

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 004-273

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 RITE AID CORPORATION and)
)
 COMMUNITY PHARMACIES, LP)
)
 Defendants)

CONSENT DECREE

WHEREAS, on or about December 4, 2003, Rite Aid Corporation ("Rite Aid") consummated the purchase of the assets of a retail pharmacy outlet in Caribou, Maine, from Frontier Pharmacy; and

WHEREAS, Rite Aid was under an obligation to provide to the Maine Attorney General 30 days' notice of acquisitions of the assets or stock of any retail pharmacy outlet located in a six-county area of Maine, including Aroostook County, pursuant to a Consent Order entered by this Court on November 8, 1995 (*State of Maine v. Rite Aid Corporation*, No. CV-95-403 [Ken.C'ty]) (*Rite Aid I*), but did not provide notice to the Attorney General of its Caribou acquisition until October 6, 2004 in its annual report to the Attorney General; and;

WHEREAS, Rite Aid desires to acquire from Community Pharmacies ("Community") the assets associated with five retail pharmacy outlets located variously in Fort Kent, Houlton, Madawaska, Gray and Fairfield pursuant to the provisions of a

purchase & sale agreement, including noncompetition clauses, and provided timely notice of this acquisition pursuant to the *Rite Aid I* Consent Order; and

WHEREAS, Plaintiff, the State of Maine, filed the Complaint herein on or about December 6, 2004, alleging violations of 10 M.R.S.A. § 1102-A, and of the *Rite Aid I* Consent Order, and Defendants Rite Aid and Community dispute all allegations relating to violations of 10 M.R.S.A. § 1102-A, including without limitation the allegations set forth in ¶¶ 1, 9 through 12, 14 and 16 through 22, but, desirous of completing the acquisition, have moved jointly with Plaintiff to consolidate the Complaint herein with *Rite Aid I*, and Plaintiff and Defendants have agreed to the entry of this Consent Decree without trial or adjudication of any issue of fact or law raised by the Complaint and without any admission by the Defendants with respect to such issues, except that Defendants admit to this Court's jurisdiction;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby **ORDERED AND DECREED** as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the Defendants under 10 M.R.S.A. § 1102-A and 1104.

II. DEFINITIONS

As used in this Consent Decree:

- (a) "Rite Aid" shall mean Rite Aid Corporation, and all its employees,

officers, agents, directors, foreign and domestic parents, subsidiaries, predecessors, partners, joint ventures, affiliates, and representatives of any of the foregoing.

(b) "Community" shall mean Community Pharmacies, LP and all its employees, officers, agents, directors, foreign and domestic parents, subsidiaries, predecessors, partners, joint ventures, affiliates, and representatives of any of the foregoing.

(c) "Suite 102" shall mean the premises formerly occupied by Brooks Drug, Inc. located at the Fort Kent Shopping Center in Fort Kent.

(d) "Suite 103" shall mean the premises formerly occupied by a state liquor store located at the Fort Kent Shopping Center in Fort Kent.

(e) "Paradis" shall mean Paradis Bros. Enterprises, a company that owns and operates supermarkets and a pharmacy in Aroostook County. Paradis is the owner of the premises referred to herein as Suite 102 and Suite 103 in which Rite Aid currently holds a leasehold interest.

III. RELIEF

1. The Complaint herein is hereby consolidated with *Rite Aid I*.
2. Within thirty (30) days of the date on which this Consent Decree is entered by the Court, Rite Aid shall make an offer to Paradis to terminate and release Rite Aid's existing leasehold interest in Suite 102 and Suite 103, without requiring or providing for any further payment by Rite Aid to Paradis, or by Paradis to Rite Aid, or by Rite Aid to any other party; provided, that Rite Aid shall not be required to terminate or release its leasehold interest in Suite 103 unless Paradis agrees to accept assignment of, and honor and accept all the terms and conditions of the sublease by and between Rite Aid and its

subtenant for any remaining term of the sublease as if Rite Aid's subtenant were the tenant of Paradis. If Paradis agrees to Rite Aid's offer, including this condition, Rite Aid shall be released from any remaining obligations thereunder to Paradis or the subtenant. Nothing in this paragraph shall be construed to prevent Paradis from entering into negotiations with the subtenant to terminate the sublease, if it so desires.

3. Rite Aid in any event shall not exercise its existing option to renew its lease on either Suite 102 or Suite 103.

4. With regard to the currently contemplated acquisition by Rite Aid of five retail pharmacy outlets from Community, Rite Aid and Community shall not enter, enforce, or observe any agreement that restricts entry by Community into the local pharmacy markets where the stores to be acquired by Rite Aid are located, or into any segment of the Maine mail order market for prescription drugs, except to the extent described herein below:

(a) **Gray:** A five-year, five-mile restriction, using the store as the center of the five-mile radius circle, with the addition of any portion of the municipality of Windham outside the five-mile radius circle.

