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8 CONSUMER ADVOCACY GROUP, INC.

**FILED**  
LOS ANGELES SUPERIOR COURT

NOV 29 2011

John Clarke, Executive Officer/Clerk  
By Cher Mason, Deputy  
CHER MASON

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11 CONSUMER ADVOCACY GROUP,  
12 INC., in the public interest,  
13 Plaintiff,  
14 v.  
15 PENSKE TRUCK LEASING CO., L.P., et  
16 al.,  
17 Defendants.

Case No. BC 457669  
[PROPOSED] CONSENT JUDGMENT  
Dept: Dept: 36  
Judge: Judge: Hon. Gregory Alarcon  
Complaint Filed: Complaint: March 21, 2011

18 **1. INTRODUCTION**

19 1.1 Plaintiff. Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG"), is a corporation  
20 qualified to do business in the State of California, and brings this action in the public interest as  
21 defined under Health and Safety Code section 25249.7(d).

22 1.2 Settling Defendant. Penske Truck Leasing Co., L.P. ("Defendant") is a truck  
23 rental company doing business in California at various locations throughout the state.

24 1.3 Covered Activity. On March 21, 2011, Plaintiff filed a Complaint for Penalties  
25 and Injunction alleging that Defendant, in its truck rental operations in California during the  
26 relevant time frame, allowed persons to smoke cigarettes and other tobacco products in their  
27 rental vehicles, thereby allegedly exposing its respective employees and customers, including the  
28 passengers of the vehicles they rented, to a workplace or other environment in which second-hand

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1 tobacco smoke and environmental tobacco smoke is present and causing the persons to inhale  
2 ambient air at the location or within the vehicles which air contained tobacco smoke and its  
3 constituent chemicals without first providing Proposition 65-compliant warnings to such exposed  
4 persons. The Complaint also alleged that Defendant allowed customers, employees and the  
5 public to be exposed to gasoline and diesel exhaust from trucks and other vehicles without first  
6 providing Proposition 65-compliant warnings to such exposed persons.

7 1.4 Proposition 65. The Safe Drinking Water and Toxic Enforcement Act codified at  
8 Health and Safety Code sections 25249.5 et seq. ("Proposition 65") prohibits, among other things,  
9 a company with ten or more employees from knowingly and intentionally exposing an individual  
10 to chemicals known to the State of California to cause cancer, birth defects, or other reproductive  
11 harm without first providing a clear and reasonable warning to such individuals. Exposures can  
12 occur as a result of a consumer product exposure, an occupational exposure, or an environmental  
13 exposure.

14 1.5 Proposition 65 Chemicals. The State of California has officially listed various  
15 chemicals pursuant to Health and Safety Code section 25249.8 as chemicals known to the State of  
16 California to cause cancer and/or reproductive toxicity, including second-hand tobacco smoke,  
17 environmental tobacco smoke and various constituent chemicals in exhaust from vehicle engines.

18 1.6 The Consent Judgment. This Consent Judgment pertains to Plaintiff's claims  
19 against Defendant as set forth in *Consumer Advocacy Group, Inc. v. Penske Truck Leasing Co.,*  
20 *L.P., et al.*, Los Angeles Superior Court Case No. BC457669 (the "Action") and the 60-Day  
21 Notice, described below, served by Plaintiff upon Defendant.

22 1.7 Plaintiff's 60-Day Notice. On or about December 27, 2010, more than sixty days  
23 before filing suit in the Action, Plaintiff served Defendant with a Notice of Intent to Sue for  
24 Violation of the Safe Drinking Water and Toxic Enforcement Act (the "Notice"), alleging  
25 exposures to (1) Tobacco Smoke and its Constituent Chemicals and (2) Gasoline and Diesel  
26 Engine Exhaust from Trucks and Other Vehicles. With regard to Tobacco Smoke, the Notice  
27 stated, among other things, that Plaintiff believed Defendant had violated Proposition 65 by  
28 knowingly and intentionally exposing its consumers, customers, and employees in California, as

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1 well as the public, to the Proposition 65-listed chemicals found in tobacco products, tobacco  
2 smoke, cigars and smokeless tobacco. Among the Proposition 65 chemicals identified by  
3 Plaintiff in the Notice were tobacco products, tobacco smoke, cigars and smokeless tobacco (and  
4 their constituent chemicals, including Acetaldehyde, Acetamide, Acrylonitrile, 4-Aminobiphenyl,  
5 (4-Aminodiphenyl), Aniline, Ortho-Anisidine, Arsenic (inorganic arsenic compounds),  
6 Benz[a]anthracene, Benzene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, Benzo[k]fluoranthene,  
7 Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium (hexavalent compounds),  
8 Chrysene, Dichlorodiphenyltrichloroethane (DDT), Dibenz[a,h]acridine, Dibenz[aj]acridine,  
9 Dibenz[a,h]anthracene, 7H-Dibenzo[c,g]carbazole, Dibenzo[a,e]pyrene, Dibenzo[a,h]pyrene,  
10 Dibenzo[a,i]pyrene, Dibenzo[a,1]pyrene, 1,1-Dimethylhydrazine (UDMH), Formaldehyde (gas),  
11 Hydrazine, Lead and lead compounds, 1-Naphthylamine, 2-Naphthylamine, Nickel and certain  
12 nickel compounds, 2-Nitropropane, N-Nitrosodi-n-butylamine, N-Nitrosodiethanolamine, N-  
13 Nitrosodiethylamine, N-Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosornicotine,  
14 N-Nitrosopiperidine, N-Nitrosopyrrolidine, Ortho-Toluidine, Tobacco Smoke, Urethane (Ethyl  
15 carbamate), Arsenic (inorganic Oxides), Cadmium, Carbon disulfide, Carbon monoxide,  
16 Nicotine, and Toluene. With regard to Gasoline and Diesel Engine Exhaust, the Notice stated,  
17 among other things, that Plaintiff believed Defendant had violated Proposition 65 by knowingly  
18 and intentionally exposing its consumers, customers and employees, as well as the public, to the  
19 Proposition 65-listed chemicals found in exhaust from gasoline and diesel engine vehicles.  
20 Among the Proposition 65 chemicals identified by Plaintiff in the Notice were Acetaldehyde,  
21 Acrylonitrile, Arsenic (inorganic arsenic compounds), Asbestos, Benza[a]anthracene, Benzene,  
22 Benzo[a]pyrene, Benzo[b]fluoranthene, Benzo[j]fluoranthene, Benzo[k]fluoranthene, Beryllium  
23 and Beryllium compounds, Bitumens (extracts of steam-refined and air-refined), 1,3 Butadiene,  
24 Cadmium and Cadmium compounds, Carbazole, Chromium (Hexavalent compounds), Chrysene,  
25 Cobalt Sulfate Heptahydrate, Hibena[a,h]anthracene, Dibenz[a,h]acridine, Dibenz[a,j]acridine,  
26 7H-Dibenzo[c,g]carbazole, Dibenz[a,e]pyrene, Dibenzo[a,1]pyrene, Dichloromethane  
27 (Methylene Chloride), Diesel Engine Exhaust, 1,1-Dimethylhydrazine (UDMH), Ethylbenzene,  
28 Formaldehyde (gas), Hydrazine, Indeno[1,2,3,s-cd]pyrene, Lead and Lead compounds, 3-

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1 Methylcholanthrene, 5- Methylchrysene, Naphthalene, Nickel and certain Nickel compounds, 1-  
2 Nitropropane, N-Nitrosodiethanolamine, N-Nitrosomonicotine, N-Nitrosopyrrolidine, Quinoline  
3 and its strong acid salts, Silica, Crystalline (airborne particles of respirable size), Soots, Tars and  
4 Mineral Oils (untreated and mildly treated oils and used engine oils), Tetrachloroethylene  
5 (Perchloroethylene), Ortho-Toluidine, Trichloroethylene, Urethane (Ethyl carbamate), Arsenic  
6 (inorganic oxides), Benzene, Cadmium, Carbon Disulfide, Carbon Monoxide, Lead, Mercury and  
7 Mercury compounds, Methyl Chloride, and Toluene. The Proposition 65 chemicals identified in  
8 the Notice shall collectively be referred to herein as "the Noticed Chemicals."

9       1.8 Purpose of Consent Judgment. In order to avoid continued and protracted  
10 litigation, CAG and Defendant (the "Parties") wish to resolve completely and finally any and all  
11 tobacco exposure issues and issues regarding exhaust from gasoline and diesel engine vehicles  
12 relating to all Noticed Chemicals as set forth in the Notice and the Action, pursuant to the terms  
13 and conditions described herein. In entering into this Consent Judgment, the Parties recognize  
14 that this Consent Judgment is a full and final settlement of all claims that were raised in the  
15 Notice related to: (1) the Noticed Chemicals in tobacco products, tobacco smoke, cigars,  
16 smokeless tobacco, secondhand tobacco smoke and environmental tobacco smoke (and each of  
17 their constituent chemicals) and (2) the Noticed Chemicals in exhaust from gasoline and diesel  
18 engine vehicles (and each of their constituent chemicals). Plaintiff and Defendant also intend for  
19 this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or  
20 collateral estoppel protection for Defendant against any and all other claims based on the same or  
21 similar allegations as to the Noticed Chemicals with respect to claims brought by Plaintiff in its  
22 own capacity or in the public interest, or to claims brought by an entity in privity with Plaintiff.

