



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 09 – 09

October 19, 2009

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: SIREA, Inc. (formerly known as AERIS, Inc.) Settlement

Attached is a stipulated final judgment issued by the District Attorney's Office of Santa Cruz County, in conjunction with the District Attorney's Offices of Santa Barbara, Santa Clara, and Sonoma Counties. A Final Judgment and Injunction against SIREA, Inc, formerly AERIS was filed on September 29, 2009 for selling short measure industrial and medical cylinder gas, improper labeling of cylinders, and improper computation of value.

We are very pleased with the excellent work done on behalf of the people, by the prosecution team representing the Santa Cruz County, Santa Clara County, Sonoma County and Santa Barbara County District Attorney's Offices as well as the State and county investigators that tested these products. SIREA, Inc. was assessed \$308,244 in civil penalties, costs, restitution and cy pres restitution. \$51,293.61 was for all investigative costs and \$25,000 in cy pres restitution was paid to the California Agriculture Commissioner and Sealer's Association's Quantity Control Trust Fund. This fund is used to benefit the citizens of the State of California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity control cases. Santa Cruz County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Edmund E. Williams

Cc PQV Special Investigators



1 BOB LEE,
District Attorney, County of Santa Cruz
2 William Atkinson (SBN 88933)
Assistant District Attorney
3 701 Ocean Street, Room 200
Santa Cruz, CA 95060
4 Tel: (831) 454-2400
Fax: (831) 454-2227

FILED
SEP 29 2009

ALEX CALVO, CLERK
BY MICHELLE IRIS
DEPUTY, SANTA CRUZ COUNTY

5 (For list of additional plaintiff's counsel,
6 see attached Exhibit 1)

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,)
12)
13 -vs-)
14 SIREA, INC., and Does 1 through 10,)
15)
16)
17 Defendant(s).)

CASE NO. CV 165347
**COMPLAINT FOR CIVIL
PENALTIES AND
EQUITABLE RELIEF**
Business and
Professions Code §
17200 & 17500

18 **INTRODUCTION**

19 The People of the State of California, by and through Bob Lee,
20 District Attorney for the County of Santa Cruz, Christie Stanley,
21 District Attorney for the County of Santa Barbara, Stephan
22 Passalacqua, District Attorney for the County of Sonoma and Dolores
23 Carr, District Attorney for the County of Santa Clara, allege on
24 information and belief the following:
25

26 **JURISDICTION AND VENUE**

27 1. The District Attorneys' authority to bring this action is
28 derived from the statutory law of the State of California,

1 including but not limited to, Business and Professions Code
2 sections 17203, 17204, 17206, 17535 and 17536.

3 2. Plaintiff is informed and believes and thereon alleges that
4 Defendants have transacted and continue to transact business within
5 the County of Santa Cruz and elsewhere within the State of California
6 and that the violations of law described below have been carried out
7 within the County of Santa Cruz and elsewhere in the State of
8 California. Unless enjoined by an Order of the Court, Defendants will
9 continue to engage in the unlawful acts, practices and courses of
10 conduct set forth below.

11 **DEFENDANTS**

12 3. Plaintiff is informed and believes and thereon alleges that
13 at all times mentioned herein, defendant Sirea, Inc. (hereinafter
14 referred to as "Sirea") was a corporation, doing business in Santa
15 Cruz County and elsewhere throughout the State of California. Sirea's
16 principal address in California is located at 140 S. Montgomery St.
17 San Jose, CA 94560.

18 4. DOES 1 through 10 are business entities, organizations, and
19 or individuals who engaged in, furthered, encouraged, promoted,
20 authorized, ratified, participated in, or are otherwise responsible
21 in some manner for the events, transactions and activities described
22 below. The true names and capacities of DOES 1 through 10 are unknown
23 to Plaintiff, who therefore sues said Defendants by such fictitious
24 names. Plaintiff will amend this Complaint to reflect the true names
25 and capacities of DOES 1 through 10 when their true identities have
26 been ascertained.

