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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

10  
11 CALSAFE RESEARCH CENTER, INC., a  
12 California non-profit corporation,

13 Plaintiff,

14 v.

15 ACH Food Companies, Inc., a Delaware  
16 Stock Corporation; and DOES 1 to 10,

17 Defendants.

Case No.: 23CV052760

[PROPOSED] STIPULATED  
CONSENT JUDGMENT

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

Complaint filed: November 22, 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 ACH  
4 Food Companies, Inc., a Delaware Stock Corporation (“ACH” or “Defendant”) (collectively, the  
5 “Parties”).

6 **1.2 General Allegations.** On November 22, 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 ACH. In this action, Calsafe alleges  
9 that ACH’s “Mazola, Caldo/Bouillon (UPC# 761720951088)” (the “Covered Product”) contains  
10 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin. Calsafe  
11 alleges that the Covered Product exposes consumers to lead at a level requiring a Proposition 65  
12 warning. Calsafe alleges that ACH qualifies as a “Person” within the meaning of Proposition 65,  
13 and that ACH manufactures, distributes, and/or offers for sale in the State of California the  
14 Covered Product.

15 **1.3 Notice of Violation.** The Complaint is based on allegations contained in Calsafe’s  
16 Notice of Violation dated July 14, 2023 (the “Notice”), that was served on the California attorney  
17 General, other public enforcers, and ACH. A true and correct copy of the Notice is attached  
18 hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed since the  
19 Notice was served on the Attorney General, public enforcers, and ACH; no designated  
20 governmental entity has filed a Complaint against ACH with regard to the Covered Product or  
21 the alleged 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 ACH, which is a violation of California *Health & Safety Code* § 25249.6. ACH 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. ACH  
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 ACH  
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 ACH. This Section shall not, however, diminish or  
8 otherwise affect ACH'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 ACH receives notice of entry of the Consent Judgment 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 ACH 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 and Compliance Date.** Beginning on the  
26 Effective Date, ACH shall reduce the level of lead in the Covered Product which is shipped for  
27 sale in California to 0.50 micrograms ("mcg") per labelled serving (collectively, "Target Level")  
28

1 or be subject to the provisions of Paragraphs 3.3 through 3.5. “Labelled serving” is the serving  
2 size indicated on the Nutrition Facts Panel.

3 **3.2** “Shipped for sale in California” means the Covered Product that ACH either  
4 directly ships into California for sale in California or that it sells to a distributor who ACH knows  
5 will sell the Product to consumers in California.

6 **3.3 Warning Requirements.** If ACH does not achieve the Target Level on or before  
7 the Effective Date, ACH agrees to only manufacture for sale, purchase for sale, import for sale,  
8 or distribute for sale in or into California (in person or online) the Covered Product that is sold  
9 with a clear and reasonable warning. A clear and reasonable warning for the Covered Product  
10 shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Product  
11 Shipped for Sale in California by ACH that contains one of the following statements:

12 (A)

13 **WARNING:** Consuming this product can expose you to lead, which is known to the  
14 State of California to cause cancer and birth defects or other reproductive harm. For  
15 more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

16 (B)

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

18 The warning shall be offset in a box with a black outline and must be in a type size no  
19 smaller than the largest type size used for other consumer information on the Covered Product.  
20 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional  
21 information. “Consumer information” does not include the brand name, product name, company  
22 name, location of manufacture, or product advertising. In no case shall the warning appear in a  
23 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. §  
24 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning  
25 includes consumer information in a language other than English, the warning must also be  
26 provided in that language in addition to English.  
27  
28

1           **3.4 Warnings for Internet Sales.** For any Covered Product sold over the internet  
2 where it will be shipped to California, the warning shall be displayed as follows: (A) on the  
3 primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word  
4 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so  
5 long as the hyperlink goes directly to a page prominently displaying the warning without content  
6 that detracts from the warning; (C) on the checkout page or any other page in the checkout  
7 process when a California delivery address is indicated for the purchase of the Covered Product  
8 and with the warning clearly associated with the Covered Product to indicate that the Covered  
9 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the  
10 purchaser prior to completing the purchase of the Covered Product. The warning is not  
11 prominently displayed if the purchaser must search for it in the general content of the website.

