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13 *Acadian Kitchen, LLC*

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**
17

18 CALSAFE RESEARCH CENTER, INC., a
19 California non-profit corporation,

20 Plaintiff,

21 v.

22 ACADIAN KITCHEN, LLC, a Louisiana
23 Limited Liability Company; and DOES 1 to
24 10,

25 Defendant.
26
27
28

Case No.: 23TRCV01517

[PROPOSED] STIPULATED
CONSENT JUDGMENT

(Health & Safety Code § 24249, et seq.)

Complaint filed: May 12, 2023
Trial Date: TBD

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
4 Acadian Kitchen, LLC (“Acadian” or “Defendant”), a Louisiana limited liability company
5 (collectively, the “Parties”).

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

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

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

26 **1.5** The Parties have entered into this Consent Judgment in order to settle,
27 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Acadian
28 denies the material, factual, and legal allegations in the Notice and Complaint and maintains that

1 all of the products, including the Covered Product, that it sold and/or distributed for sale in
2 California have been and are in compliance with all laws. Nothing in this Consent Judgment nor
3 compliance with this Consent Judgment shall constitute or be construed as an admission by
4 Acadian or by any of their respective officers, directors, shareholders, employees, agents, parent
5 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
6 distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or violation
7 of law, such specifically denied by the Acadian. This Section shall not, however, diminish or
8 otherwise affect Acadian's obligations, responsibilities, and duties under this Consent Judgment.

9 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 current or future legal proceeding unrelated to this proceeding.

12 **1.7 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"
13 shall be the date the Consent Judgment has been approved and entered by the Court.

14 **II. JURISDICTION AND VENUE**

15 **2.1** For purposes of this Consent Judgment and any further court action that may
16 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
17 subject matter jurisdiction over the allegations of violations contained in the Complaint and
18 personal jurisdiction over Acadian as to the acts alleged in the Complaint.

19 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
20 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
21 judgment as a full and final resolution of all claims up through and including the Effective Date
22 that were or could have been asserted in this action based on the facts alleged in the Notice and
23 Complaint.

24 **III. INJUNCTIVE RELIEF**

25 **3.1 Lead Reduction, Target Level, Compliance Date.** Beginning on the Effective
26 Date, Acadian shall reduce the level of lead in the Covered Product, if necessary, shipped for
27 sale in California to an amount not to exceed 0.5 micrograms of lead per day to avoid the warning
28 requirement for reproductive harm and 15 micrograms of lead per day to avoid the warning

1 requirement for cancer (the “Target Levels”), or be subject to the provisions of Paragraphs 3.3
2 through 3.12.

3 For purposes of this Settlement Agreement, the Target Levels shall be calculated using
4 the following formula: micrograms of lead per gram of product, multiplied by grams of product
5 per serving of the product as stated on the label, multiplied by serving of the product per day
6 stated on the label, which equals micrograms of lead per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 **3.2 Shipped for Sale in California.** “Shipped for Sale in California” means the
9 Covered Product that Acadian either directly ships to California for sale in California, or that it
10 sells to a distributor or retailer who Acadian knows will sell the Covered Product to consumers
11 in California. Where a retailer or distributor sells the Covered Product both in California and
12 other states, Acadian shall take commercially reasonable steps to ensure that the only Covered
13 Product that is sold in California is in compliance with Paragraph 3.3 through 3.6.

14 **3.3 Clear and Reasonable Warnings, When Required.** Acadian agrees by the
15 Effective Date to only manufacture for sale, purchase for sale, import for sale, or distribute for
16 sale in or into California (in-person or online) the Covered Product that contains a warning as
17 provided for in Paragraphs 3.3 through 3.6, except as provided in Paragraph 3.1.

18 **3.4 Warning Requirements.** A clear and reasonable warning for the Covered
19 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered
20 Product Shipped for Sale in California by Acadian that contains one of the following statements:

21 (A)

22
23 **WARNING:** Consuming this product can expose you to lead, which is known to the
24 State of California [to cause cancer and] birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov/food.

25 (B)

26 **WARNING:** [Cancer and] Reproductive Harm—www.P65Warnings.ca.gov/food.
27
28

1 The bracketed language for cancer shall not be required unless a chemical in the product exceeds
2 the No Significant Risk Level (NSRL) established by OEHAA for the particular chemical.

3 The warning shall be offset in a box with a black outline and must be in a type size no
4 smaller than the largest type size used for other consumer information on the Covered Product.
5 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
6 information. “Consumer information” does not include the brand name, product name, company
7 name, location of manufacture, or product advertising. In no case shall the warning appear in a
8 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. § 25602
9 (d). Specifically, where the product sign or label used to provide the warning includes consumer
10 information in a language other than English, the warning must also be provided in that language
11 in addition to English.

