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Joseph R. Manning, Jr., Esq. (State Bar No. 223381)  
**MANNING LAW, APC**  
20062 S.W. Birch St. Suite 200  
Newport Beach, CA 92660  
(949) 200-8755 Phone  
(866) 843-8308 Fax

Assigned for All Purposes  
Judge Peter Wilson

cx-101

Attorneys for Plaintiff  
CALSAFE RESEARCH CENTER, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE-CENTRAL JUDICIAL DISTRICT**

CALSAFE RESEARCH CENTER, INC., a  
California non-profit corporation  
  
Plaintiff,  
  
v.  
  
INDO-EUROPEAN FOODS, INC., a California  
stock corporation; and DOES 1 to 10,  
  
Defendants.

CASE No.: 30-2022-01289191-CU-TT-CXC

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

Health & Safety Code §25249.5, *et seq.*

**INTRODUCTION**

1. This Complaint is brought by plaintiff Calsafe Research Center, Inc. (“Plaintiff”) in the public interest of the People of the State of California to enforce their right to be informed of the presence of chemicals listed by the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), including Lead.

2. Plaintiff seeks to remedy Defendants’ failure to warn citizens of the State of California, in violation of Proposition 65, about the presence of Lead (“Listed Chemical”) in the

1 Defendant INDO-EUROPEAN FOODS, INC.'s ("Defendant") Zergut, Lutenica Pepper & Tomato  
2 Spread offered for sale throughout the State of California ("Products").

3 3. Defendant's Products contain the Listed Chemical and consumers of Products in the  
4 State of California are exposed to the Listed Chemical through dermal exposure and ingestion of  
5 the Products.

6 4. Defendants know and intend that their Products expose consumers in the State of  
7 California to the Listed Chemical.

8 5. Attached hereto and incorporated by reference are copies of a letter ("60-Day  
9 Notices"), dated August 5, 2022, which Plaintiff sent to Defendant, Wholesome Choice Market and  
10 California's Attorney General. Identical letters were sent to every District Attorney in the state, to  
11 the City Attorneys of every California city with a population greater than 775,000 and to all  
12 Defendants. Attached to the 60-Day Notices were Certificates of Merit attesting to the reasonable  
13 and meritorious basis for this action, Certificates of Service attesting to service of the letters on each  
14 entity described above, and a description of Proposition 65 prepared by the California Office of  
15 Environmental Health Hazard Assessment. Furthermore, factual information sufficient to establish  
16 the basis of the Certificates of Merit was enclosed with the 60-Day Notices sent to California's  
17 Attorney General.

18 6. After receiving the claims asserted in the 60-Day Notice, the public enforcement  
19 agencies identified in Paragraph 5 have failed to commence and diligently prosecute a cause of  
20 action against Defendants under Proposition 65.

21 ///

22 ///

1 **PARTIES**

2  
3 7. Plaintiff is a non-profit corporation organized under California law dedicated to  
4 protecting the public from environmental health hazards and toxic exposures. Plaintiff is based in  
5 Newport Beach, CA. Plaintiff is a person within the meaning of Health and Safety Code section  
6 25249.11 and brings this enforcement action in the public interest pursuant to Health and Safety  
7 Code section 25249.7(d). Health and Safety Code section 25249.7 (d) specifies that actions to  
8 enforce Proposition 65 may be brought by a person in the public interest, provided certain notice  
9 requirements and no other public prosecutor is diligently prosecuting an action for the same  
10 violation(s).

11  
12 8. The Defendant is a “Person” in the course of doing business within the meaning of  
13 H&S Code §25249.11(a) – “Person” means an individual, trust, firm, joint stock company,  
14 corporation, company partnership, limited liability company, and association.

15 9. The Defendant is a California stock corporation that manufactures, distributes, and/or  
16 offers for sale in the State of California, Products that contain the Listed Chemical.

17  
18 10. DOES 1 through 10, which manufacture, distribute, and/or offer for sale in the  
19 State of California Products that contain the Listed Chemical, are each person in the course of  
20 doing business within the meaning of Health and Safety Code section 25249.11. At this time, the  
21 true names and capacities of DOES 1 through 10, inclusive, are unknown to Plaintiff, who,  
22 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section  
23 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named  
24 defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true  
25 names and capacities shall be reflected in an amended complaint.

1 **JURISDICTION AND VENUE**

2  
3 11. This Court has jurisdiction over this action pursuant to California Constitution  
4 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except  
5 those given by statute to other trial courts.” The statute under which this action is brought does not  
6 specify any other court with jurisdiction.

7  
8 12. This Court has jurisdiction over Defendants based on Plaintiff’s information and  
9 good faith belief that each Defendant is a person, firm, corporation, or association that is a citizen  
10 of the State of California, has sufficient minimum contacts in the State of California, and/or  
11 otherwise purposefully avails itself of the California market. Defendants’ purposeful availment  
12 renders the exercise of personal jurisdiction by the Court consistent with traditional notions of fair  
13 play and substantial justice.

14 13. Venue in this action is proper in Court because Defendants manufacture, distribute,  
15 offer for sale, sell, and/or serve Products that contain the Listed Chemical. Liability for Plaintiff’s  
16 cause of action, or some parts thereof, has accordingly arisen during the times relevant to this  
17 Complaint and Plaintiff accordingly seeks civil penalties and forfeitures imposed by statutes.

