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**FILED**

**SEP 3 - 2008**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
HUDSON COUNTY  
DOCKET NO. HUD-C-~~132~~08

**THOMAS P. OLIVIERI, P.J.C.**  
ANNE MILGRAM, Attorney General of the  
State of New Jersey, DAVID M. SZUCHMAN,  
Director of the New Jersey Division of  
Consumer Affairs, and LOUIS E.  
GREENLEAF, Superintendent of the State of  
New Jersey, Office of Weights and Measures,

Plaintiffs,

v.

WAL-MART STORES, INC., JANE AND  
JOHN DOES 1-20, individually and as owners,  
officers, directors, shareholders, founders,  
managers, agents, servants, employees,  
representatives and/or independent contractors  
of WAL-MART STORES, INC., and XYZ  
CORPORATIONS 1-20,

Defendants.

Civil Action

**COMPLAINT**

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"),  
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, David M. Szuchman,

Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, and Louis E. Greenleaf, Superintendent of the New Jersey Office of Weights and Measures (“Superintendent”), with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of this Complaint state:

**PRELIMINARY STATEMENT**

1. With the end of the summer and the beginning of the school season, many families in the State of New Jersey (“State” or “New Jersey”) are busy shopping for school supplies and other necessities. In these difficult economic times, consumers are searching for the best product at the best value, while retail establishments are aggressively competing for consumers’ business, among other things, by advertising weekly specials. Wal-Mart Stores, Inc. (“Wal-Mart” or “Defendant”) is among those retailers that advertises and sells merchandise, among other things, through stores located in the State.

2. Commencing August 25, 2008, investigators from the New Jersey Division of Consumer Affairs (“Division”) and the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) conducted inspections within fifteen (15) of the forty-eight (48) Wal-Mart retail stores within the State. Consequently, the investigators found that those Wal-Mart retail stores, among other things: (1) were offering for sale and/or selling infant formula and non-prescription drugs beyond their expiration dates; (2) were selling a variety of merchandise, through the use of scanners, at prices in excess of the price listed at the point of display; (3) were failing to post the selling price of merchandise; (4) were not maintaining a sufficient quantity of advertised sales merchandise; and (5) were failing to post a proper bicycle safety statement promoting the use of helmets. As detailed below, such conduct is deceptive and in violation of the New Jersey Consumer

Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Weights and Measures Act, N.J.S.A. 51:1-1, et seq. (“Weights and Measures Act”), related statutes and regulations, as well as a prior Consent Order entered into with the Division.

### **PARTIES AND JURISDICTION**

3. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“CFA Regulations”). The Director of the Division is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

4. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) in the Department of Law and Public Safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1, et seq.

5. The Superintendent is charged with the responsibility of administering the Weights and Measures Act, and all regulations promulgated thereunder, N.J.A.C. 13:47B-1.1 et seq. and 13:47K-1.1 et seq. (“Weights and Measures Regulations”).

6. By this action, the Attorney General, Director and Superintendent (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA, the CFA Regulations and/or the Weights and Measures Act. Plaintiffs bring this action pursuant to their authority under the CFA and/or the Weights and Measures Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 51:1-103. Venue is proper in Hudson County, pursuant to R. 4:3-2, because it is a county in which the cause of action arose and/or in which the defendant has conducted business.

7. Defendant Wal-Mart is an Arkansas corporation established on October 31, 1969. Upon information and belief, at all relevant times, Wal-Mart has maintained a principal place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716.

8. As of January 23, 1989, Wal-Mart has been authorized to conduct business as a foreign corporation in New Jersey. Wal-Mart's registered agent in the State is Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

9. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Wal-Mart who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

10. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

##### **A. Advertisement and Retail Sale of Merchandise:**

11. At all relevant times, Defendant has been engaged in the business of operating retail stores in the State and elsewhere. Upon information and belief, these stores engage in the retail sale of a wide assortment of merchandise including, but not limited to, infant formula, non-prescription drugs, food, drinks, compact discs, housewares, sporting goods, clothing, and school and stationary supplies.

