

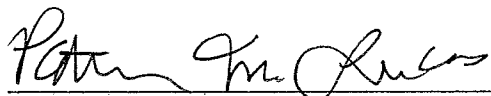
1 In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant
2 JFC International Inc., having agreed through their respective counsel that Judgment be
3 entered pursuant to the terms of their settlement agreement in the form of a Consent
4 Judgment, and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment on December 9, 2014:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure
8 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain
10 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

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IT IS SO ORDERED.

Dated: 12/16/14



JUDGE OF THE SUPERIOR COURT
Patricia Lucas

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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

JFC INTERNATIONAL INC.; *et al.*,

Defendants.

) Case No. 114CV262857
)
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) **[PROPOSED] CONSENT JUDGMENT**
)
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) Action Filed: March 26, 2014
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1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and JFC International Inc.

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

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

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

1.3 JFC International Inc.

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

1.4 General Allegations

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

1.5 Product Description

The products that are covered by this Consent Judgment are defined as “hijiki” type dried seaweed that allegedly contain arsenic including, but not limited to, *Hijiki Dried String Seaweed*, UPC #0 11152 15855 6 and *Wel-Pac Hijiki Dried Seaweed*, UPC #0 11152 03026 5, which are manufactured, imported, distributed, sold and/or offered for sale by Defendant in the State of California, hereinafter the “Products.”

1.6 Notice of Violation

On October 18, 2013, Held served JFC, others and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice

1 that Held alleged JFC was in violation of California Health & Safety Code § 25249.6 for failing to
2 warn consumers that its “hijiki” type dried seaweed exposed users in California to arsenic.

3 **1.7 Complaint**

4 On March 26, 2014, Held filed a complaint in the Superior Court in and for the County of
5 Santa Clara against JFC and Does 1 through 150, *Held v. JFC International Inc., et al.*, Case No.
6 114CV262757 (the “Complaint”), 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 the
8 State of California.

9 **1.8 No Admission**

10 Defendant denies and disputes the material, factual and legal allegations contained in Held’s
11 Notice and 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, its officers, directors, employees, or parent, subsidiary
16 or affiliated entities of any liability, wrongdoing or fact, finding, conclusion, issue of law or violation
17 of law. However, this section shall not diminish or otherwise affect Defendant’s obligations,
18 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 Defendant as to the allegations contained in the Complaint, that venue is proper in
22 the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of
23 this Consent Judgment as a full settlement and resolution of the allegations contained in the
24 Complaint.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean November 30,
27 2014.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standards**

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 As of the Effective Date, all Products manufactured, imported, distributed, sold and/or offered
10 for sale in the State of California by, or on behalf of, JFC shall either be: (a) Products that qualify as
11 Reformulated Products as defined in Section 2.1 above; or (b) Products that carry appropriate
12 Proposition 65 health hazard warnings as described in Section 2.3 below.

13 **2.3 Product Warnings**

14 As of the Effective Date, for all Products other than Reformulated Products, JFC shall provide
15 clear and reasonable warnings as set forth in subsections 2.3(a) and (b). Each warning shall be
16 prominently placed with such conspicuousness as compared with other words, statements, designs, or
17 devices as to render it likely to be read and understood by an ordinary individual under customary
18 conditions before purchase or use. Each warning shall be provided in a manner such that the
19 consumer or user understands to which *specific* Product the warning applies, so as to minimize the
20 risk of consumer confusion. Each warning label listed below shall be written in English and Japanese.

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

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

25 **WARNING:** This product contains chemicals known
26 to the State of California to cause cancer,
27 birth defects and other reproductive
28 harm, including the carcinogen arsenic.

(ii) Point-of-Sale Warnings. Alternatively, JFC may provide warning

1 signs in the form below to its customers in California with instructions to post the warnings in close
2 proximity to the point of display of the Products that are not Reformulated Products. Such instruction
3 sent to JFC's customers shall be sent by certified mail, return receipt requested.

4 **WARNING:** This product contains chemicals known
5 to the State of California to cause cancer,
6 birth defects and other reproductive
7 harm, including the carcinogen arsenic.

8 Where more than one Product is sold in proximity to other like items or to those that do not require a
9 warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be
10 used:¹

11 **WARNING:** This product contains chemicals known
12 to the State of California to cause cancer,
13 birth defects and other reproductive
14 harm, including the carcinogen arsenic.

15 [*list products for which warning is required*]

16 **(b) Mail Order Catalog and Internet Sales.** In the event that JFC sells Products via
17 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that
18 are not Reformulated Products, JFC shall provide warnings for such Products sold via mail order
19 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
20 internet shall identify the *specific* Product to which the warning applies as further specified in
21 Sections 2.3(b)(i) and (ii).

22 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
23 catalog shall be in the same type size or larger than the Product description text within the catalog.
24 The following warning shall be provided on the same page and in the same location as the display
25 and/or description of the Product:

26 **WARNING:** This product contains chemicals known
27 to the State of California to cause cancer,
28 birth defects and other reproductive
 harm, including the carcinogen arsenic.

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location as
2 the display and/or description of the Product, JFC may utilize a designated symbol to cross reference
3 the applicable warning and shall define the term “designated symbol” with the following language on
4 the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

5 **WARNING:** Certain products identified with this
6 symbol ▼ and offered for sale in this
7 catalog contain chemicals known to the
8 State of California to cause cancer, birth
9 defects, and other reproductive harm,
10 including the carcinogen arsenic.

11 The designated symbol must appear on the same page and in close proximity to the display
12 and/or description of the Product. On each page where the designated symbol appears, JFC must
13 provide a header or footer directing the consumer to the warning language and definition of the
14 designated symbol.

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

22 **WARNING:** This product contains chemicals known
23 to the State of California to cause cancer,
24 birth defects and other reproductive
25 harm, including the carcinogen arsenic.

