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12 *Attorney for Defendant*
13 *The Napoleon Co.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

17 CALSAFE RESEARCH CENTER, INC., a
18 California non-profit corporation,
19
20 **Plaintiff,**
21
22 v.
23 THE NAPOLEON CO., Washington Profit
Corporation; and DOES 1 to 10,
24
25 **Defendant.**

Case No.: 23TRCV00310
[PROPOSED] STIPULATED
CONSENT JUDGMENT
*(Health & Safety Code § 24249, et
seq.)*
Complaint filed: February 3, 2023
Trial Date: None

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1 **I. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between CalSafe
3 Research Center, Inc. (“CalSafe” or “Plaintiff”), a California non-profit corporation, and The
4 Napoleon, Co. (“Napoleon” or “Defendant”), a Washington Profit Corporation (collectively, the
5 “Parties”).

6 **1.2 General Allegations.** On February 3, 2023, CalSafe initiated this action by filing
7 a Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to Health &
8 Safety Code § 24249.5 *et seq.* (“Proposition 65”) against Napoleon. In this action, CalSafe
9 alleges that Napoleon’s Caper products (the “Covered Product”) contains lead, a chemical listed
10 under Proposition 65 as a carcinogen and reproductive toxin. CalSafe alleges that the Covered
11 Product exposes consumers to lead at a level requiring a Proposition 65 warning. CalSafe alleges
12 that Napoleon qualifies as a “Person” within the meaning of Proposition 65, and that Napoleon
13 manufactures, distributes, and/or offers for sale in the State of California the Covered Product.

14 **1.3 Notice of Violation.** The Complaint is based on allegations contained in
15 CalSafe’s Notice of Violation dated January 19, 2022 (the “Notice”), that was served on the
16 California Attorney General, other public enforcers, and Napoleon. A true and correct copy of
17 the Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days
18 have passed since the Notice was served on the Attorney General, public enforcers, and
19 Napoleon; no designated governmental entity has filed a Complaint against Napoleon with
20 regard to the Covered Product or the alleged violations.

21 **1.4** CalSafe’s Notice and Complaint allege that the use of the Product by California
22 consumers exposes them to lead without first receiving a clear and reasonable warning from
23 Napoleon, which is a violation of California Health & Safety Code § 25249.6. Napoleon denies
24 all material allegations contained in the Notice and Complaint.

25 **1.5** The Parties have entered into this Consent Judgment in order to settle,
26 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
27 Napoleon denies the material, factual, and legal allegations in the Notice and Complaint and
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1 maintains that all of the products, including the Covered Product, that it sold and/or distributed
2 for sale in California have been and are in compliance with all laws, including Proposition 65.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
4 or be construed as an admission by Napoleon or by any of their respective officers, directors,
5 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
6 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
7 finding, conclusion, issue of law, or violation of law, such specifically denied by the Napoleon.
8 This Section shall not, however, diminish or otherwise affect Napoleon's obligations,
9 responsibilities, and duties under this Consent Judgment.

10 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
12 current or future legal proceeding unrelated to this proceeding.

13 **1.7 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"
14 shall be the date the Consent Judgment has been approved and entered by the Court.

15 **II. JURISDICTION AND VENUE**

16 **2.1** For purposes of this Consent Judgment and any further court action that may
17 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
18 subject matter jurisdiction over the allegations of violations contained in the Complaint and
19 personal jurisdiction over Napoleon as to the acts alleged in the Complaint.

20 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
21 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
22 judgment as a full and final resolution of all claims up through and including the Effective Date
23 that were or could have been asserted in this action based on the facts alleged in the Notice and
24 Complaint.

25 **III. INJUNCTIVE RELIEF**

26 **3.1 Lead Reduction, Target Level, Compliance Date.** For Covered Product
27 manufactured after the Effective Date, and Shipped for Sale in California, it shall not contain
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1 more than 0.5 micrograms of lead per serving, with serving size measured by the serving size
2 specified on the label of the Covered Product (the “Target Level”), or be subject to the provisions
3 of Paragraphs 3.2 through 3.6.

