



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

DMS NOTICE
QC-11 - 07

December 19, 2011

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Clorox Company Settlement

Attached is a Stipulated Final Judgment against Clorox. It was issued by the District Attorneys' Office of Alameda County in conjunction with Monterey, Napa, Santa Clara, and Sonoma Counties' District Attorneys on November 22, 2011 for deceptive packaging/non functional slack fill of household bleach products in violation of California Business and Professions Codes 12606 (a).

We value the excellent work done on behalf of the people, by the various District Attorneys' Offices as well as the State and county investigators who tested these products. The Clorox Company was assessed \$150,000 in civil penalties, \$42,984 for investigative costs, and \$6,670 in cy pres restitution to the Consumer Protection Prosecution Trust Fund for a total of \$199,654.

Alameda County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Kristin J. Macey
Director

Cc: Edmund Williams, Director, CDFA County Liaison Office



1 NANCY E. O'MALLEY,
2 District Attorney, County of Alameda
3 SCOTT D. PATTON, State Bar. No. 148648
4 Deputy District Attorney
5 7677 Oakport Street, Suite 650
6 Oakland, California 94621
7 Telephone: (510) 383-8600

ENDORSED
FILED
ALAMEDA COUNTY

NOV 22 2011

CLERK OF THE SUPERIOR COURT
By RGILL Deputy

5 DEAN FLIPPO
6 District Attorney, County of Monterey
7 John Hubanks, State Bar No. 163765
8 Deputy District Attorney
9 1200 Aguajito Road, Room 301
10 Monterey CA 93940
11 Telephone: (831) 647-7770

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11 Daryl Roberts, State Bar No. 111981
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14 Napa, CA 94559
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17 JILL R. RAVITCH
18 District Attorney, County of Sonoma
19 Matthew Cheever, State Bar No. 191783
20 Deputy District Attorney
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22 Santa Rosa, CA 95403
23 Telephone: (707) 565-2311

21 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 FOR THE COUNTY OF ALAMEDA

23 THE PEOPLE OF THE STATE OF CALIFORNIA,
24 Plaintiff,

Case No.: **HG 11605447**

25 vs.

STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND PERMANENT
INJUNCTION

26 The CLOROX Company, a Delaware Corporation,
27 Defendant.

1 Plaintiff, the People of the State of California ("People"), has filed its complaint and
2 appears through its attorneys represented by Nancy E. O'Malley, District Attorney of Alameda
3 County, through Deputy District Attorney Scott D. Patton, Dean Flippo, District Attorney of
4 Monterey County, through Deputy District Attorney John Hubanks, Gary Lieberstein, District
5 Attorney of Napa County, through Deputy District Attorney Daryl Roberts, Jeffrey F. Rosen,
6 District Attorney of Santa Clara County, through Deputy District Attorney Michael Lee and Jill
7 Ravitch, District Attorney of Sonoma County, through Deputy District Attorney Matthew T.
8 Cheever. Defendant, The Clorox Company, a Delaware corporation, with its principal place of
9 business at 1221 Broadway, Oakland, CA (hereinafter "Clorox" or "Defendant"), appears through
10 its attorneys, Brian Hayle, Senior Corporate Counsel for Clorox, and, Morrison & Foerster LLP, by
11 Michèle Corash.
12

13 Whereas the parties recognize that bleach is a substance that is subject to degradation in the
14 presence of sunlight and, as a result, packaging options are limited, **IT IS HEREBY**
15 **STIPULATED** and agreed as follows:

16 1. That the proposed final judgment, a copy of which is attached hereto as Exhibit A,
17 and by this reference made a part hereof, may be entered in the above-entitled matter and that
18 said entry of judgment may be ordered by a Judge of the Superior Court.

19 2. That Defendant acknowledges that it has been represented by legal counsel
20 throughout all of the negotiations which preceded the execution of this stipulation, and that
21 Clorox has executed this stipulation with the consent and on the advice of such counsel.
22

23 3. That Defendant hereby waives the right to appeal, to attempt to set aside or vacate, or
24 otherwise to attack, directly or collaterally, the attached proposed Final Judgment between the
25 People and the Defendant entered pursuant to this stipulation.

26 5. That Defendant agrees to be bound as of the date of its officer's signature on this
27 stipulation, by the provisions of the proposed judgment as though ordered by the Court, and
28 Defendant waives any further notice or service of this final judgment.

