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12 *Attorney for Defendant*
13 *Vifon (USA), Inc.*

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

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

19 Plaintiff,

21 v.

22 VIFON (USA), INC., a Washington Profit
23 Corporation; and DOES 1 to 10,

24 Defendants.

Case No.: 23TRCV00638

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: March 3, 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 Vifon
4 (USA), Inc., (“Vifon” or “Defendant”), a Washington profit corporation (collectively, the
5 “Parties”).

6 **1.2 General Allegations.** On March 3, 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 Vifon. In this action, CalSafe alleges
9 that Defendant distributes and sells Noodle Products, including but not limited to the exemplar
10 “Vietnamese Style Rice Noodles”, referred to herein and throughout as the “Covered Products”.
11 CalSafe alleges the Covered Products contain lead, a chemical listed under Proposition 65 as a
12 carcinogen and reproductive toxin. CalSafe alleges that the Covered Product exposes consumers
13 to lead at a level requiring a Proposition 65 warning. CalSafe alleges that Vifon qualifies as a
14 “Person” within the meaning of Proposition 65, and that Vifon manufactures, distributes, and/or
15 offers for sale in the State of California the Covered Products.

16 **1.3 Notice of Violation.** The Complaint is based on allegations contained in
17 CalSafe’s Notice of Violation dated September 30, 2022 (the “Notice”), that was served on the
18 California attorney General, other public enforcers, and Vifon. A true and correct copy of the
19 Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have
20 passed since the Notice was served on the Attorney General, public enforcers, and Vifon; no
21 designated governmental entity has filed a Complaint against Vifon with regard to the Covered
22 Products or the alleged violations.

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

27 **1.5** The Parties have entered into this Consent Judgment in order to settle,
28 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Vifon

1 denies the material, factual, and legal allegations in the Notice and Complaint and maintains that
2 all of the products, including the Covered Products, that it sold and/or distributed for sale in
3 California have been and are in compliance with all laws. Nothing in this Consent Judgment nor
4 compliance with this Consent Judgment shall constitute or be construed as an admission by Vifon
5 or by any of their respective officers, directors, shareholders, employees, agents, parent
6 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
7 distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or violation
8 of law, such specifically denied by the Vifon. This Section shall not, however, diminish or
9 otherwise affect Vifon's obligations, 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 Vifon 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 Shipped for Sale in California.** "Shipped for Sale in California" means the
27 Covered Products that Vifon either directly ships to California for sale in California, or that it
28 sells to a distributor or retailer who Vifon knows will sell the Product to consumers in California.

1 Where a retailer or distributor sells the Covered Products both in California and other states,
2 Vifon shall take commercially reasonable steps to ensure that the only Covered Products that are
3 sold in California is in compliance with Paragraph 3.2 through 3.5.

4 **3.2 Clear and Reasonable Warnings, When Required.** Vifon agrees by the
5 Effective Date to only manufacture for sale, purchase for sale, import for sale, or distribute for
6 sale in or into California (in-person or online) the Covered Products that contains a warning as
7 provided for in Paragraphs 3.4 through 3.5.

8 **3.3 Warning Requirements.** A clear and reasonable warning for the Covered
9 Products shall consist of a warning affixed to the packaging, label, tag, or directly to each
10 Covered Products Shipped for Sale in California by Vifon that contains one of the following
11 statements:

12 (A)

13
14 WARNING: Consuming this product can expose you to lead, which is known to the
15 State of California to cause cancer and birth defects or other reproductive harm. For
16 more information go to www.P65Warnings.ca.gov/food.

17 (B)

18
19 WARNING: Cancer and Reproductive Harm—www.P65Warnings.ca.gov/food.

20 The warning shall be offset in a box with a black outline and must be in a type size no
21 smaller than the largest type size used for other consumer information on the Covered Products.
22 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
23 information. “Consumer information” does not include the brand name, product name, company
24 name, location of manufacture, or product advertising. In no case shall the warning appear in a
25 type size smaller than six (6) point type. Where the label for the product is not printed using the
26 color yellow, the yellow equilateral triangle consisting of a black exclamation point with a bold
27 black outline may be in black and white.

28 **3.4 Warnings for Internet Sales.** For any Covered Products sold over the internet
where it will be shipped to California, the warning shall be displayed as follows: (A) on the

1 primary display page for the Covered Products; (B) as a clearly marked hyperlink using the word
2 “WARNING” in all capital and bold letters on the Covered Products’ product display page, so
3 long as the hyperlink goes directly to a page prominently displaying the warning without content
4 that detracts from the warning; (C) or on the checkout page or any other page in the checkout
5 process when a California delivery address is indicated for the purchase of the Covered Products
6 and with the warning clearly associated with the Covered Product to indicate that the Covered
7 Products are subject to the warning; or (D) by otherwise prominently displaying the warning to
8 the purchaser prior to completing the purchase of the Covered Products. The warning is not
9 prominently displayed if the purchaser must search for it in the general content of the website.

10 **3.5 Warning Prominence.** Vifon agrees that each warning shall be prominently
11 placed with such conspicuousness, as compared with the other words, statements, designs, or
12 devices, as to render it likely to be read and understood by an ordinary individual under
13 customary conditions before purchase or use.

14 **3.6 Compliance with Clear and Reasonable Warning.** Vifon shall be deemed to
15 be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
16 Paragraphs 3.2 through 3.5, or (B) by complying with any future warning requirements adopted
17 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
18 applicable to the Covered Products and chemical at issue. If regulations or legislation are enacted
19 or issued providing that a Proposition 65 warning for the Covered Products is no longer required,
20 a lack of warning as set forth in this Consent Judgment will not thereafter be a breach of this
21 Consent Judgment.

22 **3.7 Grace Period of Existing Inventory.** The injunctive requirements of Section III
23 shall not apply to the Covered Products manufactured before June 15th, 2023 or that is already
24 in the stream of commerce as of the Effective Date, which Covered Product is expressly subject
25 to the releases provided in Section V.

26 **3.8 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
27 Parties, CalSafe shall notice a Motion for Court Approval and, within ten (10) days of approval
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1 of the Consent Judgment by the Court, comply with the requirements set forth in California
2 Health & Safety Code § 25249.7(f).

3 **3.9 Attorney General Objection.** If the California Attorney General objects to any
4 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
5 timely manner, and if possible, prior to the hearing on the motion.

6 **3.10 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
7 shall be void and have no force or effect.

8 **IV. MONETARY TERMS**

9 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
10 additional settlement payments, attorney fees, and costs, Vifon shall make a total payment of
11 Twenty-Five Thousand Dollars (\$25,000.00) (the “Total Settlement Amount”), apportioned into
12 a Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

13 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
14 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Vifon agrees
15 to pay Two Thousand Five Hundred Dollars (\$2,500.00) in Civil Penalties. The Civil Penalty
16 payment will be apportioned in accordance with California Health & Safety Code §§
17 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the
18 remaining twenty-five (25) percent of the funds retained by CalSafe. Within ten (10) days of the
19 Effective Date, Vifon shall issue a check to “OEHHA” in the amount of One Thousand Eight
20 Hundred and Seventy-Five Dollars (\$1,875.00), with “Prop 65 Penalties” written in the Memo
21 Line; and Vifon shall, pursuant to the instructions below, wire to CalSafe the amount of Six
22 Hundred and Twenty-Five Dollars (\$625.00).

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

25 For United States Postal Delivery Service:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

1 For Non-United States Postal Delivery Service:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street MS #19B
6 Sacramento, CA 95814

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

8 **Wire & ACH Instructions:**

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

15 For further benefit of: Civil Penalty Payment Case No. 23TRCV00638

16 **4.3 Attorney Fees and Costs.** Within fifteen (15) days of the Effective Date, Vifon
17 agrees to pay Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) to CalSafe and its
18 counsel of record for all fees and costs incurred in investigating, bringing this matter to the
19 attention of Vifon, litigating, negotiation, and obtaining judicial approval of a settlement in the
20 public interest.

21 **Wire & ACH Instructions:**

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

28 For further benefit of: Attorney's Fees Case No. 23TRCV00638

4.4 In the event that Vifon fails to remit the Total Settlement Amount or any portion
 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date,

1 Vifon shall be deemed to be in material breach of its obligations under this Consent Judgment.
2 CalSafe shall provide written notice of delinquency to Vifon via electronic mail to Vifon's
3 counsel of record. If Vifon fails to deliver any portion of or all of the Total Settlement Amount
4 within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at
5 the statutory judgment interest rate provided in California Code of Civil Procedure § 685.010.

6 Additionally, Vifon agrees to pay CalSafe's reasonable attorney fees and costs for any
7 formal efforts to enforce the terms of the consent judgment.

8 **V. RETENTION OF JURISDICTION**

9 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
10 this Consent Judgment.

11 **VI. MODIFICATION OF CONSENT JUDGMENT**

12 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
13 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
14 or (B) by motion of either Party pursuant to Paragraph 5.3 and upon entry by the Court of a
15 modified consent judgment.

16 **6.2** If Vifon seeks to modify this Consent Judgment under Paragraph 5.1, then Vifon
17 must provide written notice to CalSafe of its intent ("Notice of Intent"). If CalSafe seeks to meet
18 and confer regarding the proposed modification in the Notice of Intent, then CalSafe shall provide
19 written notice of intent to meet and confer to Vifon within thirty (30) days of receiving the Notice
20 of Intent. The Parties shall then meet and confer in good faith in person, via telephone, or via
21 video conference within thirty (30) days of CalSafe's written notice of intent to meet and confer.
22 Within thirty (30) days of such a meeting, if CalSafe disputes the proposed modification, CalSafe
23 shall provide Vifon a written basis for its opposition. The Parties shall continue to meet and confer
24 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
25 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

26 **6.3** In the event that Vifon initiates or otherwise requests a modification under
27 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
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1 modification of the Consent Judgment, Vifon shall reimburse CalSafe its costs and reasonable
2 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.
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4 **VII. BINDING EFFECT, CLAIMS COVERED, CLAIMS RELEASED**

5 **7.1** This Consent Judgment shall have no application to any Covered Product that is
6 distributed or sold exclusively outside the State of California and/or that is not used by California
7 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any other Vifon
9 products other than the Covered Product.

10 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
11 between CalSafe, on behalf of itself and its respective officers, directors, shareholders,
12 employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the
13 public interest, and Vifon and its respective officers, directors, shareholders, employees, agents,
14 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
15 distributors, wholesalers, or retailers, and all other upstream and downstream entities in the
16 distribution chain of the Covered Product and the predecessors, successors, and assigns of any of
17 them (collectively, "Released Parties").

18 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
19 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
20 Covered Product as set forth in the Notice and Complaint.

21 **7.4 CalSafe Release of Vifon(s).** CalSafe, on behalf of itself and its respective
22 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
23 and affiliates and on behalf of the public interest fully releases and discharges Released Parties
24 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,
25 fees costs, and expenses asserted, or that could have been asserted based on or related to the
26 handling, use, sale, distribution, or consumption of the Covered Products in California, as to any
27 alleged violation of Proposition 65 or its implementing regulations up through the Effective Date,
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1 based on a failure to provide Proposition 65 warning on the Covered Products with respect to lead
2 as set forth in the Notice and Complaint.

3 **7.5** CalSafe on its own behalf only, and Vifon on its own behalf only, further waives
4 and releases any and all claims they, their attorneys, or their representatives may have against
5 each other for all actions or statements made or undertaken in the course of seeking or opposing
6 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
7 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
8 any Party's right to seek to enforce the terms of the Consent Judgment.

9 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
10 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
11 Covered Product, will develop or be discovered. CalSafe on behalf of itself only, and VIFON on
12 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and
13 include all Such claims up through and including the Effective Date, including all rights of action
14 therefore. CalSafe and Vifon acknowledge that the claims released in Section VII above may
15 include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
16 unknown claims. California Civil Code § 1542 reads as follows:

17
18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
21 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
23 DEBTOR OR RELEASED PARTY.

24 **VIII. SEVERABILITY**

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

28 **IX. GOVERNING LAW**

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

3 **X. PROVISION OF NOTICE**

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

9 Notice for CalSafe shall be sent to:

10 Joseph R. Manning, Jr.
11 26100 Towne Center Drive
12 Foothill Ranch, CA 92610
13 Tel: Office (949) 200-8757 Fax: (866) 843-8309
14 p65@manninglawoffice.com

14 Notice for Vifon shall be sent to:

15 Garth N. Ward
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17 550 West C. Street, Suite 1700
18 San Diego, CA 92101
19 Garth.Ward@lewisbrisbois.com
20 Tel: (619) 233-1006
21 Fax: (619) 233-8627

19 **XI. EXECUTED IN COUNTERPARTS**

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

23 **XII. DRAFTING**

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

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

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

11 **XIV. ENFORCEMENT**

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

16 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

17 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter herein, including any and all prior
19 discussions, negotiations, commitments, and understandings related thereto. No representations,
20 oral or otherwise, express or implied, other than those contained herein have been made by any
21 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
22 deemed to exist or to bind any Party.

23 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment.

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

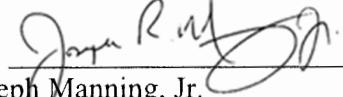
26 This Consent Judgment has come before the Court upon the request of the Parties. The
27 Parties request the Court to fully review this Consent Judgment and, being fully informed
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1 regarding the matters which are the subject of this action, make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

3
4 **IT IS SO STIPULATED.**

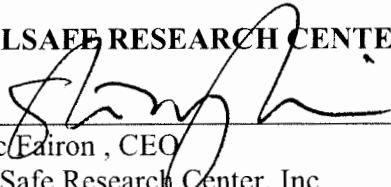
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6 DATED: August 25, 2023

MANNING LAW, APC

7 By: 
8 Joseph Manning, Jr.

9 *Attorney for Plaintiff*
10 *CalSafe Research Center, Inc.*

11
12 DATED: 8/25, 2023

CALSAFE RESEARCH CENTER, INC.
13 By: 
14 Eric Fairon, CEO
15 CalSafe Research Center, Inc.

16 DATED: _____, 2023

**LEWIS BRISBOIS BISGAARD &
SMITH LLP**

18 By: _____
19 Garth N. Ward

20 *Attorney for Defendant*
21 *Vifon (USA), Inc.*

22
23
24 DATED: _____, 2023

VIFON (USA), INC.

25 By: _____

26 Vifon (USA), Inc.

1 regarding the matters which are the subject of this action, make the findings pursuant to
2 California Health and Safety Code § 25249(f)(4) and approve this Consent Judgment.

3
4 **IT IS SO STIPULATED.**

5
6 DATED: _____, 2023

MANNING LAW, APC

7 By: _____
8 Joseph Manning, Jr.

9 *Attorney for Plaintiff*
10 *CalSafe Research Center, Inc.*

11 **CALSAFE RESEARCH CENTER, INC.**

12 DATED: _____, 2023

13 By: _____
14 Eric Fairon , CEO
15 CalSafe Research Center, Inc.

16 DATED: 8/27/23, 2023

**LEWIS BRISBOIS BISGAARD &
SMITH LLP**

18 By: Garth N. Ward
19 Garth N. Ward

20 *Attorney for Defendant*
21 *Vifon (USA), Inc.*

22 **VIFON (USA), INC.**

23
24 DATED: _____, 2023

25 By: _____
26 Lien Nguyen Thi Bach
27 Vifon (USA), Inc.

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

3 Dated: _____

4 _____
JUDGE OF THE SUPERIOR COURT

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