

**SUMMONS ISSUED**

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**CONFIRMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

OCT 25 2007

John A. Clark, Executive Officer/Clerk

By: M. Pratt Deputy

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

BY FAX

9 COUNTY OF LOS ANGELES

10 SC095814

11  
12 CENTER FOR ENVIRONMENTAL HEALTH, )

Case No. \_\_\_\_\_

13 Plaintiff,

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

14 v.

15  
16 AIRPORT CONCESSIONS, INC. DBA )  
CALIFORNIA NEWS & GIFTS; and Defendant )  
17 DOES 1 through 200, inclusive,

Health & Safety Code §25249.6 *et seq.*;

(Other)

18 Defendants.  
19

INITIAL CASE MANAGEMENT REVIEW  
AND CONFERENCE

FEB 13 2008

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22 John A. Kronstadt

23 Dept. N

24 830am  
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1 Plaintiff Center for Environmental Health (“Plaintiff”), in the public interest, and  
2 based on information and belief and investigation of counsel, except for information based on  
3 personal knowledge, hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn  
6 individuals in California that they are being exposed to nicotine, a chemical known to the State  
7 of California to cause birth defects or other reproductive harm. Such exposures have occurred,  
8 and continue to occur, through the manufacture, distribution, sale and consumer use of bottled  
9 water containing nicotine (the “Products”). Nicotine is intentionally added as an ingredient to the  
10 Products, and the Products are specifically marketed as containing nicotine. Consumers are  
11 exposed to nicotine when they drink the Products.

12 2. Under California’s Proposition 65, Health and Safety Code §25249.5 *et*  
13 *seq.*,<sup>1</sup> it is unlawful for businesses to knowingly and intentionally expose individuals in  
14 California to chemicals known to the State to cause birth defects or other reproductive harm  
15 without providing clear and reasonable warnings to individuals prior to their exposure. Despite  
16 the fact that Defendants’ Products expose consumers to nicotine, Defendants provide no  
17 warnings whatsoever about the reproductive hazards associated with nicotine exposure. To the  
18 contrary, Defendants tout the health benefits of the Products. For example, Defendants’  
19 advertising touts NicLite, one of the Products, as “the perfect smoking alternative - without any  
20 additives or harmful chemicals.” Defendants’ conduct thus violates the warning provision of  
21 Proposition 65. Health & Safety Code §25249.6.

22 **PARTIES**

23 3. Plaintiff Center for Environmental Health (“CEH”) is a non-profit  
24 corporation dedicated to protecting the public from environmental health hazards and toxic  
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
26 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and  
27 brings this enforcement action in the public interest pursuant to Health & Safety Code

28 \_\_\_\_\_  
<sup>1</sup> All statutory references herein are to California statutes, unless otherwise noted.

1 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have  
3 resulted in significant public benefit, including reformulation of toxic products to make them  
4 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout  
5 California.

6 4. Defendant Airport Concessions, Inc. dba California News & Gifts (“ACI”)  
7 is a “person in the course of doing business” within the meaning of Health & Safety Code  
8 §25249.11(b). ACI manufactures, distributes and/or sells the Products for sale and use in  
9 California.

10 5. DOES 1 through 200 are each a person in the course of doing business  
11 within the meaning of Health & Safety Code §25249.11. Defendant DOES 1 through 200 each  
12 manufacture, distribute and/or sell the Products for sale or use in California.

13 6. DOES 1 through 200 are each identified herein by fictitious names. The  
14 true names of DOES 1 through 200 are unknown to Plaintiff at this time. When the identities of  
15 DOES 1 through 200 are ascertained, the complaint shall be amended to reflect their true names.

16 7. ACI and DOES 1 through 200 are collectively referred to herein as  
17 “Defendants.”

#### 18 JURISDICTION AND VENUE

19 8. The Court has jurisdiction over this action pursuant to Health & Safety  
20 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The  
21 California Superior Court has jurisdiction over this action pursuant to California Constitution  
22 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except  
23 those given by statute to other trial courts.” The statutes under which this action is brought do  
24 not grant jurisdiction to any other trial court.

