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

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

v.

RALPH'S GROCERY COMPANY, et
al.
Defendants.

Case No. CIV 1202030

**[PROPOSED] CONSENT
JUDGMENT AS TO
GROCERY OUTLET, INC.
AND ALLIED
INTERNATIONAL CORP. OF
VA**

1. INTRODUCTION AND STATEMENT OF FACTS

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health ("CEH"), and Defendants Grocery Outlet, Inc. ("Grocery Outlet") and Allied International Corporation of VA("Allied") (collectively, "Defendants") to settle, compromise and extinguish all claims asserted by CEH against Defendants as set forth in the operative Complaint in the matter *Center for Environmental Health v. Ralph's Grocery Company, et al.* Marin County Superior Court Case No. CIV 1202030 (the "Action"). (CEH and the Defendants are sometimes referred to herein collectively as the "Parties".)

1 1.2. On February 8, 2012, CEH provided a “Notice of Violation of Safe
2 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)” (“February 8
3 Notice”), to Defendants, the California Attorney General, the District Attorneys of every
4 County in the State of California, the City Attorneys for every City in State of California
5 with a population greater than 750,000.

6 1.3. The February 8 Notice alleged violations of Proposition 65’s “warning”
7 provision, set out at Cal. Health and Safety Code § 25249.6. The chemical involved in the
8 alleged violations was lead and lead compounds (“Lead”) and the specific type of product
9 causing the alleged violations was “honey” (referred to herein as “Covered Products”).
10 Covered Products includes the Forelli brand honey distributed by Allied and sold by Grocery
11 Outlet.

12 1.4. On May 1, 2012, CEH filed its Complaint against Defendants in the
13 Action.

14 1.5. Defendants are corporations that employ ten (10) or more persons and that
15 manufacture, distribute, and/or sell Covered Products in the State of California.

16 1.6. For purposes of this Consent Judgment only, CEH and Defendants
17 stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in the
18 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint;
19 (ii) venue is proper in the County of Marin; and (iii) this Court has jurisdiction to enter this
20 Consent Judgment as a full and final resolution of all claims which were or could have been
21 raised in the Complaint in this Action based on the facts alleged in the Notice and Complaint
22 with respect to Covered Products manufactured, distributed, and/or sold by Defendants.

23 1.7. CEH and Defendants enter into this Consent Judgment as a full and final
24 settlement of all claims that were or which could have been raised in the Complaint in this
25 Action arising out of the facts or conduct related to Defendants alleged therein. By execution
26 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
27 fact, conclusion of law, or violation of law, nor shall compliance with the Consent Judgment
28 constitute or be construed as an admission by the Parties of any fact, conclusion of law, or

1 violation of law. Defendants deny the material, factual and legal allegations in the Notices
2 and Complaint and expressly deny any wrongdoing whatsoever. Nothing in this Consent
3 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties
4 may have in this or any other pending or future legal proceedings. This Consent Judgment is
5 the product of negotiation and compromise and is accepted by the Parties solely for purposes
6 of settling, compromising and resolving issues disputed in this Action.

7 **2. DEFINITIONS**

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

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

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

18 **3. INJUNCTIVE RELIEF**

19 3.1. **Lead Limits for Covered Products.** As of the date of entry of this
20 Consent Judgment (the "Effective Date"), Defendants shall not distribute, ship, sell or offer
21 for sale in California any Covered Products containing Lead in a concentration greater than
22 25 parts per billion ("ppb") (the "Lead Limit").

23 **3.1.1** In the event that the State of California modifies the Maximum
24 Allowable Dose Level ("MADL") for Lead, as set forth in 22 CCR § 12085, any party may
25 seek a corresponding modification in the Lead Limit established in Section 3.1. Any party
26 seeking such a modification in the Lead limit shall first meet and confer with the other parties
27 and thereafter may request that the Court modify this Consent Judgment accordingly.
28

1 3.2. On or before the Effective Date, Allied shall have: (1) ceased shipping the
2 Forelli's honey identified in the February 8 Notice as a non-exclusive exemplar product
3 ("Noticed Products") to stores and/or customers in California, and (ii) sent instructions to any
4 customers (other than Grocery Outlet) offering Noticed Products for sale in California to
5 cease doing so and either to return all unsold Noticed Products to Allied for destruction or
6 disposal or to destroy or dispose of such Noticed Products directly. Any destruction or
7 disposal of Noticed Products shall be in compliance with all applicable laws. Within ninety
8 (90) days after the Effective Date, Allied shall certify to CEH that it has complied with this
9 section. If there is a dispute over the implementation of these requirements, CEH and
10 Defendants shall meet and confer before seeking any remedy in court.

