



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

February 27, 2013

DMS NOTICE
QC - 13 - 4
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Yogi's Yogurt, LLC Settlement

Enclosed is a Final Judgment issued by the Yolo County District Attorney's Office, in conjunction with Tulare County's District Attorney's Office, filed against Yogi's Yogurt, LLC on January 14, 2013. The company's Big Kahuna Yogurt shops were investigated for selling frozen yogurt and failing to take tare or sufficient tare, and overcharging customers in violation of California Business and Professions Code Sections 12023, 12024, and 12024.2 respectively.

The California Department of Food and Agriculture, Division of Measurement Standards (DMS) led the investigation and worked with Yolo and Tulare County Weights and Measures. The total settlement was for \$31,000. Civil penalties amounted to \$3,000; cy pres restitution amounted to \$680; and, agency costs were \$27,320. The Yolo County Department of Agriculture received \$680 in cy pres restitution.

Yolo 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: Gary Leslie, Acting County/State Liaison, CDFA



JAN 14 2013

L. CORREIA

By _____
Deputy

1 JEFF W. REISIG, District Attorney
2 LAWRENCE BARLLY, Deputy District Attorney, Bar. No. 114456
3 Consumer Fraud and Environmental Protection Division
4 Yolo County District Attorney's Office
5 301 Second Street
6 Woodland, CA 95695
7 Phone: (530) 666-8180
8 Fax: (530) 666-8185

9 PHIL CLINE, District Attorney
10 RODNEY M. BLACO, Deputy District Attorney, Bar No. 212139
11 Consumer & Environmental Protection Division
12 Tulare County District Attorney's Office
13 221 S Mooney Blvd., Room 224
14 Visalia, CA 93291
15 Phone: (559) 636-5494

16 Attorneys for the People

17
18
19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF YOLO

22 THE PEOPLE OF THE STATE OF
23 CALIFORNIA,

24 Plaintiff,

25 vs.

26 YOGI'S YOGURT, LLC, a California Limited
27 Liability Corporation

28 Defendant(s)

Dept. Case No. *CV13-025*

FINAL JUDGMENT

29 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, having filed its complaint
30 herein, through their attorneys, JEFF W. REISIG, District Attorney of Yolo County, by
31 LAWRENCE BARLLY, Deputy District Attorney and PHIL CLINE, District Attorney for the
32 County of Tulare, by Deputy District Attorney RODNEY M. BLACO; and defendant YOGI'S
33 YOGURT, LLC, through its attorney ANN GROTTVEIT a licensed California attorney in the
34 law firm of KAHN, SOARES and CONWAY, LLP, having stipulated that this Final Judgment

1 can be entered without the taking of proof, without this Final Judgment constituting evidence of
2 an admission by defendants, and good cause appearing therefore;

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

4 1. This court has jurisdiction over the subject matter hereof and the parties hereto.

5 2. Pursuant to Business and Professions Code sections 17203 and 17535, defendant,
6 and its successor(s), officers, employees, agents, representatives, and all persons acting in concert or
7 participation with any of them, with actual or constructive notice of this Stipulated Final Judgment,
8 are permanently enjoined and restrained from directly or indirectly advertizing or selling any food
9 commodity at gross weight, an act which is in violation of California Business and Professions
10 Code sections 12023, 12024, 12024.1, 12024.2, 17200 and 17500.

11 3. Defendant shall use good faith efforts to make available and fully and clearly
12 explain the injunctive language of this Stipulated Final Judgment, including the terms and
13 conditions thereof, to each of its officers, employees, contractors designers of packaging and/or
14 anyone, including any entity, who may be responsible for the packaging of goods offered to
15 California consumers.

16 4. Pursuant to Business and Professions Code sections 12015.5, 17203, 17206, 17535
17 and 17536, Defendant shall pay Thirty-One Thousand Dollars (\$31,000.00) in settlement of this
18 matter of which \$27,320.00 is allocated to costs \$3,000.00 is allocated to penalties, and \$680.00
19 is allocated to cy pres restitution, with payments structured as follows. Delivery shall be made to
20 the Office of the Yolo County District Attorney, 301 Second Street, Woodland, CA 95695,
21 attention Larry Barlly.

