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6 CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16)
17 AIRPORT CONCESSIONS, INC. DBA)
CALIFORNIA NEWS & GIFTS, and Defendant)
18 DOES 1 through 200, inclusive,)
19 Defendants.)
20 _____)

Case No. SC095814

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 On October 25, 2007, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation, filed a complaint in Los Angeles County Superior Court,
4 entitled *Center for Environmental Health v. Airport Concessions, Inc. dba California News &*
5 *Gifts* (the “Action”), for civil penalties and injunctive relief pursuant to the provisions of Cal.
6 Health & Safety Code §25249.5 *et seq.* (“Proposition 65”). CEH’s Complaint named Airport
7 Concessions, Inc., doing business as California News & Gifts and unnamed “Does” as
8 defendants. Airport Concessions California, LLC is an affiliate of Airport Concessions, Inc. that
9 also does business as California News & Gifts. Airport Concessions, Inc. and Airport
10 Concessions California, LLC are referred to collectively herein as “ACI.”

11 1.2 ACI is a corporation that employs 10 or more persons and manufactures,
12 distributes and/or sells bottled water containing nicotine (the “Products”) in the State of
13 California.

14 1.3 On or about August 14, 2007, CEH served ACI and the appropriate public
15 enforcement agencies with the requisite 60-day notice that ACI was in violation of Proposition
16 65. CEH’s notice and the Complaint in this Action allege that ACI exposes people who consume
17 the Products to nicotine, a chemical known to the State of California to cause birth defects and
18 other reproductive harm, without providing prior clear and reasonable warning to such persons
19 regarding the reproductive toxicity of nicotine, in violation of Health & Safety Code §25249.6.

20 1.4 For purposes of this Consent Judgment only, the parties stipulate that this
21 Court has jurisdiction over the allegations of violations contained in CEH’s Complaint and
22 personal jurisdiction over ACI as to the acts alleged in CEH’s Complaint, that venue is proper in
23 the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as
24 a full and final resolution of all claims which were or could have been raised in the Complaint
25 based on the facts alleged therein.

26 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of
27 certain disputed claims between the Parties as alleged in the Complaint for the purpose of
28 avoiding prolonged and costly litigation between the Parties hereto. By execution of this Consent

Judgment, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties, for purposes of settling, compromising and resolving issues disputed in this action, including future compliance by ACI with Section 2 of this Consent Judgment and shall not be used for any other purpose, or in any other matter.

2. COMPLIANCE

2.1 As of July 1, 2008 (the "Compliance Date"), ACI shall not manufacture, distribute, ship, or sell, or cause to be manufactured, distributed, or sold, any Products unless such Products bear a label containing the following warning language:

WARNING: This product contains nicotine, a chemical known to cause birth defects and other reproductive harm.

The warning statement shall be prominently displayed on the front of the package apart from any other print that appears, and shall be displayed in a separate outlined box with no other language and with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The warning statement shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the required text, such as "legal notice required by law."

3. SETTLEMENT PAYMENT

3.1 Within 45 days of the Court's entry of this Consent Judgment, ACI shall pay the sum of \$20,000 as a settlement payment. This total shall be paid in two separate checks delivered to the offices of the Lexington Law Group, LLP at the address set forth in section 12

1 below and made payable and allocated as follows. Any failure by ACI to comply with the
2 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
3 after the delivery date the payment is received. The late fees required under this section shall be
4 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
5 pursuant to section 5 of this Consent Judgment.

6 **3.1.1 Monetary Payment in Lieu of Penalty:** \$6,500 shall be paid to
7 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
8 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
9 to continue its work protecting people from exposures to toxic chemicals. .

10 **3.1.2 Attorneys' Fees and Costs:** \$13,500 shall be used to reimburse
11 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
12 other costs incurred as a result of investigating, bringing this matter to ACI's attention, litigating
13 and negotiating a settlement in the public interest. This payment shall be made by check payable
14 to Lexington Law Group, LLP.

