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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 Coordination Proceedings Special Title
(Rule 1550(b),
19

JUDICIAL COUNSEL COORDINATION
PROCEEDING NO. 4182

20 **SECONDHAND SMOKE CASES**

21 This document relates to:

**[PROPOSED] STIPULATED CONSENT
JUDGMENT BETWEEN PLAINTIFF
CONSUMER ADVOCACY GROUP, INC.
AND DEFENDANT ARCO OIL & GAS
COMPANY**

22 CONSUMER ADVOCACY GROUP, INC. V.
23 CIRCLE K CO., et al
24

25 (LASC Case No. BC232078, formerly
San Francisco Superior Court Case
26 No. 305987)

The Honorable William Highberger
(Department 307)

1 **1.0 INTRODUCTION**

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

5 1.2 Defendant. Arco Oil & Gas Company (sued as ARCO, ARCO AM PM, ARCO,
6 INC., ATLANTIC RICHFIELD CO., ARCO, CO., and AM PM MINI MART) (collectively
7 “Defendant” or “AOGC”) owns, operates, leases and/or franchises service stations throughout
8 California. Some of these service stations include on-site retail stores (“Stores”) at which
9 tobacco products may be sold.

10 1.3 Parties. CAG and the AOGC are collectively referred to herein as the “Parties.”

11 1.4 Covered Products. Cigars, pipe tobacco, smokeless tobacco and other tobacco
12 products (other than cigarettes) are “Covered Products.”

13 1.5 Covered Properties. Service stations with on-site retail stores that are operated
14 by the AOGC are referred to herein as the “Covered Properties.”

15 1.6 Proposition 65. Health & Safety Code sections 25249.5 *et seq.* (“Proposition
16 65”) prohibits, among other things, a company consisting of ten or more employees from
17 knowingly and intentionally exposing an individual to chemicals that are known to the State of
18 California to cause cancer and/or birth defects or other reproductive harm without first providing
19 a clear and reasonable warning to such individuals.

20 1.7 Proposition 65 Chemicals. The State of California has officially listed various
21 chemicals pursuant to Health & Safety Code section 25249.8 as chemicals known to the State of
22 California to cause cancer and/or reproductive toxicity.

23 1.8 The Present Dispute. This Consent Judgment pertains to *Consumer Advocacy*
24 *Group, Inc. v. Circle K Co., et al.*, Los Angeles County Superior Court Case No. BC232078,
25 which was originally filed in San Francisco County Superior Court as Case No. 305987 on
26 August 27, 1999, which was deemed complex and has been proceeding as part of Judicial
27 Council Coordination Proceeding (“JCCP”) 4182 (the “Action”).
28

1 1.9 Plaintiff's 60-day Notice. More than sixty days prior to filing the Action,
2 Plaintiff served on AOGC a document entitled "60-day Notice of Intent to Sue Under Health &
3 Safety Code Section 25249.6 (the "Notice"). A true and correct copy of the Notice is attached
4 hereto as Exhibit "A." The Notice stated, among other things, that Plaintiff believed that AOGC
5 violated Proposition 65 by knowingly and intentionally selling cigars and smokeless tobacco at
6 certain service station sites and exposing consumers and the public to tobacco smoke and other
7 chemicals designated by the State of California to cause cancer and reproductive toxicity without
8 first giving clear and reasonable warnings. Among the Proposition 65 chemicals identified by
9 Plaintiff in the Notice were tobacco products, cigars, smokeless tobacco, and tobacco smoke (and
10 their constituent chemicals, including Acetaldehyde, Acetamide, Acrylonitrile, 4-Aminobiphenyl,
11 (4-Aminodiphenyl), Aniline, Ortho-Anisidine, Arsenic (inorganic arsenic compounds),
12 Benz[a]anthracene, Benzene, Benzo[b]fluoranthene, Benzo[j]fluoranthene,
13 Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium
14 (hexavalent compounds), Chrysene, Dichlorodiphenyltrichloroethane (DDT),
15 Dibenz[a,h]acridine, Dibenz[a,j]acridine, Dibenz[a,h]anthracene, 7H-Dibenzo[c,g]carbazole,
16 Dibenzo[a,e]pyrene, Dibenzo[a,h]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1
17 Dimethylhydrazine (UDMH), Formaldehyde (gas), Hydrazine, Lead and lead compounds, 1-
18 Naphthylamine, 2-Naphthylamine, Nickel and certain nickel compounds, 2-Nitropropane, N-
19 Nitrosodi-n-butylamine, N-Nitrosodiethanolamine, N-Nitrosodiethylamine, N-
20 Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosornicotine, N-Nitrosopiperidine, N-
21 Nitrosopyrrolidine, Ortho-Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Arsenic
22 (inorganic Oxides), Carbon disulfide, Carbon monoxide, Lead, Nicotine, Toluene, and Urethane)
23 (collectively "Noticed Chemicals").

24 1.10 Procedural History. In the Action, Plaintiff alleged violations of Proposition 65
25 and the Unfair Competition Act, Business & Professions Code section 17200 *et seq.* ("Section
26 17200") arising out of AOGC's alleged sale of cigars to consumers without providing adequate
27 warnings. In 2002, the trial court held that Plaintiff's Notice was inadequate and that the Section
28 17200 claim was barred because Proposition 64 had amended the standing requirements for

1 Section 17200 claims. Plaintiff appealed and in 2005, the Court of Appeal reversed, concluding
2 (among other things) that the Notice was valid with respect to consumer product exposures and
3 that Proposition 64 did not apply retroactively. In May 2007, the California Supreme Court
4 reversed as to the Section 17200 claim, but left the Court of Appeal's ruling on the Proposition
5 65 claim intact. The matter was remitted to the Court of Appeal and ultimately, to the trial court
6 in July 2007. On or about July 11, 2008, AOGC and other Defendants filed a Motion for
7 Judgment on the Pleadings. On October 31, 2008, the trial court granted Defendants' Motion for
8 Judgment on the Pleadings, but granted Plaintiff leave to amend. Plaintiff filed a First Amended
9 Complaint on December 19, 2008 alleging violations of Proposition 65 for the unwarned sale of
10 "cigars and tobacco products." On or about January 8, 2009, AOGC and other Defendants filed a
11 Motion by Retail Defendants to Strike Portions of Plaintiff's Unverified First Amended
12 Complaint and a Demurrer of Retail Defendants to Plaintiff's Unverified First Amended
13 Complaint. On February 10, 2009, the Court denied the motion and overruled the demurrer.
14 While the motion and demurrer were pending, Plaintiff and AOGC reached an agreement in
15 principle that would fully resolve the issues raised in the Action.

16 1.11 Purpose of Consent Judgment. In order to avoid continued and protracted
17 litigation, the Parties wish to resolve completely and finally the issues raised by the Notice and
18 the Action pursuant to the terms and conditions described herein. In entering into this Consent
19 Judgment, the Parties recognize that this Consent Judgment is a full and final settlement of all
20 claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and their
21 constituent chemicals) that were raised or that could have been raised in the Notice and the
22 Action. CAG and AOGC also intend for this Consent Judgment to provide, to the maximum
23 extent permitted by law, *res judicata* and/or collateral estoppel protection for AOGC, against any
24 and all other claims based upon the same or similar allegations as to the Noticed Chemicals.

25 1.12 No Admission. AOGC disputes that they have violated Proposition 65 as
26 described in the Notice and the Action and/or that they have any liability whatsoever based on
27 any of the facts or claims asserted in the Notice or the Action. In particular, AOGC contends that
28 they at all times provided all necessary Proposition 65 warnings; that no additional warnings are

1 required for the exposures Plaintiff alleges; and that Proposition 65 warnings currently in place
2 fully comply with Proposition 65. AOGC has shared with Plaintiff the defenses AOGC could
3 raise to the Proposition 65 claims. Plaintiff disputes AOGC's defenses and disputes that AOGC
4 has complied with Proposition 65.

5 Based on the foregoing, nothing in this Consent Judgment shall be construed as an
6 admission by Plaintiff or AOGC that any action that AOGC may have taken, or failed to take,
7 violates Proposition 65 or any other provision of any other statute, regulation or principal of
8 common law. AOGC expressly denies any alleged violation of Proposition 65.

9 1.13 Effective Upon Final Determination. AOGC's willingness to enter into this
10 Consent Judgment is based upon the understanding that this Consent Judgment will fully and
11 finally resolve all claims related to tobacco products, tobacco smoke and secondhand tobacco
12 smoke (and their constituent chemicals), brought by CAG, and that this Consent Judgment will
13 have *res judicata* and/or collateral estoppel effect to the extent allowed by law with regard to any
14 alleged violations of Proposition 65 by AOGC.

15 1.14 Effective Date. For purposes of this Consent Judgment, the Effective Date is the
16 date of entry by this Court, unless the entry of the Consent Judgment is appealed, in which case
17 the "Effective Date" is the date all appeals are resolved and entry is upheld.

18 **2.0 JURISDICTION**

19 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, the
20 Parties stipulate that this Court has jurisdiction over the allegations and claims alleged in the
21 Action.

22 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, the Parties
23 stipulate that this Court has personal jurisdiction over AOGC as to the acts and claims alleged in
24 the Action.

25 2.3 Venue. For purposes of this Consent Judgment only, the Parties stipulate that
26 venue for resolution of the allegations and claims asserted in the Action is proper in the County
27 of Los Angeles.

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1 2.4 Jurisdiction to Enter Consent Judgment. The Parties stipulate and agree that this
2 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution
3 of the allegations contained in the Notice, the Action, and of all claims that were or that could
4 have been raised based on the facts alleged therein or arising therefrom.

5 **3.0 INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

6 3.1 AOGC asserts that they are not legally responsible for the conduct of Store
7 operators who independently own, lease and/or operate retail Stores associated with service
8 stations. AOGC further asserts that Stores operated by AOGC have been in compliance with
9 Proposition 65 warning requirements relating to the consumer product exposures to tobacco
10 products alleged in the Notice because (a) manufacturer's warnings on cigar packaging satisfy
11 Proposition 65's requirements with respect to cigars; (b) Store operators post and have posted,
12 warnings that fully comply with Proposition 65. Plaintiff contends that AOGC is not in
13 compliance with Proposition 65 because some Store operators have removed manufacturer's
14 warnings on cigars and either placed cigars in humidors without Proposition 65 warnings or
15 otherwise did not provide a warning.

16 3.2 Consumer Product Warning. As to all Covered Properties, within 60 days after
17 the Effective Date AOGC agrees as follows:

18 3.2.1 If, in connection with the individual sale of cigars to consumers at all
19 Covered Properties, Store operators remove cigars from the packaging provided by the
20 manufacturer or distributor of the cigars and there are no warnings on the individual cigars or on
21 the displays or humidors provided by the manufacturer or distributor in connection with any such
22 individual sale or Store operators receive cigars for sale that do not include any warnings, then
23 AOGC shall provide a warning in connection with any such sale using substantially the following
24 language:

25 **"WARNING: This Product Contains/Produces Chemicals Known**
26 **To The State Of California To Cause Cancer and Birth Defects or**
27 **Other Reproductive Harm."**

28 3.2.2 The warnings set forth in this Section 3.2 shall be displayed at the Stores

1 at the Covered Properties with such conspicuousness, as compared with other words, statements,
2 designs, or devices as to render the warnings likely to be read and understood by an ordinary
3 individual under customary conditions of purchase or use.

4 3.3 Compliance. Compliance with paragraphs 3.2.1 and 3.2.2 is deemed to fully
5 satisfy AOGC's obligations under Proposition 65 with respect to any exposures and potential
6 exposures to the Noticed Chemicals in all respects and to all persons and entities.

7 3.3.1 The provision of said warnings shall be deemed to satisfy all obligations
8 under Proposition 65 by all person(s) or entit(ies) with respect to all consumer exposure to the
9 constituent chemicals identified in the Notice. The warnings described in this section may be
10 combined with other information on a single sign and may be provided by the same media and in
11 the same or similar format in which other information is provided to the public.

12 3.4 Future Laws or Regulations. In lieu of complying with the requirements of
13 paragraph 3.2, should (a) any future federal law or regulation that governs the warnings provided
14 for herein preempt state authority with respect to said warning; (b) any future warning
15 requirement with respect to the subject matter of said paragraph approved by the State of
16 California; or (c) any future state law or regulation specify a specific warning for consumer
17 exposure with respect to the subject matter of said paragraph, AOGC may comply with the
18 warning obligations set forth in paragraph 3.2 by complying with such future federal or state law
19 or regulation or such future warning requirement upon notice to Plaintiff.

20 3.5 Statutory Amendment to Proposition 65. If a statutory, regulatory or other
21 amendment to Proposition 65 is adopted that would exempt AOGC, the "Released Parties" (as
22 defined in paragraph 4.2 below), or the class to which AOGC belongs, from providing the
23 warnings described herein, then upon the adoption of such statutory amendment or regulation and
24 to the extent authorized by such statutory amendment or regulation, AOGC shall be relieved
25 from its obligation to provide the warnings set forth herein. In addition, should AOGC cease to
26 operate any of the Covered Properties, then AOGC shall be relieved of any obligation to provide
27 warnings with respect to such Covered Properties.

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1 **4.0 RELEASES AND CLAIMS COVERED**

2 4.1 Effect of Judgment. This Judgment is a full and final judgment with respect to
3 any claims regarding the Noticed Chemicals and the Covered Products that were asserted or that
4 could have been asserted in the Action and/or the Notice against the Released Parties (as defined
5 in paragraph 4.2 below), including, but not limited to: (a) claims for any violation of Proposition
6 65 or Section 17200 by the Released Parties and each of them, including but not limited to,
7 claims arising from consumer product exposures to the Noticed Chemicals, wherever occurring
8 and to whomever occurring, through and including the date upon which this Consent Judgment
9 becomes final, including all appeals; and (b) the Released Parties' continuing responsibility to
10 provide the warnings mandated by Proposition 65 with respect to the Noticed Chemicals.

11 4.2 Release. Except for such rights and obligations as have been created under this
12 Consent Judgment, Plaintiff, on its own behalf and in the interests of the public pursuant to
13 Health & Safety Code section 25249.7(d), with respect to the matters regarding the Noticed
14 Chemicals and Covered Products alleged in the Notice and the Action, does hereby fully,
15 completely, finally and forever release, relinquish and discharge: (a) Arco Oil & Gas Company;
16 (b) BP West Coast Products LLC; (c) the past, present, and future owners, lessors, sublessors,
17 managers, franchisors, franchisees, wholesalers, distributors and operators of (and any others
18 with any interest in) the sites identified in the Notice, all Covered Properties, and all Stores
19 affiliated with the parties identified in (a) and (b) above; and (d) the respective past, present, and
20 future officers, directors, shareholders, affiliates, members, joint venturers, partners, agents,
21 principals, employees, attorneys, parents, subsidiaries, owners, sisters or other related entities,
22 successors, and assigns of the persons and entities described in (a), (b) and (c) above (the parties
23 identified in (a), (b), (c) and (d) above are collectively referred to as the "Released Parties") of
24 and from all claims, actions, causes of action, suits, demands, rights, debts, agreements,
25 promises, liabilities, damages, penalties, royalties, fees, accountings, costs and expenses, whether
26 known or unknown, suspected or unsuspected, of any nature whatsoever that Plaintiff has or may
27 have against the Released Parties, arising directly or indirectly out of any fact or circumstance
28 occurring prior to the date upon which this Consent Judgment becomes final (including all

1 appeals), relating to any actual or alleged violation of Proposition 65 or Section 17200 by the
2 Released Parties and their respective agents, servants and employees that were or could have
3 been raised in the Notice and/or the Action (the "Released Claims"). In sum, the Released
4 Claims include all allegations made, or that could have been made, by Plaintiff with respect to
5 the Noticed Chemicals and Covered Products relating to Proposition 65 or Section 17200.

6 4.3 Intent of Parties. It is the intention of the Parties to this Release that, upon entry
7 of judgment and conclusion of any and all appeals or litigation relating to this Consent Judgment,
8 that this Consent Judgment shall be effective as a full and final accord and satisfaction and
9 release of each and every Released Claim. In furtherance of this intention, Plaintiff
10 acknowledges that it is familiar with California Civil Code section 1542, which provides as
11 follows:

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

18 Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has or may
19 have under Civil Code section 1542 (as well as any similar rights and benefits which it may have
20 by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff
21 acknowledges that it may hereafter discover facts in addition to, or different from, those which it
22 now knows or believes to be true with respect to the subject matter of this Consent Judgment and
23 the Released Claims, and that notwithstanding the foregoing, it is Plaintiff's intention to fully,
24 finally, completely and forever settle and release all Released Claims, and that in furtherance of
25 such intention, the release here given shall be and remain in effect as a full and complete general
26 release, notwithstanding the discovery or existence of any such additional or different facts.

1 4.4 Plaintiff's Ability to Represent the Public. Plaintiff hereby warrants and
2 represents to Defendant and the Released Parties that (a) Plaintiff has not previously assigned any
3 Released Claim; and (b) Plaintiff has the right, ability and power to release each Released Claim.

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

10 4.5 No Further Force and Effect. In the event that (a) the Court denies, in whole or
11 in part, the Parties' Joint Motion to Approve the Consent Judgment pursuant to Health & Safety
12 Code section 25249.7(f)(4) as amended; or (b) a decision by the Court to approve the Consent
13 Judgment is appealed and overturned by another Court, in whole or in part, then upon notice by
14 any Party hereto to any other Party hereto, this Consent Judgment shall be of no further force or
15 effect and the Parties shall be restored to their respective rights and obligations as though this
16 Consent Judgment had not been executed by the Parties.

17 **5.0 ATTORNEY FEES AND COSTS**

18 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees
19 and costs, costs of investigation, attorney fees, or other costs incurred relating to this matter,
20 AOGC shall pay to the firm of Yeroushalmi & Associates the sum of \$95,000. This amount
21 shall be paid within thirty calendar days following the entry of a final judgment, including all
22 appeals, approving this Consent Judgment.

23 **6.0 PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

24 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent
25 Judgment shall, *inter alia*:

26 6.1.1 Constitute full and fair adjudication of all claims against AOGC ,
27 including, but not limited to, all claims set forth in the Action based upon alleged violations of
28 Proposition 65, as well as any other statute, provision of common law or any theory or issue

1 which arose from AOGC's actual or alleged failure to provide warnings regarding consumer
2 exposure to Covered Products, tobacco smoke and secondhand tobacco smoke (and its
3 constituent chemicals) which are known to the State of California to cause cancer, birth defects
4 and/or other reproductive harm;

5 6.1.2 Bar all other persons, on the basis of *res judicata*, collateral estoppel
6 and/or the doctrine of mootness, from prosecuting against any Released Party any claim with
7 respect to the Noticed Chemicals and Covered Products alleged in the Notice and the Action, and
8 based upon alleged violations of (a) Proposition 65; or (b) any other statute, provision of
9 common law or any theory or issue which arose or may arise from the alleged failure to provide
10 warnings of exposure to tobacco products, tobacco smoke, and secondhand tobacco smoke (and
11 its constituent chemicals), which are known to the State of California to cause cancer, birth
12 defects, and/or other reproductive harm.

13 **7.0 DISPUTES UNDER THE CONSENT JUDGMENT**

14 7.1 Disputes. CAG may, by motion or application for an order to show cause before
15 this Court, enforce the terms and conditions contained in this Consent Judgment, however, no
16 action to enforce this Consent Judgment may be brought by CAG unless it has fully complied
17 with the notice and meet-and-confer requirements of this paragraph and paragraph 7.2. In the
18 event that a dispute arises with respect to either Party's compliance with the terms of this
19 Consent Judgment, the Parties shall meet, either in person or by telephone, and endeavor to
20 resolve the dispute in an amicable manner. In the event that legal proceedings are initiated to
21 enforce the provisions of this Consent Judgment, however, the prevailing party in such
22 proceeding may seek to recover its costs and reasonable attorneys' fees. As used herein, the term
23 "prevailing party" means a party that is successful in obtaining relief more favorable to it than the
24 relief that the other party was amenable to providing during the parties' good faith attempt to
25 resolve the dispute that is the subject of such enforcement action.

26 7.2 Notice of Violation. In the event that, any time following the compliance date set
27 forth in paragraph 3.2 hereof, CAG identifies what it believes is a violation of paragraph 3.2,
28 CAG shall issue a notice of violation pursuant to this paragraph. The notice of violation shall be

1 sent to the persons identified in section 9 hereof, and shall, at minimum, set forth for each of the
2 Covered Properties: (a) the date(s) the alleged violation(s) was observed; (b) the location at
3 which the alleged violation occurred; (c) a description of the product giving rise to the alleged
4 violation, including the product's brand and type, so that it can be readily distinguished from
5 those products for which no violation is alleged; and (d) a description of any warnings that were
6 provided at the Covered Properties relating to tobacco products, whether such warning was
7 applied to products or provided otherwise. CAG shall promptly make available for inspection
8 and/or copying, upon request, all supporting documentation or other information related to the
9 alleged violation asserted in the notice of violation. The parties shall meet and confer in good
10 faith in an effort to resolve the allegations in the notice of violation. Only after the passage of 30
11 days after service of the violation, and only to the extent the Parties have not resolved their
12 dispute, may CAG seek enforcement of this Consent Judgment pursuant to paragraph 7.1.

13 **8.0 THIRD PARTY LITIGATION**

14 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to
15 opposition to entry of this Consent Judgment by the Court, instituted by a third party or
16 governmental entity or official, Plaintiff and Defendant agree to cooperate affirmatively in all
17 efforts to defend against any such litigation.

18 **9.0 NOTICES**

19 9.1 Written Notice Required. All notices between the Parties provided for or
20 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly
21 served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent
22 via facsimile to a party at the facsimile number set forth below, or to such other or further
23 facsimile number provided in any notice sent under the terms of this paragraph, on the date of the
24 transmission of that facsimile; or (c) when deposited in the United States mail, certified, postage
25 prepaid, addressed to such party at the address set forth below, or to such other or further address
26 provided in a notice sent under the terms of this paragraph, three days following the deposit of
27 such notice in the mails.

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

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(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 Defendant:

Todd L. Normane, Senior Attorney
BP Legal – Litigation
6 Centerpointe Drive
LPR 6-552
La Palma, CA 90623
Telephone Number: (714) 228-6739
Facsimile Number: (714) 228-6570

With a copy to:

Kurt Weissmuler, Esq.
ALSTON & BIRD LLP
333 South Hope Street
16th Floor
Los Angeles, CA 90071
Telephone Number: (213) 576-1000
Facsimile Number: (213) 576-1100

A Party may change the address to which notice shall be provided under this Consent Judgment by serving a written notice to each of the Parties.

10.0 INTEGRATION

10.1 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

1 agreements, collateral or otherwise are included herein and therein. The Parties intend that this
2 Consent Judgment shall constitute an integration of all their agreements, and each understands
3 that in the event of any subsequent litigation, controversy or dispute concerning any of its terms,
4 conditions or provisions, no Party hereto shall be permitted to offer or introduce any oral or
5 extrinsic evidence concerning any other collateral or oral agreement between the Parties not
6 included herein.

7 **11.0 TIMING**

8 11.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

9 **12.0 COMPLIANCE WITH REPORTING REQUIREMENTS**

10 12.1 Reporting Forms: Presentation to Attorney General. The Parties expressly
11 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety
12 Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary
13 signatures hereto, Plaintiff shall present this Proposed Consent Judgment to the California
14 Attorney General's office.

15 **13.0 COUNTERPARTS**

16 13.1 Counterparts. This Consent Judgment may be signed in counterparts and shall be
17 binding upon the Parties hereto as if all of the Parties executed the original hereof. A facsimile
18 or pdf signature shall be valid as the original.

