

June 30, 2014

DMS NOTICE
QC - 14 - 02R
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Whole Foods Market California, Inc., a California Corporation, and Mrs. Gooch’s Natural Food Markets, Inc., a California Corporation

Enclosed is a copy of the Final Judgment and Permanent Injunction Pursuant to Stipulation issued against Whole Foods Market California, Inc., a California Corporation, and Mrs. Gooch’s Natural Food Markets, Inc., a California Corporation. The case was filed on June 18, 2014, by the City Attorney’s office of Santa Monica, in conjunction with the offices of the Los Angeles City Attorney and San Diego City Attorney for the following violations: selling by gross weight; taking improper tares and selling in less quantity than represented; overcharging consumers; selling or advertising meat by the each; and, failure to have a statement of net quantity on a packaged good or mislabeling packaged goods, all which are violations of California Business and Professions Code Sections 12023, 12024, 12024.2, 12024.5, 12607, and 12611 respectively.

The California Department of Food and Agriculture, Division of Measurement Standards worked with weights and measures investigators from over 10 counties on this case. The total settlement was for \$798,394.11. Civil penalties amounted to \$630,000, agency costs were \$68,394.11, and \$100,000 of cy pres restitution was placed in the CACASA Quantity Control Trust Fund.

Los Angeles 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 the City 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 Katherine de Contreras, Supervising Special Investigator, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,



Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



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SUPERIOR COURT
WEST DISTRICT
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Superior Court Of California
County Of Los Angeles

JUN 18 2014
Sherri R. Carter, Executive Officer/Clerk
By: Farannaz Hinojosa, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

WHOLE FOODS MARKET CALIFORNIA, INC, A CALIFORNIA CORPORATION,
AND MRS. GOOCH'S NATURAL FOOD MARKETS, INC., A CALIFORNIA CORPORATION,

Defendants.

Case No.: SC122679

FINAL JUDGMENT
AND PERMANENT INJUNCTION
PURSUANT TO STIPULATION

The parties herein are Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA (also referred to herein as "Plaintiff" or "the People"), appearing through its attorneys MICHAEL N. FEUER, City Attorney for the City of Los Angeles, by Travis Austin, Deputy City Attorney, JAN GOLDSMITH, San Diego City Attorney, represented by Kathryn L. Turner, Deputy City Attorney, MARSHA JONES MOUTRIE, Santa Monica City Attorney, represented by Adam Radinsky, Deputy City Attorney (the "People"), and Defendants Whole Foods Market California, Inc., a California Corporation, and Mrs. Gooch's Natural Foods Markets, Inc., a California Corporation (hereinafter collectively "Defendants"). Defendants are represented by Mark B.

1 Chassman, Esq., John H. Hempfling, Esq., and Jennifer Hartman King, Esq.

2 Plaintiff and Defendants having stipulated to the entry of this Final Judgment And
3 Permanent Injunction Pursuant to Stipulation ("Final Judgment") prior to the taking of any proof
4 and without trial or adjudication of any issue of fact or law, and without this Final Judgment or
5 any statements herein constituting evidence or an admission of liability or wrongdoing regarding
6 any issue, of fact, law or otherwise; and

7 The Court having considered the pleadings;

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

9 **JURISDICTION**

10 1. This action is brought under California law, and this Court has jurisdiction of the
11 subject matter and the parties.

12 **APPLICABILITY**

13 2. The provisions of the Final Judgment are applicable only to Defendants, to the
14 extent that the acts of their officers, directors, employees, agents, representatives, successors,
15 assignees, and all persons, partnerships, corporations, and other entities, when acting within the
16 course and scope of their agency and employment, under, by, through, on behalf of, or in concert
17 with, Defendants, with actual or constructive notice of this Final Judgment, in connection with the
18 operation of Defendants' California stores (collectively, "Enjoined Persons"), bind the
19 Defendants. All obligations imposed upon Defendants by the terms of this Final Judgment are
20 ordered pursuant to Business and Professions Code sections 17203 and 17535. Compliance
21 actions for violation of this injunction, if any, will be brought exclusively against the Defendants
22 for any acts by Enjoined Persons.

