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

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

15 v.

16 RALPHS GROCERY COMPANY, et al.,  
17 Defendants.

Case No.: CIV 1202030

**[PROPOSED]**  
**CONSENT JUDGMENT**

18  
19 Plaintiff, the Center for Environmental Health ("CEH"), and Defendant Sioux  
20 Honey Association, Cooperative ("Sioux" or "Defendant") enter into this Consent  
21 Judgment as follows:

22 **1. INTRODUCTION**

23 1.1. On February 8, 2012, CEH sent a "Notice of Violation of Safe  
24 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)" ("February 8  
25 Notice") to Ralphs Grocery Company ("Ralphs") and Inter-American Products, Inc.  
26 ("Inter-American"), the California Attorney General, the District Attorneys of every  
27  
28

1 County in the State of California, and the City Attorneys for every City in the State  
2 of California with a population greater than 750,000.

3 1.2. The February 8 Notice alleged violations of Proposition 65's  
4 "warning" provision, set out at Cal. Health and Safety Code § 25249.6. The chemical  
5 involved in the alleged violations was lead and lead compounds. The specific type  
6 of product causing the alleged violations was identified generically as honey.  
7 Ralph's Pure Clover Honey was identified as an example of the Covered Products  
8 that Ralphs and Inter-American allegedly marketed, distributed and/or sold in  
9 California. For purposes of this Consent Judgment, Covered Products shall refer to  
10 all honey distributed for retail sale by Sioux in California, including, without  
11 limitation, Ralph's Pure Clover Honey and the brands listed on Exhibit B to this  
12 Consent Judgment.

13 1.3. On May 1, 2012, Plaintiff filed its Complaint against Ralphs and  
14 Inter-American and against Does 1 through 100 in the present action.

15 1.4. On August 2, 2013, Plaintiff issued a 60-day Notice to Sioux  
16 ("August 2 Notice") alleging that, as the supplier of honey in the Covered Products  
17 referenced in the February 8 Notice and the Complaint, Sioux was also liable for the  
18 subject violations of Proposition 65. On or about October 2, 2013, Plaintiff filed an  
19 Amendment to Complaint to name Sioux as a defendant in the Complaint.

20 1.5. Sioux is a company that employs ten (10) or more persons and that  
21 produces Covered Products in the State of California.

22 1.6. For purposes of this Consent Judgment only, CEH and Sioux (the  
23 "Parties") stipulate that: (i) this Court has jurisdiction over the allegations of  
24 violation contained in the Complaint and personal jurisdiction over Sioux as to the  
25 acts alleged in the Complaint; (ii) that venue is proper in the County of Marin; and  
26 (iii) this Court has jurisdiction to enter this Consent Judgment as a full and final  
27 resolution of all claims which were or could have been raised in the Complaint and  
28 of all claims which were or could have been raised by any person or entity based in

1 whole or in part, directly or indirectly, on the facts alleged in the February 8 and  
2 August 2 Notices, in the present action, or arising therefrom or related thereto, with  
3 respect to Covered Products manufactured, distributed, and/or sold by the  
4 defendants.

5 1.7. The Parties enter into this Consent Judgment as a full and final  
6 settlement of certain disputed claims as alleged in the February 8 and August 2  
7 Notices and the Complaint, for the purpose of avoiding prolonged and costly  
8 litigation and of resolving the issues raised therein. By execution of this Consent  
9 Judgment, the parties do not admit any fact, conclusion of law, or violation of law,  
10 nor shall Sioux's compliance with the Consent Judgment constitute or be construed  
11 as an admission by Sioux of any fact, conclusion of law, or violation of law. Sioux  
12 denies the material, factual and legal allegations in the February 8 and August 2  
13 Notices and the Complaint and expressly denies any wrongdoing whatsoever.  
14 Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
15 remedy, argument or defense the Parties may have in this or any other pending or  
16 future legal proceedings.

17 **2. DEFINITIONS**

18 2.1. "Compliance Documentation" shall mean such analytical reports as  
19 are prepared to describe the results of any testing required by Section 3.3.

20 2.2. "Effective Date" shall mean, with respect to this Consent Judgment,  
21 the date on which this Court enters the Consent Judgment.

22 2.3. "Supplier Best Practices" shall mean those practices that can  
23 reasonably be implemented by honey producers and suppliers in order to minimize  
24 the potential introduction of lead and lead compounds during the collection, storage  
25 and transportation of raw honey. Such practices may include the collection of raw  
26 honey in the field in suitable containers, and the use of suitable steel drums with  
27 food grade epoxy liners for the storage and shipment of honey.  
28

1           2.4.       “Lead Limit” is a concentration of lead and lead compounds  
2 (expressed in parts per billion, or “ppb”) in Covered Products that will result in  
3 compliance with this Consent Judgment. For purposes of this Consent Judgment,  
4 the Lead Limit is 25 ppb.

