

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Calsafe Research Center, Inc. vs. Indo-European Foods, Inc.**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE****CASE NUMBER:**
30-2022-01289191-CU-TT-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Order - Other dated 08/03/23, was transmitted electronically by an Orange County Superior Court email server on August 7, 2023, at 1:46:47 PM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

MANNING LAW APC
P65@MANNINGLAWOFFICE.COM

Clerk of the Court, by:

_____, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

AUG 03 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

1 Joseph R. Manning, Jr., Esq. (State Bar No. 223381)
2 **MANNING LAW, APC**
3 20062 S.W. Birch St., Suite 200
4 Newport Beach, CA 92660
5 (949) 200-8755 Phone
6 (866) 843-8308 Fax
7 P65@manninglawoffice.com

8 Attorneys for Plaintiff
9 CALSAFE RESEARCH CENTER, INC.,

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 CALSAFE RESEARCH CENTER, INC., a
13 California non-profit corporation

14 Plaintiff,

15 v.

16 INDO-EUROPEAN FOODS, INC., a
17 California stock corporation; and ~~DOES +~~
~~to +~~

18 Defendants.

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

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT

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~~[PROPOSED]~~ STIPULATED CONSENT JUDGMENT

1 Plaintiff CalSafe Research Center, Inc. ("Plaintiff"), and Defendant INDO-EUROPEAN FOODS,
2 INC. ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as
3 follows:

4 WHEREAS: On or about August 5, 2022, Plaintiff, through Plaintiff's counsel, served a 60 Day
5 Notice to Defendant, Indo-European Foods, Inc., the California Attorney General, the District Attorneys
6 of every County in the State of California, and the City Attorneys for every City in the State of California
7 with a population greater than 750,000 (collectively, "Public Prosecutor(s)") alleging that Defendant
8 violated California's Safe Drinking Water and Toxic Enforcement Act of 1986, California *Health and*
9 *Safety Code* § 25249.6, *et seq.*, and its implementing regulations (collectively, "Proposition 65") alleging
10 that and that Plaintiff intended to file an enforcement action in the public interest; and

11 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Zergut, Lutenica
12 Pepper & Tomato Spread containing Lead, (collectively the "Covered Products") that were sold or
13 distributed for sale in California and further alleges that those Covered Products expose consumers in the
14 State of California to chemicals including Lead, which are listed by the State of California pursuant to
15 California *Health and Safety Code* § 25249.8; and

16 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed to Lead
17 in Covered Products without being provided the Proposition 65 warning set out at California *Health and*
18 *Safety Code* § 25249.6 and its implementing regulations ("Proposition 65 Warning");

19 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
20 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

21 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and believes that
22 this objective is achieved by the actions described in this Consent Judgment; and

23 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay and
24 expense of litigation.

25 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN PLAINTIFF
26 ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

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1. INTRODUCTION

1.1 On August 5, 2022, Plaintiff served a 60-Day Notice upon Defendant, Indo-European Foods, Inc., and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its Complaint ("Complaint") against Defendant in the present action.

1.2 For purposes of this Consent Judgment, the Parties agree that Defendant is a business entity that has employed ten or more persons at all times relevant to this action and qualifies as a "person in the course of doing business" within the meaning of Proposition 65.

1.3 For purposes of this Consent Judgment only, Plaintiff and Defendant (the "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Orange; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to the Covered Products, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").

1.4 The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with the Consent Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notices and the Complaint and expressly denies any wrongdoing whatsoever.

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2. DEFINITIONS

2.1 "Effective Date" shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

2.2 "Covered Products" shall mean, with respect to this Consent Judgment, Zergut, Lutenica Pepper & Tomato Spread that are manufactured, distributed, sold and/or offered for sale by Defendant in California.

