



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

February 5, 2013

DMS NOTICE
QC - 13 - 3
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Fresh and Easy Neighborhood Market Inc., Settlement

Enclosed is a final judgment by stipulation issued by the District Attorney's Office of the County of San Diego in conjunction with the District Attorneys of the City of San Diego and the County of Riverside filed against Fresh and Easy Neighborhood Market Inc., a Delaware corporation, on January 18, 2013. The judgment and injunction are for selling in less quantity than represented, overcharging customers and misleading advertising, violations of California Business and Professions Code sections 12024, 12024.2, and 17500 respectively.

The investigation was led by the Division of Measurement Standards (DMS) with assistance from twelve additional county jurisdictions. Fresh and Easy Neighborhood Market Inc., was ordered to pay a settlement of \$833,136 which included \$653,470 in civil penalties, \$99,666 for agencies' investigative costs, and cy pres restitution of \$80,000 to be paid into the Consumer Protection Prosecution Trust Fund. Additionally, Fresh and Easy Neighborhood Market Inc., was ordered to put into place a compliance program for the next three years with an incentive program, the "\$3.00 Off Program," whereby consumers are given the item for free, up to a \$3.00 value.

San Diego 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 the District Attorneys' offices along with the State and county investigators who 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: Gary Leslie, Acting County/State Liaison, CDFA



FILED
Clerk of the Superior Court
JAN 17 2013
By: _____
FILED
No. FCCGC 13 6103
JAN 17 2013
FILED
Clerk of the Superior Court
SAN DIEGO COUNTY

FILED
Clerk of the Superior Court
JAN 18 2013
By: Anthony Shirley, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

FRESH & EASY NEIGHBORHOOD MARKET INC., a Delaware corporation,

Defendant

Case No. 37-2013-00030655-CU-BT-CTL

FINAL JUDGMENT BY STIPULATION

Plaintiff, the People of the State of California, having filed its Complaint; and Defendant Fresh & Easy Neighborhood Market Inc., a Delaware Corporation, having accepted service of the Complaint; and

Plaintiff, appearing through its attorneys BONNIE DUMANIS, District Attorney San Diego County, by Gina Darvas, Deputy District Attorney; JAN I. GOLDSMITH, San Diego City Attorney, by Tricia Pummill, Assistant City Attorney; and PAUL ZELLERBACH, District Attorney Riverside County, by Elise J. Farrell, Deputy District Attorney; and Defendant, Fresh & Easy Neighborhood Market Inc., a Delaware Corporation, through its attorneys, McKenna Long & Aldridge LLP, by Jim McNeill; and

Plaintiff and Defendant having stipulated and consented to the entry of this Final Judgment ("Judgment") prior to the taking of any proof, and without trial or adjudication of any issue or fact or law herein; and

1 The Court having considered the pleadings;

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

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

5 2. The provisions of this Judgment are applicable to Defendant Fresh & Easy
6 Neighborhood Market Inc., a Delaware corporation and to its officers, directors, employees,
7 agents, servants and representatives acting within the course and scope of their agency and
8 employment, and to successors and assignees of Defendant, and to all persons, partnerships,
9 corporations, and other entities acting for, through, on behalf of or in concert with Defendant with
10 actual or constructive notice of this Judgment. Unless otherwise stated, all obligations imposed
11 upon Defendant Fresh & Easy Neighborhood Market Inc. by the terms of this Judgment are
12 ordered pursuant to Business and Professions Code sections 17203 and 17535.

13 **INJUNCTION**

14 3. Defendant Fresh & Easy Neighborhood Market Inc., a Delaware corporation
15 ("Fresh & Easy"), and all persons and entities set forth in Paragraph 2 above are hereby
16 permanently enjoined and restrained, pursuant to Business and Professions Code sections 17203
17 and 17535, from directly or indirectly engaging in any of the following acts or practices:

18 A. Making or causing to be made to the public any statement representing a
19 price for an item offered for sale and charging a greater price at the time the item is
20 purchased in violation of the California Business and Professions Code section 17500;

21 B. At the time of a sale of a commodity, charging an amount greater than the
22 lowest price posted on the commodity itself or on a shelf tag that corresponds to the
23 commodity, notwithstanding any limitation of the time period for which the posted price
24 is to be in effect, in violation of Business and Professions Code section 12024.2(a);

25 C. Selling a commodity in less quantity than represented, in violation of
26 Business and Professions Code section 12024; and

27

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1 D. Using a point-of-sale system to sell goods or services to consumers and
2 failing to ensure that the price of each good or service to be paid by the consumer is
3 conspicuously displayed to the consumer at the time that the price is interpreted by the
4 system.

5 4. Fresh & Easy, and all persons and entities set forth in Paragraph 3 above, are
6 ordered for a period of three (3) years from the date of entry of this Judgment to initiate and
7 enforce in all existing Fresh & Easy Stores in California, and in every future Fresh & Easy Store
8 in California, before opening for business, a program to promote pricing accuracy. Such program
9 shall consist of at least the following:

10 A. Fresh & Easy shall designate a person or persons at its corporate
11 headquarters who will be responsible for receiving and maintaining price audit
12 information, consumer complaints and weights and measures inspection reports from all
13 Fresh & Easy Stores in California. Fresh & Easy shall provide the names of the designated
14 persons and their contact information to Plaintiff as designated below. Fresh & Easy shall
15 provide the name and contact information of any individual who replaces or supplements
16 the individuals originally designated within forty-five calendar days of that assignment.
17 Notifications are to be sent by letter to the Consumer Protection Unit, San Diego District
18 Attorney's Office, 330 W. Broadway, Suite 750, San Diego, California 92101.

