

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

HUGH HENLEY, PRESTIGE PROTEINS,  
PRESTIGE MILK PROTEINS, LLC, and  
AGRI-DAIRY PRODUCTS, INC.,

Defendants.

USDC SDNY  
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ELECTRONICALLY FILED  
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**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL AS TO  
HUGH HENLEY, PRESTIGE PROTEINS,  
AND PRESTIGE MILK PROTEINS, LLC**

14 Civ. 2030 (WHP)


WHEREAS, this Stipulation and Order of Settlement and Dismissal is entered into by and among plaintiff the United States of America (the "United States"), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and defendants Hugh Henley ("Henley"), Prestige Proteins, and Prestige Milk Proteins, LLC (together, the "Prestige entities") (all defendants, collectively, the "Henley-Prestige Defendants") (collectively, the "Parties"); and

WHEREAS, Henley was at all times relevant to this action the President and Owner of the Prestige entities, and Henley and the Prestige entities are and were in the business of, *inter alia*, brokering the sale of dairy products, including casein and nonfat dry milk;

WHEREAS, the United States, through the United States Department of Agriculture ("USDA"), is responsible for administering the Dairy Product Price Support Program ("DPPSP"), and as a result of the DPPSP, at times, maintains surplus stocks of dairy products, including nonfat dry milk;

SO ORDERED:

3/28/14

  
WILLIAM H. PAULEY III U.S.D.J.

WHEREAS, the USDA has authority to offer for sale such surplus stocks of nonfat dry milk to individuals or entities on a bid basis and may accept bids at discounted prices in order to promote the strengthening of the domestic casein industry; nonfat dry milk sold under that authority must be used only for the manufacture of casein or caseinate, which are ubiquitous proteins that are commonly made from nonfat dry milk but are rarely manufactured domestically;

WHEREAS, in accordance with its authority, on certain occasions, the USDA has acquired surplus nonfat dry milk and has issued invitations for competitive bids to purchase that nonfat dry milk, which is restricted for sale to those who certify that the purchaser itself would use the product solely for the purpose of domestic conversion of the nonfat dry milk into casein or caseinate within 90 days, among other requirements;

WHEREAS, on or about March 24, 2014, the United States on behalf of the USDA filed a Complaint (the "Complaint") in the United States District Court for the Southern District of New York (the "Court") pursuant to the False Claims Act, 31 U.S.C. §§ 3729-33 (the "FCA" or "False Claims Act");

WHEREAS, the Complaint alleges, among other things, that Henley and the Prestige entities, along with co-defendant Agri-Dairy Products, Inc., defrauded the United States by making, and causing to be made, misrepresentations to the USDA in connection with two 2009 bids to, and purchases from, the USDA, such that defendants fraudulently acquired more than two million pounds of subsidized, discounted NDM, and unlawfully resold it at market prices for substantial profits, instead of using it for domestic conversion of NDM into casein or caseinate, as certified and required (including all the allegations in the Complaint, the "Covered Conduct");

WHEREAS, the Complaint seeks treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733, as well as damages under the common law;

WHEREAS, the Parties desire to reach a full and final settlement and compromise of the claims that the United States asserts against the Henley-Prestige Defendants by entering into this Stipulation (the "Stipulation");

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Parties consent to this Court's exercise of personal jurisdiction over each of them.
2. In settlement of this action, the Henley-Prestige Defendants shall pay to the United States the sum of \$632,527.56 (the "Settlement Amount"), to be paid as described in this paragraph. The first payment of \$316,263.78 shall be made within 15 days of the Effective Date, as defined in Paragraph 23 below. Thereafter, the Henley-Prestige Defendants shall pay the remaining \$316,263.78 of the Settlement Amount in six monthly installments of \$52,710.63, to be paid on or before the 15th day of each subsequent month. The Settlement Amount, and each installment payment thereof, shall be made by check or electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.
3. Hugh Henley, Prestige Proteins, and Prestige Milk Proteins, LLC admit, acknowledge, and accept responsibility for the following facts:
  - a. On or about June 1, 2009, and November 25, 2009, Henley presented two bids to the USDA to purchase discounted nonfat dry milk ("NDM");

b. In those bids to purchase NDM, Henley falsely certified that the NDM would be used solely for domestic conversion into casein or caseinate, one of USDA's requirements for purchasing the NDM;

c. The two false bids were made pursuant to an agreement between Agri-Dairy and Henley, by which the NDM would not be used for the purpose of domestic conversion into casein or caseinate, but instead would be sold by Agri-Dairy to third parties, with the net profits from the sale split between Henley and the Prestige entities, on the one hand, and Agri-Dairy, on the other;

d. Pursuant to that agreement, the NDM that Henley acquired from the USDA in connection with the June and November 2009 bids was not converted to casein, but was resold by Agri-Dairy; the net profits from those sales were split between Henley and the Prestige entities, on the one hand, and Agri-Dairy, on the other; and

e. On or about October 5, 2009, and March 9, 2010, Henley falsely certified that the NDM purchased from the USDA in connection with the June and November 2009 bids had been converted to casein or caseinate, when in fact that had not occurred.

4. The Henley-Prestige Defendants further admit and acknowledge that the Stipulation, including the Settlement Amount, is fair, reasonable, and adequate under the facts and circumstances.

5. Subject to the exceptions in Paragraph 7 below (concerning excluded claims), conditioned upon the Henley-Prestige Defendants' timely payment of the full Settlement Amount, the United States releases the Henley-Prestige Defendants from any civil monetary claim that the United States has for the Covered Conduct, including claims under the False

Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of fraud, civil conspiracy to defraud, unjust enrichment, and conversion.

6. The Henley-Prestige Defendants agree to cooperate fully with the United States in connection with the investigation of the schemes to defraud the United States alleged in the Complaint. Specifically, Henley and the Prestige entities each agree that each shall (a) provide complete and truthful disclosure of all non-privileged information as may be required by the United States with respect to the Covered Conduct, and (b) provide testimony as requested by the United States in connection with any criminal, civil, or administrative proceeding in connection with the Covered Conduct.

7. Notwithstanding the release given in Paragraph 5 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based on obligations created by this Stipulation.

8. The Henley-Prestige Defendants shall be in default of this Stipulation if they fail to make the payment required, on the terms required, in paragraph 2. The United States

will provide written notice of the default, to be sent by first-class mail to the counsel for the Henley-Prestige Defendants identified in Paragraph 22 below. In the event of default, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 5% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount is not paid in full within seven (7) business days after delivery of the notice of default, the United States may, at its option: (a) seek specific performance of the Stipulation; (b) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing the Henley-Prestige Defendants by any department, agency or agent of the United States at the time of default; (c) reinstate this lawsuit; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The Henley-Prestige Defendants shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any State or Federal court. In addition, the Henley-Prestige Defendants shall pay to the United States all reasonable costs of collection and enforcement under this paragraph, including attorney's fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, the Henley-Prestige Defendants shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which relate to the Covered Conduct, except to the extent those defenses were available on the date of the filing of the Complaint in this action.

9. The Henley-Prestige Defendants waive and will not assert any defenses any of them may have to any criminal prosecution or administrative action relating to the

Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of the Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code or New York State Tax Law.

10. Henley, on behalf of the Henley-Prestige Defendants, has provided sworn financial disclosure statements and other financial information to the United States ("Financial Statements"), and the United States has relied on the accuracy and completeness of those Financial Statements in entering into this Stipulation. Henley warrants that the Financial Statements are thorough, accurate, and complete. Henley further warrants that he does not own or have an interest in any asset(s) that has not been disclosed in the Financial Statements, and that he has made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of: (a) an asset(s) in which Henley had an interest at the time of this Stipulation that would change the estimated net worth of Henley set forth in the Financial Statements by five thousand dollars (\$5,000) or more, and which was not disclosed in the Financial Statements; or (b) a misrepresentation by Henley on, or in connection with, the Financial Statements, and in the event such non-disclosure or misrepresentation changes the estimated net worth of the Henley-Prestige Defendants set forth in the Financial Statements by five thousand dollars (\$5,000) or more; the United States may at its option: (1) rescind this Stipulation and reinstate its Complaint in this action; or (2) let the Stipulation stand and collect

the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Henley previously undisclosed or concealed or dissipated. To the extent that the United States discovers the occurrence of an event(s) encompassed by subparts (a) through (b) of this paragraph, the Henley-Prestige Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and agree not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, except to the extent these defenses were available on the date that the Complaint was filed.

11. The Henley-Prestige Defendants fully and finally release the United States, and its agencies, departments, officers, agents, employees, and servants from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Henley-Prestige Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, officers, agents, employees, and servants related to the Covered Conduct, and the United States' investigation and prosecution thereof, and this Stipulation.

12. This Stipulation is intended to be for the benefit of the parties only. The parties do not release any claims against any other person or entity, except as provided in this Stipulation. Until the cooperation described above in Paragraph 6 is no longer required by the United States and the Settlement Amount has been fully satisfied, the Henley-Prestige Defendant shall maintain custody of, or make arrangements to maintain, all of their documents and records related to the Covered Conduct.



