



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

May 2, 2012

DMS NOTICE
QC - 12 - 5
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Kroger Company – Final Judgment Pursuant to Stipulation, April 27, 2012

Enclosed is a Final Judgment Pursuant to Stipulation issued by the District Attorney's Office of Riverside filed against Kroger Company and Ralphs Grocery Company on April 27, 2012 for selling and distributing short measure frozen dairy dessert product and for displaying inaccurate or misleading prices per unit on shelf tags.

Kroger Company and Ralph's Grocery Company were assessed civil penalties, investigative cost recovery, and *cy pres* of \$290,000. Civil penalties amounted to \$190,386.33, *cy pres* restitution amounted to \$50,000, and \$49,613.77 was for agency costs. *Cy Pres* of \$50,000 will be given to the Second Harvest Food Bank.

Riverside County should be sure to report these penalties in the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

We commend the Riverside County District Attorney's Office 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/Weighmaster Programs, Enforcement Branch at (916) 229-3047, or kcontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Edmund Williams, Director, CDFA County/State Liaison



rec'd 4/16/12

1 PAUL ZELLERBACH
 District Attorney
 2 County of Riverside
 ELISE J. FARRELL, Bar No. 100929
 3 Deputy District Attorney
 3960 Orange Street
 4 Riverside, California 92501
 Telephone: (951) 955-5400
 5
 6 *Attorneys for Plaintiff*
The People of the State of California

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

APR 27 2012



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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF RIVERSIDE

10 THE PEOPLE OF THE STATE OF
 CALIFORNIA,

Case No. RIC 1105934

11 Plaintiff,

FINAL JUDGMENT PURSUANT TO
 STIPULATION

12 v.

13 THE KROGER CO., an Ohio corporation; and
 14 RALPHS GROCERY COMPANY, an Ohio
 corporation,

15 Defendants.
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 18 Plaintiff, the People of the State of California ("People" or "Plaintiff"), appearing through
 19 its attorneys, Paul Zellerbach, District Attorney of the County of Riverside, by Elise J. Farrell,
 20 Deputy District Attorney, and Defendants, The Kroger Co., an Ohio corporation ("Kroger"), and
 21 Ralphs Grocery Company, an Ohio corporation ("Ralphs"), appearing through its attorneys
 22 Michael S. Simon and Morrison & Foerster LLP by Michael Jacob Steel, have agreed that they
 23 desire to resolve this action and all issues raised by the Complaint without litigation.

24 Accordingly, the People, Kroger and Ralphs (the "Parties") have further stipulated that
 25 this Final Judgment Pursuant To Stipulation (hereinafter referred to as "Final Judgment") may be
 26 entered pursuant to their Stipulation For Entry Of Final Judgment ("Stipulation") filed with the
 27 court, without taking any evidence, without any admission or liability or fault by either Kroger or
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1 Ralphs, without the trial or adjudication of any issue of law or fact, the parties have waived their
2 right of appeal and without the entry of this Judgment limiting any right, claim, remedy or
3 defense by Kroger or Ralphs in any action or proceeding involving a non-party to this action.

4 Now, therefore, based upon the Stipulation, which is acknowledged and accepted by the Court,
5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

6 **JURISDICTION**

7 1. This Court finds that it has jurisdiction of the subject matter and the Parties.

8 **APPLICABILITY**

9 2. The provisions of this Final Judgment are applicable to Kroger and Ralphs, their
10 successors and assigns and all persons, partnerships and other entities acting by, through or on
11 behalf of, or in concert with, Kroger or Ralphs.

12 **INJUNCTION**

13 3. Pursuant to Business and Professions Code sections 17203 and 17535, and the
14 court's inherent equity powers, Kroger is permanently enjoined and restrained from the following
15 acts or practices:

16 A. Selling, offering for sale, or distributing any frozen dairy dessert product in
17 a lesser quantity than represented, in violation of Business and Professions Code section
18 12024.

19 B. Representing that the quantity of frozen dairy dessert product is greater
20 than the actual quantity of the product in violation of Business and Professions Code
21 section 17500.

22 4. Pursuant to Business and Professions Code sections 17203 and 17535, and the
23 court's inherent equity powers, Ralphs is permanently enjoined and restrained from the following
24 acts or practices:

25 A. Displaying an inaccurate or misleading price per unit on a shelf tag in
26 violation of Business and Professions Code section 17500.

1 and measures officials upon request. The request must be made in writing to the persons
2 designated for receiving notices in paragraph 13, and may be made by any means including
3 facsimile or certified mail.

4 8. Kroger shall perform routine volumetric sampling of each production lot of frozen
5 dairy desserts it manufactures for sale in California for a period of three years from the date of
6 entry of this Final Judgment to establish that the quantity of the product is accurate. Kroger shall
7 produce and maintain records documenting the sampling performed for a period of three years
8 from the date of the sampling. These documents shall be made available to employees of the
9 California Department of Food and Agriculture, Division of Measurement Standards, County
10 Weights and Measures employees, and to employees of the Riverside County District Attorney's
11 office, within ten calendar days of a written request for the documents. The request must be made
12 in writing to the persons designated for receiving notices in paragraph 13, and may be made by
13 any means including facsimile or certified mail.

