



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
A. G. Kawamura, Secretary

DMS Notice
QC – 10 – 7

December 2, 2010

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Clougherty Packing LLC (Farmer John Brand) Settlement

Attached is a Stipulated Final Judgment issued by the District Attorney's Office of San Diego County who filed against Clougherty Packing LLC on November 23, 2010 for selling short measure pork chitterlings and bacon under the Farmer John Brand in violation of California Business and Professions Codes 12024.

We value the excellent work done on behalf of the people, by Gina L. Darvas and Thomas A. Papageorge representing San Diego's District Attorney's Office as well as the State and county investigators who tested these products. Clougherty Packing LLC was assessed \$400,000 in civil penalties, \$40,100 for investigative costs, and \$11,464 in cy pres restitution for a total of \$451,564.

San Diego 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
Acting Director

Cc: Ed Williams, Director, County/State Liaison
PQV Special Investigators





SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Case#: 37-2010-00104747-CL-AT-CTL

Plaintiff,

v.

STIPULATED FINAL JUDGMENT

CLOUGHERTY PACKING LLC, a Delaware Corporation,

Defendant.

Plaintiff, the People of the State of California, by and through BONNIE M. DUMANNIS, District Attorney of San Diego County, and GINA L. DARWASS and THOMAS A. PAPAGHORGGE, Deputy District Attorneys and Defendant CLOUGHERTY PACKING LLC, a Delaware Corporation (hereinafter "Clougherty"), by and through its attorney, KENT SCHMIDT, Esq., Dorsey & Whitney LLP, having stipulated that this Court has jurisdiction over this matter and this Judgment may be signed without the taking of proof, without trial or adjudication of any issue of fact or law herein, and without this Stipulation constituting evidence or an admission by Defendants;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendant as follows:

JURISDICTION

1. This action is brought under California law and this Court has jurisdiction of its subject matter and the parties to this action.

INJUNCTION

2 2. The provisions of this Judgment are applicable to Clougherty and its officers, directors,
3 employees, agents, and representatives acting within the course and scope of their agency and
4 employment, and to successors and assignees of Clougherty, and to all persons, partnerships,
5 corporations, and other entities acting for, through, or on behalf of, or in concert with Clougherty with
6 actual or constructive notice of this Judgment. All obligations imposed upon Clougherty by the terms of
7 this Judgment are ordered pursuant to Business and Professions Code sections 17203 and 17535.
8

9 3. Clougherty and all persons and entities set forth in paragraph 2 above, are hereby
10 permanently enjoined and restrained, pursuant to Business and Professions Code sections 17203 and
11 17535, from directly or indirectly offering for sale in the state of California bacon and chitterling
12 products produced or sold by Clougherty, containing net weights less than the maximum allowable
13 variation (under applicable federal standards) from the net weights stated on the package labels.
14

15 4. Clougherty, and all persons and entities set forth in paragraph 2 above, are hereby
16 ordered, for a period of four years from the date of entry of this Stipulated Final Judgment, to compute
17 the tare of the lot of packaging for bacon products produced by Clougherty for sale in California by
18 taking the average weight (to the nearest thousandths of a pound) of five dry tares for every lot of 251
19 or more packages of bacon produced by Clougherty for sale in California. If during this four year
20 period, the sampling plan to test packages in federally-inspected meat plants (currently set forth in NIST
21 Handbook 133, January 2005 edition 2, Table 2-2, Appendix A) is modified by the U.S. Dept. of
22 Commerce, either party may move to modify this Order accordingly.
23

MONETARY RELIEF

24 5. Pursuant to Business and Professions Code sections 17206 and 17536, Defendants shall,
25 within ten day of the date of the filing of this Judgment, pay to Plaintiff civil penalties of \$400,000 by
26 check made payable to the San Diego County District Attorney. delivered as specified in paragraph 8
27 below.
28

1 11//
2 11//
3

4 6. Pursuant to Business and Professions Code sections 17206 and 17535, Defendant shall,
5 within ten days of the date of the filing of this Judgment, pay to Plaintiff costs totaling \$40,100, by
6 checks made payable as follows:

- 7 a. The sum of \$10,225 payable to the California Department of Food and
8 Agriculture;
- 9 b. The sum of \$3,449 payable to the San Diego County Agricultural
10 Commissioner/Sealer of Weights and Measures;
- 11 c. The sum of \$2,145 payable to the Riverside County Agricultural
12 Commissioner/Sealer of Weights and Measures;
- 13 d. The sum of \$1,485 payable to the Ventura County Agricultural
14 Commissioner/Sealer of Weights and Measures;
- 15 e. The sum of \$938 payable to the San Bernardino Agricultural
16 Commissioner/Sealer of Weights and Measures;
- 17 f. The sum of \$314 payable to the Contra Costa Agricultural Commissioner/Sealer
18 of Weights and Measures; and
- 19 g. The sum of \$21,544 payable to the San Diego County District Attorney.

20 7. Pursuant to Business and Professions Code sections 17200 *et seq.* and sections 17500 *et*
21 *seq.*, and the Court's inherent equitable authority, Defendant shall pay \$11,464 as *cy pres* restitution, in
22 the form of a check payable to the California Department of Food and Agriculture, to be used by that
23 Department to purchase electronic scales for use in the investigation of potential violations of California
24 weights and measures laws.

25 8. All checks shall be made payable as set forth in Paragraphs 5 and 6 above and delivered
26 to the attention of Deputy District Attorney Gina Darvas at the San Diego District Attorney's Office,
27 330 W. Broadway, Suite 750, San Diego, California 92101.
28

1 ///

2 ///

3 **NO ADMISSION OF LIABILITY**

4 9. This Judgment is not to be construed as an admission of liability by any party. This Judgment
5 was entered into as a result of a stipulation of the parties, without admission of fact or law, and without
6 any admission by Clougherty or by any related party of liability, wrongdoing, illegality, or any fact
7 alleged in the Complaint.
8

9 **RETENTION OF JURISDICTION**

10 10. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to
11 the Court at any time for such further orders and directions as may be necessary and appropriate for the
12 construction or carrying out of this Judgment, and for the enforcement of, compliance with, and for the
13 punishment of violations of the Judgment.

14 11. The clerk is ordered to immediately enter this Judgment.

15
16 Dated: NOV 23 2010, 2010

17
18 **MARGO L. LEWIS**
19 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**
20
21
22
23
24
25
26
27
28