

1 Reuben Yeroushalmi (SBN 193981)
2 **YEROUSHALMI & YEROUSHALMI**
3 An Association of Independent Law Corporations
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, California 90212
6 Telephone: 310.623.1926
7 Facsimile: 310.623.1930

8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,
14 Plaintiff,

15 v.

16 MITSUWA CORPORATION, a California
17 Corporation;
18 CENTRAL BOEKI CALIF., LTD., a
19 California Corporation;
20 PAX'S DISTRIBUTORS, a Business Entity
21 Form Unknown;
22 and DOES 1-60

23 Defendants.

CASE NO. 20STCV47785

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

24 **1. INTRODUCTION**

25 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
26 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
27
28

1 of the public, and defendant, PAX’S DISTRIBUTORS (hereinafter referred to as “Defendant” or
2 “Settling Defendant”), with each a Party to the action collectively referred to as “Parties.”

3 **1.2 Defendant and Products**

4 1.2.1 Defendant is a California corporation which employs ten or more persons.
5 Defendant distributed, and sold Filefish including but not limited to: Seasoned Filefish Cutted”;
6 “S-Trust (Wasabi Kawahagi)”; “Net Wt. 0.63 oz (18 g)”; ITEM#: PC18652”; “Distributed by
7 Pax’s”; “UPC 4 562486 042913”; “Product of Japan” (Hereinafter referred to as the “Covered
8 Products”)

9 1.2.2 For purposes of this Consent Judgment, Defendant is deemed a person in
10 the course of doing business in California and are subject to the provisions of the Safe Drinking
11 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
12 (“Proposition 65”).

13 **1.3 Chemicals of Concern**

14 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
15 California to cause cancer and/or birth defects or other reproductive harm.

16 **1.4 Notices of Violation**

17 1.4.1 1.4.5 On or about July 22, 2020 (Attorney General Notice # 2020-
18 01785) , CAG served a “60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water
19 and Toxic Enforcement Act of 1986” (“July 22, 2020 Notice”) that provided the recipients with
20 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
21 California of exposures to the Listed Chemical Lead allegedly contained in Filefish. To the best
22 of the Parties’ knowledge, no public enforcer has commenced or diligently prosecuted the
23 allegations set forth in the July 22, 2020 Notice. (referred to as the “Notice”)

24 **1.5 Complaint**

25 1.5.1 1.5.1 On December 15, 2020 CAG filed a Complaint for civil penalties
26 and injunctive relief (“Complaint”) in Los Angeles County Superior Court, Case No.
27 20STCV47785 against Settling Defendant based on the Notice. The Complaint alleges, among
28

1 other things, that Settling Defendant violated Proposition 65 by failing to give clear and
2 reasonable warnings of alleged exposure to the Listed Chemicals contained in Filefish products
3 manufactured, imported, distributed, and/or sold by Settling Defendants in California.

4 **1.6 Consent to Jurisdiction**

5 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
6 has jurisdiction over the allegations of violations contained in the Complaint and personal
7 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
8 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
9 full settlement and resolution of the allegations contained in cause of action one of the Complaint
10 and of all claims which were or could have been raised by any person or entity based in whole or
11 in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

12 **1.7 No Admission**

13 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
14 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
15 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
16 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
17 the Complaint (each and every allegation of which Defendant denies), any fact, conclusion of
18 law, issue of law or violation of law, including without limitation, any admission concerning any
19 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
20 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
21 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
22 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
23 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
24 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
25 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
26 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
27 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
28

1 other or future legal proceeding, except as expressly provided in this Consent Judgment.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means products specifically identified in Paragraph 1.2.1 sold
4 or supplied by Defendant Pax’s Distributors.

5 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
6 Court.

7 2.3 “Lead” means Lead and Lead Compounds.

8 2.4 “Listed Chemicals” means Lead.