4 **3.2 Shipped for Sale in California.** “Shipped for Sale in California” means the
5 Covered Product that Napoleon either directly ships to California for sale in California, or that
6 it sells to a distributor or retailer who Napoleon knows will sell the Product to consumers in
7 California.

8 **3.3 Clear and Reasonable Warnings, When Required.** Napoleon agrees by the
9 Effective Date to only manufacture Covered Product that will be Shipped for Sale in California
10 that contains a warning as provided for in Paragraphs 3.4 through 3.6, except as provided in
11 Paragraph 3.1.

12 **3.4 Warning Requirements.** A clear and reasonable warning for the Covered
13 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered
14 Product Shipped for Sale in California by Napoleon that contains one of the following
15 statements:

16 (A)

17
18 **WARNING:** Consuming this product can expose you to chemicals including lead,
19 which are known to the State of California to cause [cancer and] birth defects or other
20 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

21 (B)

22 **WARNING:** [Cancer and] Reproductive Harm—www.P65Warnings.ca.gov/food.

23 The warning shall be offset in a box with a black outline and must be in a type size no
24 smaller than the largest type size used for other consumer information on the Covered Product.
25 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
26 information. “Consumer information” does not include the brand name, product name, company
27 name, location of manufacture, or product advertising. In no case shall the warning appear in a
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1 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. §
2 25607.1(c). Specifically, where the Covered Product sign, label or shelf tag used to provide the
3 warning includes consumer information in a language other than English, the warning must also
4 be provided in that language in addition to English. The bracketed language is only required if
5 the Covered Product exceeds the No Significant Risk Level of 15 micrograms of lead per day.

6 **3.5 Warnings for Internet Sales.** For any Covered Product sold over the internet
7 where it will be shipped to a consumer in California, the warning shall be displayed as follows:
8 (A) on the primary display page for the Covered Product; (B) as a clearly marked hyperlink using
9 the word “WARNING” in all capital and bold letters on the Covered Product’s primary display
10 page, so long as the hyperlink goes directly to a page prominently displaying the warning without
11 content that detracts from the warning; (C) on the checkout page or any other page in the
12 checkout process when a California delivery address is indicated for the purchase of the Covered
13 Product and with the warning clearly associated with the Covered Product to indicate that the
14 Covered Product is subject to the warning; or (D) by otherwise prominently displaying the
15 warning to the purchaser prior to completing the purchase of the Covered Product. The warning
16 is not prominently displayed if the purchaser must search for it in the general content of the
17 website.

18 **3.6 Warning Prominence.** Napoleon agrees that each warning shall be prominently
19 placed with such conspicuousness, as compared with the other words, statements, designs, or
20 devices, as to render it likely to be read and understood by an ordinary individual under
21 customary conditions before purchase or use.

22 **3.7 Compliance with Clear and Reasonable Warning.** Napoleon shall be deemed
23 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
24 Paragraphs 3.1 through 3.6, or (B) by complying with any future warning requirements adopted
25 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
26 applicable to the product and chemical at issue. If regulations or legislation are enacted or issued
27 providing that a Proposition 65 warning for the Covered Product is no longer required, a lack of
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1 warning as set forth in this Consent Judgment will not thereafter be a breach of this Consent
2 Judgment.

3 **3.8 Grace Period of Existing Inventory.** The injunctive requirements of Section III
4 shall not apply to the Covered Product that is already in the stream of commerce as of the
5 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

6 **3.9 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
7 Parties, CalSafe shall notice a Motion for Court Approval and, within ten (10) days of approval
8 of the Consent Judgment by the Court, comply with the requirements set forth in California
9 Health & Safety Code § 25249.7(f).

10 **3.10 Attorney General Objection.** If the California Attorney General objects to any
11 term in this Consent Judgment, the Parties shall use their best reasonable efforts to resolve the
12 concern in a timely manner, and if possible, prior to the hearing on the motion.

13 **3.11 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
14 shall be void and have no force or effect.