13. If, within 91 days of the effective date of this Stipulation or within 91 days of any payment under this Stipulation, any of the Henley-Prestige Defendants commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors: (i) seeking to have any order for relief of any the Henley-Prestige Defendants' debts; (ii) seeking to adjudicate any of the Henley-Prestige Defendants as bankrupt or insolvent; or (iii) seeking appointment of a receiver, trustee, custodian or other similar official for any of the Henley-Prestige Defendants or for all or any substantial part of any of their assets, then:

- a. The Henley-Prestige Defendants' obligations under this Stipulation shall not be avoided pursuant to 11 U.S.C. § 547, and the Henley-Prestige Defendants shall not argue or otherwise take the position in any such case, proceeding or other action that: (i) the Henley-Prestige Defendants' obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) any of the Henley-Prestige Defendants were insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to the Henley-Prestige Defendants.
- b. In the event that the Henley-Prestige Defendants' obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the

United States, at its sole option, may rescind the releases in this Stipulation, and bring any civil and/or administrative claim, action or proceeding against the Henley-Prestige Defendants for the claims that would otherwise be covered by the releases provided in paragraph 6, above. The Henley-Prestige Defendants agree that (i) any such claims, actions, or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph; (ii) the Henley-Prestige Defendants shall not contend that any such claims, actions or proceedings brought by the United States are subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph; (iii) the Henley-Prestige Defendants shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within thirty (30) calendar days of written notification to him that the releases herein have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the date the Complaint was filed in this action; and (iv) the Henley-Prestige Defendants shall not contest the validity of a claim filed by the United States against him for the Settlement Amount and the United States may pursue its claims in the case, action or

proceeding referenced in the first clause of this paragraph, as well as any other case, action, or proceeding.

- c. The Henley-Prestige Defendants' agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

14. Except as expressly provided to the contrary in this Stipulation, the United States and the Henley-Prestige Defendants shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

15. This Stipulation is governed by the laws of the United States. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Stipulation as it relates to this action will be the United States District Court for the Southern District of New York. The parties waive any objection that any of them may now have or hereafter may have to this venue, whether concerning this Stipulation or for any related suit, action or proceeding, and irrevocably consent to the jurisdiction of this Court and agree to accept and acknowledge service in any such suit, action or proceeding.

16. For purposes of construction, this Stipulation shall be deemed to have been drafted by all parties to this Stipulation and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

17. Any failure by the United States to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions

hereof, and the United States, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

18. If any part of this Stipulation shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Stipulation, which shall survive and be construed as if such invalid unenforceable part had not been contained herein.

19. This Stipulation constitutes the complete agreement between the parties. This Stipulation may not be amended, changed, modified or waived except in writing signed by all parties or their authorized representatives.

20. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

21. Subject to the exceptions herein, in consideration of the obligations of the Henley-Prestige Defendants in this Stipulation, conditioned upon the timely full payment of the Settlement Amount, this action shall be dismissed with prejudice as to all claims the United States has asserted based on the Covered Conduct, and to the extent of, and as governed by, this Stipulation. The Court shall retain jurisdiction over this Stipulation and each party to the extent the obligations herein remain unsatisfied.

22. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery or express mail, and shall be addressed as follows:

**IF TO THE UNITED STATES:**

Sarah J. North, Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, New York 10007

**IF TO THE HENLEY-PRESTIGE DEFENDANTS:**

Michael B. Cohen, Esq.  
260 Madison Avenue  
New York, New York 10016

23. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

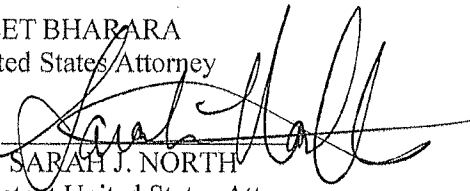
24. The Parties represent that this Stipulation is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

For the United States:

Dated: New York, New York  
March 20, 2014

PREET BHARARA  
United States Attorney

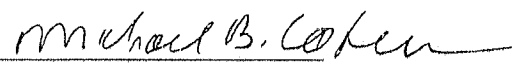
By:

  
SARAH J. NORTH  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Telephone: (212) 637-2639  
Facsimile: (212) 637-2717  
E-mail: Sarah.North@usdoj.gov

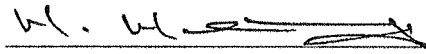
For Hugh Henley and the Prestige Entities

Dated: New York, New York  
March 19, 2014

By:

  
MICHAEL B. COHEN, Esq.  
260 Madison Avenue  
New York, New York 10016  
Telephone: (212) 448-6259  
Facsimile: (561) 659-4438  
E-mail: mcohenlaw@aol.com

Dated: New York, New York  
March \_\_, 2014



HUGH HENLEY  
Individually, and as President of:  
Prestige Proteins, and  
Prestige Milk Proteins, LLC

Dated: New York, New York  
\_\_\_\_\_, 2014

SO ORDERED:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE