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FILED
Superior Court of California
County of Los Angeles
10/06/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Williams Deputy

8 Attorneys for Plaintiff Pubic Health And Safety Advocates,
9 LLC

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 PUBLIC HEALTH AND SAFETY)
14 ADVOCATES, LLC,)
15)
16 Plaintiff,)
17)
18 vs.)
19 JFC INTERNATIONAL, INC., a California)
20 Corporation; LIAN HWA FOODS (USA) INC., a)
21 California Corporation; and DOES 1 through 50,)
22 inclusive,)
23 Defendants,)

24) **CASE NO.: 21STCV15205**
25)
26) **FIRST AMENDED COMPLAINT FOR**
27) **PENALTY AND INJUNCTION**
28)
29) **Violation of Proposition 65, the Safe Drinking**
30) **Water and Toxic Enforcement Act of 1986**
31) **(Health & Safety Code § 25249.5, et seq.)**
32)
33) **UNLIMITED CIVIL**

34 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges twenty-one (21)
35 causes of action against Defendants, **JFC INTERNATIONAL, INC., LIAN HWA FOODS (USA)**
36 **INC.,** and DOES 1 through 50, inclusive as follows:

37 **THE PARTIES**

38 1. Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** (“PHSA” or
39 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within
40 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from

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1 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
2 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

3 2. Defendants, **JFC INTERNATIONAL, INC., and LIAN HWA FOODS (USA) INC.**
4 (collectively "Defendants") is a California corporation qualified to do business in California. Upon
5 information and belief, Plaintiff contends that the Defendants have conducted business within California
6 at all relevant times herein.

7 3. Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1
8 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
9 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.
10 Plaintiff is informed, believes and thereon alleges that each fictitiously named Defendant is responsible
11 in some manner for the occurrences herein alleged and the damages caused.

12 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
13 times mentioned herein have conducted business within the state of California.

14 5. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
15 place two (2) products into the stream of commerce in California. The products ("Products") are
16 outlined herein: (1) WEL-PAC Saki Ika-Prepared Shredded Squid (Hot), UPC # 011152063188; (2)
17 Dashi Kombu (Dried Kelp), UPC #011152142715. Due to several chemicals in the Products, the
18 Defendants are required to provide "clear and reasonable" warnings to consumers about the chemicals
19 under Proposition 65.
20

21 6. At all times mentioned herein, Defendants were legally responsible for compliance with
22 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
23 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
24 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
25 Defendants business operations and/or while acting within the course and scope of employment.

26 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
27 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
28 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course

1 and scope of this agency, service, or employment, and was acting with the consent, permission, and
2 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
3 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
4 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
5 employees and agents while engaged in the management, direction, operation, or control of the affairs of
6 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
7 facilitated the alleged wrongful conduct of each of the other Defendants.
8

9 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
10 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and
11 that each of the Defendants had ten (10) or more employees at all relevant times.

12 JURISDICTION

13 9. This Court has jurisdiction over this action pursuant to *California Constitution*,
14 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
15 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
16 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
17 in any Court of competent jurisdiction.

18 10. This Court has jurisdiction over Defendants named herein because Defendants either
19 reside in California, are located in California, are foreign corporations authorized to do business in
20 California, are registered with the California Secretary of State, do sufficient business in California,
21 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
22 the markets within California through their manufacture, distribution, promotion, marketing, or sale
23 of their products within California to render the exercise of jurisdiction by the California courts
24 permissible under traditional notions of fair play and substantial justice.

25 11. Venue is proper in the County of Los Angeles because one or more of the instances
26 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
27 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
28 with respect to the consumer Products that are the subject of this action. Said Products are

1 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
2 the County of Los Angeles.

3 **BACKGROUND AND PRELIMINARY FACTS**

4
5 12. In 1986, California voters approved an initiative to address growing concerns about
6 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals
7 that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamphlet, Proposed Law,*
8 *Gen. Election (Nov.4, 1986) at p.3.* The initiative, the Safe Drinking Water and Toxic Enforcement
9 Act of 1986, codified at *Health & Safety Code § 25249.5, et seq.* (“Proposition 65”), helps to
10 protect California’s drinking water sources from contamination, to allow consumers to make
11 informed choices about the products they buy, and to enable persons to protect themselves from
12 toxic chemicals as they see fit.

13 13. Proposition 65 requires the Governor of California to publish a list of chemicals
14 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
15 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
16 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
17 to Proposition 65-listed chemicals.

18 14. All businesses with ten (10) or more employees that operate or sell products in
19 California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
20 from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*
21 *& Safety Code, § 25249.5*) and (2) required to provide “clear and reasonable” warnings before
22 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*
23 *Safety Code, § 25249.6*).

24 15. Proposition 65 provides that any person “violating or threatening to violate” the
25 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
26 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
27 violation will occur.” *Id., § 25249.11 (e).* Defendants are also liable for civil penalties of up to
28 \$2,500.00 per day per violation, recoverable in a civil action. *Id., § 25249.7 (b).*

1 16. Plaintiff identified certain practices of manufacturers and distributors of various
2 seafood products, who both in the past and presently, knowingly and intentionally expose, persons
3 in California to Lead and Lead Compounds ("Lead) in such products without first providing clear
4 and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later
5 discerned that Defendants engaged in such practice.
6

7 17. On February 27, 1987, the Governor of California added Lead to the list of
8 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
9 *Tit. 27, §27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males
10 and females. The Proposition 65 warning requirements and discharge prohibitions became
11 applicable to Lead within twenty (20) months after Lead was added to the list of chemicals known
12 to cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

13 18. On October 1, 1992, the Governor of California added Lead to the list of chemicals
14 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65
15 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
16 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
17 *§§ 25249.9 and 25249.10*.

18 19. The level of exposure to a chemical causing cancer, or reproductive toxicity under
19 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated
20 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b)*. For exposure to
21 consumer products, the level of exposure is calculated using the reasonably anticipated rate of
22 intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2)*.

23 20. Defendants' manufacture and distribute two (2) products, (1) WEL-PAC Saki Ika-
24 Prepared Shredded Squid (Hot), UPC # 011152063188; (2) Dashi Kombu (Dried Kelp), UPC
25 #011152142715 which contain sufficient quantities of Lead such that consumers, including
26 pregnant women, who consume the Products are exposed to Lead. The primary route of exposure
27 for the violations happens when consumers ingest the Products orally. These exposures occur in
28 homes, workplaces and everywhere in California where the Products are consumed.

1 21. During the relevant one-year period herein, no clear and reasonable warning was
2 provided to consumers when the products were manufactured and released into the stream of
3 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
4 hazards from Lead when the Products are consumed.

5
6 **NOTICE OF VIOLATION**

7 22. At all times relevant to this action, the Defendants have knowingly and intentionally
8 exposed the users/consumers of the Products to Lead by recommended that consumers ingest the
9 Products without first giving a clear and reasonable warning to such individuals.

10 23. The Defendants have sold WEL-PAC Saki Ika-Prepared Shredded Squid to
11 consumers in California since February 20, 2019. The Defendants have sold Dashi Kombu to
12 consumers in California since April 27, 2019. The Products continue to be imported, distributed
13 and sold in California without the requisite warning information. Consumers are exposed to Lead
14 and/or Cadmium when the Products are ingested.

15 24. On or about April 2, 2020, April 27, 2020, April 2, 2021 (re-notice), and August 2,
16 2022 (Amended Notice) Plaintiff gave notice (“Notice”) of the alleged violations of *Health &*
17 *Safety Code §25249.6* for the Products to Defendants, the California Attorney General, the District
18 Attorney for each county in California and the City Attorney for San Francisco, San Diego, San
19 Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code §25249.7(d)* and
20 *27 C.C.R. Code §25903(b)*, each Notice included the following information: the name, address, and
21 telephone number of the noticing party; the name of the alleged violator; the statute violated; the
22 approximate time period during which violations occurred; and descriptions of the violations
23 including the chemicals involved, the routes of toxic exposure, and the specific product or type of
24 product causing the violations.

25 25. Before sending the Notice of alleged violations, Plaintiff investigated the Products
26 to determine the likelihood that such products would cause consumers to sustain significant
27 exposure to Lead. Plaintiff hired a well-respected and accredited testing laboratory to test the
28 Products. This laboratory uses testing protocols established and approved by the California

1 Attorney General.

2 26. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
3 General, the District Attorneys of every county in California, the City Attorneys of every city in
4 California with a population greater than 750,000 and to the named Defendants. In compliance with
5 *Health & Safety Code* § 2521-9.7(d) and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs'
6 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
7 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
8 Notice; and (2) based on the information obtained through such consultations, believes that there is
9 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
10 each Notice.
11

12 27. In reliance on the expert's evaluation of the Products, Plaintiffs' counsel is informed
13 and believes and thereon alleges that there is a reasonable and meritorious case against Defendants
14 for this private action.

15 28. Any person acting in the public interest has standing to enforce violations of
16 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
17 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
18 within such time. *Health & Safety Code* § 25249.7(d)

19 29. Plaintiff's notice of alleged violations also included a Certificate of Service and a
20 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary"
21 *Health & Safety Code* § 25249.7(d)

22 30. Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff
23 gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

24 31. Plaintiff is informed, believes and thereon alleges that none of the public
25 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
26 diligently prosecuting an action against the Defendants under *Health and Safety Code* section
27 25249.5, *et seq.* based on the allegations herein.

28 32. Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to

1 filing this Complaint.

2 **FIRST CAUSE OF ACTION**

3 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986**
4 **(Health & Safety Code §25249.5, et seq.)**

5 33. Plaintiff incorporates by reference paragraphs 1 through 32 of this Complaint as
6 though fully set forth herein.

7 34. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
8 importer, distributor, wholesaler, promoter, or retailer of WEL-PAC Saka Ika-Prepared Shredded
9 Squid (“Shredded Squid”), UPC #011152063188.

10 35. Shredded Squid contains Lead.

11 36. Defendants knew or should have known that Lead has been identified by the State of
12 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
13 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
14 Shredded Squid and the Proposition 65 violations when the Plaintiff served Notice to Defendants
15 on April 2, 2020 and again on April 2, 2021.

16 37. The allegations surrounding Shredded Squid involves “[c]onsumer products
17 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
19 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Shredded Squid is a
20 consumer product, and as mentioned herein, exposures to Cadmium took place as a result of such
21 normal and foreseeable consumption and use.

22 38. Plaintiff is informed, believes, and thereon alleges that at least since February 20,
23 2019 and the present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Shredded Squid to Lead. Plaintiff is informed, believes, and thereon alleges
25 that Defendants manufactured, distributed, or sold the product Shredded Squid, without first
26 providing any type of clear and reasonable warning of such to the exposed persons before the time
27
28

1 of exposure. Defendants know and intend that California consumers will use and consume
2 Shredded Squid, thereby exposing them to Lead. Therefore, Defendants violated Proposition 65.

3 39. The primary exposure to the Lead found in Shredded Squid comes from dermal
4 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
5 exposures by eating and consuming Shredded Squid and handling Shredded Squid without wearing
6 gloves or any other personal equipment, or by touching bare skin or mucus membrane with after
7 handling Shredded Squid, as well as through direct and indirect hand to mouth contact, hand to
8 mucous membrane, or breathing in particulate matter dispersed from Shredded Squid.
9

10 40. Plaintiff is informed, believes and thereon alleges that each of the Defendants'
11 violations of Proposition 65 as to Shredded Squid has been ongoing and continuous, as Defendants
12 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
13 including the manufacture, distribution, promotion and sale of Shredded Squid, so that a separate
14 and distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Shredded
15 Squid as mentioned herein.

16 41. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
17 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
18 alleged herein will continue to occur into the future.
19

20 42. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Lead from Shredded Squid, pursuant to Health and
22 Safety Code §25249.7(b).
23

24 SECOND CAUSE OF ACTION

25 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986** 26 **(Health & Safety Code §25249.5, et seq.)**

27 43. Plaintiff incorporates by reference paragraphs 1 through 42 of this Complaint as
28 though fully set forth herein.

 44. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,

1 importer, distributor, wholesaler, promoter, or retailer of Dashi Kombu (“Dried Kelp”), UPC
2 #011152142715.

3 **45.** Dried Kelp contains Lead.

4 **46.** Defendants knew or should have known that Lead has been identified by the State of
5 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
6 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
7 Dried Kelp and the Proposition 65 violations when the Plaintiff served Notice to Defendants on
8 April 27, 2020.

9 **47.** The allegations surrounding Dried Kelp involves “[c]onsumer products exposure[s]”
10 which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or
11 other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
12 consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Dried Kelp is a consumer product, and as
13 mentioned herein, exposures to Cadmium took place as a result of such normal and foreseeable
14 consumption and use.

15 **48.** Plaintiff is informed, believes, and thereon alleges that at least since April 27, 2019
16 and the present, each of the Defendants knowingly and intentionally exposed California consumers
17 and users of Dried Kelp to Lead. Plaintiff is informed, believes, and thereon alleges that
18 Defendants manufactured, distributed, or sold the product Dried Kelp, without first providing any
19 type of clear and reasonable warning of such to the exposed persons before the time of exposure.
20 Defendants know and intend that California consumers will use and consume Dried Kelp, thereby
21 exposing them to Lead. Therefore, Defendants violated Proposition 65.

22 **49.** The primary exposure to the Lead found in Dried Kelp comes from dermal contact,
23 as well as direct and indirect ingestion and inhalation of the product. Persons sustain exposures by
24 eating and consuming Dried Kelp and handling Dried Kelp without wearing gloves or any other
25 personal equipment, or by touching bare skin or mucus membrane with after handling Dried Kelp,
26 as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or
27
28

1 breathing in particulate matter dispersed from Dried Kelp.

2 50. Plaintiff is informed, believes and thereon alleges that each of the Defendants'
3 violations of Proposition 65 as to Dried Kelp has been ongoing and continuous, as Defendants
4 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
5 including the manufacture, distribution, promotion and sale of Dried Kelp, so that a separate and
6 distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Dried Kelp as
7 mentioned herein.
8

9 51. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
10 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
11 alleged herein will continue to occur into the future.

12 52. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead from Dried Kelp, pursuant to Health and Safety
14 Code §25249.7(b).
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

18 1. That the Court, pursuant to *Health & Safety Code§ 25249.7(b)*, assess civil penalties
19 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;
20

21 2. An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
22 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
23 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
24 “clear and reasonable” warnings on the labels of the subject Products.

25 3. An award of reasonable attorney’s fees and cost; and
26

27 ///

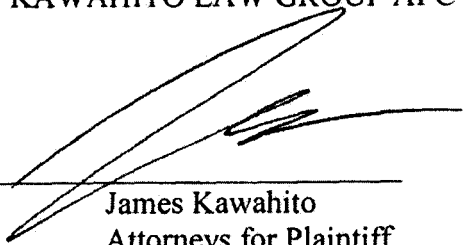
28 ///

1 4. Such other and further relief that the Court may deem just and equitable.
2
3

4 Dated: October 4, 2022

KAWAHITO LAW GROUP APC

5
6 By: _____


James Kawahito
Attorneys for Plaintiff
PUBLIC HEALTH AND SAFETY
ADVOCATES LLC

1 **PROOF OF SERVICE**

2 I am employed in the **County of Los Angeles, State of California**. I am over the age of
3 18 and not a party to this action; my current business address is **300 Corporate Pointe, Suite**
4 **340, Culver City, CA 90230**

4 On October 6, 2022, I served the foregoing document(s) described as:

5 **FIRST AMENDED COMPLAINT FOR PENALTY AND INJUNCTION**

6 on the interested parties in this action as follows:

7 Steven Garrett, Esq.
8 Teraoka & Partners LLP
9 San Francisco Office
10 Four Embarcadero Center
11 Suite 1400
12 San Francisco, CA 94111

Danning Jiang, Esq.
Law Offices of Danning Jiang
271 North First Street
San Jose, California 95113

11 BY THE FOLLOWING MEANS:

12 BY MAIL

13 I placed the envelope(s) with postage thereon fully prepaid in the United States
14 mail, at **Culver City, California**.

14 I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing with the United States Postal Service; the firm
16 deposits the collected correspondence with the United States Postal Service that
17 same day, in the ordinary course of business, with postage thereon fully prepaid,
18 at **Culver City, California**. I placed the envelope(s) for collection and mailing
19 on the above date following ordinary business practices.

18 BY E-MAIL

19 Due to the Covid-19 pandemic our office is working remotely the majority of
20 the week and not able to send physical mail per standard business practices. We
21 will provide a physical copy, upon request only. A true and correct copy of the
22 document listed above was electronically served on the email addresses listed
23 above.

21 Executed on **October 6, 2022, at Culver City, California**.

22 I declare under penalty of perjury under the laws of the State of California that
23 the above is true and correct.

24
25 I declare that I am employed in the office of a member of the bar of this court at
26 whose direction the service was made.

27 
28 Sebastian Burnside