1 2 3 4 5 6 7 8	Reuben Yeroushalmi (SBN 193981) Ben Yeroushalmi (SBN 232540) Peter T. Sato (SBN 238486) YEROUSHALMI & YEROUSHALMI An Association of Independent Law Corporations 9100 Wilshire Boulevard, Suite 240W Beverly Hills, 90212 Telephone: (310) 623-1926 Facsimile: (310) 623-1930 Attorneys for Plaintiffs, Consumer Advocacy Group, Inc.	
9	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
10	COUNTY OF LOS ANGELES	
11	CONSUMER ADVOCACY GROUP, INC.,	CASE NO. BC672474
12	in the public interest,	CONSENT JUDGMENT [PROPOSED]
13	Plaintiff,	Health & Safety Code § 25249.5 et seq.
14 15 16 17 18 19	NEW FRONTIER FOODS, INC., a Delaware Corporation; MARSHALLS OF CA, LLC., a business entity form unknown; THE TJX COMPANIES, INC., a Delaware Corporation; MARSHALLS OF MA, INC., a Massachusetts Domestic Profit Corporation; and DOES 1-20;	[Assigned For All Purposes to Honorable Dalila Corral Lyons in Dept. 20] Complaint filed: August 15, 2017
20	Defendants.	
21 22 23 24 25	 INTRODUCTION This Consent Judgment is entered into by and between Plaintiff, CONSUMI ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the inter- of the public, and Defendant, NEW FRONTIER FOODS, INC. (referred to as "Defendant") 	
25 26	collective), with each a Party to the action and collectively referred to as "Parties."	
27	1.2 Defendant and Covered Products	
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CONSENT JUDGMENT [PROPOSED]

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1.2.1 CAG alleges that Defendant is a Delaware corporation which employs ten or more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.2.2 CAG alleges that Defendant manufactures, causes to be manufactured, sells, or distributes certain seaweed snacks in California.

1.3 **Listed Chemicals**

1.3.1 Lead and Lead Compounds have been listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

1.4 **Notice of Violation**.

- 1.4.1 On or about December 2, 2016, CAG served Defendant and various public enforcement agencies with a document titled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("December 2, 2016 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and Lead Compounds, contained in certain Seaweed Snacks sold by Defendant in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the December 2, 2016 Notice.
- 1.4.2 The 60-day notice described in paragraph 1.4.1 above is hereafter referred to as the "Notice".

1.5 Complaint.

On August 15, 2017, CAG filed a Complaint against Defendant for civil penalties and injunctive relief (the "Complaint") in Los Angeles County Superior Court, Case No. BC672474, alleging that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to Lead in certain seaweed snacks Defendant distributed and/or sold in California.

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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

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

2. **DEFINITIONS**

- 2.1 "Covered Products" means Seaweed Snacks such as "The Seaweed Snack"; "Ocean's Halo"; Sriracha; Five 140Z (4G) Snack Packs New Weight .70 (20G); Product of Korea; Distributed by New Frontier Foods, Inc.; 1424 Chapin Ave. Suite 3, Burlingame CA 94010; Marshalls® 1285-060064961-000399-06-2; Exterior UPC: 851899005429; Servings Size; One 4g package; Individual package UPC: 851899005405" purchased from and/or sold by Defendant.
- 2.2 "Effective Date" means the date that this Consent Judgment is approved by the Court.
 - 2.3 "Lead" means lead and lead compounds.
 - 2.5 "Listed Chemicals" means Lead.
 - 2.6 "Notice" means Plaintiff's December 2, 2016 Notice.

3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.

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

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

4. SETTLEMENT PAYMENT

- 4.1 **Payment and Due Date**: Within 10 days of the Effective Date, Defendant shall pay a total of eighty-five thousand dollars and zero cents (\$85,000) in full and complete settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or could have been asserted in the Notice or Complaint, as follows:
- 4.1.1 **Civil Penalty**: Defendant shall issue two separate checks totaling \$15,430.00 as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:
- (a) Defendant will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$11,572.50 representing 75% of the total civil penalty and Defendant will issue a second check to CAG in the amount of \$3,857.50 representing 25% of the total civil penalty;
- (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$11,572.50. Defendant will also issue a 1099 to CAG in the amount of \$3,857.50 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.
- 4.1.2 Additional Settlement Payments: Defendant shall pay \$11,570.00 as additional settlement payments to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of

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

- Reimbursement of Attorney Fees and Costs: Defendant shall pay \$58,000 payable to "Yeroushalmi & Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of investigating, bringing this matter to the Defendant's attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval of this Consent Judgment.
- 4.2 Other than the payment to OEHHA described above, all payments referenced in paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall provide written confirmation to CAG upon payment to OEHHA.

