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Environmental Alert

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Walmart's \$16M settlement: Lessons for California retailers

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Seven California district attorneys settled claims that Walmart sold expired OTC drugs and infant formula past "use by" dates.



What's the impact?

- The stipulated judgement requires Walmart to pay \$16M and implement a multi-year compliance program with training, dedicated labor hours, and oversight.
- California regulators are treating date-code compliance as a live UCL enforcement issue, with potential per-violation penalties that can escalate quickly.
- Retailers should review expiration date controls, employee training, documentation, and product-pull procedures before regulators identify gaps.

On September 18, the Alameda County Superior Court entered a stipulated final judgment resolving a consumer protection action brought by seven California district attorneys against Walmart Inc. (*People v. Walmart Inc.*, Case No. 26CV199003). The prosecutors alleged that

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Walmart stores offered over-the-counter (OTC) drugs past their expiration dates and infant formula past its “use by” date. Under the settlement, Walmart must pay \$16 million and implement a multi-year, multi-store expired-product compliance program.

The allegations

The complaint, filed on July 14 by the district attorneys (DA) of Alameda, Sacramento, San Bernardino, San Joaquin, Solano, Sonoma, and Yolo Counties, alleged under California’s Unfair Competition Law (UCL), Business and Professions Code section 17200 that Walmart sold expired OTC drugs in violation of Health and Safety Code section 110286 and infant formula past its “use by” date in violation of Health and Safety Code section 114094.5, with inadequate procedures to verify and remove such products. The DAs sought civil penalties of up to \$2,500 per violation under Business and Professions Code section 17206.

The facts show a tolling agreement was entered into starting July 1, 2024, indicating the investigation began approximately two years before the complaint was filed.

Key terms of the judgment

- / **Monetary relief.** Walmart must pay \$15,750,000 in civil penalties and \$250,000 in investigative and enforcement costs within 30 days of the effective date. Penalties are allocated, with roughly \$2.2 million going to each plaintiff county.
- / **Injunction.** Walmart is enjoined in California from selling or offering for sale OTC drugs after their expiration date and infant formula past its “use by” date.
- / **Broad product scope.** The compliance program covers all date-regulated OTC products, expressly including all health and beauty products and cosmetic merchandise with a Drug Facts label, and all baby formula required to carry a “use by” date under the federal Food, Drug, and Cosmetic Act.
- / **Training.** Walmart will be required to train all store associates annually and train new hires within 30 days, on how to manually check expiration dates each time they handle covered products.
- / **Dedicated labor hours.** For six years, an associate must dedicate four hours per week at each covered store to finding and removing expired or expiring covered products. Walmart may substitute a “commensurate program” only with plaintiffs’ written consent.
- / **Duration.** Walmart may move to terminate the injunctive provisions after five years if all payments and expenditures are complete; they terminate automatically after six years.



Takeaways for retailers and consumer products companies

- / **Treat date-code compliance as a live UCL target.** District attorneys are coordinating multi-county investigations of retailers focused on expired OTC products and past “use by” dates for infant formula.
- / **Prepare for significant penalties.** With per-violation penalties across hundreds of stores, penalties can quickly reach eight figures.
- / **Include all Drug Facts-bearing products in OTC compliance.** Sunscreens, cosmetics, and other personal care items bearing a Drug Facts label fall within the scope regulators are focused on.
- / **Expect prescriptive remedies.** The Walmart judgment offers a template, with recurring training, dedicated labor hours, and multi-year oversight, that prosecutors are likely to seek in future settlements.
- / **Act now.** This is not the first expired product enforcement and likely will not be the last. Retailers selling date-sensitive products in California should audit rotation and pull procedures, document store-level checks, train associates, and consider privileged internal reviews to identify and fix gaps before regulators do.

Nixon Peabody’s team helps retailers assess UCL and consumer protection risk, strengthen date-code compliance programs, and prepare for or respond to regulatory inquiries and enforcement actions. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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