

FILED

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KIM TURNER, Court Exec. Officer
MARIN CO. SUPERIOR COURT
By: A. Garcia, Deputy

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7
8 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

10
11 CENTER FOR ENVIRONMENTAL
12 HEALTH, a non-profit corporation, ,
13 Plaintiff,

14 v.

15 GOLDEN HERITAGE FOODS LLC, et
16 al.,
17 Defendants.

Case No.: CIV 1204659

~~[PROPOSED]~~
CONSENT JUDGMENT

18
19 Plaintiff, the Center for Environmental Health ("CEH"), and Defendant, Golden
20 Heritage Foods LLC ("GHF"), enter into this Consent Judgment as follows:

21 **1. INTRODUCTION**

22 1.1. On December 23, 2011, CEH sent a "Notice of Violation of Safe
23 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)" ("December
24 23 Notice"), to GHF, Wal-Mart Stores, Inc. ("Wal-Mart"), the California Attorney
25 General, the District Attorneys of every County in the State of California, and the
26 City Attorneys for every City in the State of California with a population greater
27 than 750,000.
28

1 1.2. The December 23 Notice alleged violations of Proposition 65's
2 "warning" provision, set out at Cal. Health and Safety Code § 25249.6. The chemical
3 involved in the alleged violations was lead and lead compounds. The specific type
4 of product causing the alleged violations was identified generically as "honey"
5 (referred to herein as "Covered Products"). Thrifty Bee Dark & Robust
6 Internationally Sourced Honey was identified as a non-exclusive example of the
7 Covered Products that GHF and Wal-Mart allegedly marketed, distributed and/or
8 sold in California. Thrifty Bee Dark & Robust Internationally Sourced Honey is a
9 Covered Product for purposes of this Consent Judgment.

10 1.3. On October 16, 2012, Plaintiff filed its Complaint against GHF and
11 against Does 1 through 200 in the present action.

12 1.4. GHF is a company that employs ten (10) or more persons and that
13 manufactures, distributes, and/or sells Covered Products in the State of California.

14 1.5. For purposes of this Consent Judgment only, CEH and GHF (the
15 "Parties") stipulate that: (i) this Court has jurisdiction over the allegations of
16 violation contained in the Complaint and personal jurisdiction over Defendants as to
17 the acts alleged in the Complaint; (ii) that venue is proper in the County of Marin;
18 and (iii) this Court has jurisdiction to enter this Consent Judgment as a full and final
19 resolution of all claims which were or could have been raised in the Complaint and
20 of all claims which were or could have been raised by any person or entity based in
21 whole or in part, directly or indirectly, on the facts alleged in the December 23
22 Notice, in the present action, or arising therefrom or related thereto, with respect to
23 Covered Products manufactured, distributed, and/or sold by GHF.

24 1.6. The Parties enter into this Consent Judgment as a full and final
25 settlement of certain disputed claims as alleged in the December 23 Notice and the
26 Complaint, for the purpose of avoiding prolonged and costly litigation and of
27 resolving the issues raised therein. By execution of this Consent Judgment, GHF
28 does not admit any fact, conclusion of law, or violation of law, nor shall compliance

1 with the Consent Judgment constitute or be construed as an admission by the Parties
2 of any fact, conclusion of law, or violation of law. GHF denies the material, factual
3 and legal allegations in the December 23 Notice and the Complaint and expressly
4 denies any wrongdoing whatsoever. Nothing in this Consent Judgment shall
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may
6 have in this or any other pending or future legal proceedings.

7 **2. DEFINITIONS**

8 2.1. "Compliance Documentation" shall mean such analytical reports as
9 are prepared to describe the results of any testing required by Section 3.4.

10 2.2. "Effective Date" shall mean, with respect to this Consent Judgment,
11 the date on which this Court enters the Consent Judgment.

12 2.3. "Supplier Best Practices" shall mean those practices that can
13 reasonably be implemented by honey producers and suppliers in order to minimize
14 the potential introduction of lead and lead compounds during the collection, storage
15 and transportation of raw honey. Such practices may include, without limitation, the
16 substitution of plastic pails for tin canisters used by beekeeper suppliers to collect
17 raw honey in the field, and the use of new steel drums with food grade epoxy liners
18 for the storage and shipment of honey to international customers.

19 2.4. "Target Concentration Standard," or "TCS," is a concentration of
20 lead and lead compounds (expressed in parts per billion, or "ppb") in Covered
21 Products that will result in compliance with this Consent Judgment. For purposes of
22 this Consent Judgment, the TCS is 25 ppb.

23 **3. INJUNCTIVE RELIEF**

24 3.1. On or before the Effective Date, GHF shall have: (1) ceased
25 shipping the specific products (if any) identified in the December 23 Notice and
26 listed in Exhibit A ("Noticed Products") to stores and/or customers in California,
27 and (ii) sent instructions to any customers offering Noticed Products for sale in
28 California to cease doing so and either to return all unsold Noticed Products to GHF

1 for destruction or disposal or to destroy or dispose of such Noticed Products
2 directly. Any destruction or disposal of Noticed Products shall be in compliance
3 with all applicable laws. Within sixty (60) days after the Effective Date, GHF shall
4 certify to CEH that it has complied with this Section. If there is a dispute over the
5 implementation of these requirements, CEH and GHF shall meet and confer before
6 seeking any remedy in court.

7 3.2. As of the Effective Date, GHF shall not distribute, ship, sell or offer
8 for sale in California any Covered Product that contains lead or lead compounds in
9 quantities exceeding the TCS.

10 3.3. To the extent it has not already done so, and in any event not later
11 than sixty (60) days after the Effective Date, GHF shall provide written notice to its
12 international raw material suppliers, which notice shall be in the form and content
13 substantially as provided in Exhibit B to this Consent Judgment, informing them of
14 the TCS and instructing them to take expedited action to implement Supplier Best
15 Practices to achieve compliance with the TCS to the maximum extent practicable.

16 3.4. Beginning within three (3) months following the Effective Date,
17 GHF will implement a program of regular testing for the lead content of
18 representative samples of internationally-sourced honey obtained by GHF for sale or
19 distribution in California. Sampling and testing will be performed in accordance
20 with the protocols described in Exhibit C to this Consent Judgment, in conjunction
21 with regular source traceability audits of GHF's honey supplies, such as those
22 undertaken as part of the True Source Honey LLC source certification program.

23 3.4.1. Testing will be performed on no less than an annual basis for
24 all country sources. For country sources with a verified history of supplies
25 exceeding the TCS, testing initially will be performed for each shipment received for
26 packaging and distribution by GHF; provided, however, if testing for three (3)
27 consecutive quarters confirms the presence of lead or lead compounds at
28 concentrations below the TCS, future testing will be performed at least annually. As

1 an additional quality assurance / quality control ("QA/QC") measure, finished
2 honey products will be randomly tested to validate the effectiveness of established
3 source testing procedures.

4 3.4.2. GHF shall maintain and, upon CEH's written request, make
5 available to CEH for inspection and copying Compliance Documentation related to
6 any testing undertaken pursuant to this Section, for a period of three (3) years.

7 3.5. CEH may independently perform periodic sampling and testing of
8 GHF's finished honey products ("Confirmatory Testing"). In the event
9 Confirmatory Testing indicates the presence of lead in excess of the TCS, CEH shall
10 promptly notify GHF in writing and provide GHF with copies of the laboratory
11 results showing the elevated lead levels, a description of sampling and testing
12 protocol used in connection with the Confirmatory Testing, and any associated
13 QA/QC documentation. Such Confirmatory Testing shall take place at a facility
14 certified to ISO 17025 or equivalent proficiency and shall offer testing services to the
15 general public.

16 3.5.1. Following an opportunity to meet and confer concerning
17 the results of Confirmatory Testing, and at CEH's request, GHF will attempt to
18 ascertain the cause of the elevated lead level and will provide CEH with a report of
19 its investigation and a proposal to prevent its recurrence. Following a further
20 opportunity to meet and confer, GHF will take appropriate action to implement the
21 proposal.