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6. That the filing of this Stipulation and Judgment and Permanent Injunction may be made by the ex-parte appearance of plaintiff without further notice to Defendant.

7. This stipulation may be signed by counsel and by the parties in counterpart.

For the People:

Date: 10/31/11

Nancy E. O'Malley
Alameda County District Attorney

By: 
Scott D. Patton
Deputy District Attorney

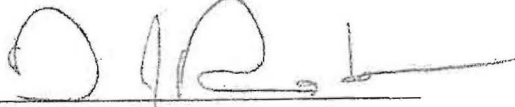
Date: _____

Dean Flippo
Monterey County District Attorney

By: _____
John Hubanks
Deputy District Attorney

Dated: 10/31/11

Gary Lieberstein
Napa County District Attorney

By: 
Daryl A. Roberts
Deputy District Attorney

Date: _____

Jeffrey F. Rosen
Santa Clara County District Attorney

By: _____
S. Michael Lee
Deputy District Attorney

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6. That the filing of this Stipulation and Judgment and Permanent Injunction may be made by the ex-parte appearance of plaintiff without further notice to Defendant.

7. This stipulation may be signed by counsel and by the parties in counterpart.

For the People:

Date: _____ Nancy E. O'Malley
Alameda County District Attorney

By: _____
Scott D. Patton
Deputy District Attorney

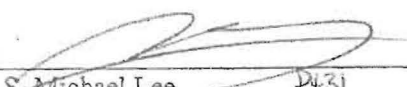
Date: _____ Dean Flippo
Monterey County District Attorney

By: _____
John Hubanks
Deputy District Attorney

Dated: _____ Gary Lieberstein
Napa County District Attorney

By: _____
Daryl A. Roberts
Deputy District Attorney

Date: 10/31/2011 Jeffrey E. Rosen
Santa Clara County District Attorney

By: 
S. Michael Lee (43)
Deputy District Attorney

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6. That the filing of this Stipulation and Judgment and Permanent Injunction may be made by the ex-parte appearance of plaintiff without further notice to Defendant.

7. This stipulation may be signed by counsel and by the parties in counterpart.

For the People:

Date: _____

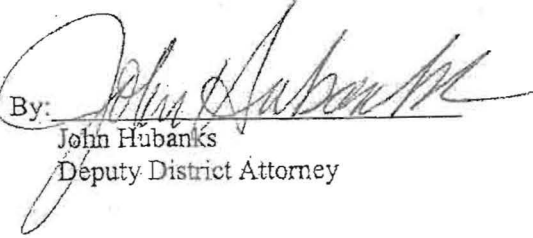
Nancy E. O'Malley
Alameda County District Attorney

By: _____

Scott D. Patton
Deputy District Attorney

Date: 10-31-11

Dean Flippo
Monterey County District Attorney

By: 
John Hubanks
Deputy District Attorney

Dated: _____

Gary Lieberstein
Napa County District Attorney

By: _____

Daryl A. Roberts
Deputy District Attorney

Date: _____

Jeffrey F. Rosen
Santa Clara County District Attorney

By: _____

S. Michael Lee
Deputy District Attorney

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Dated: 10/31/11

Jill R. Ravitch
Sonoma County District Attorney

By: Matthew T. Cheever
Matthew T. Cheever
Deputy District Attorney

For Defendants:

Dated: _____

The Clorox Company
Defendant

By: _____
[name and title]

Dated: _____

The Clorox Company
Defendant

By: _____
Brian Hayle
Senior Corporate Counsel

Dated: _____

Morrison & Foerster, LLP
Attorneys for The Clorox Company

By: _____
Michèle Corash

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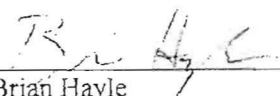
Jill R. Ravitch
Sonoma County District Attorney

By: _____
Matthew T. Cheever
Deputy District Attorney

For Defendants:

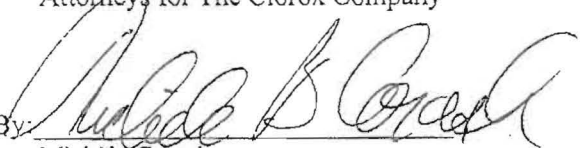
Dated: 12/10/11

The Clorox Company
Defendant

By: 
Brian Hayle
Managing Counsel

Dated: _____

Morrison & Foerster, LLP
Attorneys for The Clorox Company

By: 
Michèle Corash

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EXHIBIT A

NANCY E. O'MALLEY
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SCOTT D. PATTON, State Bar. No. 148648
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Deputy District Attorney
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District Attorney, County of Napa
Daryl Roberts, State Bar No. 111981
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JEFFREY F. ROSEN
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S. Michael Lee, State Bar No. 199007
Deputy District Attorney
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San Jose, CA 95110
Telephone: (408) 792-2943

