

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 24CV040447-910

STATE OF NORTH CAROLINA ex rel.)
JOSHUA H. STEIN, ATTORNEY)
GENERAL,)
)
Plaintiff,)
)
v.)
)
THE KROGER CO.,)
)
Defendant.)

FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The State of North Carolina (“*State*”) and the Kroger Co. (“*Kroger*”) (together with the State, the “*Parties*,” and each a “*Party*”) have entered into a consensual resolution of the above-captioned litigation (the “*Action*”) pursuant to a settlement agreement dated as of March 22, 2024 (as subsequently updated) (the “*Agreement*”), a copy of which is attached hereto as Exhibit A. The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the “*Consent Judgment*”) by the Court without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

1. Each Party warrants and represents that it engaged in arm’s-length negotiations in good faith. In hereby executing the Agreement, the Parties intend to effect a good-faith settlement.
2. The State, acting through its Attorney General, has determined that the Agreement and entry of this Consent Judgment is in the public interest.
3. Kroger denies the allegations against it and denies that it has any liability whatsoever to the State, its Subdivisions, and/or (a) any of the State’s or its Subdivisions’

departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public. Kroger is entering into this Consent 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, regulation, or ordinance, or of any other matter of fact or law, or of any fault, liability, or wrongdoing, all of which Kroger denies.

4. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely would require protracted litigation.

5. The Parties agree to the entry of the injunctive relief terms attached as Exhibit B to the Agreement.

6. Therefore, without any admission of liability or wrongdoing by Kroger or any other Released Entities (as defined in the Agreement), and without this Consent Judgment constituting evidence against or admission by anyone with respect to any issue of fact or law, the Parties now mutually consent to the entry of this Consent Judgment and agree to dismissal of the claims with prejudice pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

In consideration of the mutual promises, terms, and conditions set forth in the Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Kroger and the State, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Consent Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims of Releasers (including but not limited to the State) against Kroger and the Released Entities pursuant to the terms and conditions set forth in the Agreement. This Consent Judgment summarizes and gives effect to those terms. In the event of a conflict between the terms of the Agreement (including its exhibits) and language in this Consent Judgment, the terms of the Agreement shall govern. Nothing in this summary document shall have the effect of expanding, diminishing, explaining, or otherwise modifying any term of the Agreement.

3. The “Definitions” set forth in Section I of the Agreement are incorporated by reference into this Consent Judgment. The State is a “Settling State” within the meaning of the Agreement. Unless otherwise defined herein, capitalized terms in this Consent Judgment shall have the same meaning given to them in the Agreement.

4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Consent Judgment. This Consent Judgment shall not constitute and shall not be construed or used as a waiver of any jurisdictional defense Kroger or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreement was entered into in good faith and is in the public interest, and that entry of this Consent Judgment is in the public interest. By this Consent Judgment, the Agreement is hereby approved by the Court.

6. The State's Claims against Kroger are hereby DISMISSED WITH PREJUDICE, subject to a retention of jurisdiction by the Court as provided herein and in the Agreement.

7. The Court shall have authority to resolve disputes identified in Section VI.F.1 of the Agreement, governed by the rules and procedures of the Court.

8. By this Consent Judgment, the "Second Supplemental Agreement for Additional Funds" (the "SAAF-2"), a copy of which is attached hereto as Exhibit C and as incorporated into the Agreement pursuant to Exhibit O of the Agreement, is hereby approved by the Court as the means by which relevant funds paid pursuant to the Agreement will be allocated, used, and accounted for within the State, subject to the full acceptance by any Subdivision receiving such funds of the terms of the Agreement, including the releases provided therein. A municipality exercising its option under the SAAF-2 to transfer all its settlement funds during a particular period to the county or counties in which it is located has no further obligations under the SAAF-2 during that period.

9. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in Section VIII of the Agreement and the Release set forth in Sections X.A and G of the Agreement, as follows:

- a. The Attorney General of the State exercised the fullest extent of his powers to release Kroger and all other Released Entities from all Released Claims pursuant to the release attached hereto as Exhibit B (the "*AG Release*").
- b. Kroger has determined to proceed with the Agreement.
- c. The Subdivision Participation Agreement for each Participating Subdivision in the State that has joined to date has been made available to Kroger. As stated in the Subdivision Participation Agreement, and for the avoidance of doubt, nothing in the Subdivision Participation Agreement executed by the Participating Subdivisions is intended to modify in any way the terms of the Agreement to which the Participating Subdivisions agree. As stated in the Subdivision Participation Agreement, to the extent the terms of the executed version of the Subdivision Participation Agreement differ from the terms of the Agreement in any respect, the terms of the Agreement control.

