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CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

COORDINATION PROCEEDING SPECIAL TITLE (RULE 3.550(c)) SECONDHAND SMOKE CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4182 [PROPOSED] **CONSENT JUDGMENT BETWEEN PLAINTIFF AND DEFENDANTS WAL-MART STORES, INC., SAM'S CLUB, 7-ELEVEN, INC., CIRCLE K STORES, INC. AND TOSCO CORPORATION** Date: ____, 2010 Time: Place: Dept. 307 Judge: Hon. William Highberger

1. INTRODUCTION

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

1.2 Settling Defendants. Wal-Mart Stores, Inc., Sam's Club, 7-Eleven, Inc., Circle K Stores, Inc., and TOSCO Corporation are corporations that employ more than 10 persons. Wal-Mart Stores, Inc., Sam's Club, Circle K Stores, Inc., TOSCO Corporation, and 7-Eleven, Inc. (collectively "Settling Defendants") own, lease and/or operate retail stores in California that sold tobacco products during times relevant to this matter. Some Settling Defendants also maintain franchise agreements with independent entities ("Franchisees") that own, lease and/or operate other retail stores in California bearing Settling Defendants' names that may sell tobacco products ("Franchise Stores").

1.3 Parties. CAG and Settling Defendants are collectively referred to herein as the "Parties."

1.4 Covered Products. Cigars, pipe tobacco, "smokeless" tobacco (including, but not limited to, chewing tobacco and dipping tobacco) and all other tobacco products (other than cigarettes) are "Covered Products."

1.5 Covered Properties. The term "Covered Properties" as used herein refers only to stores in California that are operated by Settling Defendants and that sell Covered Products.

1.6 Proposition 65. Health & Safety Code section 25249.5 *et seq.* prohibits any person in the course of business from knowingly and intentionally exposing a person to chemicals known to the State of California to cause cancer or reproductive toxicity without providing a clear and reasonable warning.

1.7 Proposition 65 Chemical. Pursuant to Health & Safety Code section 25249.8, the State has listed certain chemicals as "known to the State to cause cancer and/or reproductive toxicity."

1.8 The Present Dispute. This Consent Judgment pertains to *Consumer Action Group v. Circle K Co. et al.*, (Case No. BC 232078), which was originally filed in San Francisco

Superior Court as Case No. 30598, which was deemed complex and has been proceeding as part of Judicial Council Coordination Proceeding ("JCCP") 4182 (the "Action").

1.9 **Plaintiff's 60-Day Notices.** In 1999, more than sixty days prior to filing this Action, Plaintiff served each Settling Defendant with one or more documents entitled "60-day Notice of Intent to Sue Under Health & Safety Code Section 25249.6" (the "1999 Notices"). Plaintiff later served Settling Defendants with similar notices on July 12, 2002 (the "2002 Notices"), and May 26, 2009 (the "2009 Notices"). The 1999 Notices, 2002 Notices, and 2009 Notices are hereinafter collectively referred to as the "Notices". The Notices alleged, among other things, that Plaintiff believed that each Settling Defendant had violated Proposition 65 by knowingly and intentionally selling cigars and other tobacco products that caused consumers and the public to be exposed to Proposition 65 Chemicals without first giving clear and reasonable warnings. Among the Proposition 65 Chemicals identified by Plaintiff in the Notices are tobacco smoke and oral use of smokeless tobacco products (and their constituent chemicals, including Acetaldeyde, Acetamide, Acrylonitrile, 4-Aminobyphenyl, (4-aminodiphnyl), Aniline, Ortho-Anisidine, Arsenic (inorganic arsenic compounds), Benz[a]anthracene, Benzene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium (hexavalent compounds), Chrysene, Dichlorodiphenyltrichloroethane (DDT), Dibenz[a,h]acridine, Dibenz[a,j]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1 Dimethylhydrazine (UDMH), Formaldehyde (gas), Hydrazine, Lead and lead compounds, 1-Naphthylamine, Nickel and certain nickel compounds, 2-Nitropropane, N-Nitrosodi-n-butylamine, N-Nitrosodiethanolamine, N-Nitrosodiethylamine, N-Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosonornicotine, N-Nitrosopiperidine, N-Nitrosopyrrolidine, Ortho-Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Arsenic (inorganic Oxides), Carbon disulfide, Carbon monoxide, Lead, Nicotine, Toluene, and Urethane) (collectively "Noticed Chemicals").

