

JUN 22 2010

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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

21 CONSUMER ADVOCACY GROUP, INC.,
22 in the public interest,

23 Plaintiff,

24 v.

25 STARBUCKS CORPORATION, a
26 Washington Corporation, and DOES 1-50;

27 Defendants.
28

CASE NO. BC409021

~~PROPOSED~~ STIPULATED
CONSENT JUDGMENT

The Honorable Susan Bryant-Deason
(Department 52)

1 **1.0 INTRODUCTION**

2 1.1 Plaintiff. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” or “CAG”), on
3 its own behalf and as a representative of the People of the State of California, is a non-profit
4 public interest corporation.

5 1.2 Defendant. Starbucks Corporation (“Starbucks”) owns, operates, and/or
6 manages coffee houses (“Stores”) throughout California.

7 1.3 Parties. CAG and the Starbucks are collectively referred to herein as the
8 “Parties.”

9 1.4 Covered Properties. The properties owned, operated and managed by Starbucks
10 located in the State of California at which Starbucks permits (or does not otherwise prohibit)
11 smoking at an outdoor seating area immediately adjacent to the property, which seating area is
12 under Starbucks Corporation’s control, are referred to collectively as the “Covered Properties.”

13 1.5 Proposition 65. Health & Safety Code sections 25249.5 *et seq.* (“Proposition
14 65”) prohibits, among other things, a company consisting of ten or more employees from
15 knowingly and intentionally exposing an individual to chemicals that are known to the State of
16 California to cause cancer and/or birth defects or other reproductive harm without first providing
17 a clear and reasonable warning to such individuals. Exposures can occur as a result of a
18 consumer product exposure, an occupational exposure or an environmental exposure.

19 1.6 Proposition 65 Chemicals. The State of California has officially listed various
20 chemicals pursuant to Health & Safety Code section 25249.8 as chemicals known to the State of
21 California to cause cancer and/or reproductive toxicity.

22 1.7 The Present Dispute. This Consent Judgment pertains to *Consumer Advocacy*
23 *Group, Inc. v. Starbucks Corporation, et al.*, Los Angeles County Superior Court Case No.
24 BC409021, complaint filed on March 5, 2009 (“the Action”).

25 1.8 Plaintiff’s 60-day Notices.

26 1.8.1 More than sixty days prior to filing the Action, on or about February 8, 2008,
27 CAG served public enforcement agencies and Starbucks with a document titled “Sixty-Day
28 Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement

1 Act of 1986” under Health & Safety Code Section 25249.6 (“First Notice”). The First Notice
2 alleged that certain of Starbucks’ stores located in San Francisco and Los Angeles counties
3 contained outdoor seating areas immediately adjacent to the store, and that such areas were
4 within Starbucks’ control. CAG further alleged that the smoking of tobacco was not expressly
5 prohibited by Starbucks in these outdoor areas, that Starbucks did not conspicuously post “no
6 smoking” signs, and that Starbucks violated Proposition 65 by failing to warn members of the
7 public and its employees of the second-hand tobacco smoke. CAG alleged that tobacco smoke
8 contains the following chemicals known to the State to cause cancer or reproductive harm
9 (“Noticed Chemicals”).

10 1.8.2 Also more than sixty days prior to filing the Action, on or about August 11,
11 2008, CAG issued a second “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe
12 Drinking Water And Toxic Enforcement Act of 1986” covering all Starbucks company-owned
13 store located in the State of California at which Starbucks permits (or does not otherwise
14 prohibit) smoking at an outdoor seating area immediately adjacent to the store, which area is
15 allegedly part of the premises leased by Starbucks or otherwise under Starbucks’ control,
16 alleging substantially the same violation as alleged in the First Notice (“Second Notice”). The
17 First Notice and Second Notice are collectively referred to as the “Notices.” This Consent
18 Judgment covers the Noticed Chemicals. CAG subsequently filed the instant Action against
19 Starbucks, which asserts the Proposition 65 violation alleged in the Notices.