14 **MONETARY RELIEF**

15 9. Defendants shall pay the cost of investigation incurred by state and local agencies
16 as follows:

17 A: Cashier, California Department of Food and Agriculture, Division of
18 Measurement Standards: \$21,835.00.

19 B: Los Angeles County Department of Agricultural Commissioner/Weights and
20 Measures: \$1,565.00.

21 C: Riverside County Department of Weights and Measures: \$16,213.77.

22 D. Riverside County District Attorney's Office: \$10,000.00.

23 10. Said sums shall be paid by check and payable as follows: The checks for the
24 California Department of Food and Agriculture, Division of Measurement Standards; Los
25 Angeles County Department of Agricultural Commissioner/Weights and Measures; Riverside
26 County Department of Weights and Measures; and the Riverside County District Attorney's
27 Office shall be paid upon entry of this Final Judgment. Each agency shall have a separate check
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1 made payable to them and sent to the Riverside County District Attorney's Office, attn: Elise J.
2 Farrell, 3960 Orange Street, Riverside, CA 92501.

3 11. Pursuant to Business and Professions Code sections 17536 and 17206, Defendants
4 shall pay a civil penalty of \$102,000 related to the claims regarding frozen dairy desserts, and
5 \$88,386.33 related to the claims regarding inaccurate unit pricing. The civil penalty payment
6 shall be made by check(s) payable to the Riverside County District Attorney's Office, and sent to
7 Riverside County District Attorney's Office, attn: Elise J. Farrell, 3960 Orange Street, Riverside,
8 CA 92501.

9 12. Recognizing the infeasibility of identifying injured consumers who suffered actual
10 loss, the impracticality of providing direct restitution to said consumers, and the disproportionate
11 cost of making restitution to individual consumers, which would far exceed the benefit consumers
12 would gain, the Parties agree that Defendants shall pay, pursuant to Business and Professions
13 Code sections 17203 and 17535, *cypres* restitution in the sum of \$30,000 related to the claims
14 regarding frozen dairy desserts, and \$20,000 related to the claims regarding inaccurate unit
15 pricing. The *cypres* payment shall be made by check(s) payable to Second Harvest Food Bank,
16 2950 Jefferson Street, #B, Riverside, CA 92504-8320, to be used solely to provide food and
17 personal care items to social service agencies, churches, shelters, soup kitchens, senior centers,
18 and similar charitable organizations.

19 The payments required under this paragraph shall be made upon entry of this Judgment by
20 check payable to the "Second Harvest Food Bank" and sent to the Riverside County District
21 Attorney's Office, attn: Elise J. Farrell, 3960 Orange Street, Riverside, CA, 92501.

22 **NOTICE**

23 13. When any party is entitled to receive any notice or report under this Judgment, the
24 notice or report shall be sent by overnight courier service to the person and address set forth
25 below, with a courtesy copy sent via e-mail, unless this Judgment specifically provides for service
26 by facsimile or mail, in which case those methods shall be used in addition to service by
27 overnight courier service. Any party may modify the person and address to whom notice is sent
28 by sending each other party notice by certified mail, return receipt requested. Said change shall

1 take effect for any notice mailed on the fifth day after the date the return receipt is signed by the
2 party receiving the change. Notices shall be sent to the following:

3 **FOR RIVERSIDE COUNTY**
4 **DISTRICT ATTORNEY**

5 Elise Jacobs Farrell Esq.
6 Lauren Dossey Esq.
7 Riverside County District Attorneys Office
8 3960 Orange Street
9 Riverside CA 92501
10 Phone: (951) 955-5400
11 E-mail: ejfarrell@rivcoda.org
12 laurendossey@rivcoda.org

13 **FOR THE KROGER CO.**

14 Bruce Gack, Esq.
15 Vice President and
16 Assistant General Counsel
17 The Kroger Co.
18 1014 Vine Street
19 Cincinnati, OH 45202
20 E-mail: bruce.gack@kroger.com
21 Phone: (513) 762-4000

FOR RALPHS GROCERY COMPANY

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Vice President, Legal Services
Ralphs Grocery Company
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DUTIES LIMITED TO CALIFORNIA

14. Except as set forth in paragraph 8 hereof, this Judgment shall have no effect on
Kroger's or Ralphs' operations or activities outside the State of California.

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EFFECT OF JUDGMENT

15. The Court having reviewed the Complaint, Stipulation, and this Judgment has taken into consideration the sales of product throughout the state for the purpose of assessing penalties and finds the penalties, injunctive provisions, and costs are fair, reasonable and appropriate. The court further finds the *cy pres* restitution to be paid by Defendants is for the benefit of consumers statewide and is fair, reasonable and appropriate and that this Final Judgment is a fair, full, equitable and final resolution and disposition of all those matters pleaded in the Complaint on file herein against Kroger and Ralphs.

RETENTION OF JURISDICTION

16. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders and directions as may be deemed necessary or appropriate for the construction of or the carrying out of this Final Judgment, the enforcement of the compliance with the injunctive provisions hereof, and for the punishment of violations of the injunctive provisions hereof. At any time after this Final Judgment has been in effect for four (4) years, and Defendants have paid any and all amounts due under the Final Judgment, either Defendant may file a motion, on statutory notice, requesting that the Court vacate the Final Judgment, other than the provisions of paragraphs 9 through 13, based on that Defendant's demonstrated history of compliance with the provisions of paragraphs 3 through 8 of this Final Judgment. On the five year anniversary of entry of the Final Judgment, Defendants' obligations pursuant to paragraphs 3 through 8 shall automatically terminate.

IT IS SO ORDERED.

Dated: 4/24/12



JUDGE OF THE SUPERIOR COURT