

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

STATE OF MISSOURI, <i>ex rel.</i>	)	
Attorney General Chris Koster,	)	
	)	
Plaintiff,	)	
	)	Case No. 1316-cv21688
v.	)	
	)	Division 12
WALGREEN CO.,	)	
An Illinois Corporation,	)	
	)	
Defendant.	)	

**CONSENT JUDGMENT AND PERMANENT INJUNCTION**

Whereas Plaintiff, State of Missouri by and through its Attorney General, filed a petition alleging that Defendant, Walgreen Co. (“Walgreen”), engaged in certain acts and practices in violation of the Missouri Merchandising Practices Act, and Plaintiff (“State”) and Walgreen, by their respective counsel, have consented to and have jointly recommended the entry of this Judgment without trial or adjudication on any issue of fact or law; and

Whereas Defendant Walgreen has agreed to be bound by the provisions of this Judgment through a Stipulation filed with this Court;

Whereas, since the institution of this action, Walgreen has endeavored to further serve and inform its Missouri consumers in several ways regarding

advertisement tag pricing, including changing Walgreen price tag color coding to differentiate sales and other promotional offers from regularly priced items and implementing a multi-color tag and coding system to distinguish between weekly and monthly advertisements.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

**Parties**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and has brought this action in his official capacity pursuant to Chapter 407, RSMo (2010).<sup>1</sup>

2. Defendant Walgreen Co. is an Illinois corporation that transacts business nationwide and throughout Missouri. Walgreen is located in Deerfield, Illinois.

3. Walgreen transacts business within the State of Missouri and nationwide by advertising, marketing, offering for sale, and selling to Missouri residents and others.

**Jurisdiction**

4. Jurisdiction is properly vested with this Court under Art. V, § 14 MO. CONST.

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<sup>1</sup>All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2012)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

5. This Court has subject matter and personal jurisdiction over the Defendant under Art. V, § 14 MO. CONST.

6. This Court has authority over this action pursuant to § 407.100.1 of the Merchandising Practices Act which allows the Attorney General to seek injunctive relief, restitution, and penalties in circuit court for violations of § 407.020(1), which provides:

Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, the attorney general may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

7. The provisions of the Consent Judgment shall be applicable for a period of three years from the date of entry of this Consent Judgment.

### Venue

8. Venue is proper in this Court pursuant to § 407.100.7, which provides that any action under this section may be brought in the county in which the Defendant resides, in which the violation alleged to have been committed occurred, or in which the Defendant has a principal place of business.

9. Walgreen has done business throughout Missouri.

10. The State has alleged that Walgreen has engaged in deceptive retail sales practices throughout Missouri, including in Jackson County, in violation of the Missouri Merchandising Practices Act as described in Plaintiff's Petition.

### Definitions

11. **Advertised Price** means the price or any description of the price of merchandise available for purchase in a Missouri store that is in written, graphic, or pictorial form, including, but not limited to, any notice, sign, tag, display, solicitation, or label relating to merchandise offered for sale, or any print advertisement, online advertisement, broadcast advertisement, or any other form of media that communicates prices, or incentive rewards, for merchandise available for purchase in a Missouri store, such as tags affixed to store shelving displayed near merchandise, and including prices and descriptions of prices in any Advertisement distributed into Missouri. Nothing herein will be construed to mean that a consumer will be eligible for an Advertised Price if he or she fails to qualify under any limitations or terms clearly and conspicuously disclosed in conjunction with the Advertised Price or if the Advertised Price is clearly and conspicuously limited to specified store locations or is part of a general online advertisement, so long as such terms are clearly and conspicuously disclosed, and posted in accordance with the provisions of this Judgment. Walgreen's website offers some of the same

merchandise as is offered in Walgreen's Missouri stores, and it is agreed that such website pricing shall not be included in the definition of Advertised Price for purposes of this Consent Judgment.

