CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE

June 23, 2022

DMS Notice
QC – 22 – 01
Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Target Corporation, a Minnesota Corporation

Enclosed is a copy of the Stipulated Final Judgment dated March 4, 2022, which includes a permanent injunction issued against Target Corporation, a Minnesota Corporation. The Sonoma County District Attorney filed the case in conjunction with County District Attorneys from Alameda, Contra Costa, Marin, Santa Clara, Santa Cruz, San Diego, and Ventura, for overcharging consumers and making false or misleading statements with regards to the price of an item (California Business and Professions Code §§ 12024.2 and 17500).

Weights and measures investigators from Alameda, Contra Costa, Imperial, Marin, Napa, Orange, Sacramento, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, San Diego, Shasta, Sonoma, Stanislaus, and Ventura counties collaborated on this case. The total settlement was for $5,373,618.81. Civil penalties were $5,000,000, agency costs were $173,618.81, and cy pres restitution of $200,000 was placed in the Consumer Protection Prosecution Trust Fund ($100,000) and the California Agricultural Commissioners and Sealers Association Quantity Control Trust Fund ($100,000). In lieu of paying an additional $500,000.00 as civil penalties, Target Corporation is required to implement a Compliance Program which includes price audit procedures and a Price Accuracy Program for a minimum of seven (7) years, as specified in the settlement.

The Department sincerely appreciates the work performed by the District Attorneys' offices along with the county investigators who documented and caused the violations to be prosecuted.

If you have any questions regarding this notice, please contact DMS by email at dms@cdfa.ca.gov or phone at (916) 229-3000.

Sincerely,

Kristin Macey

Kristin Macey
Director

cc: Hyrum Eastman, County/State Liaison, CDFA

annually to store managers and PATLs as discussed below. The training shall include at least the following topics to improve price accuracy:

(1) Price accuracy awareness and duties under the Judgment;

(2) How to ensure correct prices are consistently displayed and charged; and

(3) How to respond to Price Discrepancy issues raised by customers.

Defendant shall conduct and each Manager and PATL shall attend annual refresher training of no less than two (2) hours regarding the requirements of this Judgment for California store Managers and PATLs.

L. **Store Cashier Training.** Within sixty (60) days after entry of this Final Judgment, Defendant shall ensure that all store cashiers undergo price accuracy training. All cashiers hired after the date of entry of this judgment shall undergo such training within 60 days of their date of hire. Defendant shall keep in the Store PCR for one (1) year and in the Corporate PCR for five (5) years from the date of their creation, legible written or electronic records of such training, including attendance records and acknowledgments that each person received such training. The training shall be updated periodically as needed, and shall be provided annually to Store Cashiers as discussed below. The training shall include at least the following topics to improve price accuracy:

(1) Price accuracy awareness and duties under the Final Judgment;

(2) Proper implementation of the Price Accuracy Program (as set forth in paragraph 11, below); and

(3) How to respond to price accuracy issues raised by customers.

Defendant shall conduct and each employee shall attend at least thirty (30) minutes of annual refresher training regarding the relevant provisions of this Final Judgment for California store cashiers.

Target Online

M. **Technology**. Target will not use Geofencing in conjunction with the Target App or Target.com such that the price of any product advertised as available when purchased online on the Target App or Target.com either (1) increases or (2) switches to a price

advertised as available when purchased at a store based solely on the geographic location of the user.

N. **Disclosures.** Target will not advertise the price of any item via Target.com or the Target App, that is simultaneously available for purchase in store, if the online price is or may be different from the in-store price, unless the advertisement in question clearly and conspicuously discloses that the Advertised Price is (1) only available when purchased through that online channel or only available for purchase in a store, and (2) does not otherwise imply that the online price is available in the store or that the in-store price is available online.

Price Accuracy Program

11. Pursuant to Business and Professions Code section 17203 and 17535, Defendant shall, within sixty (60) days of entry of this Judgment, implement a Price Accuracy Program applicable to all California stores that shall include the following:

A. Whenever an item offered for sale has scanned at the POS at a price that is higher than the lowest of either (a) any valid Advertised Price; or (b) any price posted on the item itself or on a shelf tag that corresponds to that item notwithstanding any limitation of the time period for which the posted price is in effect, the involved customer shall receive the item(s) at the price the customer believes is the lowest advertised or posted price. If the Target employee handling the transaction does not believe the stated price is accurate or the customer does not recall the exact lowest advertised price, the Target employee or the PATL shall take immediate measures to verify the lowest Advertised Price and charge the customer that price. This program shall be referred to as the "Price Accuracy Program."

B. Any employee who is aware or is made aware, by any reasonable means, of the Price Discrepancy, shall take immediate steps to comply with the Price Accuracy Program whether at the point of sale or at a later time.

