

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT
DEP'T OF THE TRIAL COURT
Civ. No. _____

In the Matter of Walmart, Inc.

ASSURANCE OF DISCONTINUANCE
PURSUANT TO M.G.L. CHAPTER 93A, §5

I. Introduction

The Commonwealth of Massachusetts (“Commonwealth”) through its Attorney General, Maura Healey, is conducting an investigation pursuant to M.G.L. c. 93A into the sale of prescription drugs under Massachusetts workers’ compensation laws and regulations. This has included a review of workers’ compensation prescription sales by Walmart, Inc. (“Walmart”) through its pharmacies in the Commonwealth (the “Investigation”).

As a result of the Investigation, the Office of the Attorney General (“OAG”) alleges that Walmart committed unfair and deceptive acts and practices by billing and obtaining payment for prescription drugs from payors of workers’ compensation claims in excess of amounts permitted by Massachusetts laws and regulations. These alleged overcharges occurred on certain transactions from 2016 to the present at Walmart pharmacy locations in the Commonwealth.

In recognition of Walmart’s cooperation with the Investigation, the OAG agrees to accept this Assurance of Discontinuance (“Assurance”) on the terms and conditions contained herein. Walmart, without admitting any facts, liability, or wrongdoing, in the interest of resolution of this matter and for

settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein.

This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of the Assurance of Discontinuance

1. Walmart shall make a payment totaling \$500,000, which shall be used by the OAG in its sole discretion for education, consumer outreach, amelioration of consumer harm, and/or support for public interest programs and efforts regarding workers' compensation insurance, work-place injury prevention, rehabilitation, and prescription choices and management.

2. The payment referred to in paragraph 1 above shall be made by check made out to the Commonwealth of Massachusetts and shall be delivered within thirty (30) business days of the filing of this Assurance to Gia Kim, Office of the Attorney General, One Ashburton Place, 18th Floor, Boston, MA 02108.

3. For all Massachusetts workers' compensation prescription drug transactions processed by Walmart, Walmart shall ensure that such billings and payments comply with all relevant Massachusetts laws and regulations. To facilitate such compliance, Walmart and the OAG agree to work together in good faith to develop a Compliance Pricing Protocol ("Protocol") that, if and when completed, will be set forth in a separate agreement between Walmart and the OAG.

4. The OAG agrees that, subject to the provisions in any Protocol as well as paragraph 6 below, any workers' compensation prescription drug transactions in Massachusetts priced in accordance with any Protocol shall be considered substantially in compliance with the requirements of this Assurance, and the OAG shall not bring an action against Walmart for its workers' compensation pricing/payment conduct regarding such transactions except as set forth in paragraphs 5 and 6 infra.

5. Any Protocol shall be subject to change as necessary to remain in compliance with applicable Massachusetts laws and regulations concerning pricing for prescription drugs covered by

workers' compensation insurance. Except as otherwise noted in any Protocol, any such changes to a Protocol shall only be made by Walmart (or any third party retained by Walmart) after review by the OAG to determine that such changes conform to the requirements of this Assurance and after written acceptance of those changes by the OAG.

6. Walmart shall fully cooperate with the OAG in implementing this Assurance. If a Protocol is in place, subject to the confidentiality provisions of G.L. c. 93A § 6, Walmart will provide the OAG (or any third-party auditor retained by the OAG) with data and documents as reasonably requested that are sufficient to permit the OAG to verify Walmart's implementation of the Protocol. Should the OAG or its authorized auditor determine that a payor has overpaid Walmart for a workers' compensation prescription drug transaction, pursuant to the provisions of M.G.L. c. 152, 101 CMR 331.00, or other applicable governing law or regulation (an "OAG overcharge"), Walmart will either refund the OAG overcharge ("refund amounts") or, if Walmart contests in good faith the existence or amount of such OAG overcharge, provide a written statement to the OAG setting forth the reasons for contesting such OAG overcharge. To the extent Walmart issues such refund amounts on or before ninety (90) days after the later of (i) the date on which the OAG initially notifies Walmart that the refund amount is required to be made, or (ii) if Walmart contests in writing the existence or amount of the OAG overcharge, the date on which the OAG makes a final determination in writing as to any owed refund amount, the OAG shall not seek to recover any additional amounts for such refunded OAG overcharge including multiples, penalties, attorneys' fees, or other costs.

7. It is Walmart's view that the rates paid to it by payors of prescription drugs in Massachusetts under workers' compensation plans and Walmart's information and documents used to determine such rates including, without limitation, (i) Walmart's claims data, claims data elements and procedures; (ii) reimbursement rates and amounts paid to Walmart; (iii) contract, contract terms and

identities of entities contracting with Walmart; and (iv) spreadsheet, calculations and analyses prepared by Walmart or its attorneys or agent in connection with the Investigation (collectively “Confidential Commercial Walmart Information”) constitute Walmart’s confidential commercial and trade secret information. To the extent that the Confidential Commercial Walmart Information has been or is provided to the OAG pursuant to M.G.L. c. 93A, § 6, it is subject to the provision of M.G.L. c. 93A, § 6(6). By providing the Confidential Commercial Walmart Information to the OAG in connection with the Investigation and/or with this Assurance, Walmart has not and will not waive any rights that Walmart may have to protect against improper use or disclosure of the Confidential Commercial Walmart Information.

8. This Assurance is not intended to impair any right of action that Walmart may have against any other person or entity, or any right of action that any person or entity other than the Attorney General might have against Walmart. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission to the allegations in this Assurance. Walmart expressly denies any liability or wrongdoing related to this matter, and specifically denies that it committed unfair and deceptive acts and practices and that it obtained payment for prescription drugs from payors of workers’ compensation claims in excess of amounts permitted by Massachusetts laws and regulations.


9. Any funds paid under this Assurance may, at the discretion of the OAG, if not otherwise obligated or expended by February 28, 2023, be directed to the Treasurer for deposit in the General Fund.

10. This Assurance contains the complete agreement between the parties. This Assurance may be modified or supplemented only by a written document signed by both parties.

11. By signing below, Walmart agrees to comply with all the terms of this Assurance. By signing below, the OAG agrees that this Assurance shall be in lieu of a civil action or proceeding against Walmart by the OAG for any acts or practices prior to the date of this Assurance related to the Investigation and the Investigation allegations. The OAG agrees not to bring any further action related to drug pricing for workers' compensation transactions prior to the date of this Assurance against Walmart and its parent or related entities for actions taken by Walmart. The terms of this Assurance may be enforced by the OAG in a civil action or proceeding.


Respectfully Submitted:

FOR: Walmart, Inc.

By: 

Felicia H. Ellsworth
Counsel for Walmart, Inc.

FOR: Office of the Attorney General for the
Commonwealth of Massachusetts

By: 

Glenn Kaplan
Assistant Attorney General

Dated: 11/29/2022

Dated: 12/5/2022