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

WARNING: This product contains chemicals known
 to the State of California to cause cancer,
 birth defects and other reproductive
 harm, including the carcinogen arsenic.

1 (c) **Additional Warning.** In addition to the above prescribed warnings, all Products
2 manufactured, imported, distributed, sold, and/or offered for sale in California by or on behalf of JFC
3 which do not qualify as Reformulated Products shall also contain either the following warning
4 statement or a warning that is substantially similar, which at the minimum shall include a direction to
5 soak the dried seaweed in water for 30 minutes and to rinse or drain the dried seaweed prior to use:

6 **WARNING:** Due to the presence of arsenic, soak
7 the dried seaweed in water for a
8 minimum of 30 minutes and squeeze
9 out the water/rinse thoroughly prior to
 consumption of the seaweed.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty Payments**

12 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a total
13 of \$30,000 in civil penalties in accordance with this section. Each penalty payment will be allocated
14 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
15 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
16 remaining 25% of the penalty remitted to Held. Each penalty payment shall be made within two
17 business days of the date it is due and be delivered to the respective address listed in Section 3.3
18 below. JFC shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due
19 and owing under this section that are not received within two business days of the due date.

20 **3.1.1 Initial Civil Penalty**

21 Within five business days of the mutual execution of this Consent Judgment, or the
22 later of the two execution dates, if different, JFC shall issue a check for its initial civil penalty
23 payments (as provided for in the section above) in the amount of \$20,000 to “Teraoka & Partners
24 LLP”. Teraoka & Partners LLP shall provide The Chanler Group with written confirmation within
25 five business days of receipt that the funds have been deposited in a trust account. Within two
26 business days of the date that this Consent Judgment is approved by the Court, Teraoka & Partners
27 LLP shall issue two separate checks for the initial civil penalty payments to: (a) “OEHHA” in the
28 amount of \$15,000; and (b) “Dr. Anthony E. Held, Client Trust Account” in the amount of \$5,000.

1 **3.1.2 Final Civil Penalty**

2 JFC shall pay a final civil penalty of \$10,000 on or before December 31, 2015. The
3 final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2015 (the
4 “Certification Date”), an officer of JFC provides Held with written certification that, as of the date of
5 such certification and continuing into the future, all Products manufactured, imported, distributed,
6 sold and offered for sale in California by, or on behalf of, Defendant are Reformulated Products. Held
7 must receive any such certification on or before the Certification Date. The certification in lieu of a
8 final civil penalty payment provided by this section is a material term, and time is of the essence. In
9 the event the final civil penalty is not waived in accordance with this section, Defendant shall issue
10 two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$7,500;
11 and (b) “Dr. Anthony Held, Client Trust Account” in the amount of \$2,500. Each check shall be
12 delivered to the respective address listed in Section 3.3 below.

13 **3.2 Reimbursement of Fees and Costs**

14 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. Held then
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
18 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held
19 and his counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure § 1021.5, for all work performed in this matter except fees that
21 may be incurred on appeal or any motion, application for an order to show cause, or other proceeding
22 to enforce a violation of this Consent Judgment. JFC shall, within five business days of the mutual
23 execution of this Consent Judgment by the Parties, or the later of the two execution dates, if different,
24 issue a check payable to “Teraoka & Partners LLP” in the amount of \$41,000 to be held in trust by
25 Teraoka & Partners LLP for The Chanler Group. Teraoka & Partners LLP shall provide The Chanler
26 Group with written confirmation within five business days of receipt that the funds have been
27 deposited in a trust account. Within two business days of the date this Consent Judgment is approved
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1 by the Court, Teraoka & Partners LLP shall issue a check payable to "The Chanler Group" to the
2 address found in 3.3.1(a) below.

3 **3.3 Payment Procedures**

4 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

5 (a) All payments owed to Held and his counsel, pursuant to Sections 3.1
6 through 3.2, shall be delivered to the following payment address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 (b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2,
13 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at
14 the following addresses:

15 For United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

27 With a copy of the checks payable to OEHHA mailed to The Chanler
28 Group at the address set forth above in 3.3.1(a), as proof of payment to
OEHHA.

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 JFC and its parents, subsidiaries, affiliated entities under common ownership, directors,

1 officers, employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly
2 distribute or sell (or have sold) the Products including, but not limited to, their downstream
3 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
4 licensees (“Downstream Releasees”) for any violations or alleged violations that were or could have
5 been asserted under Proposition 65 for unwarned exposures to arsenic from the Products sold by
6 Defendant prior to and including the Effective Date, as set forth in the Notice. Compliance with the
7 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures
8 to arsenic from the Products.

9 **4.2 Held’s Individual Release of Claims**

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

17 **4.3 JFC’s Release of Held**

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

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25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

15 **8. NOTICES**

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

20 To JFC International Inc.:

21 Steven G. Teraoka
22 Teraoka & Partners LLP
23 One Embarcadero Center
24 Suite 1020
25 San Francisco, CA 94111

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

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

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

28 **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

1 and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

5 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

6 The Parties agree to mutually employ their best efforts to support the entry of this agreement
7 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
8 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
9 motion is required to obtain judicial approval of this Consent Judgment, which Held shall draft and
10 file, and Defendant shall join. If any third party objection to the noticed motion is filed, Held and
11 Defendant shall work together to file a joint reply and appear at any hearing before the Court. This
12 provision is a material component of the Consent Judgment and shall be treated as such in the event of
13 a breach. Defendant also represents and warrants that it will spend at least \$10,000 within one year of
14 its signing of this Consent Judgment on activities related to Proposition 65 compliance for the
15 Products, including but not limited to quality control, printing costs, consulting and training.

16 **12. MODIFICATION**

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