15 **IV. MONETARY TERMS**

16 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
17 additional settlement payments, attorney fees, and costs, Napoleon shall make a total payment
18 of Twenty Thousand Dollars (\$20,000.00) (the "Total Settlement Amount"), apportioned into a
19 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

20 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
21 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Napoleon
22 agrees to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment
23 will be apportioned in accordance with California Health & Safety Code §§ 25249(c)(1), (d),
24 with seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-
25 five (25) percent of the funds retained by CalSafe. Within ten (10) business days of the Effective
26 Date, Napoleon shall issue a check to "OEHHA" in the amount of One Thousand Five Hundred
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1 Dollars (\$1,500.00), with "Prop 65 Penalties" written in the Memo Line; and Napoleon shall,
2 pursuant to the instructions below, wire to CalSafe the amount of Five Hundred Dollars (500.00).

3 All payments made to OEHHA (EIN: 68-0284486) pursuant to this Paragraph shall be
4 delivered directly to OEHHA at the following address:

5 For United States Postal Delivery Service:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Delivery Service:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street MS #19B
16 Sacramento, CA 95814

17 All penalty payments owed to CalSafe shall be sent via wire to:

18 **Wire & ACH Instructions:**

19 Account Name: The Law Offices of Joseph R. Manning
20 Bank Name: J.P. Morgan Chase Bank, N.A.
21 Bank Address: 270 Park Ave. New York, NY. 10017
22 ACH Routing / ABA Number: 322271627
23 Wire Routing / ABA Number: 021000021
24 Account Number: 802922919

25 For further benefit of: Civil Penalty Payment Case No. 23TRCV00310

26 **4.3 Attorney Fees and Costs.** Within ten (10) business days of the Effective Date,
27 Napoleon agrees to pay Eighteen Thousand Dollars (\$18,000.00) to CalSafe and its counsel of
28 record for all fees and costs incurred in investigating, bringing this matter to the attention of
Napoleon, litigating, negotiation, and obtaining judicial approval of a settlement in the public
interest.

1 **Wire & ACH Instructions:**

2 Account Name: The Law Offices of Joseph R. Manning
3 Bank Name: J.P. Morgan Chase Bank, N.A.
4 Bank Address: 270 Park Ave. New York, NY. 10017
5 ACH Routing / ABA Number: 322271627
6 Wire Routing / ABA Number: 021000021
7 Account Number: 802922919

8 For further benefit of: Attorney's Fees Case No. 23TRCV00310

9 **4.4** In the event that Napoleon fails to remit the Total Settlement Amount or any
10 portion thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due
11 date, Napoleon shall be deemed to be in material breach of its obligations under this Consent
12 Judgment. CalSafe shall provide written notice of delinquency to Napoleon via electronic mail to
13 Napoleon's counsel of record. If Napoleon fails to deliver any portion of or all of the Total
14 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
15 shall accrue interest at the statutory judgment interest rate provided in California Code of Civil
16 Procedure § 685.010.

17 Additionally, Napoleon agrees to pay CalSafe's reasonable attorney fees and costs for any
18 efforts to collect the payment due under this Consent Judgment.

19 **V. RETENTION OF JURISDICTION**

20 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
21 this Consent Judgment.

22 **VI. MODIFICATION OF CONSENT JUDGMENT**

23 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
24 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
25 or (B) by motion of either Party pursuant to Paragraph 6.3 and upon entry by the Court of a
26 modified consent judgment.

27 **6.2** If Napoleon seeks to modify this Consent Judgment under Paragraph 6.1, then
28 Napoleon must provide written notice to CalSafe of its intent ("Notice of Intent"). If CalSafe
29 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then CalSafe

1 shall provide written notice of intent to meet and confer to Napoleon within thirty (30) days of
2 receiving the Notice of Intent. The Parties shall then meet and confer in good faith in person, via
3 telephone, or via video conference within thirty (30) days of CalSafe's written notice of intent to
4 meet and confer. Within thirty (30) days of such a meeting, if CalSafe disputes the proposed
5 modification, CalSafe shall provide Napoleon a written basis for its opposition. The Parties shall
6 continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining
7 disputes. Should it become necessary, the Parties may agree in writing to different deadlines for
8 the meet-and-confer period.