12. **Advertised Rewards Points** means any description of the amount of Rewards Points offered for merchandise available for purchase in a Missouri store that is in written, graphic, or pictorial form, including, but not limited to, any notice, sign, tag, display, or label relating to merchandise offered for sale, such as tags affixed to store shelving displayed near merchandise, or any print ad, online ad, broadcast ad, or any other form of media that communicates prices, incentive rewards, or descriptions of prices or incentive rewards for merchandise available for purchase in a Missouri store in any Advertisement for a Missouri store. Nothing herein will be construed to mean that a consumer will be eligible for Advertised Reward Points if he or she fails to qualify under any limitations or terms clearly and conspicuously disclosed in conjunction with the Advertised Reward Points or if the Advertised Reward Points are clearly and conspicuously limited to specified store locations or is part of a general online advertisement, so long as such terms are clearly and conspicuously disclosed and comply with the provisions of this Judgment. Walgreen's website offers some of the same merchandise as is offered in Walgreen's Missouri stores, and it is agreed that the rewards points offered on such website for the purchase of such



merchandise shall not be included in the definition of Advertised Rewards Points for purposes of this Consent Judgment.

13. **Advertisement** means any notice, sign, tag, display, or label that is in written, graphic, or pictorial form relating to merchandise offered for sale in a Missouri store, or any print ad, online ad, broadcast ad, or any other form of media for merchandise available for purchase in a Missouri store that communicates one or more Price Data Points to a consumer, including, but not limited to, the price of merchandise or amount of Rewards Points, or any description of the price of merchandise or amount of Rewards Points. Walgreen's website offers some of the same merchandise as is offered in Walgreen's Missouri stores, and it is agreed that such website advertising shall not be included in the definition of Advertisement for purposes of this Consent Judgment.

14. **Incentive Program** means any program designed to induce the purchase of merchandise by offering some benefit, real or perceived, to consumers if they enroll in the program, such as rewards, points, coupons and discounts.

15. **Independent Auditor** shall mean Crossmark, Inc., a company that shall undertake those duties and responsibilities as set out in this Judgment.

16. **POS Price** means the price of an item when it is scanned at the Point of Sale (“POS”).

17. **Price Data Point** means a single piece of information that conveys or affects the price of merchandise at the POS, or any Rewards Points associated with the merchandise.

A. The following illustrative examples would each be separate Price Data Points:

- i. \$2.00;
- ii. 50% off;
- iii. \$1.00 sale price;
- iv. 1,000 Rewards Points;
- v. \$4.00 regular price;
- vi. save \$0.50;
- vii. \$3.50 each; and
- viii. 2 / \$6.00 with card.

B. For purposes of the Judgment, a Price Data Point shall not include:

- i. unit pricing, including price per ounce or per unit;
- ii. time periods associated with a length of time for which an item is available at a specified price; and

iii. language involving only alphabetic characters not attached to numerical figures, including the use of the words “sale,” “clearance,” “last chance,” etc., when those words are not attached to numerical figures.

18. **Pricing Discrepancy** means any variance, whether intentional or unintentional, between the Advertised Price and the POS Price. **Points Discrepancy** means any variance, whether intentional or unintentional, between the amount of Advertised Rewards Points and the amount of Rewards Points received. For purposes of the Judgment, a Pricing Discrepancy shall not include:

A. a variance between the Advertised Price and POS Price when that variance is consistent with a clear and conspicuous price correction notice in close proximity to the merchandise which adequately notifies consumers of an incorrect Advertised Price;

B. a variance between an Advertised Price and POS Price when the merchandise was correctly stocked and labeled but either the price tag or merchandise was inadvertently moved, transferred, or transported by a consumer to the wrong rack, shelf, display, or fixture; or

C. a variance that results in a consumer being charged a price lower than the Advertised Price.

For purposes of the Judgment, a Points Discrepancy shall not include:



D. a variance between the Advertised Rewards Points and the Rewards Points awarded at POS when that variance is consistent with a clear and conspicuous Rewards Points correction notice in close proximity to the merchandise which adequately notifies consumers of an incorrect Advertised Rewards Points;

E. a variance between Advertised Rewards Points and the Rewards Points awarded at POS when the merchandise was correctly stocked and labeled but either the price tag or merchandise was inadvertently moved, transferred, or transported by a consumer to the wrong rack, shelf, display, or fixture; or

F. A variance that results in a consumer receiving more rewards points than the Advertised Reward Points.

Walgreen shall bear the burden of proof of showing that any of these exceptions apply in the event of an enforcement action or an assessment of stipulated penalties related to this Judgment.

19. **Report of Pricing Discrepancy** means accurate and valid reports of a Pricing Discrepancy by any consumer, or any employee or agent of a government agency.

