



July 27, 2011

DMS NOTICE
QC-11-03

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Tomra Pacific, Inc. Settlement

Attached is the Final Judgment Pursuant to Stipulation issued by the District Attorney's Office of Napa County, in conjunction with the District Attorney's Offices of Contra Costa, Fresno, Santa Cruz, and Sonoma Counties filed against Tomra Pacific, Inc. on July 8, 2011 for failure to have weighing instruments sealed by a sealer prior to use, purchase of less than the true quantity, and failure to locate or position the weighing device so that its indications could be accurately read by the customer pursuant to California Business and Professions Code Sections 12501.1, 12512, and 12510.

We deeply value and appreciate the excellent work done on behalf of the people, by the prosecution team representing the various District Attorney's Offices as well as the State and county investigators that investigated those violations. Tomra Pacific, Inc. was assessed civil penalties and cost recovery of \$662,244.32 of which \$500,000 was for civil penalties, \$35,000 cy pres, and \$127,244.32 for weights and measures investigative costs including reimbursements to the CACASA Trust Fund.

Napa 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
Director

Cc: Quantity Enforcement Special Investigators
Edmund Williams, Director, CDFA County Liaison Office



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21 Attorney's for Plaintiff

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

23 THE PEOPLE OF THE STATE OF CALIFORNIA,)
24)
Plaintiff,)
25)
v.)
26)
TOMRA PACIFIC, INC., a Delaware corporation,)
27)
Defendant(s).)
28)

ENDORSED

JUL 08 2011

Clerk of the Napa Superior Court
By: J. OLIVER
Deputy

NSC No. **28 - 565 29**
FINAL JUDGMENT
PURSUANT TO STIPULATION

1 THE PEOPLE OF THE STATE OF CALIFORNIA has filed its complaint and appears
2 through its attorneys: GARY LIEBERSTEIN, District Attorney for the County of Napa, by
3 Deputy District Attorney Daryl Roberts; MARK A. PETERSON, District Attorney for the
4 County of Contra Costa, by Deputy District Attorney Steven C. Bolen; ELIZABETH A.
5 EGAN, District Attorney for the County of Fresno, by Deputy District Attorney Michael C.
6 Brummel; BOB LEE, District Attorney for the County of Santa Cruz, by Deputy District
7 Attorney William R. Atkinson; and JILL R. RAVITCH, District Attorney for the County of
8 Sonoma, by Deputy District Attorney Matthew Cheever. Defendant Tomra Pacific, Inc., a
9 Delaware corporation, appears by and through their attorneys Greenberg Traurig LLP by James
10 M. Mattesich, Esq. The parties have stipulated to the entry of this Final Judgment without
11 defendant admitting any wrongdoing, without the court taking evidence, and without this Final
12 judgment constituting an admission by defendant regarding any issue of law or fact. All parties
13 waive their right of appeal, the agreed presumption set forth in Civil Code section 1654 is not
14 applicable and there is no presumption that documents should be interpreted against any party.

15 This court having considered the pleadings and the Stipulation for Entry of Final
16 Judgment and good cause appearing therefore;

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

18 **JURISDICTION**

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

20 **APPLICABILITY**

21 2. This Final Judgment is applicable to defendant Tomra Pacific, Inc., a Delaware
22 corporation, and to its agents, servants, employees, officers, directors, representatives,
23 successors, assignees, subsidiaries and divisions, and to any and all persons, partnerships,
24 corporations, and other entities acting under, by, through, on behalf of, or in concert with
25 defendant, with actual or constructive knowledge of this Final Judgment (hereafter referred to
26 as "Defendant(s)"). This Final Judgment is also applicable to any and all subsidiaries of the
27 Defendants and their respective officers, representatives, successors, assignees and all persons,
28 partnerships, corporations, and other entities acting under, by, through, on behalf of, or in

1 concert with any such subsidiary with actual or constructive knowledge of this Final Judgment.

2
3 **NO ADMISSION OF LIABILITY**

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

8 **INJUNCTION**

9 4. Pursuant to Business and Professions Code sections 17203 and 17535,
10 Defendants are permanently enjoined and restrained from directly or indirectly, in or from
11 California, failing to abide by each and every provision of Business and Professions Code
12 sections 12501.1, 12512, 12510, 17200 and 17500.

