

ORIGINAL

[Exempt from fees pursuant to Government Code Section 6103]

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13 [REDACTED]

14 Attorneys for Plaintiff
15 People of the State of California

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF STANISLAUS

19 PEOPLE OF THE STATE OF CALIFORNIA,
20 Plaintiff,

21 v.

22 PRO'S CHOICE BEAUTY CARE, INC., RITE
AID CORPORATION; LONGS DRUG
23 STORES CALIFORNIA, INC.; LONGS DRUG
STORES CORPORATION; WALGREEN
24 COMPANY; RALPHS GROCERY
COMPANY; TARGET CORPORATION; K-
25 MART CORPORATION; MARCY J. BLICK,
Individually; and DOES Nos. 1 through 50,
26 inclusive,

27 Defendants.
28

FILED
3/16/10
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY [REDACTED] DEPUTY

Case No. 623625

**STIPULATION OF PARTIES TO
THE ENTRY OF FINAL JUDGMENT
AND PERMANENT INJUNCTION**

Judge: The Hon. Hurl W. Johnson

Trial Date: Vacated

Action Filed: February 13, 2008

1 **IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES THAT:**

2 Plaintiff, the People of the State of California (“Plaintiff”), having filed its Complaint, and
3 Defendants, Pro’s Choice Beauty Care, Inc. (“Pro’s Choice”), Rite Aid Corporation, Longs Drug
4 Stores California, Inc. and Longs Drug Stores Corporation (hereinafter properly named successor
5 entity Longs Drug Stores California, LLC), CVS Pharmacy, Inc., Walgreen Co., Ralphs Grocery
6 Company, Target Corporation and Kmart Corporation (“Defendant Retailers”) (all Defendants are
7 hereafter collectively referred to as “Settling Defendants” or “Defendants” and individually
8 “Defendant”), having been served with the First Amended Complaint, hereby stipulate and
9 consent to the entry of a Final Judgment and Permanent Injunction pursuant to this Stipulation.
10 The Plaintiff and Settling Defendants (collectively referred to herein as “the Parties”) have agreed
11 to settle the claims alleged in the First Amended Complaint filed in this matter without further
12 litigation and by lodging this proposed Stipulation of Parties to the Entry of Final Judgment and
13 Permanent Injunction (“Stipulation”) pursuant to which a Final Judgment and Permanent
14 Injunction (“Final Judgment”) is to be entered by the Court.

15 **JURISDICTION**

16 This action is brought under California law and this Court has jurisdiction of the subject
17 matter and the Parties hereto.

18 **APPLICABILITY**

19 1. Plaintiff alleges that, on or before the date of entry of the Final Judgment, Defendants
20 violated the California Health and Safety Code and related implementing regulations that govern
21 (a) volatile organic compounds (“VOCs”) and product dating information in consumer hair care
22 products, including the supply, distribution, sale, or offering for sale of consumer hair care
23 products; and (b) conduct relating to the public health and environment and laws that promote fair
24 and lawful competitive business practices. The Parties to this action agree to settle this action and
25 Defendants, without admitting any fault or liability, thereupon agree to comply with the
26 injunctive provisions set forth in this Stipulation and as ordered by this Court in the Final
27 Judgment.

28 / / /

1 2. This Stipulation and the Final Judgment shall settle and resolve all claims (the “Settled
2 Claims”) that were or could have been alleged in the First Amended Complaint relating to the
3 distribution, supply, sale or offering for sale of consumer hair care products in California by the
4 Settling Defendants. For purposes of settlement, the Parties stipulate and agree that the First
5 Amended Complaint and Settled Claims shall include all claims that, prior to the Date of the Final
6 Judgment, Defendants distributed, supplied, sold or offered for sale in California consumer hair
7 care products in violation of California Code of Regulations, title 17, sections 94507 through
8 94517, California Health and Safety Code sections 41513, 42402, 42402.1, 42402.2, 42402.3 (or
9 any other applicable provision of Division 26, part 4, chapter 3 of the California Health and
10 Safety Code) and California Business and Professions Code section 17200 *et seq.* The Settled
11 Claims also include (a) all Regulated Hair Care Products and civil penalties for failure to comply
12 with requests for information that were the subject of ten-day letters issued by the California Air
13 Resources Board (“CARB”) to any Defendant prior to the Date of the Final Judgment; (b) all hair
14 care products that were identified in the Notices of Violation (“NOVs”) attached to the First
15 Amended Complaint; (c) all hair care products that any Settling Defendant distributed, supplied,
16 sold or offered for sale prior to the Date of the Final Judgment; (d) all alleged violations relating
17 to the hair care products identified in Plaintiff’s Motion for Preliminary Injunction; (e) the
18 categorization of products as Hair Styling Products prior to the Date of the Final Judgment; (f)
19 any failure to take corrective action within a reasonable period of time with respect to the alleged
20 emission of excess VOCs in connection with hair care products supplied, sold or offered for sale
21 by the Settling Defendants prior to the Date of the Final Judgment; and (g) any claim that existed
22 as of the date of entry of the Final Judgment that Defendant Pro’s Choice’s agreements with
23 Defendant Retailers to defend and indemnify the other Settling Defendants with respect to the
24 Settled Claims are unlawful and violate Business and Professions Code section 17200 *et seq.*,
25 California Code of Civil Procedure section 1060, California Civil Code sections 1668 and 2773,
26 and Insurance Code section 533.5.

27 3. The provisions of this Stipulation and the Final Judgment are applicable to Defendants
28 Pro’s Choice, Rite Aid Corporation, Longs Drug Stores California, LLC, CVS Pharmacy, Inc.,

1 Walgreen Co., Ralphs Grocery Company, Target Corporation and Kmart Corporation, and each
2 of their respective successors and assigns. The provisions of this Stipulation and the Final
3 Judgment apply only to consumer hair care products distributed, supplied, sold or offered for sale
4 by Defendant Pro's Choice in the State of California or which the Defendant Retailers purchased
5 from Defendant Pro's Choice and distributed, supplied, sold or offered for sale in the State of
6 California. Independent contractors and subcontractors are not covered by this Stipulation and
7 the Final Judgment except for past acts as alleged in the First Amended Complaint which were
8 performed at the direction of the Defendants.

