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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Susan Tran,

Plaintiffs,

v.

Sioux Honey Association, Cooperative,

Defendants.

CASE NO. 8:17-cv-00110-JLS-SS

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT (Doc. 145)**

1 Before the Court is a Motion for Summary Judgment filed by Defendant Sioux  
2 Honey Association, Cooperative. (Mot., Doc. 145-12.) Plaintiff Susan Tran opposed.  
3 (Opp., Doc. 152.) Sioux Honey replied. (Reply, Doc. 163.) Having held a hearing and  
4 taken the matter under submission, for the following reasons, the Court GRANTS the  
5 Motion.

6 **I. BACKGROUND**

7 This is consumer protection class action brought by Plaintiff and Class  
8 Representative Susan Tran concerning Sioux Honey's asserted misrepresentations and  
9 omissions regarding its honey products.

10 **A. Factual Background**

11 Sioux Honey makes, markets, sells, and distributes honey under various trademarks,  
12 including Sue Bee and Aunt Sue's. (First Amended Complaint ("FAC") ¶ 20, Doc. 34.)<sup>1</sup>  
13 Sioux Honey is a "honey cooperative . . . comprised of more than 275 individual  
14 beekeepers." (Mot. at 1.) This lawsuit concerns Sioux Honey products labeled as "Pure"  
15 and "100% Pure."<sup>2</sup> The products at issue are Sue Bee Clover Honey, Sue Bee Orange  
16 Honey, Sue Bee Sage Honey, Sue Bee LT. Amber Honey, Sue Bee Bulk Honey, Sue Bee  
17 Spun Clover Honey, Aunt Sue's Raw unfiltered Clover Honey, Aunt Sue's Raw unfiltered  
18 Wildflower Honey, Aunt Sue's Organic Honey, Blossomology Organic Honey, North  
19 American Honey, and Bradshaw Honey ("the Products"). (Lenci Decl. ¶ 2, Doc. 145-1.)  
20 Tran's theory of this case is that the Products are misleadingly labeled under California  
21

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22 <sup>1</sup> Central District of California Local Rule 56 required the parties to submit concise statements  
23 of facts incorporating "all material facts." While Sioux Honey and Tran each submitted a  
24 statement of facts, (Sioux Statement of Facts, Doc. 145-13; Tran Statement of Facts ("Tran SOF");  
25 Doc. 152-23), neither addresses the fundamental background facts of this litigation. Accordingly,  
26 the Court refers to uncontested allegations of Tran's FAC and background facts offered by the  
27 parties in their briefs. The Court is not deeming these facts true or relying on them for the  
28 purposes of resolving Sioux Honey's Motion for Summary Judgment.

29 <sup>2</sup> The "100% Pure" label appeared for a short time on only Sioux Honey's "Aunt Sue" and  
30 "North America" Products. (Tran SOF at 7.) Sioux Honey made wider use of the "Pure" label.  
(*Id.*)

1 consumer protection statutes because they contain glyphosate, a synthetic chemical and  
2 herbicide. (FAC ¶¶ 4, 37, 40.)

3 Tran relies in part on testing carried out by the FDA in 2016 on a Sioux Honey  
4 sample which identified the presence of Glyphosate in a concentration of 41 parts per  
5 billion. (Tran Request for Judicial Notice (“RJV”) Ex. 3, Doc. 150-3.)<sup>3</sup> A subsequent  
6 2018 analysis commissioned by Tran’s counsel, the Richman Law Group, on three  
7 unidentified samples of Sue Bee Clover Spun Honey returned varied results — there was  
8 no detectable level of glyphosate in one sample; 30 parts per billion in a second sample,  
9 and 40 parts per billion in a third sample. (Tran Statement of Facts (“Tran SOF”) at 3,  
10 Doc. 152-23; Tran Commissioned Study, Richman Decl. Ex. 4, Doc. 152-2.) The parties  
11 concur that any glyphosate which may be found in the Products is not an additive  
12 incorporated during the manufacturing process, but rather is a byproduct of the honey’s  
13 natural production, unintentionally mixed into the product by the honey-producing bees,  
14 which encounter the glyphosate herbicide in nature. (Tran SOF at 3.)

15 Tran states that she began purchasing Sioux Honey Products while residing in  
16 Washington State. (Tran Decl. ¶ 3, Doc. 129.) She continued to purchase the Products  
17 following her June 2013 relocation to California, buying them from a Vons Supermarket in  
18 Grover Beach, California. (*Id.*) Tran attests that she purchased the Products in reliance on  
19 Sioux Honey’s representations that they were “Pure” and “100% Pure,” believing that  
20 those labels indicated that “the products only contained honey, and nothing else, such as  
21 chemicals or impurities.” (*Id.* ¶ 4.) Former Sioux Honey Vice President of Research and  
22 Development William Huser has testified that Sioux Honey uses those labels to

23 \_\_\_\_\_  
24  
25 <sup>3</sup> Tran requests that the Court take judicial notice of three documents produced by the Food  
26 and Drug Administration in response to a January 23, 2020 Freedom of Information Act request  
27 submitted by her counsel, Levi & Korsinsky, LLP. (Request for Judicial Notice (“RJV”), Doc.  
28 150.) Sioux Honey opposed the RJV. (RJV Opp., Doc. 161.) Under Federal Rule of Evidence  
29 201, a court “may take judicial notice of undisputed matters of public record,” such as government  
30 documents from reliable sources. *Harris v. County of Orange*, 682 F.3d 1126, 1132 (9<sup>th</sup> Cir.  
2012); *Juliana v. United States*, No. 6:15-CV-01517-AA, 2018 WL 9802138, at \*1 (D. Or. Oct.