- d. Pursuant to Section VIII.C of the Agreement and Paragraph 2 of the Subdivision Participation Agreement, each Litigating Subdivision in the State that has become a Participating Subdivision is dismissing with prejudice any Released Claims that it has filed against Kroger or any of the Released Entities.

10. Release. The Parties acknowledge that the release provisions in Section X of the Agreement and the AG Release, which are incorporated by reference herein, are an integral part of this Consent Judgment. Pursuant to the Agreement and the AG Release and without limitation and to the maximum extent of the power of the State's Attorney General, Kroger and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the State and its Participating Subdivisions and any of their departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including the State's Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing, and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or any Subdivision in the State, whether or not any of them participate in the Agreement. Pursuant to the Agreement and the AG Release and to the maximum extent of the State's power, Kroger and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (1) the State, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions, and instrumentalities that have the authority to bring Claims related to Covered

Conduct seeking money (including abatement and/or remediation) or revocation or suspension of a pharmaceutical distribution or dispensing license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Further, the provisions set forth in Section X of the Agreement are incorporated by reference into this Consent Judgment as if fully set forth herein. The Parties acknowledge, and the Court finds, that those provisions are an integral part of the Agreement and this Consent Judgment, and shall govern the rights and obligations of all participants in the settlement, including without limitation the State, Kroger and the Released Entities.

11. Release of Unknown Claims. The State (for itself and its Releasers) expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The State may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasers) expressly waived and fully, finally, and forever settled, released and discharged, through the Agreement and AG Release, any and all Released Claims that may exist as of the Effective Date but which the State does not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would have materially affected the State's decision to enter into the Agreement.

12. The Court finds that the releases are given in good faith and are effective as to all Releasers and Released Entities.

13. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreement.

14. No Admission of Liability. Kroger is consenting to this Consent Judgment solely for the purpose of effectuating the Agreement, 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 Kroger expressly denies. Neither Kroger nor any other Released Entity admits that it caused or contributed to any public nuisance, and neither Kroger nor any other Released Entity admits any wrongdoing that was or could have been alleged by the State, its Participating Subdivisions, or any other person or entity. No part of this Consent Judgment shall constitute evidence of any liability, fault, or wrongdoing by Kroger or any other Released Entity. The Parties acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu thereof and are properly characterized as described in Section V.F of the Agreement.

15. No Waiver. This Consent Judgment is entered based on the Agreement without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Consent Judgment shall not be construed or used as a waiver of Kroger's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Consent Judgment. Notwithstanding the foregoing, the State may enforce the terms of this Consent Judgment as expressly provided in the Agreement.

16. No Private Right of Action. This Consent Judgment is not for use by any third party for any purpose, including submission to any court for any purpose, except Participating Subdivisions for the limited purposes set forth in Section VI.A of the Agreement. Except as expressly provided in the Agreement, no portion of the Agreement or this Consent Judgment shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. The State shall allow Participating Subdivisions in the State to notify it of any perceived violations of the Agreement or this Consent Judgment. No Settling State, including the State, may assign or otherwise convey any right to enforce any provision of the Agreement.

17. Admissibility. This Consent Judgment shall not be admissible in any other case against Kroger or any other Released Entity. This Consent Judgment shall not be binding on Kroger or any other Released Entity in any respect other than in connection with the enforcement of this Consent Judgment or the Agreement in the State. For the avoidance of doubt, nothing herein shall prohibit Kroger or any other Released Entity from entering this Consent Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Kroger's right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Consent Judgment.

18. Preservation of Privilege. Nothing contained in the Agreement or this Consent Judgment, and no act required to be performed pursuant to the Agreement or this Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, patient-safety work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

19. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm's-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party.

20. Retention of Jurisdiction. The Court shall retain jurisdiction over the Parties for the limited purpose of the resolution of disputes identified in Section VI.F.1 of the Agreement. The Court shall have jurisdiction over Participating Subdivisions in the State for the limited purposes identified in the Agreement.

21. Successors and Assigns. This Consent Judgment is binding on Kroger's successors and assigns.

22. Modification. This Consent Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the State and Kroger and without the approval of the Court. Modification of the Agreement shall be governed by Section XIII.V of the Agreement.

SO ORDERED, this the 20th day of December, 2024.

12/20/2024 2:40:34 PM


Paul C. Ridgeway
Hon. Senior Resident Superior Court Judge
SUPERIOR COURT JUDGE

Consented and agreed to by Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein:

/s/ Daniel P. Mosteller
DANIEL P. MOSTELLER
N.C. State Bar No. 36958
Deputy General Counsel

Date: 12/18/2024

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Consented and agreed to by Defendant The Kroger Co.:

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Date: 12/17/2024