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Los Angeles Superior Court

DEC 24 2009

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By SHAUNYA WESLEY Deputy

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9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13	CONSUMER ADVOCACY GROUP, INC.,)	CASE NO.	BC 428783
14	in the public interest,)		
15	Plaintiff,)	COMPLAINT FOR PENALTY,	
16	v.)	INJUNCTION, AND RESTITUTION	
17	PEET'S COFFEE & TEA, INC., a)	Violation of Proposition 65, the Safe	
18	Washington Corporation; PEET'S)	Drinking Water and Toxic Enforcement	
19	OPERATING COMPANY, INC., a Virigina)	Act of 1986 (Cal. Health & Safety Code, §	
20	Corporation, and DOES 1-50;)	25249.5, et seq.)	
21	Defendants.)	ACTION IS AN UNLIMITED CIVIL	
22)	CASE (exceeds \$25,000)	
23)		
24)		
25)		
26)		
27)		
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29 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants
30 Peet's Coffee & Tea, Inc., Peet's Operating Company, Inc., and Does 1-50 as follows:

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THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit corporation qualified to do business in the State of California. CAG is a person within the meaning of Cal. Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Cal. Health and Safety Code section 25249.7, subdivision (d).
2. Defendant Peet's Coffee & Tea, Inc. ("Peet's") is a Washington Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant Peet's Operating Company, Inc. ("Peet's Operating Co.") is a Virginia Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. Plaintiff is informed, believes, and thereon alleges that Peet's, Peet's Operating Co., and Does 1-50, at all times mentioned herein, have conducted business within the State of California.
6. At all times mentioned herein, "Defendants" include Peet's, Peet's Operating Co., and Does 1-50.
7. At all times relevant to this action, each of the Defendants, including Does 1-50, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants

1 alleged in this Complaint were ratified and approved by every other Defendant or their
2 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
3 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 4 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
5 Defendants was a person doing business within the meaning of Cal. Health and Safety
6 Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or
7 more employees.

8 **JURISDICTION**

- 9 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
10 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
11 those given by statute to other trial courts. This Court has jurisdiction over this action
12 pursuant to Cal. Health and Safety Code section 25249.7, which allows enforcement of
13 violations of Proposition 65 in any Court of competent jurisdiction.

- 14 10. This Court has jurisdiction over Defendants named herein because Defendants either
15 reside or are located in this State or are foreign corporations authorized to do business in
16 California, are registered with the California Secretary of State, or who do sufficient
17 business in California, have sufficient minimum contacts with California, or otherwise
18 intentionally avail themselves of the markets within California through their manufacture,
19 distribution, promotion, marketing, or sale of their products within California to render
20 the exercise of jurisdiction by the California courts permissible under traditional notions
21 of fair play and substantial justice.

- 22 11. Venue is proper in the County of Los Angeles because one or more of the instances of
23 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
24 because Defendants conducted, and continue to conduct, business in the County of Los
25 Angeles with respect to the consumer products that are the subject of this action.

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1 16. Through research and investigation, Plaintiff identified a widespread practice of owners,
 2 operators, and managers of coffee houses with adjacent areas where smoking of tobacco
 3 or tobacco products is permitted, of exposing, knowingly and intentionally, persons in
 4 California to the Proposition 65-listed chemicals contained in second-hand tobacco
 5 smoke or environmental tobacco smoke without first providing clear and reasonable
 6 warnings of such to the exposed persons prior to exposure. Plaintiff later discerned that
 7 Defendants engaged in such practice, thereby violating Proposition 65.

8 17. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
 9 environmental tobacco smoke contains Tobacco Smoke, a chemical known to the State of
 10 California to cause Cancer and Reproductive Toxicity.

11 18. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
 12 environmental tobacco smoke contain the following chemicals known to the State of
 13 California to cause cancer or reproductive toxicity (Constituent Chemicals):
 14

15 Carbon disulfide	Arsenic (inorganic arsenic compounds)	Dibenz[a,h]anthracene	N-Nitrosodiethylamine
16 1, 1 -Dimethylhydrazine (UDMH)	Benzo[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
17 1,3-Butadiene	Benzene	Dibenzo[a,e]pyrene	N-Nitrosomethylethylamine
18 1-Naphthylamine	Benzo[a]pyrene	Dibenzo[a,h]pyrene	N-Nitrosomorpholine
19 2-Naphthylamine	Benzo[b]fluoranthene	Dibenzo[a,i]pyrene	N-Nitrososonicotine
20 2-Nitropropane	Benzo[j]fluoranthene	Dibenzo[a,l]pyrene	N-Nitrosopiperidine
21 4-Aminobiphenyl (4-amino-diphenyl)	Benzo[k]fluoranthene	Dichlorodiphenyltrichloroethane (DDT)	N-Nitrosopyrrolidine
22 7H-Dibenzo[c,g]carbazole	Cadmium	Formaldehyde (gas)	Ortho-Anisidine
23 Acetaldehyde	Captan	Hydrazine	Ortho-Toluidine
24 Acetamide	Chromium (hexavalent compounds)	Lead and lead compounds	Urethane (Ethyl carbamate)
25 Acrylonitrile	Chrysene	Nickel and certain nickel compounds	Carbon monoxide
26 Aniline	Dibenz[a,h]acridine	N-Nitrosodiethanolamine	Nicotine
27 Urethane	Lead	Toluene	