5           **3. RELIEF**

6           3.1.       As of the Effective Date, Sioux shall not distribute, ship, sell or offer  
7 for sale in California any Covered Product that contains lead or lead compounds in  
8 quantities exceeding the Lead Limit.

9           3.2.       On or before the Effective Date, Sioux shall provide written notice  
10 to its suppliers that provide honey used in the Covered Products, informing them of  
11 the Lead Limit and instructing them to take expedited action to implement Supplier  
12 Best Practices to achieve compliance with the Lead Limit. The notice shall include  
13 the substantive content provided in Exhibit A to the Consent Judgment.

14          3.3.       Beginning within three (3) months following the Effective Date,  
15 Sioux will implement, or cause to be implemented, a program of regular testing for  
16 the lead content of representative samples of honey used in Covered Products for  
17 sale or distribution in California.

18           3.3.1.   Sioux shall ensure that each supplier of honey used in the  
19 Covered Products has had at least one batch of its honey tested on an annual basis.  
20 For suppliers with a verified history of batches provided to Sioux exceeding the  
21 Lead Limit on at least two separate occasions after June 1, 2013, testing will be  
22 performed for each shipment received for packaging and distribution; provided,  
23 however, if testing for three (3) consecutive shipments confirms the presence of lead  
24 or lead compounds at concentrations below the Lead Limit, future testing need only  
25 be performed annually.

26           3.3.2.   If a supplier of honey of the type used in the Covered  
27 Products has had at least five (5) consecutive years of annual testing that confirms  
28

1 the presence of lead or lead compounds at concentrations below the Lead Limit, the  
2 testing requirements under Section 3.3 shall terminate.

3 3.3.3. As an additional quality assurance measure, blended honey  
4 will be randomly tested to validate the effectiveness of established source testing  
5 procedures. For purposes of this Consent Judgment, the results of testing performed  
6 pursuant to the testing provisions contained herein will be evaluated in accordance  
7 with generally accepted sampling and analytical protocols, including without  
8 limitation review of the average (mean) lead levels derived from multiple samples of  
9 the same batch and/or composite sampling.

10 3.3.4. Sioux shall maintain and, upon CEH's written request, make  
11 available to CEH for inspection and copying, Compliance Documentation related to  
12 any testing undertaken pursuant to Section 3.3, for a period of three (3) years.

13 3.4. CEH may independently perform periodic sampling and testing of  
14 Covered Products ("Confirmatory Testing") manufactured after the Effective Date.  
15 Confirmatory Testing shall take place at a facility certified to ISO 17025 or equivalent  
16 proficiency and shall offer testing services to the general public. In the event  
17 Confirmatory Testing indicates the presence of lead in excess of the Lead Limit, CEH  
18 shall promptly notify Sioux in writing and provide them with copies of the  
19 laboratory results showing the elevated lead levels, a description of sampling and  
20 testing protocol used in connection with the Confirmatory Testing, and any  
21 associated QA/QC documentation.

22 3.4.1. Following an opportunity to meet and confer concerning  
23 the results of Confirmatory Testing, and at CEH's request, Sioux will attempt to  
24 ascertain the cause of the elevated lead level and will provide CEH with a report of  
25 its investigation and a proposal to prevent its recurrence. Following a further  
26 opportunity to meet and confer, Sioux will take appropriate action to implement the  
27 proposal.  
28

1                   3.4.2. In the event that Confirmatory Testing and Sioux's  
2 investigation conducted pursuant to this Section demonstrates noncompliance with  
3 the Lead Limit, Sioux shall cease further shipments of the specific product lot  
4 implicated by the Confirmatory Testing until completion of the process set forth in  
5 paragraph 3.4.1, and conduct testing of each production lot for that product line  
6 prior to further shipment of such lots. Prior to bringing any motion or request for an  
7 order to show cause to enforce the terms of this Consent Judgment, a Party seeking  
8 enforcement shall provide the allegedly violating Party thirty (30) days advanced  
9 written notice of the alleged violation. The Parties shall meet and confer during  
10 such thirty (30) day period in an effort to seek agreement on an appropriate cure for  
11 the alleged violation.