20. **Rewards Points** means any incentive offered to the consumer enrolled in an Incentive Program that the consumer may redeem at a time period subsequent to the purchase in which the incentive is awarded,

whether calculated in point value, dollar value, or other measure or format. This includes, but is not limited to, points that are redeemable on a future purchase for a discount on that future purchase, or coupons that are redeemable on a future purchase for a discount on that future purchase.

### **Injunctive Terms**

#### **Prohibitions**

21. **Injunction.** Defendant Walgreen is permanently enjoined and restrained from engaging in or facilitating the following acts and practices in, from, or to the State of Missouri:

A. **Purchase Price and Overcharges.** Except during the grace periods for displaying or removing price tags as provided in Paragraph 21. B., Defendant Walgreen is permanently enjoined and restrained from making or causing to be made to the public any representation of a price for merchandise offered for sale, including but not limited to statements in any Advertisement, and charging a higher price at the time of sale in a Missouri store than the price represented to be available in that store on the date of purchase.

B. **Time of Reduced Pricing.** Defendant Walgreen is permanently enjoined and restrained from:

i. making or causing to be made any false or misleading statement to the public with respect to the period of time when an item is available at a

reduced price, except during the grace periods described in Paragraphs 21. B. ii. and iii. below.

ii. failing to remove from a store, within 12 hours of the time the offer expires, any Advertisement which displays an offer for a limited time period;

iii. displaying an Advertisement in a store earlier than 12 hours before the offer is available in the store's POS system; or

iv. charging a higher price than the Advertised Price displayed in the store, during either of the grace periods described in 21. B. ii. or iii. above, provided that the Pricing Discrepancy is brought to the attention of a store employee.

v. Pricing and Points Discrepancies arising during the grace periods set out in paragraph 21. B. shall not be considered a violation of this Consent Judgment, provided the consumer is charged the lowest price in accordance with paragraph 21. B.

**C. Immediate Use of Discounts.** Defendant Walgreen is permanently enjoined and restrained from utilizing any Advertisement representing that Rewards Points are available immediately or can be immediately applied to a purchase, unless such is the case.

**D. Points Not Awarded.** Defendant Walgreen is permanently enjoined and restrained from making or causing to be made to the public any

representation of Rewards Points associated with any merchandise offered for sale, including but not limited to statements in any Advertisement, when not providing to the consumer who otherwise complies with the conditions of the offer, a Rewards Points value at least as great as the amount represented.

E. **Points/Coupon Redemption.** Defendant Walgreen is permanently enjoined and restrained from representing that Rewards Points or another benefit resulting from participation in an Incentive Program, or any other coupon, whether issued by Walgreen or a merchandise manufacturer, is redeemable instantly or is credited instantly when it must, instead, be redeemed or applied at a later time.

F. **Advertisement Elements.** Defendant Walgreen is permanently enjoined and restrained from utilizing any Advertisement that does not conform to the following requirements:

i. If the quantity purchased or any other factor affects the POS Price, then such factor shall be listed in the advertisement.

ii. The expiration date of the offer shall be displayed in any Advertisement that displays the sales price of an item.

iii. In any instance in which a coupon, enrollment in an Incentive Program, quantity, or any other supplementary requirement is necessary to obtain a discounted POS Price, the requirement must be clearly and

conspicuously disclosed in the Advertisement displaying the Price Data Point to which the requirement applies.

**G. Advertising Compliance.**

i. Walgreen shall ensure that any Advertised Price shall be in compliance with the Missouri Merchandising Practices Act, 407.010 to 407.1500, RSMo, (Supp. 2012), and applicable regulations promulgated thereto, including 15 C.S.R. 60-7.010 to 15 C.S.R. 60-7.110, 15 C.S.R. 60-8.010 to 15 C.S.R. 60-8.090, and 15 C.S.R. 60-9.030, and any amendments or additions thereto. When more than one price for the same item is advertised, Walgreen shall charge the lowest Advertised Price, except:

1. where the lower price requires conditions that the consumer did not meet;

2. where the lower price requires membership in an Incentive Program and the consumer is not a member; or

3. when the lowest advertised price was published in error and a clear and conspicuous price correction notice is displayed in close proximity to the merchandise, which adequately notifies consumers of an incorrect Advertised Price.

ii. This Consent Judgment resolves all claims the State has, or may have, against Walgreen, through the term of the Consent Judgment, for acts and practices of Walgreen pursuant to this subparagraph 21. G.