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

17 3.4. Beginning within three (3) months following the Effective Date, Allied
18 will implement a program of regular testing for the lead content of representative samples of
19 internationally-sourced honey obtained by Allied for sale or distribution in California.
20 Sampling and testing will be performed in accordance with the protocols described in Section
21 3.4.1.

22 3.4.1. Testing will be performed on no less than an annual basis for all
23 imported honey sources. For country sources with a verified history of honey supplies
24 exceeding the Lead Limits, testing initially will be performed for each shipment received for
25 packaging and distribution by Allied; provided, however, if testing for three (3) consecutive
26 quarters confirms the presence of lead or lead compounds at concentrations below the Lead
27 Limits, future testing thereafter will be performed on an annual basis. As an additional
28

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

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

6 3.5. CEH may independently perform periodic sampling and testing of
7 Defendants’ honey products which are to be sold and distributed in California.
8 (“Confirmatory Testing”). In the event Confirmatory Sampling indicates the presence of
9 lead in excess of the Lead Limits, CEH shall promptly notify Defendants in writing and
10 provide Defendants with copies of the laboratory results showing the elevated lead levels, a
11 description of sampling and testing protocol used in connection with the Confirmatory
12 Testing, and any associated QA/QC documentation.

13 3.5.1. Following an opportunity to meet and confer concerning the results
14 of Confirmatory Testing, and at CEH’s request, Allied will attempt to ascertain the cause of
15 the elevated lead level and provide CEH with a report of its investigation and a proposal to
16 prevent its recurrence. Following a further opportunity to meet and confer, Allied will take
17 appropriate action to implement the proposal.

18 3.5.2. In the event Confirmatory Testing conducted pursuant to this
19 section shows the presence of lead in excess of the Lead Limits in Allied’s honey products
20 which are to be sold and distributed in California, Allied shall cease further shipments to
21 California of the specific product lot implicated by the Confirmatory Testing until
22 completion of the process set forth in paragraph 3.5.1, shall notify California customers to
23 whom shipments of the implicated product lot were sold and request that such customers not
24 use or sell such product, and conduct testing of each production lot for that product line prior
25 to further shipment of such lots.

26 3.6. Prior to bringing any motion or request for an order to show cause to
27 enforce the terms of this Consent Judgment, CEH shall provide the allegedly violating Party
28 thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and

1 confer during such thirty (30) day period in an effort to seek agreement on an appropriate
2 cure for the alleged violation.

3 **4. PENALTIES AND PAYMENT**

4 4.1. Grocery Outlet and Allied shall each pay to CEH the total sum of twenty
5 thousand dollars (\$20,000), for a total of \$40,000 in settlement payments, which shall be
6 allocated as follows:

7 4.1.1. \$6,500 shall constitute a penalty pursuant to Cal. Health & Safety
8 Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health &
9 Safety Code § 25249.12.

10 4.1.2. \$8,500 shall constitute a payment in lieu of civil penalty pursuant
11 to Cal. Health & Safety Code § 25249.7(b) and 11 CCR § 3202(b). CEH will use such funds
12 to continue its work of educating and protecting the public from exposures to toxic
13 chemicals, including heavy metals such as Lead. CEH may also use a portion of such funds
14 to monitor compliance with this Consent Judgment and to purchase and test Defendants'
15 products to confirm compliance. In addition, as part of its Community Environmental Action
16 and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots
17 environmental justice groups working to educate and protect the public from exposures to
18 toxic chemicals. The method of selection of such groups can be found at the CEH website at
19 www.ceh.org/justicefund.

20 4.1.3. \$25,000 shall constitute reimbursement of CEH's reasonable
21 attorneys' fees and costs.

22 4.2. Grocery Outlet shall pay \$20,000 to CEH within 30 days of entry of this
23 Consent Judgment. Allied shall pay \$20,000 to CEH pursuant to the following schedule:
24 Allied shall make four (4) monthly payments to CEH of \$5,000 each. The first payment shall
25 be paid within 30 days of entry of this Consent Judgment, and each subsequent payment shall
26 be made within 30 days following the previous payment.

