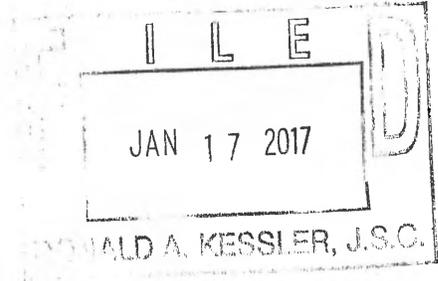


CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street- 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs



By: Russell M. Smith, Jr. (014202012)  
Deputy Attorney General  
(973) 877-1280

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, ESSEX COUNTY  
DOCKET NO. ESX-C-278-15

CHRISTOPHER S. PORRINO, Attorney General of  
the State of New Jersey, STEVE C. LEE, Director  
of the New Jersey Division of Consumers Affairs,  
and DAVID FREED, Acting Superintendent of the  
New Jersey State Office of Weights and Measures,

Plaintiffs,

v.

ADVANCE STORES COMPANY, INC.; JANE  
AND JOHN DOES 1-10, individually and as  
owners, officers, directors, founders, managers,  
agents, employees, and representatives of  
ADVANCE STORES COMPANY, INC.; and XYZ  
CORPORATIONS 1-10,

Defendant.

Civil Action

**FINAL CONSENT JUDGMENT**

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs Christopher S. Porrino, Attorney General of the State of New Jersey, Steve C. Lee, Director of the New Jersey Division of Consumer Affairs and David Freed, Acting Superintendent of the New Jersey State Office of Weights and Measures (collectively,

“Plaintiffs”),<sup>1</sup> and Advance Stores Company, Incorporated (“Defendant”) (collectively, “Parties”). As evidenced by their signatures below, the Parties do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

### **PRELIMINARY STATEMENT**

Plaintiffs commenced this Action on December 21, 2015, by the filing of a Complaint alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the New Jersey Weights and Measures Act, N.J.S.A. 51:1-1 et seq. Among other things, Plaintiffs alleged that Defendant: (1) sold automotive parts and accessories through the use of scanners, at prices in excess of the price listed at the point of display; and (2) failed to post the total selling price of automotive parts and accessories offered for sale at Advance Stores.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties’ agreement and for good cause shown:

### **IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

#### **1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

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<sup>1</sup> This action was commenced on behalf of John J. Hoffman, the former Acting Attorney General, the Director and the Superintendent. In accordance with R. 4:34-4, the caption has been revised to reflect the current Attorney General.

## 2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Essex County.

## 3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is filed with the Court (“Effective Date”).

## 4. DEFINITIONS

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 “Advance Stores” shall refer to any and all automotive parts retail locations owned and/or operated by Defendant that are branded and doing business as “Advance Auto Parts” in New Jersey.

4.2 “Action” shall refer to the matter titled Christopher S. Porrino, Attorney General of the State of New Jersey, Steve C. Lee, Director of the New Jersey Division of Consumer Affairs and David Freed, Acting Superintendent of the New Jersey State Office of Weights and Measures v. Advance Stores Company, Inc., Superior Court of New Jersey, Chancery Division, Essex County, Docket No. ESX-C-278-15, and all pleadings and proceedings related thereto, including the Complaint, filed December 21, 2015.

4.3 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition also applies to other forms of the term “Advertisement,” Including “Advertised.”

4.4 “Attorney General” shall refer to the Attorney General of the State of New Jersey

and the Office of the Attorney General of the State of New Jersey.

4.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

4.6 “Defendant” shall refer to Advance Stores Company, Incorporated with a main business address of 5008 Airport Road, Roanoke, Virginia 24012.

4.7 “General Manager” and “District Manager” shall refer to Defendant’s employees assigned to Advance Stores and holding those titles.

4.8 “Including” shall be construed as broadly as possible and shall mean “without limitation.” This definition applies to other forms of the word “Including” such as “Include[s].”

4.9 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

4.10 “New Jersey” and “State” shall refer to the State of New Jersey.

4.11 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.12 “Policy” or “Policies” shall Include any procedures, practices and/or established courses of action, whether written or oral.

4.13 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

## **5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of any business in New Jersey and shall comply with such State and/or federal laws, rules and regulations as now constituted or as may hereafter be amended, including the CFA and the Weights and Measures Act.

5.2 Defendant shall not sell, attempt to sell or offer Merchandise without the total selling price of such Merchandise plainly marked by a stamp, tag, label or sign either affixed to the Merchandise or located at the point where the Merchandise is offered for Sale, in accordance with the CFA, specifically N.J.S.A. 56:8-2.5.

5.3 Defendant shall not misrepresent the price of Merchandise sold, offered, exposed or Advertised for Sale by weight, measure, count or time, and/or represent the price in a manner calculated or tending to mislead or in any way deceive a Person, in accordance with the Weights and Measures Act, specifically N.J.S.A. 51:1-97(a)(4).

