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RITE AID CORPORATION
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 COORDINATION PROCEEDING
11 SPECIAL TITLE (RULE 3.550(c))

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4182

12 SECONDHAND SMOKE CASES

**[PROPOSED] CONSENT JUDGMENT
BETWEEN PLAINTIFF CONSUMER
ADVOCACY GROUP AND DEFENDANT
RITE AID CORPORATION**

13
14
15 Date:
Time:
16

17 **1. INTRODUCTION**

18 **1.1 Plaintiff.** Plaintiff Consumer Advocacy Group (“Plaintiff” or “CAG”), on its own
19 behalf and as a representative of the People of the State of California, is a non-profit public
20 interest corporation.

21 **1.2 Settling Defendant.** Rite Aid Corporation (“Rite Aid”) is a corporation that
22 employs more than 10 persons. Rite Aid owns, leases and/or operates retail stores in California
23 that sold tobacco products during times relevant to this matter.

24 **1.3 Parties.** CAG and Rite Aid are collectively referred to herein as the “Parties.”

25 **1.4 Covered Products.** Cigars, pipe tobacco, “smokeless” tobacco (including, but not
26 limited to, chewing tobacco and dipping tobacco) and all other tobacco products (other than
27 cigarettes) are “Covered Products.”
28

1 **1.5 Covered Properties.** The term “Covered Properties” as used herein refers only to
2 stores in California that are operated by Rite Aid and that sell Covered Products.

3 **1.6 Proposition 65.** Health & Safety Code section 25249.5 *et seq.* prohibits any
4 person in the course of business from knowingly and intentionally exposing a person to chemicals
5 known to the State of California to cause cancer or reproductive toxicity without providing a clear
6 and reasonable warning.

7 **1.7 Proposition 65 Chemical.** Pursuant to Health & Safety Code section 25249.8, the
8 State has listed certain chemicals as “known to the State to cause cancer and/or reproductive
9 toxicity.”

10 **1.8 The Present Dispute.** This Consent Judgment pertains to *Consumer Action*
11 *Group v. Circle K Co. et al.*, Case No. BC 232078, which was originally filed in San Francisco
12 Superior Court as Case No. 30598, which was deemed complex and has been proceeding as part
13 of Judicial Council Coordination Proceeding (“JCCP”) 4182 (the “Action”).

14 **1.9 Plaintiffs 60-Day Notices.** One June 15, 1999, more than sixty days prior to filing
15 this Action, Plaintiff served Rite Aid a document entitled “60-day Notice of Intent to Sue Under
16 Health & Safety Code Section 25249.6” (the “1999 Notice”). Plaintiff later served Rite Aid with
17 a similar notice on June 1, 2009 (the “2009 Notice”). The 1999 Notice and the 2009 Notice are
18 hereinafter collectively referred to as the “Notices”. The Notices alleged, among other things,
19 that Plaintiff believed that Rite Aid had violated Proposition 65 by knowingly and intentionally
20 selling cigars and other tobacco products that caused consumers and the public to be exposed to
21 Proposition 65 Chemicals without first giving clear and reasonable warnings. Among the
22 Proposition 65 Chemicals identified by Plaintiff in the Notices are tobacco smoke and oral use of
23 smokeless tobacco products (and their constituent chemicals, including Acetaldehyde, Acetamide,
24 Acrylonitrile, 4-Aminobiphenyl, (4-aminodiphenyl), Aniline, Ortho-Anisidine, Arsenic (inorganic
25 arsenic compounds), Benz[a]anthracene, Benzene, Benzo[b]fluoranthene, Benzo[j]fluoranthene,
26 Benzo[k]fluoranthene, Benzo[a]pyrene, 1,3-Butadiene, Cadmium, Captan, Chromium
27 (hexavalent compounds), Chrysene, Dichlorodiphenyltrichloroethane (DDT),
28 Dibenz[a,h]acridine, Dibenz[aj]pyrene, Dibenzo[a,i]pyrene, Dibenzo[a,l]pyrene, 1,1

1 Dimethylhydrazine (UDMH), Formaldehyde (gas), Hydrazine, Lead and lead compounds, 1-
2 Naphthylamine, Nickel and certain nickel compounds, 2-Nitropropane, N-Nitrosodi-n-
3 butylamine, N-Nitrosodiethanolamine, N-Nitrosodiethylamine, N-Nitrosomethylethylamine, N-
4 Nitrosomorpholine, N-Nitrosornicotine, N-Nitrosopiperidine, N-Nitrosopyrrolidine, Ortho-
5 Toluidine, Tobacco Smoke, Urethane (Ethyl carbamate), Arsenic (inorganic Oxides), Carbon
6 disulfide, Carbon monoxide, Lead, Nicotine, Toluene, and Urethane) (collectively “Noticed
7 Chemicals”).

8 **1.10 The Complaint.** In the Action, Plaintiff alleged violations of Proposition 65 and
9 the Unfair Competition Act, Business & Professions Code section 17200 *et seq.* (“Section
10 17200”), arising out of Rite Aid’s alleged sale of cigars to consumers without providing adequate
11 warnings. Plaintiff filed a First Amended Complaint on December 19, 2008, alleging violations
12 of Proposition 65 for the unwarned sale of “cigars and tobacco products.” As of the date the final
13 judgment in this action is entered, the First Amended Complaint shall be deemed amended and
14 replaced by the Second Amended Complaint that is attached hereto, adding specific allegations
15 that Rite Aid violated Proposition 65 through the unwarned sale of “smokeless tobacco products.”

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 Notices
18 and/or the Action pursuant to the terms and conditions described herein. In entering into this
19 Consent Judgment, the Parties recognize that this Consent Judgment is a full and final settlement
20 of all claims related to tobacco products, tobacco smoke, and secondhand tobacco smoke (and
21 their constituent chemicals) that were or could have been raised in the Notices and/or the Action.
22 The Parties also intend for this Consent Judgment to provide, to the maximum extent permitted
23 by law, *res judicata* and/or collateral estoppel protection for Rite Aid and its business affiliates,
24 subsidiaries, and/or divisions against any and all other claims based upon the same or similar
25 allegations as to the Covered Products.

26 **1.12 No Admissions.** Rite Aid disputes that it has violated Proposition 65 or any other
27 law as described in the Notices and/or the Action and/or that they have any liability whatsoever
28 based on any of the facts or claims asserted in the Notices or the Action. In particular, Rite Aid

1 contends that it has at all times provided all warnings required by Proposition 65 or any other
2 applicable law; that no additional warnings are required for the exposure that Plaintiff alleges;
3 and that warnings that were in place during the period covered by the complaint and are currently
4 in place fully comply with Proposition 65 and all other applicable laws. Plaintiff disputes these
5 contentions.

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

10 **1.13 Effective Upon Final Determination.** Rite Aid's willingness to enter into this
11 Consent Judgment is expressly based on the understanding that this Consent Judgment will fully
12 and finally resolve all claims related to, that were or could have been brought by CAG and that
13 this Consent Judgment will have *res judicata* and/or collateral estoppel effect to the full extent
14 allowed by law with regard to any alleged violation of Proposition 65 by Rite Aid, its customers,
15 subsidiaries, or affiliates.

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

19
20 **2. JURISDICTION**

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

24 **2.2 Personal Jurisdiction.** For purposes of this Consent Judgment only, the Parties
25 stipulate that this Court has personal jurisdiction over Rite Aid as to the acts and claims alleged in
26 this Action.

27 **2.3 Venue.** For purposes of this Consent Judgment only, the Parties stipulate that
28 venue for resolution of claims alleged in this Action is proper in the Superior Court for the

1 County of Los Angeles.

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

6
7 **3. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

8 **3.1** Rite Aid asserts that Covered Properties have been and are in compliance with
9 Proposition 65 warning requirements relating to consumer exposures arising from the Covered
10 Products or the use of the Covered Products because (a) manufacturers' warnings on Covered
11 Product packaging satisfy Proposition 65's requirements with respect to Covered Products; and/or
12 (b) Rite Aid otherwise provides and have provided warnings that fully comply with
13 Proposition 65. Plaintiff contends that Rite Aid is not now, and has not in the past, been in
14 compliance with Proposition 65 because at some Covered Properties, manufacturers' warnings on
15 Covered Products have been removed and the products have either been placed in humidor
16 without Proposition 65 warnings, Proposition 65 warnings were not visible, or warnings were
17 otherwise not provided. Rite Aid denies these allegations.

18 **3.2 Warning.** As to all Covered Properties, Rite Aid agrees to do as follows:

19 **3.2.1** Within 180 days of the Effective Date, Rite Aid shall cause to have posted
20 in its stores that sell smokeless tobacco products, the sign that is required by and attached as
21 Exhibit 1 to the Stipulation and Judgment entered into in *The City and County of San Francisco*
22 *et al. v. United States Tobacco Company, Inc. et al.*, Case Number CGC-98-993992 (San Diego
23 Superior Court) (*City of San Francisco*). It is attached hereto as Exhibit 1 to this Consent
24 Judgment. Such sign is to be posted in accordance with the instructions set forth on pages 2-3 of
25 Exhibit 5 to the *City of San Francisco* judgment, a copy of which is attached as Exhibit 2 to this
26 Consent Judgment.

27 **3.2.2** If in connection with the individual sale of cigars to consumers at any
28 Covered Property, Rite Aid removes cigars from the packaging provided by the manufacturer or

1 distributor of the cigars and there are no FTC warnings on the individual cigars, or on the displays
2 or humidors provided by the manufacturer or distributor in connection with any such individual
3 sale, or Rite Aid receives cigars for individual sale that do not include any warnings then Rite Aid
4 shall, within 60 days of the Effective Date, provide a warning in connection with any such sale
5 using language substantially similar to the following:

6 **“WARNING: PURSUANT TO THE**
7 **PROVISIONS OF THE CALIFORNIA**
8 **HEALTH AND SAFETY CODE, CIGARS**
9 **CONTAIN/PRODUCE CHEMICALS KNOWN**
10 **TO THE STATE OF CALIFORNIA TO**
11 **CAUSE CANCER AND/OR BIRTH DEFECTS**
12 **OR OTHER REPRODUCTIVE HARM.”**

13 **3.2.3** If Rite Aid sells both smokeless tobacco products and individual cigars as
14 described in subsection 3.2.2 above, within 60 days after the Effective Date, a single warning
15 using the following language may be provided to satisfy the requirements of subsections 3.2.1
16 and 3.2.2:

17 **“WARNING: PURSUANT TO THE**
18 **PROVISIONS OF THE CALIFORNIA**
19 **HEALTH AND SAFETY CODE, SMOKELESS**
20 **TOBACCO PRODUCTS AND CIGARS**
21 **CONTAIN/PRODUCE CHEMICALS KNOWN**
22 **TO THE STATE OF CALIFORNIA TO**
23 **CAUSE CANCER AND/OR BIRTH DEFECTS**
24 **OR OTHER REPRODUCTIVE HARM.”**

25 **3.2.4** The warnings set forth in this Section 3.2 shall be displayed in a location at
26 the Covered Properties that is reasonably likely to be viewed by consumers purchasing cigars or
27 smokeless tobacco sold in the manner described set forth on pages 2-3 of Exhibit 5 to the
28 Stipulation and Judgment entered into in *The City and County of San Francisco et al. v. United*
States Tobacco Company, Inc. et al., Case Number CGC-98-993 992 (San Diego Superior Court)
 (“*City of San Francisco*”), a copy of which is attached as Exhibit 2 to this Consent Judgment.

3.2.5 A sign of the size and point type of Exhibit 1 is an example of a warning
that satisfies the requirements of this section.

3.2.6 Compliance. Compliance with paragraphs 3.2.1 is deemed to fully satisfy
Rite Aid’s obligations under Proposition 65 with respect to consumer product, environmental, or

1 occupational exposures arising from the sale or use of Covered Products

2 **3.3 Future Laws or Regulations.** In lieu of complying with the requirements of
3 paragraph 3.2, should (a) any future federal law or regulation that governs the warnings provided
4 for Covered Products preempt state authority with respect to the warning required herein; (b) any
5 future warning requirement with respect to the subject matter of said paragraph be approved by
6 the State of California; (c) any future state law, regulation, or judicial order specify a specific
7 warning for exposures with respect to the subject matter of said paragraph, Rite Aid may, at its
8 sole option, comply with the warning obligations set forth in paragraph 3.2 by complying with
9 such future federal or state law, regulation, or judicial order.

10 **3.4 Amendment to Proposition 65.** If, as a result of a statutory, regulatory, or other
11 amendment to Proposition 65 or judicial order, Rite Aid, the “Released Parties” (as defined in
12 paragraph 4.2 below), or the class to which Rite Aid belongs, are exempted from providing the
13 warnings described herein, then Rite Aid shall be relieved from their obligations to provide the
14 warnings set forth herein.

