



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 09 – 4

May 14, 2009

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Ace Hardware Settlement

Attached is a stipulated final judgment and permanent injunction involving recent litigation against ACE Hardware for violations of the Fair Packaging and Labeling Act. We are very pleased with the fine work done by Fresno County Deputy District Attorney Alan Yengoyen and others representing the District Attorney in negotiating this settlement.

Fresno County should be sure to report penalties of \$114,000 in the County Monthly Report (CMR). \$30,000 was also provided to the CACASA QC Trust Fund as cy pres restitution.

Sincerely,

A handwritten signature in blue ink that reads 'Edmund E. Williams'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edmund E. Williams Director

Attachments

cc: Kevin Masuhara, Director, County Liaison Office

1 ELIZABETH A. EGAN
2 DISTRICT ATTORNEY, COUNTY OF FRESNO
3 ALAN YENGOYAN, SB# 048905
4 DEPUTY DISTRICT ATTORNEY
5 1250 Van Ness Avenue, Second Floor
6 Fresno, California 93721
7 Telephone: (559) 488-3156

8 ATTORNEYS FOR PLAINTIFF

FILED

JAN 12 2009

FRESNO COUNTY SUPERIOR COURT

By _____
MMD - DEPUTY

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 vs.

16 ACE HARDWARE CORPORATION,
17 a Delaware corporation,

18 Defendant.

19 CASE NO. 09 CE CG 00053

20 **STIPULATED FINAL
21 JUDGMENT AND PERMANENT
22 INJUNCTION**

23 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through
24 its attorney, Elizabeth A. Egan, Fresno County District Attorney, through Alan
25 Yengoyan, Deputy District Attorney, and Defendant ACE HARDWARE
26 CORPORATION (hereinafter "ACE"), appearing through its California attorney, Lee N.
27 Smith of the law firm Stoel Rives LLP, and

28 All parties having stipulated and consented to this Stipulated Final Judgment
without the taking of any evidence regarding any issue of law or fact, and

The Court having considered the pleadings, the stipulation of the parties, and
good cause appearing:

IT IS HEREBY ORDERED THAT:

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JURISDICTION

1
2 1. This Court has jurisdiction of the parties to this Stipulated Final Judgment
3 and Permanent Injunction and of the subject matter in this action, and that the
4 injunctive provisions in this Judgment are issued pursuant to Business and
5 Professions Code § 17203.

APPLICABILITY

6
7 2. The provisions of this Stipulated Final Judgment and Permanent
8 Injunction shall apply to the Defendant ACE and to its successors, subsidiaries,
9 divisions, officers, directors, agents, employees, representatives, members, retailers,
10 franchisees, and all other persons and entities who act in concert with said Defendant
11 who have actual or constructive notice of this Stipulated Final Judgment and
12 Permanent Injunction, collectively referred herein as ACE

INJUNCTION

13
14 3. Pursuant to Business and Professions Code § 17203, as of the 30th day
15 from the effective date of this stipulated judgment, ACE is hereby permanently
16 enjoined and restrained by this Stipulated Final Judgment and Permanent Injunction in
17 the State of California from directly or indirectly violating California Business and
18 Professions Code §§ 12602, 12605, 12611, and 17500 by distributing or causing to be
19 distributed in commerce various types and sizes of ACE adhesive and packaging tape
20 products using qualifying words or phrases that violate the Business and Professions
21 Code § 12605, including but not limited to "For Use" or "Use" upon individual product
22 labels, shipping box labels, and retail shelf display boxes appearing in conjunction with
23 a separate statement of the net quantity of contents required by Business and
24 Professions Code § 12603(b).

25 4. Notwithstanding any other terms and provisions of this stipulated
26 judgment, ACE shall not be required to take any action with respect to retailers and
27 franchisees who have in their inventory for the purpose of sale ACE adhesive and
28 packaging tape products as of the effective date of this stipulated judgment, which

1 such retailers and franchisees may continue to sell through their inventory. However,
2 within 30 days of the effective date of this stipulated judgment, ACE shall advise in
3 writing all its known retail sellers and franchisees that they should no longer advertise
4 or represent any product quantity references and descriptions that are in violation of
5 Business and Professions Code § 12603(b) as set forth in Paragraph 3 above.

