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BARBARA J. CHISHOLM (SBN 224656)
TONY LOPRESTI (SBN 289269)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-mail: bchisholm@altshulerberzon.com
tlopresti@altshulerberzon.com

ENDORSED
FILED
ALAMEDA COUNTY

MAY 13 2016

CLERK OF THE SUPERIOR COURT
By Maria Carrera
MARIA CARRERA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

AS YOU SOW,

Plaintiff,

vs.

JFC INTERNATIONAL, INC.,

Defendant.

Case No.: RG16815680
COMPLAINT
Unlimited Civil Case

1 exposure to chemicals known to the State of California to cause cancer and reproductive toxicity;
2 and/or civil penalties as provided for under the Act.

3 **PARTIES**

4 7. Plaintiff AS YOU SOW (“Plaintiff”) is an Oakland-based non-profit corporation
5 dedicated to, among other causes, the protection of the environment, toxics reduction, the
6 promotion of and improvement of human health, the improvement of worker and consumer
7 rights, environmental education, and corporate accountability. As You Sow brings this action on
8 its own behalf in the public interest pursuant to Health and Safety Code §25249.7(d).

9 8. Defendant JFC INTERNATIONAL, INC. (“Defendant”) is a business entity with
10 ten or more employees that has produced, distributed, and/or sold in California a product called
11 Wel-Pac Fueru Wakame Dried Seaweed, which contains cadmium and lead.

12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction over this action pursuant to Article VI, §10 of the
14 California Constitution because this case is not a cause given by statute to other courts.

15 10. This Court has jurisdiction over the Defendant named above because it is a
16 business entity that conducts sufficient business, has sufficient minimum contacts in, or
17 otherwise intentionally avails itself of the market in California through the manufacture, sale,
18 distribution, and/or use of its products in California.

19 11. Venue is proper in this Court because the obligation or liability arises, at least in
20 part, in the County of Alameda.

21 **LEGAL BACKGROUND**

22 12. In 1986, the voters of California overwhelmingly enacted Proposition 65.

23 13. Among other requirements, Proposition 65 provides that “[n]o person in the
24 course of doing business shall knowingly and intentionally expose any individual to a chemical
25 known to the state to cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual, except as provided in Section 25249.10.” Health &
27 Safety Code §25249.6.

1 21. On February 27, 1987, lead was placed on the OEHHA list of chemicals known to
2 the State to cause reproductive toxicity; and, on October 1, 1992, lead was placed on the list of
3 chemicals known to cause cancer.

4 22. Since at least September 17, 2013, Defendant has produced, distributed, and/or
5 sold the Covered Product in the State of California. The Covered Product consists of dried
6 wakame seaweed. It is typically used in soups, salads, or as a stand-alone dish.

7 23. Defendant has had knowledge that the Covered Product it produces, distributes,
8 and/or sells in California contains cadmium and lead.

9 24. The primary route of exposure to cadmium and lead from Defendant's product is
10 ingestion. This exposure to hazardous cadmium and lead results from the reasonably foreseeable
11 use of the Covered Product.

12 25. Defendant has produced, distributed, and/or sold the Covered Product within the
13 State of California without providing a clear and reasonable warning that the intended and
14 reasonably foreseeable use of the product will result in exposure to chemicals known to the State
15 of California to cause cancer and reproductive toxicity ("Proposition 65 warning").

16 26. On information and belief, Defendant has produced, distributed, and/or sold the
17 Covered Product within the State of California, without providing an adequate and reasonable
18 warning as required by Proposition 65 since at least September 17, 2013.

19 27. On September 17, 2014, Plaintiff served Defendant with a written notice of
20 violation stating that Defendant had violated Proposition 65 by exposing individuals to cadmium
21 and lead in the Covered Product without providing a clear and reasonable warning.

22 28. Also on September 17, 2014, Plaintiff provided notice of the violation to the
23 Attorney General and the district attorneys and city attorneys in whose jurisdiction the violations
24 are alleged to have occurred.

25 29. Defendant has knowingly and intentionally exposed consumers to cadmium and
26 lead. The exposure has been knowing and intentional in part because it results from Defendant's
27 production, distribution and/or sale of the Covered Product that contains cadmium and lead, with
28 knowledge that reasonably foreseeable use of the product will result in consumers' exposure to

1 chemicals, namely cadmium and lead, known to the State of California to cause cancer and
2 reproductive toxicity.

3 30. In accordance with Health & Safety Code §25249.7(d), this action is being
4 commenced more than 60 days from the date that As You Sow provided notice of the violation
5 of Health & Safety Code §25249.6 alleged herein to the Attorney General and the district
6 attorneys and city attorneys in whose jurisdiction the violations are alleged to have occurred, and
7 to Defendant. The notice provided to Defendant included a certificate of merit that complied
8 with the requirements of Health & Safety Code §25249.7(d)(1). Factual information sufficient to
9 establish the basis of the certificate of merit was attached to the certificate of merit served on the
10 Attorney General.

11 31. Neither the Attorney General, any district attorney, any city attorney, nor any
12 other public prosecutor has commenced and is diligently prosecuting an action against the
13 violations alleged herein.

14 **FIRST CAUSE OF ACTION**

15 32. Paragraphs 1 through 31 are re-alleged as if fully set forth herein.

16 33. By committing the acts alleged above, Defendant has, in the course of doing
17 business, knowingly and intentionally exposed individuals to chemicals known to the State of
18 California to cause cancer or reproductive toxicity without first giving clear and reasonable
19 warning to such individuals, within the meaning of Health & Safety Code §25249.6.

20 34. These actions violate Health & Safety Code §25249.6 and render Defendant liable
21 for civil penalties up to \$2,500 per day for each violation, as well as other remedies.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays that the Court:

24 A. Grant civil penalties to be paid by Defendant for each violation of Health &
25 Safety Code §25249.6;

26 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other
27 orders as are necessary to prevent Defendant from exposing persons within the State of
28 California to a known reproductive toxin and cancer-causing chemicals resulting from the

1 reasonably foreseeable use of Defendant's product without providing a clear and reasonable
2 warning calculated to ensure that the warning message is available to individuals prior to
3 exposure;

- 4 C. Award Plaintiff reasonable attorneys' fees and costs; and,
- 5 D. Grant such other and further relief as the Court deems just and proper.

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Dated: May 13, 2016

Respectfully submitted,

BARBARA J. CHISHOLM
TONY LOPRESTI
Altshuler Berzon LLP

By: 
Tony LoPresti