

1 Joseph R. Manning, Jr., Esq. (Bar No. 223381)
2 p65@manninglawoffice.com
3 **MANNING LAW, APC**
4 26100 Towne Centre Drive
5 Foothill Ranch, CA 92610
6 *Tel: (949) 200-8755*
7 *Fax:(866) 843-8308*

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

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

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

19 Defendants.

Case No.: 23CV052760

[PROPOSED] MODIFIED 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.

16 (B)

17 **WARNING:** Cancer and Reproductive Harm—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 Fifteen Thousand Five Hundred Dollars (\$15,500.00) (the “Total Settlement Amount”),
 12 apportioned into a Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and
 13 4.3, below.

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

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

25 For United States Postal Delivery Service:

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

For Non-United States Postal Delivery Service:

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

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

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. 23CV052760

4.3 Attorney Fees and Costs. Within ten (10) days of the Effective Date, ACH agrees to pay Thirteen Thousand Five Hundred Dollars (\$13,500.00) to CalSafe and its counsel of record for all fees and costs incurred in investigating, bringing this matter to the attention of ACH, litigating, negotiation, and obtaining judicial approval of a settlement in the public interest.

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. 23CV052760

1 **4.4** In the event that ACH fails to remit the Total Settlement Amount, or any portion
 2 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date,
 3 ACH shall be deemed to be in material breach of its obligations under this Consent Judgment.
 4 CalSafe shall provide written notice of delinquency to ACH via electronic mail to ACH’s counsel
 5 of record. If ACH fails to deliver any portion of or all of the Total Settlement Amount within five
 6 (5) days from the written notice, the Total Settlement Amount shall accrue interest at the statutory
 7 judgment interest rate provided in California *Code of Civil Procedure* § 685.010.

8
 9 **V. RETENTION OF JURISDICTION**

10 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
 11 this Consent Judgment.

12 **VI. MODIFICATION OF CONSENT JUDGMENT**

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

17 **6.2** If ACH seeks to modify this Consent Judgment under Paragraph 5.1, then ACH
 18 must provide written notice to Calsafe of its intent (“Notice of Intent to Modify”). If Calsafe seeks
 19 to meet and confer regarding the proposed modification in the Notice of Intent to Modify, then
 20 Calsafe shall provide written notice of intent to meet and confer to ACH within thirty (30) days
 21 of receiving the Notice of Intent. The Parties shall then meet and confer in good faith in person,
 22 via telephone, or via video conference within thirty (30) days of Calsafe’s written notice of intent
 23 to meet and confer. Within thirty (30) days of such a meeting, if Calsafe disputes the proposed
 24 modification, Calsafe shall provide ACH a written basis for its opposition. The Parties shall
 25 continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining
 26 disputes. Should it become necessary, the Parties may agree in writing to different deadlines for
 27 the meet-and-confer period.
 28

1 **6.3** In the event that ACH initiates or otherwise requests a modification under
2 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
3 modification of the Consent Judgment, ACH shall reimburse Calsafe its costs and reasonable
4 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

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

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

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

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

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

1 on a failure to provide Proposition 65 warning on the Covered Product with respect to lead as set
2 forth in the Notice and Complaint.

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

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

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

23 **VIII. SEVERABILITY**

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

27 **IX. GOVERNING LAW**

28 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
construed in accordance with the laws of the State of California.

1 **X. PROVISION OF NOTICE**

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

7 Notice for Calsafe shall be sent to:

8 Joseph R. Manning, Jr.
9 26100 Towne Centre Drive
10 Foothill Ranch, CA 92610
11 Tel: Office (949) 200-8757 Fax: (866) 843-8309
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
San Francisco, CA 94105-2933
Tel: (415) 836-2500 Fax: (415) 836-2501

16 **XI. EXECUTED IN COUNTERPARTS**

17 **11.1** This Consent Judgment may be executed in counterparts, which taken together
18 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
19 construed to be as valid as the original signature.

20 **XII. DRAFTING**

21 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
22 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the
23 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
24 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
25 drawn, and no provision of this Consent Judgment shall be construed against any Party, based
26 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted
27 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
28 participate equally in the preparation and drafting of this Consent Judgment.

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

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

7 **XIV. ENFORCEMENT**

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

14 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

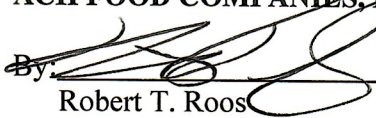
DATED: 10/2/2024, 2024

CALSAFE RESEARCH CENTER, INC.

By: 
Eric Fairon, CEO
Calsafe Research Center, Inc.

ACH FOOD COMPANIES, INC.

DATED: October 2, 2024

By: 
Robert T. Roos
Senior Corporate Counsel
ACH Food Companies, Inc.

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

Dated: _____

JUDGE OF THE SUPERIOR COURT