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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

9 Attorneys for Plaintiff SORAYA ROSS,  
10 individually and on behalf of all others similarly situated

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SORAYA ROSS, individually and**  
14 **on behalf of all others similarly**  
15 **situated,**

16 **Plaintiff,**

17 **v.**

18 **SIoux HONEY ASSOCIATION,**  
19 **COOPERATIVE, an Iowa Entity.**

20 **Defendant.**

21 **CASE NO.:**  
22 **CV 12 1645 LB**  
23 **CLASS ACTION COMPLAINT**  
24 **FOR:**

- 25 1. VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT FOR INJUNCTIVE RELIEF;
- 26 2. VIOLATIONS OF CALIFORNIA BUS. & PROF. CODE §§ 17200 ET SEQ.;
- 27 3. VIOLATIONS OF THE FALSE ADVERTISING LAW §17500;
- 28 4. ALTERNATIVELY, UNJUST ENRICHMENT/RESTITUTION

**JURY TRIAL DEMANDED**

1 Plaintiff Soraya Ross (“Plaintiff”) individually and on behalf of all others similarly  
2 situated, by her undersigned counsel, alleges the following upon personal knowledge as  
3 to her own acts and upon information and belief as to all other matters. Plaintiff’s  
4 information and belief are based upon the investigation conducted by counsel.

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this action both individually on her own behalf and as a class  
7 action against Defendant Sioux Honey Association, Cooperative (“Sioux” or  
8 “Defendant”) on behalf of a Class of all persons who purchased Sue Bee Clover Honey  
9 (“Sue Bee Honey”) from any store located in California at any time from January 1, 2010  
10 through the present (the “Class”).

11 2. At all times relevant hereto, Defendant manufactured Sue Bee Honey which  
12 was marketed to California consumers and sold in stores located in the State of  
13 California.

14 3. In California, for a product to be sold as “honey” it must contain pollen  
15 unless the removal of such pollen was “unavoidable in the removal of foreign inorganic  
16 or organic matter.” CAL. FOOD & AGRIC. CODE § 29413(e).

17 4. Despite being marketed as “Pure Honey,” the Sue Bee Honey cannot be sold  
18 in the State of California as “honey” as defined by California Food and Agriculture Code  
19 section 29413(a), (e) because it is devoid of pollen, and such pollen was not  
20 “unavoidably” removed “in the removal of foreign inorganic or organic matter.”

21 5. Accordingly, by advertising and selling to California consumers the Sue Bee  
22 Honey as “honey” in contravention of California Food and Agriculture Code section  
23 29413(a), (e) and California Food and Agriculture Code section 29673, Defendant  
24 violated California’s Consumers Legal Remedies Act (“CLRA”), Unfair Competition  
25 Law (“UCL”), and False Advertising Law (“FAL”), and unjustly enriched itself to the  
26 detriment of both Plaintiff and members of the Class.

27 \\\

28 \\\

1 **THE PARTIES**

2 6. Plaintiff Soraya Ross is a resident of Beverly Hills, California and a citizen  
3 of the State of California. On March 4, 2012, Plaintiff purchased a bottle of Sue Bee  
4 Honey for \$6.49 from an Albertsons in Santa Monica, California. Plaintiff relied upon  
5 the representation that the Sue Bee Honey was “honey” and could be sold as such to  
6 California consumers.

7 7. Defendant Sioux is a cooperative association organized under the laws of  
8 the State of Iowa. Defendant’s corporate headquarters is located at 301 Lewis  
9 Boulevard, Sioux City, Iowa 51101. Defendant advertises, distributes, markets and sells  
10 the Sue Bee Honey to thousands of consumers throughout California in contravention of  
11 California’s law as set forth herein.

12 **JURISDICTION AND VENUE**

13 8. This Court has subject matter jurisdiction over the claims asserted in this  
14 action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332. Plaintiff, a  
15 citizen of California, brings claims on behalf of a class of California citizens against  
16 Defendant, a citizen of Iowa.

