

October 13, 2015

DMS NOTICE QC - 15 -09

DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – The Hershey Company, a Delaware Company

Enclosed is a copy of the Final Judgment issued against The Hershey Company, a Delaware Company. The case was filed on April 9, 2015, by the Yolo County District Attorney Office in conjunction with the District Attorney's office of Sacramento for improper labeling and deceptive packaging, in violation of California Business and Professions Code Sections 12602 and 12606.2 respectively.

The California Department of Food and Agriculture, Division of Measurement Standards, worked with weights and measures investigators from the Sacramento County on this case. The total settlement was for \$258,673. Civil penalties amounted to \$147,173, agency costs were \$36,500, and cy pres given in products or cash of \$75,000 to be donated to the Food Bank of Yolo County, Sacramento Food Bank and Family Services, and River City Food Bank.

Sacramento County should be sure to report these penalties on the County Monthly Report along with 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 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

Kristing Many

Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



1 JEFF W. REISIG, District Attorney LAWRENCE BARLLY, Deputy District Attorney, Bar. No. 114456 Consumer Fraud and Environmental Protection Division Yolo County District Attorney's Office FILED 3 301 Second Street YOLO SUPERIOR COURT Woodland, CA 95695 4 APR 0 9 2015 Phone: (530) 666-8180 Fax: (530) 666-8185 5 W. VAN DAM Deputy 6 ANNE MARIE SCHUBERT, District Attorney DOUGLAS WHALEY, Supervising Deputy District Attorney, Bar No. 144557 Consumer & Environmental Protection Division Sacramento County District Attorney's Office 906 G Street, Suite 700 Sacramento, CA 95814 Phone: (916) 874-6174 Fax: (916) 874-7660 10 Attorneys for the People 11 12 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF YOLO 14 15 Case No. (V15-461 THE PEOPLE OF THE STATE OF CALIFORNIA, 16 17 Plaintiff. 18 VS. 19 FINAL JUDGMENT 20 THE HERSHEY COMPANY, a Delaware Company Dept. 21 Defendant(s) 22 23 Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA, having filed their 24 complaint herein and to the extent represented by and authorized to act through their attorneys, 25 JEFF W. REISIG, District Attorney of Yolo County, by LAWRENCE BARLLY, Deputy 26 District Attorney, and ANNE MARIE SCHUBERT, District Attorney for the County of 27 Sacramento, by Supervising Deputy District Attorney DOUGLAS WHALEY (collectively the

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PEOPLE v. THE HERSHEY COMPANY, Final Judgment

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"People"); and defendant, THE HERSHEY COMPANY, a Delaware Company headquarted in Pennsylvania (hereinafter "Hershey") as represented by Robert L. Falk of Morrison & Foerster LLP, a licensed California attorney, have stipulated through a STIPULATION FOR FINAL JUDGMENT filed in this matter that this Final Judgment can be entered without the taking of proof or necessitating the assertion by Hershey of its potential affirmative defenses or counterclaims, and, without this stipulated Final Judgment constituting evidence or an admission of any fact by Hershey or issue of law by any party and with good cause appearing therefore; IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

- 1. This Court has jurisdiction over the subject matter hereof and the parties hereto.
- 2. Pursuant to Business and Professions Code sections 17203 and 17535, so as not to be in violation of California Business and Professions Code sections 12602 and 12606.2, Hershey shall be permanently enjoined and restrained from directly or indirectly packaging its food products as shown in Exhibit A of the Complaint (hereinafter referred to as the "Products), said exhibit being attached hereto and made a part of this Order.
- 3. Hershey shall be permitted to sell any of the Products described in Exhibit A of the Complaint in their existing packaging if such packaging has been produced in the normal course of doing business prior to the entry of this Final Judgment by the Court. As to packaging produced following entry of this Final Judgment, Hershey shall implement commercially reasonable changes to labeling and box/tray design for the Products shown in Exhibit A of the complaint so as to address the requirements of Section 2 above, such steps not requiring Hershey to compromise on the functionality of the packaging, including the necessity of maintaining the quality of the Products and protecting the Products from damage during shipment and shelving. Such steps shall be completely implemented by no later than December 31, 2015.
- 4. This injunction shall also include, with respect to Hershey's manufacturing for any subsequent years, variations or substitutions of the Products that are materially the same as the Products shown in Exhibit A of the Complaint relative to their ingredients, number of pieces, sizes and shapes, and net weight ("Successor Products").

- 5. Hershey shall use good faith efforts to make available and fully and clearly explain the injunctive language of this Final Judgment, including the terms and conditions thereof, to each of its officers and employees who may be responsible for the packaging of the Products or Successor Products to the extent that they may hereinafter be offered for sale or distribution by Hershey in California in subsequent years.

