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Attorney for Plaintiff
Calsafe Research Center, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

MAQUEDA FOODS DISTRIBUTOR, INC.,
a California Stock Corporation;
NORTHGATE GONZALEZ, LLC, a
California Limited Liability Company; and
DOES 1 to 10,

Defendants.

Case No.: 23TRCV01760

[PROPOSED] STIPULATED
CONSENT JUDGMENT

(Health & Safety Code § 25249, et seq.)

Complaint filed: June 2, 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., a California non-profit corporation (“CalSafe” or “Plaintiff”), and
4 Maqueda Foods Distributor, Inc. (“Maqueda” or “Defendant”) (collectively, the “Parties”).

5 **1.2 General Allegations.** On June 2, 2023, CalSafe initiated this action by filing a
6 Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to *Health &*
7 *Safety Code* § 25249.5 *et seq.* (“Proposition 65”) against Maqueda. In this action, CalSafe alleges
8 that Maqueda’s “La Soledad, Mole de Oaxaca (UPC# 7501510629505)” (the “Covered
9 Product”) contains lead, a chemical listed under Proposition 65 as a carcinogen and reproductive
10 toxin. CalSafe alleges that the Covered Product exposes consumers to lead at a level requiring a
11 Proposition 65 warning. CalSafe alleges that Maqueda qualifies as a “Person” within the meaning
12 of Proposition 65, and that Maqueda manufactures, distributes, and/or offers for sale in the State
13 of California the Covered Product.

14 **1.3 Notice of Violation.** The Complaint is based on allegations contained in CalSafe’s
15 Notice of Violation dated March 27, 2023 (the “Notice”), that was served on the California
16 attorney General, other public enforcers, and Maqueda. A true and correct copy of the Notice is
17 attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed
18 since the Notice was served on the Attorney General, public enforcers, and Maqueda; no
19 designated governmental entity has filed a Complaint against Maqueda with regard to the
20 Covered Product or the alleged violations.

21 **1.4** CalSafe’s Notice and Complaint allege that the use of the Covered Product by
22 California consumers exposes them to lead without first receiving a clear and reasonable warning
23 from Maqueda, which is a violation of California *Health & Safety Code* § 25249.6. Maqueda
24 denies all material 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 Maqueda 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 Maqueda or by any of their respective officers, directors, shareholders, employees,
4 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
5 suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or
6 violation of law, such specifically denied by the Maqueda. This Section shall not, however,
7 diminish or otherwise affect Maqueda's obligations, responsibilities, and duties under this
8 Consent Judgment.

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

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

14 **II. JURISDICTION AND VENUE**

15 **2.1** For purposes of this Consent Judgment and any further court action that may
16 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
17 subject matter jurisdiction over the allegations of violations contained in the Complaint and
18 personal jurisdiction over Maqueda 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, Maqueda shall reduce the level of lead in the Covered Product, if necessary, shipped for
27 sale in California to an exposure level of no more than 0.5 micrograms of lead per serving, with
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1 serving size measured by the serving size specified on the label of the Covered Product (the
2 “Target Level”), or be subject to the provisions of Paragraphs 3.3 through 3.6

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

9 **3.3 Clear and Reasonable Warnings, When Required.** Maqueda agrees by the
10 Effective Date to only manufacture for sale, purchase for sale, import for sale, or distribute for
11 sale in or into California (in-person or online) the Covered Product that contains a warning as
12 provided for in Paragraphs 3.4 through 3.6, except as provided in Paragraph 3.1.

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 Maqueda that contains one of the following statements:

16 (A)

17
18 **WARNING:** Consuming this product can expose you to lead, which is known to the
19 State of California to cause cancer and birth defects or other reproductive harm. For
20 more information go to www.P65Warnings.ca.gov/food.

21 (B)

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

23 The warning shall be offset in a box with a black outline and must be in a type size no
24 smaller than the largest type size used for other consumer information on the Covered Product.

25 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional
26 information. “Consumer information” does not include the brand name, product name, company
27 name, location of manufacture, or product advertising. In no case shall the warning appear in a
28 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. §

1 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning
2 includes consumer information in a language other than English, the warning must also be
3 provided in that language in addition to English.

4 **3.5 Warnings for Internet Sales.** For any Covered Product sold over the internet
5 where it will be shipped to California, the warning shall be displayed as follows: (A) on the
6 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word
7 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so
8 long as the hyperlink goes directly to a page prominently displaying the warning without content
9 that detracts from the warning; (C) on the checkout page or any other page in the checkout
10 process when a California delivery address is indicated for the purchase of the Covered Product
11 and with the warning clearly associated with the Covered Product to indicate that the Covered
12 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the
13 purchaser prior to completing the purchase of the Covered Product. The warning is not
14 prominently displayed if the purchaser must search for it in the general content of the website.

15 **3.6 Warning Prominence.** Maqueda agrees that each warning shall be prominently
16 placed with such conspicuousness, as compared with the other words, statements, designs, or
17 devices, as to render it likely to be read and understood by an ordinary individual under
18 customary conditions before purchase or use.

