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23 Texaco, Inc., Texaco Food Mart, Texaco Star Mart)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Coordination Proceedings Special Title
(Rule 1550(b),

SECONDHAND SMOKE CASES

This document relates to:

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

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

JUDICIAL COUNSEL COORDINATION
PROCEEDING NO. 4182

**[PROPOSED] STIPULATED CONSENT
JUDGMENT BETWEEN PLAINTIFF
CONSUMER ADVOCACY GROUP, INC.
AND DEFENDANT TEXACO REFINING
& MARKETING, INC.**

The Honorable William Highberger
(Department 307)

1 **1.0 INTRODUCTION**

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

5 1.2 Defendant. Texaco Refining & Marketing, Inc. ("Defendant" or "TRMI")
6 (erroneously sued as Texaco, Texaco, Inc., Texaco Food Mart, Texaco Star Mart) and its
7 affiliate, Equilon Enterprises LLC ("Equilon") own, operate, lease and/or franchise service
8 stations throughout California. Some of these service stations include on-site retail stores
9 ("Stores") at which tobacco products may be sold. TRMI and Equilon are collectively referred to
10 herein as the "TRMI Parties."

11 1.3 Parties. CAG and the TRMI Parties are collectively referred to herein as the
12 "Parties."

13 1.4 Covered Properties. Service stations with on-site retail stores that are owned and
14 operated by the TRMI Parties are referred to herein as the "Covered Properties."

15 1.5 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 1.6 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 1.7 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 Council
27 Coordination Proceeding ("JCCP") 4182 (the "Action").

28 1.8 Plaintiff's 60-day Notice. More than sixty days prior to filing the Action, Plaintiff
served on TRMI a document entitled "60-day Notice of Intent to Sue Under Health & Safety

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

21 1.9 Procedural History. In the Action, Plaintiff alleged violations of Proposition 65
22 and the Unfair Competition Act, Business & Professions Code section 17200 *et seq.* ("Section
23 17200") arising out of TRMI's alleged sale of cigars to consumers without providing adequate
24 warnings. In 2002, the trial court held that Plaintiff's Notice was inadequate and that the Section
25 17200 claim was barred because Proposition 64 had amended the standing requirements for
26 Section 17200 claims. Plaintiff appealed and in 2005, the Court of Appeal reversed, concluding
27 (among other things) that the Notice was valid with respect to consumer product exposures and
28 that Proposition 64 did not apply retroactively. In May 2007, the California Supreme Court
reversed as to the Section 17200 claim, but left the Court of Appeal's ruling on the Proposition

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1 65 claim intact. The matter was remitted to the Court of Appeal and ultimately, to the trial court
2 in July 2007. On or about October 30, 2008, while Defendants' Motion for Judgment on the
3 Pleadings was pending, Plaintiff and TRMI reached an agreement in principle that would fully
4 resolve the issues raised in the Action. On October 31, 2008, the trial court granted Defendants'
5 Motion for Judgment on the Pleadings, but granted Plaintiff leave to amend.

6 1.10 Purpose of Consent Judgment. In order to avoid continued and protracted
7 litigation, the Parties wish to resolve completely and finally the issues raised by the Notice and the
8 Action pursuant to the terms and conditions described herein. In entering into this Consent
9 Judgment, the Parties recognize that this Consent Judgment is a full and final settlement of all
10 claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and their
11 constituent chemicals) that were raised or that could have been raised in the Notice and the
12 Action. CAG and the TRMI Parties also intend for this Consent Judgment to provide, to the
13 maximum extent permitted by law, *res judicata* and/or collateral estoppel protection for the
14 TRMI Parties and each of them, against any and all other claims based upon the same or similar
15 allegations as to the Noticed Chemicals.

16 1.11 No Admission. The TRMI Parties dispute that they have violated Proposition 65
17 as described in the Notice and the Action and/or that they have any liability whatsoever based on
18 any of the facts or claims asserted in the Notice or the Action. In particular, the TRMI Parties
19 contend that they at all times provided all necessary Proposition 65 warnings; that no additional
20 warnings are required for the exposures Plaintiff alleges; and that Proposition 65 warnings
21 currently in place fully comply with Proposition 65. The TRMI Parties have shared with Plaintiff
22 the defenses the TRMI Parties could raise to the Proposition 65 claims. Plaintiff disputes the
23 TRMI Parties' defenses and disputes that TRMI has complied with Proposition 65.

24 Based on the foregoing, nothing in this Consent Judgment shall be construed as an
25 admission by Plaintiff or the TRMI Parties that any action that any of the TRMI Parties may have
26 taken, or failed to take, violates Proposition 65 or any other provision of any other statute,
27 regulation or principal of common law. The TRMI Parties expressly deny any alleged violation of
28 Proposition 65.