22 3.5.2. In the event Confirmatory Testing conducted pursuant to
23 this Section shows the presence of lead in excess of the TCS in GHF's honey
24 products, GHF shall cease further shipments of the specific product lot implicated
25 by the Confirmatory Testing until completion of the process set forth in paragraph
26 3.5.1, and conduct testing of each production lot for that product line prior to further
27 shipment of such lots.

28

1 3.6. Prior to bringing any motion or request for an order to show cause
2 to enforce the terms of this Consent Judgment, a Party seeking enforcement shall
3 provide the allegedly violating Party thirty (30) days advanced written notice of the
4 alleged violation. The Parties shall meet and confer during such thirty (30) day
5 period in an effort to seek agreement on an appropriate cure for the alleged
6 violation.

7 **4. PENALTIES AND PAYMENT**

8 4.1. Within thirty (30) days of the Effective Date, GHF shall pay to CEH
9 the total sum of forty-five thousand dollars (\$45,000), which shall be allocated as
10 follows:

11 4.1.1. \$6,000 shall constitute a penalty pursuant to Cal. Health &
12 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with
13 Cal. Health & Safety Code § 25249.12.

14 4.1.2. \$8,500 shall constitute an amount paid in lieu of penalty
15 pursuant to Cal. Health & Safety Code § 25249.7(b), and Cal. Code of Regs. Title 11,
16 § 3202(b). CEH will use such funds to continue its work of educating and protecting
17 the public from exposures to toxic chemicals, including heavy metals. CEH also may
18 use a portion of such funds to monitor compliance with this Consent Judgment and
19 to purchase and test GHF's products to confirm compliance. In addition, as part of
20 its Community Environmental Action and Justice Fund, CEH will use four (4)
21 percent of such funds to award grants to grassroots environmental justice groups
22 working to educate and protect the public from exposures to toxic chemicals. The
23 method of selection of such groups can be found at the CEH website at
24 www.ceh.org/justicefund.

25 4.1.3. \$30,500 shall constitute reimbursement of CEH's reasonable
26 attorneys' fees and costs.

27 4.2. The payments specified in 4.1 shall be made by check payable to
28 CEH.

1 5. CLAIMS COVERED AND RELEASE

2 5.1. This Consent Judgment is a full, final, and binding resolution
3 between Plaintiff, on the one hand, and on the other hand, GHF and GHF's parents,
4 shareholders, divisions, subdivisions, subsidiaries, partners, affiliated companies
5 and their successors and assigns ("GHF Releasees"), and all to whom they distribute
6 or sell Covered Products including, but not limited to, distributors, wholesalers,
7 customers, retailers, franchisees, cooperative members, and licensees ("Downstream
8 Releasees"), including but not limited to Wal-Mart Stores, Inc., Topco Associates,
9 LLC, and Topco Associates, Inc., and their respective affiliates and subsidiaries, of
10 any violation of Proposition 65 that has been or could have been asserted in the
11 public interest against GHF, GHF Releasees, and Downstream Releasees, regarding
12 the failure to warn about exposure to lead arising in connection with Covered
13 Products manufactured, distributed, or sold by GHF prior to the Effective Date.

14 5.2. CEH, acting on its own behalf and in the public interest pursuant to
15 Cal. Health & Safety Code § 25249.7(d), releases, waives, and forever discharges any
16 and all claims against GHF, GHF Releasees, and Downstream Releasees arising from
17 any violation of Proposition 65 that has been or could have been asserted in the
18 public interest regarding the failure to warn about exposure to lead arising in
19 connection with Covered Products manufactured, distributed or sold by GHF prior
20 to the Effective Date.

21 5.2.1. To the extent that the foregoing release is one to which Cal.
22 Civ. Code § 1542 (or similar provisions of law) applies, it is the intention of the
23 Parties that the release shall be effective as a bar to any and all actions, fees,
24 damages, losses, claims, liabilities and demands of whatsoever character, nature and
25 kind, known or unknown, suspected or unsuspected specified herein. In furtherance
26 of this intention, Plaintiff expressly waives any and all rights and benefits conferred
27 upon it by the provisions of Cal. Civ. Code § 1542 (or similar provisions of law),
28 which read as follows: "A general release does not extend to claims which the

1 creditor does not know or suspect to exist in his or her favor at the time of executing
2 the release, which if known by him or her must have materially affected his or her
3 settlement with the debtor.”