1 19. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
2 after addition of Tobacco Smoke and each of the Constituent Chemicals to the list of
3 chemicals known to the State to cause cancer (*Cal. Code Regs. 27 §27001(b)*) or
4 reproductive toxicity (*Cal. Code Regs. 27§ 27001(c)*), Tobacco Smoke and each of the
5 Constituent Chemicals became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions. Tobacco Smoke and each of the Constituent Chemicals are now
7 fully subject to Proposition 65 warning requirements and discharge prohibitions.
8

9 **SATISFACTION OF PRIOR NOTICE**

10 20. On or about April 27, 2009, Plaintiff gave notice of alleged violations of Cal. Health and
11 Safety Code section 25249.6 subject to a private action to Peet's, identified in the notice
12 as Peet's Coffee & Tea, Inc., Peet's Operating Co., identified in the notice as Peet's
13 Operating Company, Inc., and to the California Attorney General, County District
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning Tobacco
16 Smoke and the Constituent Chemicals.

17 21. Before sending the notice of alleged violations, Plaintiff investigated the Locations
18 involved, second-hand tobacco smoke and environmental tobacco smoke, the likelihood
19 that such products would cause users to suffer significant exposures to Tobacco Smoke
20 and the Constituent Chemicals, the corporate structure of each of the Defendants, and
21 other relevant matters.

22 22. Plaintiff's notice of alleged violations included a certificate of merit executed by the
23 attorney for the noticing party, CAG. The certificate of merit stated that the attorney for
24 Plaintiff who executed the certificate had consulted with at least one person with relevant
25 and appropriate expertise who reviewed data regarding the exposure to Tobacco Smoke
26 and the Constituent Chemicals, respectively, which are the subject Proposition 65-listed
27 chemicals of this action. Based on that information, the attorney for Plaintiff who
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1 executed the certificate of merit believed there was a reasonable and meritorious case for
2 this private action. The attorney for Plaintiff attached to the certificates of merit served
3 on the Attorney General the confidential factual information sufficient to establish the
4 basis of the certificates of merit.

5 23. Plaintiff's notices of alleged violation also each included a Certificate of Service and a
6 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
7 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

8 24. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff
9 gave notice of the alleged violations to Peet's and Peet's Operating Co. and to the public
10 prosecutors referenced in Paragraph 20.

11 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
12 any applicable district attorney or city attorney has commenced and is diligently
13 prosecuting an action against the Defendants.

14
15 **FIRST CAUSE OF ACTION**

16 **(By Consumer Advocacy Group, Inc. and against Peet's Coffe & Tea, Inc., Peet's**
17 **Operating Company, Inc., and Does 1-50 For Violation Of Proposition 65, The Safe**
18 **Drinking Water And Toxic Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5,**
19 **et seq.)**

20 **Environmental Exposures to Second-Hand Tobacco Smoke And Environmental Tobacco**
21 **Smoke**

22 26. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
23 paragraphs 1 through 25 of this complaint as though fully set forth herein.

24 27. An "[e]nvironmental exposure" is an exposure which may foreseeably occur as the result
25 of contact with an environmental medium, including, but not limited to, ambient air,
26 indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or
27 natural substances, either through inhalation, ingestion, skin contact or otherwise.
28 Environmental exposures include all exposures which are not consumer products
exposures, or occupational exposure." *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants

1 failed to provide clear and reasonable Proposition 65-compliant warnings to exposed
2 persons prior to the knowing and intentional exposures described herein, and thereby
3 violated Proposition 65.

4 28. The sources of exposure are numerous. The locations of exposure were at each of
5 Defendants' stores located throughout California that has an outdoor seating area
6 adjacent to the store, and wherein the smoking of tobacco and tobacco products is not
7 expressly prohibited and which does not contain conspicuously posted "no smoking"
8 signs (hereinafter "Locations").