9 4. For purposes of this Stipulation and the Final Judgment, unless otherwise specified, the
10 definitions set forth in California Health and Safety Code section 41700 *et seq.*, and California
11 Code of Regulations, title 17, sections 94507 through 94517, inclusive, as they exist on the date
12 of entry of the Final Judgment, shall apply to the technical terms used herein. To the extent these
13 definitions are amended (or should different statutory or regulatory definitions become
14 applicable), the amendments and regulations in effect at the time of the acts, omissions, or events
15 shall apply.

16 5. Nothing in this Stipulation or the Final Judgment shall excuse Defendants, collectively or
17 individually, from prospectively meeting more stringent requirements which may be imposed
18 hereafter by changes in applicable and legally binding legislation, regulations, ordinances or
19 permits from and after the effective date thereof.

20 PERMANENT INJUNCTION

21 6. Pursuant to California Health and Safety Code section 41513, California Government
22 Code section 12607, and California Business and Professions Code section 17203, Defendants are
23 each permanently enjoined and each Defendant shall comply with the applicable provisions of
24 California Code of Regulations, title 17, sections 94507 through 94517, inclusive, with respect to
25 the Regulated Hair Care Products they distribute, supply, sell or offer for sale in or to retail stores
26 in California. As used herein, "Regulated Hair Care Products" means hair care products within
27 the definition of California Code of Regulations, title 17, section 94508, subdivision (a), sections
28 (76) through (80) defining "Hair Sprays," "Hair Styling Gels," "Hair Shines," "Hair Styling

1 Products” and “Hair Mousses.” Nothing in this Stipulation shall alter the provisions of California
2 Code of Regulations, title 17, section 94512, subdivision (a).

3 7. With respect to containers of Regulated Hair Care Products shipped by Defendant Pro’s
4 Choice to California after the Date of the Final Judgment, which products are to be distributed,
5 supplied, sold or offered for sale in California, Defendant Pro’s Choice is enjoined and mandated
6 to comply with the requirements of Exhibit A entitled “Compliance Program” attached hereto and
7 incorporated as if fully set forth herein.

8 8. Defendant Pro’s Choice is mandated to monitor, self-audit and inspect hair care products
9 which it ships to California to be distributed, supplied, sold or offered for sale in California, as set
10 forth in Exhibit B entitled “Audit Program” attached hereto and incorporated as if fully set forth
11 herein.

12 9. Defendant Pro’s Choice’s compliance with the Compliance Program in Exhibit A and the
13 Audit Program in Exhibit B of this Stipulation shall constitute compliance by only Defendant
14 Pro’s Choice with the Permanent Injunction provisions set forth in Paragraph 6 of this
15 Stipulation. Nothing in this paragraph shall preclude a Defendant Retailer from asserting that
16 Defendant Pro’s Choice’s conduct is evidence of such Defendant Retailer’s compliance with
17 Paragraph 6 of this Stipulation. Nothing in this paragraph shall preclude Plaintiff from asserting
18 that Defendant Pro’s Choice’s conduct is not evidence of a Defendant Retailer’s compliance with
19 Paragraph 6 of this Stipulation.

20 10. Defendant Retailers that have the capability shall implement “Stop Sales” of specified
21 products or containers within seventy-two (72) hours of a written request to do so by Defendant
22 Pro’s Choice. “Stop Sales” shall be a direction to stores to cease sales of specific products or
23 containers in California by modifying the computerized inventory and/or sales system to indicate
24 when the product is scanned at the retail store cash register that the product cannot be sold. The
25 Defendant Retailers with the capability to implement a Stop Sale shall also issue an instruction to
26 their California employees and/or store managers not to override the register or sales system with
27 respect to Regulated Hair Care Products. The Defendant Retailers that have the capability to
28 implement a Stop Sale are Longs Drug Stores California, LLC, Walgreen Co., Ralphs Grocery

1 Company, Target Corporation, and Kmart Corporation. Should Defendant Rite Aid subsequently
2 have Stop Sales capability, Defendant Rite Aid also shall implement Stop Sales of specific
3 products or containers thereof in its California stores within seventy-two (72) hours of a written
4 request to do so by Defendant Pro's Choice. Until Defendant Rite Aid implements a Stop Sales
5 capability, Defendant Rite Aid shall remove all the specified products or containers from its
6 shelves for sale in California stores within five calendar days (which shall be extended by an
7 additional calendar day if the fifth day is a Sunday or holiday) of a written request to do so by
8 Defendant Pro's Choice. If a manufacturer or filler of a Regulated Hair Care Product provides
9 written notice to a Defendant Retailer that is received by the Defendant Retailer's counsel or by
10 the Defendant Retailer's corporate headquarters that a certain product (or certain containers
11 thereof) does not satisfy the applicable VOC-content requirements, the Defendant Retailer shall
12 promptly forward such written notice to Defendant Pro's Choice Beauty Care, Inc., 35 Sawgrass
13 Drive, Suite 1, Bellport, New York 11713, Attention: Corporate Counsel, or to Pro's Choice's
14 counsel in this action. The provisions of Exhibit B shall apply upon receipt of such written notice
15 by Defendant Pro's Choice's counsel or Defendant Pro's Choice's headquarters in Bellport, New
16 York.

17 11. The removal of a Regulated Hair Care Product or container from California, issuance of
18 Stop Sales or any other action taken pursuant to this Stipulation or the Final Judgment shall
19 neither be construed as an admission that a product or container does not comply with California
20 VOC-content or date code regulations, nor as a waiver, estoppel or relinquishment of any Party's
21 factual or legal position with respect to such Regulated Hair Care Product or container.

22 Defendants shall not be required pursuant to this Stipulation or the Final Judgment to implement a
23 product removal or Stop Sales or take any other corrective action with respect to a product that
24 complies with California VOC-content and date code statutes and regulations.