3. INJUNCTIVE RELIEF

3.1 For each Covered Product, Defendant agrees to undertake, or cause to be undertaken on its behalf, either: (a) reformulation of the Covered Product to bring it within the Proposition exemption identified in Section 3.2 below or (b) to provide a warning as prescribed in Sections 3.3.-3.4 below. Compliance with Section 3.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to Lead exposure in the Covered Products.

3.2 Proposition 65 Exemption for the Covered Products

Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements with respect to Lead, if the Covered Product contains no more than 0.5 micrograms of lead per serving, with serving size measured by the serving size specified on the label for the Covered Product.

3.3 Warning Option

Covered Products that do not meet the warning exemption set forth in Section 3.2, shall be accompanied by a warning as described in Section 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured for sale to consumers by Defendant in the State of California after the Effective Date. Notwithstanding the foregoing, no Proposition 65 warning shall be required as to Covered Products already manufactured or in distribution and the stream of commerce as of the Effective Date. Said Covered Products are hereby deemed to be exempt from a Proposition 65 warning with respect to Lead and/or expressly released under this Consent Judgment.

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3.4 Warning Language

Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of the following warning statements ("Warning"), displayed in a reasonably conspicuous manner:

Option (1)

WARNING: Consuming this product can expose you to chemicals including Lead, which [is] are known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food

Option (2)

WARNING: [Cancer and] Reproductive Harm--
www.P65Warnings.ca.gov/food

The Warning shall be provided through a warning on the label that is securely affixed to or printed upon the label and complies with the warning content provided in Option 1 or Option 2 above. In addition, for any Covered Product sold over the internet by Defendant, the Warning shall appear prior to check-out on the primary product page, or as a pop-up when a California address is input into the shipping instructions, or on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. The Warning may be provided with a conspicuous hyperlink stating "WARNING" in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning. Given Defendant's lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Covered Products sold through Defendant's website. However, Defendant will instruct any third-party website sellers to which it supplies the Cover Product to provide the Warnings as a condition of selling the Covered Product. If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically

1 applicable to the Covered Products (the "New Safe Harbor Warning"), the Parties agree that the
2 New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the
3 warnings set forth in this Section.

4 **4. MONETARY RELIEF**

5 4.1 Within 30 calendar days of receiving notice that this Consent Judgment has been approved of and
6 entered by the Court, and after receiving taxpayer information from Plaintiff, Defendant shall pay
7 the total sum of \$28,500.00 which includes \$2,850.00 in civil penalties and \$25,650.00 in
8 payment of Plaintiff's costs and reasonable attorney's fees. The \$2,850.00 civil penalty shall be
9 apportioned pursuant to *Health and Safety Code* § 25249.12 (d), with 75%, or \$2,137.50, paid to
10 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
11 \$712.50, payable to Plaintiff. The Plaintiff's portion of the civil penalty shall be made payable to
12 Manning Law APC, Client Trust and CalSafe Research Center, Inc. and associated with taxpayer
13 identification number 84-4419173. This payment shall be delivered to **Manning Law, APC,**
14 **20062 SW Birch St. Suite 200, Newport Beach, CA 92660.**

15 4.2 The OEHHA portion of the civil penalty shall be made payable to OEHHA and associated with
16 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

17 For United States Postal Service Delivery:

18 Attn: Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010, MS #19B
22 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Attn: Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street, MS #19B
26 Sacramento, CA 95814

25 Defendant agrees to provide Plaintiff's counsel with a copy of the check payable to OEHHA,
26 simultaneous with its penalty payments to Plaintiff. Plaintiff and its counsel will provide
27 completed IRS 1099, W-9, or other tax forms as required. Relevant information is set out
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1 below:

- 2 • CalSafe Research Center, Inc, associated with taxpayer identification number 84-
3 4419173, CalSafe Research Center, Inc. 4533 MacArthur Blvd. Ste. 230, Newport
4 Beach, CA 92660.
- 5 • Manning Law, APC, associated with taxpayer identification number 83-0502205,
6 Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

