

(ENDORSED)
FILED

JUL 18 2014

David H. Yamamoto, Clerk of the Superior Court
County of Santa Clara, California
By: REINA GARZA
Deputy Clerk

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Attorneys for Plaintiff
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION**

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

Plaintiff,

v.

NATURAL IMPORT COMPANY INC.;
MITOKU COMPANY, LTD.; and **DOES 1-**
150, inclusive,

Defendants.

Case No. 114CV268192

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

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 "arsenic."

24 6. Defendants manufacture, distribute, and sell dried seaweed that contain arsenic in
25 levels that require a warning under Proposition 65 including, but not limited to, *Mitoku Me-*
26 *Hijiki Sprouts Japanese Seaweed Tips, UPC #0 21009 89095 9*. All such dried seaweed
27 containing arsenic are referred to collectively hereinafter as "PRODUCTS."
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1 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
2 occur, in Santa Clara County, and/or because DEFENDANTS conducted, and continue to
3 conduct, business in this county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 25, inclusive.

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

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

26 29. On April 16, 2014, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to NATURAL IMPORT, MITOKU and certain
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1 public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
2 PRODUCTS containing arsenic, purchasers and users in the state of California were being
3 exposed to arsenic resulting from the reasonably foreseeable use and consumption of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a
5 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

14 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain arsenic in amounts above the allowable state limits, such
16 that they require a "clear and reasonable" warning under Proposition 65.

17 33. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, distribute, and offer for sale or use in California contain arsenic.

19 34. Arsenic is present in or on the PRODUCTS in such a way as to expose
20 individuals through ingestion during reasonably foreseeable use and consumption.

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

24 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
25 and consumption of the PRODUCTS expose individuals to arsenic through ingestion.

26 37. DEFENDANTS intended that such exposures to arsenic from the reasonably
27 foreseeable use and consumption of the PRODUCTS would occur by their deliberate, non-

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1 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
2 sale or use to individuals in the state of California.

3 38. 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 arsenic through ingestion during the reasonably foreseeable use and consumption of
6 the PRODUCTS.

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

12 40. 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 41. 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 arsenic;

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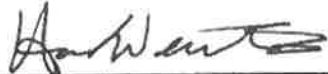
3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 et seq.;

4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

5. That the Court grant such other and further relief as may be just and proper.

Dated: July 17, 2014

Respectfully Submitted,
THE CHANLER GROUP

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