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

23 **3.6 Warning Prominence.** Acadian agrees that each warning shall be prominently
24 placed with such conspicuousness, as compared with the other words, statements, designs, or
25 devices, as to render it likely to be read and understood by an ordinary individual under
26 customary conditions before purchase or use.

27 **3.7 Compliance with Clear and Reasonable Warning.** Acadian shall be deemed to
28 be in compliance with this Consent Judgment after the Effective Date by (A) adhering to

1 Paragraphs 3.1 through 3.5, or (B) by complying with any future warning requirements adopted
2 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
3 applicable to the product and chemical at issue. If regulations or legislation are enacted or issued
4 providing that a Proposition 65 warning for the Covered Product is no longer required, a lack of
5 warning as set forth in this Consent Judgment will not thereafter be a breach of this Consent
6 Judgment.

7 **3.8 Grace Period of Existing Inventory.** The injunctive requirements of Section III
8 shall not apply to the Covered Product that is already in the stream of commerce as of the
9 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

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

14 **3.10 Attorney General Objection.** If the California Attorney General objects to any
15 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
16 timely manner, and if possible, prior to the hearing on the motion.

17 **3.11 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
18 shall be void and have no force or effect.

19 **IV. MONETARY TERMS**

20 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
21 additional settlement payments, attorney fees, and costs, Acadian shall make a total payment of
22 Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) (the “Total Settlement Amount”),
23 apportioned into a Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and
24 4.3, below.

25 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
26 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Acadian
27 agrees to pay Three Thousand Two Hundred and Fifty Dollars (\$3,250.00) in Civil Penalties.
28 The Civil Penalty payment will be apportioned in accordance with California Health & Safety

1 Code §§ 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and
2 the remaining twenty-five (25) percent of the funds retained by CalSafe. Within ten (10) business
3 days of the Effective Date, Acadian shall issue a check to “OEHHA” in the amount of Two
4 Thousand Four Hundred and Thirty-Seven Dollars and Fifty Cents (\$2,437.50), with “Prop 65
5 Penalties” written in the Memo Line; and Acadian shall, pursuant to the instructions below, wire
6 to CalSafe the amount of Eight Hundred and Twelve Dollars and Fifty Cents (\$812.50).

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

9 For United States Postal Delivery Service:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

13 For Non-United States Postal Delivery Service:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street MS #19B
18 Sacramento, CA 95814

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

19 **Wire & ACH Instructions:**

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

26 For further benefit of: Civil Penalty Payment Case No. 23TRCV01517

27 **4.3 Attorney Fees and Costs.** Within ten (10) business days of the Effective Date,
28 Acadian agrees to pay Twenty-Nine Thousand and Two Hundred and Fifty Dollars (\$29,250.00)

1 to CalSafe and its counsel of record for all fees and costs incurred in investigating, bringing this
2 matter to the attention of Acadian, litigating, negotiation, and obtaining judicial approval of a
3 settlement in the public interest.

4
5 **Wire & ACH Instructions:**

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

12 For further benefit of: Attorney’s Fees Case No. 23TRCV01517

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

20 Additionally, Acadian agrees to pay CalSafe’s reasonable attorney fees and costs for any
21 efforts to collect the payment due under this Consent Judgment.

22 **V. RETENTION OF JURISDICTION**

23 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
24 this Consent Judgment.

25 **VI. MODIFICATION OF CONSENT JUDGMENT**

26 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
27 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
28 or (B) by motion of either Party pursuant to Paragraph 5.1 and upon entry by the Court of a
modified consent judgment.

1 **6.2** If Acadian seeks to modify this Consent Judgment under Paragraph 5.1, then
2 Acadian must provide written notice to CalSafe of its intent (“Notice of Intent”). If CalSafe seeks
3 to meet and confer regarding the proposed modification in the Notice of Intent, then CalSafe shall
4 provide written notice of intent to meet and confer to Acadian within thirty (30) days of receiving
5 the Notice of Intent. The Parties shall then meet and confer in good faith in person, via telephone,
6 or via video conference within thirty (30) days of CalSafe’s written notice of intent to meet and
7 confer. Within thirty (30) days of such a meeting, if CalSafe disputes the proposed modification,
8 CalSafe shall provide Acadian a written basis for its opposition. The Parties shall continue to meet
9 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
10 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
11 confer period.

12 **6.3** In the event that Acadian initiates or otherwise requests a modification under
13 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
14 modification of the Consent Judgment, Acadian shall reimburse CalSafe its costs and reasonable
15 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

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

17 **7.1** This Consent Judgment shall have no application to any Covered Product that is
18 distributed or sold exclusively outside the State of California and/or that is not used by California
19 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
20 environmental exposures arising under Proposition 65, nor shall it apply to any other Acadian
21 products other than the Covered Product.