25 9. This Court has jurisdiction over the Defendants because each is a business  
26 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally  
27 avails itself of the California market through the sale, marketing or use of the Products in  
28 California and/or by having such other contacts with California so as to render the exercise of

1 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
2 substantial justice.

3 10. Venue is proper in the Los Angeles Superior Court because one or more of  
4 the violations arise in the County of Los Angeles.

5 **BACKGROUND FACTS**

6 11. The People of the State of California have declared by initiative under  
7 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
8 defects, or other reproductive harm.” Proposition 65, §1(b).

9 12. To effectuate this goal, Proposition 65 requires that individuals be  
10 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the  
11 State of California as known to cause birth defects or other reproductive harm unless the business  
12 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety  
13 Code §25249.6 states, in pertinent part:

14 No person in the course of doing business shall knowingly and  
15 intentionally expose any individual to a chemical known to the  
16 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual. . . .

17 13. On April 1, 1990, the State of California officially listed nicotine as a  
18 chemical known to cause reproductive toxicity. On April 1, 1991, one year later, nicotine  
19 became subject to the clear and reasonable warning requirement regarding reproductive toxins  
20 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

21 14. Defendants’ Products contain sufficient quantities of nicotine such that  
22 individuals who drink the Products are exposed to nicotine through the average use of the  
23 Products.

24 15. Defendants both know and intend that the Products contain nicotine.  
25 Nicotine is intentionally added as an ingredient to the Products, and the Products are specifically  
26 marketed as containing nicotine.

27 16. Defendants both know and intend that individuals will drink the Products,  
28 thus exposing them to nicotine.

1           17.     Nevertheless, Defendants have, since at least August 4, 2004, and  
2 continuing to the present, exposed consumers to nicotine without providing clear and reasonable  
3 warnings regarding the reproductive hazards of nicotine.

4           18.     Any person acting in the public interest has standing to enforce violations  
5 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
6 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
7 action within such time. Health & Safety Code §25249.7(d).

8           19.     More than sixty days before naming each Defendant in this suit, Plaintiff  
9 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the  
10 District Attorneys of every county in California, the City Attorneys of every California city with  
11 a population greater than 750,000, and to each of the named Defendants. Each of the Notices  
12 contained the information required by Health & Safety Code §25249.7(d) and 22 CCR  
13 §12903(b).

14           20.     Plaintiff also sent a Certificate of Merit for each Notice of Violation to the  
15 California Attorney General, the District Attorneys of every county in California, the City  
16 Attorneys of every California city with a population greater than 750,000, and to each of the  
17 named Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101,  
18 each Certificate of Merit certified that Plaintiff's counsel: (1) has consulted with one or more  
19 persons with relevant and appropriate experience or expertise who reviewed facts, studies or  
20 other data regarding the exposures to nicotine alleged in the Notice; and (2) based on the  
21 information obtained through such consultations, believes that there is a reasonable and  
22 meritorious case for a citizen enforcement action based on the facts alleged in the attached  
23 Notice. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3102, the  
24 Certificate served on the Attorney General included factual information – provided on a  
25 confidential basis – sufficient to establish the basis for the Certificates, including the identity of  
26 the person(s) consulted by Plaintiff's counsel and the facts, studies or other data reviewed by  
27 such persons.

28           21.     None of the public prosecutors with the authority to prosecute violations



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Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation of Proposition 65 according to proof;
2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin Defendants from offering the Products for sale in California without providing clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;
3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to nicotine resulting from use of Products sold by Defendants, as Plaintiff shall specify in further application to the Court;
4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other applicable theory, grant Plaintiff his reasonable attorneys' fees and costs of suit; and
5. That the Court utilize its inherent equitable power to grant such other and further relief as may be just and proper.

Dated: October 25, 2007

Respectfully submitted,  
LEXINGTON LAW GROUP, LLP

  
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Howard Hirsch  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL  
HEALTH