

5 FILED  
Superior Court of California  
County of Los Angeles

JUN 20 2018

Sherri R. Carter, Executive Officer/Clerk  
By Ingrid Flores Deputy

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2 Ben Yeroushalmi (SBN 232540)  
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4 **YEROUSHALMI & YEROUSHALMI**  
5 An Association of Independent Law Corporations  
6 9100 Wilshire Boulevard, Suite 240W  
7 Beverly Hills, 90212  
8 Telephone: (310) 623-1926  
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10  
11 Attorneys for Plaintiffs,  
12 Consumer Advocacy Group, Inc.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES

15 CONSUMER ADVOCACY GROUP, INC.,  
16 in the public interest,

17 Plaintiff,

18 v.

19 NEW FRONTIER FOODS, INC., a  
20 Delaware Corporation; MARSHALLS OF  
21 CA, LLC., a business entity form unknown;  
22 THE TJX COMPANIES, INC., a Delaware  
23 Corporation; MARSHALLS OF MA, INC., a  
24 Massachusetts Domestic Profit Corporation;  
25 and DOES 1-20;

26 Defendants.

CASE NO. BC672474

CONSENT JUDGMENT [REDACTED]

Health & Safety Code § 25249.5 *et seq.*

[Assigned For All Purposes to Honorable  
Dalila Corral Lyons in Dept. 20]

Complaint filed: August 15, 2017

27 1. INTRODUCTION

28 1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER  
ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest  
of the public, and Defendant, NEW FRONTIER FOODS, INC. (referred to as "Defendant"  
collective), with each a Party to the action and collectively referred to as "Parties."

1.2 Defendant and Covered Products

CONSENT JUDGMENT [REDACTED]

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**1.6 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations against the Defendant contained in the Complaint, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

**1.7 No Admission**

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any material allegation in the Notices or the Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including without limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment. This Consent Judgment is the product of negotiation and compromise and is

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1 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in  
2 this Action, including future compliance by Defendant with Section 3 of this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means Seaweed Snacks such as "The Seaweed Snack" ; "  
5 Ocean's Halo" ; Sriracha; Five 140Z (4G) Snack Packs New Weight .70 (20G); Product of  
6 Korea; Distributed by New Frontier Foods, Inc.; 1424 Chapin Ave. Suite 3, Burlingame CA  
7 94010; Marshalls® 1285-060064961-000399-06-2; Exterior UPC: 851899005429; Servings  
8 Size; One 4g package; Individual package UPC: 851899005405" purchased from and/or sold by  
9 Defendant.

10 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
11 Court.

12 2.3 "Lead" means lead and lead compounds.

13 2.5 "Listed Chemicals" means Lead.

14 2.6 "Notice" means Plaintiff's December 2, 2016 Notice.

15 **3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.**

16 3.1. Within sixty (60) days after the Effective Date, Defendant shall not sell, offer for  
17 sale in California, or ship for sale in California any Covered Products unless the Defendant has  
18 either (a) reformulated the Covered Products to the point where the level of the Lead does not  
19 exceed more than 75 ppb, or (b) if the Seaweed Covered Products exceed 75 parts per billion  
20 (ppb) of Lead, provide a Proposition 65 compliant warning on the Seaweed Covered Products.  
21 Any warning provided pursuant to this section shall be affixed to the packaging of, or directly  
22 on, the Covered Products, and be prominently placed with such conspicuousness as compared  
23 with other words, statements, designs, or devices as to render it likely to be read and understood  
24 by an ordinary individual under customary conditions before purchase or use. Any warning  
25 compliant with Proposition 65 and its implementing regulations shall satisfy the requirements of  
26 this Section, though the Parties agree that the following warning complies with Proposition 65:

1           △ **WARNING:** Consuming this product can expose you to chemical(s) including lead  
2 which is [are] known to the State of California to cause cancer and birth defects or other  
3 reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