12                   **4. PENALTIES AND PAYMENT**

13                   4.1.           Within thirty (30) days of the Effective Date, Sioux shall pay to  
14 CEH the total sum of fifty-five thousand dollars \$55,000 which shall be allocated as  
15 follows:

16                               4.1.1. \$10,000 shall constitute a penalty pursuant to Cal. Health &  
17 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with  
18 Cal. Health & Safety Code § 25249.12.

19                               4.1.2. \$15,000 shall constitute an amount paid in lieu of penalty  
20 pursuant to Cal. Health & Safety Code § 25249.7(b), and Cal. Code of Regs. Title 11,  
21 § 3202(b). CEH will use such funds to continue its work of educating and protecting  
22 the public from exposures to toxic chemicals, including heavy metals. CEH also may  
23 use a portion of such funds to monitor compliance with this Consent Judgment and  
24 to purchase and test Defendants' products to confirm compliance. In addition, as  
25 part of its Community Environmental Action and Justice Fund, CEH will use four  
26 (4) percent of such funds to award grants to grassroots environmental justice groups  
27 working to educate and protect the public from exposures to toxic chemicals. The  
28

1 method of selection of such groups can be found at the CEH website at  
2 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

3 4.1.3. \$30,000 shall constitute reimbursement of CEH's reasonable  
4 attorneys' fees and costs.

5 4.2. The payments specified in 4.1 shall be made by check payable to  
6 CEH.

## 7 5. CLAIMS COVERED AND RELEASE

8 5.1. This Consent Judgment is a full, final, and binding resolution  
9 between Plaintiff, on the one hand, and on the other hand, Sioux, and its parents,  
10 shareholders, members, divisions, subdivisions, subsidiaries, partners, affiliated  
11 companies, distributors, including without limitation, Inter-American, and retailers,  
12 including, without limitation, Ralphs, and each of their successors and assigns  
13 ("Releasees") of any violation of Proposition 65 that has been or could have been  
14 asserted in the public interest against the Releasees, regarding the failure to warn  
15 about exposure to lead arising in connection with Covered Products produced,  
16 marketed, distributed, or sold by Releasees.

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

23 5.2.1. To the extent that the foregoing release is one to which Cal.  
24 Civ. Code § 1542 (or similar provisions of law) applies, it is the intention of the  
25 Parties that the release shall be effective as a bar to any and all actions, fees,  
26 damages, losses, claims, liabilities and demands of whatsoever character, nature and  
27 kind, known or unknown, suspected or unsuspected specified herein. In  
28 furtherance of this intention, Plaintiff expressly waives any and all rights and

1 benefits conferred upon it by the provisions of Cal. Civ. Code § 1542 (or similar  
2 provisions of law), which read as follows: "A general release does not extend to  
3 claims which the creditor does not know or suspect to exist in his or her favor at the  
4 time of executing the release, which if known by him or her must have materially  
5 affected his or her settlement with the debtor."

6 5.3. Compliance with the terms of this Consent Judgment by Sioux shall  
7 constitute compliance with Proposition 65 with respect to lead in Covered Products  
8 produced, marketed, distributed or sold by Sioux.

9 **6. PROVISION OF NOTICE**

10 6.1. When any Party is entitled to receive any notice under this Consent  
11 Judgment, the notice shall be sent by first class and electronic mail as follows:

12 6.1.1. Notices to Defendant.

13 The person for Sioux to receive Notices pursuant to this Consent Judgment  
14 shall be:

15 David Allibone  
16 President/CEO  
17 Sioux Honey Ass'n, Cooperative  
18 P.O. Box 388  
19 509 Lewis Blvd.  
20 Sioux City, IA 51101

With a copy to

William F. Tarantino  
Morrison & Foerster LLP  
425 Market St., Suite 3300  
San Francisco, CA 94105

21 6.1.2. Notices to Plaintiff. The person for CEH to receive Notices  
22 pursuant to this Consent Judgment shall be:

23 Rick Franco  
24 Center for Environmental Health  
25 2201 Broadway, Suite 302  
26 Oakland, California 94612

27 6.2. Any Party may modify the person and address to whom the notice  
28 is to be sent by sending the other Party notice by first class and electronic mail.

1           **7. COURT APPROVAL**

2           7.1.       This Consent Judgment shall become effective on the Effective  
3 Date, provided however, that CEH shall prepare and file a Motion for Approval of  
4 this Consent 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  
6 no force or effect and shall not be introduced into evidence or otherwise used in any  
7 proceeding for any purpose.

8           **8. GOVERNING LAW AND CONSTRUCTION**

9           8.1.       The terms of this Consent Judgment shall be governed by the laws  
10 of the State of California.

