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CORPORATION

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11 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 COORDINATION PROCEEDING SPECIAL)
15 TITLE (RULE 3.550(c)))
16 SECONDHAND SMOKE CASES)
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JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

**[PROPOSED] CONSENT JUDGMENT
BETWEEN PLAINTIFF AND
DEFENDANTS WAL-MART STORES,
INC., SAM'S CLUB, 7-ELEVEN, INC.,
CIRCLE K STORES, INC. AND TOSCO
CORPORATION**

Date: _____, 2010
Time:
Place: Dept. 307

Judge: Hon. William Highberger

1 **1. INTRODUCTION**

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

5 **1.2 Settling Defendants.** Wal-Mart Stores, Inc., Sam’s Club, 7-Eleven, Inc., Circle K
6 Stores, Inc., and TOSCO Corporation are corporations that employ more than 10 persons. Wal-
7 Mart Stores, Inc., Sam’s Club, Circle K Stores, Inc., TOSCO Corporation, and 7-Eleven, Inc.
8 (collectively “Settling Defendants”) own, lease and/or operate retail stores in California that sold
9 tobacco products during times relevant to this matter. Some Settling Defendants also maintain
10 franchise agreements with independent entities (“Franchisees”) that own, lease and/or operate
11 other retail stores in California bearing Settling Defendants’ names that may sell tobacco products
12 (“Franchise Stores”).

13 **1.3 Parties.** CAG and Settling Defendants are collectively referred to herein as the
14 “Parties.”

15 **1.4 Covered Products.** Cigars, pipe tobacco, “smokeless” tobacco (including, but not
16 limited to, chewing tobacco and dipping tobacco) and all other tobacco products (other than
17 cigarettes) are “Covered Products.”

18 **1.5 Covered Properties.** The term “Covered Properties” as used herein refers only to
19 stores in California that are operated by Settling Defendants and that sell Covered Products.

20 **1.6 Proposition 65.** Health & Safety Code section 25249.5 *et seq.* prohibits any
21 person in the course of business from knowingly and intentionally exposing a person to chemicals
22 known to the State of California to cause cancer or reproductive toxicity without providing a clear
23 and reasonable warning.

24 **1.7 Proposition 65 Chemical.** Pursuant to Health & Safety Code section 25249.8, the
25 State has listed certain chemicals as “known to the State to cause cancer and/or reproductive
26 toxicity.”

27 **1.8 The Present Dispute.** This Consent Judgment pertains to *Consumer Action*
28 *Group v. Circle K Co. et al.*, (Case No. BC 232078), which was originally filed in San Francisco

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

3 **1.9 Plaintiff’s 60-Day Notices.** In 1999, more than sixty days prior to filing this
4 Action, Plaintiff served each Settling Defendant with one or more documents entitled “60-day
5 Notice of Intent to Sue Under Health & Safety Code Section 25249.6” (the “1999 Notices”).
6 Plaintiff later served Settling Defendants with similar notices on July 12, 2002 (the “2002
7 Notices”), and May 26, 2009 (the “2009 Notices”). The 1999 Notices, 2002 Notices, and 2009
8 Notices are hereinafter collectively referred to as the “Notices”. The Notices alleged, among
9 other things, that Plaintiff believed that each Settling Defendant had violated Proposition 65 by
10 knowingly and intentionally selling cigars and other tobacco products that caused consumers and
11 the public to be exposed to Proposition 65 Chemicals without first giving clear and reasonable
12 warnings. Among the Proposition 65 Chemicals identified by Plaintiff in the Notices are tobacco
13 smoke and oral use of smokeless tobacco products (and their constituent chemicals, including
14 Acetaldehyde, Acetamide, Acrylonitrile, 4-Aminobiphenyl, (4-aminodiphenyl), Aniline, Ortho-
15 Anisidine, Arsenic (inorganic arsenic compounds), Benz[a]anthracene, Benzene,
16 Benzo[b]fluoranthene, Benzo[j]fluoranthene, Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-
17 Butadiene, Cadmium, Captan, Chromium (hexavalent compounds), Chrysene,
18 Dichlorodiphenyltrichloroethane (DDT), Dibenz[a,h]acridine, Dibenz[a,j]pyrene,
19 Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1 Dimethylhydrazine (UDMH), Formaldehyde (gas),
20 Hydrazine, Lead and lead compounds, 1-Naphthylamine, Nickel and certain nickel compounds,
21 2-Nitropropane, N-Nitrosodi-n-butylamine, N-Nitrosodiethanolamine, N-Nitrosodiethylamine, N-
22 Nitrosomethylethylamine, N-Nitrosomorpholine, N-Nitrosornicotine, N-Nitrosopiperidine, N-
23 Nitrosopyrrolidine, Ortho-Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Arsenic
24 (inorganic Oxides), Carbon disulfide, Carbon monoxide, Lead, Nicotine, Toluene, and Urethane)
25 (collectively “Noticed Chemicals”).