6 5. Within 30 days of the effective date of this stipulated judgment, ACE
7 shall remove from its corporation internet website and catalogs any and all product
8 quantity references and descriptions that are in violation of Business and Professions
9 Code § 12603(b) as set forth in Paragraph 3 above.

10
11 **CIVIL PENALTIES AND COSTS**

12 6. ACE shall pay a civil penalty pursuant to Business and Professions Code
13 §§ 17206 and 17536 to the Plaintiff in the sum of ONE HUNDRED AND FOURTEEN
14 THOUSAND DOLLARS (\$114,000). Payment in full shall be made payable to the
15 "Fresno County District Attorney" no later than 30 days after the Defendant has signed
16 the Stipulation for Entry of Final Judgment. Payment shall be mailed or delivered to
17 the Fresno County District Attorney's Office, Consumer Protection Division, 1250 Van
18 Ness Avenue, Second Floor, Fresno, California 93721.

19 7. Recognizing the infeasibility of identifying customers that purchased the
20 ACE products that are the subject of the Complaint, and the impracticality of providing
21 direct restitution to said consumers, and the disproportionate costs of making
22 restitution to individual consumers, which would far exceed the benefit consumers
23 would gain, pursuant to Business and Professions Code §§ 17203 and 17535, ACE
24 shall pay THIRTY THOUSAND DOLLARS (\$30,000) as and for cy pres restitution to
25 the California Agriculture Commissioner and Sealer's Association Quantity Control
26 Trust Fund established pursuant to the Judgment in the case of People of the State of
27 California v. Safeway, Inc., et al, Sonoma County Superior Court case number
28 233008, filed July 7, 2003 by delivery to the Fresno County District Attorney on or

1 before January 15, 2009.

2 8. Each party shall bear their own costs of suit incurred in this case, except
3 that ACE shall pay filing fees in the amount of SIX HUNDRED EIGHTY DOLLARS
4 (\$680.00) payable to the "Fresno County Superior Court" upon execution by the
5 parties of the Stipulation for Entry of Final Judgment.

6
7 **NO ADMISSION OF LIABILITY**

8 9. This Judgment is not to be construed as an admission of liability by any
9 party. This Judgment was entered into as a result of a stipulation of the parties,
10 without admissions of fact or law, and without any admission by the Defendant or by
11 any related party of liability, wrongdoing, illegality, or of any fact alleged in the
12 Complaint.

13 **RELEASE**

14 10. Plaintiff, The People of the State of California, agrees that this Judgment
15 shall have a res judicata effect and further agrees to release and discharge Defendant
16 ACE and its parents, subsidiaries, affiliates, officers, employees, agents,
17 representatives, members, retailers, franchisees, successors and assigns, and all
18 persons acting in concert or participation with defendant who have actual knowledge
19 of this Judgment, from any claims, suits, demands, or complaints, pertaining to, or
20 arising from, the alleged unlawful acts and practices described in the Complaint filed
21 contemporaneously with this Stipulated Final Judgment, which acts occurred prior to
22 the date of entry of this Judgment.

23 **FULL AND FINAL ADJUDICATION**

24 11. This Judgment represents a complete and final settlement of all claims
25 that have been brought by Plaintiff against Defendant, and is deemed to a settlement
26 for the entire State of California for all violations alleged in the Complaint . No
27 circumstance or development will constitute grounds for seeking to void or overturn
28 this Agreement, except for non-performance of the obligations contained herein or

1 except where otherwise explicitly noted herein. This Judgment has been reviewed by
2 the Court and the Court finds that this agreement has been entered into in good faith.

3 **RETAINED JURISDICTION**

4 12. Jurisdiction is retained for the purpose of enabling any party to this
5 Judgment to apply to the Court at any time for such further orders or directions as may
6 be necessary or appropriate for the carrying out of this Judgment, for the modification
7 or termination of any of the injunctive provisions herein, for the enforcement of
8 compliance herewith and for punishment of violations hereof.