13 5. Pursuant to Business and Professions Code sections 17203 and 17535,
14 Defendants are hereby ordered and mandated to do all of the following:

15 A. TARE TO ZERO PROGRAM WITH CAVEAT FOR ROLL OUT.
16 Develop and implement a new procedure for the weighing of recyclable materials to be used at
17 all of its recycling centers. This new system, hereinafter referred to as "Tare to Zero," shall
18 require that the employee weighing the customers' recyclable materials take a tare for the
19 container used in each individual consumers transaction. The system shall require that each
20 transaction start with an empty barrel and the setting of the "tare" to the weight of that barrel.
21 The recyclable beverage containers shall be then added to the barrel and the barrel weighed
22 again, providing the gross weight. The IPC system then calculates the difference between the
23 gross weight and tare weight to accurately record the net weight of the recyclable beverage
24 containers. First, the tare to zero system shall be fully implemented on or before September 1,
25 2011 at all recycling centers set forth on the attached Exhibit A. Second, the tare to zero
26 system shall be fully implemented on or before June 1, 2012 at all recycling centers set forth on
27 the attached Exhibit B. Any and all new recycling centers operated by defendants after the
28 effective date of this Final Judgment shall fully implement the tare to zero system.

1 B. SECRET SHOPPER PROGRAM. Develop and implement an internal
2 “secret shopper” program to increase the quality of the consumer experience at Defendants'
3 recycling centers. This program must include methods to ensure that (1) tare is taken in every
4 transaction for the specific container used by each consumer; (2) that the Tare to Zero program
5 is being followed; (3) that the weighing devices and/or weighing instruments used at the
6 Defendants' recycling centers have been sealed by a sealer prior to being placed in operation;
7 (4) that the weighing devices and/or weighing instruments used at the Defendants' recycling
8 centers are accurate and have been recently calibrated; and (5) that the Defendants' do not
9 compensate a consumer for a quantity of recyclable material that is less than the true quantity.
10 The Secret Shopper program shall consist of a minimum of one (1) Tomra employee who
11 brings recyclable beverage containers to a site and has it processed just as a regular consumer
12 would. During the visit the secret shopper shall test for accurate weighing procedures and
13 accurate weight. All recyclable beverage containers shall be pre-weighed by the secret shopper
14 before taking to the recycle site. If the weight of the recyclable beverage containers at the site
15 varies by more than 0.10 lbs, an immediate email shall be generated to the Tomra Corporate
16 office. If a site fails it shall be retested a minimum of one (1) time within thirty (30) days. All
17 sites in the company shall be secret shopped a minimum of one (1) time per year.

18 C. Defendants shall maintain all records of the Secret Shopper Program for
19 no less than a period of one calendar year from the date of creation. These records shall be
20 made available to any District Attorney, City Attorney, any authorized representative of the
21 State of California Division of Measurement Standards, or any representative of the County
22 Sealer or Director of a County Agricultural Commissioner at a reasonable time and place upon
23 reasonable notice.

24 D. Defendants shall specifically advise the following persons of the
25 injunctive provisions of this Final Judgment: (a) its current members, officers and directors; (b)
26 any members, officers or directors who are appointed or elected within one year of the date of
27 entry of this Final Judgment, and (c) any and all persons responsible for the management and/or
28 training of personnel operating weighing devices at the Defendant's recycling centers for

1 Defendants at any time during the three years following the date of entry of this Final
2 Judgment.

3 E. Defendants shall use good faith efforts to make available and fully and
4 clearly explain the injunctive language of this Final Judgment, including the terms and
5 conditions thereof, to each person or entity responsible for purchasing recyclable materials
6 from consumers.

7 MONETARY PROVISIONS

8 6. **Costs.** Defendant shall pay the People as and for investigative costs the sum of
9 One Hundred Twenty Seven, Two Hundred Forty Four and 32/100 Dollars (\$127,244.32) by
10 separate certified checks made payable to each agency in the corresponding amounts listed
11 below.