9 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
10 **WARNINGS.**

11 3.1 After the Effective Date, Defendant shall not import, sell in California, offer for sale in
12 California, or ship for sale in California any Covered Products unless the level of Lead does not
13 exceed 20 parts per billion (“ppb”), unless Proposition 65 compliant warnings are used as set
14 forth in the following paragraphs.

15 3.2 For any Covered Products that exceeds their respective levels of Lead that are
16 placed into the stream of commerce in California after the Effective Date, Defendant must
17 provide a Proposition 65 compliant warning for the Covered Products as set forth below. Any
18 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
19 Covered Products, and be prominently placed with such conspicuousness as compared with other
20 words, statements, designs, or devices as to render it likely to be read and understood by an
21 ordinary individual under customary conditions before purchase or use. The warning must be set
22 off from other surrounding information, enclosed in a box. Where the packaging of the Covered
23 Product includes consumer information as defined by California Code of Regulations title 27
24 §25600.1(c) in a language other than English, the warning must also be provided in that language
25 in addition to English. The Parties agree that the following warning language shall constitute
26 compliance with Proposition 65 with respect to the alleged Lead in the Covered Products placed
27 into the steam of commerce by Defendant after the Effective Date:
28

1 **WARNING:** Consuming this product can expose you to Lead, a
2 chemical known to the State of California to cause cancer and birth
3 defects or other reproductive harm. For more information go to
4 www.P65Warnings.ca.gov/food.

5 3.3 For any Covered Products still existing in the Defendant's inventory as of the
6 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
7 Covered Products does not exceed their respective level of Lead. Any warning provided pursuant
8 to this section shall comply with the warning requirements under Section 3.2 above.

9 3.4 For any Covered Product where the Defendant uses a consumer product sign, or
10 label, to provide a warning, which includes consumer information in a language other than
11 English, the warning must also be provided in that foreign language in addition to English.
12 Should Defendant sell or distribute any Covered Product through the internet or provide retail
13 display material, the warning will be posted at each point of display of the product or in the
14 manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601 and
15 25602, as they may be subsequently amended.

16 3.5 Changes in the law and regulations applicable to Prop 65 occurring after this date
17 shall be incorporated into the terms of this Consent Judgment.

18 **4. SETTLEMENT PAYMENT**

19 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date but not
20 sooner than April 17, 2023, Defendant shall pay a total of one hundred and eighty thousand
21 dollars (\$180,000.00) in full and complete settlement of all monetary claims by CAG related to
22 the Notice, as follows:

23 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling seventeen
24 thousand one hundred and fifty-two dollars (\$17,152.00) as penalties pursuant to Health &
25 Safety Code § 25249.12:

26 (a) Defendant will issue a check made payable to the State of California's
27 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of twelve
28 thousand eight hundred and sixty-four dollars (\$12,864.00) representing 75% of the total penalty

1 and Defendant will issue a separate check to CAG in the amount of four thousand two hundred
2 and eighty-eight dollars (\$4,288.00) representing 25% of the total penalty; and

3 (b) Separate 1099s shall be issued for each of the above payments:

4 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
5 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
6 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

7 4.1.2 **Additional Settlement Payments:** Defendant shall make a separate
8 payment, in the amount of twelve thousand eight hundred and forty-eight dollars (\$12,848.00) as
9 an additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health &
10 Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant
11 will issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
12 payment as follows, eighty percent (80%) for fees of investigation, purchasing and testing for
13 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures
14 through various mediums, including but not limited to consumer product, occupational, and
15 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
16 retaining experts who assist with the extensive scientific analysis necessary for those files in
17 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding
18 attorney fees; twenty percent (20%) for administrative costs incurred during investigation and
19 litigation to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those
20 persons and/or entities believed to be responsible for such exposures and attempting to persuade
21 those persons and/or entities to reformulate their products or the source of exposure to
22 completely eliminate or lower the level of Proposition 65 listed chemicals including but not
23 limited to costs of documentation and tracking of products investigated, storage of products,
24 website enhancement and maintenance, computer and software maintenance, investigative
25 equipment, CAG’s member’s time for work done on investigations, office supplies, mailing
26 supplies and postage. Within 30 days of a request from the Attorney General, CAG shall provide
27 to the Attorney General copies of documentation demonstrating how the above funds have been
28

1 spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional
2 settlement payment.

