEN shall designate one person in the WALGREEN Corporate and  
3 Regulatory Law Department to be the contact person for inquiries from Weights and  
4 Measures inspectors for the California Department of Measurement Standards and for  
5 the offices of the California County Sealers; and/or any District Attorney representing  
6 the People of the State of California. WALGREEN shall keep the inspectors' offices  
7 advised of the name and telephone number of the contact person.

8           **2) STORE PRICING PERSONNEL.** Each WALGREEN store in  
9 California shall designate an employee to act as its store price accuracy coordinator  
10 (hereinafter "PRICE ACCURACY COORDINATOR") to oversee pricing accuracy  
11 measures in that store, including the correction of signage errors and both regular and  
12 random in-store audits. The PRICE ACCURACY COORDINATOR may delegate  
13 duties to other WALGREEN employees, appoint "back-up" PRICE ACCURACY  
14 COORDINATORS, or retain third-party providers as he/she deems reasonable and  
15 appropriate to assist with the PRICE ACCURACY COORDINATOR'S  
16 responsibilities.

17 **D. IN-STORE REGULAR AND RANDOM PRICING AUDITS.** Every  
18 WALGREEN store in California shall have a program of random in-store price-  
19 checking audits, to be conducted by a WALGREEN employee or employees, or a  
20 WALGREEN designated agent.

21           1) The in-store price-checking audit shall be conducted on a bi-weekly  
22 basis.

23           2) The in-store price-checking audit shall consist of no fewer than fifty  
24 (50) randomly selected items, including clearance and close out items.

25           3) If any Pricing Discrepancy is uncovered, the employee(s) or agent  
26 conducting the price-checking audit will take the necessary steps to promptly correct  
27 the Pricing Discrepancy.  
28

1                   4)     If the employee(s) or agent conducting the audit determines that the  
2 Pricing Discrepancy was caused by a pricing error which may extend beyond a single  
3 store, the employee(s) or agent will promptly notify the STORE COMPLIANCE  
4 DIRECTOR and the PRICE ACCURACY COORDINATOR in a manner  
5 customarily used by WALGREEN to expediently convey such information (such as  
6 through use of WALGREEN's Help Desk Ticketing) of the Pricing Discrepancy.

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

15                   **E.     PRICE VERIFICATION OF ADVERTISED PRODUCTS.**

16                   1)     Each week when a new WALGREEN print and/or store specific  
17 internet advertisement is distributed covering one or more products in a WALGREEN  
18 store in California, the PRICE ACCURACY COORDINATOR shall perform a price  
19 verification of a minimum of ten (10) advertised items on or about the date of the  
20 advertisement to assure that the shelf prices and in-store signs are accurate, including,  
21 but not limited to, the removal of expired sale and promotional labels, tags, signs, and  
22 display cards. If there are multiples of the item, for example a variety of colors or  
23 flavors, each such item in the category shall be price verified. Any pricing  
24 inaccuracies shall be promptly corrected.

25                   2)     Each week, at the end of a sale or the reversion of a sale price or of a  
26 special price to a regular price, a price verification of a cross-section of ten (10) prior  
27 sale or special items from different product categories shall be completed to assure  
28

1 that the shelf prices and in-store signs are accurate, including, but not limited to, the  
2 removal of expired sale and promotional labels, tags, signs, and display cards. Any  
3 pricing inaccuracies shall be promptly corrected.

4 3) The PRICE ACCURACY COORDINATOR shall be responsible for  
5 transmitting to the corporate STORE COMPLIANCE DIRECTOR, Pricing  
6 Discrepancy information within twenty four hours of learning that a price in the Price  
7 Scanning System is different from the currently advertised price for the item in the  
8 store or in WALGREEN advertising, if the Pricing Discrepancy will or is likely to  
9 affect other WALGREEN stores in California.

10 4) WALGREEN shall ensure that there are back up employees to the  
11 PRICE ACCURACY COORDINATOR in each store who are trained to handle the  
12 responsibilities for price accuracy.

13 **F. IN-STORE REPORTS OF PRICING DISCREPANCIES.** Whenever a  
14 WALGREEN store employee receives a Report of Pricing Discrepancy, the employee shall  
15 promptly investigate whether there is an error or request a store PRICE ACCURACY  
16 COORDINATOR to investigate the error. The employee or the PRICE ACCURACY  
17 COORDINATOR shall take appropriate action to resolve the Pricing Discrepancy, including  
18 promptly correcting the in-store price and, shall notify the STORE COMPLIANCE  
19 DIRECTOR if the error is likely to have occurred in other stores as well. Each WALGREEN  
20 store in California shall maintain a daily Price Discrepancy Report reflecting all pricing  
21 errors detected at the POS. These reports shall be maintained and made available to the  
22 Plaintiff as described in Paragraph 8.

23 **G. REPORTS OF PRICING DISCREPANCIES TO THE STORE**  
24 **COMPLIANCE DIRECTOR.** When the STORE COMPLIANCE DIRECTOR receives a  
25 Report of Pricing Discrepancy, the STORE COMPLIANCE DIRECTOR shall promptly  
26 investigate whether a system error at the corporate level occurred. If a system error at the  
27 corporate level is verified, the STORE COMPLIANCE DIRECTOR shall take appropriate  
28

1 action to correct the system error as soon as reasonably practicable. The STORE  
2 COMPLIANCE DIRECTOR shall use his or her best efforts to correct a system error within  
3 twenty-four (24) hours of verifying the error. WALGREEN shall make a good faith effort to  
4 take prompt interim action, as necessary, pending the resolution of a Pricing Discrepancy or  
5 correction of a Price Scanning System error.