25 12. Defendant Pro's Choice shall be required, for a period of five (5) years from the Date of
26 Final Judgment, to generate quarterly self-auditing compliance reports. Each quarterly
27 compliance report from Defendant Pro's Choice shall be sent to the current Manager of the
28 Consumer Products Enforcement Section, California Air Resources Board, at (916) 322-6965

1 (work) and (916) 445-5745 (fax) or at 1001 I Street, Sacramento, California 95814, no later than
2 April 10, July 10, October 10 and January 10 of each year reporting is required. The first
3 quarterly report shall be due on July 10, 2010 and shall cover the period from the Date of Final
4 Judgment through June 30, 2010. Each quarterly report shall be in digital format on a CD or
5 DVD containing the following information: product information (manufacturer, name, size and
6 batch or other code set forth on the products, labeling or container) for each container of
7 Regulated Hair Care Product identified as a violation and suspected violation of California VOC-
8 content or date code requirements, the quantity or number of containers of Regulated Hair Care
9 Product identified as violations and as suspected violations, documentation verifying removal of
10 the containers of Regulated Hair Care Product identified as violations and suspected violations
11 from State prior to sale, disposition of the containers of Regulated Hair Care Product identified as
12 violations and suspected violations (destroyed or sent to a state other than California), a statement
13 of reasons as to why the violation and any suspected violation occurred, and a statement of
14 corrective actions taken to ensure no future violations for the product(s). As to Regulated Hair
15 Care Products purchased from Defendant Pro's Choice and distributed, supplied, sold, or offered
16 for sale in California, each Defendant Retailer shall retain for a period of three (3) years from date
17 of creation (a) written verification of compliance as set forth in Paragraph 3 of Exhibit A attached
18 to this Stipulation; (b) any Stop Sales or product removal notices and letters relating to VOC-
19 content or date code restrictions that the particular Defendant Retailer receives from Pro's Choice
20 or a manufacturer and letters responding thereto, if any; (c) documentation necessary to
21 demonstrate implementation of any Stop Sales or product removals; and (d) any inventory data
22 and sales records related to any Stop Sales or product removals referred to in subparagraph 12(b),
23 above.

24 13. If Defendant Pro's Choice removes containers of Regulated Hair Care Products from the
25 State of California that have been identified as violations and/or suspected violations of California
26 VOC-content or date code requirements, Defendant Pro's Choice shall hold such containers for a
27 period of thirty (30) days (the "Notification Period") after submitting the quarterly self-auditing
28 compliance report pertaining to those containers and referred to in Paragraph 12 above. Should

1 Plaintiff wish to inspect the containers held by Defendant Pro's Choice, it shall notify Defendant
2 Pro's Choice within the thirty (30) day period by certified mail, return receipt requested.

3 Defendant Pro's Choice shall provide Plaintiff with photographs of the labels of the containers,
4 including any batch and date codes within seventy-two (72) hours of receipt of the request for
5 inspection. If after reviewing the photographs, Plaintiff wishes to inspect the actual containers,
6 Plaintiff shall so notify Defendant Pro's Choice in writing, sent by certified mail, return receipt
7 requested within five (5) calendar days (which shall be extended by an additional calendar day if
8 the fifth day is a Sunday or holiday) of receipt of the photographs. Defendant Pro's Choice shall
9 then retain custody of the containers and make the containers available for inspection in
10 California within thirty (30) days of the receipt of the inspection request (the "Holding Period").
11 Should any Party wish to test the containers, the Parties shall agree upon a laboratory to conduct
12 the test or, if samples of the content of the containers can be independently tested by both
13 Plaintiff's and Defendant's laboratories, the Parties shall agree upon a procedure to allow for such
14 testing. If Plaintiff does not request an inspection during the Notification Period or, if after a
15 timely request for an inspection, Plaintiff does not conduct an inspection during the Holding
16 Period, then Defendant Pro's Choice may destroy the removed containers of Regulated Hair Care
17 Product in accordance with any applicable statutes or regulations or may sell them in another state
18 outside of California. Defendant Pro's Choice may sell the product that it is currently holding for
19 further inspection as of the Date of the Final Judgment in another state outside of California or
20 destroy it in accordance with applicable law.

21 14. Upon written request by certified mail, return receipt requested, Defendant Pro's Choice
22 shall make available to Plaintiff any written verification from manufacturers or Responsible
23 Parties (as defined in California Code of Regulations, title 17, section 94508, subdivision
24 (a)(123)) received within the quarter for which a report is being generated, concerning the VOC-
25 content of any Regulated Hair Care Product or product line of Regulated Hair Care Product and
26 any analytical testing results that Defendant Pro's Choice relies upon to establish compliance with
27 VOC-content restrictions for products supplied to retail stores in California in the same quarter
28 for which the report is being generated. Defendant Pro's Choice shall maintain these and all other

1 VOC-content verification records for as long as it ships containers with the identical
2 manufacturer's label, including specific product name, size and listed order of ingredients, to
3 California for distribution, sale, or offering for sale in California retail stores and for three (3)
4 years thereafter. All documents required pursuant to this paragraph shall be made available to
5 Plaintiff within thirty (30) days of Defendant Pro's Choice's receipt of the written request.

6 15. Upon written request by certified mail, return receipt requested, Defendant Pro's Choice
7 shall also make available to Plaintiff documents sufficient to show the removal, return, rejection,
8 salvage, or destruction of containers of Regulated Hair Care Products from the Settling
9 Defendants' California Stores that have been identified as a violation or suspected violation of
10 California VOC-content or date code requirements within the quarter for which the report is
11 requested based on data then available. Defendant Pro's Choice shall maintain these records for
12 one (1) year after the removal, return, rejection, salvage or destruction of the container. All
13 documents required pursuant to this paragraph shall be made available to Plaintiff within thirty
14 (30) days of Defendant Pro's Choice's receipt of the written request.

15 16. Any party may seek modification of the injunctive provisions of the Final Judgment as
16 permitted by law or by the Court.

