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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Concurring Statement of Chairman Andrew N. Ferguson
Joined by Commissioner Mark R. Meador
Walmart Spark Driver
Matter No. 2323055

February 26, 2026

Walmart, Inc., an American multinational retail corporation headquartered in Bentonville, Arkansas, is well known for its chain stores that have become one-stop shops where Americans can purchase groceries, household essentials, electronics, clothing, toys, health and beauty items, and other goods. Walmart also operates a delivery service—the Spark Driver (Spark) Program—through which consumers in the United States (Customers) can purchase goods from Walmart stores online, and Spark drivers (Drivers) will deliver those goods to the Customer.¹ Walmart facilitates these deliveries through the Spark mobile application (Spark App).² The Spark App is like many other gig apps. A driver who accepts the terms of the offered assignment and completes it receives compensation from Walmart, including (sometimes) tips paid by the Customers through the Spark App.³

Today, the Commission and eleven States⁴ filed a complaint and proposed stipulated order in the United States District Court for the Northern District of California to settle the Commission’s and States’ claims that Walmart engaged in conduct that harmed consumers (Customers and Drivers) of the Spark Program. Specifically, the complaint alleged violations of the Federal Trade Commission Act, 15 U.S.C. § 45, and the Gramm-Leach-Bliley (GLB) Act, 15 U.S.C. § 6821,⁵ as well as various state laws.⁶ The complaint’s allegations are as follows:

Spark’s operation is like many other common delivery apps. To convince Drivers to accept jobs through Spark, Walmart distributes “Offer Cards” to potential Drivers and provides additional earning opportunities (“Incentives”) through its Spark App. Those Offer Cards contain descriptions of delivery jobs for items that Customers have ordered,⁷ as well as an estimate of the

¹ Compl. ¶ 13, *FTC v. Walmart*, No. 3:26-cv-01655 (N.D. Cal. Feb. 26, 2026), Dkt. No. 1 (Compl.).

² *E.g.*, *id.* ¶¶ 13–14, 17; *cf.* Press Release, FTC, FTC Secures Settlement Banning Growth Cave Defendants from Marketing and Selling Business Opportunities and Credit Repair Programs (Jan. 27, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/01/ftc-secures-settlement-banning-growth-cave-defendants-marketing-selling-business-opportunities>.

³ Compl. ¶ 50.

⁴ State plaintiffs are Arizona, California, Colorado, Illinois, Michigan, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, and Wisconsin.

⁵ *Id.* ¶¶ 114–31.

⁶ *Id.* ¶¶ 132–200.

⁷ *Id.* ¶¶ 41, 44 (explaining the different types of jobs represented by Offers that Drivers may accept on the Spark App).



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Driver’s total earnings for that job, broken down into three components. The first component is base pay, which is the amount Walmart commits to pay the Driver for completion of the Offer Card unless all orders in the Offer Card are cancelled.⁸ The second component is extra pay based on certain factors that make a delivery more difficult than normal (for example, ”heavy items or stairs”).⁹ The third is any pre-delivery tip amount, or “pre-tip” amount, the Customer designated before the completion of the job. Most Americans are by now familiar with the pre-tip.¹⁰ Delivery apps often invite a Customer to leave a tip before the job is completed. In a nod to the custom of tying the size of the tip to the customer’s satisfaction with the service provided, some apps permit a consumer to change the pre-tip after service has been rendered. The Spark App is one such app.¹¹ Finally, Drivers can earn additional money through earning opportunities called Incentives, Spark’s in-app promotions that condition earnings on Drivers’ completion of certain requirements.¹²

Walmart made important representations to Drivers and Customers about the pre-tip. Although Drivers understood that a Customer could change the pre-tip amount after the delivery,¹³ Walmart long represented that the amount of the pre-tip displayed in the Offer Card would change “only if the Customer affirmatively changes it” “up to 24 hours after delivery.”¹⁴ Similarly, Walmart long represented to Customers that Walmart “will pass on 100% of ‘customer confirmed tips’ to Drivers.”¹⁵ Base pay, on the other hand, reflects the amount Walmart commits to pay Drivers unless all orders in the Offer are canceled. In reliance on those representations by Walmart, Drivers disclosed to Walmart their bank account and other financial information to receive payments for completing Offers and Incentives.¹⁶