JILL R. RAVITCH
District Attorney, County of Sonoma
Matthew Cheever, State Bar No. 191783
Deputy District Attorney
2300 County Center Drive, Suite B-170
Santa Rosa, CA 95403
Telephone: (707) 565-2311

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

The CLOROX Company, a Delaware Corporation,

Defendant.

Case No.:

PROPOSED
STIPULATED FINAL
JUDGMENT AND PERMANENT
INJUNCTION

1 Plaintiff, the People of the State of California ("People"), represented by Nancy E.
2 O'Malley, District Attorney of Alameda County, through Deputy District Attorney Scott D. Patton,
3 Dean Flippo, District Attorney of Monterey County, through Deputy District Attorney John
4 Hubanks, Gary Lieberstein, District Attorney of Napa County, through Deputy District Attorney
5 Daryl Roberts, Jill Ravitch, District Attorney of Sonoma County, through Deputy District Attorney
6 Matthew T. Cheever and Jeffrey F. Rosen, District Attorney of Santa Clara County, through Deputy
7 District Attorney Michael Lee, and defendant, The Clorox Company, a Delaware corporation, with
8 its principal place of business at 1221 Broadway, Oakland, CA (hereinafter "Clorox" or
9 "Defendant"), represented by Brian Hayle, Senior Corporate Counsel for Clorox, and, Morrison &
10 Foerster LLP, by Michéle Corash, having stipulated to entry of this Stipulated Final Judgment and
11 Permanent Injunction ("Final Judgment") without the taking of proof and without this judgment
12 constituting evidence of or an admission by any party regarding any issue of law or fact alleged in
13 the complaint, all parties having waived the right to appeal, and good cause appearing,
14

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

16 **JURISDICTION**

- 17 1. The Court has jurisdiction of the parties hereto and the subject matter hereof.

18 **APPLICABILITY**

19 2. Except as otherwise specified below, the provisions of this Final Judgment are
20 applicable to Clorox and to all of its agents, servants, employees, representatives, officers,
21 directors, managers, successors and assigns, and to any and all persons, employees, corporations,
22 and other entities who are acting in concert or participating with defendant with actual or
23 constructive notice of this Final Judgment (hereinafter referred to as "Defendants").

24 3. This Final Judgment is a full, final, and binding resolution between the People and
25 Clorox of any past violation of each of the statutes and regulations concerning HOUSEHOLD
26 BLEACH PRODUCTS as alleged in the People's Complaint by Clorox.
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1 following acts or practices in or from California involving the manufacture, sale, offering for sale,
2 or distribution of a HOUSEHOLD BLEACH PRODUCT:

3 A. Pursuant to Business and Professions Code section 12606(a), Defendants
4 shall not produce a container for a HOUSEHOLD BLEACH PRODUCT having a false
5 bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly
6 or partially, as to facilitate the perpetration of deception or fraud.

7 B. Pursuant to Business and Professions Code section 12606(b), Defendants
8 shall not make, form, or fill any container for a HOUSEHOLD BLEACH PRODUCT as to
9 be misleading. A container that does not allow the consumer to fully view its contents shall
10 be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill
11 is the difference between the actual capacity of a container and the volume of product
12 contained therein. Nonfunctional slack fill is the empty space in a package that is filled to
13 less than its capacity for reasons other than those stated in Business & Professions Code
14 section 12606(b)(1)-(15).

15 C. For the purposes of enforcing this Judgment, Defendants shall have the
16 burden of proof to demonstrate that any headspace in a future product containing a
17 HOUSEHOLD BLEACH PRODUCT is necessary to avoid spillage and is not non-
18 functional slack fill in violation of section 12606.

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22 **PENALTIES, RESTITUION AND COSTS**

23 10. Upon execution of this Final Judgment, Clorox shall pay the sum of ONE
24 HUNDRED AND NINETY-NINE THOUSAND SIX HUNDRED AND FIFTY-FOUR
25 DOLLARS (\$199,654.00) pursuant to Business & Professions Code sections 17203, 17206 and
26 17536, with disbursement as follows:
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1 A. ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) in
2 civil penalties, payable upon execution of this Final Judgment. Payment shall be in the form
3 of 5 checks of THIRTY THOUSAND DOLLARS (\$30,000.00) each to the District
4 Attorneys of Alameda, Monterey, Napa, Santa Clara and Sonoma.

5 B. FORTY TWO THOUSAND AND NINE HUNDRED AND EIGHTY FOUR
6 DOLLARS (\$42,984.00) in reasonable costs for investigation and prosecution, payable upon
7 execution of the Final Judgment. Payment shall be in the form of separate checks as
8 follows:

9 i. ELEVEN THOUSAND AND SIX HUNDRED AND FIFTY FOUR
10 DOLLARS (\$11,654.00) to the State of California Department of Food and Agriculture,
11 Division of Measurement Standards, as reimbursement for its costs of investigation.

12 ii. EIGHT HUNDRED AND FORTY SEVEN DOLLARS (\$847.00) to the
13 Alameda County Weights and Measures Department.

14 iii. ONE THOUSAND AND SIX HUNDRED AND SEVENTY TWO
15 DOLLARS (\$1,672.00) to the Napa County Weights and Measures Department.

16 iv. THREE THOUSAND AND EIGHT HUNDRED AND ELEVEN
17 DOLLARS (\$3,811.00) to the Sonoma County Weights and Measurements Department.

18 v. FIVE THOUSAND DOLLARS (\$5,000.00) each to the District
19 Attorneys of Alameda, Monterey, Napa, Santa Clara and Sonoma.

20 C. The parties having recognized the impossibility of identifying aggrieved
21 consumers who suffered actual loss, the impracticality of providing direct restitution to said
22 consumers, and that the disproportionate cost of making restitution to individual consumers
23 would far exceed the benefit consumers would gain, the Court therefore orders, pursuant to
24 Business and Professions Code §§17203 and 17535, that Clorox shall pay restitution in the
25 form of *cy pres*, in the amount of SIX THOUSAND AND SIX HUNDRED AND
26 SEVENTY (\$6,670.00), to the Consumer Protection Prosecution Trust Fund previously
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1 created by the Stipulated Final Judgment and Permanent Injunction in the case of *People v.*
2 *ITT Consumer Financial Corporation, et al.* (Alameda County Superior Court No. 656038-0
3 filed on September 21, 1989) for the purpose of enhancing the investigation, prosecution,
4 and enforcement of consumer protection actions brought pursuant to the unfair competition
5 statutes of the State of California (Business and Professions Code section 17200, et seq.) by
6 the California Attorney General, district attorneys, and city attorneys authorized to bring
7 such actions pursuant to Business and Professions Code Section 17206.

8 D. Clorox shall send all Checks mandated by this subsection to the Alameda
9 County District Attorney's Office Consumer and Environmental Protection Division,
10 Attention Deputy District Attorney Scott Patton, located at 7677 Oakport Street, Suite 650,
11 Oakland, California, 94621.

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15 **JURISDICTION**

16 11. Jurisdiction is retained for the purpose of enabling any party to this Stipulated Final
17 Judgment and Permanent Injunction to apply to the Court at any time for such further orders and
18 directions as may be necessary and appropriate for the construction or carrying out of this Stipulated
19 Final Judgment and Permanent Injunction, for the modification or termination of any of its
20 injunctive provisions, for the enforcement of any of its provisions, or for punishment of any
21 violations of its provisions.

22 Reasonable attorneys' fees incurred by Plaintiff as a result of any violation of this
23 Stipulated Final Judgment and Permanent Injunction, if such violation is proven in a court of law,
24 shall be recoverable as costs pursuant to California Code of Civil Procedure sections 685.040 and
25 1033.5(a)(10)(A).

26 12. Clorox shall pay all filing fees associated with its appearance in this action. In all
27 other respects, the parties hereto shall bear their own costs and attorneys' fees.
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13. This Stipulated Final Judgment and Permanent Injunction shall take effect immediately upon entry thereof, without further notice to Defendants.

14. The clerk is ordered to enter this Stipulated Final Judgment and Permanent Injunction forthwith.

DATED: _____

JUDGE OF THE SUPERIOR COURT