12           **3.5 Warning Prominence.** ACH agrees that each warning shall be prominently  
13 placed with such conspicuousness, as compared with the other words, statements, designs, or  
14 devices, as to render it likely to be read and understood by an ordinary individual under  
15 customary conditions before purchase or use.

16           **3.6 Compliance with Clear and Reasonable Warning.** ACH shall be deemed to be  
17 in compliance with this Consent Judgment after the Effective Date by (A) adhering to Paragraphs  
18 3.1 through 3.5, or (B) by complying with any future warning requirements adopted by the State  
19 of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to  
20 the Covered Product and chemical at issue. If regulations or legislation are enacted or issued  
21 providing that a Proposition 65 warning for the Covered Product is no longer required, a lack of  
22 warning as set forth in this Consent Judgment will not thereafter be a breach of this Consent  
23 Judgment. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
24 reason of law generally, or as to the Covered Product, then ACH shall have no further obligations  
25 pursuant to this Consent Judgment.

26           **3.7 Grace Period for Existing Inventory.** The injunctive requirements of Section  
27 III shall not apply to the Covered Product that was manufactured or packaged for sale as of the  
28

1 Effective Date, and such Covered Product is expressly subject to the releases provided in  
2 Section VII.

3 **3.8 Attorney General Objection.** If the California Attorney General objects to any  
4 term in this Consent Judgment, the Parties shall use commercially reasonable efforts to resolve  
5 the concern in a timely manner, and if possible, prior to the hearing on the motion.

6 **3.9 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it  
7 shall be void and have no force or effect.

8 **IV. MONETARY TERMS**

9 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,  
10 additional settlement payments, attorney fees, and costs, ACH shall make a total payment of  
11 Twenty Thousand Dollars (\$20,000.00) (the “Total Settlement Amount”), apportioned into a  
12 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

13 **4.2 Civil Penalty Payment.** Pursuant to California *Health & Safety Code*  
14 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, ACH agrees  
15 to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment will be  
16 apportioned in accordance with California *Health & Safety Code* §§ 25249(c)(1), (d), with  
17 seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-five (25)  
18 percent of the funds retained by CalSafe. Within ten (10) days of the Effective Date, ACH shall  
19 issue a check to “OEHHA” in the amount of One Thousand Five Hundred Dollars (\$1,500.00),  
20 with “Prop 65 Penalties” written in the Memo Line; and ACH shall, pursuant to the instructions  
21 below, wire to CalSafe the amount of Five Hundred Dollars (\$500.00).

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

24 For United States Postal Delivery Service:

25 Mike Gyurics  
26 Fiscal Operations Branch Chief  
27 Office of Environmental Health Hazard Assessment  
28 P.O. Box 4010  
Sacramento, CA 95812-4010



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

6  
7 **V. RETENTION OF JURISDICTION**

8 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate  
9 this Consent Judgment.

10 **VI. MODIFICATION OF CONSENT JUDGMENT**

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

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

26 **6.3** In the event that ACH initiates or otherwise requests a modification under  
27 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a  
28



1 modification of the Consent Judgment, ACH shall reimburse Calsafe its costs and reasonable  
2 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

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

4 **7.1** This Consent Judgment shall have no application to any Covered Product that is  
5 distributed or sold exclusively outside the State of California and/or that is not used by California  
6 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or  
7 environmental exposures arising under Proposition 65, nor shall it apply to any other ACH  
8 products other than the Covered Product.

9 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution  
10 between Calsafe, on behalf of itself and its respective officers, directors, shareholders, employees,  
11 agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public  
12 interest, and ACH and its respective officers, directors, shareholders, employees, agents, direct  
13 and indirect parent companies, subsidiaries, divisions, affiliates, related entities, franchisees,  
14 licensees, customers, suppliers, distributors, wholesalers, or retailers, and all other upstream and  
15 downstream entities in the distribution chain of the Covered Product and the predecessors,  
16 successors, and assigns of any of them (collectively, “Released Parties”).

17 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute  
18 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the  
19 Covered Product as set forth in the Notice and Complaint.