18  
19 **FIRST CAUSE OF ACTION**

20 **(Violation of Proposition 65 – Against All Defendants)**

21 14. Plaintiff refers to, and incorporates by reference, the allegations of all preceding  
22 Paragraphs this Complaint, as though fully set forth herein.

23 15. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
24 above-described acts, Defendants are liable for a violation of Proposition 65.

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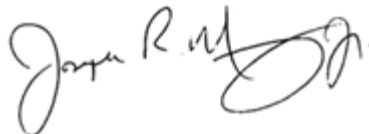
**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for judgment against Defendants, and each of them, and DOES 1 through 10, as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, offering for sale, selling and/or serving in the State of California Products that contain the Listed Chemical without first providing a “clear and reasonable warning” under Proposition 65;
2. That the Court grant Plaintiff’s reasonable attorneys’ fees and costs of suit;
3. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against Defendants in such amount as the Court deems appropriate; and,
4. For such other and further relief as the Court may deem just and proper.

Dated this 28<sup>th</sup> day of October 2022

**MANNING LAW, A.P.C**



By: \_\_\_\_\_

Joseph R. Manning, Jr., Esq.  
Attorneys for Plaintiff

# EXHIBIT 1



## CONSUMER ATTORNEYS

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August 5, 2022

### NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent CalSafe Research Center, Inc. ("CRC"), 4533 MacArthur Blvd., Ste. 165, Newport Beach, CA 92660; Tel. (949) 630-0413. CRC's Executive Director is Eric Fairon. CRC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CRC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 et seq., with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), CRC intends to pursue a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the person/company covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

1. Indo-European Foods, Inc.
2. Wholesome Choice Market, Inc.





## CONSUMER ATTORNEYS

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Zergut, Lutenica Pepper & Tomato Spread, UPC#043717282208**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that CRC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least June 13, 2022, as well as every day since the products were introduced into the California marketplace and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CRC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

CRC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office**





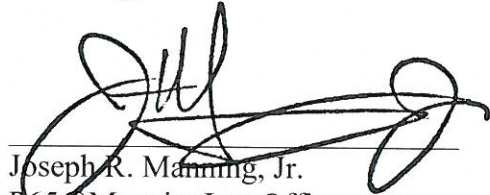
**MANNING LAW<sub>APC</sub>**

20062 SW Birch St, Suite 200  
Newport Beach, CA 92660  
Office: 949.200.8755  
Facsimile: 866.843.8308  
P65@manninglawoffice.com

## CONSUMER ATTORNEYS

address and telephone number indicated on the letterhead or at  
**P65@ManningLawOffice.com.**

Sincerely,



Joseph R. Manning, Jr.  
P65@ManningLawOffice.com

### Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Alleged Violators only)
- Factual Information in Support of Certificate of Merit (to AG only)



## CONSUMER ATTORNEYS

### CERTIFICATE OF MERIT

**Re: Calsafe Research Center, Inc.'s Notice of Proposition 65 Violations by Indo-European Foods, Inc., and Wholesome Choice Market, Inc.**

I, Joseph R. Manning, Jr., declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established, and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 5, 2022

  
Joseph R. Manning, Jr.  
P65@ManningLawOffice.com



**CONSUMER ATTORNEYS**

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 20062 S.W. Birch, Newport Beach, CA 92660. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Newport Beach, California.

On August 5, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Indo-European Foods, Inc. Corporation Service Company 2710 Gateway Oaks Dr., Ste 150N Sacramento, CA 95833	Scott Siers Indo-European Foods, Inc. 3420 S Malt Ave Commerce, CA 90040	Wholesome Choice Market, Inc. Sivoush Nayyeri 18040 Culver Drive Irvine, CA 92612
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On August 5, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT INCLUDING A SUMMARY OF CONFIDENTIAL FACTUAL INFORMATION; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550





**CONSUMER ATTORNEYS**

On August 5, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney Alameda County 7677 Oakport Street, Suite 650 Oakland, CA 94621 CEPDP65@acgov.org	Barbara Yook, District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us
Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org	Thomas L. Hardy, District Attorney Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us
Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us	Dije Ndreu, Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us
Allison Haley, District Attorney Napa County 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org	Michael Hestrin, District Attorney Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org
Anne Marie Schubert, District Attorney Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org	Mark Ankcorn, Deputy City Attorney San Diego City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov
Gregory Alker, Assistant District Attorney San Francisco County 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org	Valerie Lopez, Deputy City Attorney San Francisco City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityatty.org
Tori Verber Salazar, District Attorney San Joaquin County	Eric J. Dobroth, Deputy District Attorney San Luis Obispo County



**CONSUMER ATTORNEYS**

222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org	County Government Center Annex, 4th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Bud Porter, Supervising Deputy District Attorney Santa Clara County 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org
Stephan R. Passalacqua, District Attorney Sonoma County 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org	Phillip J. Cline, District Attorney Tulare County 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us
Gregory D. Totten, District Attorney Ventura County 800 S Victoria Ave Ventura, CA 93009 daspecialops@ventura.org	Jeff W. Reisig, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org

On August 5, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 5, 2022, in Newport Beach, California.

Krystal Garzon





## CONSUMER ATTORNEYS

### Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2nd Floor Downieville, CA 95936
District Attorney, Colusa County 310 6 <sup>th</sup> Street Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Fresno County 2100 Tulare St., Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2nd Street Yuba City, CA 95991
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012