7 4.3 The portion of the settlement attributable to attorney's fees and costs in the amount of \$25,650.00
8 shall be paid to Plaintiff's counsel, who are entitled to attorney's fees and costs incurred by it in
9 this action, including but not limited to investigating potential violations, bringing this matter to
10 Defendant's attention, as well as litigating and negotiating a settlement in the public interest.
11 Defendant shall provide its payment to Plaintiff's counsel in one check, payable to the Manning
12 Law, APC, and delivered to 20062 SW Birch St. Suite 200, Newport Beach, CA 92660, within
13 **fourteen (14) days** of the Effective Date.

14 **5. CLAIMS COVERED AND RELEASED**

15 5.1 This Consent Judgment is a full, final and binding resolution between Plaintiff on behalf of itself
16 and in the public interest, and Defendant and its respective officers, directors, members,
17 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates,
18 suppliers, franchisees, licensees, and retailers (including Wholesome Choice Market, Inc.), their
19 parent and all subsidiaries and affiliates thereof, their respective employees, agents and assigns,
20 as well as all other upstream and downstream entities in the distribution chain for any of the
21 Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the
22 "Released Parties").

23 5.2 Plaintiff acting on its own behalf and in the public interest releases the Released Parties from all
24 claims, actions, causes of actions, suits, demand, liability, damages, penalties, fees, costs, and
25 expenses asserted or which could have been asserted from the handling or consumption of the
26 Covered Products, as to any alleged violations of Proposition 65 or its implementing regulations
27 up through the Effective Date based on exposure to Lead from the Covered Products as set forth
28 in the Notices of Violation, the Complaint and herein. Compliance with the terms of this Consent

1 Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from the
2 Covered Products. This release does not apply to third-party websites that do not provide the
3 required Warnings.

4 5.3 It is possible that other claims not known to the Parties arising out of the facts contained in the
5 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
6 discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on
7 the other hand, acknowledge that this Consent Judgment is expressly intended to cover and
8 include all such claims through and including the Effective Date, including all rights of action
9 thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2
10 may include unknown claims, and nevertheless intend to release such claims, and in doing so
11 waive California *Civil Code* § 1542 which reads as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
13 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
14 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
15 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
16 OR HER SETTLEMENT WITH THE DEBTOR.

17 5.4 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
18 California *Civil Code* § 1542 is that even if Plaintiff suffers future damages arising out of or
19 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
20 including but not limited to any exposure to, or failure to warn with respect to exposure to, the
21 Covered Products, Plaintiff will not be able to make any claim for those damages against any of
22 the Released Parties.

23 5.5 Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance
24 with Proposition 65 with respect to exposure to Lead in the Covered Products as set forth in the
25 60-Day Notices and/or the Complaint.
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1 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 252249.7(f)**

2 6.1 Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in
3 California *Health and Safety Code* § 25249.7(f)

4 **7. PROVISION NOTICE**

5 7.1 When any Party is entitled to receive any notice or writing under this Consent Judgment, the
6 notice or writing shall be sent by first class certified mail with return receipt requested, or by
7 electronic mail, as follows:

8 To Defendant:

9 Collie F. James, IV
10 600 Anton Blvd, Suite 1800
11 Costa Mesa, CA 92626
12 collie.james@morganlewis.com

13 To Plaintiff:

14 Joseph R. Manning, Jr.
15 Manning Law, APC
16 20062 SW Birch St. Suite 200
17 Newport Beach, CA 92660
18 P65@manninglawoffice.com

19 Any party may modify the person and address to whom the notice is to be sent by sending the
20 other Party notice that is transmitted in the manner set forth in section 7.1.

21 **8. COURT APPROVAL**

22 8.1 Upon execution of this Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole
23 cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support.
24 This Consent Judgment shall not become effective until approved and entered by the Court. If
25 this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not
26 be introduced into evidence or otherwise used in any proceeding for any purpose.