1.10 **The Complaint.** In the Action, Plaintiff alleged violations of Proposition 65 and the Unfair Competition Act, Business & Professions Code section 17200 *et seq.* ("Section 17200") arising out of Settling Defendants' alleged sale of cigars to consumers without providing

adequate warnings. Plaintiff filed a First Amended Complaint on December 19, 2008, alleging violations of Proposition 65 for the unwarned sale of "cigars and tobacco products." As of the date the final judgment in this action is entered, the First Amended Complaint shall be deemed amended and replaced by the Second Amended Complaint that is attached hereto, adding specific allegations that the Settling Defendants violated Proposition 65 through the unwarned sale of "smokeless tobacco products."

1.11 Purpose of Consent Judgment. In order to avoid continued and protracted litigation, the Parties wish to resolve completely and finally the issues raised by the Notices and/or the Action pursuant to the terms and conditions described herein. In entering into this Consent Judgment, the Parties recognize that this Consent Judgment is a full and final settlement of all claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and their constituent chemicals) that were or could have been raised in the Notices and/or the Action. The Parties also intend for this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or collateral estoppel protection for each of the Settling Defendants and their respective business affiliates, subsidiaries, divisions, and/or their Franchisees against any and all other claims based upon the same or similar allegations as to the Covered Products.

1.12 No Admissions. Settling Defendants dispute that they have violated Proposition 65 or any other law as described in the Notices and/or the Action and/or that they have any liability whatsoever based on any of the facts or claims asserted in the Notices or the Action. In particular, Settling Defendants contend that they have at all times provided all warnings required by Proposition 65 or any other applicable law; that no additional warnings are required for the exposure that Plaintiff alleges; and that warnings that were in place during the period covered by the complaint and are currently in place fully comply with Proposition 65 and all other applicable laws. Plaintiff disputes these contentions.

Based on the foregoing, nothing in this Consent Judgment shall be construed as an admission by any Settling Defendant that any action that any Settling Defendant may have taken or failed to take violates Proposition 65 or any other provision of any other statute, regulation, or principle of common law. Settling Defendants expressly deny any violation of Proposition 65.

1.13 **Effective Upon Final Determination.** Settling Defendants' willingness to enter into this Consent Judgment is expressly based on the understanding that this Consent Judgment will fully and finally resolve all claims related to, that were or could have been brought by CAG and that this Consent Judgment will have *res judicata* and/or collateral estoppel effect to the full extent allowed by law with regard to any alleged violation of Proposition 65 by any Settling Defendant, its customers, subsidiaries, Franchisees, or affiliates.

1.14 **Effective Date.** For purposes of this Consent Judgment, the Effective Date is the date of entry by this Court, unless entry of the Consent Judgment is appealed, in which case the Effective Date is the date all appeals are resolved and entry is upheld.

2. JURISDICTION

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

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

2.3 **Venue.** For purposes of this Consent Judgment only, the Parties stipulate that venue for resolution of claims alleged in this Action is proper in the Superior Court for the County of Los Angeles.

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

3. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS

3.1 Settling Defendants assert that they are not legally responsible for the conduct of persons or entities that operate Franchise Stores. Plaintiffs dispute this position. Settling Defendants further assert that Covered Properties have been and are in compliance with Proposition 65 warning requirements relating to consumer exposures arising from the Covered

Products or the use of the Covered Products because (a) manufacturers' warnings on Covered Product packaging satisfy Proposition 65's requirements with respect to Covered Products; and/or (b) Settling Defendants otherwise provide and have provided warnings that fully comply with Proposition 65. Plaintiff contends that Settling Defendants are not now, and have not in the past, been in compliance with Proposition 65 because at some Covered Properties, manufacturers' warnings on Covered Products have been removed and the products have either been placed in humidors without Proposition 65 warnings or warnings were otherwise not provided. Defendants deny these allegations.