9 **6.3** In the event that Napoleon initiates or otherwise requests a modification under
10 Paragraph 6.1, and the meet and confer process leads to a joint motion or application for a
11 modification of the Consent Judgment, Napoleon shall reimburse CalSafe its costs and reasonable
12 attorney fees for the time spent in the process, unless the modification successfully invalidates
13 the warning provision of this Consent Judgment.

14 **6.4** Napoleon shall have grounds to modify the Consent Judgment should another case
15 brought by CalSafe and involving capers be resolved or have judgment entered on terms that
16 require warnings at a different level than the level set in Paragraph 3.1 of this Consent Judgment.

17 **VII. BINDING EFFECT, CLAIMS COVERED, CLAIMS RELEASED**

18 **7.1** This Consent Judgment shall have no application to any Covered Product that is
19 distributed or sold exclusively outside the State of California and/or that is not used by California
20 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
21 environmental exposures arising under Proposition 65, nor shall it apply to any other Napoleon
22 products other than the Covered Product.

23 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
24 between CalSafe, on behalf of itself and its respective members, owners, principals, officers,
25 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, successors,
26 assigns, legal representatives and affiliates and on behalf of the public interest, and Napoleon and
27 (a) its respective equity owners, officers, directors, shareholders, employees, agents, parent
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1 companies, subsidiaries, divisions, affiliates, and related companies, (b) its upstream suppliers
2 and downstream entities in the stream of commerce including, but not limited to franchisees,
3 licensees, customers, suppliers, distributors, wholesalers, cooperative members and retailers, and
4 (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers,
5 attorneys, predecessors, successors, and assigns of any of the entities in subsections (a) and (b),
6 above (the entities identified in subsections (a), (b), and (c), above, are collectively referred to as
7 “Released Parties”) as to the Covered Product and lead under Proposition 65.

8 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
9 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
10 Covered Product as set forth in the Notice and Complaint.

11 **7.4 CalSafe Release of Napoleon.** CalSafe, on behalf of itself and its respective
12 members, owners, principals, officers, directors, shareholders, employees, agents, parent
13 companies, subsidiaries, divisions, successors, assigns, legal representatives, and affiliates and on
14 behalf of the public interest fully releases and discharges Released Parties from any and all claims,
15 actions, cause of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
16 asserted, or that could have been asserted based on or related to the handling, use, sale,
17 distribution, or consumption of the Covered Product in California, as to any alleged violation of
18 Proposition 65 or its implementing regulations up through the Effective Date, based on a failure
19 to provide Proposition 65 warning on any Covered Product manufactured on or before the
20 Effective Date with respect to lead as set forth in the Notice and Complaint.

21 **7.5** CalSafe on its own behalf only, and Napoleon on its own behalf only, further waive
22 and release any and all claims they, their attorneys, or their representatives may have against each
23 other for all actions or statements made or undertaken in the course of seeking or opposing
24 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
25 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
26 any Party’s right to seek to enforce the terms of the Consent Judgment.

1 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
2 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
3 Covered Product, will develop or be discovered. CalSafe on behalf of itself only, and
4 NAPOLEON on behalf of itself only, acknowledge that this Consent Judgment is expressly
5 intended to cover and include all Such claims up through and including the Effective Date,
6 including all rights of action therefore. CalSafe and Napoleon acknowledge that the claims
7 released in Section VII above may include unknown claims, and nevertheless waive California
8 Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

14 **VIII. SEVERABILITY**

15 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
16 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
17 provisions shall not be adversely affected.

18 **IX. GOVERNING LAW**

19 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
20 construed in accordance with the laws of the State of California.

21 **X. PROVISION OF NOTICE**

22 **10.1** All notices required to be given to either Party to this Consent Judgment by the
23 other shall be in writing and sent to the following agents listed below via first-class mail or
24 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be
25 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall
26 take effect on the date the return receipt is signed by the Party receiving the change.