20 1.9 Purpose of Consent Judgment. The parties enter into this Consent Judgment
21 pursuant to a settlement of certain disputed claims as alleged in the Complaint for the purpose of
22 avoiding prolonged and costly litigation . Parties wish to resolve completely and finally the
23 issues raised by the Notices and the Action pursuant to the terms and conditions described
24 herein. In entering into this Consent Judgment, the Parties recognize that this Consent Judgment
25 is a full and final settlement of all claims related to tobacco products, tobacco smoke, and
26 secondhand tobacco smoke (and their constituent chemicals) that were raised or that could have
27 been raised in the Notices and/or the Action. CAG and Starbucks also intend for this Consent
28 Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or collateral

1 estoppel protection for Starbucks, against any and all other claims based upon the same or
2 similar allegations as to the Noticed Chemicals.

3 1.10 No Admission. Nothing in this Consent Judgment shall be construed as an
4 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
5 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
6 of any fact, conclusion of law, issue of law, or violation of law.

7 1.11 Effective Upon Final Determination. Starbucks Corporation's willingness to
8 enter into this Consent Judgment is based upon the understanding that this Consent Judgment
9 will fully and finally resolve all claims related to tobacco products, tobacco smoke and
10 secondhand tobacco smoke (and their constituent chemicals), brought by CAG, and that this
11 Consent Judgment will have *res judicata* and/or collateral estoppel effect to the extent allowed
12 by law with regard to any alleged violations of Proposition 65 by Starbucks.

13 2.0 JURISDICTION

14 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, the
15 Parties stipulate that this Court has jurisdiction over the allegations and claims alleged in the
16 Action.

17 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, the Parties
18 stipulate that this Court has personal jurisdiction over Starbucks as to the acts and claims alleged
19 in the Action.

20 2.3 Venue. For purposes of this Consent Judgment only, the Parties stipulate that
21 venue for resolution of the allegations and claims asserted in the Action is proper in the County
22 of Los Angeles.

23 2.4 Jurisdiction to Enter Consent Judgment. The Parties stipulate and agree that this
24 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution
25 of the allegations contained in the Notices, the Action, and of all claims that were or that could
26 have been raised based on the facts alleged therein or arising therefrom.

1 **3.0 REMEDIES**

2 3.1 Obligations and Duties. As to all Covered Properties, Starbucks agrees as
3 follows:

4 Starbucks agrees, promises, represents, and warrants that, on or before June 6,
5 2010, Starbucks will make the outdoor seating areas of all Covered Properties located throughout
6 the State of California smoke free, and smoking will be prohibited in those locations.

7 **4.0 ATTORNEY FEES AND COSTS**

8 4.1 Payment to Yeroushalmi & Associates. Starbucks shall pay CAG \$30,000.00 for
9 its attorney fees and costs incurred in this matter. The check shall be to “Yeroushalmi &
10 Associates.” CAG represents and warrants that CAG has authorized the payment of attorney
11 fees and costs, and that the payment and any application or distribution of such payment will not
12 violate any agreement between CAG and its attorneys with any other person or entity. CAG
13 releases and agrees to hold harmless the Released Parties with regard to any issue concerning the
14 allocation or distribution of the amount paid under this section. Yeroushalmi & Associates shall
15 provide its address and federal tax identification number to Starbucks prior to such payment.

16 4.2 Timing of Payments. The payment described above shall be made in full to the
17 respective recipients within ten (10) days of the approval date of this Consent Judgment.

18 **5.0 RELEASES AND CLAIMS COVERED**

19 5.1. Effect of Judgment. This Judgment is a full and final judgment with respect to
20 any claims regarding the Noticed Chemicals that were asserted or that could have been asserted
21 in the Action and/or the Notices against the Released Parties (as defined in paragraph 5.2 below),
22 including, but not limited to: (a) claims for any violation of Proposition 65 by the Released
23 Parties and each of them, including but not limited to, claims arising from consumer product
24 exposures to the Noticed Chemicals, wherever occurring and to whomever occurring, through
25 and including the date upon which this Consent Judgment becomes final, including all appeals;
26 and (b) the Released Parties’ continuing responsibility to provide the warnings mandated by
27 Proposition 65.