3.2 Warning. As to all Covered Properties, Settling Defendants agree to do as follows:

3.2.1 Within 180 days of the Effective Date, Settling Defendants shall cause to have posted in their stores that sell smokeless tobacco products, the sign that is required by and attached as Exhibit 1 to the Stipulation and Judgment entered into in *The City and County of San Francisco et al. v. United States Tobacco Company, Inc. et al.*, Case Number CGC-98-993992 (San Diego Superior Court) (*City of San Francisco*). It is attached hereto as Exhibit 1 to this Consent Judgment. Such sign is to be posted in accordance with the instructions set forth on pages 2-3 of Exhibit 5 to the *City of San Francisco* judgment, a copy of which is attached as Exhibit 2 to this Consent Judgment.

3.2.2 If in connection with the individual sale of cigars to consumers at any Covered Property, the Settling Defendant removes cigars from the packaging provided by the manufacturer or distributor of the cigars and there are no FTC warnings on the individual cigars, or on the displays or humidors provided by the manufacturer or distributor in connection with any such individual sale, or the Settling Defendant receives cigars for individual sale that do not include any warnings then such Settling Defendant shall, within 60 days of the Effective Date, provide a warning in connection with any such sale using language substantially similar to the following:

"WARNING: PURSUANT TO THE PROVISIONS OF THE CALIFORNIA HEALTH AND SAFETY CODE, CIGARS CONTAIN/PRODUCE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND/OR BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM."

3.2.3 If the Settling Defendant sells both smokeless tobacco products and individual cigars as described in subsection 3.2.2 above, within 60 days after the Effective Date, a single warning using the following language may be provided to satisfy the requirements of subsections 3.2.1 and 3.2.2:

"WARNING: PURSUANT TO THE PROVISIONS OF THE CALIFORNIA HEALTH AND SAFETY CODE, SMOKELESS TOBACCO PRODUCTS AND CIGARS CONTAIN/PRODUCE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND/OR BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM."

3.2.4 The warnings set forth in this Section 3.2 shall be displayed in a location at the Covered Properties that is reasonably likely to be viewed by consumers purchasing cigars or smokeless tobacco sold in the manner described in section 3.2.1. A sign of the size and point type of Exhibit 1 is an example of a warning that satisfies the requirements of this section.

3.2.5 Compliance. Compliance with paragraphs 3.2.1 and 3.2.2 is deemed to fully satisfy Settling Defendants' obligations under Proposition 65 with respect to consumer product, environmental, or occupational exposures arising from the sale or use of Covered Products

3.3 Future Laws or Regulations. In lieu of complying with the requirements of paragraph 3.2, should (a) any future federal law or regulation that governs the warnings provided for Covered Products preempt state authority with respect to the warning required herein; (b) any future warning requirement with respect to the subject matter of said paragraph be approved by the State of California; (c) any future state law, regulation, or judicial order specify a specific warning for exposures with respect to the subject matter of said paragraph, any Settling

Defendant may, at its sole option, comply with the warning obligations set forth in paragraph 3.2 by complying with such future federal or state law, regulation, or judicial order.

3.4 Amendment to Proposition 65. If, as a result of a statutory, regulatory, or other amendment to Proposition 65 or judicial order, Settling Defendants, the "Released Parties" (as defined in paragraph 4.2 below), or the class to which Settling Defendants belong, are exempted from providing the warnings described herein, then Setting Defendants shall be relieved from their obligations to provide the warnings set forth herein.

4. RELEASES AND CLAIMS COVERED

4.1 Effect of Judgment. This Consent Judgment is a full and final judgment with respect to any claims regarding Proposition 65 Chemicals in the Covered Products that were asserted or that could have been asserted in the Action and/or the Notices against the Released Parties (as defined in paragraph 4.2 below), including, but not limited to: (a) claims for any violation of Proposition 65 or Section 17200 by the Released Parties and each of them, including but not limited to, claims regarding exposures arising from the Covered Products or the use of the Covered Products, wherever occurring and to whomever occurring, through and including the date upon which this Consent Judgment becomes final, including all appeals; and (b) the Released Parties' continuing responsibility to provide the warnings mandated by Proposition 65 with respect to the Proposition 65 Chemicals.