1 1.12 Effective Upon Final Determination. The TRMI Parties' willingness to enter into
2 this Consent Judgment is based upon the understanding that this Consent Judgment will fully and
3 finally resolve all claims related to tobacco products, tobacco smoke and secondhand tobacco
4 smoke (and their constituent chemicals), brought by CAG, and that this Consent Judgment will
5 have *res judicata* and/or collateral estoppel effect to the extent allowed by law with regards to
6 any alleged violations of Proposition 65 by any or all of the TRMI Parties.

7 **2.0 JURISDICTION**

8 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, the
9 Parties stipulate that this Court has jurisdiction over the allegations and claims alleged in the
10 Action.

11 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, the Parties
12 stipulate that this Court has personal jurisdiction over TRMI as to the acts and claims alleged in
13 the Action.

14 2.3 Venue. For purposes of this Consent Judgment only, the Parties stipulate that
15 venue for resolution of the allegations and claims asserted in the Action is proper in the County of
16 Los Angeles.

17 2.4 Jurisdiction to Enter Consent Judgment. The Parties stipulate and agree that this
18 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution
19 of the allegations contained in the Notice, the Action, and of all claims that were or that could
20 have been raised based on the facts alleged therein or arising therefrom.

21 **3.0 INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

22 3.1 The TRMI Parties assert that they are not legally responsible for the conduct of
23 Store operators who independently own, lease and/or operate retail Stores associated with service
24 stations. The TRMI Parties further assert that Stores owned and operated by the TRMI Parties
25 have been in compliance with Proposition 65 warning requirements relating to the consumer
26 product exposures to tobacco products alleged in the Notice because (a) manufacturer's warnings
27 on cigar packaging satisfy Proposition 65's requirements with respect to cigars; (b) Store
28 operators post and have posted, warnings that fully comply with Proposition 65. Plaintiff
contends that the TRMI Parties are not in compliance with Proposition 65 because some Store

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1 operators have removed manufacturer's warnings on cigars and placed cigars in humidors without
2 Proposition 65 warnings.

3 3.2 Consumer Product Warning. As to all Covered Properties, the TRMI Parties
4 agree as follows:

5 3.2.1 The TRMI Parties will inform Store operators at all Covered Properties
6 that, if, in connection with the individual sale of cigars to consumers, Store operators remove
7 cigars from the packaging provided by the manufacturer or distributor of the cigars and there are
8 no warnings on the individual cigars or on the displays or humidors provided by the manufacturer
9 or distributor in connection with any such individual sale, or Store operators receive cigars for
10 sale that do not include any warnings, then a warning in connection with any such sale shall be
11 provided using substantially the following language:

12 “**WARNING:** This Product Contains/Produces Chemicals Known
13 To The State Of California To Cause Cancer and Birth Defects or
14 Other Reproductive Harm.”

15 3.2.2 The warnings set forth in this Section 3.2 shall be displayed at the Store
16 with such conspicuousness, as compared with other words, statements, designs, or devices as to
17 render the warnings likely to be read and understood by an ordinary individual under customary
18 conditions of purchase or use.

19 3.3 Compliance. Compliance with paragraphs 3.2.1 and 3.2.2 is deemed to fully
20 satisfy the TRMI Parties' obligations under Proposition 65 with respect to any exposures and
21 potential exposures to the Noticed Chemicals in all respects and to all persons and entities.

22 3.3.1 The provision of said warnings shall be deemed to satisfy all obligations
23 under Proposition 65 by all person(s) or entit(ies) with respect to all consumer exposure to the
24 constituent chemicals identified in the Notice. The warnings described in this section may be
25 combined with other information on a single sign and may be provided by the same media and in
26 the same or similar format in which other information is provided to the public.

27 3.4 Future Laws or Regulations. In lieu of complying with the requirements of
28 paragraph 3.2, should (a) any future federal law or regulation that governs the warnings provided
for herein preempt state authority with respect to said warning; (b) any future warning

1 requirement with respect to the subject matter of said paragraph be proposed by any industry
2 association and approved by the State of California; or (c) any future state law or regulation
3 specify a specific warning for consumer exposure with respect to the subject matter of said
4 paragraph, the TRMI Parties may comply with the warning obligations set forth in paragraph 3.2
5 by complying with such future federal or state law or regulation or such future warning
6 requirement upon notice to Plaintiff.

7 3.5 Statutory Amendment to Proposition 65. If a statutory, regulatory or other
8 amendment to Proposition 65 is adopted that would exempt the TRMI Parties, the "Released
9 Parties" (as defined in paragraph 4.2 below), or the class to which the TRMI Parties belong, from
10 providing the warnings described herein, then upon the adoption of such statutory amendment or
11 regulation and to the extent authorized by such statutory amendment or regulation, the TRMI
12 Parties shall be relieved from their obligation to provide the warnings set forth herein. In
13 addition, should the TRMI Parties cease to own or operate any of the Covered Properties, then
14 the TRMI Parties shall be relieved of any obligation to provide warnings with respect to such
15 Covered Properties.