22 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
23 between CalSafe, on behalf of itself and its respective officers, directors, shareholders,
24 employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the
25 public interest, and Acadian and its respective officers, directors, shareholders, employees,
26 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
27 suppliers, distributors, wholesalers, or retailers, and all other upstream and downstream entities
28

1 in the distribution chain of the Covered Product and the predecessors, successors, and assigns of
2 any of them (collectively, "Released Parties").

3 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
5 Covered Product as set forth in the Notice and Complaint.

6 **7.4 CalSafe Release of Acadian(s).** CalSafe, on behalf of itself and its respective
7 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
8 and affiliates and on behalf of the public interest fully releases and discharges Released Parties
9 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,
10 fees costs, and expenses asserted, or that could have been asserted based on or related to the
11 handling, use, sale, distribution, or consumption of the Covered Product in California, as to any
12 alleged violation of Proposition 65 or its implementing regulations up through the Effective Date,
13 based on a failure to provide Proposition 65 warning on the Covered Product with respect to lead
14 as set forth in the Notice and Complaint.

15 **7.5** CalSafe on its own behalf only, and Acadian on its own behalf only, further waives
16 and releases any and all claims they, their attorneys, or their representatives may have against
17 each other for all actions or statements made or undertaken in the course of seeking or opposing
18 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
19 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
20 any Party's right to seek to enforce the terms of the Consent Judgment.

21 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
22 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
23 Covered Product, will develop or be discovered. CalSafe on behalf of itself only, and ACADIAN
24 on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover
25 and include all Such claims up through and including the Effective Date, including all rights of
26 action therefore. CalSafe and Acadian acknowledge that the claims released in Section VII above
27 may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
28 unknown claims. California Civil Code § 1542 reads as follows:

1
2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
4 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
5 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR OR RELEASED PARTY.

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10 **VIII. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
12 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
13 provisions shall not be adversely affected.

14 **IX. GOVERNING LAW**

15 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
16 construed in accordance with the laws of the State of California.

17 **X. PROVISION OF NOTICE**

18 **10.1** All notices required to be given to either Party to this Consent Judgment by the
19 other shall be in writing and sent to the following agents listed below via first-class mail or
20 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be
21 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall
22 take effect on the date the return receipt is signed by the Party receiving the change.

23 Notice for CalSafe shall be sent to:

24 Joseph R. Manning, Jr.
25 26100 Towne Center Drive
26 Foothill Ranch, CA 92610
27 Tel: Office (949) 200-8757 Fax: (866) 843-8309
28 p65@manninglawoffice.com

Notice for Acadian shall be sent to:

Michael J. Gleason
HAHN LOESER & PARKS LLP
One America Plaza
600 West Broadway, Suite 1500
San Diego, CA 92101
mgleason@hahnlaw.com
Tel: (619) 810-4310

Fax: (619) 810-4311

XI. EXECUTED IN COUNTERPARTS

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

XII. DRAFTING

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

XIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

XIV. ENFORCEMENT

14.1 The Parties may, by motion or order to show cause before the Superior Court of Orange County, enforce the terms and conditions of this Consent Judgment. In any successful action brought by CalSafe to enforce this Consent Judgment, CalSafe may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with this Consent Judgment.

XV. ENTIRE AGREEMENT, AUTHORIZATION

1 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
2 of the Parties with respect to the entire subject matter herein, including any and all prior
3 discussions, negotiations, commitments, and understandings related thereto. No representations,
4 oral or otherwise, express or implied, other than those contained herein have been made by any
5 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
6 deemed to exist or to bind any Party.

7 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to stipulate to this Consent Judgment.

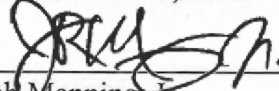
9 **XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.**

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

14
15 **IT IS SO STIPULATED.**

16
17 DATED: September 26, 2023

MANNING LAW, APC

18 By: 
19 Joseph Manning, Jr.

20 *Attorney for Plaintiff*
21 *CalSafe Research Center, Inc.*

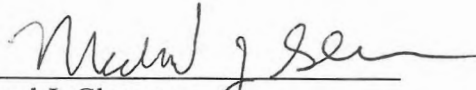
22 **CALSAFE RESEARCH CENTER, INC.**

23 DATED: 9/26/2023, 2023

24 By: 
25 Eric Fairon, CEO
26 CalSafe Research Center, Inc.

1 DATED: September 24, 2023

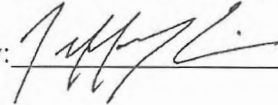
HAHN LOESER & PARKS LLP

2 By: 
3 Michael J. Gleason

4 *Attorney for Defendant*
5 *Acadian Kitchen, LLC*

6
7
8 DATED: September 26, 2023

ACADIAN KITCHEN, LLC

9 By: 

10 Acadian Kitchen, LLC

11
12
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: _____

16 _____
17 JUDGE OF THE SUPERIOR COURT