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6 *Calsafe Research Center, Inc.*

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11
12 CALSAFE RESEARCH CENTER, INC., a
13 California non-profit corporation,

14 Plaintiff,

15 v.

16 ITA, INC., a California Distribution
17 Corporation; and DOES 1 to 10,

18 Defendants.
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Case No.: 23CV049809

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: November 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 ITA,
4 Inc., a California Distribution Corporation (“ITA” or “Defendant”), a California limited liability
5 company (collectively, the “Parties”).

6 **1.2 General Allegations.** On November 3, 2023, CalSafe initiated this action by
7 filing a Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to *Health*
8 *& Safety Code* § 25249.5 *et seq.* (“Proposition 65”) against ITA. In this action, CalSafe alleges
9 that ITA’s “Shiitake Marinated Mushrooms (UPC# 618964543190)” (the “Covered Product”)
10 contains lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin.
11 CalSafe alleges that the Covered Product exposes consumers to lead at a level requiring a
12 Proposition 65 warning. CalSafe alleges that ITA qualifies as a “Person” within the meaning of
13 Proposition 65, and that ITA manufactures, distributes, and/or offers for sale in the State of
14 California the Covered Product.

15 **1.3 Notice of Violation.** The Complaint is based on allegations contained in CalSafe’s
16 Notice of Violation dated May 5, 2023 (the “Notice”), that was served on the California attorney
17 General, other public enforcers, and ITA. A true and correct copy of the Notice is attached hereto
18 as **Exhibit A** and incorporated by reference. More than 60 days have passed since the Notice
19 was served on the Attorney General, public enforcers, and ITA; no designated governmental
20 entity has filed a Complaint against ITA with regard to the Covered Product or the alleged
21 violations.

22 **1.4** CalSafe’s Notice and Complaint allege that the use of the Covered Product by
23 California consumers exposes them to lead without first receiving a clear and reasonable warning
24 from ITA, which is a violation of California *Health & Safety Code* § 25249.6. ITA denies all
25 material allegations contained in the Notice and Complaint.

26 **1.5** The Parties have entered into this Consent Judgment in order to settle,
27 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. ITA
28 denies the material, factual, and legal allegations in the Notice and Complaint and maintains that

1 all of the products, including the Covered Product, that it sold and/or distributed for sale in
2 California have been and are in compliance with all laws. Nothing in this Consent Judgment nor
3 compliance with this Consent Judgment shall constitute or be construed as an admission by ITA
4 or by any of their respective officers, directors, shareholders, employees, agents, parent
5 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
6 distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or violation
7 of law, such specifically denied by the ITA. This Section shall not, however, diminish or
8 otherwise affect ITA's obligations, responsibilities, and duties under this Consent Judgment.

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

12 **1.7 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"
13 shall 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 ITA 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 Alameda 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, ITA shall reduce the level of lead in the Covered Product, if necessary, shipped for sale in
27 California to an exposure level of no more than 0.5 micrograms of lead per serving, with serving
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1 size measured by the serving size specified on the label of the Covered Product (the “Target
2 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 ITA either directly ships to California for sale in California, or that it sells
5 to a distributor or retailer who ITA knows will sell the Product to consumers in California. Where
6 a retailer or distributor sells the Covered Product both in California and other states, ITA shall
7 take commercially reasonable steps to ensure that the only Covered Product that is sold in
8 California is in compliance with Paragraph 3.1 through 3.6.

9 **3.3 Clear and Reasonable Warnings, When Required.** ITA agrees by the Effective
10 Date to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or
11 into California (in-person or online) the Covered Product that contains a warning as provided for
12 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 ITA 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 birth defects or other reproductive harm. For more
20 information go to www.P65Warnings.ca.gov/food.

21 (B)

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

19 **3.7 Compliance with Clear and Reasonable Warning.** ITA shall be deemed to be
20 in compliance with this Consent Judgment after the Effective Date by (A) adhering to Paragraphs
21 3.1 through 3.6, or (B) by complying with any future warning requirements adopted by the State
22 of California’s Office of Environmental Health Hazard Assessment (“OEHHA) applicable to the
23 Covered Product and chemical at issue. If regulations or legislation are enacted or issued
24 providing that a Proposition 65 warning for the Covered Product is no longer required, a lack of
25 warning as set forth in this Consent Judgment will not thereafter be a breach of this Consent
26 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, ITA shall make a total payment of Forty
16 Thousand Dollars (\$40,000.00) (the “Total Settlement Amount”), apportioned into a Civil
17 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, ITA agrees
20 to pay Four Thousand Dollars (\$4,000.00) in Civil Penalties. The Civil Penalty payment will be
21 apportioned in accordance with California *Health & Safety Code* §§ 25249(c)(1), (d), with
22 seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-five (25)
23 percent of the funds retained by CalSafe. Within ten (10) days of the Effective Date, ITA shall
24 issue a check to “OEHHA” in the amount of Three Thousand Dollars (\$3,000.00), with “Prop
25 65 Penalties” written in the Memo Line; and ITA shall, pursuant to the instructions below, wire
26 to CalSafe the amount of One Thousand Dollars (\$1,000.00).