17 **CIVIL PENALTIES**

18 17. Defendants shall be jointly and severally liable to the People for the sum of **NINE**
19 **HUNDRED THIRTY THOUSAND DOLLARS (\$930,000.00)** for civil penalties, pursuant to
20 Business and Professions Code section 17206 and Health and Safety Code sections 42402.3,
21 42402.2, 42402.1, 42402 and 42403 for all Regulated Hair Care Products that allegedly did not
22 comply with California Code of Regulations, title 17, sections 94507 through 94517, inclusive,
23 and that were distributed, supplied, sold or offered for sale by Defendants in California prior to
24 the Date of the Final Judgment. By the close of the next business day after all Parties have
25 executed this Stipulation and delivered it to counsel for Defendant Pro's Choice, the payment for
26 civil penalties shall be deposited by wire transfer into the Burke, Williams & Sorensen, LLP
27 client trust account. Within two business days after notice of entry of the Final Judgment, Burke,
28 Williams & Sorensen, LLP shall issue eight checks from its client trust account made payable to

1 the following payees, to be distributed by the Attorney General as follows:

2	California Air Resources Board	\$ 475,000.00
3	California Attorney General	\$ 150,000.00
4	Stanislaus County District Attorney	\$ 150,000.00
5	Sacramento County District Attorney	\$ 37,500.00
6	San Bernardino County District Attorney	\$ 37,500.00
7	San Joaquin County District Attorney	\$ 37,500.00
8	Solano County District Attorney	\$ 37,500.00
9	El Dorado County District Attorney	\$ 5,000.00

10 The civil penalty of \$455,000 received by the California Attorney General, Stanislaus
11 County District Attorney, Sacramento County District Attorney, San Bernardino County District
12 Attorney, Solano County District Attorney, El Dorado County District Attorney, and San Joaquin
13 County District Attorney shall be apportioned as civil penalties received pursuant to Business and
14 Professions Code section 17206.

15 The civil penalty of \$475,000 received by the California Air Resources Board shall be
16 apportioned as civil penalties received pursuant to Health and Safety Code section 42403.

17 No additional civil penalties shall be due for any alleged violations of Business and
18 Professions Code sections 17206, and Health and Safety Code sections 42402.3, 42402.2,
19 42402.1, 42402 and 42403 or California Code of Regulations, title 17, sections 94507 through
20 94517 for the Settled Claims.

21 **ATTORNEYS' FEES AND COSTS**

22 18. Defendants shall be responsible, jointly and severally, to pay within thirty (30) days after
23 the entry of the Final Judgment, the sum of THREE HUNDRED AND TWENTY THOUSAND
24 DOLLARS (\$320,000.00) to Plaintiff as attorneys' fees and costs, including costs of inspection,
25 investigation, enforcement, prosecution and suit (including expert fees) pursuant to California
26 Code of Civil Procedure section 1021.8. By the close of the next business day after all Parties
27 have executed this Stipulation and delivered it to counsel for Defendant Pro's Choice, the
28 payment for attorneys' fees and costs shall be deposited by wire transfer into the Burke, Williams

1 & Sorensen, LLP client trust account. Within two business days after notice of entry of the Final
2 Judgment, Burke, Williams & Sorensen, LLP shall issue four (4) checks from its client trust
3 account made payable as follows:

4	California Attorney General	\$ 100,000.00
5	California District Attorneys Association	\$ 134,000.00 (divided equally
6		between the "Circuit Prosecutor Project"
7		and the "Statewide Rural Circuit
8		Prosecutor Project")
9	Craig Thompson Environmental Protection	
10	Prosecution Fund	\$ 86,000.00

11 No additional attorneys' fees and costs shall be due, including costs of inspection,
12 investigation, enforcement, prosecution, and suit (including expert fees and any costs or expenses
13 under Health and Safety Code section 42405.5) in connection with the Settled Claims or the
14 prosecution of this action.

15 Burke, Williams & Sorensen, LLP shall deliver all checks required by paragraphs 17 and
16 18 above to the Office of the California Attorney General as set forth below. In the alternative,
17 payments may be made by wire transfer and such transfers shall be electronically transmitted to
18 an account and routing number as directed in writing by Plaintiff to Defendants following the
19 entry of the Final Judgment. All payments made by check shall be delivered to the following
20 address:

21 Office of the California Attorney General
22 Attention: Michele Mercado
23 Environment Section
24 1300 "I" Street, 15th Floor
25 P.O. Box 944255
26 Sacramento, California 94244-2550

25 The Office of the California Attorney General shall disburse the penalties and funds in
26 accordance with the terms of the Final Judgment, and to the entities identified in Paragraphs 17
27 and 18. Defendants shall provide copies of all payments made, either by mail or personal
28 delivery, to:

1 Office of the California Attorney General
2 Brett J. Morris, Deputy Attorney General
3 1515 Clay Street, 20th Floor
4 P.O. Box 70550
5 Oakland, CA 94612-0550

6 **ENFORCEMENT AND LIABILITY**
7 **FOR NON-COMPLIANCE BY DEFENDANTS**

8 19. Nothing in this Stipulation or the Final Judgment shall restrict or condition the ability of
9 Plaintiff to separately administer or enforce laws or regulations, codes, orders, or the provisions
10 of any permit issued by CARB for any matter that is not the subject of Plaintiff's covenant not to
11 sue in Paragraph 24 below. Nothing in this Stipulation or the Final Judgment shall prevent
12 Settling Defendants from initiating judicial or administrative action against Plaintiff, CARB or
13 any other enforcement agency for any matter that is not the subject of Defendants' covenant not
14 to sue in Paragraph 25 below.

15 **AUTHORITY TO ENTER STIPULATION**

16 20. Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he
17 or she represents to enter into this Stipulation, to execute it on behalf of the Party represented, and
18 to legally bind that Party. This Stipulation may be executed by the Parties in counterparts, and
19 when a copy is signed by an authorized representative of each Party, the stipulation shall be
20 effective as if a single document were signed by all Parties.