27 5. Plaintiff is informed and believes and thereon alleges that
28 each defendant is/was the officer, agent, employee, partner, or

1 representative of each of the remaining defendants acting within the
2 course and scope of the agency, employment, partnership, conspiracy
3 or representation and each defendant has ratified and approved the
4 actions of each of the other defendants alleged herein.

5 6. Whenever, in this complaint, reference is made to any act
6 of Defendants, such allegations shall be deemed to mean the act of
7 each defendant acting individually and jointly with the other
8 defendants named in that cause of action.

9 7. Plaintiff is informed and believes that each named Doe
10 Defendant is responsible in some manner for the acts, occurrences and
11 liability hereinafter alleged and referred to.

12 8. Whenever, in this complaint, reference is made to any act
13 of a Defendant, such allegation shall be deemed to mean the act of
14 each Defendant, acting individually, jointly and severally.

15 **FIRST CAUSE OF ACTION**

16 **(Business and Professions Code § 17200)**

17 9. Plaintiff realleges and incorporates herein by reference all
18 allegations contained in paragraphs 1 through 8 of this complaint as
19 though fully set forth herein.

20 10. Beginning at an exact date unknown to Plaintiff, but at
21 least within four years prior to the filing of this complaint,
22 defendants, and each of them, engaged in a course of conduct
23 constituting acts of unfair competition, as defined by Business and
24 Professions Code §17200, including but not limited to the following:

25 (a) Selling or offering for sale compressed gas products having
26 a quantity net weight that is less than as represented on the
27 package, cylinder or container, or as represented elsewhere in
28 violation of Business and Professions Code § 12024.

1 (b) Failing to insure that all commercial weighing and measuring
2 devices conform to the latest requirements set forth in the
3 National Institute of Standards and Technology Handbook 44,
4 "Specifications, Tolerances and Other Technical Requirements for
5 Weighing and Measuring Devices".

6 (c) Charging at the time of sale of a commodity an amount
7 greater than the lowest price that is advertised, posted, marked,
8 displayed or quoted for that item in violation of Business and
9 Professions Code §12024.2.

10 (d) Selling or distributing compressed gas products without the
11 a proper label in violation of Business and Professions Code
12 §12603.

13 (e) Selling or distributing compressed gas products without a
14 statement of net quantity appearing thereon in violation of
15 Business and Professions Code § 12607.

16 (f) Violating Business and Professions Code § 17500 by
17 committing acts as described in the Second Cause of Action
18 herein.

19
20 **SECOND CAUSE OF ACTION**

21 **(Business and Professions Code § 17500)**

22 11. Plaintiff realleges and incorporates herein by reference all
23 allegations contained in paragraphs 1 through 10 as though fully set
24 forth herein.

25 12. Beginning on an exact date unknown to Plaintiff, but at
26 least within the last three years prior to the filing of the complaint
27 herein and continuing to the present, defendants have made untrue or
28 misleading representations in the course of packaging and selling

1 compressed gas products by representing that the cylinders contained
2 amounts of gas greater than the actual quantity contained within the
3 cylinders.

4 .

5 **DEMAND FOR RELIEF**

6 **WHEREFORE**, plaintiff prays that:

7 1. Defendants be preliminarily and permanently restrained and
8 enjoined from engaging in any act constituting unfair or unlawful
9 competition as defined in Business and Professions Code §§17200 and
10 17500 including but not limited to the acts set forth in paragraphs
11 10 and 12, above, as provided pursuant to Business and Professions
12 Code §§17203, 17204 and 17535.

13 2. Defendants be assessed a civil penalty of TWO THOUSAND FIVE
14 HUNDRED DOLLARS (\$2,500.00) for each act of unfair or unlawful
15 competition as defined by Business and Professions Code § 17200
16 pursuant to Business and Professions Code § 17206.

17 3. Defendants be assessed a civil penalty of TWO THOUSAND FIVE
18 HUNDRED DOLLARS (\$2,500.00) for each violation of Business and
19 Professions Code § 17500 pursuant to Business and Professions Code
20 § 17536.

21 4. Defendants be ordered to make full and complete restitution
22 to all victims of defendant's acts of unfair competition.