4.2 Release. Except for such rights and obligations as have been created under this Consent Judgment, Plaintiff, on its own and in the interests of the public pursuant to Health & Safety Code section 25249.7(d), with respect to the matters regarding the Proposition 65 Chemicals and Covered Products alleged in the Notices and/or the Action, does hereby fully, completely, finally and forever release, relinquish and discharge: (a) Settling Defendants; (b) the past, present, and future owners, lessors, sublessors, managers, franchisors, Franchisees, wholesalers, distributors and operators of (and any others with any interest in) the sites identified in the Notices, all Covered Properties, and all retail stores affiliated with Settling Defendants; (c) the manufacturers or distributors that made, distributed, or sold the Covered Products sold by Settling Defendants; (d) the past, present, and future officers, directors, shareholders, affiliates,

members, joint venturers, partners, agents, principals, employees, attorneys, parents, subsidiaries, divisions, owners, sisters or other related entities, successors, and assigns of the persons and entities described in (a) through (c) above (the parties identified in (a) through (d) above are collectively referred to as the "Released Parties") of and from all claims, actions, causes of action, suits, demands, rights, debts, agreements, promises, liabilities, damages, penalties, royalties, fees, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of any nature whatsoever that Plaintiff has or may have against the Released Parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date upon which this Consent Judgment becomes final (including all appeals), relating to any actual or alleged violation of Proposition 65 or Section 17200 by the Released Parties and their respective agents, servants and employees that were or could have been raised in the Notices and/or the Action (the "Released Claims").

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

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

Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has or may have under Civil Code section 1542 (as well as any similar rights and benefits which it may have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff acknowledges that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Consent Judgment and the Released Claims, and that notwithstanding the foregoing, it is Plaintiff's intention to fully, finally, completely and forever settle and release all Released Claims, and that in furtherance of

such intention, the release here given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts.

4.4 Plaintiff's Ability to Represent the Public. Plaintiff hereby warrants and represents to Settling Defendants and the Released Parties that (a) Plaintiff has not previously assigned any Released Claim; and (b) Plaintiff has the right, ability and power to release each Released Claim.

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

4.5 No Further Force and Effect. In the event that (a) the Court denies, in whole or in part, the Plaintiff's Motion to Approve the Consent Judgment pursuant to Health & Safety Code section 25249.7(f)(4) as amended; or (b) a decision by the Court to approve the Consent Judgment is appealed and overturned by another court, in whole or in part, then upon notice by any Party hereto to any other Party hereto, this judgment shall be of no further force or effect and the Parties shall be restored to their respective rights and obligations as though this Consent Judgment had not been executed by the Parties.

5. PAYMENTS BY SETTLING DEFENDANTS

Settling Defendants shall collectively pay a total of $480,000 in settlement of this action to defray CAG's costs, costs of investigation, attorney fees, or other costs incurred relating to this matter. This amount shall be paid to the firm of Yeroushalmi & Associates within ten business days from the date the court approves this Consent Judgment and directs that it be entered as a final judgment. Settling Defendants shall cooperate with Plaintiff to expedite, to the full extent allowed by law, entry of a final judgment.

6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

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

6.1.1 Constitute full and fair adjudication of all claims against Settling Defendants, including, but not limited to, all claims set forth in the Action based upon alleged violations of Proposition 65, as well as any other statute, provision of common law or any theory or issue which arose from Settling Defendants' alleged failure to provide warnings regarding consumer exposure to Covered Products, tobacco smoke and secondhand tobacco smoke (and their respective constituent chemicals) which are known to the State of California to cause cancer, birth defects and/or other reproductive harm.

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

7. DISPUTES UNDER THE CONSENT JUDGMENT

7.1 **General Enforcement Provisions.** CAG may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment, subject to the limitations set forth in Section 7.2. In the event that legal proceedings are initiated to enforce the provisions of this Consent Judgment, however, the prevailing party in such proceeding may seek to recover its costs and reasonable attorneys' fees. As used herein, the term "prevailing party" means a party that is successful in obtaining relief more favorable to it than the relief that the other party offered to resolve the dispute that is the subject of such enforcement action.

