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

17 **COUNTY OF LOS ANGELES**

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

20
21 Plaintiff,

22 v.

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

25 Defendants.

Case No.: 23TRCV00637

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: March 3, 2023

Trial Date: TBD

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1 **I. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between CalSafe
3 Research Center, Inc. (“CalSafe” or “Plaintiff”), a California non-profit corporation, and
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 alleges
9 that Mercado’s “Faraon, Authentic Mole (UPC# 074734065130)” (the “Covered Product”)
10 contains lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin.

11 **1.3 Notice of Violation.** The Complaint is based on allegations contained in CalSafe’s
12 Notice of Violation dated November 4, 2022 (the “Notice”), that was served on the California
13 attorney General, other public enforcers, and Mercado. A true and correct copy of the Notice is
14 attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed
15 since the Notice was served on the Attorney General, public enforcers, and Mercado; no
16 designated governmental entity has filed a Complaint against Mercado with regard to the
17 Covered Product or the alleged violations.

18 **1.4** The Parties have entered into this Consent Judgment in order to settle,
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
20 Mercado denies the material, factual, and legal allegations in the Notice and Complaint and
21 maintains that all of the products, including the Covered Product, that it sold and/or distributed
22 for sale in California have been and are in compliance with all laws. Nothing in this Consent
23 Judgment nor compliance with this Consent Judgment shall constitute or be construed as an
24 admission by Mercado or by any of their respective officers, directors, shareholders, employees,
25 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
26 suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or
27 violation of law, such specifically denied by Mercado. This Section shall not, however, diminish
28

1 or otherwise affect Mercado's obligations, responsibilities, and duties under this Consent
2 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 any
5 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 has
11 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 Date
16 that were or could have been asserted in this action based on the facts alleged in the Notice and
17 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 other
23 states, Mercado shall take commercially reasonable steps to ensure that the only Covered Product
24 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 Covered
3 Product Shipped for Sale in California by Mercado that contains one of the following statements:

4 (A)

5
6 **WARNING:** Consuming this product can expose you to lead, which is known to the
7 State of California to cause cancer and birth defects or other reproductive harm. For
8 more information go to www.P65Warnings.ca.gov/food.

8 (B)

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

10
11 The warning shall be offset in a box with a black outline and must be in a type size no
12 smaller than the largest type size used for other consumer information on the Covered Product.
13 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
14 information. “Consumer information” does not include the brand name, product name, company
15 name, location of manufacture, or product advertising. In no case shall the warning appear in a
16 type size smaller than six (6) point type. The warning shall comply with 27 C.C.R. § 25602(d),
17 as needed.

18 **3.4 Warnings for Internet Sales.** For any Covered Product sold over the internet
19 where it will be shipped to California, the warning shall be displayed as follows: (A) on the
20 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word
21 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so
22 long as the hyperlink goes directly to a page prominently displaying the warning without content
23 that detracts from the warning; (C) on the checkout page or any other page in the checkout
24 process when a California delivery address is indicated for the purchase of the Covered Product
25 and with the warning clearly associated with the Covered Product to indicate that the Covered
26 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the
27 purchaser prior to completing the purchase of the Covered Product. The warning is not
28 prominently displayed if the purchaser must search for it in the general content of the website.

1 **3.5 Warning Prominence.** Mercado agrees that each warning shall be prominently
2 placed with such conspicuousness, as compared with the other words, statements, designs, or
3 devices, as to render it likely to be read and understood by an ordinary individual under
4 customary conditions before purchase or use.

5 **3.6 Compliance with Clear and Reasonable Warning.** Mercado shall be deemed
6 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
7 Paragraphs 3.1 through 3.5, (B) by complying with any future warning requirements, applicable
8 to the Covered Product and listed chemical, adopted by the State of California's Office of
9 Environmental Health Hazard Assessment ("OEHHA), or (C) by removing the Covered Product
10 from the stream of commerce by discontinuing its sale in California. If regulations or legislation
11 are enacted or issued providing that a Proposition 65 warning for the Covered Product is no
12 longer required, a lack of warning as set forth in this Consent Judgment will not thereafter be a
13 breach of this Consent Judgment.