23 5. Plaintiff recover its costs of suit, including but not
24 limited to, costs of investigation, pursuant to Business and
25 Professions Code § 17206.

26 6. Plaintiff have such other and further relief as the nature
27 of this case requires and that this Court may deem just and proper.

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1 Dated: September 29, 2009

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BOB LEE
DISTRICT ATTORNEY

By: 
WILLIAM R. ATKINSON
Assistant District Attorney

EXHIBIT 1

CHRISTIE STANLEY

District Attorney, County of Santa Barbara
Allan Kaplan (SBN 76946)
Deputy District Attorney
1112 Santa Barbara St.
Santa Barbara, CA 93101
Telephone: (805) 568-2300

STEPHAN PASSALACQUA

District Attorney, County of Sonoma
Matthew T. Cheever (SBN 191783)
Deputy District Attorney
2300 County Center Dr.
Suite B-170
Santa Rosa, CA 95403
Telephone: (707) 565-3161

DOLORES CARR

District Attorney, County of Santa Clara
Matthew Harris (SBN 136462)
Deputy District Attorney
70 W. Hedding St. West Wing
San Jose, CA 95110
Telephone: (408) 299-7500

1 BOB LEE, DISTRICT ATTORNEY
WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY
2 STATE BAR NUMBER 88933
COUNTY OF SANTA CRUZ
3 701 OCEAN STREET, ROOM 200
SANTA CRUZ CALIFORNIA 95060
4 TELEPHONE: (831) 454-2400
5 ATTORNEYS FOR THE PEOPLE

FILED

SEP 29 2009

ALEX CALVO, CLERK
BY MICHELLE IRIS
DEPUTY, SANTA CRUZ COUNTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,)
12)
13 -vs-)
14 SIREA INC. (formerly known as AERIS)
INC.),)
15 Defendant.)

NO. CV105347
STIPULATION FOR ENTRY
OF FINAL JUDGMENT

16 Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District
17 Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R.
18 Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District
19 Attorney, Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan Deputy
20 District Attorney, Delores Carr, District Attorney of Santa Clara County, by Matt Harris Deputy
21 District Attorney, and Defendant, Sirea Inc., (formerly known as Aeris, Inc.) appearing through its
22 attorneys the Hannig Law Firm, LLP, by John H. Blake and Daniel Guerra its President hereby
23 stipulate and agree as follows:

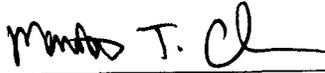
24 1. That the proposed Final Judgment, a copy of which is attached hereto as Exhibit 1, and by
25 this reference made a part hereof, may be signed by any judge of the Superior Court of the State of
26 California, for the County of Santa Cruz, and entered by the clerk without notice, provided that this
27 Stipulation for Entry of Final Judgment has been executed by counsel and the parties listed below;

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Dated: 9/22/09

Stephan R. Passalacqua
Sonoma County District Attorney

By: 

Matthew T. Cheever
Deputy District Attorney

Dated: _____

Christie Stanley
Santa Barbara County District Attorney

By: _____

Allan Kaplan
Deputy District Attorney

Dated: _____

Delores Carr
Santa Clara County District Attorney

By: _____

Matt Harris
Deputy District Attorney

DEFENDANT

Dated: _____

Hannig Law Firm LLP

By: _____

John H. Blake
Attorney for Defendant
Sirea, Inc.

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By: _____
William Atkinson
Assistant District Attorney

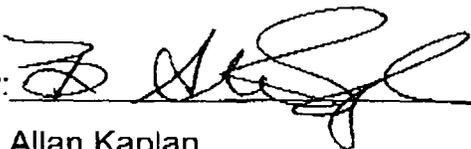
Dated: _____

Stephan R. Passalacqua
Sonoma County District Attorney

By: _____
Matthew T. Cheever
Deputy District Attorney

Dated: 8/31/09

Christie Stanley
Santa Barbara County District Attorney

By:  _____
Allan Kaplan
Deputy District Attorney

Dated: _____

Delores Carr
Santa Clara County District Attorney

By: _____
Matt Harris
Deputy District Attorney

DEFENDANT

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Dated: _____

Stephan R. Passalacqua
Sonoma County District Attorney

By: _____

Matthew T. Cheever
Deputy District Attorney

Dated: _____

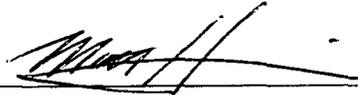
Christie Stanley
Santa Barbara County District Attorney