12. Upon information and belief, Defendant advertises and otherwise offers merchandise for sale to consumers in this State and elsewhere through various mediums including, but not limited to, television commercials, newspaper advertisements, advertising circulars and internet web sites including, but not limited to, [www.walmart.com](http://www.walmart.com).

13. Upon information and belief, at all relevant times, Defendant has been engaged in the operation of forty-eight (48) retail stores in the State under the name "Wal-Mart" (hereinafter "Wal-Mart Stores").

14. Upon information and belief, at all relevant times, Defendant has also conducted the retail sale of merchandise in this State and elsewhere through internet web sites including, but not limited to, [www.walmart.com](http://www.walmart.com).

**B. Prior Division Investigations and Settlements:**

15. On April 21, 2004, Defendant entered into a Consent Order with the Division (“April 2004 Consent Order”). At that time, Defendant was similarly engaged in the operation of retail stores in the State. The Division initiated the matter as an investigation to ascertain whether violations of the CFA and CFA Regulations had been committed by Wal-Mart, its officers, agents, representatives, and employees in connection with its advertising and sale of merchandise in the State.

16. As further reflected in the April 2004 Consent Order, Wal-Mart agreed to “cease and desist in New Jersey from engaging directly in selling or offering to sell items that have passed their expiration date. These items include, but are not limited to: (a) Non-Prescription (over the counter) drugs; (b) Infant Formula (c) Cosmetics.”

17. The April 2004 Consent Order further provided that “[i]f, after signing the Consent Order, Wal-Mart engages in any acts or practices that constitutes a violation of this order, Wal-Mart may be subject to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13.”

**C. Plaintiffs’ Current Investigation:**

18. During the period of August 25, 2008 through August 28, 2008, Defendant had been engaged in the operation of forty-eight (48) retail stores in the State which included the following locations:

| <u>Store Number</u> | <u>Store Location</u> |                         |
|---------------------|-----------------------|-------------------------|
| 5077                | 300 Wooton Avenue     | Boonton, New Jersey     |
| 1977                | 1872 Route 88         | Brick, New Jersey       |
| 2040                | 2106 Mount Holly Road | Burlington, New Jersey  |
| 2871                | 2501 Route 130 South  | Cinnaminson, New Jersey |
| 2582                | 1 Wal-Mart Plaza      | Clinton, New Jersey     |

|      |                           |                                |
|------|---------------------------|--------------------------------|
| 5340 | 500 Route 38              | Cherry Hill, New Jersey        |
| 2503 | 1885 Route 57             | Hackettstown, New Jersey       |
| 2254 | 55 South White Horse Pike | Hammonton, New Jersey          |
| 5447 | 150 Harrison Avenue       | Kearny, New Jersey             |
| 1921 | 525 Route 72 West         | Manahawkin, New Jersey         |
| 2651 | 100 North Main Street     | Manville, New Jersey           |
| 1869 | 150 Route 70 East         | Marlton, New Jersey            |
| 2497 | 1236 Route 22             | Phillipsburg, New Jersey       |
| 1844 | 950 Route 37 West         | Toms River, New Jersey         |
| 5069 | 3576 Route 22 West        | Whitehouse Station, New Jersey |

19. During the period of August 25, 2008 through August 28, 2008, Defendant offered for retail sale at the above-referenced Wal-Mart Stores a wide assortment of merchandise including, but not limited to, infant formula, non-prescription drugs, Scotch tape, sidewalk chalk, Kleenex, Elmer's Brand School Glue, batteries, staplers, crayons, and calculators.

**COUNT I**

**VIOLATION OF THE CFA BY DEFENDANT  
(SALE OF EXPIRED MERCHANDISE)**

20. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 19 above as if more fully set forth herein.

21. The CFA, specifically N.J.S.A. 56:8-2.27, provides, in pertinent part:

It shall be an unlawful practice for any person to sell or offer to sell to the public:

- a. any non-prescription drug, infant formula or baby food, which is subject to expiration dating requirements issued by the federal Food and Drug Administration, if the date of expiration has passed. . . .