21 **INTEGRATION**

22 21. This Stipulation constitutes the entire agreement between the Parties as to the matters
23 addressed herein. This Stipulation includes the agreement that the Final Judgment shall not be
24 amended or supplemented except upon written order of this Court. Except as expressly stated
25 herein, no agreements, promises, representations or warranties have been made or relied upon by
26 any Party hereto with respect to the terms of this Stipulation to the Entry of Final Judgment. Each
27 Party to this Stipulation has conducted its own independent investigation of the facts and claims
28 alleged in the First Amended Complaint and settled herein.

/ / /

1 **JURISDICTION RETAINED**

2 22. The Parties request that the Court retain jurisdiction over the Parties pursuant to California
3 Code of Civil Procedure section 664.6 to enforce this settlement until performance in full of the
4 terms of the settlement, including:

- 5 (a) entering this Stipulation to the Entry of Final Judgment;
- 6 (b) adjudicating any proceeding to enforce the Final Judgment;
- 7 (c) adjudicating any contempt of the Final Judgment;
- 8 (d) resolving any dispute that may arise between the Parties regarding the Final
9 Judgment; and
- 10 (e) issuing such further orders as may be necessary and appropriate for the
11 interpretation, implementation, modification and enforcement of the Final Judgment.

12 **NO WAIVER OF RIGHT TO ENFORCE**

13 23. The failure of any Party to enforce any provision of this Stipulation or the Final Judgment
14 shall in no way be deemed a waiver of such provision, or in any way affect the validity of this
15 Stipulation or the Final Judgment. The failure of any Party to enforce any such provision shall
16 not preclude that Party from later enforcing the same or any other provision of the Final Judgment
17 during the period that provision of the Final Judgment remains in effect. No oral advice,
18 guidance, suggestions or comments by employees or officials of any Party regarding matters
19 covered in this Stipulation or the Final Judgment shall be construed to relieve any Party of its
20 obligations required by this Stipulation or the Final Judgment.

21 **MATTERS RESOLVED BY THE FINAL JUDGMENT**

22 24. This Stipulation to the Entry of Final Judgment is a final and binding resolution and
23 settlement as to the Parties and the Settled Claims as defined above. Except as necessary to
24 enforce this Stipulation or the Final Judgment, Plaintiff hereby covenants not to sue, assert or
25 pursue any claims or causes of action in any forum against the Defendants, or each of their
26 officers, directors, employees, shareholders, representatives, agents, Contractors, Subcontractors,
27 parent, subsidiary or affiliated companies, Customers, successors or assigns, arising from or in
28 connection with all Settled Claims. (As used in this Paragraph 24 of this Stipulation,

1 "Customers" shall mean those persons and entities to whom Defendants sold Regulated Hair Care
 2 Products prior to the Date of Final Judgment. As used herein, "Contractors" and
 3 "Subcontractors" shall mean those persons and entities acting at the direction of or on behalf of
 4 Defendants prior to the Date of Final Judgment.) Plaintiff represents and warrants that it has not
 5 assigned or transferred any Settled Claim and that it will not assign or transfer, or purport to
 6 assign or transfer, any such Settled Claim in the future.

7 25. Except as necessary to enforce the terms of this Stipulation or the Final Judgment,
 8 Defendants also covenant not to sue, and agree not to assert or pursue any claims or causes of
 9 action against Plaintiff, or its representatives, agents, contractors, subcontractors or employees,
 10 for the Settled Claims. Defendants represent and warrant that they have not assigned or
 11 transferred the claims or causes of action that are the subject of the foregoing covenant not to sue
 12 and agree that they will not assign or transfer, or purport to assign and transfer, any such claims in
 13 the future.

14 26. Nothing in this Stipulation or the Final Judgment shall constitute or be construed as a
 15 satisfaction or release from liability for any conditions or claims arising as a result of past,
 16 current, or future claims except as provided in this Stipulation and the Final Judgment.

17 27. Defendants shall not seek their costs, attorneys' fees, investigatory costs, expert witness
 18 fees or other costs of litigation from Plaintiff, its officials, agents, or representatives.

19 28. Plaintiff shall dismiss, and hereby does dismiss, with prejudice all of the causes of action
 20 alleged in the First Amended Complaint as to Defendant Marcy J. Blick, with Plaintiff and
 21 Defendant Blick to each bear their own attorneys' fees and costs.

22 29. Nothing in this Agreement shall affect Plaintiff's or any other entity's right or ability to
 23 sue, assert, or pursue any claims or causes of action seeking to invalidate in whole or in part any
 24 agreement by Defendant Pro's Choice to defend or indemnify the Defendant Retailers in
 25 connection with those Regulated Hair Care Products supplied, sold or offered for sale after the
 26 Date of the Final Judgment.

27 **INTERPRETATION**

28 30. This Stipulation to the Entry of Final Judgment shall be deemed to have been drafted

[Handwritten signatures and initials]
 The Am. OI S. UNAT

1 equally by all Parties hereto. Accordingly, the Parties hereby agree that any and all rules of
 2 construction to the effect that ambiguity is construed against a drafting Party shall be inapplicable
 3 in any dispute concerning the terms, meaning, or interpretation of this Stipulation or the Final
 4 Judgment.

5 **NOTICES**

6 31. Unless otherwise specified, any notices or requests provided by this Stipulation shall be
 7 sent to the following addresses by certified mail, return receipt requested unless otherwise
 8 designated in writing by the party to receive the notice or request.

9 (a) If to Defendant Pro's Choice:

10 Pro's Choice Beauty Care, Inc.
 11 35 Sawgrass Drive, Suite 1
 12 Bellpark, NY 11713
 Attention: Corporate Counsel

13 With a copy to:

14 Melodie K. Larsen, Esq.
 15 Burke, Williams & Sorensen, LLP
 444 South Flower Street, Suite 2400
 Los Angeles, CA 90071

16 (b) If to Plaintiff:

17 Brett Morris
 18 Deputy Attorney General
 1515 Clay Street, 20th Floor
 19 P.O. Box 70550
 20 Oakland, California 94612

21 With a copy to:

22 Matthew Maclear
 23 Deputy District Attorney
 832 12th Street, Suite 300
 Modesto, CA 95313

24 **EFFECTIVE DATE**

25 32. The "Date" of the Final Judgment shall be the date of entry of the Final Judgment by this
 26 Court.

