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*CalSafe Research Center, Inc.*

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

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

v.

MONTALVAN SALES, INC., a California  
Stock Corporation; and DOES 1 to 100,  
  
Defendants.

Case No.: 23CV052735  
  
[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. (“Plaintiff”), and Montalvan Sales Inc., a California Stock Corporation  
4 (“Defendant”) (collectively, the “Parties”).

5 **1.2 General Allegations.** On November 22, 2023, Plaintiff 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 Defendant. In this action, Plaintiff  
8 alleges that Defendant’s “La Verdadera, Capers (UPC# 756869176300)” (the “Covered  
9 Product”) contains lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
10 toxin. Plaintiff alleges that the Covered Product exposes consumers to lead at a level requiring a  
11 Proposition 65 warning. Plaintiff alleges that Defendant qualifies as a “Person” within the  
12 meaning of Proposition 65, and that Defendant manufactures, distributes, and/or offers for sale  
13 in the State of California the Covered Product.

14 **1.3 Notice of Violation.** The Complaint is based on allegations contained in  
15 Plaintiff’s Notice of Violation dated April 21, 2023 (the “Notice”), that was served on the  
16 California Attorney General, other public enforcers, and Defendant. A true and correct copy of  
17 the Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days  
18 have passed since the Notice was served on the Attorney General, public enforcers, and  
19 Defendant; no designated governmental entity has filed a Complaint against Defendant with  
20 regard to the Covered Product or the alleged violations.

21 **1.4** Plaintiff’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 Defendant, which is a violation of California *Health & Safety Code* § 25249.6. Defendant  
24 denies all material allegations contained in the Notice and Complaint.

25 **1.5** The Parties have entered into this Consent Judgment in order to settle,  
26 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
27 Defendant denies the material, factual, and legal allegations in the Notice and Complaint and  
28 maintains that all of the products, including the Covered Product, that it sold and/or distributed

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

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

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

## **II. JURISDICTION AND VENUE**

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

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

## **III. INJUNCTIVE RELIEF**

**3.1 Lead Reduction, Target Level, Compliance Date.** Beginning on the Effective Date, Defendant shall reduce the level of lead in the Covered Product, if necessary, shipped for sale in California to an exposure level of no more than 0.5 micrograms of lead per day (the "Target Level"), or be subject to the provisions of Paragraphs 3.3 through 3.6 concerning

warnings.

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

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

**3.4 Warning Requirements.** A clear and reasonable warning for the Covered Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Product Shipped for Sale in California by Defendant that contains one of the following statements:

(A)

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

Defendant may, at its option, use the words “**CA WARNING:**” or “**CALIFORNIA WARNING:**” instead of the word “**WARNING:**”.

(B)

**WARNING:** Risk of cancer and reproductive harm from exposure to lead. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

or

**WARNING:** Can expose you to lead, a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

1 Defendant may, at its option, use the words “**CA WARNING:**” or “**CALIFORNIA**  
2 **WARNING:**” instead of the word “**WARNING:**”.

3 The warning shall be offset in a box with a black outline and must be in a type size no  
4 smaller than the largest type size used for other consumer information on the Covered Product.  
5 “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional  
6 information. “Consumer information” does not include the brand name, product name, company  
7 name, location of manufacture, or product advertising. In no case shall the warning appear in a  
8 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. §  
9 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning  
10 includes consumer information in a language other than English, the warning must also be  
11 provided in that language in addition to English.

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

24 **3.6 Warning Prominence.** Defendant agrees that each warning shall be prominently  
25 placed with such conspicuousness, as compared with the other words, statements, designs, or  
26 devices, as to render it likely to be read and understood by an ordinary individual under  
27 customary conditions before purchase or use.  
28

1           **3.7 Compliance with Clear and Reasonable Warning.** Defendant shall be deemed  
2 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to  
3 Paragraphs 3.1 through 3.6, or (B) by complying with any future warning requirements adopted  
4 by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
5 applicable to the Covered Product and chemical at issue.