26 **1.10 The Complaint.** In the Action, Plaintiff alleged violations of Proposition 65 and
27 the Unfair Competition Act, Business & Professions Code section 17200 *et seq.* (“Section
28 17200”) arising out of Settling Defendants’ alleged sale of cigars to consumers without providing

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

7 **1.11 Purpose of Consent Judgment.** In order to avoid continued and protracted
8 litigation, the Parties wish to resolve completely and finally the issues raised by the Notices
9 and/or the Action pursuant to the terms and conditions described herein. In entering into this
10 Consent Judgment, the Parties recognize that this Consent Judgment is a full and final settlement
11 of all claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and
12 their constituent chemicals) that were or could have been raised in the Notices and/or the Action.
13 The Parties also intend for this Consent Judgment to provide, to the maximum extent permitted
14 by law, *res judicata* and/or collateral estoppel protection for each of the Settling Defendants and
15 their respective business affiliates, subsidiaries, divisions, and/or their Franchisees against any
16 and all other claims based upon the same or similar allegations as to the Covered Products.

17 **1.12 No Admissions.** Settling Defendants dispute that they have violated Proposition
18 65 or any other law as described in the Notices and/or the Action and/or that they have any
19 liability whatsoever based on any of the facts or claims asserted in the Notices or the Action. In
20 particular, Settling Defendants contend that they have at all times provided all warnings required
21 by Proposition 65 or any other applicable law; that no additional warnings are required for the
22 exposure that Plaintiff alleges; and that warnings that were in place during the period covered by
23 the complaint and are currently in place fully comply with Proposition 65 and all other applicable
24 laws. Plaintiff disputes these contentions.

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

1 **1.13 Effective Upon Final Determination.** Settling Defendants' willingness to enter
2 into this Consent Judgment is expressly based on the understanding that this Consent Judgment
3 will fully and finally resolve all claims related to, that were or could have been brought by CAG
4 and that this Consent Judgment will have *res judicata* and/or collateral estoppel effect to the full
5 extent allowed by law with regard to any alleged violation of Proposition 65 by any Settling
6 Defendant, its customers, subsidiaries, Franchisees, or affiliates.

7 **1.14 Effective Date.** For purposes of this Consent Judgment, the Effective Date is the
8 date of entry by this Court, unless entry of the Consent Judgment is appealed, in which case the
9 Effective Date is the date all appeals are resolved and entry is upheld.

10 **2. JURISDICTION**

11 **2.1 Subject Matter Jurisdiction.** For purposes of this Consent Judgment only, the
12 Parties stipulate that this Court has subject matter jurisdiction over the allegations and claims
13 alleged in this Action.

14 **2.2 Personal Jurisdiction.** For purposes of this Consent Judgment only, the Parties
15 stipulate that this Court has personal jurisdiction over Settling Defendants as to the acts and
16 claims alleged in this Action.

17 **2.3 Venue.** For purposes of this Consent Judgment only, the Parties stipulate that
18 venue for resolution of claims alleged in this Action is proper in the Superior Court for the
19 County of Los Angeles.

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

24 **3. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

25 **3.1** Settling Defendants assert that they are not legally responsible for the conduct of
26 persons or entities that operate Franchise Stores. Plaintiffs dispute this position. Settling
27 Defendants further assert that Covered Properties have been and are in compliance with
28 Proposition 65 warning requirements relating to consumer exposures arising from the Covered

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

9 **3.2 Warning.** As to all Covered Properties, Settling Defendants agree to do as
10 follows:

11 **3.2.1** Within 180 days of the Effective Date, Settling Defendants shall cause to
12 have posted in their stores that sell smokeless tobacco products, the sign that is required by and
13 attached as Exhibit 1 to the Stipulation and Judgment entered into in *The City and County of San*
14 *Francisco et al. v. United States Tobacco Company, Inc. et al.*, Case Number CGC-98-993992
15 (San Diego Superior Court) (*City of San Francisco*). It is attached hereto as Exhibit 1 to this
16 Consent Judgment. Such sign is to be posted in accordance with the instructions set forth on
17 pages 2-3 of Exhibit 5 to the *City of San Francisco* judgment, a copy of which is attached as
18 Exhibit 2 to this Consent Judgment.