11          **9. ENTIRE AGREEMENT**

12          9.1.       This Consent Judgment contains the sole and entire agreement and  
13 understanding of the Parties with respect to the entire subject matter hereof, and any  
14 and all prior discussions, negotiations, commitments, or understandings related  
15 thereto, if any, are hereby merged herein and therein.

16          9.2.       There are no warranties, representations, or other agreements  
17 between the Parties except as expressly set forth herein. No representations, oral or  
18 otherwise, express or implied, other than those specifically referred to in this  
19 Consent Judgment have been made by any Party hereto.

20          9.3.       No other agreements not specifically contained or referenced  
21 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties  
22 hereto. Any agreements specifically contained or referenced herein, oral or  
23 otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
24 extent that they are expressly incorporated herein.

25          9.4.       No supplementation, modification, waiver, or termination of this  
26 Consent Judgment shall be binding unless executed in writing by the Party to be  
27 bound thereby.

1           9.5.       No waiver of any of the provisions of this Consent Judgment shall  
2 be deemed or shall constitute a waiver of any of the other provisions hereof whether  
3 or not 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  
6 modify 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  
9 fully authorized by the Party he or she represents to stipulate to this Consent  
10 Judgment and to enter into and execute the Consent Judgment on behalf of the Party  
11 represented and legally to bind that Party.

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

13          12.1.       Nothing in this Consent Judgment shall preclude CEH from  
14 resolving any claim against another entity on terms that are different than those  
15 contained in this Consent Judgment.

16          **13.   EXECUTION IN COUNTERPARTS**

17          13.1.       The stipulations to this Consent Judgment may be executed in  
18 counterparts and by means of facsimile, which taken together shall be deemed to  
19 constitute one document.

1 IT IS SO STIPULATED:

2

3 Dated: September 27, 2013

CENTER FOR ENVIRONMENTAL HEALTH

4

5



6

Signature

7

CHARLES P. ZANO

8

Printed Name

9

ASSOCIATE DIRECTOR

10

Title

11

12

13

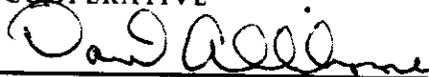
Dated: September 24, 2013

SIoux HONEY ASSOCIATION,

14

COOPERATIVE

15



16

Signature

17

David Allibone

18

Printed Name

19

President/CEO

20

Title

21

22

23

IT IS SO ORDERED, ADJUDGED AND DECREED:

24

25

26

Dated: \_\_\_\_\_, 2013

27

Judge of the Superior Court of the State of

28

California, County of Marin

1 EXHIBIT A – SUPPLIER NOTIFICATION

2  
3 IMPORTANT COMMUNICATION ABOUT  
4 LEAD RESIDUE IN HONEY

5  
6 Proposition 65 is a California law that imposes strict limits on the amounts of  
7 hazardous chemicals that the public may come into contact with through the  
8 environment, consumer goods or foods. Proposition 65 applies to alleged lead  
9 residue in honey. With respect to lead, consumers must not be exposed to lead  
10 residue in excess of 0.5 micrograms per day without a Proposition 65 warning.

11  
12 Sioux Honey Association has begun testing honey from a variety of sources. While  
13 our findings suggest that honey from most origins has little or no lead residue, we  
14 request that all of our suppliers consider the potential for the lead contamination in  
15 honey. It is suspected that most lead residue in honey is derived from equipment  
16 used to extract, transport, or contain honey prior to placement in steel drums for  
17 shipment. Galvanized steel and soldered metal equipment are of greatest concern as  
18 a potential source of lead residue.

19  
20 Sioux Honey Association has been, and will continue to conduct testing on honey  
21 shipments that are designated for delivery to California for retail sale. Honey found  
22 to contain lead residue in excess of the limits established by Proposition 65 may be  
23 subject to rejection and the supplier of that honey may be subsequently placed on  
24 probationary status pending an investigation into the origin of the lead residue. We  
25 would urge all suppliers to evaluate their potential risks and to undertake risk-based  
26 lead testing in order to evaluate the current state of residue within your supply  
27 chain or operation.

28  
Please contact us with questions about this letter, or for more specific results from  
our lead residue testing program.

Best Regards,

Sioux Honey Association

EXHIBIT B – RETAIL HONEY BRANDS

1. Special Value
2. Springfield
3. Kroger
4. Red & White
5. HyTop
6. Parade
7. Sunny Select
8. Fresh & Easy
9. Ralph's
10. Wild Harvest
11. Safeway/O Organics
12. Albertson's
13. Everyday Essential
14. Sue Bee
15. Aunt Sue's
16. Bradshaw