7.2 **Exclusive Remedy.** Any action to enforce the terms of Section 3 of this Consent Judgment shall be brought exclusively pursuant to and subject to the requirements set forth in this Section 7.2, as follows:

7.2.1 **Notice of Violation and Supporting Documentation.** In the event that CAG identifies one or more Covered Properties that CAG believes in good faith to be in material non-compliance with the requirements of Section 3, CAG may issue a Notice of Violation to each of the affected Settling Defendant(s). The Notice of Violation shall be sent to the relevant person identified in section 9 hereof within 45 days of the date that CAG observed the alleged violation, and shall, at a minimum, set forth: (a) the date(s) the alleged violation was observed; (b) the location of the retail store at which the violation is alleged to have occurred; (c) a description of the Covered Product and circumstances giving rise to the alleged violation, including the Covered Product's brand and type, and such specific facts as necessary to make it readily distinguishable from products for which no violation is alleged; and (d) a description of any warnings that were provided related to tobacco products, whether such warning was applied to products or provided otherwise. Upon request, CAG shall promptly make available for inspection and/or copying all supporting documentation or other information related to the alleged violation asserted in the notice of violation. Plaintiff and the Settling Defendant who has received the notice of violation shall meet and confer in good faith in an effort to resolve the allegations in the notice of violation.

7.2.2 **Notice of Election of Response.** No more than thirty (30) days after receiving a Notice of Violation, the Settling Defendant shall provide written notice to CAG whether it elects to contest the allegations contained in the Notice of Violation ("Notice of Election.").

(a) **Non-Contested Violations.** If a Notice of Violation is not contested, the Notice of Election shall include a description of the Settling Defendant's corrective action. If Settling Defendant elects to correct the alleged violation and does so within thirty (30) days of receiving the Notice of Violation, Settling Defendant shall have no liability for penalties or attorneys' fees associated with the allegations set forth in the Notice of Violation.

(b) **Meet and Confer.** If a Notice of Violation is contested, CAG and the affected Settling Defendant shall meet, either in person or by telephone, and endeavor in good faith to resolve the dispute in an amicable manner and without resort to further litigation.

7.3 **Consultation with the Attorney General.** The affected Settling Defendant may, within 15 days of receiving the Notice of Violation and at its sole option, seek the opinion of the California Attorney General in writing with a copy served on all other Parties. Plaintiff shall take no further action to enforce the violation which is the subject of the Notice of Violation if, within 30 days of receiving such request, the Attorney General determines that (a) the conduct alleged by Plaintiff substantially complies with this Consent Judgment or otherwise satisfies the warning obligations under Proposition 65; or (b) actions taken by the Settling Defendant to remedy the conduct alleged in the notice of violation brings the Settling Defendant into substantial compliance with the provisions of this Consent Judgment or otherwise satisfies the warning obligations of Proposition 65.

8. THIRD PARTY LITIGATION

8.1 **Duty to Cooperate.** In the event of any litigation, including but not limited to opposition to entry of this Consent Judgment by the Court, instituted by a third party or governmental entity or official, Plaintiff and Settling Defendants agree to cooperate affirmatively in all efforts to defend against any such litigation.

9. NOTICES

9.1 **Written Notice Required.** All notices between the Parties provided for or permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent via facsimile to a party at the facsimile number set forth below, or to such other or further facsimile number provided in any notice sent under the terms of this paragraph, on the date of the successful transmission of that facsimile; or (c) when deposited in the United States mail, certified, postage prepaid, addressed to such party at the address set forth below, or to such other or further addresses in a notice sent under the terms of this paragraph, three days following the deposit of such notice in the mails. Notices pursuant to this paragraph shall be sent to the parties as follows:

(a) To Plaintiff:

Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Boulevard, Suite 480
Los Angeles, CA 90010
Telephone Number: (213) 382-3813
Facsimile Number: (213) 382-3430

(b) To Settling Defendants:

Michèle B Corash or Robert Falk
Morrison & Forster
425 Market Street
San Francisco, CA 94105
Telephone Number: 415 268-7124 or 415 268-6294
Facsimile Number: 415 268-7255

AND the following:

Circle K:
Doryce Norwood
General Counsel
Circle K Stores, Inc.
1130 West Warner Road, Bldg. B (DC4)
Tempe, AZ 85284

ConocoPhillips:
Sonya Hill Bishop
Senior Counsel
ConocoPhillips
600 North Dairy Ashford St.
Houston, TX 77079

7-Eleven:
Rankin L. Gasaway
Vice President and Assistant General Counsel
7-Eleven, Inc.
Box 711
Dallas, TX 75221-0711

Sam's Club and Wal-Mart:
Nelson E. Jackson
Wal-Mart Legal - Commercial Litigation
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716-0215

AND

Michael D. Abraham
Bartko, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, CA 94111
Telephone Number: 415 956-1900
Facsimile: 415 956-1152

A party may change the address or facsimile number to which notice shall be provided under this Consent Judgment by serving a written notice to each of the Parties pursuant to this paragraph.