6           **3.8 Grace Period of Existing Inventory.** The injunctive requirements of Section III  
7 shall not apply to the Covered Product that is already in the stream of commerce as of the  
8 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

9           **3.9 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the  
10 Parties, Plaintiff shall notice a Motion for Court Approval and, within ten (10) days of approval  
11 of the Consent Judgment by the Court, comply with the requirements set forth in California  
12 *Health & Safety Code* § 25249.7(f).

13           **3.10 Attorney General Objection.** If the California Attorney General objects to any  
14 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a  
15 timely manner, and if possible, prior to the hearing on the motion.

16           **3.11 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it  
17 shall be void and have no force or effect.

#### 18 **IV. MONETARY TERMS**

19           **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,  
20 additional settlement payments, attorney fees, and costs, Defendant shall make a total payment  
21 of Thirteen Thousand Dollars (\$13,000.00) (the "Total Settlement Amount"), apportioned into a  
22 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

23           **4.2 Civil Penalty Payment.** Pursuant to California *Health & Safety Code*  
24 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Defendant  
25 agrees to pay One Thousand Three Hundred Dollars (\$1,300.00) in Civil Penalties. The Civil  
26 Penalty payment will be apportioned in accordance with California *Health & Safety Code* §§  
27 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the  
28 remaining twenty-five (25) percent of the funds retained by Plaintiff. Within ten (10) business

days of the Effective Date, Defendant shall issue a check to “OEHHA” in the amount of Nine Hundred and Seventy-Five Dollars (\$975.00), with “Prop 65 Penalties” written in the Memo Line; and Defendant shall, pursuant to the instructions below, wire to Plaintiff the amount of Three Hundred and Twenty-Five Dollars (\$325.00).

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

For United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
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 Plaintiff 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  
Wire Routing / ABA Number: 021000021  
Swift Code: CHASUS33  
Account Number: 579068902

For further benefit of: Civil Penalty Payment Case No. 23CV052735

**4.3 Attorney Fees and Costs.** Within ten (10) business days of the Effective Date, Defendant agrees to pay Eleven Thousand Seven Hundred Dollars (\$11,700.00) to Plaintiff and its counsel of record for all fees and costs incurred in investigating, bringing this matter to the attention of Defendant, 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

Wire Routing / ABA Number: 021000021

Swift Code: CHASUS33

Account Number: 579068902

For further benefit of: Attorney's Fees Case No. 23CV052735

**4.4** In the event that Defendant 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, Defendant shall be deemed to be in material breach of its obligations under this Consent Judgment. Plaintiff shall provide written notice of delinquency to Defendant via electronic mail to Defendant's counsel of record. If Defendant 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, Defendant agrees to pay Plaintiff'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 Defendant seeks to modify this Consent Judgment under Paragraph 5.1, then Defendant must provide written notice to Plaintiff of its intent ("Notice of Intent"). If Plaintiff



1 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then Plaintiff  
2 shall provide written notice of intent to meet and confer to Defendant within thirty (30) days of  
3 receiving the Notice of Intent. The Parties shall then meet and confer in good faith in person, via  
4 telephone, or via video conference within thirty (30) days of Plaintiff's written notice of intent to  
5 meet and confer. Within thirty (30) days of such a meeting, if Plaintiff disputes the proposed  
6 modification, Plaintiff shall provide Defendant a written basis for its opposition. The Parties shall  
7 continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining  
8 disputes. Should it become necessary, the Parties may agree in writing to different deadlines for  
9 the meet-and-confer period.

10 **6.3** In the event that Defendant initiates or otherwise requests a modification under  
11 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a  
12 modification of the Consent Judgment, Defendant shall reimburse Plaintiff its costs and  
13 reasonable attorney fees for the time spent in the meet-and-confer process and filing and arguing  
14 the motion.

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

16 **7.1** This Consent Judgment shall have no application to any Covered Product that is  
17 distributed or sold exclusively outside the State of California and/or that is not used by California  
18 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or  
19 environmental exposures arising under Proposition 65, nor shall it apply to any other Defendant  
20 products other than the Covered Product.

