



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

August 15, 2012

DMS NOTICE
QC - 12 - 10
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Maly's West Inc. Settlement

Enclosed is a complaint for injunction, civil penalties, and other equitable relief along with the final judgment and permanent injunction pursuant to stipulation issued by the District Attorney's Office of Stanislaus County filed against Maly's West Inc. on June 6, 2012 for overcharging customers pursuant to California Business and Professions Code section 12024.2.

The Stanislaus County District Attorney's office led the investigation and was assisted by state and county officials. Maly's West Inc. was ordered to pay a settlement of \$27,500; \$20,753 for cost recovery and \$6,747 in civil penalties.

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

We appreciate the fine work done by both of the District Attorney's Offices along with the State and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Quantity and Weighmaster Programs, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Edmund Williams, County/State Liaison, CDFA



1 BIRGIT FLADAGER
District Attorney
2 Stanislaus County
3 DAVID P. HARRIS, State Bar No. 125076
Chief Deputy District Attorney
4 JOHN B. GOULART, State Bar No. 125168
Deputy District Attorney
5 832 - 12th Street, Room 300
P.O. Box 442
6 Modesto, California 95353
7 Telephone: (209) 525-5550
Attorneys for Plaintiff

FILED
2012 JUN -6 PM 2:43
SUPERIOR COURT
COUNTY OF STANISLAUS
BY _____
DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF STANISLAUS

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MALY'S WEST, INC.,
a Delaware Corporation,

15 Defendant.

CIVIL NO. 12-0505

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF**

16
17 The PEOPLE OF THE STATE OF CALIFORNIA, by and through its
18 attorney, BIRGIT FLADAGER, District Attorney for the County of Stanislaus, by JOHN B.
19 GOULART, Deputy District Attorney, acting on information and belief, allege the
20 following upon information and belief:

21 **JURISDICTION AND VENUE**

22 1. BIRGIT FLADAGER, District Attorney for the County of Stanislaus,
23 acting to protect the general public and competitors of Defendant MALY'S WEST, INC.
24 (hereinafter Defendant) from unlawful business practices, brings this suit in the public interest
25 in the name of THE PEOPLE OF THE STATE OF CALIFORNIA. Plaintiff by this action
26 and pursuant to California Business and Professions Code Sections 17200, 17203, 17204,
27 17206, 17500, 17535, and 17536, seeks to obtain civil penalties, injunctive relief, costs, and
28 restitution for the Defendant's violations of the above statutes.

1 2. Defendant at all times mentioned herein, has been engaged in the retail
2 business of selling salon products and equipment and has transacted business in the County of
3 Stanislaus and elsewhere throughout the State of California.

4 **DEFENDANT**

5 3. Defendant is a Delaware corporation. At all relevant times, it has
6 conducted retail business in the County of Stanislaus and elsewhere in the State of California.
7 The violations of law alleged herein have been carried out within Stanislaus County and
8 throughout the State of California.

9 **NATURE OF BUSINESS INVOLVED**

10 4. Beginning at an exact date unknown to Plaintiff, but commencing no
11 later than September 7, 2007, prior to filing this complaint, Defendant, was and at all times
12 herein mentioned, has continued to do business at various locations within the State of
13 California as a retail business selling salon products and equipment..

14 5. Defendant in the course of its retail business failed to comply with the
15 applicable state laws regulating the advertising and labeling of salon products and equipment.

16 **FIRST CAUSE OF ACTION**
17 **(Misleading Statements)**

18 **(Violation of California Business and Professions Code § 17500)**

19 6. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1
20 through 6 inclusive, of this Complaint as though fully set forth herein.

21 7. Beginning at an exact date unknown to Plaintiff, but commencing no
22 later than September 7, 2007, Defendant made statements, with the intent to induce members of
23 the general public to purchase goods or services from their stores in violation of Business and
24 Professions Code section 17500. These statements included published printed advertisements
25 and in-store representations, explicit and implicit, where the selling prices of certain items were
inaccurate and, as such, were untrue and misleading.

26 8. The representations and statements made by Defendant as set forth in
27 Paragraph 7 above were untrue or misleading when made and were known, or reasonably
28 should have been known, by Defendant to be untrue and misleading.

1 **SECOND CAUSE OF ACTION**
2 **(Unfair Competition)**
(Violation of California Business and Professions Code § 17200)

3 9. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1
4 though 8 inclusive of this Complaint as though fully set forth herein.