1 5.2 Release. Except for such rights and obligations as have been created under this
2 Consent Judgment, Plaintiff, on its own behalf and in the interests of the public pursuant to
3 Health & Safety Code section 25249.7(d), with respect to the matters regarding the Noticed
4 Chemicals alleged in the Notices and the Action, does hereby fully, completely, finally and
5 forever release, relinquish and discharge: (a) Starbucks Corporation; (b) the past, present, and
6 future owners, lessors, sublessors, managers, franchisors, franchisees, wholesalers, distributors
7 and operators of (and any others with any interest in) the sites identified in the Notices, all
8 Covered Properties, and all Stores affiliated with the parties identified in (a) above; and (c) the
9 respective past, present, and future officers, directors, shareholders, affiliates, members, joint
10 venturers, partners, agents, principals, employees, attorneys, parents, subsidiaries, owners, sisters
11 or other related entities, successors, and assigns of the persons and entities described in (a) and
12 (b) above (the parties identified in (a), (b), and (c) above are collectively referred to as the
13 “Released Parties”) of and from all claims, actions, causes of action, suits, demands, rights,
14 debts, agreements, promises, liabilities, damages, penalties, royalties, fees, accountings, costs
15 and expenses, whether known or unknown, suspected or unsuspected, of any nature whatsoever
16 that Plaintiff has or may have against the Released Parties, arising directly or indirectly out of
17 any fact or circumstance occurring prior to the date upon which this Consent Judgment becomes
18 final (including all appeals), relating to any actual or alleged violation of Proposition 65 by the
19 Released Parties and their respective agents, servants and employees that were or could have
20 been raised in the Notices and/or the Action (the “Released Claims”). In sum, the Released
21 Claims include all allegations made, or that could have been made, by Plaintiff with respect to
22 the Noticed Chemicals relating to Proposition 65.

23 5.3 Intent of Parties. It is the intention of the Parties to this Release that, upon entry
24 of judgment and conclusion of any and all appeals or litigation relating to this Consent Judgment,
25 that this Consent Judgment shall be effective as a full and final accord and satisfaction and
26 release of each and every Released Claim. In furtherance of this intention, Plaintiff
27 acknowledges that it is familiar with California Civil Code section 1542, which provides as
28 follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
4 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
5 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
6 WITH THE DEBTOR.

7 Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has or may
8 have under Civil Code section 1542 (as well as any similar rights and benefits which it may have
9 by virtue of any statute or rule of law in any other state or territory of the United States).

10 Plaintiff acknowledges that it may hereafter discover facts in addition to, or different from, those
11 which it now knows or believes to be true with respect to the subject matter of this Consent
12 Judgment and the Released Claims, and that notwithstanding the foregoing, it is Plaintiff's
13 intention to fully, finally, completely and forever settle and release all Released Claims, and that
14 in furtherance of such intention, the release here given shall be and remain in effect as a full and
15 complete general release, notwithstanding the discovery or existence of any such additional or
16 different facts.

17 5.4 Plaintiff's Ability to Represent the Public. Plaintiff hereby warrants and
18 represents to Defendant and the Released Parties that (a) Plaintiff has not previously assigned
19 any Released Claim; and (b) Plaintiff has the right, ability and power to release each Released
20 Claim.

21 Plaintiff further represents and warrants that it is a public benefit corporation formed for
22 the specific purposes of (a) protecting and educating the public as to harmful products and
23 activities; (b) encouraging members of the public to become involved in issues affecting the
24 environment and the enforcement of environmental statutes and regulations including, but not
25 limited to, Proposition 65; and (c) instituting litigation to enforce the provisions of Proposition
26 65.

27 5.5 No Further Force and Effect. In the event that (a) the Court denies the Parties'
28 Joint Motion to Approve the Consent Judgment pursuant to Health & Safety Code section

1 25249.7(f)(4) as amended; or (b) a decision by the Court to approve the Consent Judgment is
2 appealed and overturned by another Court, then upon notice by any Party hereto to any other
3 Party hereto, this Consent Judgment shall be of no further force or effect and the Parties shall be
4 restored to their respective rights and obligations as though this Consent Judgment had not been
5 executed by the Parties.