17 9. This Court has jurisdiction over all causes of action asserted herein pursuant  
18 to 28 U.S.C. § 1332(d) because the aggregate claims of Plaintiff and members of the  
19 Class exceed the sum or value of \$5,000,000, and diversity of citizenship exists between  
20 at least one member of the proposed Class and Defendant.

21 10. Upon information and belief, Defendant’s sales of honey from January 1,  
22 2010 to the end of February 2012 exceeded the sum of \$13,000,000.

23 11. This Court has personal jurisdiction over Defendant because it maintains  
24 sufficient contacts in this jurisdiction, including the marketing and distribution of the Sue  
25 Bee Honey in this jurisdiction.

26 12. Venue is proper in this District because a substantial part of the events and  
27 omissions giving rise to the claim occurred in this District, including the marketing and  
28 distribution of Sue Bee Honey in this District.

**SUBSTANTIVE ALLEGATIONS**

**The Sue Bee Honey**

13. Defendant sells the Sue Bee Honey under the “Sue Bee” name.

14. Honey is one of the most popular condiments in the United States. People in the United States consume approximately 400 million pounds of honey per year. Defendant states on its website that it is responsible for the production of “around 40 million pounds of honey” per year. <http://www.suebee.com/about>.

15. Defendant markets the Sue Bee Honey as “honey” and as “pure honey” as prominently displayed on its label. However, as described herein, the Sue Bee Honey may not be sold as “honey” as defined by California Food and Agriculture Code section 29413(a), (e) because all of the pollen in the Sue Bee Honey has been unnecessarily removed.

**The Sue Bee Honey Cannot Be Sold as “Honey” in California**

16. Pursuant to California Food and Agriculture Code section 29413(e), once the pollen is removed from honey (except where unavoidable in the removal of foreign inorganic or organic matter), the condiment, under the California Food and Agriculture Code, is no longer salable in the state as “honey”.

17. California Food and Agriculture Code states in relevant part:

(a) “Honey” means the natural sweet substance produced by honeybees . . .

\* \* \*

(e) . . . Honey shall not have begun to ferment or effervesce and *no pollen or constituent particular to honey may be removed* except where unavoidable in the removal of foreign inorganic or organic matter.

CAL. FOOD & AGRIC. CODE § 29413(a), (e) (emphasis added).

18. Further, the California Food and Agriculture Code provides that:

It is unlawful for any person to mislabel any container or sub container of honey or place any false or misleading statement on any wrapper, label, or lining of any container of honey . . .

1 CAL. FOOD & AGRIC. CODE § 29673.

2 19. Moreover, “misabeled” means:

3 the placing or presence of any false or misleading statement, design, or  
4 device upon, or in connection with, any container or lot of honey, or upon  
5 the label, lining, or wrapper of any such container . . . . A statement, design,  
6 or device is false and misleading, if the honey to which it apparently or  
7 actually refers does not conform in every respect to such statement.

8 CAL. FOOD & AGRIC. CODE § 29416.

9 20. The State of California has specifically condemned and criminalized such  
10 mislabeling. Under California Food and Agriculture Code section 29701, “a violation of  
11 this chapter is an infraction punishable by a fine of not more than five hundred dollars  
12 (\$500) . . . .” CAL. FOOD & AGRIC. CODE § 29701.

13  
14 **Defendant’s Sale of Sue Bee Honey in California is Unlawful**

15 21. Despite the strict requirements of the California Food and Agriculture Code,  
16 Defendant has sold the Sue Bee Honey as “honey” when, in fact, the Sue Bee Honey  
17 does not contain pollen and therefore it cannot be sold in the State of California as  
18 “honey”.

