



PLS

**FILED**  
ALAMEDA COUNTY

**OCT 31 2016**

CLERK OF THE SUPERIOR COURT  
By Orinda Hawes  
Deputy

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Attorneys for Plaintiff

*(For additional Plaintiff's counsel, see Attachment 1  
to Stipulation for Entry of Final Judgment)*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,

vs.

MY PILLOW, INC., a Minnesota Corporation;  
and MY PILLOW DIRECT, LLC, a Minnesota  
Limited Liability Company  
Defendants.

Case No.: **HC16-836619**

FINAL JUDGMENT PURSUANT TO  
STIPULATION

Plaintiff, the People of the State of California, appears through its attorneys: Nancy E. O'Malley, District Attorney of Alameda County, by Matthew L. Beltramo, Deputy District Attorney; Edward S. Berberian, District Attorney of Marin County, by Andres H. Perez, Deputy District Attorney; Dean Flippo, District Attorney of Monterey County, by John Hubanks, Deputy District Attorney; Gary Lieberstein, District Attorney of Napa County, by Patrick Collins, Deputy District Attorney; Tony Rackauckas, District Attorney of Orange County, by Tracy E. Hughes, Deputy District Attorney; Jeffrey F. Rosen, District Attorney of Santa Clara County, by Francisca B. Allen, Deputy District Attorney; Jeffrey Rosell, District Attorney of Santa Cruz County, by Douglas Allen, Assistant District Attorney; Stephen S. Carlton, District Attorney of Shasta County, by Anand "Lucky" Jesrani, Senior Deputy District Attorney; Krishna Abrams, District Attorney of Solano County, by Diane M. Newman, Deputy District Attorney; and Jill R. Ravitch,

1 District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney.

2 Defendant, My Pillow, Inc., a Minnesota corporation with a registered address of 343 East 82nd  
3 Street #102, Chaska, MN 55318, and Defendant My Pillow Direct, LLC, a Minnesota limited liability  
4 company with a registered address of 343 East 82nd Street #102, Chaska, MN 55318 (hereinafter,  
5 collectively, "Defendants" or "My Pillow"), appear through their attorneys, Beshada and Farnese, LLP, by  
6 Peter Farnese, Esquire.

7 Plaintiff and Defendants (the "Parties") have stipulated that this Final Judgment Pursuant to  
8 Stipulation (herein the "Stipulated Final Judgment") may be entered without trial or adjudication of any  
9 issue of fact or law. The Parties enter this Final Judgment pursuant to a settlement of certain disputed  
10 claims between them as alleged in the Complaint for purposes of avoiding litigation. Nothing in this Final  
11 Judgment shall be construed as an admission or denial by Defendants of any fact, issue of law or violations  
12 of law alleged generally or specifically in the Complaint.

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

14 1. The Stipulated Final Judgment has been reviewed by this Court and is found to have been  
15 entered in good faith and to be, in all respects, just, reasonable, equitable and adequate to protect the public  
16 from the occurrence in the future of the conduct alleged in the Complaint.

17 2. Unless otherwise stated, all obligations imposed upon Defendants by the terms of this  
18 Stipulated Final Judgment are ordered pursuant to sections 17200, et seq., and 17500, et seq., of the  
19 California Business and Professions Code, including sections 17203, 17206, and 17535.

20 3. The Parties waive the right to appeal this Final Judgment both as to form and content.

21 **JURISDICTION**

22 4. This civil enforcement action is brought by Plaintiff in the public interest under the laws of  
23 the State of California. As Defendants have offered for sale and/or sold products throughout the State of  
24 California, including Alameda County, the Alameda County Superior Court ("Court") has jurisdiction of  
25 the subject matter hereof and of the Parties hereto.

26 **APPLICABILITY**

27 5. This Stipulated Final Judgment is applicable to Defendants and to their agents, servants,  
28

A. Making or disseminating, or assisting others in making or disseminating, directly or indirectly, expressly or by implication, any claim or advertisement, including any claim or advertisement made through the use of a product name, endorsement, depiction, illustration, labeling or label, consumer testimonial, expert endorsement or other product endorsement, that any pillow product, including but not limited to any pillow marketed or sold under the trade name "MyPillow," can affect the structure or function of the human body or cure, mitigate, treat, or prevent any DISEASE or symptom thereof, unless:

- i. the pillow product in question complies with California Health and Safety Code section 111550, pertaining to the sale of medical devices; and
- ii. at the time of making any such claim or representation, it is true, not misleading, and Defendant already has in its possession and relies on at least one ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY conducted on the product or a SUBSTANTIALLY EQUIVALENT DEVICE.

To the extent such claims are made by third-parties and appear on social media accounts affiliated with Defendant (including Facebook), Defendant shall remove such statements as soon as it becomes aware of them.