27 8.2 This Consent Judgment may apply to and benefit the Parties and their respective officers,
28 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
 licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns.
 This Consent Judgment shall have no application to any Covered Products that are distributed or

1 sold exclusively outside the State of California and that is not intended for use by California
2 consumers.

3 **9. GOVERNING LAW AND CONSTRUCTION**

4 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

5 **10. ENTIRE AGREEMENT**

6 10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
7 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
8 commitments, or understandings related thereto, if any, are hereby merged herein and therein.

9 10.2 There are no warranties, representations, or other agreements between the Parties except as
10 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
11 those specifically referred to in this Consent Judgment have been made by any Party hereto.

12 10.3 No other agreements not specifically contained or referenced herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or
14 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto
15 only to the extent that they are expressly incorporated herein.

16 10.4 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
17 binding unless executed in writing by the Party to be bound thereby, and approved and ordered
18 by the Court.

19 10.5 No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a
20 waiver of any of the other provisions hereof whether or not similar, nor shall such waiver
21 constitute a continuing waiver.

22 **11. RETENTION OF JURISDICTION & ENFORCEMENT**

23 11.1 This Court shall retain jurisdiction of this matter to implement, enforcer or modify the Consent
24 Judgment. Any alleged breach of the terms of this Consent Judgment must be brought in this
25 Court.

26 11.2 If Plaintiff alleges that any Covered Products fail to comply with this Consent Judgment, then
27 Plaintiff shall inform Defendant in a reasonably prompt manner of its test results and related
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1 packaging information, including information sufficient to permit Defendant to identify the
2 Covered Products at issue. The Parties shall first attempt to resolve the matter prior to Plaintiff
3 taking any further legal action.

4 11.3 In the event that Proposition 65 is repealed or preempted as to food products, or if lead is deemed
5 to be naturally occurring in the Covered Products and not requiring a warning through a law or
6 regulation, then Plaintiff shall have no further obligation pursuant to this Consent Judgment with
7 respect to, and to the extent that the Covered Products are so affected.

8 **12. NO EFFECT ON OTHER SETTLEMENTS**

9 12.1 Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against
10 another entity on terms that are different from those contained in this Consent Judgment.

11 **13. EXECUTION IN COUNTERPARTS**

12 13.1 This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an
13 original, and all of which, taken together, shall constitute the same document. Execution of the
14 Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and
15 binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the
16 same force and effect as the original.

17 **14. AUTHORIZATION**

18 14.1 The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on
19 behalf of their respective parties, and have read, understood, and agree to all of the terms and
20 conditions of this Consent Judgment.

21 **15. SEVERABILITY**

22 15.1 If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a
23 Court to be invalid, void, or unenforceable, the remaining portions of provisions shall continue in
24 full force and effect.

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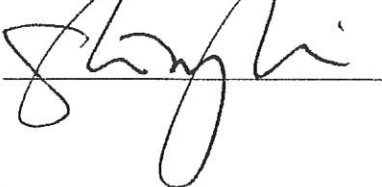
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1 **AGREED TO:**

2 **CalSafe Research Center, Inc.**

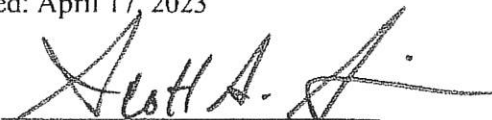
3 Dated: April 17, 2023

4
5 By: 

7 **AGREED TO:**

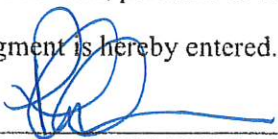
8 **Indo-European Foods, Inc.**

9 Dated: April 17, 2023

10
11 By: 

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to *Health & Safety*
14 *Code* § 25249.7(f)(4) and *Code of Civil Procedure* § 664.6, judgment is hereby entered.

15 Dated: 8/3/2023


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JUDGE OF THE SUPERIOR COURT

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