## **Remedial Actions Required**

22. **Remedial Measures.** The provisions of paragraphs 22 through 24 shall be applicable for a period of three years, unless otherwise specified.

23. **Implementation of Judgment.** Walgreen shall implement the following in regards to every Walgreen store in Missouri:

A. **Appointment of an Independent Auditor.** Within 60 days of the entry of this Judgment, Walgreen shall enter into an agreement with Crossmark, Inc. as Independent Auditor, and Crossmark, Inc. shall undertake those duties and responsibilities as set out in this Judgment. The Independent Auditor shall be charged with overseeing or performing the following activities with respect to all stores in Missouri:

i. **Audits.** The Independent Auditor shall implement in every Walgreen store in Missouri a program of random in-store price checking audits which shall be conducted in no less than 25 percent of Walgreen Missouri stores on a quarterly basis and shall consist of no fewer than 150 randomly selected items. Items will be selected according to The National Conference of Weights and Measures (NCWM) Handbook 130 - 2014 Edition, Section V. Examination Procedure for Price Verifications, including Sections 7.3.1. and 7.3.2., consisting of 50 regular priced items utilizing the randomized sample collection procedure as well as 100 items being offered with some form of discount, including, but not limited to, clearance items,

close out items, items offered at a reduced price, items offered at a reduced price to Incentive Program members, and items that offer Rewards Points with purchase selected by using the stratified sample collection procedure. If there are Pricing Discrepancies for more than two percent of the items in either of the two samples in the audit, that store shall be audited the following month, and if in the follow-up audit the store fails to achieve an accuracy rating of 98 percent or greater, such store shall continue to be audited on a monthly basis until such time as the store reaches an accuracy rating of 98 percent or greater in both of the samples for three consecutive months. Audits conducted to ascertain whether there are repeated violations shall not be included in determining the minimum number of stores to be audited each quarter as set forth in this paragraph. If any Walgreen store achieves an accuracy rating of 98 percent or greater in two consecutive random audits, that store's third and subsequent random audits shall consist of a sampling of 50 regular priced items and 50 discount priced items. Should the store subsequently fail a random audit, in future audits, the store shall again be audited in accordance with this agreement using a sampling of 50 regular priced items and 100 discount priced items. Once the store successfully passes a monthly audit for two consecutive months, any random or monthly audits of that store shall again consist of a sampling of 50 regular

priced items and 50 discount priced items. The Independent Auditor shall not alert Walgreen in advance of making any store audits.

ii. **Store notifications.** For purposes of reporting and price correction communication, Walgreen shall maintain a compilation of store managers in Missouri, complete with contact information. The compilation shall be accessible to the Independent Auditor at all times.

iii. **Price Correction.** For any Pricing Discrepancy that is uncovered, the Independent Auditor shall immediately notify store management. Management will then take the necessary steps to immediately correct the Pricing Discrepancy.

iv. **Attorney General Audit Right.** At any time during the pendency of the Consent Judgment, the Attorney General may review, analyze and audit the Independent Auditor's records and reports to ensure compliance with the terms of this Consent Judgment and to confirm the Independent Auditor's compliance with its duties as set forth within this Consent Judgment.

v. **Resignation of Independent Auditor.** In the event of a resignation by the Independent Auditor, the Parties shall immediately confer and designate a replacement Independent Auditor. Walgreen shall notify the Court of the identity and designation of the replacement Independent Auditor. The replacement Independent Auditor will be selected by agreement

of the parties, or, if there is no agreement by the parties on a replacement Independent Auditor, the Court will select a replacement Independent Auditor from among those entities identified to the Court by the parties as candidates to serve as a replacement Independent Auditor.

vi.       **Replacement of the Independent Auditor.** Either Party or both Parties may petition the Court for an Order to remove the Independent Auditor for cause, defined as misconduct, failure to perform, or neglect of duty. Prior to the filing of a petition, the Party seeking to remove the Independent Auditor shall notify the other party of its intent to file such petition, and following such notice, the Parties shall confer and negotiate in good faith to resolve the issues relating to the Independent Auditor. If after five business days, the Independent Auditor issues have not been resolved to the mutual satisfaction of the Parties, the Party seeking to replace the Independent Auditor may proceed with its petition. In the event a Party opposes a petition to remove the Independent Auditor, the burden of proof for establishing cause for removal shall lie with the Party filing the petition. A hearing on any such contested petition shall be heard as soon as the Court's calendar will allow. If the Court finds in favor of the petitioner, the replacement Independent Auditor will be selected by agreement of the parties, or, if there is no agreement by the parties, the Court will select, as soon as practicable, a replacement Independent Auditor from among those



entities identified to the Court by the Parties. Once the replacement Independent Auditor is selected, Walgreen will use commercially reasonable efforts to negotiate an acceptable agreement with the new Independent Auditor within 60 days of the new Auditor's selection.

For good cause shown, a Party may petition the Court to have an Independent Auditor appointed which shall serve on a temporary basis. Nothing contained in this Judgment shall prevent a temporarily serving Independent Auditor from serving as a replacement Independent Auditor. By agreement of the parties or by Order of the Court, the Independent Auditor may serve until a replacement Auditor or temporary Independent Auditor is appointed. Nothing in this Agreement shall prevent a party from seeking an Order from the Court to immediately remove any Independent Auditor for cause.

vii. **Report Contents.** The audit reports or other reports as described herein shall reflect the identity of the store which is the subject of the audit or report; the date of the audit or report; the identity and contact information of the person conducting the audit or making the report; the items audited or the items or issues which are the subject of the report; the detailed statement of errors uncovered, including the percentage of items purchased that involved a Pricing Discrepancy; photographs of the shelf tags or Advertisements in question; and the remediation steps taken.



viii. **Advertising Reporting.** A record of any Vigilance Awards shall be reported to the Independent Auditor by Walgreen on a quarterly basis to be included with the records and reports maintained by the Independent Auditor.

ix. **Reporting – Consumer Complaints.** Consumer complaints pertaining to the retail issues which are the subject of this Judgment and reports of a Pricing Discrepancy that are received by the State from any source may be compiled and reported to Walgreen. Walgreen shall immediately work with the State and the consumer in an effort to resolve the consumer dispute to the reasonable, mutual satisfaction of the State and Walgreen.

x. **Delegation.** Nothing in this Judgment prohibits the Independent Auditor from properly delegating the functions to be performed in this Judgment to agents, contractors, subcontractors, or others, provided all work performed at its direction or on its behalf is performed in conformance with the standards provided herein.

xi. The parties agree that Walgreen, at its expense, shall arrange to have the Independent Auditor's reports reviewed by a Certified Public Accountant (CPA) every six months for compliance with the terms of the Consent Judgment. The CPA shall be approved by the State. In the event

that the CPA becomes unable to perform the duties set forth in this Consent Judgment, the parties shall agree on a replacement CPA.

**B. Consumer Vigilance Program.** During the term of this Consent Judgment, Walgreen shall initiate and enforce in all its Walgreen retail stores in Missouri, the following program to promote pricing accuracy:

i. Whenever Walgreen is notified by a consumer that a Pricing Discrepancy has occurred during scanning at the POS, and Walgreen verifies the discrepancy, the consumer shall be given the item for free if the lowest Advertised Price is \$5.00 or less, or if the lowest Advertised Price is greater than \$5.00, the consumer shall be charged the lowest Advertised Price for the item and shall also be given a \$10.00 Walgreen merchandise card. If the consumer purchases additional quantities of the item to which the Pricing Discrepancy applies, the consumer shall be charged the lowest Advertised Price for the additional items, but shall not be entitled to receive the additional items for free if the Advertised Price is \$5.00 or less, or receive the \$10.00 Walgreen merchandise card if the Advertised Price is greater than \$5.00. Any vigilance award must be requested by the consumer within 48 hours of purchase, and a valid Walgreen receipt must be presented by the consumer.

ii. The consumer shall not be entitled to this award if (a) the Walgreen store corrects the price prior to the consumer's complaint or

notification of a pricing error, (b) the variance between the Advertised Price and POS Price is consistent with a clear and conspicuous price correction notice in close proximity to the merchandise which adequately notifies consumers of an incorrect Advertised Price, (c) the variance between an Advertised Price and POS Price resulted from the merchandise or price tag being inadvertently moved, transferred, or transported by a consumer to the wrong rack, shelf, display, or fixture, (d) the variance results in a consumer being charged a lower price than the Advertised Price, or (e) the consumer has already received the benefit of the Consumer Vigilance Program for the same item on the same day. Walgreen shall have the burden of proof in any action to establish why the consumer is not entitled to a Consumer Vigilance award, pursuant to paragraph 23. B. ii.

