

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)	
)	
Klein Foods, Inc.)	Order No. R1-2022-0052
Rodney Strong Vineyards)	
11455 Old Redwood Hwy.)	Settlement Agreement and Stipulation for
Healdsburg, CA 95448)	Entry of Order; Order
)	
Administrative Civil Liability)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the North Coast Regional Water Quality Control Board Prosecution Staff (Prosecution Staff) and Klein Foods, Inc. (Discharger) (collectively, the Parties) and is presented to the North Coast Regional Water Quality Control Board (Regional Water Board) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of Rodney Strong Vineyards, located at 11455 Old Redwood Highway, Healdsburg, Sonoma County, California (Facility). The Facility is enrolled in coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit), which prohibits discharges of waste or unauthorized non-stormwater to waters of the United States.
2. On January 22, 2020, the racking door on a large wine storage tank in the blending building at the Facility failed, releasing approximately 97,000 gallons of wine out the doors of the tank. The Prosecution Staff contends that approximately 53,000 gallons of wine discharged primarily via ground surface into Reiman Creek, which combines with Sotoyome Creek, which is tributary to the Russian River, a water of the United States. The Discharger contends its efforts following the release resulted in the capture of a substantially greater amount of wine than alleged by the Prosecution Staff.
3. The Prosecution Staff alleges the Discharger violated Industrial General Permit section III, Discharge Prohibitions, subsection B, when it discharged approximately 53,000 gallons of wine to waters of the United States on January 22, 2020. This alleged act constitutes a violation of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).

4. To resolve by consent and without further administrative proceedings the alleged violation of Industrial General Permit section III, Discharge Prohibitions, subsection B, the Parties have agreed to the imposition of \$44,718 of liability against the Discharger. Payment of \$22,359 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order. The remaining \$22,359 in liability shall be suspended upon completion of a Supplemental Environmental Project (SEP) for the Russian River Regional Monitoring program (R3MP) Project A.1.a. Data Compilation Study: Field-Collected Basic Water Quality Monitoring Data in conjunction with the San Francisco Estuary Institute (SFEI), as described in Paragraph 8 below.

5. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without further administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violation alleged except as provided in this Stipulation, and that this Stipulation is in the best interests of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Discharger hereby agrees to pay the administrative civil liability totaling \$44,718 as set forth in Paragraph 4 of Section II of this Order. Further, the Discharger agrees that \$22,359 of this administrative civil liability shall be suspended pending completion of a SEP as set forth in Paragraphs 4 and 8 herein and Attachment B incorporated herein by reference. Payment of \$22,359 shall be due and payable by check to the State Water Resources Control Board Cleanup and Abatement Account due 30 days after the proposed Order is signed and becomes final and mailed to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office, ACL Payment
1001 I Street
Sacramento, CA 95814

The check shall reference the Order number assigned to this Stipulation. The Discharger shall provide a copy of the check sent via mail and email at the time the payment is made to:

Jeremiah Puget, Senior Environmental Scientist/Enforcement Coordinator
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403-1072
Jeremiah.Puget@waterboards.ca.gov

8. **Description of the SEP:** Project A.1.a. Data Compilation Study: Field-Collected Basic Water Quality Monitoring Data is a subpart of the Russian River Regional Monitoring Program (R3MP) SEP aiming to develop a collaborative approach to restore and maintain the health of the Russian River watershed. SFEI staff will compile existing field-collected water quality monitoring data including water temperature, dissolved oxygen, pH, and turbidity for SFEI to initially summarize spatial and temporal conditions across the watershed and identify data gaps. The SEP will deliver compiled water quality data sets and a summary of the collected data, all readily publicly available. SFEI will provide quarterly invoices and a final project report within one year of completion. The R3MP SEP Project Concepts are contained in Attachment B, incorporated herein, with stand-alone Project A.1.a. on pages 14 and 15.

9. **Representation of the Implementing Party:** As a material consideration for the Regional Water Board's acceptance of this Stipulation and Order, SFEI has represented to the Parties that it will utilize the funds provided to it by the Discharger to implement and complete Project A.1.a. in its entirety and in accordance with Attachment B.