6 **6.0 PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

7 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent
8 Judgment shall, *inter alia*:

9 6.1.1 Constitute full and fair adjudication of all claims against Starbucks,
10 including, but not limited to, all claims set forth in the Action based upon alleged violations of
11 Proposition 65, as well as any other statute, provision of common law or any theory or issue
12 which arose from Starbucks's actual or alleged failure to provide warnings regarding consumer
13 exposure to tobacco products, tobacco smoke and secondhand tobacco smoke (and its constituent
14 chemicals) which are known to the State of California to cause cancer, birth defects and/or other
15 reproductive harm;

16 6.1.2 Bar all other persons, on the basis of *res judicata*, collateral estoppel
17 and/or the doctrine of mootness, from prosecuting against any Released Party any claim with
18 respect to the Noticed Chemicals alleged in the Notices and the Action, and based upon alleged
19 violations of (a) Proposition 65; or (b) any other statute, provision of common law or any theory
20 or issue which arose or may arise from the alleged failure to provide warnings of exposure to
21 tobacco products, tobacco smoke, and secondhand tobacco smoke (and its constituent
22 chemicals), which are known to the State of California to cause cancer, birth defects, and/or
23 other reproductive harm.

24 **7.0 DISPUTES UNDER THE CONSENT JUDGMENT**

25 7.1 Disputes. In the event that a dispute arises with respect to either Party's
26 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person or
27 by telephone, and endeavor to resolve the dispute in an amicable manner. No action may be
28 taken to enforce the provisions of this Judgment absent such a good faith effort to resolve the

1 dispute prior to the taking of such action. In the event that legal proceedings are initiated to
2 enforce the provisions of this Judgment, however, the prevailing party in such proceeding may
3 seek to recover its costs and reasonable attorneys' fees. As used herein, the term "prevailing
4 party" means a party that is successful in obtaining relief more favorable to it than the relief that
5 the other party was amenable to providing during the parties' good faith attempt to resolve the
6 dispute that is the subject of such enforcement action.

7 **8.0 NOTICES**

8 8.1 Written Notice Required. All notices between the Parties provided for or
9 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly
10 served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent
11 via facsimile to a party at the facsimile number set forth below, or to such other or further
12 facsimile number provided in any notice sent under the terms of this paragraph, on the date of the
13 transmission of that facsimile; or (c) when deposited in the United States mail, certified, postage
14 prepaid, addressed to such party at the address set forth below, or to such other or further address
15 provided in a notice sent under the terms of this paragraph, three days following the deposit of
16 such notice in the mails.

17 Notices pursuant to this paragraph shall be sent to the parties as follows:

18 (a) To Plaintiff:

19 Reuben Yeroushalmi
20 YEROUSHALMI & ASSOCIATES
21 3700 Wilshire Boulevard, Suite 480
22 Los Angeles, CA 90010
23 Facsimile Number: (213) 382-3430

24 (b) To Defendant:

25 David Biderman, Esq.
26 PERKINS COIE LLP
27 1888 Century Park East
28 Suite 1700
Los Angeles, CA 90067
Facsimile Number: (310) 788-3399

A Party may change the address to which notice shall be provided under this Consent

1 Judgment by serving a written notice to each of the Parties.

2 **9.0 INTEGRATION**

3 9.1 Integrated Writing. This Consent Judgment constitutes the final and complete
4 agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior
5 or contemporaneous negotiations, promises, covenants, agreements or representations
6 concerning any matters directly, indirectly or collaterally related to the subject matter of this
7 Consent Judgment. The Parties hereto have expressly and intentionally included in this Consent
8 Judgment all collateral or additional agreements that may, in any manner, touch or relate to any
9 of the subject matter of this Consent Judgment and therefore, all promises, covenants and
10 agreements, collateral or otherwise are included herein and therein. The Parties intend that this
11 Consent Judgment shall constitute an integration of all their agreements, and each understands
12 that in the event of any subsequent litigation, controversy or dispute concerning any of its terms,
13 conditions or provisions, no Party hereto shall be permitted to offer or introduce any oral or
14 extrinsic evidence concerning any other collateral or oral agreement between the Parties not
15 included herein.

16 **10.0 TIMING**

17 10.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

18 **11.0 COMPLIANCE WITH REPORTING REQUIREMENTS**

19 11.1 Reporting Forms: Presentation to Attorney General. The Parties expressly
20 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety
21 Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary
22 signatures hereto, Plaintiff shall present this Proposed Consent Judgment to the California
23 Attorney General's office.

24 **12.0 COUNTERPARTS**

25 12.1 Counterparts. This Consent Judgment may be signed in counterparts and shall
26 be binding upon the Parties hereto as if all of the Parties executed the original hereof. A
27 facsimile or pdf signature shall be valid as the original.

1 **13.0 WAIVER**

2 13.1 No waiver. No waiver by any Party hereto of any provision hereof shall be
3 deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or
4 any other provision hereof.

5 **14.0 AMENDMENT**

6 14.1 In Writing. This Consent Judgment cannot be amended or modified except by a
7 writing executed by the parties hereto that expresses, by its terms, an intention to modify this
8 Consent Judgment.

9 **15.0 SUCCESSORS**

10 15.1 Binding Upon Successors. This Consent Judgment shall be binding upon and
11 inure to the benefit of, and be enforceable by, the Parties hereto and their respective
12 administrators, trustees, executors, personal representatives, successors and assigns.

13 **16.0 CHOICE OF LAWS**

14 16.1 California Law Applies. Any dispute regarding the interpretation of this Consent
15 Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the
16 damages accruing to a Party by reason of any breach of this Consent Judgment shall be
17 determined under the laws of the State of California, without reference to choice of law
18 principles.

19 **17.0 NO ADMISSIONS**

20 17.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been
21 reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent
22 Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any violation
23 of Proposition 65 or any other law. The settlement of claims herein shall not be deemed to be an
24 admission or concession of liability or culpability by any Party, at any time, for any purpose.
25 Neither this Consent Judgment, nor any document referred to herein, nor any action taken to
26 carry out this Consent Judgment, shall be construed as giving rise to any presumption or
27 inference of admission or concession by Defendant as to any fault, wrongdoing or liability
28 whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the

1 negotiations or other proceedings connected with it, nor any other action taken to carry out this
2 Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or
3 received in evidence in any pending or future, civil, criminal or administrative action or
4 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the
5 assertion of any Released Claim or as otherwise required by law.

6 **18. REPRESENTATION**

7 18.1 Construction of Consent Judgment. The Parties each acknowledge and warrant
8 that they have been represented by independent counsel of their own selection in connection with
9 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and
10 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms
11 of this Consent Judgment will not be construed in favor of or against any Party hereto.

12 **19.0 AUTHORIZATION**

13 19.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies
14 that he or she is authorized by the Party he or she represents to enter into this Consent Judgment,
15 to stipulate to this Consent Judgment, and to execute and approve this Consent Judgment on
16 behalf of the Party represented.

17 Dated: April 8, 2010

18 CONSUMER ADVOCACY GROUP, INC.

19
20 By: [Signature]
21 Its: Pres.

22
23 Dated: April 23, 2010

24 STARBUCKS CORPORATION

25
26 By: [Signature]
27 Its: SVP Store Operations, etc

1 Approved as to form:

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3 Dated: April 8, 2010

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9 Dated: April 19, 2010

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YEROUSHALMI AND ASSOCIATES
Reuben Yeroushalmi, Esq.

By 
REUBEN YEROUSHALMI
Attorneys for Plaintiff CONSUMER ADVOCACY
GROUP, INC.

PERKINS COIE LLP
David Biderman, Esq.

By 
David Biderman, Esq.
Attorneys for Defendant STARBUCKS
CORPORATION

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Starbucks Corporation, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: June 22, 2010

Susan Bryant-Deason

Honorable Susan Bryan-Deason
Judge, Superior Court of the State of California