23       1.9 No Admission. Defendant disputes that it has violated Proposition 65 as described  
24 in the Notice and the Action and that it has any liability whatsoever based on any of the facts or  
25 claims asserted in the Notice or the Action. Plaintiff disputes Defendant's defenses.

26       Based on the foregoing, nothing contained in this Consent Judgment shall be construed as  
27 an admission by Plaintiff or Defendant that any action that Defendant may have taken, or failed to  
28 take, violates Proposition 65 or any other statute, regulation, or principal of common law.

1 Defendant expressly denies any alleged violations of Proposition 65 or any other statute,  
2 regulation, or principle of common law.

3 1.10 Effective Upon Final Determination. Defendant's willingness to enter into this  
4 Consent Judgment is based upon the understanding that this Consent Judgment will fully and  
5 finally resolve all claims related to the Noticed Chemicals present in tobacco products, tobacco  
6 smoke, cigars, smokeless tobacco, secondhand tobacco smoke (and each of their constituent  
7 chemicals) and environmental tobacco smoke and exhaust from gasoline and diesel engine  
8 vehicles (and each of their constituent chemicals), and that this Consent Judgment will have *res*  
9 *judicata* and/or collateral estoppel effect to the fullest extent allowed by law with regard to  
10 alleged violations of Proposition 65 by Defendant.

## 11 2. JURISDICTION

12 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, the  
13 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the  
14 lawsuit.

15 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, the Parties  
16 stipulate that this Court has personal jurisdiction over the Defendant as to the acts alleged in the  
17 Notice and the Action.

18 2.3 Venue. For purposes of this Consent Judgment only, venue is proper in the  
19 County of Los Angeles for resolution of the allegations made and claims asserted in the Action.

20 2.4 Jurisdiction to Enter Consent Judgment. The Parties stipulate that this Court has  
21 jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of the  
22 allegations contained in the Notices and the Action, and of all claims that were or could have  
23 been raised based on the facts alleged therein or arising therefrom by any person or entity, other  
24 than the Attorney General of the State of California, in whole or in part, directly or indirectly,  
25 against the Defendant and Released Parties, as defined in paragraph 4.2 below.

## 26 3. INJUNCTIVE RELIEF:

27 3.1 No-Smoking Policy. Within ninety (90) days of the effective date of this Consent  
28 Judgment, Defendant shall (a) discourage customers from smoking inside any rental vehicle

1 through the use of written signs posted at its facilities in California; and (b) require rental  
2 customers, pursuant to written provisions in the rental agreement or in any addendum thereto or  
3 by means of any other form of memorialized consent, including without limitation electronic  
4 signature capture, to agree to reimburse Defendant for all reasonable costs and damages which the  
5 Parties agree may include costs incurred in the cleaning of the interior portions of any rental  
6 vehicle to remove residual tobacco smoke odors or other damage caused by the rental customer  
7 arising out of the use of tobacco products in Defendant's vehicles. Defendant may also  
8 discourage customers from smoking in its vehicles by the placement of decals within its vehicles  
9 or the removal of lighters and ashtrays, but are not required to do so pursuant to this Consent  
10 Judgment.

11 3.2 Proposition 65 Warning. At any rental facilities in California owned, managed, or  
12 operated by Defendant as of the date of this Consent Judgment, Defendant agrees to post  
13 consumer warnings pursuant to Proposition 65 regarding potential exposures, if it has not already  
14 done so. The following warning shall be prominently displayed at or near the point of sale where  
15 rental car transactions take place and, to the extent not visible to Defendant's employees, also in  
16 areas visible to Defendant's employees:

17 **PROPOSITION 65 WARNING:**

18 Vehicle Exhaust Fumes are Present and Contain Chemicals Known to the State  
19 of California to Cause Cancer and Birth Defects or Other Reproductive Harm.