By: _____

Allan Kaplan
Deputy District Attorney

Dated: 9/31/07

Delores Carr
Santa Clara County District Attorney

By:  _____

Matt Harris
Deputy District Attorney

DEFENDANT

Dated: _____

Hannig Law Firm LLP

By: _____

John H. Blake
Attorney for Defendant
Sirea, Inc.

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Dated: _____

Stephan R. Passalacqua
Sonoma County District Attorney

By: _____

Matthew T. Cheever
Deputy District Attorney

Dated: _____

Christie Stanley
Santa Barbara County District Attorney

By: _____

Allan Kaplan
Deputy District Attorney

Dated: _____

Delores Carr
Santa Clara County District Attorney

By: _____

Matt Harris
Deputy District Attorney

DEFENDANT

Dated: 9-14-09

Hannig Law Firm LLP

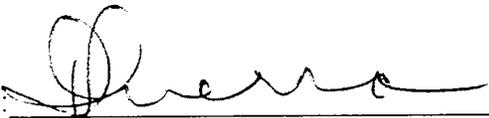
By: William W. Washburn for

John H. Blake
Attorney for Defendant
Sirea, Inc.

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Dated: 9-9-09

Sirea, Inc.
Defendant

By: 
Daniel Guerra - President

1 EXHIBIT "1"

2 BOB LEE, DISTRICT ATTORNEY
3 WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY
4 STATE BAR NUMBER 88933
5 COUNTY OF SANTA CRUZ
6 701 OCEAN STREET, ROOM 200
7 SANTA CRUZ CALIFORNIA 95060
8 TELEPHONE: (831) 454-2400
9 ATTORNEYS FOR THE PEOPLE

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SANTA CRUZ

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)
13)
14 Plaintiff,) FINAL JUDGMENT
15) PURSUANT TO
16) STIPULATION
17 -vs-)
18)
19 SIREA INC., (formerly known as AERIS)
20 INC.),)
21)
22 Defendant.)

23 Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District
24 Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R.
25 Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney,
26 Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan, Deputy District
27 Attorney, Delores Carr, District Attorney of Clara County, by Matt Harris, Deputy District Attorney,
28 and Defendant, Sirea, Inc. (formerly known as Aeris, Inc.) appearing through its attorneys the
Hannig Law Firm LLP, by John H. Blake and Daniel Guerra, its President. It appears to the Court
that this final judgment is a final resolution of this matter, that the parties hereto have stipulated and
consented to the entry of this final judgment without the taking of proof, that this final judgment does
not constitute evidence or an admission by defendants regarding any issue of fact alleged in the
complaint, and the Court having considered the matter and good cause appearing therefore,

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter hereof and of the parties hereto.

2. This judgment is applicable to defendant Sirea, Inc., a California corporation, and to each of its officers, directors, agents, servants, employees, representatives, managers, and to all persons, employees, and other entities who are acting in concert or participating with defendant, with actual or constructive notice of this judgment (hereinafter referred to as "Defendants").

PERMANENT INJUNCTION

3. Pursuant to Business & Professions Code §§17203, 17204 and 17535 Defendants are hereby enjoined and restrained from doing, directly or indirectly, any of the following:

(A) Selling or offering for sale compressed gas products having a quantity or net weight that is less than as represented on the package, cylinder or container, or as represented elsewhere in a location intended, or likely, to be displayed to any consumer or potential consumer.

(B) Failing to insure that all commercial weighing and measuring devices conform to the latest requirements set forth in the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," except where otherwise noted in Title 4, Division 9 of the California Code of Regulations, as required by 4 CCR §4000.

(C) Making any misleading or untrue statement, or failing to disclose any material fact, in violation of Business and Professions Code section 17500 with respect to any insurance surcharge, or net-weight statement on any package, cylinder or container of any compressed gas packaged or sold by the Defendant.

