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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation, ,  
Plaintiff,

v.

GOLDEN HERITAGE FOODS LLC, et  
al.,  
Defendants.

Case No.: CIV 1204659

**[PROPOSED]  
CONSENT JUDGMENT**

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

**1. INTRODUCTION**

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

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](http://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 \_\_, 2012

**CENTER FOR ENVIRONMENTAL HEALTH**

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

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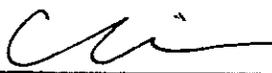
**14. EXECUTION IN COUNTERPARTS**

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:**

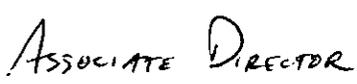
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CENTER FOR ENVIRONMENTAL HEALTH

  
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Printed Name

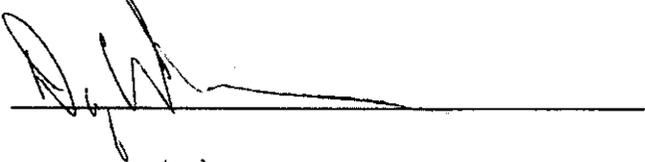
  
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Dated: October 23 2012

**GOLDEN HERITAGE FOODS LLC**



Doug Weinbremer

Printed Name

CEO

Title

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_, 2012

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

Golden Heritage Foods has been, and will continue to conduct risk based testing on  
inbound shipments from all origins. Honey found to contain lead residue in excess  
of the limits established by Proposition 65 may be subject to rejection and the  
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

2  
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.

14 Import Testing Program

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