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5 *Attorney for Plaintiff*  
6 *Calsafe Research Center, Inc.*

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ALAMEDA**

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

16 Plaintiff,

17 v.

18 PANCO FOODS, INC.; a Delaware Stock  
19 Corporation and DOES 1 to 10,

20 Defendants.  
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Case No.: 23CV052708

[PROPOSED] STIPULATED  
CONSENT JUDGMENT

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

Complaint filed: November 22, 2023  
Trial Date: January 17, 2025

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 Panco  
4 Foods, Inc. (“Panco” or “Defendant”) (collectively, the “Parties”).

5 **1.2 General Allegations.** On November 22, 2023, CalSafe initiated this action by  
6 filing a Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to *Health*  
7 *& Safety Code* § 25249.5 *et seq.* (“Proposition 65”) against Panco. In this action, Calsafe alleges  
8 that Panco’s “Pan's Mushroom Jerky Original, (UPC# 891742002014)” (the “Covered Product”)  
9 contains lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin.  
10 Calsafe alleges that the Covered Product exposes consumers to lead at a level requiring a  
11 Proposition 65 warning. Calsafe alleges that Panco qualifies as a “Person” within the meaning  
12 of Proposition 65, and that Panco manufactures, distributes, and/or offers for sale in the State of  
13 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 June 29, 2023 (the “Notice”), that was served on the California attorney  
16 General, other public enforcers, and Panco. A true and correct copy of the Notice is attached  
17 hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed since the  
18 Notice was served on the Attorney General, public enforcers, and Panco; no designated  
19 governmental entity has filed a Complaint against Panco with regard to the Covered Product or  
20 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 Panco, which is a violation of California *Health & Safety Code* § 25249.6. Panco denies  
24 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. Panco  
27 denies the material, factual, and legal allegations in the Notice and Complaint and maintains that  
28 all of the products, including the Covered Product, that it sold and/or distributed for sale in

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

8 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall  
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
10 current or future legal proceeding unrelated to this proceeding.

11 **1.7 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"  
12 shall be the date the Consent Judgment has been approved and entered by the Court.

## 13 **II. JURISDICTION AND VENUE**

14 **2.1** For purposes of this Consent Judgment and any further court action that may  
15 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has  
16 subject matter jurisdiction over the allegations of violations contained in the Complaint and  
17 personal jurisdiction over Panco as to the acts alleged in the Complaint.

18 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper  
19 in Alameda, California, and that this Court has jurisdiction to enter this Consent judgment as a  
20 full and final resolution of all claims up through and including the Effective Date that were or  
21 could have been asserted in this action based on the facts alleged in the Notice and Complaint.

## 22 **III. INJUNCTIVE RELIEF**

23 **3.1 Clear and Reasonable Warnings, When Required.** Panco agrees by the  
24 Effective Date to only manufacture for sale, purchase for sale, import for sale, or distribute for  
25 sale in or into California (in-person or online) the Covered Product that contains a clear and  
26 reasonable warning such as, but not limited to, those set out in Paragraphs 3.2 through 3.4.  
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1           **3.2 Warning Requirements.** A clear and reasonable warning for the Covered  
2 Product may consist of a warning affixed to the packaging, label, tag, or directly to each Covered  
3 Product Shipped for Sale in California by Panco that contains one of the following statements:

4           (A)

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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](http://www.P65Warnings.ca.gov/food).

9           (B)

10           **WARNING:** Cancer and Reproductive Harm—[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

11           The warning may 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 also comply with 27 C.C.R. §  
17 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning  
18 includes consumer information in a language other than English, the warning must also be  
19 provided in that language in addition to English.

20           **3.3 Warnings for Internet Sales.** For any Covered Product sold over the internet  
21 where it will be shipped to California, the warning may be displayed as follows: (A) on the  
22 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word  
23 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so  
24 long as the hyperlink goes directly to a page prominently displaying the warning without content  
25 that detracts from the warning; (C) on the checkout page or any other page in the checkout  
26 process when a California delivery address is indicated for the purchase of the Covered Product  
27 and with the warning clearly associated with the Covered Product to indicate that the Covered  
28 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the

1 purchaser prior to completing the purchase of the Covered Product. The warning is not  
2 prominently displayed if the purchaser must search for it in the general content of the website.

3 **3.4 Warning Prominence.** Panco agrees that each warning shall be prominently  
4 placed with such conspicuousness, as compared with the other words, statements, designs, or  
5 devices, as to render it likely to be read and understood by an ordinary individual under  
6 customary conditions before purchase or use.

7 **3.5 Compliance with Clear and Reasonable Warning.** Panco shall be deemed to  
8 be in compliance with this Consent Judgment after the Effective Date by (A) adhering to  
9 Paragraphs 3.2 through 3.4, or (B) by complying with any future warning requirements adopted  
10 by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
11 applicable to the Covered Product and chemical at issue. Furthermore, Covered Product that has  
12 been reformulated such that a Proposition 65 warning is no longer required, the absence of a  
13 warning, as specified in this Consent Judgment, will not be considered a breach. This  
14 determination shall be made as follows: Covered Product that contains 0.5 micrograms or less  
15 of lead per serving, where the serving size is based on the amount specified on the product label,  
16 will not require a Proposition 65 warning.

17 **3.6 Grace Period of Existing Inventory.** The injunctive requirements of Section III  
18 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 Section V.