9 29. Each of the Defendants, including Peet's and Peet's Operating Co., allowed, and allows,
10 individuals to smoke cigarettes, and other tobacco products at each of the Locations,
11 thereby exposing customers, members of the public, visitors, and vendors to Tobacco
12 Smoke and the Constituent Chemicals found in second-hand tobacco smoke or
13 environmental tobacco smoke. Each of the Defendants, including Peet's and Peet's
14 Operating Co., maintains exclusive control over at least one of the relevant outdoor
15 seating areas, as these areas constitute a portion of the property each of the Defendants
16 owns or leases for use as a store. The amount of control over the relevant outdoor seating
17 areas possessed by each of the Defendants, including Peet's and Peet's Operating Co., is
18 sufficient to prohibit or allow smoking or to post Proposition 65-compliant warnings and
19 to control the quality of ambient air entering and circulating the relevant outdoor seating
20 areas and adjacent stores. Furthermore, Plaintiff believes that Peet's and Peet's
21 Operating Co. maintains and possesses sufficient control over each of the relevant
22 Locations to prohibit or allow smoking or to require posting of Proposition 65-compliant
23 warnings and to control the quality of the ambient air entering and circulating the relevant
24 outdoor seating areas and adjacent stores, despite the operation or control of any Location
25 by another entity.

26 30. Each of the Defendants, including Peet's and Peet's Operating Co., permits persons to
27 smoke tobacco in these outdoor seating areas and often facilitates the smoking of tobacco
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1 by providing ashtrays for the convenience of those persons who smoke at the Locations.
2 When persons, including customers and employees of each of the Defendants loiter in,
3 walk through, or traverse zones in and adjacent to the relevant outdoor seating areas, they
4 are exposed to Tobacco Smoke and the Constituent Chemicals present in the ambient air.
5 Plaintiff's investigations show that infants and pregnant women are often among the
6 exposed persons. Persons are also exposed when entrance doors to the Locations are
7 open and Tobacco Smoke and the Constituent Chemicals enter the stores, the indoor
8 premises of which are otherwise non-smoking areas.

9 31. The route of exposure to Tobacco Smoke and the Constituent Chemicals is inhalation
10 contact caused when exposed persons breathe in the ambient air containing second-hand
11 tobacco smoke or environmental tobacco smoke, causing exposure of Tobacco Smoke
12 and the Constituent Chemicals to the mouth, throat, bronchi, esophagi, and lungs.
13 Exposure of Tobacco Smoke and the Constituent Chemicals generates risks of cancer and
14 reproductive toxicity to the exposed persons.

15 32. Plaintiff is informed, believes, and thereon alleges between April 27, 2006 and the
16 present, each of the Defendants knowingly and intentionally exposed persons in
17 California to Tobacco Smoke and its Constituent Chemicals, without first providing any
18 type of clear and reasonable warning of such to the exposed persons before the time of
19 exposure, as described above. These exposures occurred on, but not beyond, the property
20 owned or controlled by Defendants. Defendants thereby violated Proposition 65.

21 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
22 Proposition 65 as to second-hand tobacco smoke and environmental tobacco smoke have
23 been ongoing and continuous to the date of the signing of this complaint, so that a
24 separate and distinct violation of Proposition 65 occurred each and every time a person
25 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.
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1 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur in the future.

4 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Tobacco Smoke and its Constituent
6 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

7 36. In the absence of equitable relief, California consumers, the general public, and others
8 will continue to be involuntarily exposed to Tobacco Smoke and its Constituent
9 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts
10 alleged herein, Defendants have caused irreparable harm for which there is no plain,
11 speedy, or adequate remedy at law.

12 37. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
13 filing this Complaint.

14 **SECOND CAUSE OF ACTION**

15 **(By Consumer Advocacy Group, Inc. and against Peet's Coffe & Tea, Inc., Peet's**
16 **Operating Company, Inc., and Does 1-50 For Violation Of Proposition 65, The Safe**
17 **Drinking Water And Toxic Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5,**
18 **et seq.)**

19 **Occupational Exposures to Second-Hand Tobacco Smoke and Environmental Tobacco**
20 **Smoke**

21 38. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
22 paragraphs 1 through 37 of this complaint as though fully set forth herein.

23 39. Plaintiff's allegations concern an "[o]ccupational exposure", which "means an exposure
24 to any employee in his or her employer's workplace." *Cal. Code Regs. 27 § 25602(f)*.
25 Exposures of Tobacco Smoke and its Constituent Chemicals to Defendants' employees
26 occurred through the course of their employment.

27 40. The sources of exposure are numerous. The locations of exposure were at each of
28 Defendants' stores located throughout California that has an outdoor seating area
adjacent to the store, and wherein the smoking of tobacco and tobacco products is not

1 expressly prohibited and which does not contain conspicuously posted "no smoking"
2 signs. Each of the Defendants was an employer employing employees at each of the
3 Locations each day between April 27, 2006 and the present.