15
16 **4. RELEASES AND CLAIMS COVERED**

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

27 **4.2 Release.** Except for such rights and obligations as have been created under this
28 Consent Judgment, Plaintiff, on its own and in the interests of the public pursuant to Health &

1 Safety Code section 25249.7(d), with respect to the matters regarding the Proposition 65
2 Chemicals and Covered Products alleged in the Notices and/or the Action, does hereby fully,
3 completely, finally and forever release, relinquish and discharge: (a) Rite Aid; (b) the past,
4 present, and future owners, lessors, sublessors, managers, franchisors, franchisees, wholesalers,
5 distributors and operators of (and any others with any interest in) the sites identified in the
6 Notices, all Covered Properties, and all retail stores affiliated with Rite Aid; (c) the manufacturers
7 or distributors that made, distributed, or sold the Covered Products sold by Rite Aid; (d) the past,
8 present, and future officers, directors, shareholders, affiliates, members, joint venturers, partners,
9 agents, principals, employees, attorneys, parents, subsidiaries, divisions, owners, sisters or other
10 related entities, successors, and assigns of the persons and entities described in (a) through (c)
11 above (the parties identified in (a) through (d) above are collectively referred to as the "Released
12 Parties") of and from all claims, actions, causes of action, suits, demands, rights, debts,
13 agreements, promises, liabilities, damages, penalties, royalties, fees, accountings, costs and
14 expenses, whether known or unknown, suspected or unsuspected, of any nature whatsoever that
15 Plaintiff has or may have against the Released Parties, arising directly or indirectly out of any fact
16 or circumstance occurring prior to the date upon which this Consent Judgment becomes final
17 (including all appeals), relating to any actual or alleged violation of Proposition 65 or Section
18 17200 by the Released Parties and their respective agents, servants and employees that were or
19 could have been raised in the Notices and/or the Action (the "Released Claims").

20 **4.3 Intent of the Parties.** It is the intention of the parties to this Release that, upon
21 entry of judgment and conclusion of any and all appeals or litigation relating to this Consent
22 Judgment, this 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 SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF
28 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

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

10 **4.4 Plaintiff's Ability to Represent the Public.** Plaintiff hereby warrants and
11 represents to Rite Aid and the Released Parties that (a) Plaintiff has not previously assigned any
12 Released Claim; and (b) Plaintiff has the right, ability and power to release each Released Claim.

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

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

26
27 **5. PAYMENT BY RITE AID**

28 Rite Aid shall pay a total of \$167,500 in settlement of this action to defray CAG's costs,

1 costs of investigation, attorney fees, or other costs incurred relating to this matter. This amount
2 shall be paid to the firm of Yeroushalmi & Associates within ten (10) business days from the date
3 the court approves this Consent Judgment and directs that it be entered as a final judgment. Rite
4 Aid shall cooperate with Plaintiff to expedite, to the full extent allowed by law, entry of a final
5 judgment.

6 7 **6. 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 Rite Aid,
11 including, but not limited to, all claims set forth in the Action based upon alleged violations of
12 Proposition 65, as well as any other statute, provision of common law or any theory or issue
13 which arose from Rite Aid's alleged failure to provide warnings regarding consumer exposure to
14 Covered Products, tobacco smoke and secondhand tobacco smoke (and their respective
15 constituent chemicals) which are known to the State of California to cause cancer, birth defects
16 and/or other reproductive harm.

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

24 25 **7. DISPUTES UNDER THE CONSENT JUDGMENT**

26 **7.1 General Enforcement Provisions.** CAG may, by motion or application for an
27 order to show cause before this Court, enforce the terms and conditions contained in this Consent
28 Judgment, subject to the limitations set forth in Section 7.2. In the event that legal proceedings

1 are initiated to enforce the provisions of this Consent Judgment, however, the prevailing party in
2 such proceeding may seek to recover its costs and reasonable attorneys' fees. As used herein, the
3 term "prevailing party" means a party that is successful in obtaining relief more favorable to it
4 than the relief that the other party offered to resolve the dispute that is the subject of such
5 enforcement action.

6 **7.2 Exclusive Remedy.** Any action to enforce the terms of Section 3 of this Consent
7 Judgment shall be brought exclusively pursuant to and subject to the requirements set forth in this
8 Section 7.2, as follows:

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

24 **7.2.2 Notice of Election of Response.** No more than thirty (30) days after
25 receiving a Notice of Violation, Rite Aid shall provide written notice to CAG whether it elects to
26 contest the allegations contained in the Notice of Violation ("Notice of Election.").

27 **(a) Non-Contested Violations.** If a Notice of Violation is not
28 contested, the Notice of Election shall include a description of Rite Aid's corrective action. If

1 Rite Aid elects to correct the alleged violation and does so within thirty (30) days of receiving the
2 Notice of Violation, Rite Aid shall have no liability for penalties or attorneys' fees associated
3 with the allegations set forth in the Notice of Violation.

4 (b) **Meet and Confer.** If a Notice of Violation is contested, CAG and
5 Rite Aid shall meet, either in person or by telephone, and endeavor in good faith to resolve the
6 dispute in an amicable manner and without resort to further litigation.

7 **7.3 Consultation with the Attorney General.** Rite Aid may, within 15 days of
8 receiving the Notice of Violation and at its sole option, seek the opinion of the California
9 Attorney General in writing with a copy served on all other Parties. Plaintiff shall take no further
10 action to enforce the violation which is the subject of the Notice of Violation if, within 30 days of
11 receiving such request, the Attorney General determines that (a) the conduct alleged by Plaintiff
12 substantially complies with this Consent Judgment or otherwise satisfies the warning obligations
13 under Proposition 65; or (b) actions taken by Rite Aid to remedy the conduct alleged in the notice
14 of violation brings Rite Aid into substantial compliance with the provisions of this Consent
15 Judgment or otherwise satisfies the warning obligations of Proposition 65.

16
17 **8. THIRD PARTY LITIGATION**

18 **8.1 Duty to Cooperate.** In the event of any litigation, including but not limited to
19 opposition to entry of this Consent Judgment by the Court, instituted by a third party or
20 governmental entity or official, Plaintiff and Rite Aid agree to cooperate affirmatively in all
21 efforts to defend against any such litigation.