20 **3.7 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the  
21 Parties, CalSafe shall notice a Motion for Court Approval and, within ten (10) days of approval  
22 of the Consent Judgment by the Court, comply with the requirements set forth in California  
23 *Health & Safety Code* § 25249.7(f).

24 **3.8 Attorney General Objection.** If the California Attorney General objects to any  
25 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a  
26 timely manner, and if possible, prior to the hearing on the motion.

27 **3.9 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it  
28 shall be void and have no force or effect.

1 **IV. MONETARY TERMS**

2 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,  
3 additional settlement payments, attorney fees, and costs, Panco shall make a total payment of  
4 Twenty-Five Thousand Dollars (\$25,000.00) (the “Total Settlement Amount”), apportioned into  
5 a Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

6 **4.2 Civil Penalty Payment.** Pursuant to *California Health & Safety Code*  
7 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Panco agrees  
8 to pay Two Thousand Five Hundred Dollars (\$2,500.00) in Civil Penalties. The Civil Penalty  
9 payment will be apportioned in accordance with *California Health & Safety Code* §§  
10 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the  
11 remaining twenty-five (25) percent of the funds retained by CalSafe. Within ten (10) days of the  
12 Effective Date, Panco shall issue a check to “OEHHA” in the amount of One Thousand Eight  
13 Hundred and Seventy-Five Dollars (\$1,875.00), with “Prop 65 Penalties” written in the Memo  
14 Line; and Panco shall, pursuant to the instructions below, wire to CalSafe the amount of Six  
15 Hundred and Twenty-Five Dollars (\$625.00).

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

18 For United States Postal Delivery Service:

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

24 For Non-United States Postal Delivery Service:

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

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

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**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: Civil Penalty Payment Case No. 23CV052708

**4.3 Attorney Fees and Costs.** Panco agrees to pay Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) to CalSafe and its counsel of record for all fees and costs incurred in investigating, bringing this matter to the attention of Panco, litigating, negotiation, and obtaining judicial approval of a settlement in the public interest. The payment shall be made in nine (9) equal installment payments of Two Thousand Five Hundred Dollars (\$2,500.00).

The payments shall be due as follows:

- The first installments shall be due within thirty (30) 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.
- The fifth installment shall be due within (150) days of the Effective Date.
- The sixth installment shall be due within (180) days of the Effective Date.
- The seventh installment shall be due within (210) days of the Effective Date.
- The eighth installment shall be due within (240) days of the Effective Date.
- The ninth installment shall be due within (270) days of the Effective Date.

Nothing in this Agreement shall prohibit Panco from paying the entire \$22,500.00 in fewer than nine installments or prior to 270 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. 23CV052708

**4.4** In the event that Panco 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, Panco shall be deemed to be in material breach of its obligations under this Consent Judgment. CalSafe shall provide written notice of delinquency to Panco via electronic mail to Panco’s counsel of record. If Panco 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, Panco 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**

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

**6.2** If Panco seeks to modify this Consent Judgment under Paragraph 5.1, then Panco must provide written notice to Calsafe of its intent (“Notice of Intent”). If Calsafe seeks to meet and confer regarding the proposed modification in the Notice of Intent, then Calsafe shall provide written notice of intent to meet and confer to Panco within thirty (30) days of receiving the Notice of Intent. The Parties shall then meet and confer in good faith in person, via telephone, or via video conference within thirty (30) days of Calsafe’s written notice of intent to meet and confer. Within thirty (30) days of such a meeting, if Calsafe disputes the proposed modification, Calsafe

1 shall provide Panco a written basis for its opposition. The Parties shall continue to meet and confer  
2 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become  
3 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

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

## 8 **VII. BINDING EFFECT, CLAIMS COVERED, CLAIMS RELEASED**

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

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

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

25 **7.4 Calsafe Release of Panco(s).** Calsafe, on behalf of itself and its respective  
26 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
27 and affiliates and on behalf of the public interest fully releases and discharges Released Parties  
28 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,

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

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

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

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.

## 26 **VIII. SEVERABILITY**

27 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court  
28 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable  
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 Centre Drive  
13 Foothill Ranch, CA 92610  
14 Tel: Office (949) 200-8757 Fax: (866) 843-8309  
p65@manninglawoffice.com

15 Notice for Panco shall be sent to:

16 Jesse Lyon  
17 560 SW 10th Avenue, Suite 700  
18 Portland, OR 97205  
19 Tel: (503) 778-5268  
jesselyon@dwt.com

20 **XI. EXECUTED IN COUNTERPARTS**

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

24 **XII. DRAFTING**

25 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel  
26 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the  
27 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation  
28 and construction of this Consent Judgment, no inference, assumption, or presumption shall be

1 drawn, and no provision of this Consent Judgment shall be construed against any Party, based  
2 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted  
3 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties  
4 participate equally in the preparation and drafting of this Consent Judgment.

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

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

### 11 **XIV. ENFORCEMENT**

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

### 16 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

26 **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.

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5 **IT IS SO STIPULATED.**

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7 DATED: 11/25/2024, 2024

**CALSAFE RESEARCH CENTER, INC.**

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

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12 DATED: 11/22/2024, 2024

**PANCO FOODS, INC.**

DocuSigned by:  
Michael Pan  
By: \_\_\_\_\_  
Michael Pan, Founder

Panco Foods, Inc.

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

20 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT