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6 ANTHONY E. HELD, PH.D., P.E.

7
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.,)

Case No. 114CV269378

13 Plaintiff,)

[PROPOSED] CONSENT JUDGMENT

14 v.)

15 EDEN FOODS, INC.; *et al.*,)

Action Filed: August 13, 2014

16 Defendants.)
17 _____)

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Eden Foods, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held”) and defendant Eden Foods, Inc. (“Eden”) with Held and Eden collectively referred to
5 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 seeks to promote awareness of
8 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Eden Foods, Inc.**

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as “hijiki” type dried
21 seaweed that allegedly contain arsenic including, but not limited to, *Eden Hiziki Sea Vegetable*,
22 #7838, UPC #0 24182 15079 7, which are manufactured, imported, distributed, sold and/or offered
23 for sale by Eden in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On October 18, 2013, Held served Eden and various public enforcement agencies with a
26 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice
27 that Held alleged Eden was in violation of California Health & Safety Code § 25249.6 for failing to
28 warn consumers that its “hijiki” type dried seaweed exposed users in California to arsenic.

1 **1.7 Complaint**

2 On August 13, 2014, Held filed a complaint in the Superior Court in and for the County of
3 Santa Clara against Eden and Does 1 through 150, *Held v. Eden Foods, Inc., et al.*, Case No.
4 114CV269378 (the “Complaint”), alleging violations of California Health & Safety Code
5 § 25249.6, based on the alleged exposures to arsenic contained in certain dried seaweed sold by
6 Eden in the State of California.

7 **1.8 No Admission**

8 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
9 were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising
10 out of the facts or conduct alleged therein. Eden denies and disputes the material, factual and legal
11 allegations contained in Held’s Notice and Complaint and maintains that all products that it has
12 sold, manufactured, imported and/or distributed in California, including the Products, have been and
13 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
14 admission by Eden of any fact, finding, issue of law or violation of law, nor shall compliance with
15 this Consent Judgment constitute or be construed as an admission by Eden, its officers, directors,
16 employees, or parent, subsidiary or affiliated entities of any liability, wrongdoing or fact, finding,
17 conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise
18 affect Eden’s obligations, responsibilities and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Eden as to the allegations contained in the Complaint, that venue is proper in the
22 County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
26 Consent Judgment is entered by the Court.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

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

8 **2.2 Reformulation or Warning Commitment**

9 Starting no later than December 15, 2015, all Products manufactured, imported, distributed,
10 sold and/or offered for sale in the State of California by Eden shall either be: (a) Products that
11 qualify as Reformulated Products as defined in Section 2.1 above; or (b) Products that carry
12 appropriate Proposition 65 health hazard warnings as described in Section 2.3 below.

13 **2.3 Product Warnings**

14 Starting no later than December 15, 2015, for all Products other than Reformulated
15 Products, Eden shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and
16 (b). Each warning shall be prominently placed with such conspicuousness as compared with other
17 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. Each warning shall be provided in a
19 manner such that the consumer or user understands to which *specific* Product the warning applies,
20 so as to minimize the risk of consumer confusion.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** Eden shall affix a warning to the packaging,
23 labeling, or directly on each Product that is not a Reformulated Product provided for sale by Eden to
24 distributors, directly to consumers, or provided by Eden directly to retail outlets in California that
25 states:

26
27
28 **WARNING:** This product contains arsenic, known to
 the State of California to cause cancer.

1 reference the applicable warning and shall define the term “designated symbol” with the following
2 language on the inside of the front cover of the catalog or on the same page as any order form for
3 the Product(s):

4 **WARNING:** Certain products identified with this
5 symbol ▼ and offered for sale in this
6 catalog contain arsenic, known to the
State of California to cause cancer.

7 The designated symbol must appear on the same page and in close proximity to the display
8 and/or description of the Product. On each page where the designated symbol appears, Eden must
9 provide a header or footer directing the consumer to the warning language and definition of the
10 designated symbol.

11 **(ii) Internet Website Warning.** A warning shall be given in conjunction
12 with the sale of the Products by Eden via the internet, which warning shall appear: (a) on the same
13 web page on which a Product is displayed; (b) on the same web page as the order form for a
14 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
15 displayed to a purchaser during the checkout process. The following warning statement shall be
16 used and shall appear in any of the above instances adjacent to or immediately following the
17 display, description, or price of the Product for which it is given in the same type size or larger than
18 the Product description text:

19 **WARNING:** This product contains arsenic, known to
the State of California to cause cancer.

20 Alternatively, the designated symbol may appear adjacent to or immediately following the
21 display, description, or price of the Product for which a warning is being given, provided that the
22 following warning statement also appears elsewhere on the same web page, as follows: that states:

23 **WARNING:** This product contains arsenic, known to
24 the State of California to cause cancer.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payments**

3 In settlement of all the claims referred to in this Consent Judgment, Eden has been assessed
4 a total of \$13,000 in civil penalties in accordance with this section. Each penalty payment will be
5 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
6 the funds remitted to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) by Held. Each penalty payment shall be made within two business days of the date it
8 is due and be delivered to the address listed in Section 3.3 below. Eden shall be liable for payment
9 of interest, at a rate of 10% simple interest, for all amounts due and owing under this section that are
10 not made within two business days of the due date.

11 **3.1.1 Initial Civil Penalty**

12 Within five business days of (a) the mutual execution of this Consent Judgment, or
13 the later of the two execution dates, if different and (b) Eden’s counsel’s receipt of a properly
14 completed IRS Form W-9 from The Chanler Group, Eden shall issue a check for its initial civil
15 penalty payment in the amount of \$4,000, in the manner provided in Section 3.3 below.

16 **3.1.2 Final Civil Penalty**

17 Eden shall pay a final civil penalty of \$9,000 on or before April 30, 2016. The final
18 civil penalty shall be waived in its entirety, however, if, no later than April 15, 2016 (the
19 “Certification Date”), an officer of Eden provides Held with written certification that, as of the date
20 of such certification and continuing into the future, all Products manufactured, imported,
21 distributed, sold and offered for sale in California by Eden are Reformulated Products. Held must
22 receive any such certification on or before the Certification Date. The certification in lieu of a final
23 civil penalty payment provided by this section is a material term, and time is of the essence. In the
24 event the final civil penalty is not waived in accordance with this section, Eden shall issue a check
25 for its final civil penalty payments to “Dr. Anthony E. Held, Client Trust Account” in the amount of
26 \$9,000. The check shall be delivered to the address listed in Section 3.4 below.

27 **3.2 Reimbursement of Legal Fees and Costs**

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Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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4. **CLAIMS COVERED AND RELEASED**

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

Held, acting on his own behalf and in the public interest, through this Consent Judgment releases Eden and its parents, subsidiaries, affiliated entities under common ownership, and each such entity's current and former directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell (or have sold) the Products including, but not limited to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations or alleged violations that were or could have been asserted under Proposition 65 for unwarned exposures to arsenic from the Products sold by Eden prior to and including the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to arsenic from the Products.

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

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

Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

2 Held, in his individual capacity only and *not* in his representative capacity, expressly waives and
3 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
4 him by the provisions of Section 1542 of the California Civil Code as well as under any other state
5 or federal statute or common law principle of similar effect, to the fullest extent that he may
6 lawfully waive such rights or benefits pertaining to alleged or actual exposure to arsenic in the
7 Products sold or distributed for sale by Eden prior to and including the Effective Date .

8 **4.3 Eden's Release of Held**

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

15 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
26 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
27 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
28 preemption or rendered inapplicable by reason of law generally as to the Products, then Eden shall

1 provide written notice to Held of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
3 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Eden from any
4 obligation to comply with any pertinent state or federal toxics control law.

5 **8. NOTICES**

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

10 To Eden Foods, Inc.:

11 Jeffrey D. Polsky, Esq.
12 Fox Rothschild LLP
13 345 California Street
14 Suite 2200
San Francisco, CA 94104
Attorneys for Eden Foods, Inc.

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

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

17 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

24 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The parties agree to mutually employ their best efforts to support the entry of this agreement
26 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
27 manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
28 noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall

1 draft and file, and Eden shall join. If any third party objection to the noticed motion is filed, Held
2 and Eden shall work together to file a joint reply and appear at any hearing before the Court. This
3 provision is a material component of the Consent Judgment and shall be treated as such in the event
4 of a breach.

5 **12. MODIFICATION**

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

9
10 **13. AUTHORIZATION**

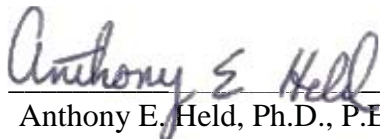
11 The undersigned are authorized to execute this Consent Judgment on behalf of their
12 respective parties and have read, understood and agree to all of the terms and conditions of this
13 Consent Judgment.

14 AGREED TO:

AGREED TO:

15
16 Date: 7/14/15

Date: _____

17
18 By: 
Anthony E. Held, Ph.D., P.E.

By: _____
Michael Potter, President
EDEN FOODS, INC.

1 draft and file, and Eden shall join. If any third party objection to the noticed motion is filed, Held
2 and Eden shall work together to file a joint reply and appear at any hearing before the Court. This
3 provision is a material component of the Consent Judgment and shall be treated as such in the event
4 of a breach.

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7 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
8 of any party and entry of a modified Consent Judgment by the Court.

9 **13. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective parties and have read, understood and agree to all of the terms and conditions of this
12 Consent Judgment.
13

14 AGREED TO:

AGREED TO:

15
16 Date: _____

Date: July 20, 2015

17
18 By: _____

By:  _____

19 Anthony E. Held, Ph.D., P.E.

Michael Potter, President
EDEN FOODS, INC.