3 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay one
4 hundred and fifty thousand dollars (\$150,000.00) to “Yeroushalmi & Yeroushalmi” as
5 reimbursement for reasonable investigation fees and costs, attorneys’ fees, and any other costs
6 incurred as a result of investigating, bringing this matter to Defendant’s attention, litigating, and
7 negotiating a settlement in the public interest.

8 4.2 Other than the payment to OEHHA described above, all payments referenced in
9 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
10 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
11 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
12 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
13 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
14 payment to OEHHA was delivered.

15 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
17 behalf of itself and in the public interest and Defendant for failure to provide Proposition 65
18 warning of exposure to Lead from the Covered Products as set forth in the Notice, and fully
19 resolves all claims that have been or could have been asserted against Defendant in this action up
20 through the Effective Date for failure to provide Proposition 65 warnings for the Covered
21 Products regarding Lead. CAG, on behalf of itself and in the public interest, hereby discharges
22 Defendant, and their respective officers, directors, insurers, employees, parents, shareholders,
23 divisions, subdivisions, subsidiaries, and their successors and assigns (“Defendant Releasees”)
24 and all customers, retailers, and downstream entities in the distribution chain of the Covered
25 Products to whom Defendant distributed or sold Covered Products, and the predecessors,
26 successors and assigns of any of them, and all of their respective officers, directors, shareholders,
27 members, managers, employees, agents only as to Covered Products sold by the Defendant
28

1 (collectively, “Downstream Releasees”), for all Covered Products placed into the stream of
2 commerce up through the Effective Date for violations of Proposition 65 based on exposure to
3 Lead from the Covered Products. Defendant’s compliance with the terms of this Consent
4 Judgment shall be deemed to constitute compliance with Proposition 65 regarding alleged
5 exposures to Lead from the Covered Products. Nothing in this Section affects CAG’s right to
6 commence or prosecute an action under Proposition 65 against any person other than Defendant
7 Releasees or Downstream Releasees after the Effective Date.

8 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
10 indirectly, any form of legal action and releases all claims, including, without limitation, all
11 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
12 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
13 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
14 fixed or contingent (collectively “Claims”), against the Released Parties arising from any
15 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
16 about exposure to Lead from the Covered Products. In furtherance of the foregoing, as to alleged
17 exposures to Lead from the Covered Products, CAG on behalf of itself only, hereby waives any
18 and all rights and benefits which it now has, or in the future may have, conferred upon it with
19 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
20 law regarding the failure to warn about exposure to Lead from the Covered Products by virtue of
21 the provisions of section 1542 of the California Civil Code, which provides as follows:
22

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

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

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
2 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
3 about exposure to Lead from the Covered Products, including but not limited to any exposure to,
4 or failure to warn with respect to exposure to Lead from the Covered Products, CAG will not be
5 able to make any claim for those damages against Released Parties. Furthermore, CAG
6 acknowledges that it intends these consequences for any such Claims arising from any violation
7 of Proposition 65 or any other statutory or common law regarding the failure to warn about
8 exposure to Lead from Covered Products as may exist as of the date of this release but which
9 CAG does not know exist, and which, if known, would materially affect their decision to enter
10 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
11 ignorance, oversight, error, negligence, or any other cause.

12 **6. ENTRY OF CONSENT JUDGMENT**

13 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
14 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
15 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.
16

17 6.2 The Parties shall make all reasonable efforts possible to have the Consent
18 Judgment approved by the Court.