19 **14.0 WAIVER**

20 14.1 No waiver. No waiver by any Party hereto of any provision hereof shall be
21 deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or
22 any other provision hereof.

23 **15.0 AMENDMENT**

24 15.1 In Writing. This Consent Judgment cannot be amended or modified except by a
25 writing executed by the parties hereto that expresses, by its terms, an intention to modify this
26 Consent Judgment.

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1 **16.0 SUCCESSORS**

2 16.1 Binding Upon Successors. This Consent Judgment shall be binding upon and
3 inure to the benefit of, and be enforceable by, the Parties hereto and their respective
4 administrators, trustees, executors, personal representatives, successors and assigns.

5 **17.0 CHOICE OF LAWS**

6 17.1 California Law Applies. Any dispute regarding the interpretation of this Consent
7 Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the
8 damages accruing to a Party by reason of any breach of this Consent Judgment shall be
9 determined under the laws of the State of California, without reference to choice of law
10 principles.

11 **18.0 NO ADMISSIONS**

12 18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been
13 reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent
14 Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any violation
15 of Proposition 65 or any other law. The settlement of claims herein shall not be deemed to be an
16 admission or concession of liability or culpability by any Party, at any time, for any purpose.
17 Neither this Consent Judgment, nor any document referred to herein, nor any action taken to
18 carry out this Consent Judgment, shall be construed as giving rise to any presumption or
19 inference of admission or concession by Defendant as to any fault, wrongdoing or liability
20 whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the
21 negotiations or other proceedings connected with it, nor any other action taken to carry out this
22 Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or
23 received in evidence in any pending or future, civil, criminal or administrative action or
24 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the
25 assertion of any Released Claim or as otherwise required by law.

26 **19.0 REPRESENTATION**

27 19.1 Construction of Consent Judgment. The Parties each acknowledge and warrant
28 that they have been represented by independent counsel of their own selection in connection with

1 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and
2 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms
3 of this Consent Judgment will not be construed in favor of or against any Party hereto.

4 **20.0 AUTHORIZATION**

5 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies
6 that he or she is authorized by the Party he or she represents to enter into this Consent Judgment,
7 to stipulate to this Consent Judgment, and to execute and approve this Consent Judgment on
8 behalf of the Party represented.

9 **21.0 RETENTION OF JURISDICTION**

10 21.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment and to determine the outcome of any disputed matters in the event legal
12 proceedings are initiated pursuant to Section 7.0 hereof.

13
14 Dated: _____, 2009

CONSUMER ADVOCACY GROUP, INC.

15
16
17 By: _____

18 Its: _____

19
20 Dated: February 26, 2009

BP WEST COAST PRODUCTS LLC,
on behalf of AOGC

21
22
23 By: Todd L. Normane

24 Its: Senior Attorney

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Dated: 3/16, 2009

CONSUMER ADVOCACY GROUP, INC.

Lyn H. Marcus, Inc.
By: Lyn H. Marcus
Its: President

Dated: _____, 2009

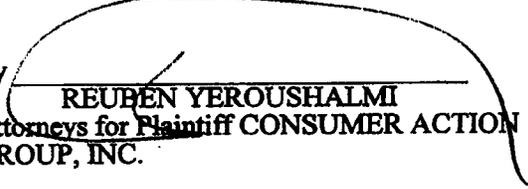
BP WEST COAST PRODUCTS LLC,
on behalf of AOGC

By: _____
Its: _____

1 Approved as to form:

2
3 Dated: 2/26/09, 2009

YERCUSHALMI AND ASSOCIATES
REUBEN YEROUSHALMI

4
5 By 
6 REUBEN YEROUSHALMI
7 Attorneys for Plaintiff CONSUMER ACTION
8 GROUP, INC.

9 Dated: Feb. 26, 2009

10 ALSTON & BIRD, LLC
11 KURT WEISSMULLER
12 ABIGAIL PAGE

13 By 
14 KURT WEISSMULLER
15 Attorneys for Defendant ARCO OIL & GAS
16 COMPANY

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