9 13. This Judgment shall take effect immediately upon entry thereof.

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DATED: 1-12-09

By: DONALD R. FRANSON JR.
JUDGE OF THE SUPERIOR COURT

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1 ELIZABETH A. EGAN
2 FRESNO COUNTY DISTRICT ATTORNEY
3 ALAN YENGOYAN (SB #48905)
4 DEPUTY DISTRICT ATTORNEY
5 1250 VAN NESS AVENUE, 2ND FLOOR
6 FRESNO, CALIFORNIA 93721
7 TELEPHONE: (559) 488-3156

FILED

JAN 12 2009

FRESNO COUNTY SUPERIOR COURT

By _____ MMD - DEPUTY

ATTORNEYS FOR PLAINTIFF

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF FRESNO

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 ACE HARDWARE CORPORATION,
15 a Delaware corporation,

16 Defendant

09CECG00053
CIVIL NO:

**STIPULATION FOR ENTRY
OF FINAL JUDGMENT**

17
18 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through
19 its attorney, Elizabeth A. Egan, Fresno County District Attorney, through Alan
20 Yengoyan, Deputy District Attorney, and Defendant ACE HARDWARE
21 CORPORATION (hereinafter "ACE") represented by California attorney Lee N. Smith
22 of the law firm of Stoel Rives LLP, do hereby stipulate as follows:

23 1. That the Defendant is entering into this Stipulation for Entry of Final
24 Judgment for the purpose of compromise and settlement, and to avoid litigation, and
25 that by entering into this Stipulation, that said Defendant does not admit the truth of
26 any allegation of the Complaint herein nor of any inference which may arise by
27
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1 reason of entering into this Stipulation, and expressly denies each allegation of the
2 Complaint.

3 2. That the Court has in personam jurisdiction of the Defendant and
4 subject matter jurisdiction in this case.

5 3. That Defendant hereby warrants and represents that it has caused this
6 Stipulation to be executed by an authorized officer of this corporate Defendant who
7 has been duly authorized by appropriate action to bind ACE to all terms and
8 conditions of this Stipulation and of the Final Judgment.

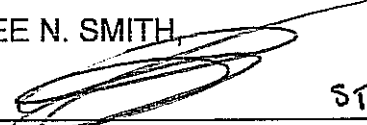
9 4. That the Final Judgment, a copy of which is attached hereto as
10 EXHIBIT "A" and made a part hereof, may be entered forthwith and without the
11 presentation of any evidence and without trial or adjudication of any issue of law or
12 fact herein.
13
14

15 ACE HARDWARE CORPORATION,
16 a Delaware corporation

17 DATED: _____

17 by _____
18 Title: _____

19
20 DATED: 12/17/08

19 LEE N. SMITH,
20 
21 STEEL RIVER LLP
22 Attorney for ACE HARDWARE CORPORATION

23 ELIZABETH A. EGAN,
24 DISTRICT ATTORNEY

25 DATED: December 12, 2008

25 by Alan Yengoyan
26 ALAN YENGOYAN
27 Deputy District Attorney
28

1 reason of entering into this Stipulation, and expressly denies each allegation of the
2 Complaint.

3 2. That the Court has in personam jurisdiction of the Defendant and
4 subject matter jurisdiction in this case.

5 3. That Defendant hereby warrants and represents that it has caused this
6 Stipulation to be executed by an authorized officer of this corporate Defendant who
7 has been duly authorized by appropriate action to bind ACE to all terms and
8 conditions of this Stipulation and of the Final Judgment.

