



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

August 15, 2012

DMS NOTICE
QC - 12 - 09
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Bumble Bee Foods, LLC; Tri Union SeaFoods, LLC d/b/a Chicken of the Sea International; and, Starkist Company Settlement

Enclosed is a Final Judgment Pursuant to Stipulation against Bumble Bee Foods, LLC; Tri Union Seafoods, LLC d/b/a Chicken of the Sea International; and Starkist Company that was issued by the District Attorney's Office of Riverside County in conjunction with San Diego and Marin Counties' District Attorneys on August 2, 2012. The companies were accused of selling canned tuna that failed to meet its standards of identity i.e., was short weight, violating California Business and Professions Code sections 17200, Unfair Competition, and 17500, False and Misleading Advertising.

The California Department of Food and Agriculture, Division of Measurement Standards (DMS) led the investigation and was assisted by several counties. Bumble Bee Foods, LLC; Tri Union Seafoods, LLC d/b/a Chicken of the Sea International; and Starkist Co. were assessed \$2,548,500 in civil penalties, \$451,500 for investigative costs, and \$300,000 in cy pres restitution for a total of \$3,300,000. The cy pres will be in the form of canned tuna that will be distributed to California food banks.

Riverside 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: Edmund Williams, County/State Liaison, CDFA



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14 Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
AUG 02 2012
S. Hopkins-Bright

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF RIVERSIDE

17 THE PEOPLE OF THE STATE OF CALIFORNIA,

Case#: RIC 1211729

18 Plaintiff,

19 v.

FINAL JUDGMENT PURSUANT TO
STIPULATION

20 BUMBLE BEE FOODS, LLC; TRI-UNION
21 SEAFOODS, LLC d/b/a CHICKEN OF THE SEA
INTERNATIONAL; and STARKIST CO.;

22 Defendants.
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25 THE PEOPLE OF THE STATE OF CALIFORNIA have filed its Complaint in this matter,
26 appearing through its attorneys PAUL ZELLERBACH, District Attorney for the County of
27 Riverside, by Deputy District Attorney Elise J. Farrell; EDWARD S. BERBERIAN, JR., District
28 Attorney, County of Marin, by Deputy District Attorney Andres H. Perez; and BONNIE

1 DUMANIS, District Attorney, County of San Diego, by Deputy District Attorney Gina Darvas.
2 Defendants, BUMBLE BEE FOODS, LLC, appearing through its attorneys Goodwin Proctor, LLP
3 by Forrest A. Hainline III and Zackler & Associates, by Allan I. Zackler; TRI-UNION
4 SEAFOODS, LLC d/b/a CHICKEN OF THE SEA INTERNATIONAL, appearing through its
5 attorneys Patton Wolan Carlise LLP by Roger W. Patton; and STARKIST CO., appearing through
6 its attorneys Procopio, Cory, Hargreaves & Savitch, LLP by Edward C. Walton; in lieu of filing
7 responsive pleadings to the Complaint, Defendants, and each of them, have stipulated with Plaintiff
8 to the entry of this Final Judgment Pursuant to Stipulation ("Judgment") without the court taking
9 evidence, and without this Judgment constituting an admission by any Defendant regarding any
10 issue of law or fact. All parties agree that they jointly participated in the drafting of the Stipulation
11 for Entry of Final Judgment upon which this Judgment is based, and that Civil Code section 1654
12 shall have no application to any interpretation of said Stipulation. The parties waive the right to
13 appeal this Judgment both as to form and content.

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

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

17 **JURISDICTION**

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

19 **APPLICABILITY**

20 2. This Judgment is applicable to each Defendant and its respective officers,
21 directors, representatives, successors, and assignees, and all persons, partnerships, corporations,
22 and other entities acting under, by through, on behalf of, or in concert with Defendants, with
23 actual or constructive knowledge of this Judgment.

24 **INJUNCTION**

25 3. Pursuant to Business and Professions Code sections 17203 and 17535, Defendants,
26 and each of them, are enjoined and restrained from distributing in or from California any
27 canned tuna product regulated by the Standard of Identity set forth in the Code of Federal
28 Regulations, Title 21, Section 161.190 (hereafter "SOI") that is "seasoned or flavored" with

1 vegetable broth, within the meaning of that Section (hereafter "Regulated Products"), and that
2 does not meet the fill of container requirements set forth in subsection (c) of that Section
3 (hereafter "Fill Requirements") until such time as the Fill Requirements are abolished or the
4 Federal Food and Drug Administration grants a Defendant an exemption or variance from the
5 Fill Requirements for Regulated Products by means of a Temporary Marketing Permit or other
6 regulatory action, and then only to the Defendant granted the exemption or variance

7 4. Any Party shall have the right to seek modification of paragraph 3 of this
8 Judgment in the event of enactment of a material amendment to the Fill Requirements. Prior to
9 seeking such modification, the seeking Party shall provide written notice to the remaining
10 parties stating that said Party intend(s) to seek modification. The Parties agree to meet and
11 confer about modification within thirty (30) days following notice. If the parties agree on
12 modification, the parties will enter a stipulated modified judgment, with approval of the Court.
13 If the parties are unable to agree on modification, the Party seeking modification may file a
14 motion with the Court seeking a modification of the Judgment

15 5. The provisions of this Judgment shall not apply to any Regulated Products that
16 have already been manufactured prior to the entry of this Judgment.

17 QUALITY CONTROL

18 6. Each Defendant shall test every lot of Regulated Products it manufactures and
19 offers for sale to consumers in California until expiration of the injunction provision of this
20 Judgment to ensure that the Defendant is meeting the Fill Requirements for such Regulated
21 Products. Each Defendant shall record the results of each test and shall make those results
22 available to the District Attorney's Offices of Riverside, Marin, or San Diego, and to the
23 Department of Measurement Standards, within 15 days of a written request to that Defendant.

24 COMPLIANCE

25 7. Each Defendant shall specifically advise the following persons of the injunctive
26 provisions of this Judgment: (a) current officers and directors; (b) officers or directors who are
27 appointed or elected within one year of the date of entry of this Judgment, and (c) any and all
28 persons responsible for packaging the Defendants' Regulated Products at any time during the

1 two years following the date of entry of this Judgment.

2 8. Each Defendant shall use good faith efforts to make available and fully and clearly
3 explain the injunctive language of this Judgment, including the terms and conditions thereof, to
4 each of its tuna canning contractors, its designers of tuna cans and/or any person or entity who is
5 responsible for the canning of Regulated Products offered by the Defendants and each of them
6 to California consumers.

7 **MONETARY PROVISIONS**

8 9. Pursuant to Business and Professions Code sections 12015.5, 17206, and 17536,
9 Defendants shall pay a total of \$3,300,000 (Three Million Three Hundred Thousand Dollars) in
10 settlement of this matter, divided up as set forth below. One payment of \$3,000,000 (Three
11 Million) shall be made by cashier or business check to "County of Riverside District Attorney's
12 Office" to be paid upon entry of the Judgment, and sent to Elise J. Farrell, Riverside County
13 District Attorney's Office, Special Prosecutions Section, 3960 Orange Street, Riverside, CA
14 92501. Riverside County District Attorney's Office will disburse the monies as follows:

15 A. A check in the amount of \$ 86,000 (Eighty Six Thousand Dollars) shall be made
16 payable to Cashier, State of California Department of Food and Agriculture
17 Division of Measurement Standards for costs of investigation. Of that amount,
18 \$62,000 (Sixty Two Thousand Dollars) is to be used specifically for the Division
19 of Measurement Standards quantity and price verification program.

20 B. Costs of investigation to the following entities paid by separate and individual
21 checks to the entities in the amounts described, as follows:

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|---|-----------|
| 22 a. Los Angeles County, Division of Weights and Measures | \$715.00 |
| 23 b. Orange County Agricultural Commissioner | \$2772.00 |
| 24 c. Riverside County, Division of Weights and Measures | \$688.00 |
| 25 d. San Bernardino County, Division of Weights and Measures | \$538.00 |
| 26 e. San Diego County, Division of Weights and Measures | \$787.00 |

27 C. A check in the amount of \$969,500 (Nine Hundred Sixty Nine Thousand Five
28 Hundred Dollars) shall be made payable to the Marin County District Attorney's

1 Office: \$ 849,500 shall be allocated as civil penalties pursuant to California
2 Business and Professions Code section 17206 and 17536; and \$ 120,000 shall be
3 allocated as costs of investigation.

