



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

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](mailto:katherine.decontreras@cdfa.ca.gov).

Sincerely,

Kristin J. Macey  
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



1 JEFF W. REISIG, District Attorney  
2 LAWRENCE BARLLY, Deputy District Attorney, Bar. No. 114456  
3 Consumer Fraud and Environmental Protection Division  
4 Yolo County District Attorney's Office  
5 301 Second Street  
6 Woodland, CA 95695  
7 Phone: (530) 666-8180  
8 Fax: (530) 666-8185

**FILED**  
**YOLO SUPERIOR COURT**  
**APR 09 2015**  
By W. VAN DAM  
Deputy

9 ANNE MARIE SCHUBERT, District Attorney  
10 DOUGLAS WHALEY, Supervising Deputy District Attorney, Bar No. 144557  
11 Consumer & Environmental Protection Division  
12 Sacramento County District Attorney's Office  
13 906 G Street, Suite 700  
14 Sacramento, CA 95814  
15 Phone: (916) 874-6174  
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17 Attorneys for the People

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF YOLO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. CV15-461

Plaintiff,

vs.

FINAL JUDGMENT

THE HERSHEY COMPANY, a Delaware Company

Dept.

Defendant(s)

Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA, having filed their complaint herein and to the extent represented by and authorized to act through their attorneys, JEFF W. REISIG, District Attorney of Yolo County, by LAWRENCE BARLLY, Deputy District Attorney, and ANNE MARIE SCHUBERT, District Attorney for the County of Sacramento, by Supervising Deputy District Attorney DOUGLAS WHALEY (collectively the

1 “People”); and defendant, THE HERSHEY COMPANY, a Delaware Company headquartered in  
2 Pennsylvania (hereinafter “Hershey”) as represented by Robert L. Falk of Morrison & Foerster  
3 LLP, a licensed California attorney, have stipulated through a STIPULATION FOR FINAL  
4 JUDGMENT filed in this matter that this Final Judgment can be entered without the taking of  
5 proof or necessitating the assertion by Hershey of its potential affirmative defenses or counter-  
6 claims, and, without this stipulated Final Judgment constituting evidence or an admission of any  
7 fact by Hershey or issue of law by any party and with good cause appearing therefore;

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

9 1. This Court has jurisdiction over the subject matter hereof and the parties hereto.

10 2. Pursuant to Business and Professions Code sections 17203 and 17535, so as not to  
11 be in violation of California Business and Professions Code sections 12602 and 12606.2, Hershey  
12 shall be permanently enjoined and restrained from directly or indirectly packaging its food  
13 products as shown in Exhibit A of the Complaint (hereinafter referred to as the “Products), said  
14 exhibit being attached hereto and made a part of this Order.

15 3. Hershey shall be permitted to sell any of the Products described in Exhibit A of  
16 the Complaint in their existing packaging if such packaging has been produced in the normal  
17 course of doing business prior to the entry of this Final Judgment by the Court. As to packaging  
18 produced following entry of this Final Judgment, Hershey shall implement commercially  
19 reasonable changes to labeling and box/tray design for the Products shown in Exhibit A of the  
20 complaint so as to address the requirements of Section 2 above, such steps not requiring Hershey  
21 to compromise on the functionality of the packaging, including the necessity of maintaining the  
22 quality of the Products and protecting the Products from damage during shipment and shelving.  
23 Such steps shall be completely implemented by no later than December 31, 2015.

24 4. This injunction shall also include, with respect to Hershey’s manufacturing for any  
25 subsequent years, variations or substitutions of the Products that are materially the same as the  
26 Products shown in Exhibit A of the Complaint relative to their ingredients, number of pieces, sizes  
27 and shapes, and net weight (“Successor Products”).  
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1           5.     Hershey shall use good faith efforts to make available and fully and clearly  
2 explain the injunctive language of this Final Judgment, including the terms and conditions  
3 thereof, to each of its officers and employees who may be responsible for the packaging of the  
4 Products or Successor Products to the extent that they may hereinafter be offered for sale or  
5 distribution by Hershey in California in subsequent years.

6           6.     Defendant shall pay Two Hundred Fifty Eight Thousand Six Hundred Seventy Three  
7 Dollars (\$258,673) in settlement of this matter as set forth below and pursuant to Business and  
8 Professions Code sections 12015.5, 17206 and 17536.

9           (A)    Delivery of the full cash amount set forth in subsections (B) and (C) below shall  
10 be made prior to the presentation of this Final Judgment to the Court and is to be  
11 held pending Court approval of this settlement.

12           (B)    Payment shall be delivered to the Office of the Yolo County District Attorney,  
13 301 Second Street, Woodland, CA 95695, attention Larry Barlly.

14           (C)    Payment shall be in the form of 3 checks payable as follows:

15           (i)    One check for \$2,500 shall be made payable to the Sacramento County  
16 Department of Agriculture for the costs of their investigation,

17           (ii)   One check for \$90,586.80 shall be made payable to the Yolo County District  
18 Attorney's Office of which \$17,000 shall be allocated as the costs of investigation  
19 and the remainder shall be allocated as civil penalties.

20           (iii)   One check for \$90,586.80 shall be made payable to the Sacramento County  
21 District Attorney's Office of which \$17,000 shall be allocated as the costs of  
22 investigation and the remainder shall be allocated as civil penalties.

23           (D)    In addition to the preceding cash payments, within 60 days of Notice of Entry of  
24 this Stipulated Final Judgment, Hershey, having previously identified the not-  
25 for-profit organizations listed on Exhibit A as worthy recipients, shall arrange to  
26 donate on a pro rata basis:  
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- 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





**EXHIBIT A**

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

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