27 Notice for CalSafe shall be sent to:

1 Joseph R. Manning, Jr.
2 26100 Towne Center Drive
3 Foothill Ranch, CA 92610
4 Tel: Office (949) 200-8757 Fax: (866) 843-8309
5 p65@manninglawoffice.com

6 Notice for Napoleon shall be sent to:

7 Will Wagner
8 ARNOLD & PORTER KAYE SCHOLER LLP
9 Three Embarcadero Center, 10th Floor
10 San Francisco, CA 94111
11 Tel: (415) 471-3100
12 Fax: (415) 471-3400
13 Will.wagner@arnoldporter.com

14 **XI. EXECUTED IN COUNTERPARTS**

15 **11.1** This Consent Judgment may be executed in counterparts, which taken together
16 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
17 construed to be as valid as the original signature.

18 **XII. DRAFTING**

19 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
20 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the
21 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
22 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
23 drawn, and no provision of this Consent Judgment shall be construed against any Party, based
24 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted
25 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
26 participate equally in the preparation and drafting of this Consent Judgment.

27 **XIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

28 **13.1** If a dispute with respect to either Party's compliance with the terms of this
Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an

1 amicable manner. No action or motion may be filed with the Court in the absence of such a good
2 faith attempt to resolve the dispute beforehand.

3 **XIV. ENFORCEMENT**

4 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
5 Orange County, enforce the terms and conditions of this Consent Judgment. The terms of this
6 Consent Judgment can only be enforced by a Party. The prevailing party in an enforcement is
7 entitled to reasonable attorneys' fees and costs.

8 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

9 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to the entire subject matter herein, including any and all prior
11 discussions, negotiations, commitments, and understandings related thereto. No representations,
12 oral or otherwise, express or implied, other than those contained herein have been made by any
13 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
14 deemed to exist or to bind any Party.

15 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to stipulate to this Consent Judgment.

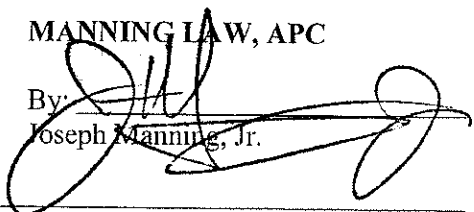
17 **XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.**

18 **16.1** This Consent Judgment has come before the Court upon the request of the Parties.
19 The Parties request the Court to fully review this Consent Judgment and, being fully informed
20 regarding the matters which are the subject of this action, make the findings pursuant to
21 California Health and Safety Code § 25249(f)(4) and approve this Consent Judgment.

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23 **IT IS SO STIPULATED.**

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25 DATED: 9/21, 2023

MANNING LAW, APC

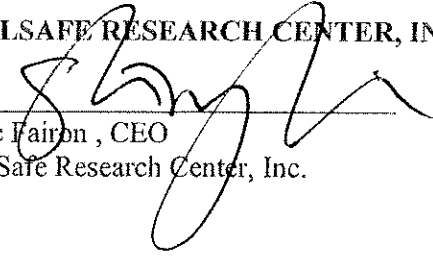
26 By: 
27 Joseph Manning, Jr.
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Attorney for Plaintiff
CalSafe Research Center, Inc.

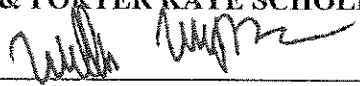
CALSAFE RESEARCH CENTER, INC.

DATED: 9/21/23, 2023

By: 
Eric Fairon, CEO
CalSafe Research Center, Inc.

DATED: September 21, 2023

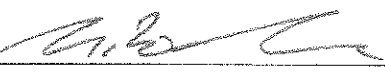
ARNOLD & PORTER KAYE SCHOLER LLP

By: 
Will Wagner

Attorney for Defendant
The Napoleon Co.

DATED: 9/21, 2023

THE NAPOLEON CO.

By: 

The Napoleon Co.

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

Dated: _____

JUDGE OF THE SUPERIOR COURT