C. Defendant shall inform customers of the Price Accuracy Program by posting a sign in a clear, conspicuous and unobstructed location at every POS location in every store in California. In no event shall the signs be placed lower than forty-eight inches (48')

above the floor. The signs shall be printed on in a different color than their background (e.g. sign with a white background on a red vertical surface).

(1) The signs shall be no smaller than five inches by eight inches (5" x 8") in size; words shall be in a font size no less than 24-point and shall be against a contrasting background (e.g., black letters on a white background); and shall state:

> **"PRICE ACCURACY PROGRAM NOTICE: If an item scans at a price higher than the lowest currently advertised or posted price, please advise your cashier immediately of the correct price and we will charge you the lowest advertised price."**

(2) In addition to the signs located at the POS locations, Defendant shall place a sign with the heading "PRICE ACCURACY PROGRAM NOTICE" in the entrance area clearly visible to customers as they enter the store and customer service area of each California store. The sign shall be at least two feet by three feet (2' x 3') in size, in a font size no less than 48-point against a contrasting background. The bottom of the sign should be no lower than thirty-six inches above the floor. The parties agree placing this Price Accuracy Program Notice in or adjacent to the "ad board," or equivalent area in stores without an "ad board," located in the entrance area of a store, meets the requirements of this sign provision.

D. Defendant shall not make any statements or take any actions which would directly or indirectly prevent or discourage the Price Accuracy Program from being followed, complied with, enforced by or adhered to by employees, nor shall Defendant or Defendant's employees make any statements or take any actions that would discourage customers from utilizing this program.

Third-Party Auditor

12. Within thirty (30) calendar days of the entry of this Final Judgment, Target shall retain the services of a third-party auditor ("Auditor"), such Auditor to be identified to and accepted by the People prior to entry of Judgment. The Auditor shall within a period of five (5) years conduct five (5) annual compliance audits of California stores. The purpose of the annual compliance audits shall be to monitor and confirm Target's compliance with various provisions

of Paragraphs 10 and 11 of the Judgment. The annual compliance audits shall include the audit protocols Target has provided to the People.

13. Target, with help from the Auditor, shall submit an annual report of the compliance audits to the People, within fifteen (15) calendar days of each anniversary date of the entry of this Final Judgment. The audit reports, based on the parties' agreed upon protocol shall include, but not be limited to:

A. The Auditor's description and discussion of its audit objectives, scope, criteria, audit activities, audit findings and audit conclusions, and a summary of all audit evidence considered or relied upon by the Auditor to support the audit conclusions;

B. A summary of the Price Audit results;

C. A listing of any written advisements of violation, including formal Notices of Violation and inspection reports directed at and maintained at any Target retail store by any local or state agency that identifies any violation and/or alleged violation of any consumer protection law relating to advertising, price accuracy or weighing accuracy, retained at the store;

D. A brief description of the disposition of any such noted violations and what corrective measures, if any, were taken by Target; and

E. A plan to correct any deficiencies raised in the Auditor's report that have not already been addressed.

14. If the Auditor determines that a California store passes three consecutive annual compliance audits, the Auditor shall not conduct any additional annual compliance audits of that store.

MISCELLANEOUS

15. Neither the Injunction, nor any provision hereof, shall be a defense, or be admissible in support of a defense, to an action by the People for any future violation(s) of any consumer protection law including, but not limited to, violations of the Business and Professions Code.

16. Nothing in this Final Judgment shall in any way prevent Defendant from

developing, testing or implementing new or different systems or measures regarding the subjects covered by the Final Judgment. At Defendant's request, prior to implementation or proposed implementation of any such new or different system or measure, the parties agree to meet and confer regarding the viability or continued application of any particular affected provision of this Final Judgment and whether the Final Judgment shall be modified, upon consent of the court, to include the implementation of any such new or different system or measure.

17. Nothing in this Judgment shall in any manner affect Defendant's obligation to fully comply with any other law, statute, or regulation not referenced herein. Nor shall anything in this Judgment be construed as addressing violations of the law, if any, not mentioned in the Complaint or addressed herein.

MONETARY RELIEF

18. Pursuant to Business and Professions Code sections 17203 and 17353, Defendant shall pay reimbursement for the stipulated costs of investigation in the total amount of one hundred seventy-three thousand six hundred eighteen dollars and eighty-one cents ($173,618.81), which shall be paid by separate certified checks made payable as follows:

A. $23,364.20 made payable to Alameda County Department of Agriculture, Weights and Measures;

B. $7,812.98 made payable to Contra Costa County Department of Agriculture, Weights and Measures;

C. $1,803.63 made payable to Imperial County Department of Agriculture, Weights and Measures;

D. $8,734.44 made payable to Marin County Department of Agriculture, Weights and Measures;

E. $3,449.50 made payable to Napa County Department of Agriculture, Weights and Measures;

F. $14,536.00 made payable to Orange County Department of Agriculture, Weights and Measures;

G. $1,800.00 made payable to Sacramento County Department of Agriculture, Weights and Measures;

H. $7,738.02 made payable to San Diego County Department of Agriculture, Weights and Measures;

I. $3,242.87 made payable to San Luis Obispo County Department of Agriculture, Weights and Measures;

J. $4,160.00 made payable to Santa Barbara County Department of Agriculture, Weights and Measures;

K. $20,732.21 made payable to Santa Clara County Department of Agriculture, Weights and Measures;

L. $5,000.00 made payable to the County of Santa Cruz Agricultural Commissioner;

M. $4,277.45 made payable to Shasta County Department of Agriculture, Weights and Measures;

N. $32,245.00 made payable to Sonoma County Department of Agriculture, Weights and Measures;

O. $875.29 made payable to Stanislaus County Department of Agriculture, Weights and Measures;

P. $33,847.22 made payable to Ventura County Department of Agriculture, Weights and Measures.

19. The parties having stipulated that it is impractical and unfeasible to provide direct restitution to consumers who may have been affected by Defendant's practices, the costs of administering a direct restitution program would likely exceed any benefit to individual consumers derived therefrom, pursuant to Business and Professions Code sections 17203 and 17535, Defendant shall pay *cy pres* restitution in the amount of $200,000, as follows:

A. $100,000 shall be made payable to the "Consumer Protection Prosecution Trust Fund," an entity established in the case of *People v. ITT Consumer Financial Corporation* (Alameda Superior Court No. 656038-0), to support the enforcement of consumer protection laws in California; and

B. $100,000 shall be made payable to the California Agricultural Commissioners and Sealers Association Quantity Control Trust Fund to support the investigation and enforcement of consumer protection laws in California.

20. Pursuant to Business and Professions Code section 17206, Defendant shall pay a total of five million dollars ($5,000,000.00) in civil penalties, which amount, shall be paid as follows pursuant to Government Code section 26506:

A. $714,285.71 made payable to the Alameda County District Attorney's Office;

B. $714,285.71 made payable to the Contra Costa County District Attorney's Office;

C. $714,285.71 made payable to the Marin County District Attorney's Office;

D. $714,285.71 made payable to the Santa Cruz County District Attorney's Office;

E. $714,285.71 made payable to the Sonoma County District Attorney's Office;

F. $714,285.71 made payable to the San Diego County District Attorney's Office; and

G. $714,285.71 made payable to the Ventura County District Attorney's Office.

21. In lieu of paying to the People an additional sum of $500,000.00 as civil penalties, Defendant is required to implement price audit procedures, as specified in greater detail in Paragraphs 10(D)(2), 12, and 13. Over the seven years following entry of this Final Judgment, Defendant will allocate at least this sum to the activities and compliance measures at its California stores as set forth above.

22. All payments made pursuant to this Final Judgment and all notices, reports and communications required in conjunction with the Judgment shall be delivered no later than fourteen (14) days after the date of entry of this Final Judgment to the attention of:

Matthew T. Cheever, Chief Deputy District Attorney
Environmental and Consumer Law Division
Sonoma County District Attorney's Office
2300 County Center Dr., Ste. B170
Santa Rosa, California, 95403

Provided, however, that the People may designate another person to receive payments, notices, reports and communications by notifying Defendant in writing.

REQUESTS FOR INFORMATION TO VERIFY COMPLIANCE

23. Except as otherwise provided in this Final Judgment, Defendant shall retain electronic or other records required to be generated or maintained by this Final Judgment for a period of five (5) years from the date of creation of the electronic or other record. During the period commencing on the date of entry of this Final Judgment and ending five (5) years after the date of entry of this Final Judgment, the People may make a written request to Defendant for non-privileged documents or information showing compliance with the injunctive or conduct provisions of this Final Judgment. Defendants shall provide such non-privileged

documents or information within thirty (30) days after receipt of the request unless otherwise agreed by the parties or ordered by this or another court. If Defendant believes, in good faith, that it cannot produce the requested non-privileged documents or information within the time contemplated herein, Defendant shall request an extension from the People within thirty (30) days of its receipt of the People's request and identify the time period Defendant reasonably anticipates will be required to complete the production. If the People and Defendant cannot agree upon an extension or the scope of production after good faith meet and confer efforts, then Defendant may seek appropriate relief from the court.

RETENTION OF JURISDICTION

24. Jurisdiction is retained, pursuant to Code of Civil Procedure section 664.6, by the Court for the purpose of enabling any party to the Final 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 the injunctive, conduct or other provisions of this Final Judgment, for the modification, release, or dissolution of any injunctive or conduct provisions contained in this Final Judgment, and for the enforcement of compliance with this Final Judgment or the punishment of violations of the Judgment.

25. The Clerk shall enter this Final Judgment forthwith.

Dated: March 4, 2022

JUDGE OF THE SUPERIOR COURT
COUNTY OF SONOMA
Jennifer V. Dollard