27 33. At any time sixty (60) months after the Date of the Final Judgment by the Court, any Party
 28 may provide notice to the Court (which shall be served on all other Parties) that the Permanent

[Handwritten signatures and initials]
 ML AM DL [unclear]

1 Injunction provisions of the Final Judgment should expire and have no further force or effect
2 (“Notice of Termination”). A motion seeking to modify or terminate the Permanent Injunction
3 may be filed and set for hearing by the Court. In the event that such a motion is filed, none of the
4 injunctive provisions of the Final Judgment will terminate pending the Court’s ruling on the
5 motion. The termination of any of the injunctive provisions of the Final Judgment shall have no
6 effect on any Party’s obligation to comply with requirements imposed by statute, regulation,
7 ordinance, or law. Nothing in this paragraph is intended to modify existing law with respect to
8 the modification or termination of permanent injunctions.

9 The Parties, by and through their respective and duly authorized representatives, hereby
10 stipulate and consent to this Stipulation to the Entry of Final Judgment and Permanent Injunction.
11

12 **IT IS SO STIPULATED.**

13
14 **FOR PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA:**

15
16 Dated: March _____, 2010

EDMUND G. BROWN JR.
Attorney General of California

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BRETT J. MORRIS
Deputy Attorney General
Attorneys for Plaintiff
The People of the State of California

Dated: March _____, 2010

BIRGIT FLADAGER
District Attorney, County of Stanislaus

MATTHEW MACLEAR
Deputy District Attorney

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FOR THE SETTLING DEFENDANTS:

Dated: March 12, 2010

PRO'S CHOICE BEAUTY CARE, INC.



MICHAEL ROSS
President
For Pro's Choice Beauty Care, Inc.

Dated: March _____, 2010

RITE AID CORPORATION

JAMES COMITALE
Vice President and Assistant Secretary
For Rite Aid Corporation

Dated: March _____, 2010

Longs Drug Stores California, LLC. (for
formerly-named Defendants Longs Drug
Stores California, Inc. and Longs Drug
Stores Corporation)

DENNIS MURPHY
Senior Legal Counsel
For Longs Drug Stores California, LLC.

Dated: March _____, 2010

WALGREEN CO.

Its _____
For Walgreen Co.

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Dated: March _____, 2010

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MICHAEL ROSS
President
For Pro's Choice Beauty Care, Inc.

Dated: March 15, 2010

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JAMES COMITALE
Vice President and Assistant Secretary
For Rite Aid Corporation

Dated: March _____, 2010

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DENNIS MURPHY
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For Longs Drug Stores California, LLC.

Dated: March _____, 2010

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President
For Pro's Choice Beauty Care, Inc.

Dated: March _____, 2010

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JAMES COMITALE
Vice President and Assistant Secretary
For Rite Aid Corporation

Dated: March 11, 2010

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formerly-named Defendants Longs Drug
Stores California, Inc. and Longs Drug
Stores Corporation)



DENNIS MURPHY
Senior Legal Counsel & *Asst. Secretary*
For Longs Drug Stores California, LLC.

Dated: March _____, 2010

WALGREEN CO.

Its
For Walgreen Co.

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Stores Corporation)

DENNIS MURPHY
Senior Legal Counsel
For Longs Drug Stores California, LLC.

Dated: March 10, 2010

WALGREEN CO.


Shannon Petree
Divisional Vice President and General
Merchandise Manager

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Dated: March 10, 2010

~~RALPHS GROCERY COMPANY~~


STEVEN J. PROUGH
Vice President, Legal Services
For Ralphs Grocery Company

Dated: March _____, 2010

KMART CORPORATION

MARY ELIZABETH TORTORICE
Vice President and Deputy General Counsel
Sears Holdings Management Corporation
For Kmart Corporation

Dated: March _____, 2010

TARGET CORPORATION

ROBIN L. PREBLE
Senior Group Legal Counsel
For Target Corporation

APPROVED AS TO FORM

Dated: March _____, 2010

BURKE, WILLIAMS, & SORENSEN, LLP
By:

MELODIE K. LARSEN
Attorneys for Pro's Choice Beauty Care, Inc.
and Marcy J. Blick

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Dated: March _____, 2010

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For Ralphs Grocery Company

Dated: March 12, 2010

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Dated: March 15, 2010

STEVENS, O'CONNELL & JACOBS, LLP
By:



MATTHEW G. JACOBS
Attorneys for Rite Aid Corporation

Dated: March _____, 2010

GREENBURG TRAURIG LLP
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California, LLC and Walgreen Co.

Dated: March _____, 2010

MORRISON & FOERSTER, LLP
By:

MICHAEL JACOB STEEL
Attorneys for Defendants Ralphs Grocery
Company and Kmart Corporation

Dated: March _____, 2010

MORRISON & FOERSTER, LLP
By:

PETER HSIAO
Attorneys for Target Corporation

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STEVENS, O'CONNELL & JACOBS, LLP
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Dated: March 12, 2010

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Dated: March _____, 2010

STEVENS, O'CONNELL & JACOBS, LLP
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MATTHEW G. JACOBS
Attorneys for Rite Aid Corporation

Dated: March _____, 2010

GREENBURG TRAURIG LLP
By:

JAMES MATTESICH
Attorneys for Defendant Longs Drug Stores
California, LLC and Walgreen Co.