15 **4. MODIFICATION OF CONSENT JUDGMENT**

16 4.1 This Consent Judgment may be modified by written agreement of CEH
17 and ACI, after noticed motion, and upon entry of a consent judgment by the Court thereon, or
18 upon motion of CEH or ACI as provided by law and upon entry of a modified consent judgment
19 by the Court.

20 **5. ENFORCEMENT OF CONSENT JUDGMENT**

21 5.1 CEH may, by motion or application for an order to show cause before the
22 Superior Court of the County of Los Angeles, enforce the terms and conditions contained in this
23 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH
24 shall be entitled to its reasonable investigation fees and costs, attorneys' fees, and any other costs
25 incurred as a result of such motion or application.

26 **6. APPLICATION OF CONSENT JUDGMENT**

27 6.1 This Consent Judgment shall apply to and be binding upon the parties
28 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of

1 them.

2 **7. RELEASE**

3 7.1 This Consent Judgment is a full, final and binding resolution between
4 CEH and ACI of any violation of Proposition 65 that could have been asserted against ACI in
5 the Complaint based on ACI's failure to warn about exposure to nicotine contained in the
6 Products, with respect to any Products manufactured, distributed or sold by ACI on or prior to
7 the date of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment
8 by ACI shall constitute compliance with Proposition 65 by ACI with respect to any alleged
9 failure to warn about exposure to nicotine contained in the Products with respect to any Products
10 manufactured, distributed or sold by ACI. This release does not limit or effect the obligations of
11 any party created under this Consent Judgment.

12 **8. SEVERABILITY**

13 8.1 In the event that any of the provisions of this Consent Judgment are held
14 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
15 affected.

16 **9. SPECIFIC PERFORMANCE**

17 9.1 The parties expressly recognize that ACI's obligations under this Consent
18 Judgment are unique. In the event that ACI is found to be in breach of this Consent Judgment
19 for failure to comply with the provisions of Section 2 hereof, the parties agree that it would be
20 extremely impracticable to measure the resulting damages and that such breach would cause
21 irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies,
22 may sue in equity for specific performance, and ACI expressly waives the defense that a remedy
23 in damages will be adequate.

24 **10. GOVERNING LAW**

25 10.1 The terms of this Consent Judgment shall be governed by the laws of the
26 State of California.

27 **11. RETENTION OF JURISDICTION**

28 11.1 This Court shall retain jurisdiction of this matter to implement this
Consent Judgment.

1 **12. PROVISION OF NOTICE**

2 12.1 All notices required pursuant to this Consent Judgment and
3 correspondence shall be sent to the following:

4 For CEH:

5 Howard Hirsch
6 Lexington Law Group, LLP
7 1627 Irving Street
8 San Francisco, CA 94122

9 For ACI:

10 Christopher G. Foster
11 Brownstein Hyatt Farber Schreck
12 11911 San Vicente Boulevard, Suite 350
13 Los Angeles, CA 90049-6650

14 **13. COURT APPROVAL**

15 13.1 If this Consent Judgment is not approved by the Court, it shall be of no
16 further force or effect.

17 **14. EXECUTION AND COUNTERPARTS**

18 14.1 The stipulations to this Consent Judgment may be executed in
19 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
20 document.

21 **15. AUTHORIZATION**

22 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
24 into and execute the Consent Judgment on behalf of the party represented and legally bind that
25 party. The undersigned have read, understand and agree to all of the terms and conditions of this
26 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
27 costs.
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AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 7/21/08

AIRPORT CONCESSIONS, INC. and
AIRPORT CONCESSIONS CALIFORNIA, LLC

Dated: _____

Printed Name

Title

1 AGREED TO:

2 CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

4 _____
5 Michael Green, Executive Director
Center for Environmental Health

6 AIRPORT CONCESSIONS, INC. and
7 AIRPORT CONCESSIONS CALIFORNIA, LLC

Dated: 07-18-08

8 _____
9 _____

10 William R Harris
11 _____

Printed Name

12 Person's CEO
13 _____

Title

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JUDGMENT

Based upon the stipulated Consent Judgment between CEH and ACI, judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California