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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
RALPHS GROCERY COMPANY, an Ohio corporation by operation of and as successor by merger with RALPHS GROCERY COMPANY, a Delaware corporation,  
  
Defendant.

CASE NO.  
  
FINAL JUDGMENT AND PERMANENT INJUNCTION

1 Plaintiff, the People of the State of California (“People” or “Plaintiff”), through its  
2 attorney, Attorney General Bill Lockyer, by Acting Senior Assistant Attorney General Albert  
3 Norman Sheldon and Deputy Attorney General Michele R. Van Gelderen, on the one hand, and  
4 Defendant Ralphs Grocery Company, an Ohio corporation by operation of and as successor by  
5 merger with Ralphs Grocery Company, a Delaware corporation (“Ralphs” or “Defendant”), by  
6 Kay Garbizo, its Vice President of Advertising, and through its counsel, Pillsbury Winthrop,  
7 LLP, by Richard S. Ruben, on the other hand, having stipulated that this Final Judgment and  
8 Permanent Injunction (hereafter “Judgment”) may be entered pursuant to their Stipulation for  
9 Entry of Final Judgment and Permanent Injunction (the “Stipulation”), filed with the Court, with  
10 each party waiving their right to an adjudicative trial and the taking of evidence on any issue of  
11 fact or law, and without this Judgment constituting any type of express or implied admission of  
12 liability or wrongdoing by Defendant, and without the entry of this Judgment limiting any right,  
13 claim, remedy or defense by Defendant in any action or proceeding involving a non-party to this  
14 action;

15 Now, therefore, based upon the Stipulation, which is acknowledged and accepted by the  
16 Court,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

18 JURISDICTION

19 1. For purposes of this Judgment only, the parties have stipulated that this Court has  
20 jurisdiction over the allegations and subject matter of the People’s Complaint filed in this action,  
21 and the parties thereto, that venue is proper in this County, and that this Court has jurisdiction to  
22 enter this Judgment.

23 DEFINITIONS

24 2. For the purposes of this Judgment, the following definitions apply:

25 A. “Travel Promotion” means an offer to consumers of an award of free or  
26 discounted transportation and/or lodging with a third party (“Travel”) in exchange for purchasing  
27 qualifying items and/or spending a qualifying amount of money at Defendant’s Ralphs  
28 Supermarkets, Cala Foods and/or Bell Markets stores in the State of California (“Stores”).

1 “Travel Promotion” does not include any vendor-sponsored promotions offered by Defendant at  
2 any of the Stores in which: (1) one or more of Defendant’s vendors offer and/or supply Travel to  
3 consumers; (2) the ability of a consumer to participate is not based upon making or accumulating  
4 a certain dollar amount of qualifying purchases at the Stores, even if a consumer can participate  
5 by purchasing such vendors’ product(s) as specified by the vendor(s); (3) the recipient(s) of the  
6 Travel are selected randomly from among promotion entrants; and (4) the promotion complies  
7 with all applicable sweepstakes and promotions laws.

8 B. “The Great Escape Promotion” means the Defendant’s promotion that was  
9 announced in or about the spring of 2003 for which consumers of the Stores were offered the  
10 opportunity to claim one “Certificate” (as defined in this Judgment) that could be redeemed for  
11 one free two-night hotel stay in specified cities at certain types of hotels (the “Award Travel”),  
12 subject to the terms and conditions of the promotion, each time they accumulated \$400 in  
13 qualifying purchases at the Stores between June 4, 2003, and July 15, 2003 (the “Promotion  
14 Period”).

15 C. “Certificate” means a Reservation Redemption Certificate earned and  
16 claimed by consumers in connection with The Great Escape Promotion, which could be  
17 redeemed for the Award Travel, subject to the terms and conditions of The Great Escape  
18 Promotion as described in advertising for The Great Escape Promotion, in materials related to  
19 The Great Escape Promotion available to consumers at the Stores during the Promotion Period,  
20 on the Certificate and/or in the Certificate packet.

21 D. “Eligible Certificate” means a Certificate (i) earned and claimed by a  
22 consumer during the Promotion Period, (ii) which was timely submitted by the consumer for  
23 redemption for the Award Travel, and (iii) for which the consumer did not receive a confirmed  
24 reservation date and Award Travel under The Great Escape Promotion.

25 E. “Restitution Award” means a Marriott Flex Award good for a three-day,  
26 two-night hotel stay, in a form and with terms and conditions substantially similar to those  
27 attached hereto as Exhibit “A,” at the Marriott owned or operated hotel properties on the lists  
28 attached hereto as Exhibit “B,” with an expiration date of six (6) months after the Administrator

1 (as defined in this Judgment) distributes it to an Eligible Customer (as defined in this Judgment),  
2 or later in Defendant's sole and absolute discretion.