(D) Charging at the time of sale of a commodity an amount greater than the lowest price that is advertised, posted, marked, displayed or quoted for that item in violation of Business and Professions Code section 12024.2.

(E) Advertising, soliciting, or representing by any means, a product for sale or purchase if it is intended to entice a consumer into a transaction different from that originally represented in violation of Business and Professions Code section 12024.6.

1 (F) Selling or distributing any compressed gas product without a proper label in violation of
2 Business and Professions Code section 12603.

3 (G) Selling, offering for sale, or exposing for sale any compressed gas product without a
4 statement of net quantity appearing thereon in violation of Business and Professions Code section
5 12607.

6 (H) Failing, while engaged in the packaging, selling or distributing of any packaged or
7 labeled compressed gas product, to establish and maintain adequate controls and procedures
8 reasonably designed to achieve compliance with Business and Professions Code
9 sections 17200, 17500, 12024 and 12600, et seq., such controls and procedures to include reasonable
10 check-fill protocols (to achieve accuracy in filling, packaging and labeling) and other reasonable
11 quality-control protocols.

12 MONETARY RELIEF

13 4. Pursuant to Business and Professions Code sections 17203 and 17536, Defendant shall
14 on or before the date of the approval of this Judgment, pay civil penalties, costs, restitution and *cy*
15 *pres* restitution in the total amount of \$308,244.00. Said payment shall be made in the form of a
16 certified check made payable to the Santa Cruz District Attorney, and delivered to William Atkinson,
17 Santa Cruz District Attorney's Office, 701 Ocean St., Room 200, Santa Cruz, CA 95060 and shall
18 be delivered and distributed by the Santa Cruz District Attorney as follows:

19 A. Civil penalties in the amount of \$231,595.39, in equal amounts to the District
20 Attorney's Office of Santa Clara, Santa Barbara, Sonoma and Santa Cruz.

21 B. \$355.00 payable to the clerk of the court for Defendant's filing fees.

22 C. Costs of fifty one thousand two hundred ninety three dollars 61/100 (\$51,293.61),
23 to the following state and local regulatory and law enforcement agencies that contributed resources
24 to this investigation:

25	Santa Clara County Agricultural Commissioner	\$3,771.17
26	San Luis Obispo County Agricultural Commissioner	\$1,320.00
27	Sonoma County Agricultural Commissioner	\$5,984.00
28	Santa Cruz County Agricultural Commissioner	\$1,820.00

1	Mendocino County Agricultural Commissioner	\$1,186.20
2	California Division of Measurement Standards	<u>\$37,212.34</u>
3		Total: \$51,293.61

4 C. *Cy Pres* restitution: The parties having recognized the impossibility of identifying
5 aggrieved consumers who suffered actual loss, and the impracticality of providing direct restitution
6 to said consumers, and the disproportionate cost of making restitution to individual consumers which
7 would far exceed the benefit consumers would gain, the Court therefore orders that *cy pres*
8 restitution, in the amount of \$25,000.00, shall be paid to the California Agricultural Commissioner
9 and Sealer's Association's Quantity Control Trust Fund established pursuant to the Judgment in the
10 *People of the State of California v. Safeway Inc., et al*, Sonoma County Superior Court, Case No.
11 233008 filed July 7, 2003. This *cy pres* restitution is intended to benefit the citizens of the State of
12 California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity-
13 control case.

14 5. Jurisdiction is retained so that the injunctive provisions of the Final Judgment may be
15 modified, as appropriate, upon application by either party, for the purpose of conforming them to any
16 addition, modification, deletion or other change to Division 5, Chapter 6, Section 12601, *et seq.*, of
17 the Business and Professions Code cited as and commonly known as the California "Fair Packaging
18 and Labeling Act," or any successor statute, or any provision of the California Code of Regulations
19 adopted pursuant to said act, or for the purpose of conforming them to any provision of the United
20 States Code or Code of Federal Regulations which may supercede California law or regulation
21 pursuant to the Supremacy Clause of the United States Constitution.