16 **4.0 RELEASES AND CLAIMS COVERED**

17 4.1 Effect of Judgment. This Judgment is a full and final judgment with respect to
18 any claims regarding the Noticed Chemicals that were asserted or that could have been asserted in
19 the Action and/or the Notice against the Released Parties (as defined in paragraph 4.2 below),
20 including, but not limited to: (a) claims for any violation of Proposition 65 or Section 17200 by
21 the Released Parties and each of them, including but not limited to, claims arising from consumer
22 product exposures to the Noticed Chemicals, wherever occurring and to whomever occurring,
23 through and including the date upon which this Consent Judgment becomes final, including all
24 appeals; and (b) the Released Parties' continuing responsibility to provide the warnings mandated
25 by Proposition 65 with respect to the Noticed Chemicals.

26 4.2 Release. Except for such rights and obligations as have been created under this
27 Consent Judgment, Plaintiff, on its own behalf and in the interests of the public pursuant to Health
28 & Safety Code section 25249.7(d), with respect to the matters regarding the Noticed Chemicals
alleged in the Notice and the Action, does hereby fully, completely, finally and forever release,

1 relinquish and discharge: (a) Texaco Refining and Marketing, Inc., TRMI and Equilon Enterprises
2 LLC; (b) the past, present, and future owners, lessors, sublessors, managers, franchisors,
3 franchisees, wholesalers, distributors and operators of (and any others with any interest in) the
4 sites identified in the Notice, all Covered Properties, and all Stores affiliated with the parties
5 identified in (a) above; and (c) the respective past, present, and future officers, directors,
6 shareholders, affiliates, members, joint venturers, partners, agents, principals, employees,
7 attorneys, parents, subsidiaries, owners, sisters or other related entities, successors, and assigns of
8 the persons and entities described in (a) and (b) above (the parties identified in (a), (b), and (c)
9 above are collectively referred to as the "Released Parties") of and from all claims, actions, causes
10 of action, suits, demands, rights, debts, agreements, promises, liabilities, damages, penalties,
11 royalties, fees, accountings, costs and expenses, whether known or unknown, suspected or
12 unsuspected, of any nature whatsoever that Plaintiff has or may have against the Released Parties,
13 arising directly or indirectly out of any fact or circumstance occurring prior to the date upon
14 which this Consent Judgment becomes final (including all appeals), relating to any actual or
15 alleged violation of Proposition 65 or Section 17200 by the Released Parties and their respective
16 agents, servants and employees that were or could have been raised in the Notice and/or the
17 Action (the "Released Claims"). In sum, the Released Claims include all allegations made, or that
18 could have been made, by Plaintiff with respect to the Noticed Chemicals relating to Proposition
19 65 or Section 17200.

20 4.3 Intent of Parties. It is the intention of the Parties to this Release that, upon entry
21 of judgment and conclusion of any and all appeals or litigation relating to this Consent Judgment,
22 that this Consent Judgment shall be effective as a full and final accord and satisfaction and release
23 of each and every Released Claim. In furtherance of this intention, Plaintiff acknowledges that it
24 is familiar with California Civil Code section 1542, which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 WHICH THE CREDITOR DOES NOT KNOW OR SUPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
28 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST

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HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR.

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

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

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

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

1 **5.0 ATTORNEY FEES AND COSTS**

2 5.1 Payment to Yeroushalmi & Associates. In an effort to defray CAG's expert fees
3 and costs, costs of investigation, attorney fees, or other costs incurred relating to this matter, the
4 TRMI Parties shall pay to the firm of Yeroushalmi & Associates the sum of \$84,000. This
5 amount shall be paid within ten days following the entry of a final judgment, including all appeals,
6 approving this Consent Judgment.

7 **6.0 PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

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

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

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

25 **7.0 DISPUTES UNDER THE CONSENT JUDGMENT**

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

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

7 **8.0 THIRD PARTY LITIGATION**

8 8.1 Duty to Cooperate. In the event of any litigation, including but not limited to
9 opposition to entry of this Consent Judgment by the Court, instituted by a third party or
10 governmental entity or official, Plaintiff and Defendant agree to cooperate affirmatively in all
11 efforts to defend against any such litigation.

