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14 *Louisville Vegan Jerky Co., Inc.*

15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES - CENTRAL JUDICIAL DISTRICT**

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

21 Plaintiff,

22 v.

23 LOUISVILLE VEGAN JERKY CO., LLC, a
24 Kentucky Limited Liability Company; and
DOES 1 to 10,

25 Defendants.
26
27
28

Case No.: 23TRCV00311

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: February 3, 2023
Trial Date: None Set

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 Louisville Vegan Jerky Co., Inc. (“LVJ” or “Defendant”), a Kentucky limited liability company
5 (collectively, the “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 LVJ. In this action, CalSafe alleges that
9 LVJ’s Maple Bacon (the “Covered Product”) contains lead, a chemical listed under Proposition
10 65 as a carcinogen and reproductive toxin. CalSafe alleges that the Covered Product exposes
11 consumers to lead at a level requiring a Proposition 65 warning. CalSafe alleges that LVJ
12 qualifies as a “Person” within the meaning of Proposition 65, and that LVJ manufactures,
13 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 July 29, 2022 (the “Notice”), that was served on the
16 California attorney General, other public enforcers, and LVJ. A true and correct copy of the
17 Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have
18 passed since the Notice was served on the Attorney General, public enforcers, and LVJ; no
19 designated governmental entity has filed a Complaint against LVJ with regard to the Covered
20 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 **LVJ, which is a violation of California Health & Safety Code § 25249.6. LVJ denies all material**
24 **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 **Defendant denies the material, factual, and legal allegations in the Notice and Complaint and**
28 **maintains that all of the products, including the Covered Product, that it sold and/or distributed**

1 for sale in California have been and are in compliance with all laws. Nothing in this Consent
2 Judgment nor compliance with this Consent Judgment shall constitute or be construed as an
3 admission by the Defendant or by any of their respective officers, directors, shareholders,
4 employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees,
5 customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue
6 of law, or violation of law, such specifically denied by the Defendant. This Section shall not,
7 however, diminish or otherwise affect Defendant's obligations, responsibilities, and duties under
8 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 mean ninety (90) days following the full execution of this Consent Judgment by all Parties.

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 LVJ 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, Defendant shall reduce the level of lead in the Covered Product, if necessary, shipped for
27 sale in California to 0.016 parts per million (the "Target Level"), or be subject to the provisions
28 of Paragraphs 3.3 through 3.6.

1 **3.2 Shipped for Sale in California.** “Shipped for Sale in California” means the
2 Covered Product that Defendant either directly ships to California for sale in California, or that
3 it sells to a distributor or retailer who Defendant knows will sell the Product to consumers in
4 California. Where a retailer or distributor sells the Covered Product both in California and other
5 states, Defendant shall take commercially reasonable steps to ensure that the only Covered
6 product that is sold in California either (1) is in compliance with Paragraph 3.1, or (2) is in
7 compliance with Paragraphs 3.3 through 3.6.

8 **3.3 Clear and Reasonable Warnings, When Required.** If Defendant does not
9 achieve the Target Level on the Covered Product, Defendant agrees by the Effective Date to only
10 manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California
11 (in-person or online) the Covered Product that contains a warning as provided for in Paragraphs
12 3.4 through 3.6.

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

17 (A)

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

22 (B)

23 ⚠️ **WARNING:** Cancer and Reproductive Harm—www.P65Warnings.ca.gov/food.

24 The warning shall be offset in a box with a black outline, and must be in a type size no
25 smaller than the largest type size used for other consumer information on the Covered Product.
26 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
27 information. “Consumer information” does not include the brand name, product name, company
28

1 name, location of manufacture, or product advertising. In no case shall the warning appear in a
2 type size smaller than six (6) point type. Where the label for the product is not printed using the
3 color yellow, the yellow equilateral triangle consisting of a black exclamation point with a bold
4 black outline may be in black and white.

5 **3.5 Warnings for Internet Sales.** For any Covered Product sold over the internet
6 where it will be shipped to California, the warning shall be displayed as follows: (A) on the
7 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word
8 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so
9 long as the hyperlink goes directly to a page prominently displaying the warning without content
10 that detracts from the warning; (C) on the checkout page or any other page in the checkout
11 process when a California delivery address is indicated for the purchase of the Covered Product
12 and with the warning clearly associated with the Covered Product to indicate that the Covered
13 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the
14 purchaser prior to completing the purchase of the Covered Product. The warning is not
15 prominently displayed if the purchaser must search for it in the general content of the website.

16 **3.6 Warning Prominence.** Defendant agrees that each warning shall be prominently
17 placed with such conspicuousness, as compared with the other words, statements, designs, or
18 devices, as to render it likely to be read and understood by an ordinary individual under
19 customary conditions before purchase or use.

20 **3.7 Compliance with Target Level or Clear and Reasonable Warning.** LVJ shall
21 be deemed to be in compliance with this Consent Judgment after the Effective Date by (A)
22 adhering to Paragraph 3.1 or Paragraphs 3.3 through 3.6, or (B) by complying with any future
23 warning requirements adopted by the State of California’s Office of Environmental Health
24 Hazard Assessment (“OEHHA). If regulations, legislation, or judicial rulings are enacted or
25 issued providing that a Proposition 65 warning for the Covered Product is no longer required, a
26 lack of warning or lack of complying with Target Levels set forth in this Consent Judgment will
27 not thereafter be a breach of this Consent Judgment.

1 **3.8 Grace Period of Existing Inventory.** The injunctive requirements of Section III
2 shall not apply to the Covered Product that is already in the stream of commerce as of the
3 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

4 **3.9 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
5 Parties, CalSafe shall notice a Motion for Court Approval and, within ten (10) days of approval
6 of the Consent Judgment by the Court, comply with the requirements set forth in California
7 Health & Safety Code § 25249.7(f).

8 **3.10 Attorney General Objection.** If the California Attorney General objects to any
9 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
10 timely manner, and if possible, prior to the hearing on the motion.

11 **3.11 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
12 shall be void and have no force or effect.

13 **IV. MONETARY TERMS**

14 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
15 additional settlement payments, attorney fees, and costs, LVJ shall make a total payment of
16 thirty-five thousand dollars (\$35,000.00) (the “Total Settlement Amount”), apportioned into a
17 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

18 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
19 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, LVJ agrees
20 to pay three-thousand five hundred dollars (\$3,500.00) in Civil Penalties. The Civil Penalty
21 payment will be apportioned in accordance with California Health & Safety Code §§
22 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the
23 remaining twenty-five (25) percent of the funds retained by CalSafe. Within ten (10) days of the
24 date of approval of this Consent Judgment by the Court, LVJ shall issue two separate checks for
25 the Civil Penalty payment as follows: (A) to “OEHHA” in the amount of two thousand six
26 hundred twenty-five dollars (\$2,625.00), with “Prop 65 Penalties” written in the Memo Line;
27 and (B) to “CalSafe Research Center” in the amount of eight hundred seventy five dollars
28 (\$875.00).

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

3 For United States Postal Delivery Service:

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

9 For Non-United States Postal Delivery Service:

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

15 All payments made to CalSafe (EIN: 84-4419173) pursuant to this Paragraph shall be sent
16 to:

17 Manning Law APC
18 Client Trust Account: CalSafe Research Center
19 26100 Towne Center Drive
20 Foothill Ranch, CA 92610

21 **4.3 Attorney Fees and Costs.** Within ten (10) days of the approval of this Consent
22 Judgment by the Court, LVJ agrees to pay thirty one thousand five hundred dollars (\$31,500.00)
23 to CalSafe and its counsel of record for all fees and costs incurred in investigating, bringing this
24 matter to the attention of LVJ, litigating, negotiation, and obtaining judicial approval of a
25 settlement in the public interest. LVJ shall issue one check for \$31,500.00 payable to "Manning
26 Law APC" (EIN: 83-0502205).

27 All payments made pursuant to this Paragraph shall be sent or delivered to:

28 Manning Law APC
26100 Towne Center Drive
Foothill Ranch, CA 92610

1
2 **4.4** In the event that LVJ fails to remit the Total Settlement Amount or any portion
3 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date,
4 LVJ shall be deemed to be in material breach of its obligations under this Consent Judgment.
5 CalSafe shall provide written notice of delinquency to LVJ via electronic mail to LVJ's counsel
6 of record. If LVJ fails to deliver any portion of or all of the Total Settlement Amount within five
7 (5) days from the written notice, the Total Settlement Amount shall accrue interest at the statutory
8 judgment interest rate provided in California Code of Civil Procedure § 685.010.

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

11 **V. RETENTION OF JURISDICTION**

12 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
13 this Consent Judgment.

14 **VI. MODIFICATION OF CONSENT JUDGMENT**

15 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
16 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
17 or (B) by motion of either Party pursuant to Paragraph 5.3 and upon entry by the Court of a
18 modified consent judgment.

19 **6.2** If LVJ seeks to modify this Consent Judgment under Paragraph 5.1, then LVJ must
20 provide written notice to CalSafe of its intent ("Notice of Intent"). If CalSafe seeks to meet and
21 confer regarding the proposed modification in the Notice of Intent, then CalSafe shall provide
22 written notice of intent to meet and confer to LVJ within thirty (30) days of receiving the Notice
23 of Intent. The Parties shall then meet and confer in good faith in person, via telephone, or via
24 video conference within thirty (30) days of CalSafe's written notice of intent to meet and confer.
25 Within thirty (30) days of such a meeting, if CalSafe disputes the proposed modification, CalSafe
26 shall provide LVJ a written basis for its opposition. The Parties shall continue to meet and confer
27 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
28 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

1 **6.3** In the event that LVJ initiates or otherwise requests a modification under
2 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
3 modification of the Consent Judgment, LVJ shall reimburse CalSafe its costs and reasonable
4 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

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

6 **7.1** This Consent Judgment shall have no application to any Covered Product that is
7 distributed or sold exclusively outside the State of California and/or that is not used by California
8 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
9 environmental exposures arising under Proposition 65, nor shall it apply to any other LVJ
10 products other than the Covered Product.

11 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
12 between CalSafe, on behalf of itself and its respective officers, directors, shareholders,
13 employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the
14 public interest, and LVJ and its respective officers, directors, shareholders, employees, agents,
15 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
16 distributors, wholesalers, or retailers, and all other upstream and downstream entities in the
17 distribution chain of the Covered Product, including by not limited to Sprouts Farmers Market,
18 LLC, and the predecessors, successors, and assigns of any of them (collectively, "Released
19 Parties").

20 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
21 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
22 Covered Product as set forth in the Notice and Complaint.

23 **7.4 CalSafe Release of Defendant(s).** CalSafe, on behalf of itself and its respective
24 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 and affiliates and on behalf of the public interest fully releases and discharges Released Parties
26 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,
27 fees costs, and expenses asserted, or that could have been asserted based on or related to the
28 handling, use, sale, distribution, or consumption of the Covered Product in California, as to any

1 alleged violation of Proposition 65 or its implementing regulations up through the Effective Date,
2 based on a failure to provide Proposition 65 warning on the Covered Product with respect to lead
3 as set forth in the Notice and Complaint.

4 **7.5** CalSafe on its own behalf only, and LVJ on its own behalf only, further waive and
5 release any and all claims they, their attorneys, or their representatives may have against each
6 other for all actions or statements made or undertaken in the course of seeking or opposing
7 enforcement of Proposition 65 in connection with the Notice and Complaint up through ad
8 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
9 any Party's right to seek to enforce the terms of the Consent Judgment.

10 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
11 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
12 Covered Product, will develop or be discovered. CalSafe on behalf of itself only, and LVJ on
13 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and
14 include all Such claims up through and including the Effective Date, including all rights of action
15 therefore. CalSafe and LVJ acknowledge that the claims released in Section VII above may
16 include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
17 unknown claims. California Civil Code § 1542 reads as follows:

18
19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
22 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
23 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
24 DEBTOR OR RELEASED PARTY.

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1 **VIII. SEVERABILITY**

2 In the event that any of the provisions of this Consent Judgment are held by a court of
3 competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions
4 shall not be adversely affected.

5 **IX. GOVERNING LAW**

6 The terms and conditions of this Consent Judgment shall be governed by and construed in
7 accordance with the laws of the State of California.

8 **X. PROVISION OF NOTICE**

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

14 Notice for CalSafe shall be sent to:

15 Joseph R. Manning, Jr.
16 26100 Towne Center Drive
17 Foothill Ranch, CA 92610
18 Tel: Office (949) 200-8757 Fax: (866) 843-8309
19 p65@manninglawoffice.com

20 Notice for LVJ shall be sent to:

21 George Salmas
22 The Food Lawyers®
23 1880 Century Park East
24 Suite 611
25 Los Angeles, CA 90067
26 Tel: (310) 556-0721
27 George.Salmas@TheFoodLawyers.com

28 **XI. EXECUTED IN COUNTERPARTS**

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.

1 **XII. DRAFTING**

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

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

11 If a dispute with respect to either Party's compliance with the terms of this Consent
12 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, by
13 video conference, and/or in writing and endeavor to resolve the dispute in an amicable manner.
14 No action or motion may be filed with the Court in the absence of such a good faith attempt to
15 resolve the dispute beforehand.

16 **XIV. ENFORCEMENT**

17 The Parties may, by motion or order to show cause before the Superior court of Los
18 Angeles County, enforce the terms and conditions of this Consent Judgment. In any successful
19 action brought by CalSafe to enforce this Consent Judgment, CalSafe may seek whatever fines,
20 costs, penalties, or remedies as are provide by law for failure to comply with this Consent
21 Judgment.

22 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

23 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter herein, including any and all prior
25 discussions, negotiations, commitments, and understandings related thereto. No representations,
26 oral or otherwise, express or implied, other than those contained herein have been made by any
27 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
28 deemed to exist or to bind any Party.

1 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
2 by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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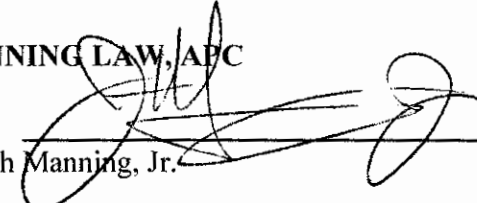
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IT IS SO STIPULATED.

1
2
3 DATED: June 21, 2023


MANNING LAW, APC

4 By: 
5 Joseph Manning, Jr.

6 *Attorney for Plaintiff*
7 *CalSafe Research Center, Inc.*

8 **CALSAFE RESEARCH CENTER, INC.**

9 DATED: 6/21/2023, 2023

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

10
11
12
13 DATED: _____, 2023

THE FOOD LAWYERS®

14 By: _____
15 Michael R. Hambly

16 *Attorney for Defendant*
17 *Louisville Vegan Jerky Co., Inc.*

18
19 **LOUISVILLE VEGAN JERKY CO., INC.**

20 DATED: _____, 2023

By: _____
21 Fred Gustafson
22 President
23 Louisville Vegan Jerky Co., Inc.

1 **IT IS SO STIPULATED.**

2
3 DATED: _____, 2023

MANNING LAW, APC

4 By: _____
5 Joseph Manning, Jr.

6 *Attorney for Plaintiff*
7 *CalSafe Research Center, Inc.*

8 **CALSAFE RESEARCH CENTER, INC.**

9 DATED: _____, 2023 By: _____

10 Eric Fairon , CEO CalSafe Research
11 Center, Inc.

12
13 DATED: June 21, 2023

THE FOOD LAWYERS®

14 By: 
15 Michael R. Hambly

16 *Attorney for Defendant*
17 *Louisville Vegan Jerky Co., Inc.*

18 DATED: June 21, 2023

LOUISVILLE VEGAN JERKY CO., INC.

19
20 y: 
21 Fred Gustafson
22 President
23 Louisville Vegan Jerky Co., Inc.