22 6. Jurisdiction is further retained for the purpose of enabling either party to apply to the Court
23 for such further orders, directions, modifications or terminations as may be necessary or appropriate
24 for the construction, carrying out, modification, or termination of any of the injunctive provisions
25 of this Final Judgment, for the enforcement of compliance herewith; or for punishment of violations
26 hereunder; except that Defendant shall not apply for a termination of the injunctive portion of this
27 Final Judgment at any time prior to the expiration of five (5) years from the date of execution of this
28 Final Judgment.

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7. Plaintiff's failure to seek enforcement of any provisions of this Final Judgment shall in no way be deemed a waiver of such provision, nor in any way affect the validity of this Final Judgment or any term thereof. Plaintiff's failure to seek to enforce any such provision shall not preclude or estop Plaintiff from later seeking to enforce the same or any other provision of this Final Judgment.

8. This Final Judgment shall take effect immediately upon entry hereof.

Date: _____

Judge of the Superior Court

1 BOB LEE, DISTRICT ATTORNEY
2 WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY
3 STATE BAR NUMBER 88933
4 COUNTY OF SANTA CRUZ
5 701 OCEAN STREET, ROOM 200
6 SANTA CRUZ CALIFORNIA 95060
7 TELEPHONE: (831) 454-2400
8 ATTORNEYS FOR THE PEOPLE

FILED
SEP 29 2009

ALEX CALVO, CLERK
BY MICHELLE IRIS
DEPUTY, SANTA CRUZ COUNTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)
11 Plaintiff,)
12)
13 -vs-)
14 SIREA INC., (formerly known as AERIS)
15 INC.),)
16 Defendant.)

CV165347
FINAL JUDGMENT
PURSUANT TO
STIPULATION

16 Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District
17 Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R.
18 Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney,
19 Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan, Deputy District
20 Attorney, Delores Carr, District Attorney of Clara County, by Matt Harris, Deputy District Attorney,
21 and Defendant, Sirea, Inc. (formerly known as Aeris, Inc.) appearing through its attorneys the
22 Hannig Law Firm LLP, by John H. Blake and Daniel Guerra, its President. It appears to the Court
23 that this final judgment is a final resolution of this matter, that the parties hereto have stipulated and
24 consented to the entry of this final judgment without the taking of proof, that this final judgment does
25 not constitute evidence or an admission by defendants regarding any issue of fact alleged in the
26 complaint, and the Court having considered the matter and good cause appearing therefore,
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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter hereof and of the parties hereto.

2. This judgment is applicable to defendant Sirea, Inc., a California corporation, and to each of its officers, directors, agents, servants, employees, representatives, managers, and to all persons, employees, and other entities who are acting in concert or participating with defendant, with actual or constructive notice of this judgment (hereinafter referred to as "Defendants").

PERMANENT INJUNCTION

3. Pursuant to Business & Professions Code §§17203, 17204 and 17535 Defendants are hereby enjoined and restrained from doing, directly or indirectly, any of the following:

(A) Selling or offering for sale compressed gas products having a quantity or net weight that is less than as represented on the package, cylinder or container, or as represented elsewhere in a location intended, or likely, to be displayed to any consumer or potential consumer.

(B) Failing to insure that all commercial weighing and measuring devices conform to the latest requirements set forth in the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," except where otherwise noted in Title 4, Division 9 of the California Code of Regulations, as required by 4 CCR §4000.

(C) Making any misleading or untrue statement, or failing to disclose any material fact, in violation of Business and Professions Code section 17500 with respect to any insurance surcharge, or net-weight statement on any package, cylinder or container of any compressed gas packaged or sold by the Defendant.

(D) Charging at the time of sale of a commodity an amount greater than the lowest price that is advertised, posted, marked, displayed or quoted for that item in violation of Business and Professions Code section 12024.2.

(E) Advertising, soliciting, or representing by any means, a product for sale or purchase if it is intended to entice a consumer into a transaction different from that originally represented in violation of Business and Professions Code section 12024.6.

1 (F) Selling or distributing any compressed gas product without a proper label in violation of
2 Business and Professions Code section 12603.