22. At least during the period of August 25, 2008 through August 28, 2008, Defendant was engaged in the retail sale of infant formula and/or non-prescription drugs subject to the

expiration dating requirements of N.J.S.A. 56:8-2.27 at Wal-Mart Stores in the State including, but not limited to, the following:

| <u>Store Number</u> | <u>Store Location</u>     |                                |
|---------------------|---------------------------|--------------------------------|
| 5077                | 300 Wooton Avenue         | Boonton, New Jersey            |
| 5340                | 500 Route 38              | Cherry Hill, New Jersey        |
| 2254                | 55 South White Horse Pike | Hammonton, New Jersey          |
| 5447                | 150 Harrison Avenue       | Kearny, New Jersey             |
| 2651                | 100 North Main Street     | Manville, New Jersey           |
| 2497                | 1236 Route 22             | Phillipsburg, New Jersey       |
| 5069                | 3576 Route 22 West        | Whitehouse Station, New Jersey |

23. The infant formula and/or non-prescription drugs found to have been offered for sale and/or sold beyond its expiration date at the above-referenced Wal-Mart Stores include, but are not limited to, the following: (a) Parent's Choice Infant Formula; (b) Tylenol Concentrated Infants' Drops; (c) Equate Extra Strength Pain Reliever; (d) Similac Infant Formula; (e) Theraflu Daytime Warming Relief; (f) Vicks Formula 44 Throat Spray; (g) Dr. Blaine's Tineacide Antifungal Cream; and (h) Dimetapp Children's Cold medicine.

24. Each offer for sale and/or sale of an infant formula and/or non-prescription drug beyond its expiration date comprises a separate violation of the CFA, N.J.S.A. 56:8-2.27.

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES) (SALE OF EXPIRED MERCHANDISE)**

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24 above as if more fully set forth herein.

26. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . .

27. At all relevant times, Defendant has advertised and been engaged in the retail sale of a wide assortment of merchandise in Wal-Mart Stores within the State including, but not limited to, infant formula and non-prescription drugs .

28. In so doing, Defendant has engaged in the use of unconscionable commercial practices which include, but are not limited to, the following:

- a. Offering for sale and/or selling infant formula beyond its expiration date; and
- b. Offering for sale and/or selling non-prescription drugs beyond their expiration date.

29. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

### **COUNT III**

#### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES, FALSE PROMISES AND MISREPRESENTATIONS) (SALE OF MERCHANDISE AT PRICE IN EXCESS OF POSTED PRICE)**

30. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 29 above as if more fully set forth herein.

31. At all relevant times, Defendant has advertised and been engaged in the retail sale of a wide assortment of merchandise in Wal-Mart Stores within the State including, but not limited to,

Scotch tape, sidewalk chalk, Kleenex, Elmer's Brand School Glue, batteries, baby powder, socks, envelopes and fishing lines.

32. At all relevant times, Defendant has employed the use of scanners to determine the value of merchandise sold at Wal-Mart Stores within the State.

33. During the period of August 25, 2008 through August 29, 2008, merchandise sold by Defendant in the State was found to have scanned at a price in excess of the price listed at the point of display including, but not limited to, at the following Wal-Mart Stores:

| <u>Store Number</u> | <u>Store Location</u>     |                                |
|---------------------|---------------------------|--------------------------------|
| 5077                | 300 Wooton Avenue         | Boonton, New Jersey            |
| 2040                | 2106 Mount Holly Road     | Burlington, New Jersey         |
| 2871                | 2501 Route 130 South      | Cinnaminson, New Jersey        |
| 2582                | 1 Wal-Mart Plaza          | Clinton, New Jersey            |
| 5340                | 500 Route 38              | Cherry Hill, New Jersey        |
| 2503                | 1885 Route 57             | Hackettstown, New Jersey       |
| 2254                | 55 South White Horse Pike | Hammonton, New Jersey          |
| 5447                | 150 Harrison Avenue       | Kearny, New Jersey             |
| 1921                | 525 Route 72 West         | Manahawkin, New Jersey         |
| 2651                | 100 North Main Street     | Manville, New Jersey           |
| 1869                | 150 Route 70 East         | Marlton, New Jersey            |
| 2497                | 1236 Route 22             | Phillipsburg, New Jersey       |
| 1844                | 950 Route 37 West         | Toms River, New Jersey         |
| 5069                | 3576 Route 22 West        | Whitehouse Station, New Jersey |