19 **3.2.2** If in connection with the individual sale of cigars to consumers at any
20 Covered Property, the Settling Defendant removes cigars from the packaging provided by the
21 manufacturer or distributor of the cigars and there are no FTC warnings on the individual cigars,
22 or on the displays or humidors provided by the manufacturer or distributor in connection with any
23 such individual sale, or the Settling Defendant receives cigars for individual sale that do not
24 include any warnings then such Settling Defendant shall, within 60 days of the Effective Date,
25 provide a warning in connection with any such sale using language substantially similar to the
26 following:

1 **“WARNING: PURSUANT TO THE**
2 **PROVISIONS OF THE CALIFORNIA**
3 **HEALTH AND SAFETY CODE, CIGARS**
4 **CONTAIN/PRODUCE CHEMICALS KNOWN**
5 **TO THE STATE OF CALIFORNIA TO**
6 **CAUSE CANCER AND/OR BIRTH DEFECTS**
7 **OR OTHER REPRODUCTIVE HARM.”**

8 **3.2.3** If the Settling Defendant sells both smokeless tobacco products and
9 individual cigars as described in subsection 3.2.2 above, within 60 days after the Effective Date, a
10 single warning using the following language may be provided to satisfy the requirements of
11 subsections 3.2.1 and 3.2.2:

12 **“WARNING: PURSUANT TO THE**
13 **PROVISIONS OF THE CALIFORNIA**
14 **HEALTH AND SAFETY CODE, SMOKELESS**
15 **TOBACCO PRODUCTS AND CIGARS**
16 **CONTAIN/PRODUCE CHEMICALS KNOWN**
17 **TO THE STATE OF CALIFORNIA TO**
18 **CAUSE CANCER AND/OR BIRTH DEFECTS**
19 **OR OTHER REPRODUCTIVE HARM.”**

20 **3.2.4** The warnings set forth in this Section 3.2 shall be displayed in a location at
21 the Covered Properties that is reasonably likely to be viewed by consumers purchasing cigars or
22 smokeless tobacco sold in the manner described in section 3.2.1. A sign of the size and point type
23 of Exhibit 1 is an example of a warning that satisfies the requirements of this section.

24 **3.2.5 Compliance.** Compliance with paragraphs 3.2.1 and 3.2.2 is deemed to
25 fully satisfy Settling Defendants’ obligations under Proposition 65 with respect to consumer
26 product, environmental, or occupational exposures arising from the sale or use of Covered
27 Products

28 **3.3 Future Laws or Regulations.** In lieu of complying with the requirements of
paragraph 3.2, should (a) any future federal law or regulation that governs the warnings provided
for Covered Products preempt state authority with respect to the warning required herein; (b) any
future warning requirement with respect to the subject matter of said paragraph be approved by
the State of California; (c) any future state law, regulation, or judicial order specify a specific
warning for exposures with respect to the subject matter of said paragraph, any Settling

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

3 **3.4 Amendment to Proposition 65.** If, as a result of a statutory, regulatory, or other
4 amendment to Proposition 65 or judicial order, Settling Defendants, the “Released Parties” (as
5 defined in paragraph 4.2 below), or the class to which Settling Defendants belong, are exempted
6 from providing the warnings described herein, then Settling Defendants shall be relieved from
7 their obligations to provide the warnings set forth herein.

8 **4. RELEASES AND CLAIMS COVERED**

9 **4.1 Effect of Judgment.** This Consent Judgment is a full and final judgment with
10 respect to any claims regarding Proposition 65 Chemicals in the Covered Products that were
11 asserted or that could have been asserted in the Action and/or the Notices against the Released
12 Parties (as defined in paragraph 4.2 below), including, but not limited to: (a) claims for any
13 violation of Proposition 65 or Section 17200 by the Released Parties and each of them, including
14 but not limited to, claims regarding exposures arising from the Covered Products or the use of the
15 Covered Products, wherever occurring and to whomever occurring, through and including the
16 date upon which this Consent Judgment becomes final, including all appeals; and (b) the Released
17 Parties’ continuing responsibility to provide the warnings mandated by Proposition 65 with
18 respect to the Proposition 65 Chemicals.

