

RECEIVED

JAN 10 2019

Yolo County District Attorney

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

FILED  
YOLO SUPERIOR COURT

JAN 09 2019

BY A. TRUITT  
DEPUTY

Additional counsel listed on "Attachment A"

Attorneys for Plaintiff  
THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF YOLO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. CV19-47

FINAL JUDGMENT

Plaintiff,

vs.

RUSSELL STOVER CHOCOLATES, LLC, and  
GHIRARDELLI CHOCOLATE COMPANY.

Dept. 12

Defendants

Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA ("Plaintiff" or the "People"), having filed its complaint; Defendants RUSSELL STOVER CHOCOLATES, LLC and GHIRARDELLI CHOCOLATE COMPANY ("Defendants") having accepted service of the Complaint; and the parties appearing through their attorneys as follows: For Plaintiff, JEFF W. REISIG, District Attorney of Yolo County, by LARRY BARLLY, Deputy District Attorney; LISA A. SMITTCAMP, District Attorney for the County of Fresno, by TY MURPHY, Deputy District Attorney, TORI VERBER SALAZAR, District Attorney for San Joaquin County, by CELESTE KAISCH Deputy District Attorney, ANNE MARIE SCHUBERT, District Attorney

1 for the County of Sacramento, by Deputy District Attorney DOUGLAS WHALEY; JEFFERY S.  
2 ROSELL, District Attorney of Santa Cruz County by EDWARD T. BROWNE, Deputy District  
3 Attorney and STEPHEN S. CARLTON District Attorney of Shasta County by ANAND  
4 "LUCKY" JESRANI; and For Defendants, Thomas B. Mayhew of Farella, Braun, and Martel  
5 LLP;

6 Plaintiff and Defendants having stipulated through a STIPULATION FOR FINAL  
7 JUDGMENT filed in this matter that this Final Judgment can be entered without the taking of  
8 proof and without trial or adjudication of any issue of fact or law herein, and without Defendants  
9 admitting any violation of the law herein;

10 Defendants have agreed to modify or discontinue the packaging of products as set forth  
11 below to ensure compliance with the Slack Fill Statutes. Ghirardelli "tent bags" or "stand up  
12 bags" will be modified to add a transparent "window" of the minimum dimensions set forth in  
13 Exhibit B, which will allow customers to fully view the contents, and to fully view obvious  
14 secondary packaging.

15 The People are satisfied that the resolution as embodied in this Final Judgment is fair,  
16 reasonable, is in the best interest of the parties, and fulfills the People's enforcement objectives;  
17 and  
18

19 The Court having considered the pleadings;

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

- 21 1. This Court has jurisdiction over the subject matter hereof and the parties hereto.
- 22 2. This Final Judgment is applicable to Defendants and its officers, representatives,  
23 successors, assignees, and all persons, partnerships, corporations, and other entities acting under,  
24 by, through, on behalf of, or in concert with Defendants, with actual or constructive knowledge  
25 of this Final Judgment. This Final Judgment is also applicable to any and all subsidiaries of the  
26 Defendants and its respective officers, representatives, successors, assignees and all persons,  
27 partnerships, corporations, and other entities acting under, by, through, on behalf of, or in concert  
28

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

2           3. Pursuant to Business and Professions Code sections 17203 and 17535, so as not to  
3 be in violation of California Business and Professions Code sections 12602 and 12606.2, and the  
4 provisions of 21 C.F.R. 100.100 (“the Slack-Fill Statutes”), Defendants shall be permanently  
5 enjoined and restrained from directly or indirectly packaging the food products listed on Exhibit A  
6 (hereinafter referred to as the “PRODUCTS”) in any manner which violates the Slack-Fill Statutes.  
7 Defendants shall modify or discontinue the packaging of products as set forth in Exhibit B. The  
8 Final Judgment is fair, reasonable, is in the best interest of the parties, and fulfills the People’s  
9 enforcement objectives.

10           4. With respect to the Ghirardelli 100% Unsweetened Cocoa product, Ghirardelli  
11 shall take those steps necessary to ensure that manufacture of the product complies with NIST  
12 Handbook 133 (including as it may be amended in the future), which has been adopted by the State  
13 of California pursuant to Business and Professions Code section 12211 and California Code of  
14 Regulations Title 4 Division 9 Chapter 11, section 4600, to determine fill accuracy, including  
15 assuring that individual packages may not weigh below the MAV as listed in Handbook 133. In the  
16 event that Business and Professions Code section 12211 or California Code of Regulations Title 4  
17 Division 9 Chapter 11 section 4600 are modified or repealed, so that they no longer require sealers  
18 to comply with NIST Handbook 133, this provision shall no longer apply to Defendants.

19           5. For a period not to exceed 90 days from entry of this Final Judgment, Defendants  
20 shall be permitted to sell any of the Whitman and Russell Stover Products described in Exhibit A  
21 of the Complaint in their existing packaging if such packaging has been produced in the normal  
22 course of doing business prior to the entry of this Final Judgment by the Court (sell through  
23 period).