20 Tobacco Smoke Is Not Permitted in Rental Vehicles, Though It May Be Present  
21 Near Rental Facilities. Tobacco Smoke Contains Chemicals Known to the State  
22 of California to Cause Cancer and Birth Defects or Other Reproductive Harm.

23 The Parties acknowledge that, at certain locations, circumstances may arise which prevent  
24 Defendant from controlling where, when, and how signs are displayed and whether signs can be  
25 maintained in the locations initially selected by Defendant. If that occurs, Defendant shall notify  
26 plaintiff and shall take alternative steps to provide the warnings required by Proposition 65.

27 Defendant agrees to take reasonable steps to require that the warnings set forth in this section  
28 3.2 be displayed at each rental facility in California under its ownership, management, or

1 operation with such conspicuousness, as compared with other words, statements, designs, or  
2 devices as to render the warnings likely to be read and understood by an ordinary consumer under  
3 customary conditions of purchase or use, consistent with California Code of Regulations, title 22,  
4 section 12601, subdivision (b)(3).

5 3.3 Compliance. Defendant's compliance with paragraphs 3.1 and 3.2 is deemed to  
6 fully satisfy Defendant's obligations under Proposition 65 with respect to any exposures and  
7 potential exposures to Noticed Chemicals as set forth in the Notice and the Action.

8 3.4 Future Laws or Regulations. In lieu of complying with the requirements of  
9 paragraphs 3.1 and 3.2, if: (a) any future federal law or regulation that governs the warning  
10 provided for here preempts state authority with respect to said warning, or (b) any future new  
11 state law or regulation specifying a specific warning for truck rental companies with respect to the  
12 subject matter of said paragraphs which amends or preempts Proposition 65, Defendant may  
13 comply with the warning obligations set forth in paragraphs 3.1 and 3.2 of this Judgment by  
14 complying with such future federal or state law or regulation upon notice to Plaintiff.

15 3.5 Statutory Amendment to Proposition 65. If there is a statutory or other  
16 amendment to Proposition 65, or regulations are adopted pursuant to Proposition 65, which would  
17 exempt Defendant and/or the "Released Parties," as defined in paragraph 4.2 below, from  
18 providing the warnings described in paragraph 3.2 of this Consent Judgment, then, upon the  
19 adoption of such statutory amendment or regulation, and to the extent provided for in such  
20 statutory amendment or regulation, and upon notice to Plaintiff, Defendant shall be relieved from  
21 its obligation to provide the warnings set forth here.

22 3.6 Former Facilities. Should Defendant cease to own, manage, or operate any rental  
23 facility in California after the effective date of this Consent Judgment, then Defendant shall be  
24 relieved of its obligation to post warning as detailed under paragraphs 3.1 and 3.2 of this Consent  
25 Judgment with respect to such facility.

#### 26 4. RELEASE AND CLAIMS COVERED

27 4.1 Effect of Judgment. The Consent Judgment is a full and final judgment with  
28 respect to any claims regarding the Noticed Chemicals that were asserted or could have been

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1 asserted in the Action against the Released Parties (as defined in paragraph 4.2 below) regarding  
2 Covered Activities as defined in section 1.3, at its facilities in California, including, but not  
3 limited to: (a) claims for any violations of Proposition 65 by the Released Parties and each of  
4 them at their facilities arising from consumer product, environmental, and occupational exposures  
5 to the Noticed Chemicals as set forth in the Notice, wherever occurring and to whomever  
6 occurring, through and including the date upon which the Judgment becomes final.

7 4.2 Releases.

8 (a) Release by Plaintiff in the Public Interest. Except for such rights and  
9 obligations as have been created under this Consent Judgment, Plaintiff, "in the public interest" as  
10 that phrase is understood pursuant to Health and Safety Code section 25249.7, subd. (d), with  
11 respect to the matters regarding the Noticed Chemicals alleged in the Action, does hereby fully,  
12 completely, finally and forever release, relinquish and discharge Defendant and its respective  
13 past, present, and future owners, lessors, sublessors, managers and operators of, and any others  
14 with any interest in Defendant's facilities in California, their past, present, and future officers,  
15 directors, shareholders, affiliates, agents, principals, employees, attorneys, parents, subsidiaries,  
16 owners, sister-or other related entities, and successors and assigns (the "Released Parties") of and  
17 from all claims, actions, causes of action, demands, rights, debts, agreements, promises,  
18 liabilities, damages, accountings, costs and expenses, that were or could have been asserted in the  
19 public interest in the Complaint against the Released Parties, arising in whole or in part, directly  
20 or indirectly, out of any fact or circumstance occurring prior to the date upon which the Consent  
21 Judgment becomes final, relating to alleged violations of Proposition 65 by the Released Parties  
22 and their respective agents, servants and employees and exposures to the Noticed Chemicals as  
23 set forth in the Notices, being hereinafter referred to as the "Released Claims." Notwithstanding  
24 the foregoing, this Consent Judgment does not provide a release for any of the other corporations  
25 or entities that received a sixty-day notice regarding alleged violations of Proposition 65 for  
26 exposure to second-hand smoke as issued by Plaintiff in or around December 2010. The  
27 Released Claims include all allegations made, or that could have been made, by Plaintiff in the  
28 public interest with respect to the Noticed Chemicals and relating to Proposition 65.