19 **4.2 Release.** Except for such rights and obligations as have been created under this
20 Consent Judgment, Plaintiff, on its own and in the interests of the public pursuant to Health &
21 Safety Code section 25249.7(d), with respect to the matters regarding the Proposition 65
22 Chemicals and Covered Products alleged in the Notices and/or the Action, does hereby fully,
23 completely, finally and forever release, relinquish and discharge: (a) Settling Defendants; (b) the
24 past, present, and future owners, lessors, sublessors, managers, franchisors, Franchisees,
25 wholesalers, distributors and operators of (and any others with any interest in) the sites identified
26 in the Notices, all Covered Properties, and all retail stores affiliated with Settling Defendants; (c)
27 the manufacturers or distributors that made, distributed, or sold the Covered Products sold by
28 Settling Defendants; (d) the past, present, and future officers, directors, shareholders, affiliates,

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

13 **4.3 Intent of the Parties.** It is the intention of the parties to this Release that, upon
14 entry of judgment and conclusion of any and all appeals or litigation relating to this Consent
15 Judgment, this judgment shall be effective as a full and final accord and satisfaction and release
16 of each and every Released Claim. In furtherance of this intention, Plaintiff acknowledges that it
17 is familiar with California Civil Code section 1542, which provides as follows:

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

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

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

3 **4.4 Plaintiff's Ability to Represent the Public.** Plaintiff hereby warrants and
4 represents to Settling Defendants and the Released Parties that (a) Plaintiff has not previously
5 assigned any Released Claim; and (b) Plaintiff has the right, ability and power to release each
6 Released Claim.

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

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

20 **5. PAYMENTS BY SETTLING DEFENDANTS**

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

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

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1 **6.1 Entry of Judgment.** Entry of judgment by the Court pursuant to this Consent
2 Judgment shall, *inter alia*:

3 **6.1.1** Constitute full and fair adjudication of all claims against Settling
4 Defendants, including, but not limited to, all claims set forth in the Action based upon alleged
5 violations of Proposition 65, as well as any other statute, provision of common law or any theory
6 or issue which arose from Settling Defendants' alleged failure to provide warnings regarding
7 consumer exposure to Covered Products, tobacco smoke and secondhand tobacco smoke (and
8 their respective constituent chemicals) which are known to the State of California to cause cancer,
9 birth defects and/or other reproductive harm.

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

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

18 **7.1 General Enforcement Provisions.** CAG may, by motion or application for an
19 order to show cause before this Court, enforce the terms and conditions contained in this Consent
20 Judgment, subject to the limitations set forth in Section 7.2. In the event that legal proceedings
21 are initiated to enforce the provisions of this Consent Judgment, however, the prevailing party in
22 such proceeding may seek to recover its costs and reasonable attorneys' fees. As used herein, the
23 term "prevailing party" means a party that is successful in obtaining relief more favorable to it
24 than the relief that the other party offered to resolve the dispute that is the subject of such
25 enforcement action.

26 **7.2 Exclusive Remedy.** Any action to enforce the terms of Section 3 of this Consent
27 Judgment shall be brought exclusively pursuant to and subject to the requirements set forth in this
28 Section 7.2, as follows:

1 **7.2.1 Notice of Violation and Supporting Documentation.** In the event that
2 CAG identifies one or more Covered Properties that CAG believes in good faith to be in material
3 non-compliance with the requirements of Section 3, CAG may issue a Notice of Violation to each
4 of the affected Settling Defendant(s). The Notice of Violation shall be sent to the relevant person
5 identified in section 9 hereof within 45 days of the date that CAG observed the alleged violation,
6 and shall, at a minimum, set forth: (a) the date(s) the alleged violation was observed; (b) the
7 location of the retail store at which the violation is alleged to have occurred; (c) a description of
8 the Covered Product and circumstances giving rise to the alleged violation, including the Covered
9 Product's brand and type, and such specific facts as necessary to make it readily distinguishable
10 from products for which no violation is alleged; and (d) a description of any warnings that were
11 provided related to tobacco products, whether such warning was applied to products or provided
12 otherwise. Upon request, CAG shall promptly make available for inspection and/or copying all
13 supporting documentation or other information related to the alleged violation asserted in the
14 notice of violation. Plaintiff and the Settling Defendant who has received the notice of violation
15 shall meet and confer in good faith in an effort to resolve the allegations in the notice of violation.