9 4. That the Final Judgment, a copy of which is attached hereto as
10 EXHIBIT "A" and made a part hereof, may be entered forthwith and without the
11 presentation of any evidence and without trial or adjudication of any issue of law or
12 fact herein.
13
14

15
16 DATED: 12/17/08

ACE HARDWARE CORPORATION,
a Delaware corporation
by *Kimberly C. Kranda*
Title: Senior Corporate Counsel

17
18
19
20 DATED: 12/17/08

LEE N. SMITH,
[Signature] STOEL RIVKUP
Attorney for ACE HARDWARE
CORPORATION

21
22
23
24 DATED: December 12, 2008

ELIZABETH A. EGAN,
DISTRICT ATTORNEY
by *Alan Yengoyan*
ALAN YENGOYAN
Deputy District Attorney

1 ELIZABETH A. EGAN
DISTRICT ATTORNEY, COUNTY OF FRESNO
2 ALAN YENGOYAN, SB# 048905
DEPUTY DISTRICT ATTORNEY
3 1250 Van Ness Avenue, Second Floor
Fresno, California 93721
4 Telephone: (559) 488-3156

5 ATTORNEYS FOR PLAINTIFF

6

7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

8

COUNTY OF FRESNO

9

10

THE PEOPLE OF THE STATE OF CALIFORNIA,

) CASE NO.

11

Plaintiff,

) **STIPULATED FINAL
JUDGMENT AND PERMANENT
INJUNCTION**

12

vs.

13

ACE HARDWARE CORPORATION,
a Delaware corporation,

14

15

Defendant.

16

17

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through
18 its attorney, Elizabeth A. Egan, Fresno County District Attorney, through Alan
19 Yengoyan, Deputy District Attorney, and Defendant ACE HARDWARE
20 CORPORATION (hereinafter "ACE"), appearing through its California attorney, Lee N.
21 Smith of the law firm Stoel Rives LLP, and

22

All parties having stipulated and consented to this Stipulated Final Judgment
23 without the taking of any evidence regarding any issue of law or fact, and

24

The Court having considered the pleadings, the stipulation of the parties, and
25 good cause appearing:

26

IT IS HEREBY ORDERED THAT:

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/////

JURISDICTION

1
2 1. This Court has jurisdiction of the parties to this Stipulated Final Judgment
3 and Permanent Injunction and of the subject matter in this action, and that the
4 injunctive provisions in this Judgment are issued pursuant to Business and
5 Professions Code § 17203.

APPLICABILITY

6
7 2. The provisions of this Stipulated Final Judgment and Permanent
8 Injunction shall apply to the Defendant ACE and to its successors, subsidiaries,
9 divisions, officers, directors, agents, employees, representatives, members, retailers,
10 franchisees, and all other persons and entities who act in concert with said Defendant
11 who have actual or constructive notice of this Stipulated Final Judgment and
12 Permanent Injunction, collectively referred herein as ACE

INJUNCTION

13
14 3. Pursuant to Business and Professions Code § 17203, as of the 30th day
15 from the effective date of this stipulated judgment, ACE is hereby permanently
16 enjoined and restrained by this Stipulated Final Judgment and Permanent Injunction in
17 the State of California from directly or indirectly violating California Business and
18 Professions Code §§ 12602, 12605, 12611, and 17500 by distributing or causing to be
19 distributed in commerce various types and sizes of ACE adhesive and packaging tape
20 products using qualifying words or phrases that violate the Business and Professions
21 Code § 12605, including but not limited to "For Use" or "Use" upon individual product
22 labels, shipping box labels, and retail shelf display boxes appearing in conjunction with
23 a separate statement of the net quantity of contents required by Business and
24 Professions Code § 12603(b).

25 4. Notwithstanding any other terms and provisions of this stipulated
26 judgment, ACE shall not be required to take any action with respect to retailers and
27 franchisees who have in their inventory for the purpose of sale ACE adhesive and
28 packaging tape products as of the effective date of this stipulated judgment, which

1 such retailers and franchisees may continue to sell through their inventory. However,
2 within 30 days of the effective date of this stipulated judgment, ACE shall advise in
3 writing all its known retail sellers and franchisees that they should no longer advertise
4 or represent any product quantity references and descriptions that are in violation of
5 Business and Professions Code § 12603(b) as set forth in Paragraph 3 above.