1 (b) Release by Plaintiff. Except for such rights and obligations as have been  
2 created under this Consent Judgment, Plaintiff, for and on its own behalf, with respect to the  
3 matters regarding the Noticed Chemicals alleged in the Notices and the Action, does further  
4 hereby fully, completely, finally and forever release, relinquish and discharge the Released  
5 Parties of and from all claims, actions, causes of action, demands, rights, debts, agreements,  
6 promises, liabilities, damages, accountings, costs and expenses, whether known or unknown,  
7 suspected or unsuspected, of every nature whatsoever that Plaintiff has or may have against the  
8 Released Parties, arising in whole or in part, directly or indirectly, out of any fact or circumstance  
9 occurring prior to the date upon which the Consent Judgment becomes final, relating to alleged  
10 violations of Proposition 65 or any other violation by the Released Parties and their respective  
11 agents, servants and employees, being hereinafter referred to as the "Released Claims."  
12 Notwithstanding the foregoing, this Consent Judgment does not provide a release for any of the  
13 other corporations or entities that received a sixty-day notice regarding alleged violations of  
14 Proposition 65 for exposure to second-hand smoke as issued by Plaintiff in or around December  
15 2010. The Released Claims include all allegations made, or that could have been made, by  
16 Plaintiff with respect to the Noticed Chemicals relating to Proposition 65 or otherwise.

17 4.3 Intent of Parties. The Parties intend that this release, upon entry of judgment shall  
18 be effective as a full and final accord and satisfaction and release of each Released Claim. In  
19 furtherance of this intention, Plaintiff acknowledges that it is familiar with California Civil Code  
20 section 1542, which provides as follows:

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

25 Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has, or may  
26 have, under Civil Code section 1542 (as well as any similar rights and benefits which it may have  
27 by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff  
28 acknowledges that it may hereafter discover facts in addition to, or different from, those which it

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1 now knows or believes to be true with respect to the subject matter of this Consent Judgment and  
2 the Released Claims, but that notwithstanding the foregoing, it is Plaintiff's intention to fully,  
3 finally, completely and forever settle and release all Released Claims, and that in furtherance of  
4 such intention, the release here given shall be and remain in effect as a full and complete general  
5 release, notwithstanding the discovery or existence of any such additional or different facts.

6 4.4 Plaintiff's Ability to Represent Public. Plaintiff hereby warrants and represents to  
7 Defendants and the Released Parties that (a) Plaintiff has not previously assigned any Released  
8 Claim, and (b) Plaintiff has the right, ability and power to release each Released Claim.

9 Plaintiff further represents and warrants that it is a public benefit corporation formed for  
10 the specific purposes of (a) protecting and educating the public as to harmful products and  
11 activities; (b) encouraging members of the public to become involved in issues affecting the  
12 environment and the enforcement of environmental statutes and regulations including, but not  
13 limited to, Proposition 65; and (c) instituting litigation to enforce the provisions of Proposition  
14 65.

15 4.5 No Further Force and Effect. Plaintiff and Defendant hereby request that this  
16 Court enter judgment pursuant to this Consent Judgment. In the event that:

17 (a) this Court denies, in whole or in part, the motion to approve the  
18 Consent Judgment pursuant to Health and Safety Code section 25249.7 (f)(4) as amended,  
19 (b) a decision by this Court to approve the Consent Judgment is appealed  
20 and overturned by another Court, in whole or in part, or

21 (c) a third party files litigation to contest the validity of the Consent  
22 Judgment as against any Plaintiff or Defendant relating to this Consent Judgment, then  
23 upon notice by any party hereto to the other party hereto, this Consent Judgment shall be  
24 of no further force or effect and the Parties shall be restored to their respective rights and  
25 obligations as though this Consent Judgment had not been executed by the Parties.