22
23 **9. NOTICES**

24 **9.1 Written Notice Required.** All notices between the Parties provided for or
25 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly
26 served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent via
27 facsimile to a party at the facsimile number set forth below, or to such other or further facsimile
28 number provided in any notice sent under the terms of this paragraph, on the date of the

1 successful transmission of that facsimile; or (c) when deposited in the United States mail,
2 certified, postage prepaid, addressed to such party at the address set forth below, or to such other
3 or further addresses in a notice sent under the terms of this paragraph, three days following the
4 deposit of such notice in the mails. Notices pursuant to this paragraph shall be sent to the parties
5 as follows:

6 (a) To Plaintiff:

7 Reuben Yeroushalmi
8 Yeroushalmi & Associates
9 9100 Wilshire Blvd., Suite 610E
10 Beverly Hills, CA 90212
11 Telephone: (310) 623-1926
12 Facsimile: (310) 623-1930

13 (b) To Rite Aid:

14 Christopher M. Young or Karen S. Chen
15 DLA Piper LLP (US)
16 401 B Street, Suite 1700
17 Telephone Number: (619) 699-2700
18 Facsimile Number: (619) 699-2701

19 AND

20 Jim Comitale
21 Vice President, Assistant General Counsel
22 Rite Aid Corporation
23 30 Hunter Lane
24 Camp Hill, PA 17011
25 Facsimile Number: (717) 975-5711

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

28 **10. TERMINATION**

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

1 **11. INTEGRATION**

2 **11.1.1 Integrated Writing.** This Consent Judgment constitutes the final and
3 complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes
4 all prior or contemporaneous negotiations, promises, covenants, agreements or representations
5 concerning any matters directly, indirectly or collaterally related to the subject matter of this
6 Consent Judgment. The Parties hereto have expressly and intentionally included in this Consent
7 Judgment all collateral or additional agreements that may, in any manner, touch or relate to any of
8 the subject matter of this Consent Judgment and therefore, all promises, covenants and
9 agreements, collateral or otherwise are included herein and therein. The Parties intend that this
10 Consent Judgment shall constitute an integration of all their agreements, and each understands
11 that in the event of any subsequent litigation, controversy of dispute concerning any of its terms,
12 conditions or provisions, no party hereto shall be permitted to offer or introduce any oral or
13 extrinsic evidence concerning any other collateral or oral agreement between the Parties not
14 included herein.

15
16 **12. TIMING**

17 **12.1 Time of Essence.** Time is of the essence in the performance of the terms hereof.
18

19 **13. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 **13.1 Reporting Forms: Presentation to Attorney General.** The Parties expressly
21 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety
22 Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary
23 signatures hereto, Plaintiff shall present this Consent Judgment to the California Attorney
24 General's office.

25
26 **14. COUNTERPARTS.**

27 **Counterparts.** This Consent Judgment may be signed in counterparts and shall be
28 binding upon the Parties hereto as if all of the Parties executed the original hereof. A facsimile or

1 PDF signature shall be valid as the original.

2
3 **15. WAIVER**

4 **15.1 No Waiver.** No waiver by any Party hereto of any provision hereof shall be
5 deemed to be a waiver by any other Party or of any other provision hereof or of any subsequent
6 breach of the same or any other provision hereof.

7
8 **16. AMENDMENT**

9 **16.1 In Writing.** This Consent Judgment cannot be amended or modified except by a
10 writing executed by the Parties hereto that expresses, by its terms, an intention to modify this
11 Consent Judgment.

12
13 **17. SUCCESSORS**

14 **17.1 Binding Upon Successors.** This Consent Judgment shall be binding upon and
15 inure to the benefit of, and be enforceable by, the Parties hereto and their respective
16 administrators, trustees, executors, personal representatives, successors and assigns.

17
18 **18. NO ADMISSIONS**

19 **18.1 Consent Judgment Cannot Be Used as Evidence.** This Consent Judgment has
20 been reached by the Parties to avoid the costs of further prolonged litigation. By entering into
21 this Consent Judgment, neither Plaintiff nor Rite Aid admits any issue of fact or law, including
22 any violation of Proposition 65 or any other law. The settlement of claims herein shall not be
23 deemed to be an admission or concession of liability or culpability by any party, at any time, for
24 any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any action
25 taken to carry out this judgment, shall be construed as giving rise to any presumption or inference
26 of admission or concession by Rite Aid as to any fault, wrongdoing or liability whatsoever.
27 Neither this Consent Judgment, nor any of its terms or provisions, nor any of the negotiations or
28 other proceedings connected with it, nor any other action taken to carry out this Consent

1 Judgment, by any of the Parties hereto, shall be referred to, offered as evidence, or received in
2 evidence in any pending or future civil, criminal or administrative action or proceeding, except in
3 a proceeding to enforce this judgment, to defend against the assertion of any Released Claim, or
4 as otherwise required by law.

5
6 **19. REPRESENTATION**

7 **19.1 Construction of Consent Judgment.** The Parties each acknowledge and warrant
8 that they have been represented by independent counsel of their own selection in connection with
9 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and
10 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, its terms
11 will not be construed in favor of or against any Party hereto.

12
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
19 **21. RETENTION OF JURISDICTION**

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

23 **APPROVED AS TO FORM:**

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Dated: _____

DLA PIPER LLP (US)

By: _____
CHRISTOPHER M. YOUNG
KAREN S. CHEN
Attorneys for Defendant
RITE AID CORPORATION

Dated: 9/21/10

YEROUSHALMI & ASSOCIATES

By: _____
REUBEN YEROUSHALMI
Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP

IT IS SO STIPULATED:

Dated: 9/21/10

By: *Lyndee Marcus, Pres.*
For Plaintiff Consumer Advocacy Group

Dated: _____

By: _____
For Defendant Rite Aid Corporation

IT IS SO ORDERED, ADJUDGED, AND DECREED:

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Dated: _____

Hon. William Highberger
Judge of the Superior Court

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.