6 5. Within 30 days of the effective date of this stipulated judgment, ACE
7 shall remove from its corporation internet website and catalogs any and all product
8 quantity references and descriptions that are in violation of Business and Professions
9 Code § 12603(b) as set forth in Paragraph 3 above.

10
11 **CIVIL PENALTIES AND COSTS**

12 6. ACE shall pay a civil penalty pursuant to Business and Professions Code
13 §§ 17206 and 17536 to the Plaintiff in the sum of ONE HUNDRED AND FOURTEEN
14 THOUSAND DOLLARS (\$114,000). Payment in full shall be made payable to the
15 "Fresno County District Attorney" no later than 30 days after the Defendant has signed
16 the Stipulation for Entry of Final Judgment. Payment shall be mailed or delivered to
17 the Fresno County District Attorney's Office, Consumer Protection Division, 1250 Van
18 Ness Avenue, Second Floor, Fresno, California 93721.

19 7. Recognizing the infeasibility of identifying customers that purchased the
20 ACE products that are the subject of the Complaint, and the impracticality of providing
21 direct restitution to said consumers, and the disproportionate costs of making
22 restitution to individual consumers, which would far exceed the benefit consumers
23 would gain, pursuant to Business and Professions Code §§ 17203 and 17535, ACE
24 shall pay THIRTY THOUSAND DOLLARS (\$30,000) as and for cy pres restitution to
25 the California Agriculture Commissioner and Sealer's Association Quantity Control
26 Trust Fund established pursuant to the Judgment in the case of People of the State of
27 California v. Safeway, Inc., et al, Sonoma County Superior Court case number
28 233008, filed July 7, 2003 by delivery to the Fresno County District Attorney on or

1 before January 15, 2009.

2 8. Each party shall bear their own costs of suit incurred in this case, except
3 that ACE shall pay filing fees in the amount of SIX HUNDRED EIGHTY DOLLARS
4 (\$680.00) payable to the "Fresno County Superior Court" upon execution by the
5 parties of the Stipulation for Entry of Final Judgment.

6
7 **NO ADMISSION OF LIABILITY**

8 9. This Judgment is not to be construed as an admission of liability by any
9 party. This Judgment was entered into as a result of a stipulation of the parties,
10 without admissions of fact or law, and without any admission by the Defendant or by
11 any related party of liability, wrongdoing, illegality, or of any fact alleged in the
12 Complaint.

13 **RELEASE**

14 10. Plaintiff, The People of the State of California, agrees that this Judgment
15 shall have a res judicata effect and further agrees to release and discharge Defendant
16 ACE and its parents, subsidiaries, affiliates, officers, employees, agents,
17 representatives, members, retailers, franchisees, successors and assigns, and all
18 persons acting in concert or participation with defendant who have actual knowledge
19 of this Judgment, from any claims, suits, demands, or complaints, pertaining to, or
20 arising from, the alleged unlawful acts and practices described in the Complaint filed
21 contemporaneously with this Stipulated Final Judgment, which acts occurred prior to
22 the date of entry of this Judgment.

23 **FULL AND FINAL ADJUDICATION**

24 11. This Judgment represents a complete and final settlement of all claims
25 that have been brought by Plaintiff against Defendant, and is deemed to a settlement
26 for the entire State of California for all violations alleged in the Complaint . No
27 circumstance or development will constitute grounds for seeking to void or overturn
28 this Agreement, except for non-performance of the obligations contained herein or

1 except where otherwise explicitly noted herein. This Judgment has been reviewed by
2 the Court and the Court finds that this agreement has been entered into in good faith.

3 **RETAINED JURISDICTION**

4 12. Jurisdiction is retained for the purpose of enabling any party to this
5 Judgment to apply to the Court at any time for such further orders or directions as may
6 be necessary or appropriate for the carrying out of this Judgment, for the modification
7 or termination of any of the injunctive provisions herein, for the enforcement of
8 compliance herewith and for punishment of violations hereof.

9 13. This Judgment shall take effect immediately upon entry thereof.