21 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution  
22 between Plaintiff, on behalf of itself and its respective officers, directors, shareholders,  
23 employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the  
24 public interest, and Defendant and its respective officers, directors, shareholders, employees,  
25 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,  
26 suppliers, distributors, wholesalers, or retailers, and all other upstream and downstream entities  
27 in the distribution chain of the Covered Product and the predecessors, successors, and assigns of  
28 any of them (collectively, "Released Parties").

1           **7.3**     Compliance with the terms of this Consent Judgment shall be deemed to constitute  
2 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to  
3 lead in the Covered Product as set forth in the Notice and Complaint.

4           **7.4     Plaintiff Release of Defendant.** Plaintiff, on behalf of itself and its respective  
5 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
6 and affiliates and on behalf of the public interest fully releases and discharges Released Parties  
7 from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties,  
8 fees costs, and expenses asserted, or that could have been asserted based on or related to the  
9 handling, use, sale, distribution, or consumption of the Covered Product in California, as to any  
10 alleged violation of Proposition 65 or its implementing regulations up through the Effective Date,  
11 based on a failure to provide Proposition 65 warning on the Covered Product with respect to lead  
12 as set forth in the Notice and Complaint.

13           **7.5**     Plaintiff on its own behalf only, and Defendant on its own behalf only, further  
14 waives and releases any and all claims they, their attorneys, or their representatives may have  
15 against each other for all actions or statements made or undertaken in the course of seeking or  
16 opposing enforcement of Proposition 65 in connection with the Notice and Complaint up through  
17 and including the Effective Date, provided, however, that nothing in this Section shall affect or  
18 limit any Party's right to seek to enforce the terms of the Consent Judgment.

19           **7.6     California Civil Code Section 1542.** It is possible that other claims not known to  
20 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the  
21 Covered Product, will develop or be discovered. Plaintiff and Defendant acknowledge that this  
22 Consent Judgment is expressly intended to cover and include all such claims up through and  
23 including the Effective Date, including all rights of action therefore. Plaintiff and Defendant  
24 acknowledge that the claims released in Section VII above may include unknown claims, and  
25 nevertheless waive California Civil Code § 1542 as to any such unknown claims. *California Civil*  
26 *Code* § 1542 reads as follows:  
27  
28

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

# **VIII. SEVERABILITY**

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

# **IX. GOVERNING LAW**

**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.

# **X. PROVISION OF NOTICE**

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

Notice for Plaintiff shall be sent to:

Joseph R. Manning, Jr.  
26100 Towne Centre Drive  
Foothill Ranch, CA 92610  
Tel: Office (949) 200-8757 Fax: (866) 843-8309  
P65@manninglawoffice.com

Notice for Defendant shall be sent to:

Jad T. Davis  
Shook, Hardy & Bacon LLP  
5 Park Plaza, Ste. 1600  
Irvine, CA 92614  
T: (949) 475-1500; F: (949) 475-0016  
jtdavis@shb.com

**XI. EXECUTED IN COUNTERPARTS**

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

**XII. DRAFTING**

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

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

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

**XIV. ENFORCEMENT**

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

**XV. ENTIRE AGREEMENT, AUTHORIZATION**

**15.1** This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, including any and all prior

discussions, negotiations, commitments, and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

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

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

**16.1** This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, make the findings pursuant to California *Health and Safety Code* § 25249.7(f)(4) and approve this Consent Judgment.

**IT IS SO STIPULATED.**

DATED: 4/22/2025, 2025

**PLAINTIFF**

DocuSigned by:

By: eric fairon  
Eric Fairon, CEO  
CalSafe Research Center, Inc.

DATED: 4/22/25, 2025

**DEFENDANT**

By: Carmen Montalvan  
Carmen Montalvan  
Montalvan Sales, Inc.

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

3 Dated: \_\_\_\_\_

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