5 10. Beginning at an exact date unknown to Plaintiff, but commencing no
6 later than September 7, 2007, Defendant, in certain cases, did charge at the time an item was
7 sold, an amount that was more than the price that was posted or quoted in violation of
8 California Business and Professions Code Sections 12024.2 and 17500 and said violations
9 constitute acts of unfair competition within the meaning of Business and Professions Code
10 Section 17200.

11 **PRAYER**

12 **WHEREFORE**, PLAINTIFF PRAYS for judgment as follows:

13 1. For a permanent injunction, pursuant to California Business and
14 Professions Code Sections 17203, 17204, 17535, and 17536, enjoining Defendant from
15 engaging in any of the following practices:

- 16 a. Making untrue or misleading statements in connection with the sale
17 of items to the public in California, which statements constitute
18 false advertising within the meaning of California Business and
19 Professional Code section 17500.
20 b. Charging at a time an item was sold, an amount that was more than
21 the price that was posted or quoted price in violation of California
22 Business and Professions Code Section 12024.2.

23 2. That pursuant to California Business and Professions Code Section
24 17536, Defendant be assessed a civil penalty in the amount of TWO THOUSAND FIVE
25 HUNDRED DOLLARS (\$2,500.00) for each and every violation of the California Business
26 Professions Code section 17500 as alleged in the First Cause of Action.

27 3. That pursuant to California Business and Professions Code Section
28 17206, Defendant be assessed a civil penalty in the amount of TWO THOUSAND FIVE

1 HUNDRED DOLLARS (\$2,500.00) for each and every violation of the California Business
2 and Professions Code section 17200 as alleged in the Second Cause of Action.

3 4. That pursuant to California Business and Professions Code Section
4 12015.5, Defendant pay the incurred costs of the investigation in this action.

5 5. That Plaintiff recover reasonable restitution for Defendant's acts of
6 deceptive advertising and unfair competition.

7 6. That Plaintiff recover its costs of suit.

8 7. That Plaintiff be given such other further relief as the nature of this case
9 may require and this Court deems proper to fully and successfully dissipate the effects of the
10 unlawful and unfair acts complained of in this Complaint.

11 Executed this 31st day of May, 2012, at Modesto, California.

12 BIRGIT FLADAGER, District Attorney
13 County of Stanislaus

14 By: 
15 John B. Goulart
16 Deputy District Attorney

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FILED

12 JUN 11 PM 12:54

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY _____
DEPUTY

1 BIRGIT FLADAGER
District Attorney
2 Stanislaus County
DAVID P. HARRIS, State Bar No. 125076
3 Chief Deputy District Attorney
JOHN B. GOULART, State Bar No. 125168
4 Deputy District Attorney
832 - 12th Street, Room 300
5 P.O. Box 442
Modesto, California 95353
6 Telephone: (209) 525-5550

7 Attorneys for Plaintiff

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9 SUPERIOR COURT, STATE OF CALIFORNIA
10 COUNTY OF STANISLAUS
11

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13 THE PEOPLE OF THE STATE OF CALIFORNIA,)

14 Plaintiff,)

15 vs.)

16 MALY'S WEST, INC.,)
17 a Delaware Corporation,)

18 Defendant,)

CASE NO.: 075565

FINAL JUDGMENT AND
PERMANENT INJUNCTION
PURSUANT TO
STIPULATION

19 -----o0o-----

20 Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA (hereafter, "Plaintiff")
21 appearing through its attorney, BIRGIT FLADAGER, District Attorney for the County of Stanislaus
22 by JOHN B. GOULART, Deputy District Attorney, and Defendant, Maly's West, Inc. (hereafter
23 "Defendant") appearing through its attorney FRED J. DIBERNARDO; and;

24 Plaintiff and Defendant having stipulated to the entry of this Final Judgment and Permanent
25 Injunction (hereafter, "Judgment") prior to the taking of any proof and without trial or adjudication
26 of any issue of fact or law; and

27 The Court having considered the pleadings;
28

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 **JURISDICTION**

3 1. This action is brought under California law, and this Court has jurisdiction of the subject
4 matter and the parties.

5 **APPLICABILITY**

6 2. This Judgment, including the permanent injunction it contains, is applicable to Defendant
7 through its officers, directors, representatives, and all persons acting on behalf of Defendant within
8 the scope of their authority and duties. Nothing in this Judgment shall be construed to impose
9 liability on any others besides Defendant for the obligations specified in this Judgment.

10 **INJUNCTION**

11 3. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant is
12 permanently enjoined from:

13 a. Intentionally charging at the time of sale of a commodity, a value which is more
14 than the price which is advertised or displayed in violation of Business and Professions Code Section
15 12024.2;

16 b. Intentionally making any false or misleading statement regarding the price of items
17 offered for sale.

18 4. Defendant shall maintain its price accuracy program that ensures that items sold to its
19 customers are sold at the advertised or displayed price. Nothing in this Judgment, including the
20 injunction portion, shall hinder or prevent Defendant from adopting, implementing, developing, or
21 exploring any new or different procedures, measures, systems, and/or technologies that Defendant
22 believes will improve the effectiveness of its price accuracy program or increase its efficiency
23 without diminishing its effectiveness.

24 **MONETARY RELIEF**

25 5. Defendant shall pay the cost of investigation incurred by state and local agencies in this
26 case totaling \$20,753.00. Defendant shall pay said sum by checks made payable to the agencies and
27 in the amounts identified below within ten business days after notice of entry of this Judgment has
28 been provided to Defendant's counsel of record in this matter, by delivery to the Stanislaus County

1 District Attorney's Office, attn: Donna Robinson, P.O. Box 442; Modesto, CA 95353 or 832 12th
2 Street, Rm 300; Modesto, CA 95354:

- 3 a. \$6,746.00 to "California Department of Measurement Standards".
- 4 b. \$2,900.00 to "Los Angeles County Department of Weights and Measures".
- 5 c. \$1,600.00 to "Marin County Department of Weights and Measures".
- 6 d. \$2,490.00 to "Santa Clara County Department of Weights and Measures".
- 7 e. \$1,120.00 to "Contra Costa County Department of Weights and Measures".
- 8 f. \$1,110.00 to "San Bernardino County Department of Weights and Measures".
- 9 g. \$94.00 to "Santa Barbara County Department of Weights and Measures".
- 10 h. \$810.00 to "Riverside County Department of Weights and Measures".
- 11 i. \$550.00 to "Sacramento County Department of Weights and Measures".
- 12 j. \$175.00 to "Tulare County Department of Weights and Measures".
- 13 k. \$1,653.00 to "Stanislaus County Department of Weights and Measures".
- 14 l. \$145.00 to "Fresno County Department of Weights and Measures".
- 15 m. \$340.00 to "Monterey County Department of Weights and Measures".
- 16 n. \$240.00 to "Napa County Department of Weights and Measures".
- 17 o. \$170.00 to "Orange County Department of Weights and Measures".
- 18 p. \$610.00 to "Ventura County Department of Weights and Measures".

19 6. Pursuant to Business and Professions Code Section 17206, within ten business days after
20 notice of entry of this judgment has been provided to Defendant's counsel of record in this matter,
21 Defendant shall pay a civil penalty of \$6,747.00 by check to the "Stanislaus County District
22 Attorney" and shall send the check to the attention of Donna Robinson, at the address listed in
23 Paragraph 5, above.

24 7. Defendant denies all allegations of wrongdoing in the complaint. This Final Judgment was
25 entered into as a result of a stipulation of the parties, without admission of fact or law, and without
26 the admission by Defendant of liability, wrongdoing, illegality, or of any fact alleged in the
27 Complaint and is not to be construed as an admission of liability by any party.

28 ///

1 modifications to the Judgment, any stipulations between Plaintiff and Defendant relating to the
2 proposed Judgment and any other papers submitted to the Court or signed by Plaintiff and Defendant
3 in connection with the proposed Judgment are null and void.

4 13. The clerk is ordered to immediately enter this Judgment.

5 IT IS SO STIPULATED.

6 DATED: May 9, 2012

BIRGIT FLADAGER
District Attorney, Stanislaus County

7
8 BY: John B. Goulart
JOHN B. GOULART
Deputy District Attorney

9
10 Attorney for Plaintiff,
The People of the State of California

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12 DATED: May 23, 2012

MALY'S WEST, INC.

13
14 BY: Fred DiBernardo
FRED DIBERNARDO
15 Counsel for Defendant Maly's West, Inc.

16 **IT IS SO ORDERED:**

17 DATED: MAY 9 2012

WENDY W. JOHNSON

JUDGE OF THE SUPERIOR COURT