iii. Walgreen employees shall not be eligible for a Consumer Vigilance award.

iv. Walgreen shall record its compliance with this provision by maintaining accurate, current, and complete records pertaining to each such Consumer Vigilance award, including the amount of the Pricing Discrepancy, and shall forward such reports to the Independent Auditor quarterly on the 30th day of the month following the end of each calendar quarter. Any dispute as to a consumer's eligibility for or concerning the amount of the

payment shall be determined by the Independent Auditor as soon as practicable.

C. **Compliance Reporting.** The records of audits performed in accordance with the terms of this Consent Judgment shall not be admissible as evidence against Walgreen in any subsequent action or law enforcement activity by the State of Missouri, except that such records may be admissible in court proceedings solely to establish compliance or a failure to comply with the audit provisions of this Consent Judgment.

D. **Multiple Items.** If, in the course of a random audit, the Independent Auditor selects a sale item that requires the purchase of more than one unit to obtain the discounted price (*e.g.* 2 for \$3.00), the Independent Auditor shall purchase the required number of units to verify the discounted price; however, the selection of multiple items in these instances shall only count as a single item within the 50-item sample or 100-item discount price sample, as the case may be.

#### **Violations, Reports, and Stipulated Penalties**

24. **Pricing Accuracy.** Walgreen shall be assessed a stipulated monetary penalty of \$1,500 for each event in which a Missouri store fails in any single quarterly audit or monthly audit by the Independent Auditor to obtain the accuracy levels as contemplated by paragraph 23. A. i. If the same store fails a second Independent Auditor inspection during the term of this

Consent Judgment, the store shall be assessed a stipulated monetary penalty of \$3,000, and if the same store fails a third or any subsequent Independent Auditor inspection during the term of this Consent Judgment, the store shall be assessed a stipulated monetary penalty of \$5,000.

The maximum penalty to be assessed pursuant to this paragraph shall be one \$5,000 penalty assessed per store per failed inspection or audit.

25. **Reporting to the Independent Auditor.** In the event Walgreen fails in any given calendar quarter to provide timely reports to the Independent Auditor, as contemplated by this Judgment, Walgreen shall be in violation of this Judgment and shall be assessed a stipulated monetary penalty of \$1,000 per violation.

26. **Preclusion.** Violations of the terms or conditions of this Consent Judgment identified by the Independent Auditor shall be subject solely to the penalty provisions of this Consent Judgment, and the Attorney General shall not pursue other payments or penalties for the same acts whether under local, State, or federal law.

27. **Length of Penalties.** Penalties as provided herein shall be assessed for any conduct occurring on the 31st day following the entry of this Judgment and shall continue for three years from the date of the entry of this Judgment. Penalties shall be paid to the State within 30 days of assessment, to a fund to be identified by the State.



## Dispute Resolution

### 28. **Informal Resolution.**

i. In the event of a dispute over the assessment of violations by the Independent Auditor as reported to Walgreen, any party may invoke the dispute resolution provisions of this Section by notifying the other party in writing of the matters in dispute and of the party's intention to resolve the dispute under this section. The parties shall attempt to resolve the dispute informally for a period of 30 days.

ii. **Mediation.** If the parties are unable to resolve the dispute through informal negotiation, either party may invoke formal dispute resolution through mediation. The party invoking the formal dispute resolution through mediation shall have the burden of proof. Mediation shall be conducted pursuant to Missouri Supreme Court Rule 17, as amended. The parties will agree on a mediator, or, if no agreement is reached, the parties will jointly request this Court select a mediator. The parties agree to mediate all disputes in good faith. The mediation process shall commence within two weeks of the selection of a mediator and the parties shall use their best efforts to conclude the mediation process within four weeks of commencement. In the event mediation fails to resolve the dispute, the State's position shall stand unless Walgreen seeks judicial resolution of the dispute in this Court.