24           6. Defendants shall be permitted a sell through period of its Ghirardelli products,  
25 excluding those products designated as “tent bags” or “standup-bags” if such packaging has been  
26 produced in the normal course of doing business prior to the entry of this Final Judgment by the  
27 Court.

1           7.       Ghirardelli “tent bags” or “stand up bags” shall be modified to add a transparent  
2 “window” of the minimum dimensions set forth in Exhibit B. Ghirardelli will modify its  
3 packaging to make this change, and will cease production of bags without the window, as  
4 follows:

5           a.       Production of stand up bag SKUs representing at least 95% of stand up bag sales  
6 volume shall use the new packaging with the window by June 1, 2019; and

7           b.       Production of 100% of all stand up bag SKUs shall use the new packaging with  
8 the window by December 31, 2019.

9           Defendants shall be permitted a sell through period of the Ghirardelli tent bags or stand  
10 up bags in their existing packaging if such products have been produced in accordance with this  
11 schedule.

12          8.       This injunction shall also include, with respect to Defendants’ manufacturing for  
13 any subsequent years, variations or substitutions of the Products that are materially the same as the  
14 products shown in Exhibit A of the Complaint relative to their ingredients, number of pieces, sizes  
15 and shapes, packaging dimensions, and net weight (“Successor Products”).

16          9.       Defendants shall use good faith efforts to make available and fully and clearly  
17 explain the injunctive language of this Final Judgment, including the terms and conditions  
18 thereof, to each of its officers and employees who may be responsible for the packaging of the  
19 Products or Successor Products to the extent that they may hereinafter be offered for sale or  
20 distribution by Defendants in California in subsequent years.

21          10.       Defendants shall pay (or for administrative convenience, one Defendant may pay  
22 on behalf of all Defendants, and seek such reimbursement as the Defendants may agree amongst  
23 themselves) Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in settlement of this  
24 matter as set forth below and pursuant to Business and Professions Code sections 12015.5, 17206  
25 and 17536.

26               (A)     Delivery of the full amount set forth in subsections (B) and (C) below shall be  
27

1 made prior to the presentation of this Final Judgment to the Court and is to be  
2 held pending Court approval of this settlement. If the Court does not approve the  
3 settlement, the amount shall be promptly returned to the Defendant that made the  
4 payment.

5 (B) Payment shall be delivered to the Office of the Yolo County District Attorney,  
6 301 Second Street, Woodland, CA 95695, attention Larry Barilly.

7 (C) Payment shall be in the form of certified or cashier's checks payable as follows:

8 (i) \$3,000.00 total shall be made payable to the Sacramento County Department  
9 of Agriculture for the costs of their investigation,

10 (ii) \$1,500 total shall be made payable to the Santa Cruz County Department of  
11 Agriculture for the costs of their investigation,

12 (iii) \$1,500 total shall be made payable to the Monterey County Department of  
13 Agriculture for the costs of their investigation,

14 (iv) \$148,800.00 total shall be made payable to the Yolo County District  
15 Attorney's Office of which \$2,000 shall be allocated as the costs of investigation  
16 and the remainder shall be allocated as civil penalties.

17 (v) \$74,400.00 total shall be made payable to the Fresno County District  
18 Attorney's Office of which \$2,000 shall be allocated as the costs of investigation  
19 and the remainder shall be allocated as civil penalties.

20 (vi) \$148,800.00 total shall be made payable to the Sacramento County District  
21 Attorney's Office of which \$2,000 shall be allocated as the costs of investigation  
22 and the remainder shall be allocated as civil penalties.

23 (vii) \$74,400.00 total shall be made payable to the Santa Cruz County District  
24 Attorney's Office of which \$2,000 shall be allocated as the costs of investigation  
25 and the remainder shall be allocated as civil penalties.

26 (viii) \$146,800.00 shall be made payable to the Treasurer of San Joaquin County  
27  
28

1 as and for civil penalties; \$2,000 shall be made payable to the San Joaquin County  
2 District Attorney's Office and allocated as the costs of investigation.

3 (ix) \$148,800 shall be made payable to the Shasta County District Attorney's  
4 Office of which \$2,000 shall be allocated as the costs of investigation and the  
5 remainder shall be allocated as civil penalties.

6 11. The failure of the People to enforce any provision of this Final Judgment shall  
7 neither be deemed a waiver of such provision, nor shall it in any way affect the validity of this  
8 Final Judgment. The failure of the People to enforce any provision shall not preclude them  
9 from later enforcing the same or other provisions of this Final Judgment.

10 12. Except as otherwise expressly provided herein, each party shall bear its own  
11 attorney's fees and costs and retain its own rights, including rights to assert claims or defenses in  
12 any future matter or proceeding.

13 13 This Final Judgment is a final and binding resolution and settlement of all  
14 violations and causes of action arising from the facts alleged in the Complaint.