4           4.     **SETTLEMENT PAYMENT**

5           4.1     **Payment and Due Date:** Within 10 days of the Effective Date, Defendant shall  
6 pay a total of eighty-five thousand dollars and zero cents (\$85,000) in full and complete  
7 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any  
8 other claim for costs, expenses or monetary relief of any kind for claims that were or could have  
9 been asserted in the Notice or Complaint, as follows:

10           4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling  
11 \$15,430.00 as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

12                   (a) Defendant will issue one check made payable to the State of  
13 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of  
14 \$11,572.50 representing 75% of the total civil penalty and Defendant will issue a second check  
15 to CAG in the amount of \$3,857.50 representing 25% of the total civil penalty;

16                   (b) Separate 1099s shall be issued for each of the above payments:  
17 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
18 0284486) in the amount of \$11,572.50. Defendant will also issue a 1099 to CAG in the amount  
19 of \$3,857.50 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,  
20 Suite 240W, Beverly Hills, California 90212.

21           4.1.2 **Additional Settlement Payments:** Defendant shall pay \$11,570.00 as  
22 additional settlement payments to "Consumer Advocacy Group, Inc." pursuant to Health &  
23 Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use  
24 this payment as follows, eighty five percent (85%) for fees of investigation, purchasing and  
25 testing for Proposition 65 Listed Chemicals in various products, and for expert fees for  
26 evaluating exposures through various mediums, including but not limited to consumer product,  
27 occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of

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1 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary  
2 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but  
3 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during  
4 investigation and litigation to reduce the public's exposure to Proposition 65 Listed Chemicals  
5 by notifying those persons and/or entities believed to be responsible for such exposures and  
6 attempting to persuade those persons and/or entities to reformulate their products or the source of  
7 exposure to completely eliminate or lower the level of Proposition 65 Listed Chemicals  
8 including but not limited to costs of documentation and tracking of products investigated, storage  
9 of products, website enhancement and maintenance, computer and software maintenance,  
10 investigative equipment, CAG's member's time for work done on investigations, office supplies,  
11 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall  
12 provide to the Attorney General copies of documentation demonstrating how the above funds  
13 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such  
14 additional settlement payment.

15  
16 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall pay  
17 \$58,000 payable to "Yeroushalmi & Yeroushalmi" as complete reimbursement for any and all  
18 reasonable investigation fees and costs, attorneys' fees, expert fees, and any and all other costs  
19 and expenses incurred as a result of investigating, bringing this matter to the Defendant's  
20 attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining  
21 court approval of this Consent Judgment.

22 **4.2** Other than the payment to OEHHA described above, all payments referenced in  
23 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
24 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
25 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard  
26 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.  
27 Defendant shall provide written confirmation to CAG upon payment to OEHHA.

1 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
3 behalf of itself and in the public interest, and Defendant and their officers, directors, insurers,  
4 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
5 companies, and their successors and assigns ("Defendant's Releasees"), and all entities to whom  
6 Defendant directly or indirectly distributed or sold Covered Products, including, but not limited  
7 to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
8 licensees, and the successors and assigns of any of them, who may use, maintain, distribute or  
9 sell Covered Products ("Downstream Defendant Releasees"), of all claims alleged or that could  
10 have been alleged for alleged exposures to the Listed Chemicals from the Covered Products  
11 manufactured, distributed or sold by Defendant, Defendant's Releasees, and/or Downstream  
12 Defendant Releasees up to and including the Effective Date. Defendant's compliance with this  
13 Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged  
14 exposures to the Listed Chemical from the Covered Products manufactured, distributed, or sold  
15 by Defendant, Defendant Releasees or Downstream Defendant Releasees. Nothing in this  
16 Section affects CAG's right to commence or prosecute an action under Proposition 65 against  
17 any person other than Defendant, Defendant Releasees, or Downstream Defendant Releasees.  
18 Defendant, Defendant Releasees and Downstream Defendant Releasees are hereafter collectively  
19 referred to as the "Released Parties".  
20

21 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
22 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
23 indirectly, any form of legal action and releases all claims, including, without limitation, all  
24 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
25 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
26 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
27 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual  
28

1 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the  
2 Covered Products manufactured, distributed or sold by the Released Parties up to the Effective  
3 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from  
4 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby  
5 waives any and all rights and benefits which it now has, or in the future may have, conferred  
6 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold  
7 by the Released Parties up to the Effective Date arising from any violation of Proposition 65 or  
8 any other statutory or common law regarding the failure to warn about exposure to the Listed  
9 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California  
10 Civil Code, which provides as follows:

11           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
12           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
13           FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
14           KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
                  OR HER SETTLEMENT WITH THE DEBTOR.