26 **5. ATTORNEYS' FEES AND COSTS**

27 5.1 Payment in Lieu of Civil Penalties. Within 30 (thirty) days of the approval of this  
28 Consent Judgment, Defendant shall pay CAG \$21,000 in lieu of civil penalties. Payment shall be

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1 to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and purposes  
2 related to environmental protection, worker health and safety, or reduction of human exposure to  
3 hazardous substances (including administrative and product testing costs arising from such  
4 projects), as CAG may choose. CAG shall provide its address and federal tax identification  
5 number to Defendant prior to such payment.

6 5.2 Payment to Yeroushalmi & Associates. Within 30 (thirty) days of the approval of  
7 this Consent Judgment, Defendant shall pay CAG \$45,500 for its attorney fees and costs incurred  
8 in this matter. The check shall be to "Yeroushalmi & Associates." CAG represents and warrants  
9 that CAG has authorized the payment of attorney fees and costs. CAG releases and agrees to  
10 hold harmless the Released Parties with regard to any issue concerning the allocation or  
11 distribution of the amount paid under this section. Yeroushalmi & Associates shall provide its  
12 address and federal tax identification number to Defendant prior to such payment.

13 **6. PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

14 6.1 Entry of Judgment. It is the Parties' intent that entry of judgment by the Court  
15 pursuant to this Consent Judgment, *inter alia*:

16 (a) Constitutes full and fair adjudication of all claims against Defendant,  
17 including, but not limited to, all claims set forth in the Action, based upon alleged  
18 violations of Proposition 65, as well as any other statute, provision of common law or any  
19 theory or issue that has been or could have been asserted by Plaintiff, acting in the public  
20 interest against Defendant which arose from Defendant's alleged failure to provide  
21 warnings regarding exposure to tobacco products, tobacco smoke, cigars, smokeless  
22 tobacco, secondhand tobacco smoke, environmental tobacco smoke (and each of their  
23 constituent chemicals) and exhaust from gasoline and diesel engine vehicles (and each of  
24 their constituent chemicals), which may be present at its facilities and which are known to  
25 the State of California to cause cancer, birth defects, and/or other reproductive harm;

26 (b) Bars Plaintiff in its own capacity or in the interests of the public and  
27 any entities in privity with Plaintiff, on the basis of *res judicata*, the doctrine of mootness  
28 and/or the doctrine of collateral estoppel, to the extent provided by law, from prosecuting

1 against any Released Party any claim alleged in the Action with respect to the Noticed  
2 Chemicals, and based upon alleged violations of (i) Proposition 65, or (ii) any other  
3 statute, provision of common law or any theory or issue that was alleged or that could  
4 have been alleged in the Action which arose or arises from the alleged failure to provide  
5 warning of exposure to tobacco products, tobacco smoke, cigars, smokeless tobacco,  
6 secondhand tobacco smoke and environmental tobacco smoke and exhaust from gasoline  
7 and diesel engines at Defendant's facilities in California (and each of their constituent  
8 chemicals), which may be present at Defendant's facilities in California referred to in  
9 paragraph 3.1 and which are known to the State of California to cause cancer, birth  
10 defects, and/or other reproductive harm.

11 **7. DISPUTES UNDER THE CONSENT JUDGMENT**

12 7.1 Disputes. In the event that a dispute arises with respect to either party's  
13 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person or by  
14 telephone, and endeavor to resolve the dispute in an amicable manner. No action may be taken to  
15 enforce the provisions of the Judgment absent such a good faith effort to resolve the dispute prior  
16 to the taking of such action. In the event that legal proceedings are initiated to enforce the  
17 provisions of the Judgment, however, the prevailing party in such proceeding may seek to recover  
18 its costs and reasonable attorneys' fees. As used in the preceding sentence, the term "prevailing  
19 party" means a party who is successful in obtaining relief more favorable to it than the relief that  
20 the other party was amenable to providing during the Parties' good faith attempt to resolve the  
21 dispute that is the subject of such enforcement action.