34. The merchandise found to have scanned at a price in excess of the price listed at the point of display at the Wal-Mart Stores include, but are not limited to, the following: (a) Elmer's Brand School Glue; (b) Scotch Transparent Tape; (c) Crayola Sidewalk Chalk; (d) Kleenex; (e) Rayovac batteries; (f) Equate Baby Powder; (g) Kraft Envelopes; (h) Berkley Brand Trilene Big Game fishing line; (i) Stanley 20 Piece Screwdriver Set; (j) Sportline Brand Pedometer; (k) Ensure

Plus Homemade Vanilla Shake; (l) Oust Surface Disinfectant; (m) Wal-Mart 10-Pair Socks; (n) Day26 Compact Disc; and (o) Purina Fit & Trim dog food.

35. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices, false promises and/or misrepresentations:

- a. Selling merchandise to consumers at prices that exceed the price posted at the point of display or otherwise; and
- b. Misrepresenting to consumers at the point of display or otherwise, the price of merchandise offered for sale at Wal-Mart Stores.

36. Each unconscionable commercial practice and/or misrepresentation by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

#### **COUNT IV**

#### **VIOLATION OF THE WEIGHTS AND MEASURES ACT BY DEFENDANT (IMPROPER PRICE SCANNING)**

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above as if more fully set forth herein.

38. The Weights and Measures Act, N.J.S.A. 51:1-1 et seq., governs the use of a weight and measure in the State.

39. At all relevant times, Defendant has been engaged in the retail sale of merchandise at Wal-Mart Stores within the State. Such merchandise constitutes a "commodity" within the meaning of the Weights and Measures Act, N.J.S.A. 51:1-2(a).

40. At all relevant times, Defendant has employed the use of scanners to determine the value of merchandise sold at Wal-Mart Stores within the State. Such scanners constitute a "weight and measure" within the meaning of the Weights and Measures Act, N.J.S.A. 51:1-2(e).

41. The Weights and Measures Act provides in pertinent part:

1. No person shall:

.....

(4) Misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, count, or time, or represent the price in a manner calculated or tending to mislead or in any way deceive a person.

[N.J.S.A. 51:1-97(a)(4).]

42. During the period of August 25, 2006 through August 29, 2006, commodities sold by Defendant in the State were found to have scanned at a price in excess of the price listed at the point of display including, but not limited to, at the Wal-Mart Stores referenced in paragraph 32 above.

43. The commodities found to have scanned at a price in excess of the price listed at the point of display at the Wal-Mart Stores include, but are not limited to, those referenced in paragraph 33 above.

44. Each commodity having a list price that is contrary to the price that was calculated through the weight and measure device at the Wal-Mart Stores comprises a separate violation of the Weights and Measures Act, N.J.S.A. 51:1-100.

**COUNT V**

**VIOLATION OF THE CFA BY DEFENDANT  
(FAILURE TO DISPLAY SELLING PRICE)**

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44 above as if more fully set forth herein.

46. The CFA requires that persons offering merchandise for sale display the selling price, as follows:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where the merchandise is offered for sale.

[N.J.S.A. 56:8-2.5.]

47. In addition, the CFA provides:

For purposes of this act, each day for which the total selling price is not marked in accordance with the provisions of this act for each group of identical merchandise shall constitute a separate violation of this act and the act of which this act is a supplement.

[N.J.S.A. 56:8-2.6.]

48. During the period of August 25, 2008 through August 28, 2008, merchandise offered for sale and/or sold by Defendant did not include a plainly marked total selling price including, but not limited to, at the following Wal-Mart Stores:

| <u>Store Number</u> | <u>Store Location</u> |                         |
|---------------------|-----------------------|-------------------------|
| 5077                | 300 Wooton Avenue     | Boonton, New Jersey     |
| 1977                | 1872 Route 88         | Brick, New Jersey       |
| 2040                | 2106 Mount Holly Road | Burlington, New Jersey  |
| 2871                | 2501 Route 130 South  | Cinnaminson, New Jersey |
| 5340                | 500 Route 38          | Cherry Hill, New Jersey |

|      |                           |                                |
|------|---------------------------|--------------------------------|
| 2254 | 55 South White Horse Pike | Hammonton, New Jersey          |
| 1869 | 150 Route 70 East         | Marlton, New Jersey            |
| 2497 | 1236 Route 22             | Phillipsburg, New Jersey       |
| 5069 | 3576 Route 22 West        | Whitehouse Station, New Jersey |

49. The merchandise found not to include a plainly marked total selling price affixed to the merchandise or located at the point of display in the Wal-Mart Stores include, but are not limited to, the following: (a) D2 Energizer Batteries; (b) Hunt's Ketchup; (c) Crayola Washable Crayons; (d) Crayola Staple-Free Stapler; (e) LeWorld Dual Power Calculator; (f) Colors-In-Motion Twist-Up Crayons; (g) kickballs; (h) junior-size footballs; (i) Look & Learn ViewMaster; (j) Sparkle 8-Roll Paper Towels; (k) Hannah Montana Pillow; (l) Maxfli Golf Balls; (m) Rubbermaid 20-quart Ice Chest; (n) Frank & Teressa's Original Buffalo Sauce; and (o) Sterilite 58-quart Storage Box.

50. Each instance and each day where Defendant offered for sale and/or sold merchandise without labeling or displaying the total selling price constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.5 and N.J.S.A. 56:8-2.6.

## COUNT VI

### VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANT

51. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 50 above as if more fully set forth herein.

52. The General Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA ("Advertising Regulations"), address, among other issues, general advertising practices and price reduction advertisements.

53. Specifically, the Advertising Regulations provide, in relevant part:
- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:
1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. . . .

[N.J.A.C. 13:45A-9.2(a)(1).]

54. During the period of August 25, 2008 to August 28, 2008, Defendant advertised the availability of sales merchandise at Wal-Mart Stores including, but not limited to, the following:

| <u>Store Number</u> | <u>Store Location</u>     |                                |
|---------------------|---------------------------|--------------------------------|
| 5077                | 300 Wooton Avenue         | Boonton, New Jersey            |
| 1977                | 1872 Route 88             | Brick, New Jersey              |
| 2582                | 1 Wal-Mart Plaza          | Clinton, New Jersey            |
| 5340                | 500 Route 38              | Cherry Hill, New Jersey        |
| 2503                | 1885 Route 57             | Hackettstown, New Jersey       |
| 2254                | 55 South White Horse Pike | Hammonton, New Jersey          |
| 1921                | 525 Route 72 West         | Manahawkin, New Jersey         |
| 2651                | 100 North Main Street     | Manville, New Jersey           |
| 1869                | 150 Route 70 East         | Marlton, New Jersey            |
| 2497                | 1236 Route 22             | Phillipsburg, New Jersey       |
| 5069                | 3576 Route 22 West        | Whitehouse Station, New Jersey |

55. The merchandise advertised for sale but not maintained in sufficient quantities at the above-referenced Wal-Mart Stores includes, but is not limited, to the following: (a) NCAA/NFL

Team Gazebo; (b) NCAA/NFL Team Cooler; (c) Schumacher Power Source; (d) NCAA Stadium Seat; (e) Hunt's Ketchup; (f) Red Bull Energy Drink 6-pack; (g) NCAA/NFL Team Armchair; (h) Pepsi 12-pack; (i) Rawlings Tailgater Football; and (j) Fresh Vegetable Tray.

56. Each failure by Defendant to maintain a sufficient quantity of sales merchandise constitutes a separate violation of N.J.A.C. 13:45A-9.2(a)1 and a per se violation of the CFA.

## COUNT VII

### VIOLATION OF THE BICYCLE SAFETY ACT

57. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 56 above as if more fully set forth herein.