19 **3.7 Compliance with Clear and Reasonable Warning.** Maqueda shall be deemed
20 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
21 Paragraphs 3.1 through 3.6, or (B) by complying with any future warning requirements adopted
22 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
23 applicable to the Covered Product and chemical at issue. If regulations or legislation are enacted
24 or issued providing that a Proposition 65 warning for the Covered Product is no longer required,
25 a lack of warning as set forth in this Consent Judgment will not thereafter be a breach of this
26 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, Maqueda shall make a total payment of
16 Twenty Thousand Dollars (\$20,000.00) (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, Maqueda
20 agrees to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment
21 will be apportioned in accordance with California *Health & Safety Code* §§ 25249(c)(1), (d),
22 with seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-
23 five (25) percent of the funds retained by CalSafe. Within ten (10) days of the Effective Date,
24 Maqueda shall issue a check to “OEHHA” in the amount of One Thousand Five Hundred Dollars
25 (\$1,500.00), with “Prop 65 Penalties” written in the Memo Line; and Maqueda shall, pursuant
26 to the instructions below, wire to CalSafe the amount of Five Hundred Dollars (\$500.00).

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

1 For United States Postal Delivery Service:

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

7 For Non-United States Postal Delivery Service:

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

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

14 **Wire Instructions:**

15 Account Name: The Law Offices of Joseph R. Manning
16 Bank Name: J.P. Morgan Chase Bank, N.A.
17 Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612
18 Routing Number: 322271627
19 Wire Routing / ABA Number: 021000021
20 Swift Code: CHASUS33
21 Account Number: 579068902

22 For further benefit of: Civil Penalty Payment Case No. 23TRCV01760

23 **4.3 Attorney Fees and Costs.** Within ten (10) days of the Effective Date, Maqueda
24 agrees to pay Eighteen Thousand Dollars (\$18,000.00) to CalSafe and its counsel of record for
25 all fees and costs incurred in investigating, bringing this matter to the attention of Maqueda,
26 litigating, negotiation, and obtaining judicial approval of a settlement in the public interest. The
27 payment shall be made in four (4) equal installment payments of Four Thousand and Five
28 Hundred (\$4,500.00).

The payments shall be due as follows:

- The first installments shall be due within ten (10) days of the Effective Date.
- The second installment shall be due within sixty (60) days of the Effective Date.

- The third installment shall be due within ninety (90) days the Effective Date.
- The fourth installment shall be due within (120) days of the Effective Date.

Nothing in this Agreement shall prohibit Maqueda from paying the entire \$18,000.00 in fewer than four installments or prior to within 120 days of the Effective Date.

Wire Instructions:

Account Name: The Law Offices of Joseph R. Manning
 Bank Name: J.P. Morgan Chase Bank, N.A.
 Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612
 Routing Number: 322271627
 Wire Routing / ABA Number: 021000021
 Swift Code: CHASUS33
 Account Number: 579068902

For further benefit of: Attorney’s Fees Case No. 23TRCV01760

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

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

V. RETENTION OF JURISDICTION

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

VI. MODIFICATION OF CONSENT JUDGMENT

1 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
2 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
3 or (B) by motion of either Party pursuant to Paragraph 5.1 and upon entry by the Court of a
4 modified consent judgment.

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

16 **6.3** In the event that Maqueda initiates or otherwise requests a modification under
17 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
18 modification of the Consent Judgment, Maqueda shall reimburse Calsafe its costs and reasonable
19 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

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

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

26 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
27 between Calsafe, on behalf of itself and its respective officers, directors, shareholders, employees,
28 agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public

1 interest, and Maqueda and its respective officers, directors, shareholders, employees, agents,
2 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
3 distributors, wholesalers, or retailers (including, but not limited to, Northgate Gonzalez, LLC),
4 and all other upstream and downstream entities in the distribution chain of the Covered Product
5 and the predecessors, successors, and assigns of any of them (collectively, “Released Parties”).

6 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
7 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to
8 lead in the Covered Product as set forth in the Notice and Complaint.

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

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

24 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
25 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
26 Covered Product, will develop or be discovered. Calsafe on behalf of itself only, and Maqueda
27 on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover
28 and include all such claims up through and including the Effective Date, including all rights of

1 action therefore. Calsafe and Maqueda acknowledge that the claims released in Section VII above
2 may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
3 unknown claims. California *Civil Code* § 1542 reads as follows:

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

9 **VIII. SEVERABILITY**

10 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
11 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
12 provisions shall not be adversely affected.

13 **IX. GOVERNING LAW**

14 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
15 construed in accordance with the laws of the State of California.

16 **X. PROVISION OF NOTICE**

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

22 Notice for Calsafe shall be sent to:

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

27 Notice for Maqueda shall be sent to:

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XI. EXECUTED IN COUNTERPARTS

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

XII. DRAFTING

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

XIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

XIV. ENFORCEMENT

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

XV. ENTIRE AGREEMENT, AUTHORIZATION

1 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

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

8 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 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 Parties.
12 The Parties request the Court to fully review this Consent Judgment and, being fully informed
13 regarding the matters which are the subject of this action, make the findings pursuant to
14 California *Health and Safety Code* § 25249(f)(4) and approve this Consent Judgment.

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16 **IT IS SO STIPULATED.**

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19 DATED: 7/16/2024, 2024

CALSAFE RESEARCH CENTER, INC.

DocuSigned by:
By: eric fairon
Eric Fairon, CEO
Calsafe Research Center, Inc.

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25 DATED: 7/15-, 2024

MAQUEDA FOODS DISTRIBUTOR, INC.

By: [Signature]

Maqueda Foods Distributor, Inc.

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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