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Attorney for Plaintiff
Calsafe Research Center, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

BIOOPTIMIZERS USA, INC.; and DOES 1 to
10,

Defendants.

Case No.: 25TRCV00096

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed:
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
4 Biooptimizers USA, Inc. (“BUI” or “Defendant”) (collectively, the “Parties”).

5 **1.2 General Allegations.** On January 13, 2025, CalSafe initiated this action by filing
6 a Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to *Health &*
7 *Safety Code* § 25249.5 *et seq.* (“Proposition 65”) against BUI. In this action, Calsafe alleges that
8 BUI’s Mushroom Breakthrough dietary supplement powder (all flavors) including, but not
9 limited to the following flavor, “Mushroom Breakthrough Salted Caramel (UPC#
10 850018116718)” (the “Covered Products”) contain lead, a chemical listed under Proposition 65
11 as a carcinogen and reproductive toxin. Calsafe alleges that the Covered Products exposes
12 consumers to lead at a level requiring a Proposition 65 warning. Calsafe alleges that BUI
13 qualifies as a “Person” within the meaning of Proposition 65, and that BUI manufactures,
14 distributes, and/or offers for sale in the State of California the Covered Products.

15 **1.3 Notice of Violation.** The Complaint is based on allegations contained in Calsafe’s
16 Notice of Violation dated August 16, 2024 (the “Notice”), that was served on the California
17 Attorney General, other public enforcers, and BUI. A true and correct copy of the Notice is
18 attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed
19 since the Notice was served on the Attorney General, public enforcers, and BUI; no designated
20 governmental entity has filed a Complaint against BUI with regard to the Covered Products or
21 the alleged violations.

22 **1.4** Calsafe’s Notice and Complaint allege that the use of the Covered Products by
23 California consumers exposes them to lead without first receiving a clear and reasonable warning
24 from BUI, which is a violation of California *Health & Safety Code* § 25249.6. BUI 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. BUI
28

denies the material, factual, and legal allegations in the Notice and Complaint and maintains that all of the products, including the Covered Products, 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 BUI or by any of their 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 BUI. This Section shall not, however, diminish or otherwise affect BUI'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 BUI as to the acts alleged in the Complaint.

2.2 For purposes of this Consent Judgment, the Parties stipulate that venue is proper in Los Angeles 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 Reformulation or Clear and Reasonable Warnings. BUI agrees that within ninety (90) days following 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 Products that are reformulated, as provided for in Paragraph 3.2 or contains a warning as provided for in Paragraphs 3.3 through 3.5.

3.2 Reformulation Requirements. Covered Products shall be deemed reformulated if below 0.5 micrograms of lead per serving, with the serving size measured by the serving size specified on the label of the Covered Products.

3.3 Warning Requirements. A clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Covered Products Shipped for Sale in California by BUI 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.

BUI 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. www.P65Warnings.ca.gov/food.

or

WARNING: Can expose you to lead, a carcinogen and reproductive toxicant. www.P65Warnings.ca.gov/food.

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

The warning shall be offset in a box with a black outline and must be in a type size no smaller than the largest type size used for other consumer information on the Covered Products. “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional

1 information. “Consumer information” does not include the brand name, product name, company
2 name, location of manufacture, or product advertising. In no case shall the warning appear in a
3 type size smaller than six (6) point type. The warning shall also comply with 27 C.C.R. §
4 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning
5 includes consumer information in a language other than English, the warning must also be
6 provided in that language in addition to English.

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

19 **3.5 Warning Prominence.** BUI agrees that each warning shall be prominently
20 placed with such conspicuousness, as compared with the other words, statements, designs, or
21 devices, as to render it likely to be read and understood by an ordinary individual under
22 customary conditions before purchase or use.

23 **3.6 Compliance with Clear and Reasonable Warning.** BUI shall be deemed to be
24 in compliance with this Consent Judgment after the Effective Date by (A) adhering to Paragraphs
25 3.2 through 3.4, or (B) by complying with any future warning requirements adopted by the State
26 of California’s Office of Environmental Health Hazard Assessment (OEHHA) applicable to the
27 Covered Products and chemical at issue.

1 **3.7 Grace Period of Existing Inventory.** The injunctive requirements of Section III
2 shall not apply to the Covered Products that is already in the stream of commerce as of ninety
3 (90) days after the Effective Date, which Covered Products is expressly subject to the releases
4 provided in Section V.

5 **3.8 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
6 Parties, CalSafe shall notice a Motion for Court Approval and, within ten (10) days of approval
7 of the Consent Judgment by the Court, comply with the requirements set forth in California
8 *Health & Safety Code* § 25249.7(f).

9 **3.9 Attorney General Objection.** If the California Attorney General objects to any
10 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
11 timely manner, and if possible, prior to the hearing on the motion.

12 **3.10 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
13 shall be void and have no force or effect.

14 **IV. MONETARY TERMS**

15 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
16 additional settlement payments, attorney fees, and costs, BUI shall make a total payment of
17 Twenty-Five Thousand Dollars (\$25,000.00) (the “Total Settlement Amount”), apportioned into
18 a Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

19 **4.2 Civil Penalty Payment.** Pursuant to California *Health & Safety Code*
20 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, BUI agrees
21 to pay Two Thousand Five Hundred Dollars (\$2,500.00) in Civil Penalties. The Civil Penalty
22 payment will be apportioned in accordance with California *Health & Safety Code* §§
23 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the
24 remaining twenty-five (25) percent of the funds retained by CalSafe. Within ten (10) days of the
25 Effective Date, BUI shall issue a check to “OEHHA” in the amount of One Thousand Eight
26 Hundred and Seventy-Five Dollars (\$1,875.00), with “Prop 65 Penalties” written in the Memo
27
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Line; and BUI shall, pursuant to the instructions below, wire to CalSafe the amount of Six Hundred and Twenty-Five Dollars (\$625.00).

All payments made to OEHHHA (EIN: 68-0284486) pursuant to this Paragraph shall be delivered directly to OEHHHA 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 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
Wire Routing / ABA Number: 021000021
Swift Code: CHASUS33
Account Number: 579068902

For further benefit of: Civil Penalty Payment Case No. 25TRCV00096

4.3 Attorney Fees and Costs. Within ten (10) days of the Effective Date, BUI 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 BUI, 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. 25TRCV00096

4.4 In the event that BUI 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, BUI shall be deemed to be in material breach of its obligations under this Consent Judgment. CalSafe shall provide written notice of delinquency to BUI via electronic mail to BUI's counsel of record. If BUI 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, BUI 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 BUI seeks to modify this Consent Judgment under Paragraph 5.1, then BUI 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 BUI within thirty (30) days of receiving the Notice

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

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

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

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

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

25 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
26 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to
27 lead in the Covered Products as set forth in the Notice and Complaint.

1 **7.4 Calsafe Release of BUI.** Calsafe, on behalf of itself and its respective officers,
2 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and
3 affiliates and on behalf of the public interest fully releases and discharges Released Parties from
4 any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties, fees
5 costs, and expenses asserted, or that could have been asserted based on or related to the handling,
6 use, sale, distribution, or consumption of the Covered Products in California, as to any alleged
7 violation of Proposition 65 or its implementing regulations up through the Effective Date, based
8 on a failure to provide Proposition 65 warning on the Covered Products with respect to lead as
9 set forth in the Notice and Complaint.

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

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

24
25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE
28 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 Calsafe 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 BUI shall be sent to:

Michael Gleason
Hahn Loeser & Parks LLP
One America Plaza,
600 West Broadway, Suite 1500
San Diego, CA 92101
Tel: (619) 810-4310 Fax: (619) 810-4311
mgleason@hahnlaw.com

1 **XI. EXECUTED IN COUNTERPARTS**

2 **11.1** This Consent Judgment may be executed in counterparts, which taken together
3 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
4 construed to be as valid as the original signature.

5 **XII. DRAFTING**

6 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
7 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the
8 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
9 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
10 drawn, and no provision of this Consent Judgment shall be construed against any Party, based
11 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted
12 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
13 participate equally in the preparation and drafting of this Consent Judgment.

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

15 **13.1** If a dispute with respect to either Party's compliance with the terms of this
16 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
17 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an
18 amicable manner. No action or motion may be filed with the Court in the absence of such a good
19 faith attempt to resolve the dispute beforehand.

20 **XIV. ENFORCEMENT**

21 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
22 Los Angeles County, enforce the terms and conditions of this Consent Judgment. In any
23 successful action brought by Calsafe to enforce this Consent Judgment, Calsafe may seek
24 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with
25 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.

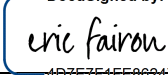
XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.

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(f)(4) and approve this Consent Judgment.

IT IS SO STIPULATED.

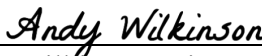
DATED: 4/8/2025, 2025

CALSAFE RESEARCH CENTER, INC.

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

DATED: 8th April, 2025

BIOPTIMIZERS USA, INC.

By: 
Andy Wilkinson, Vice President
Bioptimizers USA, 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