19 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
20 Judgment and any and all prior agreements between the Parties merged herein shall terminate
21 and become null and void, and the actions shall revert to the status that existed prior to the
22 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
23 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
24 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
25 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
26 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.
27
28

1 **7. MODIFICATION OF JUDGMENT**

2 7.1 This Consent Judgment may be modified only upon written agreement of the
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **8. RETENTION OF JURISDICTION**

8 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
9 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

10 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
11 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

12 **10. SERVICE ON THE ATTORNEY GENERAL**

13 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
14 California Attorney General so that the Attorney General may review this Consent Judgment
15 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
16 has received the aforementioned copy of this Consent Judgment, and in the absence of any
17 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
18 approve this Consent Judgment.

19 **11. ATTORNEY FEES**

20 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
21 own costs and attorney fees in connection with this action.

22 **12. GOVERNING LAW**

23 12.1 The validity, construction and performance of this Consent Judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts of law
25 provisions of California law.

26 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California. In the event that Proposition 65 is amended, repealed, preempted, or is otherwise
28

1 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
2 Judgment are rendered inapplicable or are no longer required as a result of any such amendment,
3 repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered
4 Products, then any Defendant subject to this Consent Judgment may provide written notice to
5 CAG of any asserted change in the law, and shall have no further obligations pursuant to this
6 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.
7 Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any obligation
8 to comply with any pertinent state or federal law or regulation.

9 12.3 The Parties, including their counsel, have participated in the preparation of this
10 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
11 Consent Judgment was subject to revision and modification by the Parties and has been accepted
12 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
13 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
14 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
15 agrees that any statute or rule of construction providing that ambiguities are to be resolved
16 against the drafting Party should not be employed in the interpretation of this Consent Judgment
17 and, in this regard, the Parties hereby waive California Civil Code § 1654.

18 **13. EXECUTION AND COUNTERPARTS**

19 13.1 This Consent Judgment may be executed in counterparts and by means of
20 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
21 one document and have the same force and effect as original signatures.
22

23 **14. NOTICES**

24 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

25 If to CAG:

26 Reuben Yeroushalmi
27 YEROUSHALMI & YEROUSHALMI
28 9100 Wilshire Boulevard, Suite 240W

1 Beverly Hills, CA 90212
2 (310) 623-1926
3 Email: lawfirm@yeroushalmi.com

4 If to Defendant.:
5 T. Michael Fehmel
6 Fehmel & Associates
7 4550 Wilshire Boulevard
8 Los Angeles, CA 90010
9 (323) 933-2525
10 Email: tmf@fehmel.com

11 **15. AUTHORITY TO STIPULATE**

12 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
14 the party represented and legally to bind that party.

AGREED TO:	AGREED TO:
Date: _____, 2023	Date: <u>2-7</u> , 2023
Name: _____	Name: <u>ATSUSHI WATANABE</u>
Title: _____	Title: <u>PRESIDENT</u>
CONSUMER ADVOCACY GROUP, INC.	PAX'S DISTRIBUTORS

15 **IT IS SO ORDERED.**

16 Date: _____


17 _____
18 JUDGE OF THE SUPERIOR COURT

1 Beverly Hills, CA 90212
2 (310) 623-1926
3 Email: lawfirm@yeroshalmi.com

4 If to Defendant.:
5 T. Michael Fehmel
6 Fehmel & Associates
7 4550 Wilshire Boulevard
8 Los Angeles, CA 90010
9 (323) 933-2525
10 Email: tmf@fehmel.com

11 **15. AUTHORITY TO STIPULATE**

12 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
14 the party represented and legally to bind that party.

AGREED TO:	AGREED TO:
Date: <u>02/08</u> , 2023	Date: _____, 2023
	
Name: <u>Michael Marcus</u>	Name: _____
Title: <u>Director</u>	Title: _____
CONSUMER ADVOCACY GROUP, INC.	PAX'S DISTRIBUTORS

21
22 **IT IS SO ORDERED.**

23
24 Date: _____

JUDGE OF THE SUPERIOR COURT