10. TERMINATION

Any Settling Defendant may elect (but is not required) to terminate its participation in this Consent Judgment at any time beginning six years after the Effective Date by means of filing with the Court and serving all Parties with a notice of termination, at which time the electing Settling Defendant's obligations under Section 3 hereunder shall immediately be deemed to cease to exist, as will the bar in section 6 to actions based on exposures occurring after the notice of termination.

11. INTEGRATION

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

12. TIMING

12.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

13. COMPLIANCE WITH REPORTING REQUIREMENTS

13.1 Reporting Forms: Presentation to Attorney General. The Parties expressly acknowledge and agree to comply with the reporting requirements referenced in Health & Safety

Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary signatures hereto, Plaintiff shall present this Consent Judgment to the California Attorney General's office.

14. COUNTERPARTS.

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

15. WAIVER

15.1 No Waiver. No waiver by any Party hereto of any provision hereof shall be deemed to be a waiver by any other Party or of any other provision hereof or of any subsequent breach of the same or any other provision hereof.

16. AMENDMENT

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

17. SUCCESSORS

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

18. NO ADMISSIONS

18.1 Consent Judgment Cannot Be Used as Evidence. This Consent Judgment has been reached by the Parties to avoid the costs of further prolonged litigation. By entering into this Consent Judgment, neither Plaintiff nor Settling Defendants admits any issue of fact or law, including any violation of Proposition 65 or any other law. The settlement of claims herein shall not be deemed to be an admission or concession of liability or culpability by any party, at any time, for any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any action taken to carry out this judgment, shall be construed as giving rise to any presumption or inference of admission or concession by any Settling Defendant as to any fault, wrongdoing or

liability whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this judgment, to defend against the assertion of any Released Claim, or as otherwise required by law.

19. REPRESENTATION

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

20. AUTHORIZATION

20.1 Authority to Enter Into Consent Judgment. Each of the signatories hereto certifies that he or she is authorized by the Party he or she represents to enter into this Consent Judgment, to stipulate to its contents, and to execute and approve it on behalf of the Party represented.

21. RETENTION OF JURISDICTION

21.1 This Court shall retain jurisdiction of this matter to implement or modify this Consent Judgment and to determine the outcome of any disputed matters in the event legal proceedings are initiated pursuant to Section 7 hereof.

APPROVED AS TO FORM:

Dated: August 5/2010

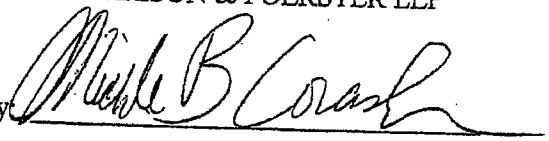
YEROUSHALMI & ASSOCIATES

By: _____

Ruben Yeroushalmi
For Plaintiff Consumer Advocacy Group

Dated:

MORRISON & FOERSTER LLP

By: 

Michèle Beigel Corash
Morrison & Foerster
For Defendants Circle K Stores, Inc., 7-Eleven, Inc., Sam's Club, Wal-Mart Stores, Inc., and Tosco Corporation

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant Tosco Corporation

Dated:

By: _____

For Defendant Circle K Stores, Inc.

Dated:

By: _____

For Defendants Wal-Mart Stores, Inc. and Sam's Club

Dated:

By: Rawkin Garamy MC

For Defendant 7-Eleven, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: 10/5/10

Hon. William Highberger
Judge of the Superior Court

Dated:

MORRISON & FOERSTER LLP

By: _____

Michèle Beigel Corash
Morrison & Foerster
For Defendants Circle K Stores, Inc., 7-Eleven, Inc., Sam's Club, Wal-Mart Stores, Inc., and Tosco Corporation

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant Tosco Corporation

Dated:

By: _____

For Defendant Circle K Stores, Inc.