iii. **Unsuccessful Mediation.** Any petition to the Court following mediation must be initiated by filing a motion or other applicable pleading with the Court asking the Court to resolve the dispute. The party petitioning the Court shall have the burden of proof. The motion shall describe the dispute, state that the party filing the motion has made a diligent, good faith effort to resolve the dispute through informal negotiation and formal Dispute Resolution, describe the result of the formal Dispute Resolution, and include a proposal for resolving the dispute.

iv. **Effect of Dispute Resolution Procedures.** The invocation of the Dispute Resolution procedures under this Section shall not extend, postpone, or affect any obligation of Walgreen under this Judgment unless expressly provided herein or unless the parties agree to the extension, postponement, or effect. If applicable, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. In the event Walgreen does not prevail on the disputed issue, stipulated penalties, if applicable, shall not be excused and shall be deemed to have accrued from the date any violation commenced and shall be paid in full within 10 days of the date of the resolution of the dispute. However, in the event that Walgreen prevails on the disputed issue, stipulated penalties, if applicable, shall not be assessed for the disputed issue.

## Notices

29. **Judgment Notices.** Notices, reports, and audits, as set forth herein, shall be provided via overnight mail and electronic mail to the following addresses or at such address as shall be provided in writing to the parties and to the Independent Auditor:

For the Attorney General:

Chief of Consumer Protection  
Office of the Missouri Attorney General  
221 West High St.  
Jefferson City, MO 65102  
[Reports.Walgreen@ago.mo.gov](mailto:Reports.Walgreen@ago.mo.gov)

For Walgreen:

Director, Regulatory Law  
Walgreen Co.  
104 Wilmot Road, MS 1434  
Deerfield, IL 60015  
[bob.delaney@walgreens.com](mailto:bob.delaney@walgreens.com)

For Independent Auditor:

Vice President, Business Development  
Crossmark, Inc.  
5100 Legacy Drive  
Plano, TX 75024  
[Alex.yakulis@crossmark.com](mailto:Alex.yakulis@crossmark.com)

## General Provisions

30. **No Admission.** Walgreen is entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or

regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Walgreen expressly denies. Walgreen does not admit any violation of the Missouri Merchandising Practice Act, and does not admit any wrongdoing that was or could have been alleged by the Attorney General before the date of the Judgment under those laws. No part of this Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Walgreen. This document and its contents are not intended for use by any third party for any purpose, including submission to any court, for any purpose.

31. **Ongoing Obligation.** Nothing in this Judgment shall be construed as relieving Walgreen of the obligation in the future to comply with all state and federal laws, regulations, or rules; or relieving Walgreen from any future liability under the laws unrelated to the offer and sale of Merchandise not set forth in the State's petition; or as limiting the ability of the State of Missouri from enforcing such unrelated provisions with respect to Walgreen within the State of Missouri for new conduct or actions of Walgreen after entry of this Judgment.

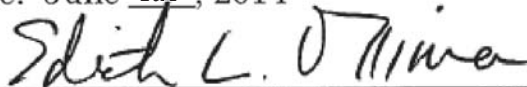
32. **Force Majeure.** No stipulated penalties shall be incurred if the event which gives rise to the stipulated penalty assessment is the result of performance which is delayed by force majeure. For purposes of this Judgment, a force majeure event is defined as any event arising from act of

God, war, strike, riot, or other catastrophe not foreseeable and beyond the control of Walgreen that delays or prevents performance of any obligation under this Judgment despite Walgreen's best efforts to fulfill the obligation.

33. **Jurisdiction of the Court.** This Court retains jurisdiction to enforce any terms of this Judgment and any violations of the provisions of this Judgment shall be deemed contempt of the Court.

It is so ordered and decreed.

Date: June 4<sup>th</sup>, 2014



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The Honorable Judge Messina

It is hereby certified that copies of the foregoing were sent through the e-filing system on 04-Jun-2014 to the following:

B JOYCE YEAGER  
KRISTIN ANNE UNDERWOOD  
NATHAN JEREMY AQUINO  
STEVEN MARTIN AARON  
PATRICK ANDREW MCINERNEY



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Law Clerk



Approved by the parties:

**CHRIS KOSTER**  
Attorney General



Date:

5/30/2014

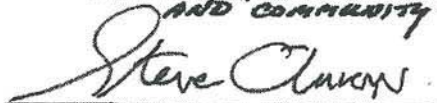
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