12 **9.0 NOTICES**

13 9.1 Written Notice Required. All notices between the Parties provided for or
14 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly
15 served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent via
16 facsimile to a party at the facsimile number set forth below, or to such other or further facsimile
17 number provided in any notice sent under the terms of this paragraph, on the date of the
18 transmission of that facsimile; or (c) when deposited in the United States mail, certified, postage
19 prepaid, addressed to such party at the address set forth below, or to such other or further address
20 provided in a notice sent under the terms of this paragraph, three days following the deposit of
21 such notice in the mails.

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

23 (a) To Plaintiff:

24
25 Reuben Yeroushalmi
26 Yeroushalmi & Associates
27 3700 Wilshire Boulevard, Suite 480
28 Los Angeles, CA 90010
Facsimile Number: (213) 382-3430

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(b) To Defendant:

Cisselon Nichols-Hurd
Equilon Enterprises, LLC
P.O. Box 2463
Houston, TX 77252-2463

With a Copy To:

Michael R. Leslie
Caldwell Leslie & Proctor, PC
1000 Wilshire Blvd., Suite 600
Los Angeles, CA 90017
Facsimile Number: (213) 629-9022

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

11.0 TIMING

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

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1 **12.0 COMPLIANCE WITH REPORTING REQUIREMENTS**

2 12.1 Reporting Forms: Presentation to Attorney General. The Parties expressly
3 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety
4 Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary
5 signatures hereto, Plaintiff shall present this Proposed Consent Judgment to the California
6 Attorney General's office.

7 **13.0 COUNTERPARTS**

8 13.1 Counterparts. This Consent Judgment may be signed in counterparts and shall be
9 binding upon the Parties hereto as if all of the Parties executed the original hereof. A facsimile or
10 pdf signature shall be valid as the original.

11 **14.0 WAIVER**

12 14.1 No waiver. No waiver by any Party hereto of any provision hereof shall be
13 deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or
14 any other provision hereof.

15 **15.0 AMENDMENT**

16 15.1 In Writing. This Consent Judgment cannot be amended or modified except by a
17 writing executed by the parties hereto that expresses, by its terms, an intention to modify this
18 Consent Judgment.

19 **16.0 SUCCESSORS**

20 16.1 Binding Upon Successors. This Consent Judgment shall be binding upon and
21 inure to the benefit of, and be enforceable by, the Parties hereto and their respective
22 administrators, trustees, executors, personal representatives, successors and assigns.

23 **17.0 CHOICE OF LAWS**

24 17.1 California Law Applies. Any dispute regarding the interpretation of this Consent
25 Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the
26 damages accruing to a Party by reason of any breach of this Consent Judgment shall be
27 determined under the laws of the State of California, without reference to choice of law
28 principles.

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1 **18.0 NO ADMISSIONS**

2 18.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been
3 reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent
4 Judgment, neither Plaintiff nor Defendant admits any issue of fact or law, including any violation
5 of Proposition 65 or any other law. The settlement of claims herein shall not be deemed to be an
6 admission or concession of liability or culpability by any Party, at any time, for any purpose.
7 Neither this Consent Judgment, nor any document referred to herein, nor any action taken to
8 carry out this Consent Judgment, shall be construed as giving rise to any presumption or inference
9 of admission or concession by Defendant as to any fault, wrongdoing or liability whatsoever.
10 Neither this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or
11 other proceedings connected with it, nor any other action taken to carry out this Consent
12 Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or received in
13 evidence in any pending or future, civil, criminal or administrative action or proceeding, except in
14 a proceeding to enforce this Consent Judgment, to defend against the assertion of any Released
15 Claim or as otherwise required by law.

16 **19.0 REPRESENTATION**

17 19.1 Construction of Consent Judgment. The Parties each acknowledge and warrant
18 that they have been represented by independent counsel of their own selection in connection with
19 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and
20 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms
21 of this Consent Judgment will not be construed in favor of or against any Party hereto.

22 **20.0 AUTHORIZATION**

23 20.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies
24 that he or she is authorized by the Party he or she represents to enter into this Consent Judgment,
25 to stipulate to this Consent Judgment, and to execute and approve this Consent Judgment on
26 behalf of the Party represented.

27 Dated: 3/16/09, 2009

CONSUMER ADVOCACY GROUP, INC.

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Lyn H Marcus
By: Lyn H Marcus
Its: President

Dated: _____, 2009

EQUILON ENTERPRISES, LLC

By: _____
Its: _____

Dated: _____, 2009

TEXACO REFINING & MARKETING, INC.

By: _____
Its: _____

Approved as to form:

Dated: 3/3, 2009

YEROUSHALMI AND ASSOCIATES
REUBEN YEROUSHALMI

By: REUBEN YEROUSHALMI
Attorneys for Plaintiff CONSUMER ACTION
GROUP, INC.

Dated: _____, 2009

CALDWELL LESLIE & PROCTOR, PC
MICHAEL R. LESLIE
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