B. Violating the provisions of any of the following statutes: California Health and Safety Code section 110400, by delivering in commerce any device that is falsely advertised; California Health and Safety Code section 111440, by manufacturing, selling, delivering, holding, or offering for sale any device that is misbranded; California Health and Safety Code section 111445, by misbranding any device; and/or California Health and Safety Code section 111450, by delivering in commerce any device that is misbranded;

C. Violating the provisions of California Civil Code section 1770(a)(5), by representing that Defendants' goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that Defendants have a sponsorship, approval, status, affiliation, or connection which they do not have;

1 D. Making and/or disseminating any claim or representation, directly or indirectly,  
2 about any user or endorser of any pillow product unless Defendants disclose, clearly and  
3 prominently and in visual proximity to any written claim or in temporal proximity to any claim  
4 conveyed by voice, any material connection between such user or endorser and any Defendant. For  
5 purposes of this Section, a "material connection" shall mean any relationship that materially affects  
6 the weight or credibility of the user testimonial or endorsement and that would not reasonably be  
7 expected by consumers, including, but not limited to monetary payments from the endorser to the  
8 seller, or from the seller to the endorser, or the provision of goods, services, or other benefits to  
9 anyone providing a user testimonial or endorsement.

10 E. Advertising in any media, including but not limited to television, radio, print,  
11 Internet or product labels, that any product is an "official" product (or words to that effect) of any  
12 foundation, non-profit organization or other trade group ostensibly devoted to the study of sleep or  
13 sleep conditions. In order to give sufficient time for full compliance, Defendants shall have until  
14 January 31, 2017, to come into compliance with the provisions of Paragraphs 8.D. and 8.E. of this  
15 Final Judgment.

16 9. Nothing in this Stipulated Final Judgment shall be construed as:

17 A. Permitting or allowing Defenadnts to market, advertise, distribute or sell a "medical  
18 device" as that term is used in 21 U.S.C. Section 321(h) in violation of the federal statutes, rules or  
19 regulations pertaining thereto;

20 B. Permitting or allowing Defendants to engage in any violation of law, including any  
21 false advertisement, that occurs, takes place or exists as of the time of entry of judgment or at any  
22 time thereafter; and

23 C. Relieving Defendants of the obligation to follow any applicable law or statute not  
24 referenced herein.

25 10. Any amended statute, or regulation, successor statute or regulation or renumbered statute or  
26 regulation will have the same force and effect as the statutes and regulations cited in this Final Judgment.  
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**MONETARY RELIEF**

11. Pursuant to Business and Professions Code sections 17203, 17206, 17535 and 17536, Defendants shall make monetary payments in this matter is as set forth below:

A. Restitution: As Defendant My Pillow, Inc., has previously agreed to pay restitution to California consumers in connection with an independent and uncoordinated class action lawsuit styled *Amiri v. My Pillow, Inc.* (San Bernardino Superior Court Docket #CIVDS 1606479, filed Apr. 26, 2016), the Court therefore orders that additional restitution in this matter shall take the form of *cy pres* in the amount of one hundred thousand dollars (\$100,000.00). Said restitution shall be paid to non-profit organizations that provide or support overnight sleeping accommodations to those in need of assistance, including the homeless and those who are victims of domestic violence, as set forth in Schedule A, attached hereto. Defendants shall issue separate cashier checks payable to each recipient organization in the respective amounts set forth therein. The checks shall be delivered via overnight mail or hand delivery to Deputy District Attorney Matthew Beltramo no later than five (5) business days after the date of entry of this Final Judgment.

B. Civil Penalties: Defendants are hereby jointly and severally ordered pursuant to Business & Professions Code sections 17206 and 17536, to pay civil penalties in the total amount of nine hundred ninety-five thousand dollars (\$995,000.00). Civil penalties shall paid in the form of cashier's check, money order or trust fund check and shall made payable to the "Marin County District Attorney's Office," which office shall distribute the payment in equal amounts between the District Attorney offices representing the People in this action, in accordance with Business and Professions Code section 17206 and Government Code Section 26506. The cashier's check or money order shall be delivered via hand delivery or overnight mail to Deputy District Attorney Matthew Beltramo no later than there (3) business days after the date this judgment is entered.

**COMPLIANCE**

12. For the purpose of securing compliance with the terms of this Stipulated Final Judgment,

1 Defendants are hereby ordered and mandated to do all of the following:

2 A. Defendants shall create, maintain and make available to any representative of the  
3 People for inspection and copying, within fifteen (15) days of any written request to do so, the  
4 following:

5 i. all written documents from or correspondence with the Food and Drug  
6 Administration regarding any approval for use or exemption described in paragraph 8(A)(i),  
7 above;

8 ii. all ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL  
9 STUDIES for the types of claims described above. Each such ADEQUATE AND  
10 WELL-CONTROLLED HUMAN CLINICAL STUDY shall contain the date of its  
11 inclusion in this file, and shall be maintained for at least five (5) years from the date of its  
12 inclusion in this file; and

13 iii. A file that contains all tests, reports, studies, surveys, demonstrations,  
14 information or other evidence in Defendants' possession or control, if any, that contradict,  
15 qualify or call into question any claim or representation made and/or disseminated for any  
16 of Defendants' products, or that contradict, qualify or call into question the basis upon  
17 which Defendants relied on such claim or representation, including but not limited to  
18 complaints from consumers and complaints or inquiries from governmental organizations.  
19 For each such item, the date of its inclusion in the file shall be noted, and such item shall be  
20 maintained for at least five (5) years from the date of its inclusion in this file.