(b) **Fairfield:** A five-year, five-mile restriction centered on the store with the addition of any portion of the municipalities of Fairfield, Waterville, Winslow and Oakland outside the five-mile radius circle.

(c) **Houlton, Fort Kent & Madawaska:** A five-year, fifteen-mile restriction centered on the store in each case.

(d) **Mail order:** A two-year restriction on the use of any information gleaned from the pharmacies being transferred to solicit mail order customers within the geographic areas described above.

Rite Aid and Community shall not enter into, enforce or observe any noncompetition

agreement or clause with each other affecting any retail pharmacy market in the State of Maine that is not reasonably ancillary to a *bona fide* business acquisition or transaction between Rite Aid and Community.

5. Rite Aid shall provide at least thirty (30) days advance notice to the Maine Attorney General of any contemplated transaction involving consideration, (including transactions pending but not consummated as of November 1, 2004) to which Rite Aid is a party involving the future acquisition, directly or indirectly, of any stock, assets or control over the stock or assets (including, without limitation, control through leasehold or management contract) of any retail pharmacy company or outlet; and shall at the same time submit any noncompetition clause or agreement contemplated or entered into in the context of any such transaction for review by the Attorney General. The Attorney General shall review the submission to determine whether the noncompetition clause or agreement is reasonably ancillary to the proposed transaction and otherwise consistent with state antitrust law. If within 30 days of its submission the Attorney General determines that the noncompetition clause or agreement does not meet this standard, he may, by letter directed to Rite Aid, require appropriate changes to its terms. In such case, Rite Aid is barred from implementing the clause or agreement unless it accepts the changes required by the Attorney General; provided that Rite Aid may contest the Attorney General's determination by means of a motion for relief in this Court pursuant to section V, paragraph 10 below. If the Attorney General does not act within 30 days of its submission, Rite Aid may give full effect to the noncompetition clause or agreement; however, nothing herein shall prevent the Attorney General from instituting a new antitrust enforcement action to challenge the transaction or noncompetition clause or

agreement at a later time, as he may deem necessary or appropriate. The provisions of this paragraph shall apply only to transactions affecting assets or outlets located in, or involving the acquisition of a controlling interest in the stock of a retail pharmacy company that possesses assets or an outlet located in any market in the counties of Aroostook, Penobscot (north of the N45° 10' line of latitude), Piscataquis, Somerset or Washington. .

6. Rite Aid shall pay to the Maine Attorney General a monetary penalty of \$2,000 as a sanction for its failure to provide notification of its Caribou acquisition, to be applied to consumer and antitrust enforcement.

7. Rite Aid and Community shall each pay to the Attorney General the sum of \$2,500 to defray his costs of investigation and suit in this matter.

IV. TERMINATION

8. The Consent Order in *Rite Aid I* is hereby terminated.

9. This Consent Decree shall terminate on the sixth anniversary of its date of entry.

V. RETENTION OF JURISDICTION

10. Jurisdiction is retained by the Court for the purpose of enabling any of the parties to the Decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the interpretation or implementation of this Consent Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith.

VI. PUBLIC INTEREST

11. Entry of this Consent Decree is in the public interest.

Dated:

**CONSENTED TO ON BEHALF OF
THE STATE OF MAINE BY:**



FRANCIS ACKERMAN
Assistant Attorney General
Consumer Protection Division

Dated:

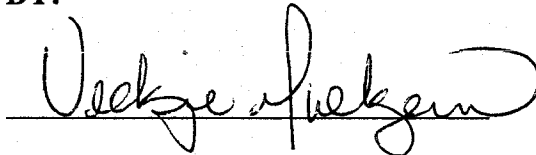
**CONSENTED TO ON BEHALF OF
DEFENDANT RITE AID CORPORATION
BY:**



ROBERT B. SARI
Senior Vice President and General Counsel

Dated:

**CONSENTED TO ON BEHALF OF
DEFENDANT COMMUNITY
PHARMACIES, LP.
BY:**



It is hereby ordered and adjudged as set forth above. Judgment shall enter in accordance with the above terms, which are incorporated herein by this reference.

Dated: *06/06/2004*



JUSTICE, SUPERIOR COURT

A TRUE COPY
ATTEST:

Nancy A. Desjardins
Nancy A. Desjardins
Clerk of Courts