



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

January 20, 2016

DMS NOTICE
QC - 16 - 01
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Atkins Nutritionals, Inc., a New York Corporation

Enclosed is a copy of the Stipulated Final Judgment issued against Atkins Nutritionals, Inc., a New York corporation. The case was filed on December 17, 2015, by the Riverside County District Attorney in conjunction with the San Diego County District Attorney for deceptive packaging, in violation of California Business and Professions Code Section 12606.2.

The California Department of Food and Agriculture, Division of Measurement Standards, worked with weights and measures investigators from Riverside County on this case. The total settlement was for \$225,993.75. Civil penalties amounted to \$196,400, agency costs were \$16,593.75, and cy pres in the amount of \$13,000 was placed in the Consumer Protection Prosecution Trust Fund.

Riverside County should be sure to report these penalties on the County Monthly Report along with their individual investigative cost reimbursements in the appropriate columns.

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

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



DEC 16 2015

P. Tantlinger

pt

1 MICHAEL A. HESTRIN
District Attorney, County of Riverside
2 ELISE J. FARRELL, State Bar No. 100929
Sr. Deputy District Attorney
3 3960 Orange Street
Riverside, CA 92501
4 Telephone: (951) 955-5400

5 BONNIE DUMANIS
District Attorney, County of San Diego
6 GINA DARVAS, State Bar No. 163221
Deputy District Attorney
7 330 W. Broadway
San Diego, CA 92101
8 Telephone: (619) 531-4070

9 Attorneys for Plaintiff

IMFRG
DEC 17 2015

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF RIVERSIDE

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 ATKINS NUTRITIONALS, INC.,

17 Defendant.

Civil Case No.: 21C1514269

STIPULATED FINAL JUDGMENT

18 THE PEOPLE OF THE STATE OF CALIFORNIA having filed its Complaint and
19 appearing by and through MICHAEL A. HESTRIN, District Attorney for the County of
20 Riverside, and Elise J. Farrell, Sr. Deputy District Attorney; and BONNIE DUMANIS, District
21 Attorney for the County of San Diego, and Gina Darvas, Deputy District Attorney; and
22 Defendant, ATKINS NUTRITIONALS, INC., a New York corporation (hereinafter referred to as
23 "Defendant"), appearing by and through its attorney, George Gigounas, DLA Piper LLP; having
24 stipulated to the entry of this Final Judgment without Defendant admitting or denying any
25 wrongdoing, without the court taking evidence, and without this Final Judgment constituting an
26 admission or denial by Defendant regarding any issue of law or fact. All parties waive their right
27 of appeal and have agreed the presumption set forth in Civil Code section 1654 is not applicable
28 and there is no presumption that documents should be interpreted against any party. The parties

1 have waived the right to appeal this Judgment both as to form and content. This court having
2 considered the pleadings and the Stipulation for Entry of Final Judgment and good cause
3 appearing therefore;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, THAT:

5 **JURISDICTION**

6 1. This court has jurisdiction of the subject matter hereof and the parties hereto.

7 **APPLICABILITY**

8 2. This Final Judgment is applicable to Defendant and its officers and directors,
9 representatives, successors, and assignees, and all persons, partnerships, corporations, and other
10 entities acting under, by through, on behalf of, or in concert with Defendant, with actual or
11 constructive knowledge of this Final Judgment.

12 **INJUNCTION**

13 3. Pursuant to Business and Professions Code section 17203 and 17535, Defendant is
14 permanently enjoined and restrained from doing, directly or indirectly, in or from California the
15 following:

16 A. Manufacturing, packaging, or distributing any product in a container that
17 violates Business and Professions Code section 12606.2.

18 B. Representing directly or by implication that any product offered for sale to
19 the public is of greater quantity or volume than that which is actually being sold.

20 4. The injunctive provisions of this Final Judgment shall not apply to any products in
21 packages manufactured and packaged by Defendant prior to the date of entry of this Final
22 Judgment, to permit Defendant an opportunity to sell through existing inventory and produce new
23 items in conforming packaging. Notwithstanding, the provisions of this Final Judgment shall
24 apply to all products as of June 30, 2016.

25 **COMPLIANCE**

26 5. Defendant shall specifically advise the following persons of the injunctive
27 provisions of this Final Judgment: (a) its current controlling shareholders, officers and directors;
28 (b) any controlling shareholders, officers or directors who are appointed or elected within one

1 year of the date of entry of this Final Judgment, and (c) any and all persons responsible for
2 package engineering, design or marketing for Defendant at any time during the three years
3 following the date of entry of this Final Judgment.

4 6. Defendant shall use good faith efforts to make available and fully and clearly
5 explain the injunctive language of this Final Judgment, including the terms and conditions
6 thereof, to each of its officers, and anyone, including any entity, who may be responsible for the
7 packaging of goods offered to California consumers, including employees, contractors, and/or
8 designers of packaging.

9 **MONETARY PROVISIONS**

10 7. Defendant shall pay penalties and costs in the sum of \$225,993.75 and restitution
11 (in the form of *cy pres*) in total settlement of this matter as set forth below and pursuant to
12 Business and Professions Code sections 12015.5, 17203, 17206, 17535 and 17536. Said penalties,
13 costs, and restitution shall be distributed as follows:

14 A. \$13,316.45 to the RIVERSIDE COUNTY DEPARTMENT OF WEIGHTS AND
15 MEASURES for costs of investigation.

16 B. \$3,117.30 to the CALIFORNIA DEPARTMENT OF MEASUREMENT
17 STANDARDS for costs of investigation to be designated solely for quantity control
18 investigations.

19 C. \$160.00 to the Riverside County District Attorney's Office (CACASA fund) for
20 costs of investigation.

21 D. \$98,200.00 to the Riverside County District Attorney and \$98,200.00 to the San
22 Diego County District Attorney for payment of civil penalties pursuant to Business and
23 Professions Code sections 17206 and 17536.

24 E. Restitution pursuant to paragraph 10 below.

25 8. All payments required by this Judgment shall be sent to the Riverside County
26 District Attorney's Office, attn.: Elise J. Farrell, 3960 Orange Street, Riverside, CA 92501 no
27 later than the date of filing of the Final Judgment.

28 9. The parties having stipulated and the Court hereby finds that it is impractical and

1 impossible to identify or to provide direct restitution to individual consumers who may have
2 unknowingly purchased Defendant's products believing that they contained quantities greater
3 than represented and that other forms of direct restitution are too impractical, costly, and would
4 far exceed any benefit to individual consumers. Thus, pursuant to Business and Professions Code
5 sections 17203 and 17535, Defendant shall pay the sum of \$13,000 to the Consumer Protection
6 Prosecution Trust Fund established in the case of *People v. ITT Consumer Financial Corporation*
7 (Alameda Superior Court Case No 656038-0).

8 10. The failure of the People to enforce any provision of this Final Judgment shall
9 neither be deemed a waiver of such provision nor shall it in any way affect the validity of this
10 Final Judgment.

11 11. The failure of the People to enforce any provision shall not preclude it from later
12 enforcing the same or other provisions of this Final Judgment.

13 **RETENTION OF JURISDICTION**

14 12. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment
15 to apply to the court at any time for such orders and directions as may be necessary and
16 appropriate for the construction of or the carrying out of the injunctive provisions of this Final
17 Judgment, for the modification or termination of any of the injunctive provisions, and for the
18 enforcement of compliance herewith and for punishment of violations thereof.

19 13. This Judgment shall take effect immediately upon entry hereof.

20 14. The clerk is ordered to enter this Judgment forthwith.

21
22 Dated: 12/14/15



JUDGE OF THE SUPERIOR COURT