

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118
6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,) Case No. RG15756506
13 Plaintiff,)
14 v.) **[PROPOSED] CONSENT JUDGMENT**
15 CTC FOOD INTERNATIONAL INC.; *et al.*,) Action Filed: January 29, 2015
16 Defendants.)

17
18
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and CTC Food International Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held” or “Plaintiff”) and defendant CTC Foods International Inc. (“CTC” or “Defendant”)
5 with Plaintiff and Defendant collectively referred to as the “Parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

7 Held is an individual residing in the State of California who, with this action, seeks to
8 promote awareness of exposure to toxic chemicals and to improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial products.

10 **1.3 CTC Food International Inc.**

11 Held alleges that Defendant employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Defendant has manufactured, imported, distributed and/or sold in the State
16 of California dried hijiki seaweed containing arsenic (inorganic arsenic compounds) (hereinafter,
17 “arsenic”). Arsenic is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause cancer.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as *Daichu Me-Hijiki*
21 *Dried Seaweed, Item 00817, UPC #4 901925 203032*, which Held alleges are manufactured,
22 imported, distributed, sold and/or offered for sale by Defendant in the State of California,
23 hereinafter the “Products” or “Product.”

24 **1.6 Notice of Violation**

25 On September 30, 2014, Held served CTC, others and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
27

1 notice stating that CTC was in violation of California Health & Safety Code § 25249.6 for failing to
2 warn consumers that its dried seaweed exposed users in California to arsenic.

3 **1.7 Complaint**

4 On January 29, 2015, Held filed a complaint in the Superior Court in and for the County of
5 Alameda against CTC and Does 1 through 150, *Held v. CTC Food International Inc., et al.*, Case
6 No. RG15756506 (the “Action”), alleging violations of California Health & Safety Code § 25249.6,
7 based on the alleged exposures to arsenic contained in certain dried seaweed sold by Defendant in
8 the State of California.

9 **1.8 No Admission**

10 Defendant denies the material, factual and legal allegations contained in Held’s Notice and
11 Complaint and maintains that all products that it has sold, manufactured, imported and/or
12 distributed in California, including the Products, have been and are in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
14 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute
15 or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
16 violation of law. However, this section shall not diminish or otherwise affect Defendant’s
17 obligations, responsibilities and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
21 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean September 22,
25 2015.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Product Sales**

3 As a result of Held’s Notice and subsequent Action, CTC represents that it has withdrawn
4 the Products from inventory and discontinued all sales. CTC has committed that it has no intention
5 of continuing the sale of Products, in the state of California in the future, however in the unlikely
6 event that CTC does decide to sell the Products after the Effective Date, all Products manufactured,
7 imported, distributed, sold and/or offered for sale in the State of California by, or on behalf of, CTC
8 shall be Products that qualify as Reformulated Products as defined in Section 2.2.

9 **2.2 Reformulation Standard**

10 Reformulated Products are defined as Products containing arsenic in concentrations less than
11 5 parts per billion (“ppb”) when analyzed pursuant to U.S. Environmental Protection Agency
12 (“EPA”) testing methodology 3050B, 6010B, 6020 inductively coupled plasma-mass spectrometry,
13 or any other methodology utilized by federal or state agencies for the purpose of determining the
14 arsenic content in a solid substance.

15 **3. MONETARY PAYMENTS**

16 **3.1 Civil Penalty Payments**

17 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a
18 total of \$2,000 in civil penalties in accordance with this Section. Each penalty payment will be
19 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
20 the funds remitted to the California Office of Environmental Health Hazard Assessment
21 (“OEHHHA”) and the remaining 25% of the penalty remitted to Held. Each penalty payment shall be
22 made within two business days of the date it is due and be delivered to the addresses listed in
23 Section 3.3 below. CTC shall be liable for payment of interest, at a rate of 10% simple interest, for
24 all amounts due and owing under this Section that are not received within two business days of the
25 due date.

26 Within five days of the mutual execution of this Consent Judgment, CTC shall issue a check
27 for its initial civil penalty payment in the amount of \$2,000 to “McPhee & MCPhee”. MCPhee &
28

1 McPhee shall provide The Chanler Group with written confirmation within five days of receipt that
2 the funds have been deposited in a trust account. Within five days of the date that this Consent
3 Judgment is approved by the Court, McPhee & McPhee shall issue a check for the initial civil
4 penalty payment to: "Dr. Anthony E. Held, Client Trust Account" in the amount of \$2,000.

5 **3.2 Reimbursement of Fees and Costs**

6 The parties reached an accord on the compensation due to Held and his counsel under
7 general contract principles and the private attorney general doctrine codified at California Code of
8 Civil Procedure § 1021.5, for all work performed in the matter. The Parties then attempted to (and
9 did) reach an accord on the compensation due to Held and his counsel under general contract
10 principles and the private attorney general doctrine codified at California Code of Civil Procedure §
11 1021.5, for all work performed through the mutual execution of this agreement. CTC shall, within
12 five days of the mutual execution of this Consent Judgment by the Parties, issue a check payable to
13 "McPhee & McPhee" in the amount of \$18,000 to be held in trust by McPhee & McPhee for The
14 Chanler Group. McPhee & McPhee shall provide The Chanler Group with written confirmation
15 within five days of receipt that the funds have been deposited in a trust account. Within five
16 business days of the date this Consent Judgment is approved by the Court, McPhee & McPhee shall
17 issue a check payable to "The Chanler Group" to the address found in 3.3.1(a) below.

18 **3.3 Payment Procedures**

19 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

20 All payments owed to Held and his counsel, pursuant to Sections 3.1
21 through 3.2, shall be delivered to the following payment address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710
27
28

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held's Public Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest, releases CTC and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
6 Products including, but not limited to, their downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
8 any violations arising under Proposition 65 for unwarned exposures to arsenic from the Products
9 sold by Defendant prior to the Effective Date, as set forth in the Notice. Compliance with the terms
10 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
11 arsenic from the Products.

12 **4.2 Held's Individual Release of Claims**

13 Held, in his individual capacity only and *not* in his representative capacity, also provides a
14 release to CTC, Releasees, and Downstream Releasees which shall be effective as a full and final
15 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
16 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
17 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
18 exposures to arsenic in the Products sold or distributed for sale by Defendant before the Effective
19 Date.

20 **4.3 CTC's Release of Held**

21 CTC on behalf of itself, its past and current agents, representatives, attorneys, successors
22 and/or assignees, hereby waives any and all claims against Held, his attorneys and other
23 representatives, for any and all actions taken or statements made (or those that could have been
24 taken or made) by Held and his attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
26 respect to the Products.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
8 remaining shall not be adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
12 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
13 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
14 preemption or rendered inapplicable by reason of law generally as to the Products, then Defendant
15 shall provide written notice to Held of any asserted change in the law, and shall have no further
16 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
17 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from
18 any obligation to comply with any pertinent state or federal toxics control law.

19 **8. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
22 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
23 other party at the following addresses:

24 To CTC Food International Inc.:

25 Ike Fukumoto, President
26 CTC Food International Inc.
27 131 West Harris Ave
28 South San Francisco, CA 94080

To Anthony E. Held, Ph.D., P.E.:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall draft and file, and Defendant shall join. If any third party objection to the noticed motion is filed, Held and Defendant cooperate to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

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

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 9/22/2015

Date: _____

By: *Anthony E. Hill*
Anthony E. Hill, Ph.D., P.E.

By: _____
Ike Fukumoto, President
CTC Food International Inc.

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

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.


AGREED TO:

AGREED TO:

Date: _____

Date: 9 / 23 / 15

By: _____
Anthony E. Held, Ph.D., P.E.

By:  _____
Ike Fukumoto, President
CTC Food International Inc.