-
- 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

**ATTACHMENT -
SECOND AMENDED
COMPLAINT**

1 REUBEN YEROUSHALMI (SBN 193981)
DANIEL D. CHO (SBN 105409)
2 BEN YEROUSHALMI (SBN 232540)
3 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 610E
4 Beverly Hills, California 90212
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – UNLIMITED

11 CONSUMER ADVOCACY GROUP, INC.,) Judicial Council Coordinated Proceeding
in the public interest,) No.: 4182
12)
13 Plaintiff,) Original San Francisco County Case No.:
30987
14 v.)
15)
16 CIRCLE K STORES, INC., TOSCO) SECOND AMENDED COMPLAINT
CORPORATION, WAL-MART STORES,) FOR PENALTY, INJUNCTION, AND
17 INC., SAM'S CLUB, RITE AID) RESTITUTION
CORPORATION, RITE AID PHARMACIES,)
18 RITE AID PHARMACY, and 7-ELEVEN,) [For Violations of *Health & Safety Code* §
INC.;) 25249.5, *et seq.*]
19 Defendants.) ACTION IS AN UNLIMITED CIVIL
20) CASE (exceeds \$25,000)

21 COORDINATION PROCEEDING SPECIAL)
TITLE (Rule 3.550(c)))
22)
23 SECOND HAND SMOKE CASES)
24)
25)
26)
27)

28

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges, on information and belief, as
2 follows:

- 3 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff") is a non-profit
4 corporation qualified to do business in the State of California, and brings this action in
5 the public interest as defined under Health and Safety Code section 25249.7(d).
- 6 2. Plaintiff has now discovered that it designated defendants in the complaint by incorrect
7 names. Plaintiff hereby amends the First Amended Complaint to substitute the correct
8 name for the incorrect name wherever it appears in the First Amended Complaint.
9 CIRCLE K STORES, INC. to substitute for CIRCLE K CO. AND CIRCLE K. WAL-
10 MART STORES, INC. to substitute for WALMART STORES, INC.
- 11 3. Defendants CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-MART
12 STORES, INC., SAM'S CLUB, RITE AID CORPORATION, RITE AID
13 PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC. are, and at all times
14 mentioned herein, have been qualified to do business in the State of California.
- 15 4. At all times mentioned herein, each of the defendants named herein was a person doing
16 business within the meaning of Health and Safety Code section 25249.11(a). Plaintiffs
17 are informed and believe and thereon allege that at all times mentioned herein, each
18 defendant had ten (10) or more employees.
- 19 5. The Court has jurisdiction over this action pursuant to California Constitution Article VI,
20 Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts. The statute under which this action is brought
22 does not specify any other basis of jurisdiction.

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1 **FIRST CAUSE OF ACTION**

2 **(BY CONSUMER ADVOCACY GROUP, INC. AGAINST CIRCLE K STORES, INC., ,**
3 **TOSCO CORPORATION, WAL-MART STORES, INC., SAM'S CLUB, RITE AID**
4 **CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN,**
5 **INC., FOR VIOLATION OF THE STATE OF CALIFORNIA'S PROPOSITION 65**
6 **(HEALTH & SAFETY CODE § 25249.5, et. seq.))**

- 7 6. Plaintiff repeats and incorporates by reference paragraphs 1 through 5 of this complaint
8 as though fully set forth herein.
- 9 7. Plaintiff is informed and believes and thereon alleges that CIRCLE K STORES, INC.,
10 TOSCO CORPORATION, WAL-MART STORES, INC., SAM'S CLUB, RITE AID
11 CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-
12 ELEVEN, INC. knowingly and intentionally sold, and thereby exposed consumers to,
13 cigars which contained, and the consumption of which exposed purchasers thereof to,
14 chemicals known to the State of California to cause cancer and reproductive toxicity, as
15 set forth in Health and Safety Code sections 25249.5, et seq. (sometimes referred to
16 throughout as Proposition 65), and the related California Code of Regulations title 22
17 sections 12000 through 14000.
- 18 8. The Superior Courts of California entered previous consent judgments regarding the
19 manufacture, sale, and distribution of cigars and tobacco products under Proposition 65.
20 See *People ex rel. Van De Kamp v. Safeway Stores, et al.*, (San Francisco Superior Court
21 Case No.: 897576, Consent Judgments ordered Oct. 18, 1988); *People ex rel. Van De*
22 *Kamp v. Safeway Stores, et al.*, (San Francisco Superior Court Case No.: 897576,
23 Consent Judgment ordered Nov. 20, 1990) (collectively referred to as "Previous Consent
24 Judgments"). The Previous Consent Judgments are entitled to collateral estoppel effect
25 as to the methods of compliance regarding retailers of cigars and tobacco products' duty
26 to provide warnings. Specifically, the 1988 consent judgments required on-product
27 warnings of various types. The 1990 consent judgment enjoined, prohibited, and
28 restrained retailers of cigars and tobacco products from failing to provide Proposition 65-

1 Compliant Warnings. (For the purposes of this complaint, the terms "Proposition 65-
2 Compliant Warning" and "Proposition 65-Compliant Warnings" shall mean and refer to
3 the language and manner of display of such language required by the Previous Consent
4 Judgments, including that the required language be placed clearly and conspicuously, so
5 that an ordinary retail customer would reasonably notice it, on containers and display
6 boxes of cigars and tobacco products, and their contents if sold separately, that states that
7 the product contains/produces chemicals known to the State of California to cause cancer,
8 birth defects, and/or other reproductive harm, so that it is in compliance with Health and
9 Safety Code section 25249.5, *et seq.*, and the terms of the Previous Consent Judgments).
10 Accordingly, defendants CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-
11 MART STORES, INC., SAM'S CLUB, RITE AID CORPORATION, RITE AID
12 PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC., as retailers of cigars
13 and tobacco products, were entitled to take advantage of the methods of compliance set
14 forth in the Previous Consent Judgments and were likewise required to abide by such
15 Previous Consent Judgments.

16 9. Plaintiff is informed and believes, and thereon alleges that CIRCLE K STORES, INC.,
17 TOSCO CORPORATION, WAL-MART STORES, INC., SAM'S CLUB, RITE AID
18 CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-
19 ELEVEN, INC., at all relevant times, failed to comply with the methods of compliance
20 set forth in the Previous Consent Judgments, and thereby failed to provide Proposition
21 65-Compliant Warnings.