4 5.2.2. The Parties acknowledge that the foregoing waiver of the
5 provisions of Cal. Civ. Code § 1542 was bargained for separately; thus,
6 notwithstanding the provisions of section 1542, and for the purpose of
7 implementing a full and complete release and discharge of the GHF Releasees and
8 their Downstream Releasees, Plaintiff expressly acknowledges that the provisions of
9 Section 5.2 of this Consent Judgment are intended to include, without limitation, all
10 of the claims, causes of action and liabilities which the Parties, and each of them, do
11 not know or suspect to exist in their favor at the time of execution of this Consent
12 Judgment, which contemplates extinguishment of all such claims, causes of action
13 and liabilities.

14 5.3. Compliance with the terms of this Consent Judgment by GHF and
15 the GHF Releasees shall constitute compliance with Proposition 65 by GHF, the GHF
16 Releasees and their Downstream Releasees with respect to any alleged failure to
17 warn about lead in Covered Products manufactured, distributed or sold by GHF
18 after the Effective Date.

19 6. REOPENER

20 6.1. In the event that a concentration of lead and lead compounds in
21 Covered Products greater than the TCS established under this Consent Judgment is
22 determined by the State of California in any administrative proceeding or by a court
23 in any other judicial proceeding commenced to enforce the requirements of
24 Proposition 65 to result in exposures below the maximum allowable dose level for
25 lead set forth in 22 CCR § 12805, either Party may request an opportunity to meet
26 and confer with the other Party concerning a corresponding modification to the TCS
27 and may thereafter request that the Court modify this Consent Judgment
28 accordingly.

1 **7. PROVISION OF NOTICE**

2 7.1. When any Party is entitled to receive any notice under this Consent
3 Judgment, the notice shall be sent by first class and electronic mail as follows:

4 7.1.1. Notices to GHF. The persons for GHF to receive Notices
5 pursuant to this Consent Judgment shall be:

6 Mr. Doug Weinbrenner
7 Chief Executive Officer
8 Golden Heritage Foods LLC
9 120 Santa Fe
 Hillsboro, Kansas 67063

10 With a copy to:

11 Kevin T. Haroff, Esq.
12 Marten Law PLLC
13 455 Market Street, Suite 2200
 San Francisco, California 94105-2446

14 7.1.2. Notices to Plaintiff. The person for CEH to receive Notices
15 pursuant to this Consent Judgment shall be:

16 Rick Franco, Esq.
17 Center for Environmental Health
18 2201 Broadway, Suite 302
 Oakland, California 94612

19 7.2. Any Party may modify the person and address to whom the notice
20 is to be sent by sending the other Party notice by first class and electronic mail.

21 **8. COURT APPROVAL**

22 8.1. This Consent Judgment shall become effective on the Effective
23 Date, provided however, that CEH shall prepare and file a Motion for Approval of
24 this Consent Judgment and GHF shall support approval of such Motion.

25 8.2. If this Consent Judgment is not entered by the Court, it shall be of
26 no force or effect and shall not be introduced into evidence or otherwise used in any
27 proceeding for any purpose.

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9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. RETENTION OF JURISDICTION

11.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

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12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

12.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

13. NO EFFECT ON OTHER SETTLEMENTS

13.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

14. EXECUTION IN COUNTERPARTS

14.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: ~~October~~ ^{November} 1, 2012
CEH

CENTER FOR ENVIRONMENTAL HEALTH



CHARLES P. ZARNAS

Printed Name

ASSOCIATE DIRECTOR

Title

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Dated: October 23, 2012

GOLDEN HERITAGE FOODS LLC



Doug Weinbremer

Printed Name

CEO

Title

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: FEB 04, 2012

LYNN DURYEE

Judge of the Superior Court of the State of
California, County of Marin

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EXHIBIT A – NOTICED PRODUCTS

1. Thrifty Bee Dark & Robust Internationally Source Honey (12 oz. bottle)
2. Thrifty Bee Dark & Robust Internationally Source Honey (32 oz. bottle)
3. Pure 'n Simple Honey (12 oz. bottle)

1 EXHIBIT B – SUPPLIER NOTIFICATION FORM

2
3 IMPORTANT COMMUNICATION ABOUT
4 LEAD RESIDUES IN HONEY

5
6 As a valued supplier, Golden Heritage Foods (GHF) is committed to keeping you
7 informed about important developments within the honey industry. We feel that the
8 best way to protect the interests of each member of the supply chain is to be
9 transparent and forthcoming with our suppliers when we become aware of
10 changing conditions in our industry.