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DATED: 1-12-09 By: DONALD R. FRANSON JR.
JUDGE OF THE SUPERIOR COURT

1 except where otherwise explicitly noted herein. This Judgment has been reviewed by
2 the Court and the Court finds that this agreement has been entered into in good faith.

3 **RETAINED JURISDICTION**

4 12. Jurisdiction is retained for the purpose of enabling any party to this
5 Judgment to apply to the Court at any time for such further orders or directions as may
6 be necessary or appropriate for the carrying out of this Judgment, for the modification
7 or termination of any of the injunctive provisions herein, for the enforcement of
8 compliance herewith and for punishment of violations hereof.

9 13. This Judgment shall take effect immediately upon entry thereof.

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DATED: _____ By: _____
JUDGE OF THE SUPERIOR COURT

1 ELIZABETH A. EGAN
DISTRICT ATTORNEY, COUNTY OF FRESNO
2 ALAN YENGOYAN, SB# 048905
DEPUTY DISTRICT ATTORNEY
3 1250 Van Ness Avenue, Second Floor
Fresno, California 93721
4 Telephone: (559) 488-3156

FILED
JAN 8 - 2009
FRESNO COUNTY SUPERIOR COURT
By _____
ERS - DEPUTY

5 ATTORNEYS FOR PLAINTIFF

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF FRESNO

8 THE PEOPLE OF THE STATE OF
9 CALIFORNIA,

Case No. 09 CE CG 00 053 DRF

10 Plaintiff,

11 vs.

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTY, RESTITUION, AND
OTHER EQUITABLE RELIEF**

12 ACE HARDWARE CORPORATION,
a Delaware corporation,

13 Defendant

This case has been assigned to
Judge Donald R. Franson for all purposes

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16 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Elizabeth A.
17 Egan, District Attorney of the County of Fresno, State of California, acting on
18 information and belief, allege as follows:

19 1. Elizabeth A. Egan, District Attorney of the County of Fresno, acting to
20 protect the public from unlawful, unfair and/or fraudulent business acts or practices,
21 and from untrue or misleading representations, brings this action in the name of THE
22 PEOPLE OF THE STATE OF CALIFORNIA pursuant to California statutory law,
23 including but not limited to California Business and Professions Code §§ 17200 and
24 17500, et. seq.

25 2. At all times herein mentioned, ACE HARDWARE CORPORATION
26 (hereinafter "ACE") is and was a corporation organized and existing under the laws of
27 the State of Delaware, transacting business in the County of Fresno and elsewhere
28 throughout the State of California. Its principal place of business and corporate

1 headquarters are located in Oak Brook, Illinois and as relevant to this action, it is in the
2 business of marketing and selling various types and sizes of adhesive and packaging
3 tape products to the general public and businesses in the County of Fresno,
4 throughout the State of California and the United States.

5 3. Whenever in this complaint reference is made to any act of ACE, such
6 allegation shall be deemed to mean that said corporation, and its officers, directors,
7 agents and employees, did or authorized such act while actively engaged in the
8 management, direction, or control of the officers of said corporation, and each of them,
9 and while acting within the scope of their employment.

10
11 **FIRST CAUSE OF ACTION**

12 (Business and Professions Code §17500)

13 4. Plaintiff incorporates Paragraphs 1 through 3 above as though fully set
14 forth herein.

15 5. Beginning on a date unknown to Plaintiff but within the last three years
16 preceding the date of the filing of this Complaint, ACE made or caused to be made
17 untrue or misleading statements before the public by means of product label
18 representations in the County of Fresno and throughout the State of California with the
19 intent to induce members of the public to purchase various types and sizes of ACE
20 adhesive and packaging tape products, in violation of Business and Professions Code
21 §17500. Said untrue or misleading statements include, but are not limited to:

22 a) representing on product labels of such products a width use measure
23 that was more than the actual width of the tape product and more than the net quantity
24 of contents representation of such products required pursuant to Business and
25 Professions Code §12603(b), to wit: representing a tape product to be for "2" Use"
26 when the tape product was in fact 1.89 inches in width, representing a tape product to
27 be "1 ½" Use" when the tape product was in fact 1.41 inches in width, representing a
28 tape product to be "1" Use" when the tape product was in fact .94 inches in width, and

1 representing a tape product to be "¾ " Use" when the tape product was in fact .71
2 inches in width.

3
4 **SECOND CAUSE OF ACTION**

5 (Business and Professions Code §17200)

6 6. Plaintiff incorporates Paragraphs 1 through 5 above as though fully set
7 forth herein.

8 7. Beginning on a date unknown to Plaintiff but within the last four years
9 preceding the date of the filing of this Complaint, ACE has engaged in acts of unfair
10 competition in violation of Business and Professions Code §17200 by engaging in
11 unlawful, unfair and/or fraudulent business acts or practices and unfair, deceptive,
12 untrue or misleading advertising in regard to product quantity representations of
13 various types and sizes of ACE adhesive and packaging tape products, to wit:

14 a) ACE made untrue or misleading statements as set forth in
15 Paragraph 5 of this Complaint.

16 b) ACE violated Business and Professions Code §12605 in
17 that ACE distributed or caused to be distributed in commerce various types and sizes
18 of ACE brand adhesive and packaging tape products using qualifying words or
19 phrases appearing in conjunction with a separate statement of the net quantity of
20 contents required by Section 12603(b) that were deceptive, untrue or misleading and
21 which exaggerated the amount of the tape commodity contained therein.

22 c) ACE violated Business and Professions Code §12611 in that ACE
23 packed, shipped and sold various types and sizes of its ACE adhesive and packaging
24 tape products in containers which did not conform to Chapter 6 (Fair Packing &
25 Labeling Act) of Division 5 (Weights and Measures) of the Business and Professions
26 Code.

27 d) ACE violated Business and Professions Code §12602 in that ACE
28 engaged in the packaging or labeling of various types and sizes of its adhesive and

1 packaging tape products contained in a package which did not conform to the
2 provisions of Chapter 6 (Fair Packing & Labeling Act) of Division 5 (Weights and
3 Measures) of the Business and Professions Code.

4
5 **THIRD CAUSE OF ACTION**

6 (Business and Professions Code §§ 17203 and 17535)

7 8. Plaintiff incorporates Paragraphs 1 through 7 above as though fully set forth
8 herein.

9 9. ACE has engaged in, is engaging in, and will continue to engage in acts or
10 practices which constitute or will constitute violations of law as more specifically set
11 forth in this Complaint. Unless enjoined by this Court pursuant to Business and
12 Professions Code §17203 and 17535, said violations will continue to the detriment of
13 the rights and interests of the Plaintiff as to those who purchase the above described
14 products.

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for the following:

17 1. That, pursuant to the First Cause of Action and Business and Professions
18 Code §17536, ACE be assessed to pay a civil penalty not to exceed TWENTY-FIVE
19 HUNDRED DOLLARS (\$2500.00) for each and every violation, according to proof.

20 2. That, pursuant to the Second Cause of Action and Business and
21 Professions Code §17206, ACE be assessed to pay a civil penalty not to exceed
22 TWENTY-FIVE HUNDRED DOLLARS (\$2500.00) for each and every violation,
23 according to proof.

24 3. That, pursuant to the Third Cause of Action, ACE and its directors, officers,
25 employees, agents and representatives, and any and all persons or entities who are
26 acting in concert or participating in any manner with others, be preliminarily and
27 permanently enjoined and restrained, directly or indirectly, from engaging in acts of
28 untrue or misleading statements and unfair competition as set forth in this Complaint.

1 4. That said Defendant pay Plaintiff's cost of suit incurred in this action and its
2 cost of investigation.

3 5. Such other and further relief as the nature of this case may require and as
4 the Court deems appropriate.

5 ELIZABETH A. EGAN
6 DISTRICT ATTORNEY

7 DATED: December 12, 2008

8 By: Alan Yengoyan
9 Alan Yengoyan
10 Deputy District Attorney
11 Consumer & Environmental Protection
12 Division

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