Unbeknownst to Drivers, however, Walmart sometimes inflated the Offer Cards’ total earnings estimate above what Drivers could reasonably expect to earn for completing that Offer, even if Customers never changed the pre-tip. The Offer Cards, for example, routinely offered Drivers jobs that were actually “split orders”—subparts of a Customer’s entire order that multiple Drivers unknowingly work to fulfill.¹⁷ In those instances, Drivers would receive only a fraction of

⁸ *Id.* ¶¶ 46, 77.

⁹ *Id.* ¶ 49.

¹⁰ *Id.* ¶¶ 46 & Images 1 & 2, 49.

¹¹ *Id.* ¶¶ 48, 50.

¹² *Id.* ¶¶ 52–53 & Image 3.

¹³ *Id.* ¶ 50.

¹⁴ *Id.* ¶¶ 44, 48.

¹⁵ *Id.* ¶¶ 18, 50.

¹⁶ *Id.* ¶¶ 126–31.

¹⁷ *Id.* ¶ 53.



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the Offer Cards’ represented tip, yet Drivers could not determine when accepting an offer whether the Offer Cards contained a split order.¹⁸ Walmart also failed to disclose all conditions that Drivers must meet to receive earnings for Incentives¹⁹ and failed to pay Drivers even when they met all of an Incentive’s conditions.²⁰ And despite Walmart’s representations to the contrary, it did not always pass on “100% of [Customers’] tips ... to Drivers.” In fact, Walmart internally acknowledged that instances of Customers leaving tips that neither went to Drivers nor were refunded to Customers were among the top “25 biggest defects affecting Spark.”²¹

To resolve the claims arising from those allegations, Walmart has agreed to a proposed stipulated order that would impose on Walmart a monetary judgment of \$100 million.²² That \$100 million includes: \$11 million to be paid as civil penalties to the State plaintiffs²³; \$10 million to be paid to the Commission to administer as restitution²⁴; and \$79 million either already paid²⁵ or to be paid²⁶ to Drivers by Walmart directly to make Drivers whole, including amounts Walmart began paying Drivers late last year after receiving the Commission’s draft complaint, and \$16 million to endow a Driver Fund to make additional payments. Any amount remaining in the Driver Fund after Walmart issues its payments to Drivers will be remitted to the Commission to supplement the Commission’s claims process.²⁷

The proposed stipulated order also imposes significant changes to Walmart’s business practices to ensure that Walmart never does anything like this again. The injunction prohibits Walmart from modifying Offers after a Driver has accepted the Offer, unless one of six enumerated

¹⁸ *Id.* ¶¶ 55–58. Walmart’s unilateral removal of orders from “batched orders”— multiple Customer orders that Drivers see as a single Offer with multiple stops—before, during, and after they are offered to Drivers (and Drivers accept) results in a similar outcome. *Id.* ¶ 59. Even when Walmart modified the orders that make up a batched order earning opportunity, it failed to update the Offer Card to represent earnings Drivers could reasonably expect to earn from such an Offer. *Id.* ¶¶ 60–61. A Driver could thus complete a batched order on the belief that he would earn the entirety to the Offer Card’s earnings amount (or close) when, in reality, Walmart’s unilateral modification of the orders batched reduced the possible pre-tips and base pay that Driver could collect.

¹⁹ *Id.* ¶¶ 90–95.

²⁰ *Id.* ¶¶ 96–101.

²¹ *Id.* ¶¶ 18, 105–06 (demonstrating Walmart’s knowledge that “[t]ips that Customers leave do not always go to their Drivers”).

²² Proposed Stipulated Order § V, *FTC v. Walmart*, No. 3:26-cv-01655 (N.D. Cal. Feb. 26, 2026), Dkt. No. 2, (Order).

²³ *Id.* §§ V.A–V.F.

²⁴ *Id.* § V.F.

²⁵ *Id.* § V.B.

²⁶ *Id.* §§ V.C, V.E.

²⁷ *Id.* § V.D.

