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6 *Attorneys for Plaintiff, MAUREEN PARKER*

FILED
Clerk of the Superior Court

SEP 17 2018

By: M. Garland

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**
11 **UNLIMITED CIVIL JURISDICTION**
12

13 **MAUREEN PARKER,**

14)
15)
16) **Plaintiff**)

17 **and**)

18 **RITE AID CORPORATION**)
19 **AND DOES 1-25 INCLUSIVE**)
20)

21)
22 **Defendants.**)
23)

CASE NO.:
37-2017-00042751-CU-NP-NC

mg
24) **[PROPOSED]**)
25) **JUDGMENT APPROVING**)
26) **PROP 65 STIPULATION AND**)
27) **CONSENT JUDGMENT**)
28) *(Cal. Health & Safety Code § 25249.6 et seq.)*

Date: August 31, 2018

Time: 01:30PM

Dept. N-27

Hon. Jacqueline M. Stern

Action Filed: November 9, 2017

1
2 In the above entitled action, Plaintiff, MAUREEN PARKER and Defendant Rite
3 Aid Corporation having agreed through their respective counsel that judgment be entered
4 pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed]
5 Consent Judgment entered into by the parties, and following issuance of an order approving this
6 Proposition 65 settlement agreement and entering this Consent Judgment on Sept. 17, 2018. *mg*

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to
8 Code of Civil Procedure §664.6, judgment is entered in accordance with the Consent Judgment
9 attached hereto as Exhibit 1.

10
11 **IT IS SO ORDERED.**

12
13 Dated: 9/17/18

14 
15 _____
16 **JUDGE OF THE SUPERIOR COURT**

17 Jacqueline M. Stern
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Exhibit No. 1

1 STEPHEN URE, ESQ.
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2 11622 El Camino Real, Suite 100
San Diego, CA 92130
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4 Attorneys for Plaintiff Maureen Parker
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6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 MAUREEN PARKER,

11 Plaintiff,

12 v.

13 Rite Aid Corporation

14 Defendants,
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Case No. 37-2017-00042751-CU-NP-NC

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT RITE AID, INC.**

17
141 **1. INTRODUCTION**

4 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
19 Maureen Parker acting on behalf of the public interest (hereinafter "Parker"), and Defendant Rite
20 Aid Corporation (hereinafter "Rite Aid"), with Parker and Rite Aid collectively referred to as the
21 "Parties" and each of them as a "Party." Parker is an individual residing in California who seeks
22 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
23 eliminating hazardous substances contained in consumer products. Rite Aid is a person in the
24 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et*
25 *seq.*

26 1.2 **Allegations and Representations.** Parker alleges that Rite Aid has offered for
27 sale in the State of California and has sold in California, a Kettle Grill 14 inch that when used as

1 intended exposes individuals to carbon monoxide and soot, and that such sales have not been
2 accompanied by Proposition 65 warnings. Carbon monoxide and soot are listed under
3 Proposition 65 as chemicals known to the State of California to cause birth defects or other
4 reproductive harm.

5
6 1.3 **Notices of Violation/Complaint.** On or about May 22, 2017, Parker served Rite
7 Aid and various public enforcement agencies with a document entitled "60-Day Notice of
8 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Rite Aid
9 was in violation of Proposition 65 for failing to warn consumers and customers that the Kettle
10 Grill 14 inch exposed users in California to carbon monoxide and soot. No public enforcer
11 diligently prosecuted the claims threatened in the Notice within sixty days plus service time
12 relative to the provision of the Notice to them by Parker.

13 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
14 has jurisdiction over Rite Aid as to the allegations contained in the complaint filed in this matter,
15 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
16 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
17 of all claims which were or could have been raised in the Complaint based on the facts alleged
141 therein and/or in the Notices.

4 1.5 Rite Aid denies the material allegations contained in Parker's Notice and
19 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
20 Judgment shall be construed as an admission by Rite Aid of any fact, finding, issue of law, or
21 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
22 an admission by Rite Aid of any fact, finding, conclusion, issue of law, or violation of law, such
23 being specifically denied by Rite Aid. However, this section shall not diminish or otherwise
24 effect the obligations, responsibilities, and duties of Rite Aid under this Consent Judgment.

25 **2. DEFINITIONS**

26 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.
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2.2 **Covered Product.** The term “Covered Product” means all outdoor grill cooking products of any size, dimension, color, or stated purpose designed, manufactured, sold, distributed or otherwise made available to, by or for Rite Aid including but not limited to the Kettle Grill 14 inch, UPC637503000703.

2.3 **Effective Date.** The term “Effective Date” shall mean the date this Consent Judgment is entered as a Judgment of the Court.

2.4 **Listed Chemicals:** The term “Listed Chemicals” shall mean carbon monoxide and soot.

2.5 **Notice.** The term “Notice” shall have the meaning given in Section 1.3.

2.6 **Releasees.** The terms “Defendant Releasees” and “Downstream Defendant Releasees” shall have the meanings given in Section 5.1.

2.7 **Execution Date.** The term “Execution Date” shall mean the date this Consent Judgment is signed by the parties

3. **INJUNCTIVE RELIEF: WARNINGS**

3.1 Commencing on the Effective Date, Rite Aid shall not sell, offer for sale, or ship for sale in California any Covered Product, unless the Covered Product is accompanied by the following on-product warning:



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Or



WARNING: The use of this product can expose you to carbon monoxide and soot, which are chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

1
2 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
3 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
4 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
5 words, statements, or designs as to render it likely to be read and understood by an ordinary
6 individual under customary conditions of purchase or use. A warning may be contained in the
7 same section of the packaging or labeling that states other safety warnings, if any, concerning the
8 use of the product and shall be at least the same size as those other safety warnings, but no less
9 than 6 point font.

10 3.3 For warnings that are not on-product warnings, including but not limited to
11 warnings printed in an instruction booklet for any Covered Product or for on-line sales of the
12 Covered Product, the following warning shall be used:



13
14 **WARNING:** The use of this product can expose you to carbon monoxide and soot,
15 which are chemicals known to the State of California to cause cancer and birth defects or
16 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

16 4. MONETARY TERMS

17 4.1 **Penalty.** Rite Aid shall pay a civil penalty of \$500.00 pursuant to Health and
141 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of these funds remitted to the State of California's Office of
19 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
20 Parker, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be
21 made within 5 days of the Execution Date.

22 4.2 **Attorney's Fees.** Rite Aid agrees to pay reasonable attorney fees, inclusive of all
23 expenses and costs incurred as a result of investigating, bringing this matter to Rite Aid's
24 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
25 interest, pursuant to Code of Civil Procedure section 1021.5, in an amount of \$16,000.00 Rite
26 Aid shall wire Parker's counsel the total sum of \$16,500.00 representing the civil penalty and
27

1 attorney fees in Sections 4.1 and 4.2 within 5 days following Execution Date, and wire instruction
2 information from Parker's counsel.

3 **5. RELEASE OF ALL CLAIMS**

4
5 5.1 This consent judgment is a full, final, and binding resolution between Parker
6 acting in the public interest, and Rite Aid, its owners, investors employees, directors, officers,
7 managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
8 companies, and affiliates, and their successors and assigns ("Defendant Releasees"), and all
9 entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
10 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
11 customers, licensors, licensees, retailers, franchisees, and cooperative members, and their
12 successors and assigns ("Downstream Defendant Releasees"). Upon full execution of this
13 Consent Judgment, and subject to payment by Rite Aid of the full settlement amount and
14 compliance with the terms of this Consent Judgment, Parker, on behalf of herself, her agents,
15 successors, heirs, and assigns, hereby fully and irrevocably releases and discharges Rite Aid, the
16 Defendant Releasees, and the Downstream Defendant Releasees from all claims for violations of
17 Proposition 65 that were, or which could have been, asserted in the Complaint based on exposure
141 to and/or failure to warn about Listed Chemicals from Covered Products as set forth in the Notice,
4 with respect to any Covered Products manufactured, distributed, or sold by Rite Aid, the
19 Defendant Releasees, and/or the Downstream Defendant Releasees prior to the Effective Date.
20 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
21 with regard to the Covered Products.

22 5.2 In addition to the foregoing, Parker, on behalf of herself, her past and current
23 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
24 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
25 legal action and releases any Rite Aid, Defendant Releasees, and Downstream Defendant
26 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
27 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,

1 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
2 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
3 related to or arising from Covered Products manufactured distributed or sold by Rite Aid or
4 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph,
5 Parker hereby specifically waives any and all rights and benefits which she now has, or in the
6 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
7 Code, which provides as follows:
8

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

14 5.3 Rite Aid waives any and all claims against Parker, her attorneys and other
15 representatives, for any and all actions taken or statements made (or those that could have been
16 taken or made) by Parker and her attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
18 and/or with respect to Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein
23 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. In the event that Proposition 65 is repealed or
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
Rite Aid shall provide written notice to Parker of any asserted change in the law, and shall have

1 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
2 Covered Products are so affected.

3 **8. ENFORCEMENT**

4
5 8.1 Parker may, by motion or application for an order to show cause before the
6 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
7 Judgment. Prior to bringing any motion or application to enforce the requirements of this
8 Consent Judgment, Parker shall provide Rite Aid with a proposed Notice of Violation, and a copy
9 of any documentary evidence which purportedly supports Parker's Notice of Violation. The
10 Parties shall then meet and confer in good faith for a period of at least sixty (60) days regarding
11 the basis for Parker's anticipated motion or application in an attempt to resolve it informally.
12 Should such attempts at informal resolution fail, Parker may file her enforcement motion or
13 application. This Consent Judgment may only be enforced by the Parties.

14 **9. NOTICES**

15 9.1 Unless specified herein, all correspondence and notices required to be provided
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
17 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
141 party by the other party at the following addresses:

4 For Rite Aid:

19 Elizabeth V. McNulty
20 Taylor Anderson LLP
21 19100 Von Karman Avenue, Suite 820
22 Irvine, CA 92612

23 and

24 For Parker:

25 Stephen Ure
26 Law Offices of Stephen Ure, PC.
27 11622 El Camino Real, Suite 100
San Diego, California 92130

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Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES

10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

11.1 Parker agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and Rite Aid agrees it shall support approval of such Motion.

11.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve months after it has been fully executed by the Parties. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30-days, any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed on its normal course.

11.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court, and the case shall proceed on its normal course on the trial court's calendar.

12. MODIFICATION

12.1 This Consent Judgment may be modified only by express written agreement of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

1
2 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
3 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

4 **13. ATTORNEY'S FEES**

5 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
7 unless the unsuccessful party has acted with substantial justification. For purposes of this
8 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
9 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

10 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
11 own attorneys' fees and costs.

12 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **14. RETENTION OF JURISDICTION**

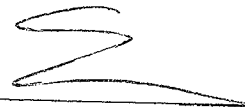
15 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 **15. AUTHORIZATION**

141 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
4 their respective Parties and have read, understood and agree to all of the terms and conditions of
19 this document and certifies that he or she is fully authorized by the Party he or she represents to
20 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
21 Except as explicitly provided herein each Party is to bear its own fees and costs.
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APPROVED AS TO FORM:

<p>AGREED TO: Date: <u>March 30</u>, 2018 By:  On Behalf of Maureen Parker Stephen Ure, Law Offices of Stephen Ure, PC</p>	<p>AGREED TO: Date: _____, 2018 By: _____ On Behalf of Rite Aid, Inc. Elizabeth V. McNulty Taylor Anderson LLP</p>
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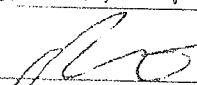
IT IS HEREBY SO STIPULATED:

<p>AGREED TO: Date: <u>3/30/2018</u> By: <u>Maureen Parker</u> MAUREEN PARKER</p>	<p>AGREED TO: Date: _____ By: _____ Rite Aid, Inc.</p>
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1 **APPROVED AS TO FORM:**

2	3	4	5	6	7	8	9
AGREED TO:				AGREED TO:			
Date : _____, 2018				Date: _____, 2018			
By: _____				By: _____			
On Behalf of Maureen Parker Stephen Ure, Law Offices of Stephen Ure, PC				On Behalf of Rite Aid Elizabeth V. McNulty Taylor Anderson LLP			

10 **IT IS HEREBY SO STIPULATED:**

11	12	13	14	15	16	17	18
AGREED TO:				AGREED TO:			
Date: _____				Date: <u>4/20/18</u>			
By: _____ MAUREEN PARKER				By:  Rite Aid Real Estate Litigation & Commercial Law			