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 & ACH Instructions:**

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

21 For further benefit of: Civil Penalty Payment Case No. 23CV049809

22 **4.3 Attorney Fees and Costs.** Within ten (10) days of the Effective Date, ITA agrees
23 to pay Thirty-Six Thousand Dollars (\$36,000.00) to CalSafe and its counsel of record for all fees
24 and costs incurred in investigating, bringing this matter to the attention of ITA, litigating,
25 negotiation, and obtaining judicial approval of a settlement in the public interest.

26 **Wire & ACH Instructions:**

27 Account Name: The Law Offices of Joseph R. Manning
28 Bank Name: J.P. Morgan Chase Bank, N.A.
29 Bank Address: 270 Park Ave. New York, NY. 10017
30 ACH Routing / ABA Number: 322271627
31 Wire Routing / ABA Number: 021000021
32 Account Number: 802922919

1 For further benefit of: Attorney's Fees Case No. 23CV049809
2

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

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

12 **V. RETENTION OF JURISDICTION**

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

15 **VI. MODIFICATION OF CONSENT JUDGMENT**

16 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
17 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
18 or (B) by motion of either Party pursuant to Paragraph 5.1 and upon entry by the Court of a
19 modified consent judgment.

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

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

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

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

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

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

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

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

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

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

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

24 **VIII. SEVERABILITY**

25 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
26 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
27 provisions shall not be adversely affected.

1 **IX. GOVERNING LAW**

2 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
3 construed in accordance with the laws of the State of California.

4 **X. PROVISION OF NOTICE**

5 **10.1** All notices required to be given to either Party to this Consent Judgment by the
6 other shall be in writing and sent to the following agents listed below via first-class mail or
7 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be
8 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall
9 take effect on the date the return receipt is signed by the Party receiving the change.

10 Notice for Calsafe shall be sent to:

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

16 Notice for ITA shall be sent to:

17
18 **XI. EXECUTED IN COUNTERPARTS**

19 **11.1** This Consent Judgment may be executed in counterparts, which taken together
20 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
21 construed to be as valid as the original signature.

22 **XII. DRAFTING**

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

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

5 **13.1** If a dispute with respect to either Party's compliance with the terms of this
6 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
7 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an
8 amicable manner. No action or motion may be filed with the Court in the absence of such a good
9 faith attempt to resolve the dispute beforehand.

10 **XIV. ENFORCEMENT**

11 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
12 Los Angeles County, enforce the terms and conditions of this Consent Judgment. In any
13 successful action brought by Calsafe to enforce this Consent Judgment, Calsafe may seek
14 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with
15 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.**

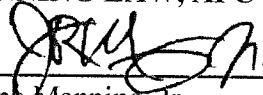
26 **16.1** This Consent Judgment has come before the Court upon the request of the Parties.
27 The Parties request the Court to fully review this Consent Judgment and, being fully informed
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1 regarding the matters which are the subject of this action, 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.**

5
6 DATED: 1/31, 2024


MANNING LAW, APC

7 By: 
8 Joseph Manning, Jr.

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

11 DATED: 1/31/2024, 2024

CALSAFE RESEARCH CENTER, INC.

12 By: 
13 Eric Fairon, CEO
14 Calsafe Research Center, Inc.
7D2607E79EDE490...

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16 DATED: _____, 2024

17 By: _____

18
19 *Attorney for Defendant*
20 *ITA, Inc.*

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22
23 **ITA, INC.**

24 DATED: _____, 2024

25 By: _____

26 ITA, 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: _____, 2024

MANNING LAW, APC

7 By: _____
8 Joseph Manning, Jr.

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

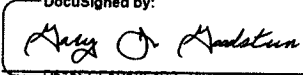
CALSAFE RESEARCH CENTER, INC.

11
12 DATED: _____, 2024

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

16 DATED: 1/31/2024, 2024

ALLEGUEZ NEWMAN GOODSTEIN, LLP

17 DocuSigned by:
18 By: 
19 Gary J. Goodstein
20 *Attorney for Defendant*
21 *ITA, Inc.*

22 DATED: 1/31/2024, 2024

ITA, INC
23 DocuSigned by:
24 By: **ROBERT KOROL**
25 Robert Korol, CEO
26 ITA, Inc.

1 **ORDER AND JUDGMENT**

2

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to *Health & Safety*

4 *Code* § 25249.7(f)(4) and *Code of Civil Procedure* § 664.6, judgment is hereby entered.

5

6 Dated: _____

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JUDGE OF THE SUPERIOR COURT

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