23 **DEFINITIONS**

- 24 3. For the purposes of this Final Judgment, the following definitions shall apply:
- 25 a. "Advertised Price" means the price that is posted or displayed on the
26 commodity itself or on a shelf tag that corresponds to that commodity or
27 the price for a commodity published in a newspaper, magazine, or direct
28 mail publication. Nothing herein will be construed to mean that a

1 consumer will be eligible for the Advertised Price if he or she fails to
2 qualify under the applicable terms disclosed in conjunction with the
3 Advertised Price, so long as said terms are clearly and conspicuously
4 disclosed.

- 5 b. **“Container”** means any receptacle or carton, whether lidded or unlidded,
6 into which a commodity is packed or placed, or any wrappings with or into
7 which any commodity is wrapped or put for sale.
- 8 c. **“SKU”, “PLU” and “Velocity Codes”** are codes which contain the tare
9 deduction for a container or a particular commodity.
- 10 d. **“POS price”** means the Point of Sale price, which is the price of an item
11 when it is scanned;
- 12 e. **“Price Scanning Systems”** means an automated system by which a
13 marking or tag affixed to an item offered for sale to the public is
14 electronically scanned at the **Point of Sale (“POS”)** terminal to determine
15 the identity of the item and the price to be charged for the item.
- 16 f. **“Pricing Discrepancy”** means a variance between the Advertised Price
17 and the POS price, and any overcharge at the POS due to taking an
18 inadequate deduction for tare weight or from selling any commodity in less
19 quantity than it is represented to be.
- 20 g. **“Report of Pricing Discrepancy”** means a report of a Pricing Discrepancy
21 by any customer, any employee or agent of a government agency, or any
22 employee of Defendants.
- 23 h. **“Tare Weight”** means the weight of the container in which the commodity
24 is placed.
- 25 i. **“Weights and Measures Official”** means any representative of (i) the
26 State of California Division of Measurement Standards, (ii) any California
27 County Sealer, (iii) any Director of a California County Department of
28 Agriculture.

INJUNCTION

4. Pursuant to Business and Professions Code sections 17203 and 17535, Enjoined Persons, and each of them, are enjoined and restrained for a period of five years from the date of entry of this Final Judgment from engaging in any of the following acts or practices:

- a. Charging at the time of sale of a commodity, a value which is more than the price which Defendants advertised, posted, marked, displayed or quoted, in violation of Business & Professions Code section § 12024.2. Nothing herein will preclude Defendants from requiring that the consumer present the applicable advertisement or coupon at POS as a condition of obtaining the Advertised Price. However, any such presentment requirement must be clearly and conspicuously disclosed in the advertisement and/or coupon, as required by law;
- b. Selling any commodity in less quantity than it is represented to be, in violation of Business & Professions Code section 12024;
- c. Knowingly marking a short weight or taking a false tare on any container in violation of Business & Professions Code section 12021;
- d. Selling a commodity by gross weight in violation of Business & Professions Code section 12023;
- e. Willfully selling a pre-packaged commodity in less quantity than represented in violation of Business & Professions Code section 12024.3;
- f. Selling meat, fish, or fowl other than by actual net weight in violation of Business & Professions Code section 12024.5;
- g. Failing to have a statement of net quantity on a package in violation of Business & Professions Code section 12607;
- h. Selling a commodity with a non-conforming container or label in violation of Business & Professions Code section 12611; and
- i. Making or causing to be made any false or misleading statement to the public with respect to the price of items offered for sale in violation of

1 Business and Professions Code section 17500.

2 **COMPLIANCE PROGRAM**

3 5. Pursuant to Business and Professions Code sections 17203 and 17535, and subject
4 to the provisions of Business and Professions Code sections 17207 and 17535.5, Defendants
5 shall, to the extent that they have not already done so, initiate and enforce for a period of four (4)
6 years from the date of entry of this Final Judgment, in every existing store owned and operated by
7 Defendants in California, and in every new store to be opened by Defendants in California during
8 the four (4) year period, a program to promote pricing accuracy. This shall include the following:

- 9 a. **POLICIES AND PROCEDURES.** Defendants shall implement written
10 accuracy policies and procedures (“Policies and Procedures”) that
11 incorporate the provisions in the Final Judgment within one hundred and
12 twenty (120) days of the date of entry of this Final Judgment.
- 13 b. **SIGNATURE AND ACKNOWLEDGEMENT.** Defendants’ State
14 Coordinator (as designated pursuant to subsection (c) below) shall be
15 required to read the Policies and Procedures and sign an acknowledgement
16 that they have read them and understand them. Defendants shall confirm
17 their compliance with this provision by filing a sworn declaration to said
18 effect with the court, executed by the person charged with responsibility
19 for pricing programs, and serving copies on Adam Radinsky, Deputy City
20 Attorney, Santa Monica City Attorney’s Office, Consumer Protection Unit,
21 1685 Main Street, Room 310, Santa Monica, California 90401, by certified
22 mail no later than one hundred and forty-five (145) days from the entry of
23 the Final Judgment.
- 24 c. **APPOINTMENT OF PRICING PERSONNEL**
- 25 i. **CORPORATE PRICING PERSONNEL.** Defendants shall
26 appoint one central State Coordinator (“SC”) for each California
27 corporation who shall be responsible for overseeing the
28 Defendants’ compliance program in coordination with the

1 Defendants' outside regulatory counsel ("ORC"), Jennifer Hartman
2 King, King Williams & Gleason LLP,
3 520 Capitol Mall, Suite 750, Sacramento, CA 95814. The SC may
4 delegate duties to other Defendants' employees, appoint "back-up"
5 SCs, or retain third-party providers as the SC deems reasonable and
6 appropriate to assist with the SC's responsibilities.

7 ii. **POINT-OF CONTACT.** Defendants' ORC shall be the
8 designated corporate contact persons for inquiries from Weights
9 and Measures inspectors.

10 iii. **IN-STORE PRICING PERSONNEL.** Each Defendants' store in
11 California shall designate an employee or employees whose
12 responsibilities shall include pricing accuracy in that store. These
13 duties may be delegated to other Defendants' employees or third-
14 party providers as the Defendants deem reasonable and appropriate.

15 d. **RANDOM IN-STORE AUDITS.** Defendants' employees, or a third-
16 party provider retained by Defendants, (collectively "**Auditors**") shall
17 conduct random in-store price-checking audits in every store on a quarterly
18 basis.

19 i. The purpose of the audits will be to ensure that proper deductions
20 for tare weight are taken at the point of sale and that all products are
21 priced accurately.

22 ii. Auditors shall conduct each quarterly in-store audit on no less than
23 fifty (50) randomly selected products. The products in the audits
24 shall include items from the following departments within each
25 store: specialty, bakery, prepared foods, seafood, meat, produce,
26 grocery, whole body, and bulk.

27 iii. If any Pricing Discrepancy is uncovered, Defendants will take the
28 necessary steps promptly to correct the Pricing Discrepancy.

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- iv. At the conclusion of the audit, the Auditors shall inform the SC of any Pricing Discrepancy that had been found in the audit.
 - v. Upon being informed of any Pricing Discrepancy found in the audit, the SC shall confirm that the necessary steps to correct the error(s) have been taken and shall take any reasonable steps necessary to prevent such Pricing Discrepancies in the future.
 - vi. If the Auditors investigate and determine that the Pricing Discrepancy was caused by a pricing error which extends beyond a single store, the Auditors will promptly notify the SC of the Pricing Discrepancy.
 - vii. Auditors shall record the results of the audit, and the Defendants shall retain said results as provided in the "Retention of Records" provision herein. The recorded results of the audit shall include: (1) the date and approximate time of the audit, (2) the name and title of the person conducting the audit, (3) the number of items audited, (4) a list of pricing errors discovered, if any, during that audit and the corresponding items' description, correct price and scanned price, (5) a certification that the errors, if any, were corrected, along with the time of the correction, if any; and (6) a statement as to whether the SC was notified, along with the time of the notification.
- e. **IN-STORE REPORTS OF PRICING DISCREPANCIES.** Whenever a Defendants store leader receives a Report of Pricing Discrepancy, the store leader shall promptly investigate whether there is an error or request an Auditor to investigate the error. If the store leader investigates and determines that a Pricing Discrepancy exists, the store leader shall notify the SC. The SC or store leader shall take appropriate action to resolve the Pricing Discrepancy. Defendants shall use their best efforts to correct the Pricing Discrepancy within twenty-four (24) hours.

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f. **REPORTS OF PRICING DISCREPANCIES TO THE SC.** When the SC receives a Report of Pricing Discrepancy pursuant to paragraph 5.d.vii, the SC shall promptly investigate whether a system error at the corporate level occurred. If a system error at the corporate level is verified, the SC shall ensure appropriate action is taken to correct the system error as soon as reasonably practicable. The SC also shall endeavor in good faith to take prompt interim action, as necessary, pending the resolution of a Pricing Discrepancy or correction of a Price Scanning System error. Communications to the store level regarding corrective action undertaken shall be maintained as provided in the "Retention of Records" provision herein.