22 10. Plaintiff is informed and believes, and thereon alleges that CIRCLE K STORES, INC.,
23 TOSCO CORPORATION, WAL-MART STORES, INC., SAM'S CLUB, RITE AID
24 CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-
25 ELEVEN, INC., as retailers of cigars and tobacco products, failed to comply with the
26 terms of the Previous Consent Judgments, and thereby violated Health and Safety Code
27 section 25249.5, *et seq.*, (1) by one or both (a) receiving containers or display boxes of
28 cigars or other tobacco products without a Proposition 65-Compliant Warning and

1 thereafter selling these containers and display boxes, and/or their contents, without any
2 Proposition 65-Compliant Warnings, and/or (b) by receiving cigars or other tobacco
3 products in boxes or display containers properly labeled with a Proposition 65-Compliant
4 Warning and thereafter removing, covering, or defacing the warning so that a retail
5 customer could not ordinarily or reasonably read the warning, or removing the contents
6 of the containers and display boxes and thereafter selling these contents without any
7 Proposition 65-Compliant Warning (such as in a humidor without any Proposition 65-
8 Compliant Warning), and (2) by not displaying clear and reasonable Proposition 65-
9 Compliant Warnings at the counters at which the cigars are sold that a retail customer is
10 reasonably likely to see. Plaintiff is informed and believes, and thereon alleges, that the
11 conduct described above constitutes a violation of Health and Safety Code section
12 25249.5, *et seq.*, as it applies to retailers of cigars and tobacco products. All violations of
13 Health and Safety Code section 25249.5, *et seq.*, by defendants alleged herein shall refer
14 to the conduct, acts, and omissions described in this paragraph.

15 11. Defendants CIRCLE K STORES, INC. and TOSCO CORPORATION knowingly and
16 intentionally sold cigars, smokeless tobacco products (which includes but are not limited
17 to "Chewing Tobacco" and "Dipping tobacco." "Chewing Tobacco" is a form of
18 Smokeless Tobacco furnished as long strands of whole or very coarsely shredded leaves
19 and consumed by placing a portion of the tobacco between the cheek and gum or teeth
20 and chewing. "Dipping Tobacco" is a fine-grain tobacco that often comes in teabag-like
21 pouches that users "pinch" or "dip" between their lower lip and gum.), and other tobacco
22 products while failing to provide Proposition 65-Compliant Warnings at locations
23 throughout the State of California. Purchasers of cigars sold by these defendants lit them
24 and smoked them at the consumers' homes, places of work, and places of leisure, and in
25 doing so, inhaled the chemicals listed below that are known to the State of California to
26 cause cancer and/or reproductive toxicity. Purchasers of smokeless tobacco sold by these
27 defendants use them at the consumers' homes, places of work, and places of leisure, and
28 in doing so, absorb the chemicals listed below that are known to the State of California to

1 cause cancer and/or reproductive toxicity by chewing on and touching the smokeless
2 tobacco.

3 12. Defendants WAL-MART STORES, INC. and SAM'S CLUB knowingly and
4 intentionally sold cigars, smokeless tobacco products, and other tobacco products while
5 failing to provide Proposition 65-Compliant Warnings at locations throughout the State
6 of California. Purchasers of cigars sold by defendants lit them and smoked them in their
7 homes, places of work, and places of leisure, and in doing so, absorbed through the
8 linings of their mouths the chemicals listed below that are known to the State of
9 California to cause cancer and/or reproductive toxicity. Purchasers of smokeless tobacco
10 sold by these defendants use them at the consumers' homes, places of work, and places of
11 leisure, and in doing so, absorb the chemicals listed below that are known to the State of
12 California to cause cancer and/or reproductive toxicity by chewing on and touching the
13 smokeless tobacco.

14 13. Defendants RITE AID CORPORATION, RITE AID PHARMACIES, and RITE AID
15 PHARMACY knowingly and intentionally sold cigars, smokeless tobacco products, and
16 other tobacco products while failing to provide Proposition 65-Compliant Warnings at
17 locations throughout the State of California. Purchasers of cigars sold by these
18 defendants lit them and smoked them in their homes, places of work, and places of
19 leisure, and in doing so, inhaled the chemicals listed below that are known to the State of
20 California to cause cancer and/or reproductive toxicity. Purchasers of smokeless tobacco
21 sold by these defendants use them at the consumers' homes, places of work, and places of
22 leisure, and in doing so, absorb the chemicals listed below that are known to the State of
23 California to cause cancer and/or reproductive toxicity by chewing on and touching the
24 smokeless tobacco.

25 14. Defendant 7-ELEVEN, INC. knowingly and intentionally sold cigars, smokeless tobacco
26 products, and other tobacco products while failing to provide Proposition 65-Compliant
27 Warnings at locations throughout the State of California. Purchasers of cigars sold by
28 these defendants lit them and smoked them in their homes, place of work, and places of

1 leisure, and in doing so inhaled the chemicals listed below that are known to the State of
2 California to cause cancer and/or reproductive toxicity. Purchasers of smokeless tobacco
3 sold by these defendants use them at the consumers' homes, places of work, and places of
4 leisure, and in doing so, absorb the chemicals listed below that are known to the State of
5 California to cause cancer and/or reproductive toxicity by chewing on and touching the
6 smokeless tobacco.

7 15. At all times mentioned herein, 7-ELEVEN, INC. is liable as a retailer for knowingly and
8 intentionally selling and exposing consumers and/or customers to cigars, smokeless
9 tobacco products, and tobacco products which contained, and the consumption of which
10 exposed purchasers thereof to, chemicals known to the State of California to cause cancer
11 and/or reproductive toxicity while failing to provide Proposition 65-Compliant Warnings.

12 16. 7-ELEVEN, INC. knowingly and intentionally exposed its customers and the general
13 public to the carcinogens and reproductive toxicants when 7-Eleven stores throughout the
14 State of California (hereinafter "7-ELEVEN STORES") exposed their customers to
15 chemicals known to the State of California to cause cancer and/or reproductive toxicity
16 through the sale of cigars, smokeless tobacco products, and tobacco products while
17 failing to provide Proposition 65-Compliant Warnings.

18 17. 7-ELEVEN, INC. knowingly and intentionally exposed its customers and the general
19 public to the carcinogens and reproductive toxicants when 7-ELEVEN STORES – in
20 their capacity as franchisees of 7-ELEVEN, INC. – exposed their customers to chemicals
21 known to the State of California to cause cancer and/or reproductive toxicity through the
22 sale of cigars, smokeless tobacco products, and tobacco products while failing to provide
23 Proposition 65-Compliant Warnings.