21 B. Within thirty (30) days of the date of the entry of this Stipulated Final Judgment,  
22 Defendants shall provide a copy of this Final Judgment to each of their current principals, officers,  
23 directors and managers, affiliates, subsidiaries and to all personnel, agents and representatives  
24 having primary authority over sales, advertising or policy responsibility with respect to the subject  
25 matter of this Final Judgment and shall obtain from each such person a legible signed written  
26 acknowledgment indicating that he or she has received a copy of this Final Judgment, read it,  
27 understood its terms, and agreed to fully abide by all of its terms. Defendants shall provide written  
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1 verification of such acknowledgments to the People within fifteen (15) days of any written request  
2 to do so;

3 C. For a period of five (5) years after entry of this Stipulated Final Judgment,  
4 Defendants shall provide a copy of this Final Judgment to each of their future principals, officers,  
5 directors and managers, future affiliates, future subsidiaries, and to all future personnel, agents and  
6 representatives having primary authority over sales, advertising or policy responsibility with  
7 respect to the subject matter of this judgment within ten (10) days after the person commences his  
8 or her responsibilities. Defendants shall obtain from each such person a legible signed written  
9 acknowledgment indicating that he or she received a copy of this Stipulated Final Judgment, read it,  
10 understood its terms, and agreed to fully abide by all of its terms. Defendants shall maintain and  
11 upon request make available, within fifteen (15) days of receipt of a written request, to  
12 representatives of the People for inspection and copying, all such legible signed written  
13 acknowledgments.

14 **JURISDICTION RETAINED**

15 13. Jurisdiction is retained for the purposes of enabling any party to this Stipulated Final  
16 Judgment to apply to the Court at any time for such order or directions as may be necessary or appropriate  
17 for the construction of or carrying out of this Stipulated Final Judgment, for the modification or termination  
18 of any of the injunctive provisions thereof, for the enforcement of compliance therewith, or for the  
19 punishment of violations thereunder.

20 **EFFECT AND ENTRY**

21 14. This Final Judgment shall take effect immediately upon entry hereof.

22  
23 DATED: 10/31/16

24 By:

25   
Judge of the Superior Court

26 **MORRIS JACOBSON**

**SCHEDULE A: NON-PROFIT SHELTERS**

<b>Name of Shelter (Payee)</b>	<b>Address</b>	<b>EIN</b>	<b>Amount</b>
Homeward Bound of Marin	1385 N. Hamilton Parkway Novato, CA 94949	68-0011405	\$10,000
Safe Alternatives to Violent Environments Inc.	1900 Mowry Ave, Suite 201 Fremont, CA 94538	94-2520559	\$10,000
Shasta Women's Refuge (d/b/a One Safe Place)	2280 Benton Drive, Suite A Redding, CA 96003	94-2663045	\$10,000
Napa Emergency Women's Services	1141 Pear Tree Lane, Suite 220 Napa, CA 94558	94-2745889	\$10,000
Safequest Solano	1049 Union Ave, Suites B & C Fairfield, CA 94533	94-2853669	\$10,000
Asian Americans for Community Involvement of Santa Clara County (d/b/a Asian Women's Home)	2400 Moorpark Ave San Jose, CA 95128	94-2292491	\$2,000
Maitri	PO Box 697 Santa Clara, CA 95052	94-3132087	\$2,000
Young Women's Christian Association of Silicon Valley	375 South Third Street San Jose CA 95112	94-1186196	\$2,000
Community Solutions for Children Families and Individuals	16264 Church Street, Suite 103, Morgan Hill, CA 95037	23-7351215	\$2,000
Next Door Solutions to Domestic Violence	234 E Gish Rd #200 San Jose, CA 95112	94-2420708	\$2,000
Community Action Partnership of Sonoma County	141 Stony Circle, Suite # 210 Santa Rosa, CA 95401	94-1648949	\$10,000
Mercy House Living Centers (d/b/a Mercy House)	P.O. Box 1905 Santa Ana, CA 92702	33-0315864	\$10,000
Pass The Word Ministry (d/b/a We Help Homeless Women)	P.O. Box 2674 Monterey, CA 93942	45-2534088	\$10,000
Walnut Avenue Family and Women's Center	303 Walnut Ave Santa Cruz, CA 95060	94-1186197	\$5,000
Monarch Services Inc.	1509 Seabright Ave. C-1, Santa Cruz, CA 95062	94-2462783	\$5,000
<b>Total:</b>			<b>\$100,000</b>