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5. MATTERS COVERED BY THIS CONSENT JUDGMENT

- 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest, and Defendant and their officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies, and their successors and assigns ("Defendant's Releasees"), and all entities to whom Defendant directly or indirectly distributed or sold Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, and the successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), of all claims alleged or that could have been alleged for alleged exposures to the Listed Chemicals from the Covered Products manufactured, distributed or sold by Defendant, Defendant's Releasees, and/or Downstream Defendant Releasees up to and including the Effective Date. Defendant's compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to the Listed Chemical from the Covered Products manufactured, distributed, or sold by Defendant, Defendant Releasees or Downstream Defendant Releasees. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person other than Defendant, Defendant Releasees, or Downstream Defendant Releasees. Defendant, Defendant Releasees and Downstream Defendant Releasees are hereafter collectively referred to as the "Released Parties".
- 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual

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

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

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

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

6. ENFORCEMENT OF JUDGMENT

- 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of California, Los Angeles County, enforce the terms and conditions contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment, and attempts to resolve such Party's failure to comply in an open and good faith manner.
- Notice of Violation. Prior to bringing any motion, order to show cause, or other proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a) the name of the Covered Products; (b) specific dates when the Covered Product was sold in California; (c) the store or other place at which the Covered Product was available for sale to consumers; and (d) all test data obtained by CAG regarding the Covered Products and identification of the Listed Chemicals tested, and (e) any other evidence or support for the allegations in the NOV.
 - 6.2.1 **Non-Contested NOV.** CAG shall take no further action of any kind regarding the alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of Election ("NOE") not to contest the NOV that meets one of the following conditions:
 - (a) A statement that the Covered Product was manufactured or shipped by Defendant for sale in California prior to the Effective Date; or

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- (b) A statement that since receiving the NOV Defendant has taken corrective action by either: (i) taking all steps necessary to bring the sale of the product into compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores in California, as applicable, remove the Covered Product identified in the NOV from sale in California and destroy or return the Covered Product to Defendant or vendor, as applicable; or (iii) refute the information provided in the NOV.
- **Contested NOV.** Defendant may serve a Notice of Election ("NOE") informing CAG of its election to contest the NOV within 60 days of receiving the NOV.
- (a) In its election, Defendant may request that the sample(s) of Covered Product tested by CAG be subject to confirmatory testing at an EPA- accredited laboratory.
- (b) If the confirmatory testing establishes that the Covered Products do not contain the Listed Chemicals in excess of the safe harbor limits for the Listed Chemicals as determined by CAG, CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with the safe harbor limits as described above, Defendant may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.
- (c) If Defendant does not withdraw a NOE to contest the NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Consent Judgment.
- 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

7. ENTRY OF CONSENT JUDGMENT

7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and Defendant waive their respective rights to a hearing and trial on the allegations in the Notice and Complaint.

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

8. MODIFICATION OF JUDGMENT

- 8.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court.
- 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9. RETENTION OF JURISDICTION

9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this Consent Judgment under Code of Civil Procedure § 664.6.

10. LIMITED TO CALIFORNIA

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

11. SERVICE ON THE ATTORNEY GENERAL

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

12. ATTORNEY FEES

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

13. GOVERNING LAW

- 13.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.
- 13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or its implementing regulations are modified as to the safe harbor language currently set forth in California Code of Regulations 25603.2 or the No Significant Risk Levels and Specific Regulatory Levels set forth in California Code of Regulations Sections 25705 and 25805, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so

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

The Parties, including their counsel, have participated in the preparation of this

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Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent

EXECUTION AND COUNTERPARTS 14.

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

Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15. NOTICES

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

If to CAG:

Reuben Yeroushalmi Yeroushalmi & Yeroushalmi 9100 Wilshire Boulevard, Suite 240W Beverly Hills, CA 90212

If to Defendant New Frontier Foods, Inc.:

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

1	With a copy to:	
2	William F. Blankenship III	
3	Blankenship Law Firm	
4	3710 Rawlins Street, Suite 1230 Dallas, Texas 75219	
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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	
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10	of the Party represented and legally to bind that party.	
11	AGREED TO:	
12	Date: April 27, 2018 Date: 4-28-2018	
13	To Man	
14	Robert Mock	
15	Name: Michael Marcus Name: Robert Mock	
16	Title: CEO NEW FRONTIER FOODS, INC.	
17	INC.	
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20	IT IS SO ORDERED.	
21	II IS SO ORDERED.	
22	Deve	
23	Date:	
24	JUDGE OF THE SUPERIOR COURT	
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