58. The Act concerning Bicycle and Motorized Bicycle Regulation, N.J.S.A. 39:4-10.3 ("Bicycle Safety Act"), addresses, among other issues, the notification to be provided as to the required use of a helmet by riders under the age of 17. The Bicycle Safety Act provides, in pertinent part, that:

- a. A person regularly engaged in the business of selling or renting bicycles shall post a sign at the point where the sale or rental transaction is completed stating: "STATE LAW REQUIRES A BICYCLE RIDER UNDER 17 YEARS OF AGE TO WEAR A HELMET." The size of the sign shall be at a minimum 15 inches in length and 8 inches in width. . . .

[N.J.S.A. 39:4-10.3(a).]

59. At least during the period of August 25, 2008 to August 26, 2008, Defendant offered bicycles for sale, yet failed to provide the proper bicycle safety statement in Wal-Mart Stores which include, but are not limited to, the following:

| <u>Store Number</u> | <u>Store Location</u>     |                       |
|---------------------|---------------------------|-----------------------|
| 2582                | 1 Wal-Mart Plaza          | Clinton, New Jersey   |
| 2254                | 55 South White Horse Pike | Hammonton, New Jersey |

60. Each Wal-Mart Store which offers bicycles for sale and fails to post the proper bicycle safety statement, constitutes a separate violation of the Bicycle Safety Act, each of which constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

### COUNT VIII

#### VIOLATION OF THE PRIOR CONSENT ORDER BY DEFENDANT

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 above as if more fully set forth herein.

62. Pursuant to the April 2004 Consent Order, Defendant, among other things, agreed to comply with N.J.S.A. 56:8-2.27 and to cease and desist from offering for sale or selling non-prescription drugs and infant formula beyond its expiration date.

63. Additionally, Defendant agreed that any future violations of the April 2004 Consent Order by Wal-Mart may subject Defendant to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13.

64. As set forth herein, Wal-Mart continued to engage in acts and practices in violation of N.J.S.A. 56:8-2.27.

65. Such conduct comprises second and subsequent violations of the CFA, subject to a penalty of not more than \$20,000 per violation pursuant to N.J.S.A. 56:8-13, as well as other relief provided by N.J.S.A. 56:8-18.

## PRAYER FOR RELIEF

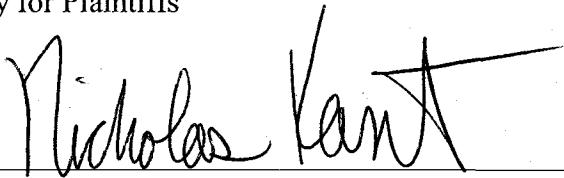
WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the

Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Bicycle Safety Act, N.J.S.A. 39:4-10.3;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Bicycle Safety Act, N.J.S.A. 39:4-10.3 including, but not limited to the acts and practices alleged in this Complaint;
- (c) Directing Defendant to remove all expired infant formula and/or non-prescription drugs from any Wal-Mart Store in the State;
- (d) Directing Defendant to arrange for the destruction of any infant formula and/or non-prescription drug that is removed from any Wal-Mart Store in the State;
- (e) Directing the assessment of restitution amounts against Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (f) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the Weights and Measures Act, N.J.S.A. 51:1-1 et seq.;
- (g) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (h) Assessing penalties against Defendant for violation of a prior cease and desist order, in accordance with N.J.S.A. 56:8-18;

- (i) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (j) Granting such other relief as the interests of justice may require.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
\_\_\_\_\_  
Nicholas Kant  
Deputy Attorney General


Dated: September 3, 2008  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Bicycle Safety Act, N.J.S.A. 39:4-10.3 and relevant regulations, is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_




Nicholas Kant  
Deputy Attorney General

Dated: September 3, 2008  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Deputy Attorney General Nicholas Kant is hereby designated as trial counsel for this matter.

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
\_\_\_\_\_  
Nicholas Kant  
Deputy Attorney General

Dated: September 3, 2008  
Newark, New Jersey