RETENTION OF RECORDS

6. The SC shall retain audit records for at least four (4) years. Such records may be retained electronically rather than in paper copies and shall be made available for inspection as soon as practical, but in any event not later than twenty-one (21) days from the date of the request of any Weights and Measures Official.

INADMISSIBILITY OF RECORDS

7. The records of any procedures performed in accordance with the terms of this Final Judgment, including records of the in-store audits and daily Price Discrepancy Reports, are not admissible in any subsequent proceeding against or relating to Defendants by Plaintiff, except in court proceedings to establish a failure to comply with the provisions of this Final Judgment.

1 **MEET AND CONFER**

2 8. Prior to taking any action in court, including, without limitation, to allege a
3 violation or breach of this injunction, the People agree to first notify Defendants in writing of the
4 alleged violation or breach, engage in reasonable and good faith efforts to informally address and
5 resolve the People's concerns, and allow Defendants fifteen (15) calendar days, to correct such
6 alleged violation or breach.

7 **MONETARY RELIEF**

8 9. Defendants shall present to Plaintiff, upon entry of this Final Judgment, as and for
9 investigative costs, the sum of sixty-eight thousand three hundred ninety-four dollars and eleven
10 cents (\$68,394.11), by checks payable as follows:

11 County of Los Angeles, Weights and Measures	\$ 5,982.00
12 County of Contra Costa, Weights and Measures	\$ 1,124.80
13 County of Fresno, Weights and Measures	\$ 249.98
14 County of Monterey, Weights and Measures	\$ 646.87
15 County of Napa, Weights and Measures	\$ 854.00
16 County of Placer, Weights and Measures	\$ 1,018.04
17 County of Sacramento, Weights and Measures	\$ 1,500.00
18 County of San Diego, Weights and Measures	\$ 1,904.82
19 County of Santa Clara, Weights and Measures	\$15,765.81
20 County of Ventura, Weights and Measures	\$3,588.84
21 State of California, Division of Measurement Standards	\$21,750.00
22 Consumer Protection Prosecution Trust	\$14,008.95

23 The checks shall be mailed to the Santa Monica City Attorney's Office, Consumer Protection
24 Unit, 1685 Main St., Room 310, Santa Monica, CA 90401, Attention: Adam Radinsky, Deputy
25 City Attorney.

26 10. As provided by and pursuant to Business and Professions Code sections 17206
27 and 17536, Defendants shall pay to Plaintiff, upon entry of this Final Judgment, as civil
28 penalties, the sum of six-hundred thirty thousand dollars (\$630,000.00). Pursuant to Business

1 and Professions Code section 17206 and Government Code section 26506 said civil penalty
2 shall be paid as follows:

3 \$210,000.00 to the Los Angeles City Attorney's Office;

4 \$210,000.00 to the San Diego City Attorney's Office; and

5 \$210,000.00 to the Santa Monica City Attorney's Office.

6 The civil penalties payment checks shall be mailed to the Santa Monica City Attorney's Office,
7 Consumer Protection Unit, 1685 Main St., Room 310, Santa Monica, CA 90401, Attention:
8 Adam Radinsky, Deputy City Attorney.

9 11. The parties stipulate, and the Court hereby finds, that it is impractical and
10 impossible to identify or to provide direct restitution to consumers who may have unknowingly
11 been charged an incorrect price for merchandise and that other forms of direct restitution are
12 too impractical, costly, and would far exceed any benefit to individual consumers. Thus,
13 Defendants, Defendants, shall pay restitution under the doctrine of *cy pres* pursuant to Business
14 and Professions Code sections 17203 and 17535, upon entry of this Final Judgment, the sum of
15 one-hundred thousand dollars (\$100,000.00), made payable to the CACASA Quality Control
16 Trust. The *cy pres* payment shall be mailed to the Santa Monica City Attorney's Office,
17 Consumer Protection Unit, 1685 Main St., Room 310, Santa Monica, CA 90401, Attention:
18 Adam Radinsky, Deputy City Attorney.

19 12. The parties shall bear their own attorney's fees and, except as provided in
20 paragraph 9 herein, the parties shall bear their own costs.

21 **RETENTION OF JURISDICTION AND FINALITY**

22 13. The Court retains jurisdiction for the purpose of enabling any party to this Final
23 Judgment to apply to the Court at any time for such further orders and directions as may be
24 necessary and appropriate for the construction or carrying out of this Final Judgment; for the
25 modification or termination of any of its injunctive provisions; and for the enforcement of,
26 compliance with, and punishment of violations of the Final Judgment. The parties waive the right
27 to appeal this Final Judgment as to form and content. Defendants' obligations pursuant to
28 paragraph 5 shall automatically terminate on the four-year anniversary of entry of this Final

1 Judgment.

2 14. This Final Judgment is a fair, full, equitable and final resolution and disposition of
3 all the matters pleaded in the Complaint in this action. The Final Judgment represents the
4 complete and final settlement of all claims that have been or could have been brought by Plaintiff
5 against Defendants relating to the subject matter of the Complaint filed contemporaneously with
6 this Final Judgment, including any acts in actual or alleged violation of Business and Professions
7 Code sections 12021, 12023, 12024, 12024.2, 12024.3, 12024.5, 12067, 12611, 17200 *et seq.* and
8 17500 *et seq.*, and shall bar Plaintiff from any further civil or criminal action against Defendants
9 for said acts which allegedly occurred prior to the date of entry of this Final Judgment.

10 15. The People stipulate and agree, and the Court hereby finds, that this Final
11 Judgment shall constitute a release of Defendants and its officers, directors, employees, agents,
12 representatives, parents, subsidiaries, related entities, successors and assigns from any future
13 claims or lawsuits by the People pertaining to or arising from any of the alleged unlawful acts and
14 practices described in the Complaint which acts occurred prior to the entry date of this Final
15 Judgment.

16 16. Nothing in the Complaint in this action, the accompanying Stipulation, or this
17 Final Judgment, nothing in the negotiations leading up to these filings and no action taken or
18 conduct undertaken to carry out the provisions, terms or conditions contained herein shall be
19 deemed, considered or construed as any type of admission or concession by Defendants or by any
20 entity, individual or organization covered by the Stipulation or this Final Judgment of any fault,
21 omission or wrongdoing.

22 17. This Final Judgment shall have no effect on Defendants' operations or activities
23 outside the State of California.

24 **NOTICE**

25 18. When any party is entitled to receive any notice or report under this Judgment, the
26 notice or report shall be sent by facsimile or mail to the person and address set forth below. Any
27 party may modify the person and address to whom notice is sent by sending each other party
28 notice by facsimile or mail. Notices shall be sent to the following:

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1 FOR THE LOS ANGELES CITY ATTORNEY

2 Travis Austin, Deputy City Attorney

3 Los Angeles City Attorney's Office

4 Consumer Protection Section

5 200 N Main Street, 5th Floor City Hall East

6 Los Angeles, CA 90012

7 Phone: (213) 978-7967

8 Fax: (213) 978-8111

9 Email: Travis.Austin@lacity.org

10

11 FOR THE SAN DIEGO CITY ATTORNEY

12 Kathryn L. Turner, Deputy City Attorney

13 San Diego City Attorney's Office

14 1200 Third Avenue, Suite 700

15 San Diego, CA 92101

16 Phone: (619) 533-5602

17 Fax: (619) 533-5504

18 Email: klturner@sandiego.gov

19

20 FOR THE SANTA MONICA CITY ATTORNEY

21 Adam Radinsky, Deputy City Attorney

22 Santa Monica City Attorney's Office

23 Consumer Protection Unit

24 1685 Main Street, Room 310

25 Santa Monica, CA 90401

26 Phone: (310) 458-8327

27 Fax: (310) 482-7213

28 Email: adam.radinsky@smgov.net

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FOR DEFENDANTS WHOLE FOODS MARKET CALIFORNIA, INC. AND MRS. GOOCH'S
NATURAL FOOD MARKETS, INC.

John H. Hempfling II, Esq.
Global Litigation Counsel
Whole Foods Market
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Fax: (512) 482-7213
Email: john.hempfling@wholefoods.com

With copies to:
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EFFECTIVENESS

19. This Final Judgment shall take effect immediately upon its filing and without the filing of a Notice of Entry of Final Judgment.

20. The Clerk is directed to immediately enter this Final Judgment.

DATED: 02/18/14

CRAIG D. KARLAN

JUDGE OF THE SUPERIOR COURT