16 **7.2.2 Notice of Election of Response.** No more than thirty (30) days after
17 receiving a Notice of Violation, the Settling Defendant shall provide written notice to CAG
18 whether it elects to contest the allegations contained in the Notice of Violation ("Notice of
19 Election.").

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

25 **(b) Meet and Confer.** If a Notice of Violation is contested, CAG and
26 the affected Settling Defendant shall meet, either in person or by telephone, and endeavor in good
27 faith to resolve the dispute in an amicable manner and without resort to further litigation.
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1 **7.3 Consultation with the Attorney General.** The affected Settling Defendant may,
2 within 15 days of receiving the Notice of Violation and at its sole option, seek the opinion of the
3 California Attorney General in writing with a copy served on all other Parties. Plaintiff shall take
4 no further action to enforce the violation which is the subject of the Notice of Violation if, within
5 30 days of receiving such request, the Attorney General determines that (a) the conduct alleged
6 by Plaintiff substantially complies with this Consent Judgment or otherwise satisfies the warning
7 obligations under Proposition 65; or (b) actions taken by the Settling Defendant to remedy the
8 conduct alleged in the notice of violation brings the Settling Defendant into substantial
9 compliance with the provisions of this Consent Judgment or otherwise satisfies the warning
10 obligations of Proposition 65.

11 **8. THIRD PARTY LITIGATION**

12 **8.1 Duty to Cooperate.** In the event of any litigation, including but not limited to
13 opposition to entry of this Consent Judgment by the Court, instituted by a third party or
14 governmental entity or official, Plaintiff and Settling Defendants agree to cooperate affirmatively
15 in all efforts to defend against any such litigation.

16 **9. NOTICES**

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

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

(b) To Settling Defendants:

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

AND the following:

Circle K:

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

ConocoPhillips:

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

7-Eleven:

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

Sam's Club and Wal-Mart:

Nelson E. Jackson
Wal-Mart Legal - Commercial Litigation
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716-0215

AND

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

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

3 **10. TERMINATION**

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

10 **11. INTEGRATION**

11 **11.1.1 Integrated Writing.** This Consent Judgment constitutes the final and
12 complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes
13 all prior or contemporaneous negotiations, promises, covenants, agreements or representations
14 concerning any matters directly, indirectly or collaterally related to the subject matter of this
15 Consent Judgment. The Parties hereto have expressly and intentionally included in this Consent
16 Judgment all collateral or additional agreements that may, in any manner, touch or relate to any of
17 the subject matter of this Consent Judgment and therefore, all promises, covenants and
18 agreements, collateral or otherwise are included herein and therein. The Parties intend that this
19 Consent Judgment shall constitute an integration of all their agreements, and each understands
20 that in the event of any subsequent litigation, controversy or dispute concerning any of its terms,
21 conditions or provisions, no party hereto shall be permitted to offer or introduce any oral or
22 extrinsic evidence concerning any other collateral or oral agreement between the Parties not
23 included herein.

24 **12. TIMING**

25 **12.1 Time of Essence.** Time is of the essence in the performance of the terms hereof.

26 **13. COMPLIANCE WITH REPORTING REQUIREMENTS**

27 **13.1 Reporting Forms: Presentation to Attorney General.** The Parties expressly
28 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety

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

4 **14. COUNTERPARTS.**

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

8 **15. WAIVER**

9 **15.1 No Waiver.** No waiver by any Party hereto of any provision hereof shall be
10 deemed to be a waiver by any other Party or of any other provision hereof or of any subsequent
11 breach of the same or any other provision hereof.

12 **16. AMENDMENT**

13 **16.1 In Writing.** This Consent Judgment cannot be amended or modified except by a
14 writing executed by the Parties hereto that expresses, by its terms, an intention to modify this
15 Consent Judgment.