Dated: March _____, 2010

MORRISON & FOERSTER, LLP
By:

MICHAEL JACOB STEEL
Attorneys for Defendants Ralphs Grocery
Company and Kmart Corporation

Dated: March 16, 2010

MORRISON & FOERSTER, LLP
By:



PETER HSIAO
Attorneys for Target Corporation

1 **EXHIBIT A**

2 **COMPLIANCE PROGRAM**

3 1. For each container of hair care products within the definitions in California Code
4 of Regulations, title 17, section 94508, subdivision (a), sections (76) through (80) (“Hair Sprays,”
5 “Hair Styling Gels,” “Hair Shines,” “Hair Styling Products” and “Hair Mousses”) (hereinafter,
6 collectively, “Regulated Hair Care Products”) that it ships to California after the date of the Final
7 Judgment to be distributed, supplied, sold or offered for sale by retail stores in California,
8 Defendant Pro’s Choice shall perform at least one of the steps described in Paragraphs (a) through
9 (c) below:

- 10 a. Verify that each container clearly indicates that it is compliant with California
11 VOC-content restrictions (such as, for example, by labeling containers that comply
12 with California VOC-content restrictions by placing “CA” in the part number,
13 labeling those containers that meet California VOC-content restrictions as “low
14 VOC” or as meeting “stringent VOC clean air standards,” labeling containers as
15 California compliant, or labeling as non-compliant only those containers that are
16 not good for California).
- 17 b. Test one or more representative samples of such containers pursuant to CARB
18 Method 310 (*See* California Code of Regulations, title 17, section 94515) prior to
19 distributing, supplying, selling or offering for sale such product in the State of
20 California. A representative sample as used in subdivision b, paragraph 1 of this
21 Exhibit A, shall be defined to be a container with the same manufacturer's UPC
22 (except where the UPC differs solely because of the container size) and same
23 ingredients in the same listed order. Testing shall be repeated whenever (a) the
24 manufacturer’s UPC changes; (b) the ingredients listed change; or (c) the listed
25 order of the ingredients changes.

26 In those cases where the UPC of a Regulated Hair Care Product differs
27 solely because of container size and Plaintiff provides Defendant Pro’s Choice
28 with either (i) written documentation from the manufacturer or filler of the

1 Regulated Hair Care Product establishing that the VOC-content of one size
2 container complies with California VOC-content restrictions while another size
3 container of the same Regulated Hair Care Product with the same ingredients in
4 the same listed order does not, or (ii) CARB's written test results establishing that
5 the VOC-content of one size container complies with California VOC-content
6 restrictions while another size container of the same Regulated Hair Care Product
7 with the same ingredients in the same listed order does not, then Defendant Pro's
8 Choice shall test each size of that Regulated Hair Care Product with the same
9 ingredients in the same listed order prior to any further distributing, supplying,
10 selling or offering to sell in California the container size that has been identified as
11 non-compliant. Defendant Pro's Choice's receipt of written manufacturer
12 documentation pursuant to this subparagraph shall cause all of the procedures of
13 Paragraph 1 of Exhibit B to be implemented. Defendant Pro's Choice's receipt of
14 CARB's written test results pursuant to this subparagraph shall cause all of the
15 provisions of Paragraph 3 of Exhibit B to be implemented.

16 c. Obtain written documentation from the product manufacturer and/or Responsible
17 Party (as defined in California Code of Regulations, title 17, section 94508,
18 subdivision (a)(123)) that such Regulated Hair Care Product or containers thereof
19 to be distributed, supplied, sold, or offered for sale in the State of California
20 comply with California's VOC-content restrictions (California Code of
21 Regulations, title 17, section 94509).

22 2. Defendant Pro's Choice shall also inspect each container of Regulated Hair Care
23 Products for compliance with the product dating information requirements of California Code of
24 Regulations, title 17, sections 94512.

25 3. Defendant Pro's Choice shall provide written verification of compliance with the
26 provisions of Exhibit A to the other Settling Defendants on a quarterly basis by the 15th day of
27 the month immediately following the end of each calendar quarter.

28 / / /

1 4. Defendant Pro's Choice shall implement and maintain procedures by which
2 Regulated Hair Care Products are screened and sorted for date codes and compliance with
3 California VOC-content restrictions prior to shipment to California to be distributed, supplied,
4 sold or offered for sale by retail stores in California.

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EXHIBIT B
AUDIT PROGRAM

Defendant Pro's Choice shall monitor, self-audit and inspect the Regulated Hair Care Products it ships to California to be distributed, supplied, sold or offered for sale by retail stores in California by performing the following steps:

1. If a manufacturer or filler of a Regulated Hair Care Product provides written notice to Defendant Pro's Choice or written notice to a Defendant Retailer that is forwarded to Defendant Pro's Choice (as provided by Paragraph 11 of the Stipulation), which notice is received by Defendant Pro's Choice's counsel or at Defendant Pro's Choice's corporate headquarters in Bellport, New York, that a certain product or certain containers thereof do not satisfy the applicable California VOC-content requirements, Defendant Pro's Choice, after verifying the information provided, shall issue a product removal notice for all affected containers to all entities receiving any affected containers from Defendant Pro's Choice. Defendant Pro's Choice shall have five (5) business days after receipt of the written notice to verify the information provided by the manufacturer or filler. If the information provided by the manufacturer or filler is verified, Defendant Pro's Choice shall have three (3) days from the verification to issue a removal notice. The removal notice shall include a request that the Defendant Retailers who received the affected product implement a Stop Sale for the specific product or containers identified in the removal notice. Defendant Pro's Choice shall take such steps as are reasonably necessary to ensure that all affected containers are removed within thirty (30) days of the removal notice. All affected containers shall be returned in accordance with the applicable product removal procedures in place between Defendant Pro's Choice and each Defendant Retailer. Such containers shall be identified in quarterly compliance reports submitted by Defendant Pro's Choice referred to in paragraph 13 of the Stipulation of Parties to the Entry of Final Judgment and Permanent Injunction.