Dated: MORRISON & FOERSTER LLP

By: _____

Michèle Beigel Corash
Morrison & Foerster
For Defendants Circle K Stores, Inc., 7-Eleven, Inc., Sam's Club, Wal-Mart Stores, Inc., and Tosco Corporation

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant Tosco Corporation

Dated:

By: _____

For Defendant Circle K Stores, Inc.

Dated:

MORRISON & FOERSTER LLP

By: _____

Michèle Beigel Corash
Morrison & Foerster
For Defendants Circle K Stores, Inc., 7-Eleven, Inc., Sam's Club, Wal-Mart Stores, Inc., and Tosco Corporation

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendants Tosco Corporation and Circle K Stores, Inc.

Dated:

By: _____

For Defendants Wal-Mart Stores, Inc. and Sam's Club

Dated:

By: _____
Senior Vice President / General Merchandizing Manager

EXHIBIT 1

EXHIBIT 1

THE SIGN SHALL APPEAR AS FOLLOWS:

WARNING: PURSUANT TO THE PROVISIONS OF THE CALIFORNIA HEALTH & SAFETY CODE, SMOKELESS TOBACCO PRODUCTS CONTAIN CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

EXHIBIT 5

[Date]

California Chamber of Commerce (CCC)
1201 K Street, 12th Floor
Sacramento, CA 95814

National Association of Convenience Stores
(NACS)
1605 King Street
Alexandria, VA 22314-2792

California Grocers Association
(CGA)
906 G Street, Suite 700
Sacramento, CA 95814

National Food Distributors Association
(NFDA)
401 N. Michigan Avenue
Chicago, IL 60611-4267

California Beverage Merchants
(Alcohol Beverage Merchants Cal. Retail)
Liquor Dealers Association
(Cal. Retail Wines and Spirits
Association)
1716 X Street
Sacramento, CA 95818

Re: Proposition 65 – Smokeless Tobacco Products

Dear Sir or Madam:

This letter encloses one hundred copies of a Proposition 65 sign concerning smokeless tobacco products. I would request that you forward a copy to any of your California retailer members who request one. For your information, set forth below is the background relating to the Proposition 65 sign.

As you should be aware, a California law known as Proposition 65 (California Health and Safety Code § 25249.5, *et seq.*) generally requires retailers selling products containing chemicals known to the State of California to cause cancer, birth defects or other reproductive harm to provide a Proposition 65 warning regarding the products.

On March 31, 1998, the City and County of San Francisco and the Environmental Law Foundation, for themselves, and on behalf of the people of the State of California, filed a lawsuit against certain smokeless tobacco manufacturers and others, alleging that the sale of smokeless tobacco products in California violates Proposition 65 unless Proposition 65 warnings are provided.

On _____, the Court entered a Stipulation and Judgment which resolved this lawsuit. Pursuant to the Stipulation and Judgment entered by the Court, copies of the enclosed Proposition 65 sign already have been provided free of charge to retailers selling smokeless tobacco products in California.

Under the Stipulation and Judgment, in order to provide retailers subject to Proposition 65 with an additional means of complying with and avoiding potential liability under Proposition 65, we are enclosing copies of the Proposition 65 sign. Under the Stipulation and Judgment, in order for retailers to gain the benefit of a release of claims, they must post a Proposition 65 sign.[3]

Accordingly, please forward a copy of the Proposition 65 sign to any of your California retailer members who request one. For your information, the Stipulation and Judgment provides that retailers post the Proposition 65 sign in the following manner:

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[3] The release is a legal document that may affect retailers' legal rights. Retailers should consult with an attorney if they have questions regarding its scope or applicability.

- Post Proposition 65 sign in a location that is visible to smokeless tobacco consumers.
- Do not block, cover up, or attach Proposition 65 sign to anything that has the "circle and arrow" warnings concerning smokeless tobacco, such as any portion of product cans, packages, displays, racks, or vendors.

Thank you for you attention to this matter.

Very truly yours,

City and County of San Francisco

-and-

Environmental Law Foundation