4 41. Each of the Defendants, including Peet's and Peet's Operating Co., allowed, and allows,
5 individuals to smoke cigarettes, and other tobacco products at each of the Locations,
6 thereby exposing its employees to Tobacco Smoke and the Constituent Chemicals found
7 in second-hand tobacco smoke or environmental tobacco smoke. Each of the Defendants,
8 including Peet's and Peet's Operating Co., maintains exclusive control over at least one
9 of the relevant outdoor seating areas, as these areas constitute a portion of the property
10 each of the Defendants owns or leases for use as a store. The amount of control over the
11 relevant outdoor seating areas possessed by each of the Defendants, including Peet's and
12 Peet's Operating Co., is sufficient to prohibit or allow smoking or to post Proposition 65-
13 compliant warnings and to control the quality of ambient air entering and circulating the
14 relevant outdoor seating areas and adjacent stores. Furthermore, Plaintiff believes that
15 each of the Defendants, including Peet's and Peet's Operating Co., maintains and
16 possesses sufficient control over each of the relevant Locations to prohibit or allow
17 smoking or to require posting of Proposition 65-compliant warnings and to control the
18 quality of the ambient air entering and circulating the relevant outdoor seating areas and
19 adjacent stores, despite the operation or control of any Location by another entity.

20 42. Each of the Defendants, including Peet's and Peet's Operating Co., permits persons to
21 smoke tobacco in these outdoor seating areas and often facilitates the smoking of tobacco
22 by providing ashtrays for the convenience of those persons who smoke at the Locations.
23 When persons, including customers and employees of each of the Defendants loiter in,
24 walk through or traverse zones in and adjacent to the relevant outdoor seating areas, they
25 are exposed to Tobacco Smoke and the Constituent Chemicals present in the ambient air.
26 Plaintiff's investigations show that infants and pregnant women are often among the
27 exposed persons. Persons are also exposed when entrance doors to the Locations are
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1 open and Tobacco Smoke and the Constituent Chemicals enter the stores, the premises of
2 which are otherwise non-smoking areas. Employees of each of the Defendants suffered,
3 and suffer, additional exposures when they empty ashtrays or otherwise clean or service
4 the relevant outdoor seating areas. Because of the foregoing, employees of each of the
5 Defendants suffered, and suffer, exposures of significant duration on a regular basis,
6 without receiving warnings.

7 43. The route of exposure to Tobacco Smoke and the Constituent Chemicals is inhalation
8 contact caused when exposed persons, including the employees of each of the
9 Defendants, breathe in the ambient air containing second-hand tobacco smoke or
10 environmental tobacco smoke, causing exposure of Tobacco Smoke and the Constituent
11 Chemicals to the mouth, throat, bronchi, esophagi, and lungs. Exposure of Tobacco
12 Smoke and the Constituent Chemicals generates risks of Cancer and Reproductive
13 Toxicity to the exposed persons.

14 44. Plaintiff is informed, believes, and thereon alleges that on each day between April 27,
15 2006 and the present each of the Defendants knowingly and intentionally exposed
16 persons, including its employees, in California to Tobacco Smoke and its Constituent
17 Chemicals, without first giving clear and reasonable warning of such to the exposed
18 persons before the time of exposure, as described above. Defendants thereby violated
19 Proposition 65.

20 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to second-hand tobacco smoke and environmental tobacco smoke have
22 been ongoing and continuous to the date of the signing of this complaint, so that a
23 separate and distinct violation of Proposition 65 occurred each and every time a person
24 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.

25 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
27 violations alleged herein will continue to occur in the future.
28

1 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Tobacco Smoke and its Constituent
3 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

4 48. In the absence of equitable relief, California consumers, the general public, and others
5 will continue to be involuntarily exposed to Tobacco Smoke and its Constituent
6 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts
7 alleged herein, Defendants have caused irreparable harm for which there is no plain,
8 speedy, or adequate remedy at law.

9 49. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
10 filing this Complaint.

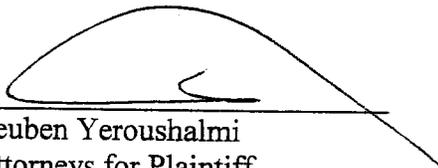
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12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

- 14 1. A permanent injunction mandating Proposition 65 compliant warnings;
15 2. Penalties pursuant to Cal. Health and Safety Code section 25249.7, subdivision (b);
16 3. Costs of suit;
17 4. Reasonable attorney fees and costs; and
18 5. Any further relief that the court may deem just and equitable.

19
20 Dated: December 22, 2009

YEROUSHALMI & ASSOCIATES

21
22
23 BY: 

24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 Consumer Advocacy Group, Inc.
27
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