27 4.3. The payments specified in Section 4.2 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 between
3 Plaintiffs, Defendants and Defendants' parents, shareholders, divisions, subdivisions,
4 subsidiaries, partners, affiliated companies and their successors and assigns and all to whom
5 they distribute or sell Covered Products including, but not limited to, distributors,
6 wholesalers, customers, retailers, franchisees, cooperative members, and licensees
7 ("Downstream Releasees"), and their affiliates and subsidiaries, for all claims alleged in the
8 Complaint in this Action arising from any violation of Proposition 65 that has been or could
9 have been asserted in the public interest against Defendants and Downstream Releasees,
10 regarding the failure to warn about exposure to lead arising in connection with Covered
11 Products manufactured, distributed, or sold by Defendants prior to the Effective Date.

12 5.2. CEH, for itself and acting on behalf of the public interest pursuant to Cal.
13 Health & Safety Code §25249.7(d), releases, waives, and forever discharges any and all
14 claims alleged in the Complaint in this Action against Defendants and Downstream
15 Releasees arising from any violation of Proposition 65 that has been or could have been
16 asserted in the public interest regarding the failure to warn about exposure to lead arising in
17 connection with Covered Products manufactured, distributed or sold by Defendants prior to
18 the Effective Date.

19 5.3. Compliance with the terms of this Consent Judgment by Defendants and
20 the Downstream Releasees shall constitute compliance with Proposition 65 by Defendants
21 and Downstream Releasees with respect to any alleged failure to warn about lead in Covered
22 Products manufactured, distributed or sold by Defendants after the Effective Date.

23 5.4. CEH hereby waives any right or benefit that CEH may have, now or in the
24 future, under Section 1542 of the Civil Code of the State of California, which reads as
25 follows;

26 A general release does not extend to claims which the creditor does not know or
27 suspect to exist in his or her favor at the time of executing the release, which if
28 known by him or her must have materially affected his or her settlement with the
 debtor.

1 **6. PROVISION OF NOTICE**

2 6.1. 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 6.1.1. Notices to Defendants. The persons for Defendants to receive
5 Notices pursuant to this Consent Judgment shall be:

6 Grocery Outlet, Inc.:
7 Charles S. Custer
8 Adam B. Sugarman
9 Gordon & Rees LLP
10 275 Battery Street, Suite 2000
11 San Francisco, California 94111

12 Allied International Corporation of VA:
13 David R. Mahdavi
14 FRACASSI, MAHDAVI, SISSMAN & RAND, LLP
15 1890 Preston White Drive
16 Suite 100
17 Reston, Virginia 20191

18 With a copy to:

19 Charles S. Custer
20 Adam B. Sugarman
21 Gordon & Rees LLP
22 275 Battery Street, Suite 2000
23 San Francisco, California 94111

24 6.1.2. Notices to Plaintiff. The person for CEH to receive Notices
25 pursuant to this Consent Judgment shall be:

26 Rick Franco
27 Center for Environmental Health
28 2201 Broadway, Suite 302
 Oakland, California 94612

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

1 **7. COURT APPROVAL**

2 7.1. This Consent Judgment shall become effective on the Effective Date,
3 provided however, that CEH shall prepare and file a Motion for Approval of this Consent
4 Judgment and Defendants shall support approval of such Motion.

5 7.2. If this Consent Judgment is not entered by the Court, it shall be of no force
6 or effect and shall not be introduced into evidence or otherwise used in any proceeding for
7 any purpose.

8 **8. GOVERNING LAW AND CONSTRUCTION**

9 8.1. The terms and obligations arising from this Consent Judgment shall be
10 construed and enforced in accordance with the laws of the State of California. Nothing in the
11 Consent Judgment shall alter, create, enlarge or diminish any legal obligation otherwise
12 required in common law, statute or regulation.

13 **9. ENTIRE AGREEMENT**

14 9.1. This Consent Judgment contains the sole and entire agreement and
15 understanding of CEH and Defendants with respect to the entire subject matter hereof, and
16 any and all prior discussions, negotiations, commitments, or understandings related thereto, if
17 any, are hereby merged herein and therein.

18 9.2. There are no warranties, representations, or other agreements between
19 CEH and Defendants except as expressly set forth herein. No representations, oral or
20 otherwise, express or implied, other than those specifically referred to in this Consent
21 Judgment have been made by any Party hereto.

22 9.3. No other agreements not specifically contained or referenced herein, oral
23 or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
24 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to
25 bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

26 9.4. No supplementation, modification, waiver, or termination of this Consent
27 Judgment shall be binding unless executed in writing by the Party to be bound thereby.
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1 9.5. No waiver of any of the provisions of this Consent Judgment shall be
2 deemed or shall constitute a waiver of any of the other provisions hereof whether or not
3 similar, nor shall such waiver constitute a continuing waiver.

4 **10. RETENTION OF JURISDICTION**

5 10.1. This Court shall retain jurisdiction of this matter to implement or modify
6 the Consent Judgment.

7 **11. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8 11.1. Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
10 into and execute the Consent Judgment on behalf of the Party represented and to legally bind
11 that Party. CEH also certifies that it will comply with all applicable obligations pursuant to
12 Cal. Health & Safety Code § 25249.7.

13 **12. NO EFFECT ON OTHER SETTLEMENTS**

14 12.1. Nothing in this Consent Judgment shall preclude CEH from resolving any
15 claim against another entity on terms that are different than those contained in this Consent
16 Judgment.

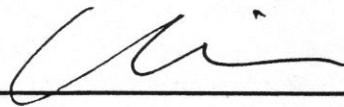
17 **13. EXECUTION IN COUNTERPARTS**

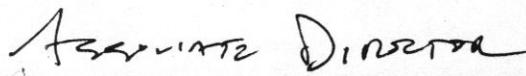
18 13.1. The stipulations to this Consent Judgment may be executed in counterparts
19 and by means of facsimile, which taken together shall be deemed to constitute one document.

20 **IT IS SO STIPULATED:**

21 *January 30, 2013*
22 Dated: ~~December~~ , 2012

CENTER FOR ENVIRONMENTAL HEALTH

23 
24 _____
25 Printed Name *CHARLIE PERAZZO*

26 
27 _____
28 Title

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Dated: December 13, 2012

GROCERY OUTLET, INC.

Michael Ward

Printed Name MICHAEL WARD

CHIEF ADMINISTRATIVE OFFICER

Title

Dated: December __, 2012

**ALLIED INTERNATIONAL
CORPORATION OF VA**

Printed Name

Title

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

Dated: _____, 2013

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

Dated: December __, 2012

GROCERY OUTLET, INC.

Printed Name

Title

Dated: December __, 2012

**ALLIED INTERNATIONAL
CORPORATION OF VA**

Chad Akhavan

Printed Name

v.p.

Title

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

Dated: _____, 2013

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

- 11 -

Consent Judgment As To Grocery Outlet, and Allied International-Case No. CIV 1202030

EXHIBIT A

IMPORTANT COMMUNICATION ABOUT LEAD RESIDUES IN HONEY

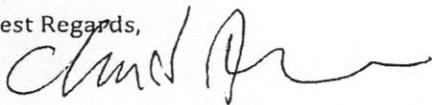
In February 2012, Allied International Corporation of VA was served with a legal notice in California concerning the presence of lead in imported honey, and other companies were served with similar complaints. As a supplier of honey to Allied, we wanted to make you aware of these issues and suggest certain practices that will minimize the potential introduction of lead into honey.

It is suspected that most lead residue in honey is introduced during the collection, storage and transportation of raw honey via holding tanks or vessels (containers, tins) used to extract, transport or contain honey. Galvanized steel and soldered metal containers are of greatest concern as a potential source of lead residue, as are containers painted with lead-containing paint. Therefore, we urge you to review your collection, storage and shipment practices and, as appropriate, to substitute plastic pails for tin canisters to collect raw honey in the field, and to use new steel drums with food grade epoxy liners for the storage and shipment of honey.

Allied will be conducting testing on inbound shipments from all origins. Honey found to contain lead residue in excess of the legal limits may be subject to rejection and the supplier of that honey may be subsequently placed on probationary status pending an investigation into the origin of the lead residue. We would urge all suppliers to evaluate their potential risks and to undertake lead testing in order to evaluate the current state of residue within your supply chain or operation.

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

Best Regards,



Allied International Corporation of VA