20 **7.4 Calsafe Release of ACH(s).** Calsafe, on behalf of itself and its respective officers,  
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and  
22 affiliates and on behalf of the public interest fully releases and discharges Released Parties from  
23 any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties, fees  
24 costs, and expenses asserted, or that could have been asserted based on or related to the handling,  
25 use, sale, distribution, or consumption of the Covered Product in California, as to any alleged  
26 violation of Proposition 65 or its implementing regulations up through the Effective Date, based  
27 on a failure to provide Proposition 65 warning on the Covered Product with respect to lead as set  
28 forth in the Notice and Complaint.

1           **7.5**     Calsafe on its own behalf only, and ACH on its own behalf only, further waives  
2 and releases any and all claims they, their attorneys, or their representatives may have against  
3 each other for all actions or statements made or undertaken in the course of seeking or opposing  
4 enforcement of Proposition 65 in connection with the Notice and Complaint up through and  
5 including the Effective Date, provided, however, that nothing in this Section shall affect or limit  
6 any Party’s right to seek to enforce the terms of the Consent Judgment.

7           **7.6 California Civil Code Section 1542.** It is possible that other claims not known to  
8 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the  
9 Covered Product, will develop or be discovered. Calsafe on behalf of itself only, and ACH on  
10 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and  
11 include all such claims up through and including the Effective Date, including all rights of action  
12 therefore. Calsafe and ACH acknowledge that the claims released in Section VII above may  
13 include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such  
14 unknown claims. California *Civil Code* § 1542 reads as follows:

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

21 **VIII. SEVERABILITY**

22           **8.1**     In the event that any of the provisions of this Consent Judgment are held by a court  
23 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable  
24 provisions shall not be adversely affected.

25 **IX. GOVERNING LAW**

26           **9.1**     The terms and conditions of this Consent Judgment shall be governed by and  
27 construed in accordance with the laws of the State of California.

28 **X. PROVISION OF NOTICE**

1           **10.1** All notices required to be given to either Party to this Consent Judgment by the  
2 other shall be in writing and sent to the following agents listed below via first-class mail or  
3 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be  
4 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall  
5 take effect on the date the return receipt is signed by the Party receiving the change.

6           Notice for Calsafe shall be sent to:

7                                 Joseph R. Manning, Jr.  
8                                 26100 Towne Centre Drive  
9                                 Foothill Ranch, CA 92610  
10                                Tel: Office (949) 200-8757 Fax: (866) 843-8309  
11                                p65@manninglawoffice.com

12           Notice for ACH shall be sent to:

13                                Gregory G. Sperla  
14                                DLA Piper LLP (US)  
15                                555 Mission Street, Suite 2400  
16                                San Francisco, CA 94105-2933  
17                                Tel: (415) 836-2500 Fax: (415) 836-2501

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  
28 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**

1           **13.1** If a dispute with respect to either Party’s compliance with the terms of this  
2 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by  
3 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an  
4 amicable manner. No action or motion may be filed with the Court in the absence of such a good  
5 faith attempt to resolve the dispute beforehand.

6 **XIV. ENFORCEMENT**

7           **14.1** The Parties may, by motion or order to show cause before the Superior Court of  
8 Alameda County, enforce the terms and conditions of this Consent Judgment. Before  
9 commencing an action to enforce this Consent Judgment, CalSafe shall afford ACH a reasonable  
10 opportunity to cure any violation. Subject to the foregoing, in any successful action brought by  
11 Calsafe to enforce this Consent Judgment, Calsafe may seek all remedies provided by law for  
12 failure to comply with this Consent Judgment.

13 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

14           **15.1** This Consent Judgment contains the sole and entire agreement and understanding  
15 of the Parties with respect to the entire subject matter herein, including any and all prior  
16 discussions, negotiations, commitments, and understandings related thereto. No representations,  
17 oral or otherwise, express or implied, other than those contained herein have been made by any  
18 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be  
19 deemed to exist or to bind any Party.

20           **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the Party he or she represents to stipulate to this Consent Judgment.

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

23           **16.1** This Consent Judgment has come before the Court upon the request of the Parties.  
24 The Parties request the Court to fully review this Consent Judgment and, being fully informed  
25 regarding the matters which are the subject of this action, make the findings pursuant to  
26 California *Health and Safety Code* § 25249(f)(4) and approve this Consent Judgment.

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