

(ENDORSED)
FILED

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David H. Ver... Clerk of the Superior Court
County of Santa Clara, California
County Clerk

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

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

15 Plaintiff,

16 v.

17 HOSODA BROS. INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. _____

114CV268193

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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, *Dried Seaweed*,
26 #4967085241017. All such dried seaweed containing arsenic are referred to collectively
27 hereinafter as "PRODUCTS."
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
2 California.

3 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
7 in the state of California.

8 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 state of California.

12 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
13 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
14 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
15 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
16 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

17 20. HOSODA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as "DEFENDANTS."

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
22 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
23 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
24 occur, in Santa Clara County, and/or because DEFENDANTS conducted, and continue to
25 conduct, business in this county with respect to the PRODUCTS.

26 22. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court "original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

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

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

21 27. On April 16, 2014, plaintiff’s sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to HOSODA and certain public enforcement
23 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
24 arsenic, purchasers and users in the state of California were being exposed to arsenic resulting
25 from the reasonably foreseeable use and consumption of the PRODUCTS, without the
26 individual purchasers and users first having been provided with a “clear and reasonable
27 warning” regarding such toxic exposures, as required by Proposition 65.

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1 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
5 and will continue to occur in the future.

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

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

12 31. DEFENDANTS knew or should have known that the PRODUCTS they
13 manufacture, distribute, and offer for sale or use in California contain arsenic.

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

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

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
20 and consumption of the PRODUCTS expose individuals to arsenic through ingestion.

21 35. DEFENDANTS intended that such exposures to arsenic from the reasonably
22 foreseeable use and consumption of the PRODUCTS would occur by their deliberate, non-
23 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
24 sale or use to individuals in the state of California.

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and other individuals in the state of California who were or who would become
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1 exposed to arsenic through ingestion during the reasonably foreseeable use and consumption of
2 the PRODUCTS.

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

8 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
9 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
10 for each violation.

11 39. As a consequence of the above-described acts, Health and Safety Code
12 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

18 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
20 offering the PRODUCTS for sale or use in California without first providing a "clear and
21 reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et*
22 *seq.*, as to the harms associated with exposures arsenic;

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

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- 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.