24 18. 7-ELEVEN, INC. knowingly and intentionally exposed its customers and the general
25 public to the carcinogens and reproductive toxicants when 7-ELEVEN STORES – in
26 their capacity as agents of 7-ELEVEN, INC. – exposed their customers to chemicals
27 known to the State of California to cause cancer and/or reproductive toxicity through the
28

- 1 sale of cigars, smokeless tobacco products, and tobacco products while failing to provide
2 Proposition 65-Compliant Warnings.
- 3 19. At all times mentioned herein, 7-ELEVEN STORES have acted as the agents for 7-
4 ELEVEN, INC. 7-ELEVEN, INC. retained substantial control over the means and
5 manner in which 7-ELEVEN STORES conduct their day-to-day business operations.
6 Furthermore, 7-ELEVEN, INC. retained the power to terminate at will their franchise
7 agreements with 7-ELEVEN STORES.
- 8 20. At all times mentioned herein, 7-ELEVEN, INC. held itself out to its customers and the
9 public as retailers of cigars, smokeless tobacco products, and tobacco products when 7-
10 ELEVEN STORES sold cigars, smokeless tobacco products, and tobacco products to
11 their customers and the general public while failing to provide Proposition 65-Compliant
12 Warnings. Therefore, 7-ELEVEN, INC. held 7-ELEVEN STORES out as its agents to
13 the public and its customers, causing the public and customers to reasonably believe that
14 7-ELEVEN STORES had apparent or ostensible authority to act on behalf 7-ELEVEN,
15 INC.
- 16 21. 7-ELEVEN, INC. is liable for 7-ELEVEN STORES' alleged violations of Health and
17 Safety Code section 25249.5, *et seq.*, and will be equitably estopped from denying such
18 liability. 7-ELEVEN, INC. is liable for violations of Proposition 65 in relation to the sale
19 of the cigars, smokeless tobacco products, and tobacco products to the public by 7-
20 ELEVEN STORES, when the general public changed its position and purchased cigars,
21 smokeless tobacco products, and tobacco products from 7-ELEVEN STORES, by
22 justifiably relying on 7-ELEVEN, INC.'S extensive advertising and marketing. 7-
23 ELEVEN, INC.'S marketing includes the posting and placement of the name and logo of
24 "7-ELEVEN" and 7-ELEVEN, INC.'S trademarked and legally protected symbols and
25 signage appear on the premises, advertising, and throughout other media of the 7-
26 ELEVEN STORES. The general public changes its position and enters the premises of
27 the 7-ELEVEN STORES and purchases cigars, smokeless tobacco products, and tobacco
28 products upon recognizing the name brand "7-ELEVEN" and related brands. Neither

1 advertising on the premises of the 7-ELEVEN STORES nor the significant marketing and
2 advertising 7-ELEVEN, INC. conducts through other media make apparent that 7-
3 ELEVEN, INC. has no control over the operation of 7-ELEVEN STORES or that they
4 are unrelated to 7-ELEVEN STORES. 7-ELEVEN, INC. relies on deriving its profits
5 from the general public's recognition of the brand and identity of "7-ELEVEN" and must
6 be equitably estopped from denying liability that is grounded in the general public's
7 recognition of the brand "7-ELEVEN."

8 22. 7-ELEVEN, INC. became liable for 7-ELEVEN STORES' alleged violations of Health
9 and Safety Code section 25249.5, *et seq.*, when 7-ELEVEN, INC. received the fruits and
10 benefits of an unauthorized contract for the sale of cigars, smokeless tobacco products,
11 and tobacco products in alleged violation of Proposition 65, and therefore they were
12 unjustly enriched – *quasi ex contractu*. 7-ELEVEN, INC. received the benefits derived
13 from the sale of cigars, smokeless tobacco products, and tobacco products in violation of
14 Proposition 65. 7-ELEVEN STORES sell a varied assortment of consumer products,
15 including cigars, smokeless tobacco products, and tobacco products. The general public
16 enters the premises of 7-ELEVEN STORES and purchases consumer products, including
17 cigars, smokeless tobacco products, and tobacco products.

18 23. At all times mentioned herein, CIRCLE K STORES, INC., TOSCO CORPORATION,
19 WAL-MART STORES, INC. SAM'S CLUB, RITE AID CORPORATION, RITE AID
20 PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC. knew that the
21 consumption and foreseeable use of cigars, smokeless tobacco products, and tobacco
22 products sold by them exposed customers to chemicals known to the State of California
23 to cause cancer and/or reproductive toxicity and harm. At all times relevant to this
24 action, these same defendants knew and intended that the normal and foreseeable use of
25 their cigars, smokeless tobacco products, and tobacco products would expose their
26 customers to tobacco smoke and tobacco related chemicals through inhalation.
27 Therefore, CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-MART
28 STORES, INC. SAM'S CLUB, RITE AID CORPORATION, RITE AID

1 PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC. knowingly and
 2 intentionally exposed their customers to the following chemicals found in cigars,
 3 smokeless tobacco products, and tobacco products known to the State of California to
 4 cause cancer and/or reproductive toxicity:

5 **CARCINOGENS**

6 Tobacco smoke	Acetaldehyde
7 Acetamide	Acrolein
8 Acrylonitrile	4-Aminobiphenyl
9 Aniline	o-Anisidine
10 Benz[a]anthracene	Benzene
11 Benzo[b]fluoranthene	Benzo[j]fluoranthene
12 Benzo[k]fluoranthene	Benzo[a]pyrene
13 1,3-Butadiene	Captan
14 Carbon disulfide	Carbon monoxide
15 Chrysene	DDT
16 Dibenz[a,h]acridine	Dibenz[a,j]acridine
17 Dibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
18 Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
19 Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
20 1,1-Dimethylhydrazine	1-Naphthylamine
21 2-Naphthylamine	Nicotine
22 2-Nitropropane	N-Nitrosodi-n-butylamine
23 N-Nitrosodiethanolamine	N-Nitrosodiethylamine
24 N-Nitroso-n-methylethylamine	N'-Nitrosornicotine
25 N-Nitrosopiperidine	N-Nitrosopyrrolidine
26 Styrene	Toluene
27 2-Toluidine	Urethane
28 Vinyl chloride	Arsenic
	Chromium
	Nickel
	(4-Aminodiphenyl)

23 **REPRODUCTIVE TOXINS**

24 Arsenic (inorganic oxides)	Cadmium
25 Carbon disulfide	Carbon monoxide
26 Lead	Nicotine
27 Toluene	Tobacco Smoke
28 Urethane	Benzene
	1,3-Butadiene

1 24. The purchasers of the cigars and smokeless tobacco products were exposed to the above
2 Proposition 65-listed chemicals without being given the warnings required by Health and
3 Safety Code section 25249.6 and the Previous Consent Judgments discussed above, *i.e.*,
4 clear and conspicuous language placed, such that an ordinary retail customer would
5 reasonably notice it, on containers and display boxes of cigars, smokeless tobacco
6 products, and other tobacco products, and their contents if sold separately, that states that
7 the product contains/produces chemicals known to the State of California to cause cancer,
8 birth defects, and/or other reproductive harm.

9 25. The routes of exposure of the above Proposition 65-listed chemicals were and are by
10 inhalation, ingestion, oral consumption, and dermal contact.

11 26. By engaging in the acts and omissions set forth above, CIRCLE K STORES, INC.,
12 TOSCO CORPORATION, WAL-MART STORES, INC. SAM'S CLUB, RITE AID
13 CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-
14 ELEVEN, INC. in the course of doing business, knowingly and intentionally exposed
15 individuals to chemicals known to the State of California to cause cancer and/or
16 reproductive toxicity without first giving clear and reasonable warning within the
17 meaning of Health and Safety Code section 25249.6 and the Previous Consent
18 Judgments, *i.e.*, clear and conspicuous language placed, such that an ordinary retail
19 customer would reasonably notice it, on containers and display boxes of cigars,
20 smokeless tobacco products, or other tobacco products, and their contents if sold
21 separately, that states that the product contains/produces chemicals known to the State of
22 California to cause cancer, birth defects, and/or other reproductive harm.

23 27. Each defendant failed and refused to give prior clear and reasonable warnings that
24 comply with the requirements of Health and Safety Code section 25219.5, *et seq.*, and the
25 terms of the Previous Consent Judgments, to individuals exposed to reproductive toxins
26 and carcinogens through the normal and foreseeable use of its products. Plaintiff is
27 informed and believes, and thereon alleges, defendants failed to provide the warnings
28 required by Health and Safety Code section 25249.6 and the previous consent judgments

1 discussed above by (1) either one or both (a) removing cigars or other tobacco products
2 from containers or display boxes containing Proposition 65-Compliant Warnings and
3 selling these products outside of these containers or display boxes, including in humidors,
4 without any accompanying or clear and reasonable Proposition 65-Compliant Warnings,
5 and/or (b) receiving cigars or other tobacco products in containers or display boxes not
6 containing any Proposition 65-Compliant Warnings and thereafter selling these products
7 absent any Proposition 65-Compliant Warnings, and (2) not displaying any clear or
8 reasonable Proposition 65-Compliant Warnings at the counters at which these products
9 are sold that a retail customer would be reasonably likely to see.

10 28. Plaintiff mailed to CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-MART
11 STORES, INC. SAM'S CLUB, RITE AID CORPORATION, RITE AID
12 PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC. 60-day notices for
13 failure to properly warn the public about chemicals listed under Health and Safety Code
14 section 25249.6. Copies of the notices were mailed to the California Attorney General
15 and the County District Attorneys and City Attorneys for each city containing a
16 population of at least 750,000 people, for the locations throughout the State of California
17 within which the defendants have allegedly violated Health and Safety Code section
18 25249.5, *et seq.*, and 22 California Code of Regulations sections 12000 through 14000.

19 29. Before mailing each 60-day notice to defendants CIRCLE K STORES, INC., TOSCO
20 CORPORATION, WAL-MART STORES, INC. SAM'S CLUB, RITE AID
21 CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-
22 ELEVEN, INC. in the beginning and middle of 1999, Plaintiff conducted investigations
23 as to each of these defendants. As a result of these investigations, Plaintiff identified
24 violations of Proposition 65, including non-compliance with the Previous Consent
25 Judgments, as to each of these defendants.

26 30. On or about July 12, 2002, Plaintiff mailed to CIRCLE K STORES, INC., TOSCO
27 CORPORATION, WAL-MART STORES, INC. SAM'S CLUB, RITE AID
28 CORPORATION, and 7-ELEVEN, INC. 60-day notices for failure to properly warn the

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public about chemicals listed under Health and Safety Code section 25249.6. Copies of the notices were mailed to the California Attorney General and the County District Attorneys and City Attorneys for each city containing a population of at least 750,000 people, for the locations throughout the State of California within which the defendants have allegedly violated Health and Safety Code section 25249.5, *et seq.*, and 22 California Code of Regulations sections 12000 through 14000.

31. On or about May 26, 2009, Plaintiff mailed to CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-MART STORES, INC. SAM'S CLUB, RITE AID CORPORATION, and 7-ELEVEN, INC. 60-day notices for failure to properly warn the public about chemicals listed under Health and Safety Code section 25249.6. Copies of the notices were mailed to the California Attorney General and the County District Attorneys and City Attorneys for each city containing a population of at least 750,000 people, for the locations throughout the State of California within which the defendants have allegedly violated Health and Safety Code section 25249.5, *et seq.*, and 22 California Code of Regulations sections 12000 through 14000.

32. No response was ever received from any of the prosecutors to whom Plaintiff sent the 60-day notices. Plaintiff is informed and believes that none of the prosecutors to whom Plaintiff sent 60-day notices is prosecuting an action against any defendant herein for the violations set forth herein.

33. Individuals exposed to the chemicals suffered and continue to suffer irreparable harm due to their being exposed to the above-listed chemicals without prior clear and reasonable warning.

34. Plaintiff is informed, believes, and thereon alleges that each of defendants CIRCLE K STORES, INC., TOSCO CORPORATION, WAL-MART STORES, INC., SAM'S CLUB, RITE AID CORPORATION, RITE AID PHARMACIES, RITE AID PHARMACY, and 7-ELEVEN, INC.'S violations of Proposition 65 arising from the sale of cigars and smokeless tobacco products without Proposition 65-Compliant Warnings have been ongoing and continuous to the date of the signing of this complaint, so that a

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separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to the Proposition 65-Listed chemicals above.

35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65 mentioned herein is ever continuing.

36. An action for injunctive relief and penalties for violations of Health and Safety Code section 25249.5, *et seq.*, is specifically authorized by Health and Safety Code section 25249.7.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests against each defendant as follows:

1. A permanent injunction pursuant to California Health and Safety Code section 25249.7(a), and the equitable powers of the Court;
2. Penalties pursuant to Health and Safety Code section 25249.7(b) in the amount of \$2,500.00 per day per violation;
3. Cost of suit;
4. Reasonable attorney's fees and costs; and
5. Any further relief that the Court may deem just and equitable.

Dated: 2/17/10

YEROUSHALMI & ASSOCIATES

BY: _____
 Reuben Yeroushalmi
 Attorneys for Plaintiff
 Consumer Advocacy Group, Inc.