3 F. "Settlement Offers" means Defendant's offers of \$50 and \$100 Marriott  
4 Bonus Bucks coupons (the "Settlement Awards") to certain individuals who participated in The  
5 Great Escape Promotion in exchange for a release of their claims related to The Great Escape  
6 Promotion.

7 G. "Settling Customers" means those individuals identified on the list  
8 attached hereto as Exhibit "C" who accepted the Settlement Offers.

9 H. "Non-Settling Customers" means those individuals who (i) are not Settling  
10 Customers and (ii) submitted one or more Eligible Certificates in connection with The Great  
11 Escape Promotion, who will be identified on a list to be deemed attached hereto as Exhibit "E"  
12 pursuant to this Judgment.

13 I. "Great Escape Small Claims Actions" means any and all Small Claims  
14 Court actions filed against Defendant by any individuals who participated in The Great Escape  
15 Promotion.

16 J. "Great Escape Class Actions" means any and all styled class actions or  
17 representative actions, other than this action, filed against Defendant by or on behalf any  
18 individuals who participated in The Great Escape Promotion or on behalf of the general public.

### 19 INJUNCTION

20 3. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant,  
21 its successors, and all persons acting in concert or in participation with any of them who have  
22 actual knowledge or constructive knowledge (as defined by California law) of this Judgment, are  
23 hereby permanently enjoined and restrained from, directly or indirectly, engaging in the  
24 following acts or practices in connection with a Travel Promotion in the State of California:

25 A. In all advertisements for a Travel Promotion, failing to disclose, in a clear  
26 and conspicuous manner, the requirements to earn the award and that significant restrictions  
27 apply to a consumer's ability to redeem the award, if such restrictions apply. As used in this  
28 Judgment:

1 i. a written statement is “clear and conspicuous” if it is  
2 readily understandable and presented in such size, color, contrast and location, compared  
3 to the other matter with which it is presented, so as to be readily noticed and understood.  
4 If such statement modifies, explains, or clarifies other information with which it is  
5 presented, it must be presented in close proximity to the information that it modifies and  
6 in a manner so as to be readily noticed and understood.

7 ii. an oral statement is “clear and conspicuous” if it is readily  
8 understandable and presented in such volume and at such speed, compared to the other  
9 matter with which it is presented, so as to be readily heard and understood. If such  
10 statement modifies, explains, or clarifies other information with which it is presented, it  
11 must be presented immediately after the information it modifies and in a manner so as to  
12 be readily heard and understood.

13 B. Failing to provide the advertised Travel to each consumer who fully  
14 complies with all of the terms and conditions of the Travel Promotion;

15 C. Requiring a consumer who has fully complied with all of the terms and  
16 conditions of the Travel Promotion to discharge, waive or release any right or remedy without  
17 providing to the consumer, at a minimum, the Travel to which he or she is entitled under the  
18 Travel Promotion, equivalent substitute travel, or a cash payment equal to the approximate or  
19 advertised retail value of such Travel, provided, however, that if such discharge, waiver or  
20 release is the result of a court order, it shall not be considered a violation of this provision;

21 D. Advertising a Travel Promotion to consumers without first conducting an  
22 investigation, which is reasonable under the circumstances, into the ability of any third party that  
23 Defendant hires, with whom Defendant contracts or partners, or to whom Defendant delegates, to  
24 perform or the performance of any of Defendant’s obligations under the terms and conditions of  
25 that Travel Promotion; and

26 E. Disclaiming liability for any failure to provide the advertised Travel to  
27 each consumer who fully complies with all of the terms and conditions of the Travel Promotion,  
28 regardless of whether the failure results, in whole or in part, from the acts or omissions of a third

1 party that Defendant hires, with whom Defendant contracts or partners, or to whom Defendant  
2 delegates, to perform or the performance of any of Defendant's obligations under the terms and  
3 conditions of that Travel Promotion.

#### 4 RESTITUTION

5 4. Pursuant to Business and Professions Code sections 17203 and 17535, Defendant  
6 shall make restitution to all eligible Settling Customers and Non-Settling Customers pursuant to  
7 the restitution program set forth in this Judgment.

8 A. Settling Customers: Each of the Settling Customers shall be offered and  
9 entitled to timely claim one Restitution Award pursuant to this Judgment in lieu of each  
10 Settlement Award to which they are entitled pursuant to his or her acceptance of the Settlement  
11 Offers. Any Settling Customer who timely claims a Restitution Award pursuant to this Judgment  
12 will not be entitled to the Settlement Award, and his or her claim of the Restitution Award in lieu  
13 thereof will constitute a binding and enforceable modification of Defendant's obligations to them  
14 pursuant to their acceptance of the Settlement Offers. Any Settling Customer who does not  
15 timely claim a Restitution Award pursuant to this Judgment shall be provided the Settlement  
16 Award previously accepted by him or her pursuant to the Settlement Offers. All Settling  
17 Customers who have, subsequent to his or her acceptance of the Settlement Offers and prior to  
18 the Notice Deadline, brought Great Escape Small Claims Actions against Defendant and resolved  
19 the same by entering into settlement and release agreements with Defendant are not entitled to  
20 any restitution under this Judgment. Nothing in this Judgment affects the parties' rights and  
21 obligations under the terms of such settlement and release agreements (a list of such customers  
22 identifiable as of the time the Stipulation was executed is attached hereto as Exhibit "D" and may  
23 be updated by Defendant with the approval of the Administrator by filing an updated exhibit with  
24 the Court, at which time it will be deemed to be Exhibit "D" attached to this Judgment).

25 B. Non-Settling Customers: Each of the Non-Settling Customers shall be  
26 offered and entitled to timely claim and receive one Restitution Award for each of their Eligible  
27 Certificates pursuant to this Judgment. All Non-Settling Customers who have, prior to the  
28 Notice Deadline, brought Great Escape Small Claims Actions against Defendant and resolved the

1 same by entering into settlement and release agreements with Defendant are not entitled to any  
2 restitution under this Judgment. Nothing in this Judgment affects the parties' rights and  
3 obligations under the terms of such settlement and release agreements (a list of such customers  
4 identifiable as of the time the Stipulation was executed is attached hereto as Exhibit "D" and may  
5 be updated by Defendant with the approval of the Administrator by filing an updated exhibit with  
6 the Court, at which time it will be deemed to be Exhibit "D" attached to this Judgment).

7 5. The restitution program pursuant to this Judgment shall be administered by a third  
8 party claims administrator ("Administrator") selected and retained by Defendant at its sole  
9 expense subject to the approval of Plaintiff, which approval shall not be unreasonably withheld.

10 6. The notice and claims procedure shall be designed by the Administrator and  
11 Defendant and subject to the approval of the Plaintiff, which approval shall not be unreasonably  
12 withheld.

13 7. Within 90 days after the entry of this Judgment, and to the extent they have not  
14 already done so, the Administrator and Defendant shall develop a database of Settling Customers  
15 and Non-Settling Customers eligible to claim a Restitution Award pursuant to this Judgment  
16 ("Eligible Customers"). A list of eligible Non-Settling Customers shall be provided by the  
17 Administrator to Defendant and Plaintiff, and Defendant shall file the same with this Court at  
18 which time it will be deemed to be Exhibit "E" attached to this Judgment.

19 8. Within 90 days after the entry of this Judgment (the "Notice Deadline"), the  
20 Administrator shall notify each of the Eligible Customers of their right to claim a Restitution  
21 Award pursuant to the restitution program established by this Judgment and include in such  
22 notice a claim form to be returned to the Administrator to claim a Restitution Award. Such  
23 notice shall be made by mail. If an Eligible Customer has previously identified an e-mail address  
24 in connection with The Great Escape Promotion, such notice may instead be made by e-mail to  
25 that previously identified e-mail address. Such e-mail notice is only effective, however, if the  
26 Administrator confirms that the notice has been transferred from the sender's e-mail system to  
27 the Internet for delivery. The Administrator shall maintain records confirming such transfer for a  
28 period of 12 months after the Claim Deadline. Customers shall have, and the notice shall so

1 specify, a period of 45 days from the date of mailing or e-mailing of the notice to claim their  
2 Restitution Award (the "Claim Deadline"). The notice to eligible Settling Customers shall notify  
3 them of their option pursuant to this Judgment to receive either the Settlement Awards previously  
4 accepted by them or to timely claim a Restitution Award in lieu thereof. Eligible Customers who  
5 do not receive such notice may contact the Administrator to claim a Restitution Award at any  
6 time during the administration of the Restitution Program.

7 9. The Administrator shall review each consumer's claim for a Restitution Award to  
8 determine whether the consumer is an Eligible Customer covered by this Judgment who has  
9 timely claimed a Restitution Award. In making such determinations, the Administrator may use  
10 any criteria established by the Administrator and the Defendant subject to the approval of the  
11 Plaintiff, which approval shall not be unreasonably withheld. Within 90 days after the Claim  
12 Deadline, the Administrator shall distribute the Restitution Award or the Settlement Award to all  
13 such Eligible Customers (the "Distribution Deadline").

14 10. The Administrator shall respond to any questions by Eligible Customers about the  
15 claim procedure under this Judgment and shall establish a toll-free telephone number, a fax  
16 number and an e-mail address to receive such questions.

