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

17
18 CALSAFE RESEARCH CENTER, INC., a
California non-profit corporation,

19 Plaintiff,

20
21 v.

22 MERCADO LATINO, INC., a California
23 Stock Corporation; and DOES 1 to 10,

24 Defendants.

Case No.: 23TRCV00637

[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
4 Mercado Latino, Inc. (“Mercado” or “Defendant”), a California 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 Mercado. In this action, Calsafe
9 alleges that Mercado’s “Faraon, Authentic Mole (UPC# 074734065130)” (the “Covered
10 Product”) contains lead, a chemical listed under Proposition 65 as a carcinogen and
11 reproductive toxin.

12 **1.3 Notice of Violation.** The Complaint is based on allegations contained in
13 Calsafe’s Notice of Violation dated November 4, 2022 (the “Notice”), that was served on the
14 California attorney General, other public enforcers, and Mercado. A true and correct copy of
15 the Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days
16 have passed since the Notice was served on the Attorney General, public enforcers, and
17 Mercado; no designated governmental entity has filed a Complaint against Mercado with
18 regard to the Covered Product or the alleged violations.

19 **1.4** The Parties have entered into this Consent Judgment in order to settle,
20 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
21 Mercado denies the material, factual, and legal allegations in the Notice and Complaint and
22 maintains that all of the products, including the Covered Product, that it sold and/or distributed
23 for sale in California have been and are in compliance with all laws. Nothing in this Consent
24 Judgment nor compliance with this Consent Judgment shall constitute or be construed as an
25 admission by Mercado or by any of their respective officers, directors, shareholders,
26 employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees,
27 customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion,
28 issue of law, or violation of law, such specifically denied by Mercado. This Section shall not,

1 however, diminish or otherwise affect Mercado's obligations, responsibilities, and duties under
2 this Consent Judgment.

3 **1.5** Except as expressly set forth herein, nothing in this Consent Judgment shall
4 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
5 any current or future legal proceeding unrelated to this proceeding.

6 **1.6 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"
7 shall be the date the Consent Judgment has been approved and entered by the Court.

8 **II. JURISDICTION AND VENUE**

9 **2.1** For purposes of this Consent Judgment and any further court action that may
10 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court
11 has subject matter jurisdiction over the allegations of violations contained in the Complaint and
12 personal jurisdiction over Mercado as to the acts alleged in the Complaint.

13 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
14 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
15 judgment as a full and final resolution of all claims up through and including the Effective
16 Date that were or could have been asserted in this action based on the facts alleged in the
17 Notice and Complaint.

18 **III. INJUNCTIVE RELIEF**

19 **3.1 Shipped for Sale in California.** "Shipped for Sale in California" means the
20 Covered Product that Mercado either directly ships to California for sale in California, or that it
21 sells to a distributor or retailer who Mercado knows will sell the Product to consumers in
22 California. Where a retailer or distributor sells the Covered Product both in California and
23 other states, Mercado shall take commercially reasonable steps to ensure that the only Covered
24 Product that is sold in California is in compliance with Paragraph 3.1 through 3.5.

25 **3.2 Clear and Reasonable Warnings, When Required.** Mercado agrees by the
26 Effective Date to only manufacture for sale, purchase for sale, import for sale, or distribute for
27 sale in or into California (in-person or online) the Covered Product that contains a warning as
28 provided for in Paragraphs 3.3 through 3.5.

1 **3.3 Warning Requirements.** A clear and reasonable warning for the Covered
2 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each
3 Covered Product Shipped for Sale in California by Mercado that contains one of the following
4 statements:

5 (A)

6
7 ⚠️ **WARNING:** Consuming this product can expose you to lead, which is known to
8 the State of California to cause cancer and birth defects or other reproductive harm.
9 For more information go to www.P65Warnings.ca.gov/food.

10 (B)

11 ⚠️ **WARNING:** Cancer and Reproductive Harm--www.P65Warnings.ca.gov/food.

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

20 **3.4 Warnings for Internet Sales.** For any Covered Product sold over the internet
21 where it will be shipped to California, the warning shall be displayed as follows: (A) on the
22 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the
23 word “WARNING” in all capital and bold letters on the Covered Product’s primary display
24 page, so long as the hyperlink goes directly to a page prominently displaying the warning
25 without content that detracts from the warning; (C) on the checkout page or any other page in
26 the checkout process when a California delivery address is indicated for the purchase of the
27 Covered Product and with the warning clearly associated with the Covered Product to indicate
28

1 that the Covered Product is subject to the warning; or (D) by otherwise prominently displaying
2 the warning to the purchaser prior to completing the purchase of the Covered Product. The
3 warning is not prominently displayed if the purchaser must search for it in the general content
4 of the website.

5 **3.5 Warning Prominence.** Mercado agrees that each warning shall be prominently
6 placed with such conspicuousness, as compared with the other words, statements, designs, or
7 devices, as to render it likely to be read and understood by an ordinary individual under
8 customary conditions before purchase or use.

9 **3.6 Compliance with Clear and Reasonable Warning.** Mercado shall be deemed
10 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
11 Paragraphs 3.1 through 3.5, (B) by complying with any future warning requirements adopted
12 by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA), or
13 (C) by removing the Covered Product from the stream of commerce by discontinuing its sale in
14 California. If regulations, legislation, or judicial rulings are enacted or issued providing that a
15 Proposition 65 warning for the Covered Product is no longer required, a lack of warning as set
16 forth in this Consent Judgment will not thereafter be a breach of this Consent Judgment.

17 **3.7 Grace Period of Existing Inventory.** The injunctive requirements of Section
18 III shall not apply to the Covered Product that is already in the stream of commerce as of the
19 Effective Date, which Covered Product is expressly subject to the releases provided in
20 Section V.

21 **3.8 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
22 Parties, CalSafe shall notice a Motion for Court Approval and, within five (5) days of approval
23 of the Consent Judgment by the Court, comply with the requirements set forth in California
24 *Health & Safety Code* § 25249.7(f).

25 **3.9 Attorney General Objection.** If the California Attorney General objects to any
26 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
27 timely manner, and if possible, prior to the hearing on the motion.

1 **3.10 Void if Not Approved.** If this Consent Judgment is not approved by the Court,
2 it shall be void and have no force or effect.

3 **IV. MONETARY TERMS**

4 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
5 additional settlement payments, attorney fees, and costs, Mercado shall make a total payment
6 of Thirty Thousand Dollars (\$30,000.00) (the "Total Settlement Amount"), apportioned into a
7 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

8 **4.2 Civil Penalty Payment.** Pursuant to California *Health & Safety Code*
9 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Mercado
10 agrees to pay Three Thousand Dollars (\$3,000.00) in Civil Penalties. The Civil Penalty
11 payment will be apportioned in accordance with California *Health & Safety Code* §§
12 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the
13 remaining twenty-five (25) percent of the funds retained by CalSafe. Within thirty (30) days of
14 the Effective Date, Mercado shall issue a check to "OEHHA" in the amount of Two Thousand
15 Two Hundred and Fifty Dollars (\$2,250.00), with "Prop 65 Penalties" written in the Memo
16 Line; and Mercado shall, pursuant to the instructions below, wire to CalSafe the amount of
17 Seven Hundred and Fifty Dollars (\$750.00).

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

20 For United States Postal Delivery Service:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Delivery Service:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street MS #19B
 Sacramento, CA 95814

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

2
3 **Wire & ACH Instructions:**

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

10 For further benefit of: Civil Penalty Payment Case No. 23TRCV00637

11 **4.3 Attorney Fees and Costs.** Within thirty (30) days of the Effective Date,
12 Mercado agrees to pay Twenty-Seven Thousand Dollars (\$27,000.00) to CalSafe and its counsel
13 of record for all fees and costs incurred in investigating, bringing this matter to the attention of
14 Mercado, litigating, negotiation, and obtaining judicial approval of a settlement in the public
15 interest.

16 **Wire & ACH Instructions:**

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

23 For further benefit of: Attorney's Fees Case No. 23TRCV00637

24 **4.4** In the event that Mercado fails to remit the Total Settlement Amount or any
25 portion thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment on or before
26 thirty (30) days after the Effective Date, Mercado shall be deemed to be in material breach of its
27 obligations under this Consent Judgment. CalSafe shall provide written notice of delinquency to
28 Mercado via electronic mail to Mercado's counsel of record. If Mercado fails to deliver any

1 portion of or all of the Total Settlement Amount within ten (10) days from the written notice,
2 the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
3 provided in California *Code of Civil Procedure* § 685.010.

4 **V. RETENTION OF JURISDICTION**

5 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or
6 terminate this Consent Judgment.

7 **VI. MODIFICATION OF CONSENT JUDGMENT**

8 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
9 (A) written stipulation of the Parties and upon entry by the Court of a modified consent
10 judgment, or (B) by motion of either Party pursuant to Paragraph 5.1 and upon entry by the
11 Court of a modified consent judgment.

12 **6.2** If Mercado seeks to modify this Consent Judgment under Paragraph 5.1, then
13 Mercado must provide written notice to Calsafe of its intent (“Notice of Intent”). If Calsafe
14 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
15 Calsafe shall provide written notice of intent to meet and confer to Mercado within thirty (30)
16 days of receiving the Notice of Intent. The Parties shall then meet and confer in good faith in
17 person, via telephone, or via video conference within thirty (30) days of Calsafe’s written notice
18 of intent to meet and confer. Within thirty (30) days of such a meeting, if Calsafe disputes the
19 proposed modification, Calsafe shall provide Mercado a written basis for its opposition. The
20 Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve
21 any remaining disputes. Should it become necessary, the Parties may agree in writing to
22 different deadlines for the meet-and-confer period.

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

24 **7.1** This Consent Judgment shall have no application to any Covered Product that is
25 distributed or sold exclusively outside the State of California and/or that is not used by
26 California consumers.

27 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
28 between Calsafe, on behalf of itself and its respective officers, directors, shareholders,

1 employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the
2 public interest, and Mercado and its respective officers, directors, shareholders, employees,
3 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
4 suppliers, distributors, wholesalers, or retailers, all other upstream and downstream entities in
5 the distribution chain of the Covered Product and the predecessors, successors, and assigns of
6 any of them (collectively, "Released Parties").

7 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to
8 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
9 exposures to the Covered Product as set forth in the Notice and Complaint.

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

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

25 **7.6 California Civil Code Section 1542.** It is possible that other claims not known
26 to the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
27 Covered Product, will develop or be discovered. Calsafe on behalf of itself only, and
28 MERCADO on behalf of itself only, acknowledge that this Consent Judgment is expressly

1 intended to cover and include all Such claims up through and including the Effective Date,
2 including all rights of action therefore. Calsafe and Mercado acknowledge that the claims
3 released in Section VII above may include unknown claims, and nevertheless waive California
4 Civil Code § 1542 as to any such unknown claims. California *Civil Code* § 1542 reads as
5 follows:

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

11 **VIII. SEVERABILITY**

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

15 **IX. GOVERNING LAW**

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

18 **X. PROVISION OF NOTICE**

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

24 Notice for Calsafe shall be sent to:

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

1 Notice for Mercado shall be sent to:

2 Maria M. Rohaidy
3 One World Trade Center, Suite 400
4 Long Beach, CA 90831
5 Office: (562) 436-9201 Fax: (562) 590-9695
6 mmr@tsyslaw.com

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8
9
10 **XI. EXECUTED IN COUNTERPARTS**

11 **11.1** This Consent Judgment may be executed in counterparts, which taken together
12 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
13 construed to be as valid as the original signature.

14 **XII. DRAFTING**

15 **12.1** The terms of this Consent Judgment have been reviewed by the respective
16 counsel for each Party prior to its signing, and each Party has had the opportunity to fully
17 discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent
18 interpretation and construction of this Consent Judgment, no inference, assumption, or
19 presumption shall be drawn, and no provision of this Consent Judgment shall be construed
20 against any Party, based on the fact that one of the Parties and/or one of the Parties' legal
21 counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively
22 presumed that all of the Parties participate equally in the preparation and drafting of this
23 Consent Judgment.

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

25 **13.1** If a dispute with respect to either Party's compliance with the terms of this
26 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
27 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an
28 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.

29 **XIV. ENFORCEMENT**

30 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
Los Angeles County, enforce the terms and conditions of this Consent Judgment.

1 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

11 **16.1** This Consent Judgment has come before the Court upon the request of the
12 Parties. The Parties request the Court to fully review this Consent Judgment and, being fully
13 informed regarding the matters which are the subject of this action, make the findings pursuant
14 to California *Health and Safety Code* § 25249(f)(4) and approve this Consent Judgment.

15 **IT IS SO STIPULATED.**

16
17 DATED: 8/18/2023, 2023

MANNING LAW, APC

18 By: 

19 Joseph Manning, Jr.
20 Attorney for Plaintiff Calsafe Research
Center, Inc.

21
22 DATED: 8/18/23, 2023


CALSAFE RESEARCH CENTER, INC.

23 By: 

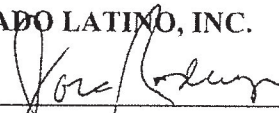
24 Eric Fairon, CEO
25 Calsafe Research Center, Inc.

TAUBMAN, SIMPSON, YOUNG & SULENTOR

1
2 DATED: August 17, 2023

3 By: 
4 Daniel C. Kim
5 Attorney for Defendant
6 Mercado Latino, Inc.

7
8
9 DATED: AUG 16, 2023

10 MERCADO LATINO, INC.
11 By: 
12 Jorge Rodriguez
13 Chief Financial Officer for Mercado
14 Latino, Inc.

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

17 Dated: _____

18 _____
19 JUDGE OF THE SUPERIOR COURT