22 7.2 Notice of Violation. In the event that CAG identifies what it believes is a violation  
23 of paragraph 3.2 at any of the Defendant's facilities, CAG shall issue a notice of alleged violation  
24 pursuant to this paragraph. The notice of alleged violation shall be sent to the persons identified  
25 in Section 9 hereof, and shall, at minimum, set forth for each of the affected Parties: (a) the  
26 date(s) the alleged violation(s) was observed; (b) the facility where the alleged violation(s)  
27 occurred; (c) a description of the circumstances or conditions giving rise to the alleged  
28 violation(s), including the specific location of the alleged violation at the facility and any affected

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1 party(ies); and (d) a description of any warnings that were provided at the facility relating to  
2 tobacco products and/or engine exhaust, whether such warning was posted or provided otherwise.  
3 CAG shall promptly make available for inspection and/or copying, upon request, all supporting  
4 documentation or other information related to the alleged violation asserted in the notice of  
5 violation. The Parties shall meet and confer in good faith in an effort to resolve the allegations in  
6 the notice of violation. Only after the passage of sixty (60) days after service of the notice of  
7 alleged violation, and only to the extent the Parties have not resolved their dispute, may CAG  
8 seek enforcement of this Consent Judgment pursuant to paragraph 7.1.

#### 9 8. THIRD-PARTY LITIGATION

10 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to  
11 opposition to entry of the Consent Judgment by this Court, instituted by a third party or  
12 governmental entity or official, the Parties agree to cooperate affirmatively in all good-faith  
13 efforts to defend against any such litigation.

#### 14 9. NOTICES

15 9.1 Written Notice Required. All notices between the Parties provided for or  
16 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly  
17 served:

- 18 (i) When personally delivered to a party, on the date of such delivery; or  
19 (ii) When sent via facsimile to a party at the facsimile number set forth  
20 below, or to such other or further facsimile number provided in a notice sent under the  
21 terms of this paragraph, on the date of the transmission of that facsimile; or  
22 (iii) When deposited in the United States mail, certified, postage prepaid,  
23 addressed to such party at the address set forth below, or to such other or further address  
24 provided in a notice sent under the terms of this paragraph, three days following the  
25 deposit of such notice in the mails.  
26 (iv) Notices pursuant to this paragraph shall be sent to the Parties at the  
27 addresses identified below, or to such other place as may from time to time be specified in  
28

1 a notice to each of the Parties hereto given pursuant to this paragraph as the address for  
2 service of notice on such party. The addresses for notices are as follows:

3 If to Defendant Penske Truck Leasing Co., L.P.:

4 Kristin T. Morgan, Esq.  
5 Penske Truck Leasing Co., L.P.  
6 Route 10 - Green Hills  
7 P.O. Box 563  
8 Reading, PA 19603  
9 Fax: (610) 775-6330

10 With a copy to:

11 Bonnie Allyn Barnett, Esq.  
12 Drinker Biddle & Reath LLP  
13 One Logan Square, Suite 2000  
14 Philadelphia, PA 19103  
15 Fax: (215) 988-2757

16 If to CAG:

17 Consumer Advocacy Group, Inc.  
18 c/o Reuben Yeroushalmi  
19 Yeroushalmi & Associates  
20 9100 Wilshire Blvd., Ste. 610E  
21 Beverly Hills, CA 90212  
22 Fax: (310) 623-1930

## 23 10. INTEGRATION

24 10.1 Integrated Writing. This Consent Judgment constitutes the final and complete  
25 agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior  
26 or contemporaneous negotiations, promises, covenants, agreements or representations concerning  
27 any matters directly, indirectly or collaterally related to the subject matter of this Consent  
28 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 portion of  
the subject matter of this Consent Judgment and, therefore, all promises, covenants and  
agreements, collateral or otherwise, are included herein. The Parties intend that this Consent  
Judgment shall constitute an integration of 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

1 evidence concerning any other collateral or oral agreement between or among the Parties not  
2 included herein.

3 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

4 11.1 Reporting Forms; Presentation to Attorney General. The Parties agree to comply  
5 with the reporting form requirements referenced in Health and Safety Code section 25249.7,  
6 subdivision (f). Therefore, Plaintiff shall present this Consent Judgment to the California  
7 Attorney General's office upon receiving all necessary signatures.

8 **12. COUNTERPARTS**

9 12.1 Counterparts. This Consent Judgment may be signed in counterparts and shall be  
10 binding upon the Parties hereto as if all of said Parties executed the original hereof. A facsimile  
11 or PDF signature shall be as valid as the original.

12 **13. WAIVER**

13 13.1 No Waiver. No waiver by any party hereto of any provision hereof shall be  
14 deemed to be a waiver of any other provisions hereof or of any subsequent breach of the same or  
15 any other provision hereof.

16 **14. AMENDMENT**

17 14.1 In Writing. This Consent Judgment cannot be amended or modified except by a  
18 writing executed by the Parties hereto that expresses, by its terms, an intention to modify this  
19 Consent Judgment, and as approved by the court.