12 AGENCY	AMOUNT
13 Amador County Weights and Measures Division	\$ 324.13
14 Butte County Weights and Measures	\$ 2,400.00
15 Calaveras County Department of Agriculture Division of Weights 16 and Measures	\$ 280.44
17 Contra Costa County Department of Weights and Measures	\$ 7,422.50
18 County of El Dorado Division of Weights and Measures	\$ 429.08
19 Fresno County Department of Agriculture Division of Weights and 20 Measures	\$ 3,190.90
21 County of Kern Agriculture and Measurement Standards	\$ 4,850.69
22 Kings County Department of Agriculture Measurement Standards	\$ 1,605.22
23 Lake County Department of Agriculture Division of Weights and 24 Measures	\$ 327.20
25 Los Angeles County Department of Agriculture 26 Commissioner/Weights & Measures	\$ 4,095.00
27 Madera County Ag Commissioner Weights and Measures	\$ 311.85
28 Merced County Ag Commissioner Weights and Measures	\$ 740.00
Monterey County Ag Commissioner Weights and Measures	\$ 328.36
Napa County Department of Weights and Measures	\$ 2,288.00
County of Orange Weights and Measures	\$ 2,772.00
Placer County Agricultural Commissioner Division of Weights and Measures	\$ 598.50
Plumas County Department of Agriculture Weights and Measures	\$ 235.00
Riverside County Division of Weights and Measures	\$ 1,865.77
San Bernardino County Department of Weights and Measures	\$ 7,560.00
County of San Diego Department of Agriculture, Weights and Measures	\$ 8,842.66
San Joaquin County Division of Weights and Measures	\$ 6,004.08
San Luis Obispo County Department of Agriculture, Weights and Measures	\$ 2,130.00
San Mateo County Department of Agriculture Weights and Measures	\$ 1,446.32

1	Santa Clara County Division of Weights and Measures	\$ 1,510.78
2	County of Santa Cruz Agricultural Commissioner / Sealer	\$ 3,756.12
3	County of Solano Department of Agriculture Division of Weights and Measures	\$ 926.00
4	Agricultural Commissioner County of Sonoma Weights and Measures Division	\$11,124.00
5	Stanislaus County Agricultural Commissioner and Sealer of Weights and Measures	\$ 853.96
6	Tulare County Agricultural Commissioner / Sealer Weights and Measures	\$ 736.00
7	Tuolumne County Weights and Measures	\$ 171.92
8	County of Ventura RMA / Weights and Measures	\$ 2,688.00
9	County of Yolo Department of Agriculture / Weights and Measures	\$ 576.00
10	Yuba County Agricultural Commissioner Weights and Measures	\$ 4,152.00
11	CACASA Quantity Control Trust Fund	\$ 1,512.07
12	California Department of Food and Agriculture Division of Measurement Standards	\$39,189.77
13	TOTAL	\$127,244.32

7. **Restitution.** The parties having stipulated, and the Court hereby finds, that it would be impractical, infeasible, too costly and would far exceed any benefit to attempt to identify individual consumers that have suffered an actual loss by selling recyclable materials to the Defendants. Thus, Defendant shall pay restitution under the doctrine of cy pres pursuant to Business and Professions Code sections 17203 and 17535 in the sum of Thirty Five Thousand Dollars (\$35,000.00) in a certified check made payable to the California Department of Food and Agriculture Division of Measurement Standards. The Division shall use these funds to conduct a quantity assurance survey verifying that various packaged products offered for sale in California in fact contain the represented quantity of the product sold. Said survey shall be conducted statewide and be completed on or before July 1, 2013. The California Department of Agriculture, Division of Measurement Standards shall report their findings in writing to the Plaintiff within 30 days of the completion of the survey. At the conclusion of the survey, a copy of the final report shall be retained with this judgment as proof of compliance with this paragraph.

8. **Civil Penalties.** Tomra is hereby ordered, pursuant to Business and Professions Code sections 12015.5, 17207, 17536, 17503 and 17535, to pay at the time of the filing of this Stipulated Final Judgment, a civil penalty of Five Hundred Thousand Dollars (\$500,000.00)

1 and Professions Code §17200, based upon violations of Business and Professions Code
2 §§12501.1, 12510, 12512, and 17500, as more fully alleged in the Complaint on file in this
3 action.

4 **RETENTION OF JURISDICTION**

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

10 16. All forms of notice of service required to be made upon any Defendant for the
11 purpose of enforcement of the terms of this Judgment shall be deemed to have been made when
12 such service has been made by United States mail as follows: James Mattesich, Greenberg
13 Traurig, 1201 K Street, Suite 1100, Sacramento, CA 95814-3938.

14 17. This Judgment shall take effect immediately upon entry thereof.

15
16
17 DATED: _____

7/7/11

RAYMOND A. GUADAGNI

JUDGE OF THE SUPERIOR COURT