22 (A) At the time of the signing of the Stipulation for Final Judgment Defendant shall
23 tender \$16,000 in the form of five checks payable as follows. The People shall not disperse
24 these checks until and unless the Court approves this Final Judgment.

25 (i) One check in the amount of \$680.00 shall be made payable to the Yolo
26 County Department of Agriculture and is allocated for cy pres restitution.

27 (ii) One check in the amount of \$3,000.00 shall be made payable to the
28 California Department of Food and Agriculture and is allocated for the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

costs of their investigation.

- (iii) One check in the amount of \$1,000.00 shall be made payable to the Tulare County Agricultural Commissioner and is allocated for the costs of their investigation.
- (iv) One check in the amount of \$6,320.00 shall be made payable to the Tulare County District Attorney Consumer Protection Trust Fund and is allocated for the costs of their investigation.
- (v) One check in the amount of \$5,000.00 shall be made payable to the Yolo County District Attorney and is allocated for the costs of their investigation.

(B) Delivery of the remaining payments shall be made, each in an amount not less than \$1875.00, consecutively every three months following the date of Entry of Judgment with completion of all payment to be made no later than two years from the date of Entry of Judgment. Each of these payments shall be delivered to the Office of the Yolo County District Attorney, 301 Second Street, Woodland, CA 95695, attention Larry Barlly.

- (i) Each of the first six payments shall be in the form of two checks payable as follows:
 - (a) One check for 937.50 shall be made payable to the Tulare County District Attorney Consumer Protection Trust Fund and is allocated for the costs of their investigation,
 - (b) One check for \$937.50 shall be made payable to the Yolo County District Attorney's and is allocated for the costs of their investigation,
- (ii) The seventh payment shall be in the form of two checks payable as follows:
 - (a) One check for 937.50 shall be made payable to the Tulare County District Attorney Consumer Protection Trust Fund, of which \$375.00 is allocated for the costs of their investigation and 562.50 is allocated as penalties;

1 (b) One check for 937.50 shall be made payable to the Yolo County
2 District Attorney, of which \$375.00 is allocated for the costs of their
3 investigation and 562.50 is allocated as penalties.

4 (iii) The eighth payment shall be in the form of two checks payable as follows:

5 (a) One check for 937.50 shall be made payable to the Tulare County
6 District Attorney Consumer Protection Trust Fund, which is allocated
7 as penalties;

8 (b) One check for 937.50 shall be made payable to the Yolo County
9 District Attorney, which is allocated as penalties.

10 (C) Time is of the essence. Any payment not received by the date it is due, or in an
11 amount less than stated in this FINAL JUDGMENT, is deemed to be a violation
12 of this FINAL JUDGMENT and the entire unpaid balance of is immediately due
13 and payable and statutory interest of TEN PERCENT (10%) shall accrue on the
14 entire remaining balance from the date of Entry of Judgment without further
15 demand or notice.

16 5. The failure of the People to enforce any provision of this Final Judgment, which
17 includes but it not limited to the election to permit a cure period or attempts at informal
18 resolution of any alleged violations of this injunction, shall neither be deemed a waiver of such
19 provision, nor shall it in any way affect the validity of this Stipulated Final Judgment. The
20 failure of the People to enforce any provision shall not preclude it from later enforcing the
21 same or other provisions of this Stipulated Final Judgment.

22 6. Except as otherwise expressly provided herein, each party shall bear its own
23 attorney's fees and costs.

24 7. The language used for the obligations set forth in this Final Judgment is solely for
25 the purposes of settlement and compromise and are in no way intended to be an alteration of
26 California law in any other action. If an ambiguity arises regarding any provision of this
27 Stipulated Final Judgment that requires interpretation, there is no presumption that the document
28

1 should be interpreted against any party. The presumption set forth in Civil Code section 1654 is
2 not applicable.

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

8 9. This Final Judgment has been reviewed by the Court, and based upon the
9 representations of the parties, the Court finds that it has been entered in good faith and is, in all
10 respects, fair, just, and equitable to protect the public and the individuals who may have been
11 affected by the issues related as more fully described in the Complaint.

12 10. The clerk is directed to enter this Final Judgment forthwith.

13
14
15 DATED: 14 JAN. 2013

16
17 DANIEL P. MAGUIRE

18 _____
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25
26
27
28