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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 (ii) **Point-of-Sale Warnings.** Alternatively, Eden may provide warning  
2 signs in the form below to its customers in California with instructions to retailers in California it  
3 sells to post the warnings in close proximity to the point of display of the Products that are not  
4 Reformulated Products. Such instruction sent to retailers Eden sells to shall be sent by certified  
5 mail, return receipt requested (or some comparable method that provides proof of delivery).

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

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

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

[*list products for which warning is required*]

13 (b) **Mail Order Catalog and Internet Sales.** In the event that Eden sells Products via  
14 mail order catalog and/or the internet, to customers located in California, after December 15, 2015,  
15 that are not Reformulated Products, Eden shall provide warnings for such Products sold via mail  
16 order catalog or the internet to California residents. Warnings given in the mail order catalog or on  
17 the internet shall identify the *specific* Product to which the warning applies as further specified in  
18 Sections 2.3(b)(i) and (ii).

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

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

25 Where it is impracticable to provide the warning on the same page and in the same location  
26 as the display and/or description of the Product, Eden may utilize a designated symbol to cross

27 <sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar  
28 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 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  
7 State of California to cause cancer.

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

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

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

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

25 **WARNING:** This product contains arsenic, known to  
26 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**

28

1 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
2 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
3 issue to be resolved after the material terms of the agreement had been settled. Held then  
4 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
5 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held  
6 and his counsel under general contract principles and the private attorney general doctrine codified  
7 at California Code of Civil Procedure § 1021.5, for all work performed in this matter except fees  
8 that may be incurred on appeal or any motion, application for an order to show cause, or other  
9 proceeding to enforce a violation of this Consent Judgment. Eden shall, within five business days  
10 of the mutual execution of this Consent Judgment by the parties, or the later of the two execution  
11 dates, if different, issue a check in the amount of \$23,500 in the manner provided in Section 3.3  
12 below.

13 **3.3 Payment Timing; Payments Held In Trust**

14 Eden shall deliver the initial civil penalty required by section 3.1.1 of this Consent  
15 Judgment to its counsel, Fox Rothschild, LLP, in trust, within five business days of execution of  
16 this Consent Judgment. Eden’s counsel shall immediately confirm receipt of the initial civil  
17 penalty funds in writing to Held’s counsel and, thereafter, hold the amount paid in trust until such  
18 time as the Court grants the motion for approval of the Parties’ settlement contemplated by Section  
19 5. Within 5 business days of the Effective Date, Eden’s counsel shall deliver all settlement  
20 payments it has held in trust, in a single check made out to “The Chanler Group” to Held’s counsel  
21 at the address provided in Section 3.4. In the event the final civil penalty payment required by  
22 Section 3.1.2 becomes due prior to the Effective Date, then Eden shall deliver the final civil  
23 penalty payment to its attorney to be held in trust until, and disbursed within 5 business days after  
24 the Effective Date.

25 **3.4 Payment Procedures**

26 All payments owed to Held and his counsel, pursuant to Sections 3.1-3.3, shall be  
27 delivered to the following payment address:

28 The Chanler Group



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

1  
2  
3  
4. **CLAIMS COVERED AND RELEASED**

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

5  
6 Held, acting on his own behalf and in the public interest, through this Consent Judgment  
7 releases Eden and its parents, subsidiaries, affiliated entities under common ownership, and each  
8 such entity's current and former directors, officers, employees, and attorneys ("Releasees") and  
9 each entity to whom they directly or indirectly distribute or sell (or have sold) the Products  
10 including, but not limited to, their downstream distributors, wholesalers, customers, retailers,  
11 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any  
12 violations or alleged violations that were or could have been asserted under Proposition 65 for  
13 unwarned exposures to arsenic from the Products sold by Eden prior to and including the Effective  
14 Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes  
15 compliance with Proposition 65 with respect to exposures to arsenic from the Products.

16 4.2 **Held's Individual Release of Claims**

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

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES  
27 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
28 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 **13. AUTHORIZATION**

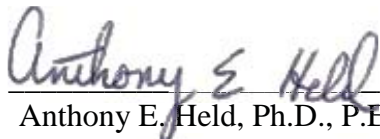
10 The undersigned are authorized to execute this Consent Judgment on behalf of their  
11 respective parties and have read, understood and agree to all of the terms and conditions of this  
12 Consent Judgment.  
13

14 AGREED TO:

AGREED TO:

15  
16 Date: 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.

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 **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: \_\_\_\_\_

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

By:  \_\_\_\_\_

Michael Potter, President  
EDEN FOODS, INC.