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1 2. If Defendant Pro's Choice identifies any potentially non-compliant containers of
2 Regulated Hair Care Product(s) that it has shipped to California to be distributed, supplied, sold
3 or offered for sale in California:

4 a. The potentially non-compliant containers shall be immediately pulled from
5 the shelves of the store locations where they were found and immediately processed for
6 return to Defendant Pro's Choice in New York for inspection. The means for return to
7 New York shall be by the most appropriate means of ground transportation to ensure the
8 quickest delivery under the circumstances. The Parties agree that UPS Ground shall be
9 sufficient to satisfy this requirement in any case and that Defendant Pro's Choice shall
10 bear the expense of such return. Defendant Pro's Choice shall inspect the returned
11 containers for compliance with California law. The method of inspection shall be to
12 inspect the manufacturer's labeling of the container and compare it to samples that
13 Defendant Pro's Choice already knows are either compliant or non-compliant with
14 California VOC-content restrictions based on previous use of one of the criteria set forth
15 in paragraphs 1(a) through 1(c) of Exhibit A.

16 b. Within ten (10) business days after receipt of the container in New York,
17 Defendant Pro's Choice shall complete an investigation to determine whether the non-
18 compliant container was an isolated incident or whether additional non-compliant
19 containers were shipped to California customers for distribution, sale or offer for sale in
20 California. Defendant Pro's Choice's investigation shall include a review of any
21 irregularities in warehouse procedures and an inspection of at least five (5) other stores in
22 the same retail chain for additional non-compliant containers by the same product name
23 and label, date code (if the product is subject to a sell-through period), size, exact batch
24 code and listed order of ingredients. Defendant Pro's Choice shall implement any
25 necessary corrective action. If Defendant Pro's Choice determines that additional non-
26 compliant containers of the product were shipped to California, Defendant Pro's Choice
27 shall immediately issue a product removal notice for all affected containers to all entities
28 receiving them from Defendant Pro's Choice. The removal notice shall include a request

1 that the Defendant Retailers receiving the affected product or containers implement a Stop
2 Sale for the specific products or containers identified in the removal notice. Defendant
3 Pro's Choice shall take such steps as are reasonably necessary to ensure that all affected
4 containers are removed from California stores and warehouses within thirty (30) days of
5 the issuance of a product removal notice. All affected containers shall be returned in
6 accordance with the applicable product removal procedures in place between Defendant
7 Pro's Choice and each Defendant Retailer. All containers returned in response to such a
8 product removal action shall be identified in quarterly compliance reports submitted by
9 Defendant Pro's Choice, which reports shall be as described in paragraph 13 of the
10 Stipulation of Parties to the Entry of Final Judgment and Permanent Injunction. If the
11 same product by the same manufacturer and with the same product name and label, date
12 code, size and exact batch code and listed order of ingredients is found in more than ten
13 (10) locations of any chain, then Defendant Pro's Choice shall immediately institute a
14 complete "Field VOC Audit" for all stores in that chain in addition to the Stop Sales and
15 product removal effort described above.

16 3. If, after testing the product pursuant to CARB Method 310, CARB discovers a
17 potential violation of California VOC laws with respect to any Regulated Hair Care Product
18 supplied by Defendant Pro's Choice then:

19 a. If CARB sends a written Notice of Violation to Defendant Pro's Choice
20 and the written notice includes (a) the test report created by CARB for the container(s)
21 and all other data or information upon which CARB bases its determination of non-
22 compliance; (b) readable photographs of the front, back and bottom of the container
23 (including listed order of ingredients), the UPC sticker, the portion of the label (if any)
24 indicating compliance or non-compliance, and the date and batch code on the container
25 (as well as any other codes placed on the container by the manufacturer or filler); and (c)
26 includes any lawfully-available information obtained from the manufacturer (except for
27 the formula of the product) with respect to the VOC-content or date code of the container
28 or product or states that no such information has been obtained by CARB, then:

1 b. Defendant Pro's Choice shall have ten (10) business days to investigate
2 CARB's claim and determine whether any non-compliant product was supplied, sold or
3 offered for sale to retail stores in California and, if so, whether additional non-compliant
4 containers were shipped to California customers. Defendant Pro's Choice's investigation
5 shall include a review of any irregularities in warehouse procedures and an inspection of
6 at least five (5) other stores in the same retail chain for additional non-compliant
7 containers by the same product name and label, date code (if the product is subject to a
8 sell-through period), size, exact batch code and listed order of ingredients. If Defendant
9 Pro's Choice confirms that the container was non-compliant and determines that the
10 additional non-compliant containers were shipped to California, Defendant Pro's Choice
11 shall immediately issue a product removal notice for all affected containers to all entities
12 receiving them from Defendant Pro's Choice. The removal notice shall include a request
13 that the Defendant Retailers receiving the affected product or containers implement a Stop
14 Sale for the specific products or containers identified in the removal notice. Defendant
15 Pro's Choice shall take such steps as are reasonably necessary to ensure that all affected
16 containers are removed from California stores and warehouses within thirty (30) days of
17 the issuance of a product removal notice.

18 c. All affected containers shall be returned in accordance with the applicable
19 product removal procedures in place between Defendant Pro's Choice and each Defendant
20 Retailer. All containers returned in response to such a product removal action shall be
21 identified in quarterly compliance reports submitted by Defendant Pro's Choice, which
22 reports shall be as described in paragraph 13 of the Stipulation of Parties to the Entry of
23 Final Judgment and Permanent Injunction. If the same product by the same manufacturer
24 and with the same product name and label, date code, size and exact batch code and listed
25 order of ingredients is found in more than ten (10) locations of any chain, then Defendant
26 Pro's Choice shall institute a complete "Field VOC Audit" for all stores in that chain in
27 addition to the Stop Sale and product removal effort described above.

1 d. If Defendant Pro's Choice contests CARB's claim of violation, it may,
2 within fourteen (14) days of receipt of the written claim of violation, provide a written
3 response to CARB in which it states the facts upon which it bases its belief that the
4 Regulated Hair Care Product complies with California Code of Regulations, title 17,
5 sections 94509 and 94512, including test data and supporting documentation. Defendant
6 Pro's Choice may also provide copies of all communications with the manufacturer or
7 filler of the product and documents relating to its compliance with the foregoing sections.
8 If additional time is needed to provide information, Defendant Pro's Choice may notify
9 CARB in writing and shall have an additional ten (10) days in which to respond.

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