²⁸ *Id.* §§ V.B, V.D.



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exceptions in the order apply.²⁸ It also prohibits Walmart from making or assisting others in making misrepresentations to Drivers or Customers like those at issue in this matter.²⁹

Most significantly, to uphold its end of the bargain, Walmart must create and operate an Earnings Verification Program “designed to ensure Drivers are paid the amount of money shown on the Initial Offer Card” “upon completion of the Offer and are paid for any Incentives that they have completed.”³⁰ To satisfy those terms, the agreement requires Walmart “at a minimum, for a period of ten (10) years” to document the Program’s requirements in writing.³¹ It further requires Walmart to document and assess instances in which Drivers were not paid the amount they were owed³² as well as to adopt procedures “requiring [Walmart] to make all reasonable efforts to remediate” those instances.³³ And Walmart must retain and provide to the Commission relevant records under this Program as well as a report showing the effectiveness of the Program in compliance with the agreement’s terms.³⁴ If Walmart fails to obey this injunction, the Commission can return to Court in contempt proceedings.

This order thus hands a momentous win to all consumers affected by Walmart’s alleged misconduct: Customers and the workers who make up Walmart’s Drivers.

* * *

One year ago, I directed the Directors of the Bureaus of Competition, Consumer Protection, and Economics, and the Office of Policy Planning to form a Joint Labor Task Force that would “prioritize investigation and prosecution of deceptive, unfair, or anticompetitive labor market conduct in ... the Bureau of Consumer Protection.”³⁵ As I explained at the time, the Commission has typically carried out its “dual mandate” through consumer protection and competition enforcement efforts focused on protecting Americans in their role as consumers.³⁶ While

²⁸ *Id.* § II (enumerating six exceptions such as when Drivers’ or Customers’ conduct results in changes to the Offer and thus the related earnings).

²⁹ *Id.* § III (listing nine prohibited misrepresentations with an exception when “the alleged misrepresentation is based on information provided to Defendant by a reliable third-party data source”).

³⁰ *Id.* § I (making this requirement subject to the six exceptions enumerated by section II of the Order).

³¹ *Id.* § I.A.

³² *Id.* §§ I.C-I.D (requiring Walmart to “[a]ssess and document ... at least annually[] all of the instances in which a Driver was not paid” the amount in the Offer Card or for completing the Incentive, despite the Driver’s completion of the Offer or all conditions of the Incentive).

³³ *Id.* § I.F.

³⁴ *Id.* §§ I.G–I.F.

³⁵ Chairman Andrew N. Ferguson, Directive Regarding Labor Markets Task Force (Feb. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf.

³⁶ *Id.* at 1.



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“[p]rotecting consumers will always be central to the FTC’s mission and statutory mandate,” “it is important to remember that the FTC’s authority includes protecting the same American consumers in their roles as workers.”³⁷

In the year since, this task force’s work is already bearing fruit, providing tangible benefits to the American workforce.³⁸ The settlement announced today is only the beginning. I applaud Commission staff for their significant contributions to this investigation into Walmart, without which these Customers and Drivers would not have obtained this significant relief.

³⁷ *Ibid.*

³⁸ *E.g.*, Press Release, FTC, FTC Finalizes Consent Order in Adamas No-Hire Agreement Matter (Feb. 12, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/02/ftc-finalizes-consent-order-adamas-no-hire-agreement-matter>; Press Release, FTC, FTC Approves Final Order Prohibiting Noncompete Enforcement by Gateway Servs. (Nov. 26, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/11/ftc-approves-final-order-prohibiting-noncompete-enforcement-gateway-services>; *cf.* Moving Forward: Protecting Workers from Anticompetitive Noncompete Agreements, FTC (Jan. 27, 2026), <https://www.ftc.gov/news-events/events/2026/01/moving-forward-protecting-workers-anticompetitive-noncompete-agreements>; Concurring Statement of Comm’r Andrew N. Ferguson Joined by Comm’r Melissa Holyoak, *In the Matter of Planned Building Servs., Inc.*, Matter No. 2410029 (Jan. 6, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2410029-planned-building-ferguson-concurrence-redacted.pdf.