19 22. Defendant has admitted that it removes all of Sue Bee Honey’s natural  
20 pollen on its website:

21 *Sue Bee Honey is filtered to remove all pollen to lessen its chances of*  
22 *granulation (sugaring) . . . . Pollen adds to the nutritional value of honey.*

23 <http://www.suebee.com/honey/faq> (emphasis added).

24 23. Further, Defendant’s website makes clear that such removal of pollen was  
25 not necessary for the removal of foreign matter from the honey, rather, the pollen is  
26 removed “to lessen its chances of granulation (sugaring).” In fact, Defendant sells other  
27 honey varieties that have not had all of their pollen removed, demonstrating that it is able  
28 to sell honey with pollen.

1 24. It is clear that the Sue Bee Honey does not contain pollen, which was  
2 unnecessarily removed. Therefore, the Sue Bee Honey cannot be sold in the State of  
3 California as “honey” as defined by the California Food and Agriculture Code.

4 25. By engaging in the foregoing conduct, Defendant has violated the CLRA,  
5 UCL and FAL and unjustly enriched itself at the expense of Plaintiff and members of the  
6 Class.

7  
8 **Defendant’s Sale of the Sue Bee Honey**  
9 **Damaged Plaintiff and Class Members**

10 26. At all times relevant hereto, Defendant sold the Sue Bee Honey through  
11 stores located throughout California.

12 27. Had Plaintiff and members of the Class known the Sue Bee Honey could not  
13 be sold within the State of California as “honey”, or that the Sue Bee Honey did not  
14 contain any pollen, Plaintiff and members of the Class would not have purchased the Sue  
15 Bee Honey.

16 28. As a result of Defendant’s misconduct, Plaintiff and Class members suffered  
17 economic losses.

18 **CLASS ACTION ALLEGATIONS**

19 29. Plaintiff brings this action both individually and as a class action pursuant to  
20 Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) against Defendant, on her own behalf and on  
21 behalf of any person who purchased a bottle of Sue Bee Honey from any store located in  
22 California at any time from January 1, 2010, through the present.

23 30. Members of the Class are so numerous that joinder of all members would be  
24 impracticable. Plaintiff estimates that there are thousands of members of the Class. Upon  
25 information and belief, Defendant’s sales of honey from January 1, 2010 to the end of  
26 February 2012 exceeded the sum of \$13,000,000.

27 31. Questions of law and fact are common to all the members of the Class that  
28 predominate over any questions affecting only individual members, including:

- 1 a. Whether the Sue Bee Honey was devoid of pollen;
- 2 b. Whether the sale of Sue Bee Honey as “honey” violated the California Food
- 3 and Agriculture Code;
- 4 c. Whether Defendant’s conduct violated the CLRA;
- 5 d. Whether Defendant’s conduct violated the UCL;
- 6 e. Whether Defendant’s conduct violated the FAL;
- 7 f. Whether Defendant’s sale of the Sue Bee Honey unjustly enriched
- 8 Defendant at the expense of Plaintiff and members of the Class; and
- 9 g. Whether as a result of Defendant’s misconduct, Plaintiff and other Class
- 10 members are entitled to damages, restitution, equitable relief, injunctive
- 11 relief, or other relief, and the amount and nature of such relief.

12 32. The claims of Plaintiff are typical of the claims of the members of the Class.

13 Plaintiff has no interests antagonistic to those of the Class, and Defendant has no

14 defenses unique to the Plaintiff.

15 33. Plaintiff will protect the interests of the Class fairly and adequately, and

16 Plaintiff has retained attorneys experienced in complex class action litigation.

17 34. A class action is superior to all other available methods for this controversy

18 because: i) the prosecution of separate actions by the members of the Class would create

19 a risk of adjudications with respect to individual members of the Class that would, as a

20 practical matter, be dispositive of the interests of the other members not parties to the

21 adjudications, or substantially impair or impede their ability to protect their interests; ii)

22 the prosecution of separate actions by the members of the Class would create a risk of

23 inconsistent or varying adjudications with respect to the individual members of the Class,

24 which would establish incompatible standards of conduct for Defendant; iii) Defendant

25 acted or refused to act on grounds generally applicable to the Class; and iv) questions of

26 law and fact common to members of the Class predominate over any questions affecting

27 only individual members, and a class action is superior to other available methods for the

28 fair and efficient adjudication of the controversy.

1 35. Plaintiff does not anticipate any difficulty in the management of this  
2 litigation.

3 **COUNT I**

4 **(By Plaintiff, Individually and on Behalf of All Class Members, for Violation**  
5 **of the California Consumers Legal Remedies Act For Injunctive Relief, only,**  
6 **CAL. CIV. CODE §§ 1750 et seq.)**

7 36. Plaintiff incorporates and realleges all of the foregoing paragraphs.

8 37. At all times relevant herein, the Consumers Legal Remedies Act (CLRA)  
9 was in effect. The CLRA prohibits “unfair or deceptive acts or practices.” Plaintiff  
10 bases this count on Defendant’s omissions of a material fact of which Defendant had  
11 exclusive knowledge and was obliged to disclose.

12 38. The Sue Bee Honey is a “good” under Cal. Civ. Code § 1761(a).

13 39. Plaintiff and Class members are “consumers” under Cal. Civ. Code §  
14 1761(d).

15 40. The CLRA applies to Defendant’s conduct because Defendant’s conduct  
16 was intended to result, and did result, in the sale of goods for personal, family, or  
17 household use.

18 41. The CLRA prohibits representing that goods or services have  
19 characteristics, ingredients, uses, benefits, or quantities which they do not have;  
20 representing that goods or services are of a particular standard, quality, or grade, if they  
21 are of another; and advertising goods with intent not to sell them as advertised.

22 42. At all times relevant hereto, Defendant misrepresented the quality,  
23 characteristics, and/or ingredients of the Sue Bee Honey, and advertised the Sue Bee  
24 Honey with intent not to sell it as advertised.

25 43. In particular, Defendant marketed for sale in California the Sue Bee Honey  
26 as “honey” when it could not be sold as “honey” as defined by the California Food and  
27 Agriculture Code.

28 44. Had Plaintiff and members of the Class known the Sue Bee Honey could not  
be sold within the State of California as “honey” or that the Sue Bee Honey did not



1 contain any pollen, Plaintiff and members of the Class would not have purchased the Sue  
2 Bee Honey.

3 45. As a result of Defendant's misconduct, which is ongoing, Plaintiff and Class  
4 members have suffered economic losses.

5 46. Accordingly, Plaintiff and Class members seek a permanent injunction,  
6 only, on this count.

7  
8 **COUNT II**

9 **(By Plaintiff, Individually and on Behalf of All Class Members for Violations of the  
10 Unfair Competition Law, CAL. BUS. & PROF. CODE §§ 17200 et seq.)**

11 47. Plaintiff incorporates and realleges all of the foregoing paragraphs.

12 48. Defendant's practices as alleged in this Complaint constitute unlawful and  
13 unfair business acts and practices under California's Unfair Competition Law (UCL),  
14 BUS. & PROF. CODE §§ 17200 et seq.

15 49. The UCL prohibits acts of "unfair competition," including any unlawful,  
16 unfair, fraudulent or deceptive business act or practice.

17 50. Under the unlawful prong of the UCL, a violation of another law is treated  
18 as unfair competition that is independently actionable.

19 51. A business practice is "unfair" if it violates an established public policy or if  
20 it is immoral, unethical, oppressive, or unscrupulous and causes injury to consumers  
21 which outweighs its benefits; or if a reasonable consumer would be deceived by the  
22 labeling of the product.

23 52. Defendant committed unlawful practices because it violated the CLRA.

24 53. Defendant committed "unfair" business acts and practices by engaging in  
25 conduct where the utility of such conduct, if any, is outweighed by the gravity of the  
26 consequences to Plaintiff and to other Class members and engaging in conduct that is  
27 immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and  
28 to other Class members.

1 54. Furthermore, members of the California public are likely to be deceived by  
2 Defendant's marketing of the Sue Bee Honey because pursuant to California law, the  
3 product cannot be marketed or sold as "honey".

4 55. Defendant also committed unlawful acts because it violated the California  
5 Food and Agriculture Code.

6 56. Under the California Food and Agriculture Code, a condiment cannot be  
7 sold as "honey" if it contains "no pollen" or "any constituent particular to honey" has  
8 been unnecessarily removed.

9 57. Specifically, section 29413 entitled "Definitions of 'Honey'; Sale of honey;  
10 Standards" provides in relevant part that:

11 (a) "Honey" means the natural sweet substance produced by honeybees from  
12 the nectar of plants or from secretions of living parts of plants or excretions  
13 of plant sucking insects on the living parts of plants, which the bees collect,  
14 transform by combining with specific substances of their own, deposit,  
15 dehydrate, store, and leave in the honeycomb to ripen and mature.

16 \* \* \*

17 (e) Honey sold as described in subdivision (d) shall not have added to it any  
18 food ingredient, including food additives, nor shall any other additions be  
19 made other than honey. Honey shall not have any objectionable matter,  
20 flavor, aroma, or taint absorbed from foreign matter during its processing  
21 and storage. Honey shall not have begun to ferment or effervesce and *no  
pollen or constituent particular to honey may be removed* except where  
unavoidable in the removal of foreign inorganic or organic matter.

22 CAL. FOOD & AGRIC. CODE § 29413 (emphasis added).

23 58. Further, the California Food and Agriculture Code prohibits the false  
24 labeling of honey that does not meet the definition of "honey" and which cannot be sold  
25 in the State of California as "honey".

26 59. In particular, section 29673 entitled "Mislabeling; False or misleading  
27 statements" provides that:  
28

1 It is unlawful for any person to mislabel any container or sub container of  
2 honey or place any false or misleading statement on any wrapper, label, or  
3 lining of any container of honey, or on any placard which is used in  
connection with or which has reference to any honey.

4 CAL. FOOD & AGRIC. CODE § 29673.

5 60. Moreover, under section 29416, entitled "Misabeled" means the following:

6 the placing or presence of any false or misleading statement, design, or  
7 device upon, or in connection with, any container or lot of honey, or upon  
8 the label, lining, or wrapper of any such container, or any placard used in  
9 connection with any container or lot of honey, which has reference to such  
10 honey. A statement, design, or device is false and misleading, if the honey to  
11 which it apparently or actually refers does not conform in every respect to  
such statement.

12 CAL. FOOD & AGRIC. CODE § 29416.

13 61. The State of California has specifically condemned and criminalized such  
14 mislabeling. Under California Food and Agriculture Code section 29701, entitled  
15 "Infraction; Second or subsequent violation as misdemeanor; Fine or imprisonment,"

16 (a) Unless otherwise specified, a violation of this chapter is an infraction  
17 punishable by a fine of not more than five hundred dollars (\$500).

18 (b) A conviction of a second or subsequent violation of this chapter within  
19 any 12- month period is a misdemeanor punishable by a fine of not less than  
20 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or  
21 by imprisonment in the county jail for not more than six months, or by both  
the fine and imprisonment.

22 CAL. FOOD & AGRIC. CODE § 29701.

23 62. By selling "honey" that has had its pollen unnecessarily removed,  
24 Defendant has violated the California Food and Agriculture Code.

25 63. In addition, Defendant committed unlawful practices because it violated the

26 CLRA.

27 ///

28 ///

1 64. Furthermore, by illegally misbranding the Sue Bee Honey as “honey”  
2 Defendant has violated California Health and Safety Code section 110765.

3 65. Plaintiff and Class members have suffered injury in fact and have lost  
4 money and property as a result of Defendant’s unlawful and unfair practices.