20 **15. SUCCESSORS**

21 15.1 Binding Upon Successors. This Consent Judgment shall be binding upon and  
22 inure to the benefit of, and be enforceable by, the Parties hereto and their respective  
23 administrators, trustees, executors, personal representatives, successors and permitted assigns.

24 **16. CHOICE OF LAWS**

25 16.1 California Law Applies. Any dispute regarding the interpretation of this Consent  
26 Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the  
27 damages accruing to a Party by reason of any breach of this Consent Judgment shall be  
28

1 determined under the laws of the State of California, without reference to choice of law  
2 principles.

3 **17. NO ADMISSIONS**

4 17.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been  
5 reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent  
6 Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any  
7 violations of Proposition 65 or any other law. The settlement of claims herein shall not be  
8 deemed to be an admission or concession of liability or culpability by any Party, at any time, for  
9 any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any action  
10 taken to carry out this Consent Judgment, shall be construed as giving rise to any presumption or  
11 inference of admission or concession by Defendant as to any fault, wrongdoing or liability  
12 whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the  
13 negotiations or other proceedings connected with it, nor any other action taken to carry out this  
14 Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or  
15 received in evidence in any pending or future civil, criminal or administrative action or  
16 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the  
17 assertion of the Released Claims or as otherwise required by law.

18 **18. REPRESENTATION**

19 18.1 Construction of Consent Judgment. Plaintiff and Defendant each acknowledge  
20 and warrant that they have been represented by independent counsel of their own selection in  
21 connection with the prosecution and defense of the Action, the negotiations leading to this  
22 Consent Judgment and the drafting of this Consent Judgment; and that in interpreting this  
23 Consent Judgment, the terms of this Consent Judgment will not be construed either in favor of or  
24 against any Party hereto.

25 **19. AUTHORIZATION**

26 19.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies that  
27 he or she is authorized by the Party he or she represents to enter into this Consent Judgment, to  
28



1 stipulate to the Judgment, and to execute and approve the Judgment on behalf of the Party  
2 represented.

3  
4 Dated: Nov 18 2011

CONSUMER ADVOCACY GROUP, INC.

5 By Lynn H. Marcus  
6 Consumer Advocacy Group, Inc.  
7 Name: Lynn H. Marcus  
Its: President

8  
9 Dated: \_\_\_\_\_, 2011

PENSKE TRUCK LEASING CO., L.P.

10 By \_\_\_\_\_  
11 Name: \_\_\_\_\_  
12 Its: \_\_\_\_\_

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1 stipulate to the Judgment, and to execute and approve the Judgment on behalf of the Party  
2 represented.

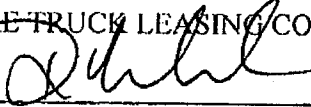
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4 Dated: \_\_\_\_\_ 2011

CONSUMER ADVOCACY GROUP, INC.

5 By \_\_\_\_\_  
6 Consumer Advocacy Group, Inc.  
7 Name: \_\_\_\_\_  
8 Its: \_\_\_\_\_

9 Dated: November 18, 2011

PENSKE TRUCK LEASING CO., L.P.

10 By   
11 Name: DON MIKES  
12 Its: VP, RENTAL

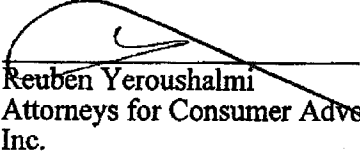
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Approved as to form:


Dated: Nov 18, 2011

YEROUSHALMI & ASSOCIATES

By   
Reuben Yeroushalmi  
Attorneys for Consumer Advocacy Group,  
Inc.

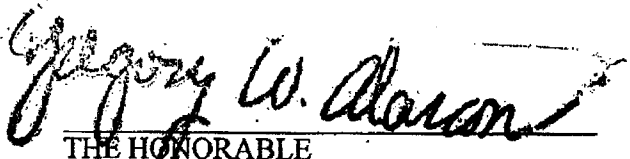
Dated: Nov 18, 2011

DRINKER BIDDLE & REATH, LLP

By   
Bonnie Allyn Barnett  
Fey Epling  
Attorneys for Penske Truck Leasing Co.,  
L.P.

REVIEWED AND APPROVED AS A JUDGMENT OF THE SUPERIOR COURT. IT  
IS SO ORDERED.

Dated: NOV 29 2011, 2011

  
THE HONORABLE  
JUDGE OF THE SUPERIOR COURT  
Gregory W. Alarcon