1 communicate to consumers that the Products contain “one ingredient, no other ingredients,  
2 no additives,” nothing but honey produced by honeybees. (Tran SOF at 6, Huser Depo. at  
3 34:5-20, Lenci Decl. Ex. 7, Doc. 145-8.)

#### 4 **B. Procedural History**

5 Tran filed this class action on January 23, 2017, alleging Sioux Honey’s  
6 misrepresentations and omissions. (Compl., Doc. 1.) Tran then filed her First Amended  
7 Complaint on April 6, 2017. (FAC.) In her FAC, Tran asserts the following claims  
8 against Sioux Honey: (1) violation of California’s Consumers Legal Remedies Act  
9 (“CLRA”); (2) violation of California’s False Advertising Law (“FAL”); and (3) violation  
10 of California’s Unfair Competition Law (“UCL”). (*Id.* ¶¶ 108–47.)

11 Thereafter, the Court denied Sioux Honey’s Motion to Dismiss, holding that at the  
12 pleading stage, it could not “determine as a matter of law that Sioux Honey’s use of the  
13 words ‘Pure’ or ‘100% Pure’ would not deceive the reasonable consumer.” (MTD Order,  
14 Doc. 62.) Subsequently, the Court granted in part Tran’s Motion for Class Certification,  
15 certifying the following Rule 23(b)(2) injunctive and declaratory relief Class:

16  
17 All persons residing in California, who, from January 2014 to the Present,  
18 purchased, for personal use and not resale, Sue Bee Products.

19  
20 (Class Certification Order, Doc. 182.)

21 Sioux Honey now seeks summary judgment on each of Tran’s claims.

#### 22 **II. LEGAL STANDARD**

23 In deciding a motion for summary judgment, the Court must view the evidence in  
24 the light most favorable to the non-moving party and draw all justifiable inferences in that  
25 party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Summary  
26 judgment is proper “if the [moving party] shows that there is no genuine dispute as to any  
27 material fact and the [moving party] is entitled to judgment as a matter of law.” Fed. R.

28 *Civ. P. 56*. A factual dispute is “genuine” when there is sufficient evidence such that a

1 reasonable trier of fact could resolve the issue in the non-movant’s favor, and a fact is  
2 “material” when it might affect the outcome of the suit under the governing law. Anderson,  
3 477 U.S. at 248. But “credibility determinations, the weighing of evidence, and the  
4 drawing of legitimate inferences from the facts are jury functions, not those of a judge.”  
5 *Acosta v. City of Costa Mesa*, 718 F.3d 800, 828 (9th Cir. 2013) (quoting *Reeves v.*  
6 *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

7       The role of the Court is not to resolve disputes of fact but to assess whether there  
8 are any factual disputes to be tried. The moving party bears the initial burden of  
9 demonstrating the absence of a genuine dispute of fact. *Celotex Corp. v. Catrett*, 477 U.S.  
10 317, 323 (1986). When the moving party will not bear the burden of proof at trial, it may  
11 satisfy its initial burden at the summary judgment stage by “produc[ing] evidence negating  
12 an essential element of the nonmoving party's claim or defense or show[ing] that the  
13 nonmoving party does not have enough evidence of an essential element to carry its  
14 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies,*  
15 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). “Once the moving party carries its initial  
16 burden, the adverse party ‘may not rest upon the mere allegations or denials of the adverse  
17 party’s pleading,’ but must provide affidavits or other sources of evidence that ‘set forth  
18 specific facts showing that there is a genuine issue for trial.’” *Devereaux v. Abbey*, 263  
19 F.3d 1070, 1076 (9th Cir. 2001) (quoting Fed. R. Civ. P. 56(e)).

### 20 **III. DISCUSSION**

21       Sioux Honey sets forth three arguments in its Motion for Summary Judgment: (1)  
22 each asserted claim fails because Tran has not produced evidence in support of essential  
23 elements of those claims (Mot. at 5-12); (2) Tran lacks standing to assert claims in  
24 connection with Products labeled “100% Pure” because she did not purchase a Product  
25 bearing that label (*id.* at 13); and, (3) because Tran “has an adequate remedy at law under  
26 the CLRA for ‘actual damages,’ her claims for equitable relief under CLRA, FAL, and  
27 UCL must be dismissed” (*id.* at 14-16). The Court addresses Sioux Honey’s standing

28 argument first, before turning to its evidentiary argument. Finding Tran’s lack of evidence

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