11
12 Late in 2011, GHF was served with a notice of alleged violation of Proposition 65,
13 which is a California law that imposes very strict limits on the amounts of
14 hazardous chemicals that the public may come into contact with through the
15 environment, consumer goods or foods. These limits can be well below what the
16 FDA might recommend as acceptable, and in the case of honey, consumers must not
17 be exposed to lead residue in excess of 0.5 micrograms per day.

18
19 As a result of this notice, Golden Heritage Foods took two specific actions; the first
20 was to conduct the necessary work to determine the amount of lead that would be
21 considered acceptable under the requirements of Proposition 65. The second was to
22 begin testing honey from a variety of sources, both Domestic and Import, in order to
23 determine where honey with lead residues might originate and how high the levels
24 of residue might be. As a result of this work, we have determined that honey from
25 most countries, including the United States, meets the requirements of Proposition
26 65. Of the countries tested for lead residues, only two were found to contain
27 problematic concentrations of lead: India and Vietnam.

28
29 While our findings suggest that honey from most origins has very little or no
30 residue, we would request that all of our suppliers consider the potential for the
31 inclusion of lead in honey. It is suspected that most lead residue in honey is derived
32 from holding tanks or vessels (containers, tins) used to extract, transport or contain
33 honey prior to placement in steel drums for shipment. Galvanized steel and
34 soldered metal containers are of greatest concern as a potential source of lead
35 residue.

36
37 Golden Heritage Foods has been, and will continue to conduct risk based testing on
38 inbound shipments from all origins. Honey found to contain lead residue in excess
39 of the limits established by Proposition 65 may be subject to rejection and the
40 supplier of that honey may be subsequently placed on probationary status pending

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an investigation into the origin of the lead residue. We would urge all suppliers to evaluate their potential risks and to undertake risk based lead testing in order to evaluate the current state of residue within your supply chain or operation.

Please contact Golden Heritage Foods with questions about this letter, or for more specific results from our lead residue testing program.

Best Regards,

1 EXHIBIT C – LEAD TESTING PROTOCOLS

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3 Domestic Testing Program

- 4 • Honey received from the first load from each crop year from each state will be
5 tested for lead residue in order to establish baseline levels for each supplier.
6 • Suppliers found with honey over 25 ppb will be placed on probationary status
7 and subsequent loads will be tested before accepted and cleared for use. Once
8 the supplier takes corrective action to eliminate the source of contamination and
9 demonstrates a reduction in lead residue to below limits, they will be removed
10 from probationary status and tested as described above.
11 • Suppliers found with honey below 25 ppb but with quantifiable residues will be
12 contacted to educate them about the risks of lead contamination and potential
13 sources for that contamination. They will be encouraged to change practices to
14 reduce the incidence of lead in their honey.
15 • Suppliers without lead residue will exit the testing program and only receive
16 retesting on a random annual basis to ensure there has been no increase in
17 residue levels.

18 Import Testing Program

- 19 • Each load of honey received from India and Vietnam will be tested upon receipt
20 or tested prior to arrival using the True Source Certified, independently
21 collected, pre-shipment sample.
22 • Loads received from outside India and Vietnam will be tested on an annual
23 basis.
24 • Suppliers found with honey over 25 ppb will be placed on probationary status
25 and subsequent loads will be tested before accepted and cleared for use. Once
26 the supplier takes corrective action to eliminate the source of contamination and
27 demonstrates a reduction in lead residue to below limits, they will be removed
28 from probationary status and tested as described above.
• Loads found to contain lead over 25 ppb will generate a notification to the
supplier, advising them of the finding and warning of the potential for future
load rejection.