15 14. The language used for the obligations set forth in the Final Judgment are solely  
16 for the purposes of settlement and compromise and are in no way intended to be an alteration of  
17 California law. If an ambiguity arises regarding any provision of this Final Judgment that  
18 requires interpretation, there is no presumption that documents filed in this matter should be  
19 interpreted against any party based on the party that drafted them. The presumption set forth in  
20 Civil Code section 1654 also is not applicable.

21 15. Jurisdiction is retained for the purpose of enabling any party to the Stipulated  
22 Final Judgment to apply to the Court, with proper notice to the other party, for such further  
23 orders and directions as may be necessary and appropriate for the construction and carrying out  
24 of the Stipulated Final Judgment, for the modification or dissolution of any injunctive provisions  
25 hereof, for enforcement of compliance herewith, or for remedies of violations hereof.

26 16. The parties waive the right to appeal this Stipulated Final Judgment as to both  
27  
28

1 form and content.

2 17. This Final Judgment has been reviewed by the Court, and based upon the  
3 representations of the parties, the Court finds that it has been entered in good faith and is, in all  
4 respects, fair, just, and equitable to protect the interests of the parties and the public. This Final  
5 Judgment, once entered by the Court, shall therefore be deemed to have resolved all matters  
6 which were or could have been raised in the Complaint based on the People's investigation and  
7 subsequent communications with Defendants with respect to their allegations concerning their  
8 labeling and packaging practices.

9 18. The clerk is directed to enter this Stipulated Final Judgment forthwith.

10  
11 DATED: JAN 0 9 2019

12 STEPHEN L. MOCK  
13 JUDGE OF THE SUPERIOR COURT

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit A: Products**

Whitman's Sampler, 40 oz, 0-7640-07098-6

Russell Stover Holiday Season Box 52 pieces 7260 00091 0

Ghirardelli Masterpieces Box 61246, also referred to as 7-4759931246-5

Ghirardelli Caramel Everyday Square Box Gift 63042, also referred to as  
7-4759933042

Ghirardelli Assorted YRD Tray Box 63301, also referred to as 7-475993301

Ghirardelli Caramel Everyday SQ Pouch Gift 63040, also referred to as  
7-4759933040

Ghirardelli Assorted Everyday Square Pouch Gift 63041, also referred to as  
7-4759933041-4

Ghirardelli Square SF Medium Tote 60616, also referred to as "Large Purse Box"  
7-4759930616-7

Ghirardelli Assortment Squares/Square SF Small Tote 60615, also referred to as  
7-4759930615-0

Ghirardelli Cable Car Box 60827, also referred to as 7-4759930827-7

Any Ghirardelli Squares stand-up or "tent" bags not containing a transparent window.  
For illustration and not by way of limitation, an example of a stand-up bag is the now  
discontinued PLU 7-4759930212-1.

Ghirardelli 100% Unsweetened Cocoa, UPC 747599617034 \_\_\_\_\_



**Exhibit B: Discontinued/Modified Packaging**

Product	Modified Packaging
Whitman's Sampler, 40 oz, 0-7640-07098-6	A new package with the following dimensions: 14.75" Height x 23.0" Width x 1.45" Depth
Russell Stover Holiday Season Box 52 pieces 7260 00091 0	A package with the following dimensions: 9.15" Height x 23.15" Width x 1.50" Depth
Ghirardelli Masterpieces Box 61246, also referred to as 7-4759931246-5	The manufacture of this particular package has been discontinued
Ghirardelli Caramel Everyday Square Box Gift 63042, also referred to as 7-4759933042	The manufacture of this particular package has been discontinued
Ghirardelli Assorted YRD Tray Box 63301, also referred to as 7-475993301	The manufacture of this particular package has been discontinued
Ghirardelli Caramel Everyday SQ Pouch Gift 63040, also referred to as 7-4759933040	The manufacture of this particular package has been discontinued
Ghirardelli Assorted Everyday Square Pouch Gift 63041, also referred to as 7-4759933041-4	The manufacture of this particular package has been discontinued
Ghirardelli Square SF Medium Tote 60616, also referred to as "Large Purse Box"	The manufacture of this particular package has been discontinued

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7-4759930616-7	
Ghirardelli Assortment Squares/Square SF Small Tote 60615, also referred to as 7-4759930615-0	The manufacture of this particular package has been discontinued
Ghirardelli Cable Car Box 60827, also referred to as 7-4759930827-7	The manufacture of this particular package has been discontinued
Ghirardelli Premium Chocolate Assortment Squares 9.38 oz. also referred to as 7-4759930619-8	The manufacture of this particular package has been discontinued
Any stand-up or "tent" bags not containing a transparent window. For illustration and not by way of limitation, an example of a stand-up bag is the now discontinued PLU 7-4759930212-1.	Addition of a transparent window on one of the sides of the package, with the following minimum dimensions: Width: 20 millimeters (.787 inches) and Height: 35 millimeters (1.377 inches).
Ghirardelli 100% Unsweetened Cocoa, UPC 747599617034	Compliance with weighing procedures as set forth in the judgment

28669\6821890.1