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10 Attorneys for Plaintiffs,
11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

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

16 Plaintiff,

17 v.

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

25 Defendants.

26 CASE NO. BC672474

27 **CONSENT JUDGMENT [PROPOSED]**

28 Health & Safety Code § 25249.5 *et seq.*

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

Complaint filed: August 15, 2017

1. INTRODUCTION

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**

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:
27

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

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
27

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.
23
24
25
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27

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
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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

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.
10

11 AGREED TO:

AGREED TO:

12 Date: April 27, 2018

Date: 4-28-2018

13 *Michael Marcus*

Robert Mock

14 Name: Michael Marcus

Name: Robert Mock

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

Title: CEO
NEW FRONTIER FOODS, INC.

18
19
20 **IT IS SO ORDERED.**

21
22 Date: _____

23 JUDGE OF THE SUPERIOR COURT
24
25
26
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