3 (G) Selling, offering for sale, or exposing for sale any compressed gas product without a
4 statement of net quantity appearing thereon in violation of Business and Professions Code section
5 12607.

6 (H) Failing, while engaged in the packaging, selling or distributing of any packaged or
7 labeled compressed gas product, to establish and maintain adequate controls and procedures
8 reasonably designed to achieve compliance with Business and Professions Code
9 sections 17200, 17500, 12024 and 12600, et seq., such controls and procedures to include reasonable
10 check-fill protocols (to achieve accuracy in filling, packaging and labeling) and other reasonable
11 quality-control protocols.

12 MONETARY RELIEF

13 4. Pursuant to Business and Professions Code sections 17203 and 17536, Defendant shall
14 on or before the date of the approval of this Judgment, pay civil penalties, costs, restitution and *cy*
15 *pres* restitution in the total amount of \$308,244.00. Said payment shall be made in the form of a
16 certified check made payable to the Santa Cruz District Attorney, and delivered to William Atkinson,
17 Santa Cruz District Attorney's Office, 701 Ocean St., Room 200, Santa Cruz, CA 95060 and shall
18 be delivered and distributed by the Santa Cruz District Attorney as follows:

19 A. Civil penalties in the amount of \$231,595.39, in equal amounts to the District
20 Attorney's Office of Santa Clara, Santa Barbara, Sonoma and Santa Cruz.

21 B. \$355.00 payable to the clerk of the court for Defendant's filing fees.

22 C. Costs of fifty one thousand two hundred ninety three dollars 61/100 (\$51,293.61),
23 to the following state and local regulatory and law enforcement agencies that contributed resources
24 to this investigation:

25	Santa Clara County Agricultural Commissioner	\$3,771.17
26	San Luis Obispo County Agricultural Commissioner	\$1,320.00
27	Sonoma County Agricultural Commissioner	\$5,984.00
28	Santa Cruz County Agricultural Commissioner	\$1,820.00

1	Mendocino County Agricultural Commissioner	\$1,186.20
2	California Division of Measurement Standards	<u>\$37,212.34</u>
3	Total:	\$51,293.61

4 C. *Cy Pres* restitution: The parties having recognized the impossibility of identifying
5 aggrieved consumers who suffered actual loss, and the impracticality of providing direct restitution
6 to said consumers, and the disproportionate cost of making restitution to individual consumers which
7 would far exceed the benefit consumers would gain, the Court therefore orders that *cy pres*
8 restitution, in the amount of \$25,000.00, shall be paid to the California Agricultural Commissioner
9 and Sealer's Association's Quantity Control Trust Fund established pursuant to the Judgment in the
10 *People of the State of California v. Safeway Inc., et al*, Sonoma County Superior Court, Case No.
11 233008 filed July 7, 2003. This *cy pres* restitution is intended to benefit the citizens of the State of
12 California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity-
13 control case.

14 5. Jurisdiction is retained so that the injunctive provisions of the Final Judgment may be
15 modified, as appropriate, upon application by either party, for the purpose of conforming them to any
16 addition, modification, deletion or other change to Division 5, Chapter 6, Section 12601, *et seq.*, of
17 the Business and Professions Code cited as and commonly known as the California "Fair Packaging
18 and Labeling Act," or any successor statute, or any provision of the California Code of Regulations
19 adopted pursuant to said act, or for the purpose of conforming them to any provision of the United
20 States Code or Code of Federal Regulations which may supercede California law or regulation
21 pursuant to the Supremacy Clause of the United States Constitution.

22 6. Jurisdiction is further retained for the purpose of enabling either party to apply to the Court
23 for such further orders, directions, modifications or terminations as may be necessary or appropriate
24 for the construction, carrying out, modification, or termination of any of the injunctive provisions
25 of this Final Judgment, for the enforcement of compliance herewith; or for punishment of violations
26 hereunder; except that Defendant shall not apply for a termination of the injunctive portion of this
27 Final Judgment at any time prior to the expiration of five (5) years from the date of execution of this
28 Final Judgment.