17 11. Defendant shall reasonably cooperate in making available whatever records are  
18 reasonably required by the Administrator in administering the restitution program under this  
19 Judgment. The Administrator shall hold in confidence and not disclose the business and  
20 consumer records provided to or by it, except as is necessary to carry out the Administrator's  
21 responsibilities under this Judgment.

22 12. The Administrator's fees and expenses shall be delivered to the Administrator by  
23 Defendant in accordance with Defendant's agreement with the Administrator. The Restitution  
24 Awards and Settlement Awards that the Administrator is to distribute to Eligible Customers shall  
25 be delivered to the Administrator by Defendant within 14 days of the Administrator's notice to  
26 Defendants of the quantity needed of each for distribution pursuant to this Judgment.

27 13. If a notice or distribution of a Restitution Award or Settlement Award to an  
28 Eligible Customer is returned as undeliverable, the Administrator shall take, or cause to be taken,

1 reasonable steps, including, but not limited to, skip-tracing, to attempt to locate the Eligible  
2 Customer and to deliver the notice or distribution if that Eligible Customer is located.

3 CIVIL PENALTIES AND COSTS

4 14. Pursuant to California Business and Professions Code sections 17206 and 17536,  
5 Defendant shall pay to Plaintiff the combined total sum of ONE HUNDRED TWENTY-FIVE  
6 THOUSAND DOLLARS (\$125,000.00), as and for civil penalties, within sixty (60) days after  
7 the Administrator distributes all of the Restitution Awards and Settlement Awards to the Eligible  
8 Customers pursuant to the restitution program under this Judgment, but in no event shall this  
9 payment be made later than one (1) year after the entry of this Judgment.

10 15. Defendant shall also pay to Plaintiff the sum of ONE HUNDRED THOUSAND  
11 DOLLARS (\$100,000.00), as and for attorney fees and costs related to Plaintiff's investigation of  
12 The Great Escape Promotion and the prosecution of this matter, within sixty (60) days after the  
13 Administrator distributes all of the Restitution Awards and Settlement Awards to the Eligible  
14 Customers pursuant to the restitution program under this Judgment, but in no event shall this  
15 payment be made later than one (1) year after the entry of this Judgment.

16 16. The sums described in the preceding two paragraphs shall be paid by check made  
17 payable to the California Attorney General's Office and delivered to Plaintiff at the following  
18 address: California Attorney General's Office, 300 South Spring Street, Los Angeles California  
19 90013, Attn: Deputy Attorney General Michele R. Van Gelderen.

20 17. The payments required pursuant to paragraphs 14 and 15 of this Judgment are not  
21 dischargeable in bankruptcy.

22 PROVISION OF NOTICE

23 18. 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, unless this Judgment specifically provides for service by facsimile or mail, in which case  
26 those methods shall be used in addition to service by overnight courier service. Any party may  
27 modify the person and address to whom notice is sent by sending each other party notice by  
28 certified mail, return receipt requested. Said change shall take effect for any notice mailed on the

1 fifth day after the date the return receipt is signed by the party receiving the change. Notices  
2 shall be sent to the following:

3                   For Plaintiff:           Michele R. Van Gelderen  
4   Deputy Attorney General  
5   Office of the Attorney General  
6   Department of Justice  
7   State of California  
8   300 South Spring Street, Suite 5000  
9   Los Angeles, CA 90013

10                   For Defendant:           Matthew C. Kane, Esq.  
11   Senior Attorney  
12   Legal Department  
13   Ralphs Grocery Company  
14   1100 West Artesia Boulevard  
15   Compton, CA 90220

16   With a copy to:           Richard S. Ruben, Esq.  
17   Pillsbury Winthrop LLP  
18   650 Town Center Drive  
19   Seventh Floor  
20   Costa Mesa, CA 92626

21   MONITORING BY ATTORNEY GENERAL

22                   19.       Defendant shall provide information reasonably requested by Plaintiff for the  
23                   purpose of enabling Plaintiff to determine compliance with the provisions of this Judgment.  
24                   Nothing in this Judgment limits the right of the Attorney General to request or to obtain  
25                   information from Defendant as otherwise provided by law.

26   DUTIES AND OBLIGATIONS LIMITED TO CALIFORNIA

27                   20.       This Judgment shall have no effect on Defendant's operations or activities at its  
28                   Stores outside the State of California.



1           24.    This Judgment shall be effective and apply to and be binding upon Plaintiff and  
2 Defendant when entered by the Court.

3           IT IS SO ORDERED, ADJUDGED AND DECREED.

4           DATE: July 21, 2004

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Judge of the Superior Court

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