6 **6. INCENTIVE PROGRAM.** WALGREEN shall for a period of three (3) years from  
7 the date of entry of this Stipulated Final Judgment initiate and enforce in all existing WALGREEN  
8 stores in California, and in every future WALGREEN 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.** Whenever WALGREEN is notified by a consumer and verifies that a Pricing  
12 Discrepancy has occurred during scanning at the POS in a California store, whether or not  
13 the transaction has been completed, the customer shall be given the item free if the  
14 Advertised Price is less than five dollars (\$5.00). If the Advertised price is greater than five  
15 dollars (\$5.00), the customer shall be charged the applicable Advertised Price and shall be  
16 given an award of a five dollar (\$5.00) Merchandise Card. If the customer purchases  
17 additional quantities of the item to which the Pricing Discrepancy applies, the price charged  
18 will be the Advertised Price. The incentive program shall not apply to alcohol, tobacco,  
19 dairy, prescription drug products or other products to which California law restricts  
20 application of such discounts.

21 **B.** The customer will not be entitled to this award if a WALGREEN employee  
22 corrects the price prior to the customer's complaint or notification of a pricing error; if the  
23 merchandise had been inadvertently moved by a customer to an incorrect shelf or display; or  
24 if a clear and conspicuous price error notice was posted in the area where the merchandise is  
25 stocked or at each POS terminal at the time the purchase was commenced. If WALGREEN is  
26 first notified of the price discrepancy by the customer during the transaction, the customer is  
27 entitled to the award although the transaction may not have been completed prior to  
28

1 WALGREEN'S correction of the discrepancy.

2 C. WALGREEN'S employees are not eligible for the incentive program.

3 D. WALGREEN shall post signage that is clearly and conspicuously visible and  
4 legible to consumers standing at each POS location in its California stores informing them of  
5 the incentive program described herein. The signs shall be not less than six inches by eight  
6 inches (6" x 8") or not greater than eight and one half inches by eleven inches (8 1/2"x11") in  
7 size and in both Spanish and English. The signage shall be posted on the flat counter shelf  
8 space at each POS terminal, in a conspicuous location with a title in not less than 30-point  
9 type font and with the text of the signage in not less than 20-point type font.

10 E. The method of providing the incentive and the wording of the sign shall be as  
11 stated in the sample below:

12 **WALGREEN'S SCANNER PRICE GURANTEE: IF AN ITEM SCANS AT A**  
13 **HIGHER PRICE THAN THE ADVERTISED PRICE, AND THE PRICE IS**  
14 **GREATER THAN FIVE DOLLARS (\$5), WE WILL GIVE YOU A FIVE DOLLAR**  
15 **(\$5.00) MERCHANDISE CARD. IF THE ADVERTISED PRICE IS FIVE**  
16 **DOLLARS (\$5) OR LESS, YOU WILL RECEIVE THAT ITEM FOR FREE. THIS**  
17 **DOES NOT APPLY TO ALCOHOL, TOBACCO, DAIRY, AND PRESCRIPTION**  
18 **DRUGS, OR IF A CORRECTIVE NOTICE WAS POSTED.**

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

28



1	Santa Clara County Dept. of Agriculture & Envr. Mgmt.	\$51,000.00
2	Contra Costa County Dept. of Agriculture	\$21,000.00
3	San Mateo County Dept. of Weights and Measures	\$6,225.00
4	Santa Cruz County Dept. of Weights and Measures	\$2,225.00
5	Fresno County Dept. of Weights and Measures	\$1,480.00
6	San Diego County Dept. of Ag., Weights and Measures	\$6,550.00
7	Riverside County Dept. of Weights and Measures	\$13,250.00
8	Marin County Dept. of Weights and Measures	\$1,425.00
9	Kern County Dept. of Ag. and Measurement Standards	\$2,270.00
10	Kings County Dept. of Weights and Measures	\$530.00
11	Sacramento County Division of Weights and Measures	\$7,300.00
12	Alameda County Dept. of Weights and Measures	\$2,750.00
13	San Joaquin County Dept. of Weights and Measures	\$4,475.00
14	Los Angeles County Dept. of Weights and Measures	\$44,700.00
15	Humboldt County Dept. of Weights and Measures	\$1,875.00
16	Orange County Dept. of Weights and Measures	\$1,025.00
17	Sonoma County Dept. of Weights and Measures	\$2,425.00
18	Napa County Dept. of Weights and Measures	\$225.00
19	San Bernardino County Dept. of Weights and Measures	\$12,750.00
20	Stanislaus County Dept. of Weights and Measures	\$1,365.00
21	Shasta County Dept. of Weights and Measures	\$510.00
22	Imperial County Dept. of Weights and Measures	\$850.00
23	Madera County Dept. of Weights and Measures	\$400.00
24	Mendocino County Dept. of Agriculture	\$275.00
25	Tehama County Dept. of Ag., Weights and Measures	\$120.00
26	Ventura County Dept. of Weights and Measures	\$4,000.00
27	CA Dept. of Measurement Standards	\$9,000.00
28		



