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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11
12 ANTHONY E. HELD, PH.D., P.E.,
13 Plaintiff,
14 v.
15 JFC INTERNATIONAL INC.; and DOES 1-
16 150, inclusive,
17 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code. § 25249.6 *et seq.*)

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1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the presence of arsenic (inorganic arsenic compounds), a toxic
5 chemical found in dried seaweed sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about the risk of exposure to arsenic (inorganic arsenic compounds)
8 present in and on dried seaweed manufactured, distributed, and offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of arsenic (inorganic arsenic compounds) are commonly found in and
11 on dried seaweed that defendants manufacture, distribute, and offer for sale to consumers
12 throughout the state of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual" Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
19 arsenic (inorganic arsenic compounds) as a chemical known to cause cancer. Arsenic
20 (inorganic arsenic compounds) became subject to the "clear and reasonable warning"
21 requirements of the act one year later on February 27, 1988. Cal. Code Regs. tit. 27, §
22 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). Arsenic (inorganic arsenic
23 compounds) is referred to hereinafter as the "LISTED CHEMICAL."

24 6. Defendants manufacture, distribute, and sell dried seaweed that contain arsenic
25 (inorganic arsenic compounds) in levels that require a warning under Proposition 65 including,
26 but not limited to, the *Hijiki Dried String Seaweed, UPC #0 11152 15855 6* and the *Wel-Pac*
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1 *Hijiki Dried Seaweed, UPC #0 11152 03026 5.* All such dried seaweed containing arsenic
2 (inorganic arsenic compounds) are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the state of
4 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
6 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
7 & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards of the LISTED
11 CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the state of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of toxic exposures from consumer products; and he brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant JFC INTERNATIONAL INC. ("JFC") is a person in the course of
20 doing business within the meaning of Health and Safety Code section 25249.11.

21 12. JFC manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
22 state of California, or implies by its conduct that it manufactures, distributes, and/or offers the
23 PRODUCTS for sale or use in the state of California.

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
25 persons in the course of doing business within the meaning of Health and Safety Code section
26 25249.11.

1 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
2 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
3 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
4 California.

5 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
6 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

7 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
8 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
9 in the state of California.

10 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
11 the course of doing business within the meaning of Health and Safety Code section 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 state of California.

14 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
16 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
18 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. JFC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
21 “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
24 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
25 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
26 occur, in Santa Clara County, and/or because DEFENDANTS conducted, and continue to
27 conduct, business in this county with respect to the PRODUCTS.

1 22. The California Superior Court has jurisdiction over this action pursuant to
2 California Constitution Article VI, section 10, which grants the Superior Court "original
3 jurisdiction in all causes except those given by statute to other trial courts." The statute under
4 which this action is brought does not specify any other basis of subject matter jurisdiction.

5 23. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
7 association that is a citizen of the state of California, has sufficient minimum contacts in the
8 state of California, and/or otherwise purposefully avails itself of the California market.
9 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
10 California courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**

12 **(Violation of Proposition 65 - Against All Defendants)**

13 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
14 Paragraphs 1 through 23, inclusive.

15 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
16 Enforcement Act of 1986, the People of California expressly declare their right "[t]o be
17 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
18 harm."

19 26. Proposition 65 states, "[n]o person in the course of doing business shall
20 knowingly and intentionally expose any individual to a chemical known to the state to cause
21 cancer or reproductive toxicity without first giving clear and reasonable warning to such
22 individual" Health & Safety Code § 25249.6.

23 27. On October 18, 2013, plaintiff's sixty-day notice of violation, together with the
24 requisite certificate of merit, was provided to JFC and certain public enforcement agencies
25 stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED
26 CHEMICAL, purchasers and users in the state of California were being exposed to the LISTED
27 CHEMICAL resulting from the reasonably foreseeable use and consumption of the
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1 PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
4 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
6 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
7 and will continue to occur in the future.

8 29. After receiving the claims asserted in the sixty-day notice of violation, the
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a
10 cause of action against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
14 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, distribute, and offer for sale or use in California contain the LISTED
17 CHEMICAL.

18 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
19 expose individuals through ingestion during reasonably foreseeable use and consumption.

20 33. The normal and reasonably foreseeable use and consumption of the PRODUCTS
21 have caused, and continue to cause, consumer exposures to the LISTED CHEMICAL, as such
22 exposures are defined by California Code of Regulations title 27, section 25602(b).

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
24 and consumption of the PRODUCTS expose individuals to the LISTED CHEMICAL through
25 ingestion.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable use and consumption of the PRODUCTS would occur by their
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1 deliberate, non-accidental participation in the manufacture, distribution, and offering of the
2 PRODUCTS for sale or use to individuals in the state of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the state of California who were or who would become
5 exposed to the LISTED CHEMICAL through ingestion during the reasonably foreseeable use
6 and consumption of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through
9 ingestion resulting from the reasonably foreseeable use and consumption of the PRODUCTS
10 sold by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue
11 to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
13 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
14 for each violation.

15 39. As a consequence of the above-described acts, Health and Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:


- 20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
26 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 26, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Harris A. Weinstein
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.