19 B. Fresh & Easy shall designate an employee or employees in every Fresh &
20 Easy Store in California whose responsibilities shall include pricing accuracy. These
21 efforts shall include, among others, a Store Manager, Assistant Manager or Team Lead
22 ("Store Pricing Coordinator") who shall walk the store before it is opened on the day
23 when promotions are effective to verify that all promotion price changes have been made.
24 These efforts shall also include having the Store Pricing Coordinator of one store in each
25 California price zone on a weekly basis to verify that all price changes have been made in
26 the applicable price zone.

27 C. The Store Pricing Coordinator at every Fresh & Easy Store (or an
28 employee under their supervision) shall perform weekly price checks on enough items in

1 the store so that every shelf-edge label in the store has been checked at least once every
2 thirteen weeks. Pricing errors discovered during such reviews shall be promptly corrected
3 in the store. The Store Pricing Coordinators shall transmit the information to the person or
4 persons designated pursuant to Paragraph 4A above, at Fresh & Easy's corporate
5 headquarters within three hours after learning that a price in the point-of-sale computer
6 system is different from the currently advertised price for the item in the store or in
7 advertising if the price discrepancy is likely to affect other Fresh & Easy Stores in
8 California. Fresh & Easy shall ensure that there are backup employees trained to handle
9 the responsibilities for price accuracy.

10 D. Whenever any employee of Fresh & Easy becomes aware that a customer
11 in a Fresh & Easy Store in California has been or is being charged a price for an item
12 which is higher than the lowest price currently listed on the shelf, store sign, or
13 advertisement, Fresh & Easy shall give the customer a three dollar (\$3.00) reduction
14 from the item's lowest posted or advertised price, or if the item's lowest posted or
15 advertised price is three dollars (\$3.00) or less, the customer shall receive one such item
16 for free. If a customer is purchasing more than one of the same identical item for which a
17 price discrepancy is found, in addition to either deducting three dollars (\$3.00) from the
18 price of one such item, or giving the customer one such item for free, Fresh & Easy shall
19 charge that customer the lowest advertised price on all remaining identical items
20 purchased by that same customer in the same purchase transaction and the discrepant
21 price shall be corrected. This program shall be referred to as the "\$3.00 Off Program."

22 E. Fresh & Easy shall inform customers of the policy set forth in Paragraph
23 4D above by posting a sign at every check-out stand in every Fresh & Easy Store in
24 California in a location where it is noticeable and easily readable by a customer who is
25 standing in the check-out lane. The sign shall state: "If an item scans at a price higher than
26 the shelf or advertised price, WE WILL CORRECT THE ERROR AND DEDUCT \$3.00
27 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM. If the lowest
28

1 advertised price is \$3.00 or less, you will receive the item for free. You will be charged
2 the lowest advertised price for all additional identical items you are buying at the same
3 time.”

4 **MONETARY RELIEF**

5 5. Pursuant to Business and Professions Code sections 17206 and 17536, Fresh and
6 Easy shall, on the date of filing of this Judgment, pay to Plaintiff six hundred fifty-three thousand
7 four hundred seventy dollars (\$653,470) in the form of three separate checks as follows: (1) a first
8 check in the amount of two hundred seventeen thousand eight hundred twenty-three dollars
9 (\$217,823) payable to the “*San Diego District Attorney's Office*;” (2) a second check in the
10 amount of two hundred seventeen thousand eight hundred twenty-three dollars (\$217,823)
11 payable to the “*Riverside District Attorney's Office*;” and (3) a third check in the amount of two
12 hundred seventeen thousand eight hundred twenty-four dollars (\$217,824) payable to the “*San*
13 *Diego City Treasurer*.”

14 6. Fresh & Easy shall, on the date of the filing of this Judgment, pay to Plaintiff costs
15 totaling ninety-nine thousand six hundred sixty-six dollars (\$99,666) in the form of sixteen (16)
16 separate checks payable as follows:

17 San Diego City Treasurer	\$30,000
18 San Diego District Attorney's Office	\$10,000
19 Riverside District Attorney's Office	\$10,000
20 California Dept. of Food and Agriculture	\$17,766
21 Alameda Dept. of Agriculture/Weights and Measures	\$ 231
22 Contra Costa Division of Weights and Measures	\$ 170
23 Kern County Dept. of Agriculture and Measurement Standards	\$ 1,181
24 Los Angeles County Agricultural Commissioner	\$ 9,155
25 Napa County Weights and Measures	\$ 440
26 Orange County Agricultural Commissioner	\$ 882
27 Riverside County Weights and Measures	\$ 2,484
28 San Bernardino County Agriculture/Weights & Measures	\$ 3,018