15 CAG understands and acknowledges that the significance and consequence of this waiver of  
16 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
17 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
18 violation of Proposition 65 or any other statutory or common law regarding the Covered  
19 Products manufactured, distributed or sold by the Released Parties up to the Effective Date  
20 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the  
21 Covered Products, CAG will not be able to make any claim for those damages, penalties or other  
22 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these  
23 consequences for any such Claims arising from any violation of Proposition 65 or any other  
24 statutory or common law regarding the failure to warn about exposure to the Listed Chemical  
25 from the Covered Products as may exist as of the date of this release but which CAG does not  
26 know exist, and which, if known, would materially affect their decision to enter into this Consent



1 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,  
2 error, negligence, or any other cause. The scope of this entire release section is only limited to  
3 covered products sold and/or distributed by defendant (New Frontier Foods, Inc).

4 6. ENFORCEMENT OF JUDGMENT

5 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
6 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
7 California, Los Angeles County, enforce the terms and conditions contained herein. A Party  
8 may enforce any of the terms and conditions of this Consent Judgment only after that Party first  
9 provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of  
10 this Consent Judgment, and attempts to resolve such Party's failure to comply in an open and  
11 good faith manner.

12 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
13 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of  
14 Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a)  
15 the name of the Covered Products; (b) specific dates when the Covered Product was sold in  
16 California; (c) the store or other place at which the Covered Product was available for sale to  
17 consumers; and (d) all test data obtained by CAG regarding the Covered Products and  
18 identification of the Listed Chemicals tested, and (e) any other evidence or support for the  
19 allegations in the NOV.  
20

21 6.2.1 **Non-Contested NOV.** CAG shall take no further action of any kind  
22 regarding the alleged violation if, within 60 days of receiving such NOV, Defendant  
23 serves a Notice of Election ("NOE") not to contest the NOV that meets one of the  
24 following conditions:

25 (a) A statement that the Covered Product was manufactured or  
26 shipped by Defendant for sale in California prior to the Effective Date; or

1 (b) A statement that since receiving the NOV Defendant has taken  
2 corrective action by either: (i) taking all steps necessary to bring the sale of the product  
3 into compliance under the terms of this Consent Judgment; or (ii) requesting that its  
4 customers or stores in California, as applicable, remove the Covered Product identified in  
5 the NOV from sale in California and destroy or return the Covered Product to Defendant  
6 or vendor, as applicable; or (iii) refute the information provided in the NOV.

7 6.2.2 **Contested NOV.** Defendant may serve a Notice of Election (“NOE”)  
8 informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

9 (a) In its election, Defendant may request that the sample(s) of  
10 Covered Product tested by CAG be subject to confirmatory testing at an EPA- accredited  
11 laboratory.

12 (b) If the confirmatory testing establishes that the Covered Products do  
13 not contain the Listed Chemicals in excess of the safe harbor limits for the Listed  
14 Chemicals as determined by CAG, CAG shall take no further action regarding the alleged  
15 violation. If the testing does not establish compliance with the safe harbor limits as  
16 described above, Defendant may withdraw its NOE to contest the violation and may  
17 serve a new NOE pursuant to Section 6.2.1.

18 (c) If Defendant does not withdraw a NOE to contest the NOV, the  
19 Parties shall meet and confer for a period of no less than 30 days before CAG may seek  
20 an order enforcing the terms of this Consent Judgment.