16 **17. SUCCESSORS**

17 **17.1 Binding Upon Successors.** This Consent Judgment shall be binding upon and
18 inure to the benefit of, and be enforceable by, the Parties hereto and their respective
19 administrators, trustees, executors, personal representatives, successors and assigns.

20 **18. NO ADMISSIONS**

21 **18.1 Consent Judgment Cannot Be Used as Evidence.** This Consent Judgment has
22 been reached by the Parties to avoid the costs of further prolonged litigation. By entering into
23 this Consent Judgment, neither Plaintiff nor Settling Defendants admits any issue of fact or law,
24 including any violation of Proposition 65 or any other law. The settlement of claims herein shall
25 not be deemed to be an admission or concession of liability or culpability by any party, at any
26 time, for any purpose. Neither this Consent Judgment, nor any document referred to herein, nor
27 any action taken to carry out this judgment, shall be construed as giving rise to any presumption
28 or inference of admission or concession by any Settling Defendant as to any fault, wrongdoing or

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

7 **19. REPRESENTATION**

8 **19.1 Construction of Consent Judgment.** The Parties each acknowledge and warrant
9 that they have been represented by independent counsel of their own selection in connection with
10 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and
11 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, its terms
12 will not be construed in favor of or against any Party hereto.

13 **20. AUTHORIZATION**

14 **20.1 Authority to Enter Into Consent Judgment.** Each of the signatories hereto
15 certifies that he or she is authorized by the Party he or she represents to enter into this Consent
16 Judgment, to stipulate to its contents, and to execute and approve it on behalf of the Party
17 represented.

18 **21. RETENTION OF JURISDICTION**

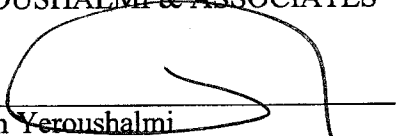
19 **21.1** This Court shall retain jurisdiction of this matter to implement or modify this
20 Consent Judgment and to determine the outcome of any disputed matters in the event legal
21 proceedings are initiated pursuant to Section 7 hereof.

22 **APPROVED AS TO FORM:**

23 Dated: *August 5/2010*

YEROUSHALMI & ASSOCIATES

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25 By:


26 Ruben Yeroushalmi
27 For Plaintiff Consumer Advocacy Group
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Dated:

MORRISON & FOERSTER LLP

By: 

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

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant Tosco Corporation

Dated:

By: _____

For Defendant Circle K Stores, Inc.

1 Dated:

2

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By: _____

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

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6 Dated:

7

8

By: Raulin Masany MC

9

For Defendant 7-Eleven, Inc.

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11

IT IS SO ORDERED, ADJUDGED, AND DECREED:

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13 Dated:

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Hon. William Highberger
Judge of the Superior Court

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Dated:

MORRISON & FOERSTER LLP

By: _____

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

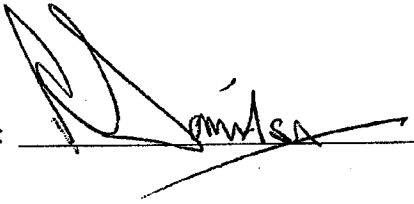
IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By:  _____

For Defendant Tosco Corporation

Dated:

By: _____

For Defendant Circle K Stores, Inc.

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Dated:

MORRISON & FOERSTER LLP

By: _____

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

IT IS SO STIPULATED:

Dated:

By: _____

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendant Tosco Corporation

Dated:

By:  _____

For Defendant Circle K Stores, Inc.

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Dated: MORRISON & FOERSTER LLP

By: _____

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

IT IS SO STIPULATED:

Dated:

By: *John W. Marcus, Pres.*

For Plaintiff Consumer Advocacy Group

Dated:

By: _____

For Defendants Tosco Corporation and Circle K Stores,
Inc.

Dated:

By: _____

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

Dated:

By: *J. B. [Signature]*
Senior Vice President / General Merchandizing Manager

EXHIBIT 1

EXHIBIT 1

THE SIGN SHALL APPEAR AS FOLLOWS:

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

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

EXHIBIT 5

[Date]

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

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

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

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

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

Re: Proposition 65 -- Smokeless Tobacco Products

Dear Sir or Madam:

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

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

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

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

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

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

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

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

Thank you for you attention to this matter.

Very truly yours,

City and County of San Francisco

-and-

Environmental Law Foundation