5  
6 **COUNT III**  
7 **(By Plaintiff, Individually and on Behalf of All Class Members for Violations of the**  
8 **False Advertising Law, Cal. Bus. & Prof. Code § 17500)**

9 66. Plaintiff incorporates and realleges all of the foregoing paragraphs.

10 67. California Business and Professions Code §17500 makes it unlawful for any  
11 corporation or association selling anything “of any nature whatsoever” to intentionally  
12 make any statement or omission, including over the Internet, in connection with the  
13 marketing or sale of such product which is untrue, misleading or deceptive. Specifically,  
14 Cal. Bus. & Prof. Code §17500 prohibits a business from engaging in a scheme with the  
15 intent not to sell a product as so advertised.

16 68. Defendant engaged in false, untrue, misleading and deceptive advertising in  
17 California, in violation of California Business and Professions Code section 17500,  
18 because it should have known that it was violating the California Food and Agriculture  
19 Code by uniformly labeling and marketing its Sue Bee Honey as “honey” when it in fact  
20 could not be sold as “honey” in the State of California.

21 69. As a result of Defendant’s misleading statements and omissions, reasonable  
22 consumers, including Plaintiff, were misled or likely to be misled into believing that the  
23 Sue Bee Honey could be sold as “honey” in the State of California.

24 70. Defendant engaged in the aforementioned deceptive and misleading  
25 business practices to increase its profits. As such, Defendant’s deceptive statements and  
26 omissions caused substantial injury to consumers, including Plaintiff and members of the  
27 Class.

28 ///

1 71. Plaintiff seeks, on behalf of herself and members of the Class, full  
2 restitution, as necessary and according to proof, to restore any and all monies acquired by  
3 Defendant from Plaintiff and members of the Class as a result of Defendant's false,  
4 misleading and deceptive advertising as stated above.

5 **COUNT IV**

6 **(Alternatively, By Plaintiff, Individually and on Behalf of All California Class**  
7 **Members For Restitution / Unjust Enrichment Under California Law)**

8 72. Plaintiff incorporates and realleges all of the foregoing paragraphs.

9 73. This Count is brought against Defendant pursuant to California's common  
10 law doctrine of unjust enrichment/restitution.

11 74. At all times relevant hereto, Defendant marketed and sold the Sue Bee  
12 Honey as "honey" when it was not legally entitled to sell the Sue Bee Honey as "honey,"  
13 in the State of California.

14 75. Plaintiff and other similarly situated Class members conferred upon  
15 Defendant benefits that were non-gratuitous profits.

16 76. Defendant accepted or retained the benefits conferred by Plaintiff and other  
17 similarly situated Class members despite Defendant's knowledge of its material  
18 misrepresentations and omissions of material fact.

19 77. Retaining the benefits conferred upon Defendant by Plaintiff and other  
20 similarly situated Class members under these circumstances make Defendant's retention  
21 of the benefits unjust and inequitable.

22 78. Because Defendant's retention of the benefits conferred by Plaintiff and  
23 other similarly situated Class members is unjust and inequitable, Defendant must pay  
24 restitution in a manner established by the Court.

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28 ///

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that this Court:

a. Certify this action as a class action under Rule 23 of the Federal Rules of Civil Procedure, appoint the named Plaintiff as the Class representative, and appoint the undersigned as class counsel;

b. Issue a permanent injunction or other appropriate equitable relief requiring Defendant to refrain from marketing its Sue Bee Honey to consumers in the State of California;

c. Order Defendant to pay Plaintiff and other members of the Class an amount of actual and statutory damages, restitution and punitive damages in an amount to be determined at trial on Counts II through IV;

e. Issue an order granting Plaintiff's reasonable costs and attorneys' fees; and


f. Grant such other relief as may be just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 2, 2012

**KIESEL BOUCHER & LARSON LLP**

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