 6. Defendant shall pay Two Hundred Fifty Eight Thousand Six Hundred Seventy Three
- 6. Defendant shall pay Two Hundred Fifty Eight Thousand Six Hundred Seventy Three Dollars (\$258,673) in settlement of this matter as set forth below and pursuant to Business and Professions Code sections 12015.5, 17206 and 17536.
 - (A) Delivery of the full cash amount set forth in subsections (B) and (C) below shall be made prior to the presentation of this Final Judgment to the Court and is to be held pending Court approval of this settlement.
 - (B) Payment shall be delivered to the Office of the Yolo County District Attorney,301 Second Street, Woodland, CA 95695, attention Larry Barlly.
 - (C) Payment shall be in the form of 3 checks payable as follows:
 - (i) One check for \$2,500 shall be made payable to the Sacramento County Department of Agriculture for the costs of their investigation,
 - (ii) One check for \$90,586.80 shall be made payable to the Yolo County District Attorney's Office of which \$17,000 shall be allocated as the costs of investigation and the remainder shall be allocated as civil penalties.
 - (iii) One check for \$90,586.80 shall be made payable to the Sacramento County District Attorney's Office of which \$17,000 shall be allocated as the costs of investigation and the remainder shall be allocated as civil penalties.
 - (D) In addition to the preceding cash payments, within 60 days of Notice of Entry of this Stipulated Final Judgment, Hershey, having previously identified the not-for-profit organizations listed on Exhibit A as worthy recipients, shall arrange to donate on a pro rata basis:

- i. products having a retail value of at least \$75,000, or
- ii. an equivalent net value in cash, or
- iii. any combination of the above, to be determined at the sole discretion of said organizations.

Should any of the organizations listed on Exhibit B decline to accept the proffered donation, the remaining organizations shall be permitted to accept the donation on a pro rata basis or, should they decline to do so, Hershey shall provide the remaining donation to Feeding America (fka America's Second Harvest the Nation's Food Bank Network) for use with respect to other worthy recipients in California. Donations shall be arranged for within sixty (60) days of the entry of this Final Judgment by the Court and completed within no later than an additional 60 days if in cash or an additional one hundred and up to 180 days beyond that if in-kind.

- (E) Time is of the essence. Any payment or donation not received by the date it is due, or in an amount less than stated in this FINAL JUDGMENT, is deemed to be a violation of this FINAL JUDGMENT and the entire unpaid balance or donation value is immediately due and payable and statutory interest of TEN PERCENT (10%) shall accrue on the entire remaining balance without further demand or notice.
- 7. The failure of the People to enforce any provision of this Final Judgment shall neither be deemed a waiver of such provision, nor shall it in any way affect the validity of this Final Judgment. The failure of the People to enforce any provision shall not preclude them from later enforcing the same or other provisions of this Final Judgment.
- 8. If the People contend that any Hershey product is not packaged in accordance with the law or that any Product or Successor Product is not in compliance with the Stipulated Judgment, the People shall first contact Hershey in an attempt to resolve any dispute at least

sixty (60) days prior to filing an action. Written contact shall be made to both Hershey and its counsel of record in this action. During that time frame, and subject to any extension thereof as may be further agreed upon by the parties, Hershey may, but is not required to, obtain the opinion of an expert and may, but is not required to, share the opinion of the expert with the Plaintiffs. If, prior to the expiration of the time period described above, Hershey commits to sharing the opinion of an expert with the Plaintiffs, Hershey and its expert will be provided with an additional sixty (60) days to produce such an opinion to the Plaintiffs. The parties shall then meet within an additional thirty (30) days, or within such a longer period of time as they mutually agree, to discuss the opinion and otherwise attempt to resolve the issue without the intervention of the Court.

- 9. Except as otherwise expressly provided herein, each party shall bear its own attorney's fees and costs and retain its own rights, including rights to assert claims or defenses in any future matter or proceeding.
- 10. The language used for the obligations set forth in the Final Judgment are solely for the purposes of settlement and compromise and are in no way intended to be an alteration of California law. If an ambiguity arises regarding any provision of this Final Judgment that requires interpretation, there is no presumption that documents filed in this matter should be interpreted against any party based on the party that drafted them. The presumption set forth in Civil Code section 1654 also is not applicable.
- 11. Jurisdiction is retained for the purpose of enabling any party to the Stipulated Final Judgment to apply to the Court, with proper notice to the other party, for such further orders and directions as may be necessary and appropriate for the construction and carrying out of the Stipulated Final Judgment, for the modification or dissolution of any injunctive provisions hereof, for enforcement of compliance herewith, or for remedies of violations hereof.
- 12. The parties waive the right to appeal this Stipulated Final Judgment as to both form and content.

13. This Final Judgment has been reviewed by the Court, and based upon the representations of the parties, the Court finds that it has been entered in good faith and is, in all respects, fair, just, and equitable to protect the interests of the parties and the public. This Final Judgment, once entered by the Court, shall therefore be deemed to have resolved all matters which were or could have been raised in the Complaint based on the People's investigation and subsequent communications with Hershey with respect to their allegations concerning its labeling and packaging practices.

14. The clerk is directed to enter this Stipulated Final Judgment forthwith.

DATED: APR 0 9 2015

TIMOTHY L. FALL

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

Food Bank of Yolo County
Sacramento Food Bank and Family Services
River City Food Bank

PEOPLE v. THE HERSHEY COMPANY, Final Judgment