21 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the  
22 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.  
23

24 **7. ENTRY OF CONSENT JUDGMENT**

25 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
26 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
27

1 Defendant waive their respective rights to a hearing and trial on the allegations in the Notice and  
2 Complaint.

3           7.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent  
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
5 and become null and void, and the actions shall revert to the status that existed prior to the  
6 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
7 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
8 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
9 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
10 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

11 8. MODIFICATION OF JUDGMENT

12           8.1 This Consent Judgment may be modified only upon written agreement of the  
13 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
14 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

15           8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith  
16 to meet and confer with the other Party prior to filing a motion to modify the Consent  
17 Judgment.  
18

19  
20 9. RETENTION OF JURISDICTION

21           9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
22 terms of this Consent Judgment under Code of Civil Procedure § 664.6.  
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1 10. LIMITED TO CALIFORNIA

2 10.1 This Consent Judgment shall have no effect on Covered Products sold or  
3 distributed outside the State of California.

4 11. SERVICE ON THE ATTORNEY GENERAL

5 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
6 California Attorney General so that the Attorney General may review this Consent Judgment  
7 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the  
8 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may  
9 then submit it to the Court for approval.

10 12. ATTORNEY FEES

11 12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its  
12 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

13 13. GOVERNING LAW

14 13.1 The validity, construction and performance of this Consent Judgment shall be  
15 governed by the laws of the State of California, without reference to any conflicts of law  
16 provisions of California law.

17 13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
18 inapplicable by reason of law generally, or its implementing regulations are modified as to the safe  
19 harbor language currently set forth in California Code of Regulations 25603.2 or the No Significant  
20 Risk Levels and Specific Regulatory Levels set forth in California Code of Regulations Sections  
21 25705 and 25805, or if any of the provisions of this Consent Judgment are rendered inapplicable  
22 or are no longer required as a result of any such repeal or preemption, or rendered inapplicable  
23 by reason of law generally as to the Covered Products, then Defendant may provide written  
24 notice to CAG of any asserted change in the law, and shall have no further obligations pursuant  
25 to this Consent Judgment with respect to, and to the extent that, the Covered Products are so  
26

1 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any  
2 obligation to comply with any other pertinent state or federal law or regulation.

3  
4 13.3 The Parties, including their counsel, have participated in the preparation of this  
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
8 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
9 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
10 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
11 resolved against the drafting Party should not be employed in the interpretation of this Consent  
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

13 **14. EXECUTION AND COUNTERPARTS**

14 14.1 This Consent Judgment may be executed in counterparts and by means of  
15 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
16 one document and have the same force and effect as original signatures.

17 **15. NOTICES**

18 15.1 Any notices under this Consent Judgment shall be by delivery of First Class Mail.

19 If to CAG:

20  
21 Reuben Yeroushalmi  
22 Yeroushalmi & Yeroushalmi  
23 9100 Wilshire Boulevard, Suite 240W  
24 Beverly Hills, CA 90212

25 If to Defendant New Frontier Foods, Inc.:

26 Melissa A. Jones  
27 STOEL RIVES LLP  
28 500 Capitol Mall, Ste 1600  
Sacramento, CA 95814

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1 With a copy to:

2 William F. Blankenship III  
3 Blankenship Law Firm  
4 3710 Rawlins Street, Suite 1230  
5 Dallas, Texas 75219

6 16. AUTHORITY TO STIPULATE

7 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
8 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf  
9 of the Party represented and legally to bind that party.

11 AGREED TO:

12 Date: April 27, 2018

13 

14 Name: Michael Marcus

15 Title: Director  
16 CONSUMER ADVOCACY GROUP,  
17 INC.

11 AGREED TO:

12 Date: 4-28-2018

13 

14 Name: Robert Mock

15 Title: CEO  
16 NEW FRONTIER FOODS, INC.

18  
19  
20 IT IS SO ORDERED.

21  
22 Date: JUN 20 2018

23 

24 JUDGE OF THE SUPERIOR COURT  
25 **DALILA CORRAL LYONS**

32 06/25/2018