5.4 Defendant shall not sell or offer for Sale Merchandise at a price that exceeds the price posted at the point of display or otherwise, in accordance with the CFA, specifically N.J.S.A. 56:8-2.

5.5 Defendant shall not misrepresent to Consumers, at the point of display or otherwise, the price of Merchandise offered for Sale, in accordance with the CFA, specifically N.J.S.A. 56:8-2.

## **6. SETTLEMENT PAYMENT**

6.1 The Parties have agreed to a settlement of this Action in the amount of Sixty Nine Thousand Six Hundred Seven and 89/100 Dollars (\$69,607.89) (“Settlement Payment”).

6.2 The Settlement Payment comprises Forty Two Thousand and 00/100 Dollars (\$42,000.00) in civil penalties pursuant to N.J.S.A. 56:8-13 and N.J.S.A. 51:1-97(a), Twenty Four Thousand Four Hundred Eight Five and 79/100 Dollars (\$24,485.79) in attorneys’ fees pursuant to N.J.S.A. 56:8-19, and Three Thousand One Hundred Twenty-Two and 10/100 Dollars (\$3,122.10) in investigative costs pursuant to N.J.S.A. 56:8-11.

6.3 Defendant shall make the Settlement Payment contemporaneously with the signing of this Consent Judgment.

6.4 The Settlement Payment shall be made by certified or cashier’s check, money order, wire transfer, or credit card made payable to the “New Jersey Division of Consumer Affairs,” and shall be forwarded to the undersigned:

Russell M. Smith, Jr., Deputy Attorney General  
Division of Law, Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

6.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

## **7. GENERAL PROVISIONS**

7.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Judgment.

7.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the New Jersey.

7.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

7.4 This Consent Judgment contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Parties.

7.5 Except as otherwise explicitly provided in this Consent Judgment, nothing in this Consent Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this Consent Judgment is held invalid or unenforceable by

operation of law, the remaining terms of this Consent Judgment shall not be affected.

7.7 This Consent Judgment shall be binding upon Defendant as well as any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

7.8 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment be used to avoid compliance with this Consent Judgment.

7.9 This Consent Judgment is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment shall constitute, or be construed as: (a) an approval, sanction or authorization by the Plaintiffs or any other governmental unit of New Jersey of any act or practice of Defendant; and (b) an admission by Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any federal or New Jersey law, order, statute, or regulation, including the CFA and/or the Weights and Measures Act.

7.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 The Parties represent and warrant that an authorized representative of each has signed this Consent Judgment with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

8.2 Defendant represents and warrants that, at present, it employs a procedure whereby it implements price changes at all Advance Stores on a weekly basis.

8.3 Defendant represents and warrants that, at present, it employs a procedure whereby District Managers, at least quarterly, conduct a spot check for price accuracy of twenty (20) randomly selected Merchandise items offered for Sale at Advance Stores.

## **9. RELEASE**

9.1 In consideration of the undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the Settlement Payment in the manner specified in Section 6, the Plaintiffs hereby agrees to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA and/or the Weights and Measures Act, as well as the matters specifically addressed in this Consent Judgment (“Released Claims”).

9.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

## **10. MONITORING FOR COMPLIANCE**

10.1 Within forty-five (45) days of the Effective Date, Defendant shall distribute a summary of this Consent Judgment via electronic mail or otherwise to the General Manager and District Manager for each of the Advance Stores. Within sixty (60) days of the Effective Date, Defendant shall certify to the Plaintiffs that each of the above-referenced Persons have been provided with a summary of this Consent Judgment. Within thirty (30) days of the one (1) year anniversary of the Effective Date, Defendant shall again distribute a summary of this Consent Judgment via electronic mail or otherwise to the General Manager and District Manager of each of the Advance Stores. Within sixty (60) days of the one (1) year anniversary of the Effective

Date, Defendant shall again certify to the Plaintiffs that each of the above-referenced Persons have been provided with a summary of this Consent Judgment.

10.2 Defendant shall continue to maintain uniform Policies for monitoring the price accuracy of Merchandise at Advance Stores to ensure that such Merchandise is not displayed, offered for Sale and/or sold at a price that exceeds the price posted at the point of display or otherwise.

10.3 Defendant shall continue to maintain uniform Policies to ensure that the total selling price of Merchandise displayed, offered for Sale and/or sold at Advance Stores is plainly marked on the Merchandise or at the point where the Merchandise is offered for Sale.

10.4 Within sixty (60) days of the Effective Date, and for a period of two (2) years thereafter, Defendant shall cause each Advance Store to conduct a minimum of one (1) audit per four (4) week period of forty (40) Merchandise items offered for Sale. Defendant shall maintain a log of each audit, which includes: (a) date and time of audit; (b) name and title of Person conducting the audit; (c) the Merchandise items audited; (d) verification that the selling price of such Merchandise is marked on the Merchandise or at the point where the Merchandise is offered for Sale by a front tag or otherwise; (e) verification that such Merchandise's marked price matches the price in Defendant's point of sale system; and (f) verification that any marking or pricing errors discovered during the audit are corrected. Each Advance Store shall maintain the log for at least three (3) months from the date of each audit and it shall be made available for inspection by the Plaintiffs, provided, however, such inspection is intended to permit the Plaintiffs to verify compliance with this Consent Judgment and in no event shall such log or any information contained therein be used as the basis for an alleged violation of the CFA and/or the Weights and Measures Act against the Defendant for errors identified therein and corrected.

10.5 Defendant shall provide General Managers and other appropriate employees with the training and/or instruction necessary to ensure compliance with this Consent Judgment.

10.6 Within ninety (90) days of the Effective Date, Defendant's General Managers shall participate in a training session via Defendant's Learning Management System, which shall include: (a) identification of the need for price accuracy; (b) instructions on how to correct price accuracy and how to replace missing or incorrect price tags; and (c) instruction on how to respond to Consumer inquiries regarding Merchandise pricing issues. For a period of at least eighteen months (18) from the Effective Date, Defendant shall also provide such training to all newly hired General Managers.

10.7 Defendant's General Managers shall again participate the training session described in Section 10.6, within sixty (60) days of the one (1) year anniversary of the Effective Date.

10.8 Defendant shall employ a procedure for senior management monitoring and correction of pricing discrepancies identified at Advance Stores.

10.9 Within thirty (30) days of the Effective Date, and for a period of two (2) years thereafter, Defendant shall designate Jacquie Jordan as the Pricing Compliance Coordinator ("PCC"). The duties of the PCC shall include the intake of notices of pricing violations at Advance Stores, distributing such notices to Defendant's legal department, and processing payment for any properly assessed penalties. John Blanton, Esq. and/or Brian Dan, Esq., in the Defendant's Legal Department shall be the designated corporate contact Person for inquiries from the Plaintiffs, and shall monitor compliance with Defendant's Merchandise pricing policies and the terms of this Consent Judgment at all Advance Stores. The PCC, Mr. Blanton, or Mr. Dan may delegate duties to other employees of Defendant, appoint "backup" PCCs, or retain

third-parties as such person deems reasonable and appropriate to assist with the PCC's responsibilities.

#### **11. PENALTIES FOR FAILURE TO COMPLY**

11.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

#### **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- a. Relieving Defendant of its obligation to comply with all State and federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

#### **13. NOTICES UNDER THIS CONSENT JUDGMENT**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Russell M. Smith, Jr., Deputy Attorney General  
Division of Law, Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

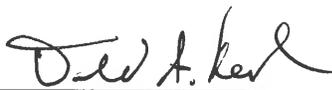
For the Defendant:

Gregg A. Ilardi, Esq.  
The Law Offices of Gregg A. Ilardi  
174 Delawanna Avenue  
Clifton, New Jersey 07014

With a copy to:

Advance Auto Parts  
Legal Department  
5008 Airport Road  
Roanoke, Virginia 24012

IT IS ON THE 17 DAY OF January 2016, SO ORDERED, ADJUDGED  
AND DECREED.

  
\_\_\_\_\_  
HON. DONALD A. KESSLER, J.S.C.

**JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:**

FOR THE PLAINTIFFS:

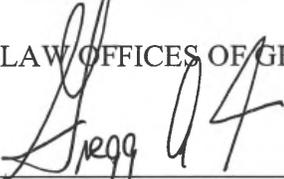
CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Russell M. Smith, Jr.  
Deputy Attorney General  
Division of Law, Consumer Fraud Prosecution  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Tel. (973) 877-1280

Dated: 1/17, 201~~6~~<sup>7</sup>

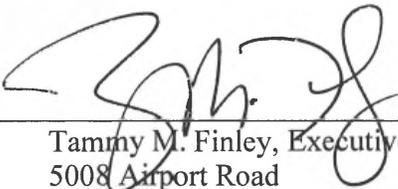
FOR THE DEFENDANT:

THE LAW OFFICES OF GREGG A. ILARDI LLC

By:   
Gregg A. Ilardi, Esq.  
174 Delawanna Avenue  
Clifton, New Jersey 07014  
Tel. (973) 507-7822

Dated: January 10, 2016

ADVANCE STORES COMPANY, INCORPORATED

By:   
Tammy M. Finley, Executive Vice President, General Counsel and Corporate Secretary  
5008 Airport Road  
Roanoke, Virginia 24012

Dated: JANUARY 10, 201~~6~~<sup>7</sup>