14 **3.7 Grace Period of Existing Inventory.** The injunctive requirements of Section III
15 shall not apply to the Covered Product that is already in the stream of commerce as of the
16 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

17 **3.8 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
18 Parties, CalSafe shall notice a Motion for Court Approval and, within five (5) days of approval
19 of the Consent Judgment by the Court, comply with the requirements set forth in California
20 *Health & Safety Code* § 25249.7(f).

21 **3.9 Attorney General Objection.** If the California Attorney General objects to any
22 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
23 timely manner, and if possible, prior to the hearing on the motion.

24 **3.10 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
25 shall be void and have no force or effect.

26 **IV. MONETARY TERMS**

27 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
28 additional settlement payments, attorney fees, and costs, Mercado shall make a total payment of

1 Thirty Thousand Dollars (\$30,000.00) (the "Total Settlement Amount"), apportioned into a Civil
2 Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

3 **4.2 Civil Penalty Payment.** Pursuant to California *Health & Safety Code*
4 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Mercado
5 agrees to pay Three Thousand Dollars (\$3,000.00) in Civil Penalties. The Civil Penalty payment
6 will be apportioned in accordance with California *Health & Safety Code* §§ 25249(c)(1), (d),
7 with seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-
8 five (25) percent of the funds retained by CalSafe. Within thirty (30) days of the Effective Date,
9 Mercado shall issue a check to "OEHHA" in the amount of Two Thousand Two Hundred and
10 Fifty Dollars (\$2,250.00), with "Prop 65 Penalties" written in the Memo Line; and Mercado
11 shall, pursuant to the instructions below, wire to CalSafe the amount of Seven Hundred and Fifty
12 Dollars (\$750.00).

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

15 For United States Postal Delivery Service:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Delivery Service:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street MS #19B
26 Sacramento, CA 95814

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

28 **Wire & ACH Instructions:**

Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.

1 Bank Address: 270 Park Ave. New York, NY. 10017
2 ACH Routing / ABA Number: 322271627
3 Wire Routing / ABA Number: 021000021
4 Account Number: 802922919

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

6 **4.3 Attorney Fees and Costs.** Within thirty (30) days of the Effective Date, Mercado
7 agrees to pay Twenty-Seven Thousand Dollars (\$27,000.00) to CalSafe and its counsel of record
8 for all fees and costs incurred in investigating, bringing this matter to the attention of Mercado,
9 litigating, negotiation, and obtaining judicial approval of a settlement in the public interest.

10 **Wire & ACH Instructions:**

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

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

18 **4.4** In the event that Mercado fails to remit the Total Settlement Amount or any portion
19 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment on or before thirty (30)
20 days after the Effective Date, Mercado shall be deemed to be in material breach of its obligations
21 under this Consent Judgment. CalSafe shall provide written notice of delinquency to Mercado via
22 electronic mail to Mercado's counsel of record. If Mercado fails to deliver any portion of or all
23 of the Total Settlement Amount within ten (10) days from the written notice, the Total Settlement
24 Amount shall accrue interest at the statutory judgment interest rate provided in California *Code*
25 *of Civil Procedure* § 685.010.

26 **V. RETENTION OF JURISDICTION**

27 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
28 this Consent Judgment.

1 **VI. MODIFICATION OF CONSENT JUDGMENT**

2 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
3 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
4 or (B) by motion of either Party pursuant to Paragraph 5.1 and upon entry by the Court of a
5 modified consent judgment.

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

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

18 **7.1** This Consent Judgment shall have no application to any Covered Product that is
19 distributed or sold exclusively outside the State of California and/or that is not used by California
20 consumers.

21 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
22 between Calsafe, on behalf of itself and its respective officers, directors, shareholders, employees,
23 agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public
24 interest, and Mercado and its respective officers, directors, shareholders, employees, agents,
25 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
26 distributors, wholesalers, or retailers, all other upstream and downstream entities in the
27 distribution chain of the Covered Product and the predecessors, successors, and assigns of any of
28 them (collectively, "Released Parties").

1 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
2 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
3 Covered Product as set forth in the Notice and Complaint.

4 **7.4 Calsafe Release of Mercado(s).** Calsafe, on behalf of itself and its respective
5 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
6 and affiliates and on behalf of the public interest fully releases and discharges Released Parties
7 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,
8 fees costs, and expenses asserted, or that could have been asserted based on or related to the
9 handling, use, sale, distribution, or consumption of the Covered Product in California, as to any
10 alleged violation of Proposition 65 or its implementing regulations, up through the Effective Date,
11 based on a failure to provide Proposition 65 warning on the Covered Product with respect to lead
12 as set forth in the Notice and Complaint.

13 **7.5** Calsafe on its own behalf only, and Mercado on its own behalf only, further waives
14 and releases any and all claims they, their attorneys, or their representatives may have against
15 each other for all actions or statements made or undertaken in the course of seeking or opposing
16 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
17 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
18 any Party's right to seek to enforce the terms of the Consent Judgment.

19 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
20 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
21 Covered Product, will develop or be discovered. Calsafe on behalf of itself only, and MERCADO
22 on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover
23 and include all Such claims up through and including the Effective Date, including all rights of
24 action therefore. Calsafe and Mercado acknowledge that the claims released in Section VII above
25 may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
26 unknown claims. California *Civil Code* § 1542 reads as follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

5 **VIII. SEVERABILITY**

6 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
7 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
8 provisions shall not be adversely affected.

9 **IX. GOVERNING LAW**

10 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
11 construed in accordance with the laws of the State of California.

12 **X. PROVISION OF NOTICE**

13 **10.1** All notices required to be given to either Party to this Consent Judgment by the
14 other shall be in writing and sent to the following agents listed below via first-class mail or
15 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be
16 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall
17 take effect on the date the return receipt is signed by the Party receiving the change.

18 Notice for Calsafe shall be sent to:

19 Joseph R. Manning, Jr.
20 26100 Towne Center Drive
21 Foothill Ranch, CA 92610
22 Tel: Office (949) 200-8757 Fax: (866) 843-8309
p65@manninglawoffice.com

23 Notice for Mercado shall be sent to:

24 Maria M. Rohaidy
25 One World Trade Center, Suite 400
26 Long Beach, CA 90831
Office: (562) 436-9201 Fax: (562) 590-9695

mmr@tsyslaw.com

27 **XI. EXECUTED IN COUNTERPARTS**

1 **11.1** This Consent Judgment may be executed in counterparts, which taken together
2 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
3 construed to be as valid as the original signature.

4 **XII. DRAFTING**

5 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
6 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the
7 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
8 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
9 drawn, and no provision of this Consent Judgment shall be construed against any Party, based
10 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted
11 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
12 participate equally in the preparation and drafting of this Consent Judgment.

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

14 **13.1** If a dispute with respect to either Party's compliance with the terms of this
15 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
16 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an
17 amicable manner. No action or motion may be filed with the Court in the absence of such a good
18 faith attempt to resolve the dispute beforehand.

19 **XIV. ENFORCEMENT**

20 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
21 Los Angeles County, enforce the terms and conditions of this Consent Judgment.

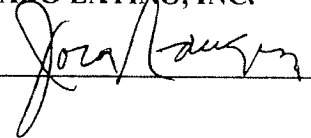
22 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

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.

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MERCADO LATINO, INC.

DATED: Sept 29, 2023

By: 

Mercado Latino, Inc.

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

Dated: _____

JUDGE OF THE SUPERIOR COURT

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.

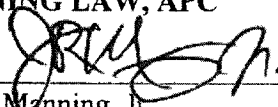
3 **XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.**

4 16.1 This Consent Judgment has come before the Court upon the request of the Parties.
5 The 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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9 **IT IS SO STIPULATED.**

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11 DATED: October 3, 2023

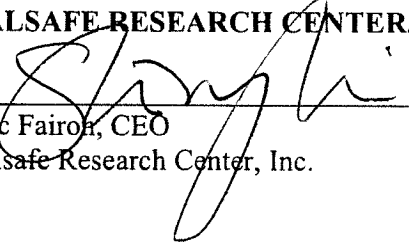
MANNING LAW, APC

12 By: 
13 Joseph Manning, Jr.


14 *Attorney for Plaintiff*
15 *Calsafe Research Center, Inc.*

16
17 DATED: 10/9, 2023

CALSAFE RESEARCH CENTER, INC.

18 By: 
19 Eric Fairoh, CEO
20 Calsafe Research Center, Inc.

21 DATED: October 3, 2023

22 By: 
23

24 *Attorney for Defendant*
25 *Mercado Latino, Inc.*