4 D. The amount of \$969,500 (Nine Hundred Sixty Nine Thousand Five Hundred
5 Dollars) shall be retained by the Riverside County District Attorney's Office: \$
6 849,500 shall be allocated as civil penalties pursuant to California Business and
7 Professions Code section 17206 and 17536; and \$ 120,000 shall be allocated as the
8 costs of its investigation.

9 E. A check in the amount of \$969,500 (Nine Hundred Sixty Nine Thousand Five
10 Hundred Dollars) shall be made payable to the San Diego County District
11 Attorney's Office: \$849,500 shall be allocated as civil penalties pursuant to
12 California Business and Professions Code section 17206 and 17536; and \$
13 120,000 shall be allocated as the costs of its investigation.

14 10. Recognizing the infeasibility of identifying consumers who suffered actual loss,
15 the impracticality of providing direct restitution to said consumers, and the disproportionate
16 cost of making restitution to individual consumers, which would far exceed the benefit
17 consumers would gain, the parties agree that Defendants shall pay restitution, pursuant to
18 Business and Professions Code sections 17203 and 17535, under the doctrine of *cy pres* in the
19 sum of \$300,000 (Three Hundred Thousand Dollars) of canned tuna at retail price within 120
20 days of entry of this Judgment. Said restitution shall be in the form of canned tuna distributed to
21 food banks throughout the State of California who are members of the California Association of
22 Food Banks and which have status as charitable organizations pursuant to IRS Code section
23 501(c)(3). Within 180 days of entry of this Judgment, Defendants shall deliver to the District
24 Attorney's Office of Riverside proof of distribution of the canned tuna including the names of
25 the recipient food banks, the amount of tuna distributed to each food bank, and the retail value
26 of the tuna delivered to each food bank. Defendants shall bear all costs associated with this

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1 restitution program.

2 **FAIR, JUST AND EQUITABLE SETTLEMENT**

3 11. The court having reviewed the Complaint, Stipulation and this Judgment, has
4 taken into consideration the sales of products throughout the state for the purpose of assessing
5 penalties and finds the penalties, injunctive provisions, and costs are fair, reasonable and
6 appropriate. The court further finds the *cy pres* restitution to be paid by Defendants is for the
7 benefit of consumers statewide, and is fair, reasonable and appropriate. The court further finds
8 that this Judgment is a fair, full, equitable and a final resolution and disposition of all those
9 matters stated in the Complaint on file herein.

10 **NO WAIVER**

11 12. Defendants' Stipulation to this Judgment is not, and will not be construed as, a
12 waiver of any defense, whether factual, legal, equitable or constitutional, that they or any of
13 them had, has or will have to the enforceability of the press Fill Requirements of the SOI. In
14 any action to enforce this Judgment, including but not limited to any contempt proceedings, any
15 party against whom such enforcement is sought may raise any and all available and potential
16 defenses against the enforceability of the Fill Requirements of the SOI, notwithstanding the
17 existence of the Stipulation for Entry of Final Judgment and this Judgment. This Judgment is
18 not intended to and does not adjudicate or decide any issues of law or fact for purposes of the
19 doctrines of collateral estoppel and res judicata.

20 **NO ADMISSION OF LIABILITY**

21 13. This Judgment is not to be construed as an admission of liability by any party.
22 This Judgment was entered into as a result of a stipulation of the parties, without admission of
23 fact or law, and without any admission by any of the Defendants, or any related party, of
24 liability, wrongdoing, illegality or any fact alleged in the Complaint.

25 **RETENTION OF JURISDICTION**

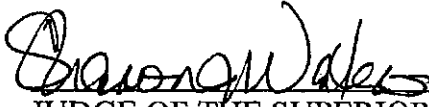
26 14. Jurisdiction is retained for the purpose of enabling any party to this Judgment to
27 apply to the Court at any time for such orders and directions as may be necessary and
28 appropriate for the construction of or the carrying out of this Judgment, for the modification or

1 termination of any of the injunctive provisions of the Judgment, and for the enforcement of
2 compliance herewith and for punishment of violations hereof.

3 15. Except as otherwise provided herein, each party shall bear its own costs of suit,
4 including attorneys' fees.

5 16. This is a Final Judgment that fully and finally disposes of all claims asserted, or
6 which could have been asserted, in the Complaint, and shall take effect immediately upon entry
7 hereof.

8 DATED: Aug 2, 2012

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12 JUDGE OF THE SUPERIOR COURT

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