10. **Certification of Expenditures:** Within 30 days of completing the SEP, the Discharger shall submit a certified statement by a responsible corporate official documenting the Discharger's expenditures during the implementation of the SEP. The expenditures may be external payment to outside vendors or contractors implementing the SEP. The official may rely upon and utilize normal company project tracking systems that capture employee time expenditures and external payments to outside vendors. The Discharger shall provide any additional information requested by the Regional Water Board that is reasonably necessary to verify the Discharger's SEP expenditures. If requested by the Regional Water Board, the Discharger, at its sole cost, shall submit an audit report prepared by an independent third party acceptable to the Regional Water Board documenting that the Discharger expended the money as claimed. If requested, such information from an independent third party shall be submitted to the Regional Water Board within three months of completion of the SEP. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

11. **Certification of Performance of Work:** Within 30 days of completing the SEP, the Discharger or SFEI shall submit under penalty of perjury a report to the Regional

Water Board stating that the SEP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to verify the SEP's completion and costs.

12. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulation and Order, the completion of the SEP and any audits, Regional Water Board staff, with notice to the Regional Water Board Enforcement Coordinator, shall request that the Regional Water Board issue a Satisfaction of Order. The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Discharger under this Stipulated Order.

13. **Failure to Expend All Suspended Administrative Civil Liability Funds in Completing the SEP within a Year:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it has spent the entire agreed SEP amount of \$22,359 for the completed SEP within a year from the date of issuance of this Stipulation and Order, the Discharger shall pay the difference between the \$22,359 suspended administrative civil liability and the amount the Discharger can demonstrate it actually spent on the SEP, as an administrative civil liability to the Cleanup and Abatement Account. Prosecution Staff shall issue a Notice of Violation and the Discharger shall pay the difference within 30 days of the Discharger's receipt of such notice. If the amount due cannot be agreed upon by the Parties, the Regional Water Board shall determine the amount of suspended liability owed via a Motion for Payment of Suspended Liability. The Regional Water Board may elect to add the reasonable costs of enforcement to the amount due to the Cleanup and Abatement Account. Payment of the assessed amount will satisfy the Discharger's obligations to implement the SEP.

14. **The Regional Water Board Is Not Liable:** Neither the Regional Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger or SFEI, its directors, officer, employees, agents, representative, or contractors in carrying out activities pursuant to this Stipulation and Order. Nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, including the SEP.

15. **Facility Improvements:** As part of this settlement, the Discharger has agreed to implement the following facility improvements within one year of the issuance of this Stipulation and Order:

- a. Update site maps,
- b. Field-locate all storm drain and sewer infrastructure and include in site map updates,
- c. Add sampling points as needed,

- d. Replace mislabeled manhole lids,
- e. Label all inlets in the field, and
- f. Keep records up to date.

16. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional administrative civil liability.

17. **Denial of Liability:** In settling this matter, the Discharger does not admit to the violation alleged in Paragraph 3, above. However, the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board, this Stipulated Order maybe used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

18. **Public Notice:** The Discharger understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

19. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure for adoption of this Order as necessary or advisable under the circumstances.

20. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from such Party's own counsel in connection with the matters set forth herein.

21. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

22. **Modification:** This Stipulation and Order shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications must

be in writing, signed by all Parties, and approved the Regional Water Board or its delegate.

23. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

24. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

25. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to file a petition for review of the adoption of the Order to the Regional Water Board for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

26. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order or the SEP.

27. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulation and Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by

employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulation or Order.

28. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

29. **No Third-Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.

30. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

31. **Counterpart Signatures:** This Stipulation and Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation and Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

32. **Effective Date:** This Stipulation and Order, including the obligations under Paragraph 6 and Attachment B, shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Team
North Coast Region**

By:   Digitally signed by Claudia E. Villacorta
Date: 2023.02.21 14:03:59 -08'00'

Claudia Villacorta, Assistant Executive Officer

Date: _____

Klein Foods, Inc.

By: 
Tobin Ginter
Chief Operating Officer/Chief Financial Officer

Date: 6/7/2023

Attachment A: Administrative Civil Liability Methodology Summary
Attachment B: Russian River Restoration Monitoring Program Project A.1.a. Data
Compilation Study: Field-Collected Basic Water Quality Monitoring Data

Order of the North Coast Regional Water Board

33. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.

34. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.

35. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

36. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.

By: _____
Valerie Quinto
Executive Officer

Date: July 25, 2023