

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>PHILIP MORRIS USA INC., et al.,</b>	)	<b>Civil Action No.: 99-2496 (GK)</b>
	)	
<b>Defendants.</b>	)	
	)	

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**DECLARATION OF KATHLEEN A. SPARROW**

I, Kathleen A. Sparrow, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1) My name is Kathleen A. Sparrow. I am the Executive Vice President of Marketing and Sales for ITG Brands, LLC (“ITG Brands”). I make this declaration in support of a brief that addresses the potential of exhibiting corrective statement remedies at retail point-of-sale.

2) I served as Senior Vice President of Sales for ITG Brands from June 2015, when R.J. Reynolds Tobacco Company acquired Lorillard Tobacco Company and ITG Brands acquired the Winston, Salem, Kool, and Maverick brands (the “Acquired Brands”), until August 2016, when I was named Executive Vice President of Marketing and Sales. I was previously employed by Lorillard Tobacco Company, which I joined as a Field Sales representative in 1980, and where I was promoted through a variety of positions within its Sales Department. While employed by Lorillard, I made two declarations to this Court regarding retail point-of-sale

corrective statements, in connection with briefs submitted by Lorillard. See Dkt. Nos. 5906-3 and 6097-1. I adopt and incorporate the statements in those declarations here.

3) As part of my job, I track market shares of the major cigarette manufacturers. At present ITG Brands has a national market share of about 9%. Philip Morris USA Inc. has a national market share of about 49%, and R.J. Reynolds Tobacco Company has a national market share of about 32%. These shares vary regionally, by brand, and by store, but ITG Brands' share is typically significantly less than the shares of either Philip Morris USA Inc. or R.J. Reynolds Tobacco Company.

4) ITG Brands and its affiliate Commonwealth Brands, Inc. manufacture and sell a portfolio of cigarette brands. This portfolio currently includes the Acquired Brands (Winston, Maverick, Salem, and Kool), which ITG Brands acquired from defendants R.J. Reynolds Tobacco Company and Lorillard Tobacco Company. The portfolio also includes USA Gold, Sonoma, Montclair, and Rave, as well as other brands, which were not acquired from R.J. Reynolds Tobacco Company and Lorillard Tobacco Company.

5) I have had regular contact throughout my career with all types of cigarette retailers. My current position requires a thorough knowledge and understanding of the national cigarette retail environment. One of my responsibilities as Executive Vice President of Marketing and Sales is to manage ITG Brands' retail merchandising program contracts. As part of my job responsibilities, I regularly receive extensive information about the cigarette retail environment. This knowledge and experience provides the basis for the statements in this declaration.

6) There is great variability in the types of retail stores in which ITG Brands and others' cigarette products are sold, both in terms of the type of store (e.g., chain or grocery store,

convenience store, kiosk store at gas station, grocery store, bodega-type store) and the physical lay-out of the store. This variability speaks to the impracticability of imposing any one-size-fits-all approach to a point-of-sale corrective statement remedy across retail locations.

7) There is also great variability in how retail stores merchandise cigarettes for sale, as shown in the photographs attached as Appendix A to this declaration. Among many other variations, products are sold in wide wall fixtures, narrow wall fixtures, corner wall fixtures that share two walls, half wall fixtures, counter display fixtures, and kiosk display fixtures. This variability also speaks to the impracticability of imposing any one-size-fits-all approach to the point-of-sale corrective statement remedy across retail locations.

8) I am not aware of any retail environment in which ITG Brands' products are sold that does not also sell brands manufactured by Philip Morris USA Inc. and/or R.J. Reynolds Tobacco Company.

9) ITG Brands maintains a contract-based, retail-merchandising program with cigarette retailers. So do Philip Morris USA Inc. and R.J. Reynolds Tobacco Company. For ITG Brands, retailers enter into a bilateral contract with ITG Brands by executing the ITG Brands Retail Partnership Agreement.

10) Currently, I estimate that there are approximately 200,000 retailers with contracts with one or more of Philip Morris USA Inc., R.J. Reynolds Tobacco Company, and ITG Brands. ITG Brands has such contracts with approximately 176,000 retailers. For the vast majority of such retailers, Philip Morris USA Inc. and R.J. Reynolds Tobacco Company also have contracts with the retailers. There are only about 7,300 retailers for which only ITG Brands, and not Philip Morris USA Inc. or R.J. Reynolds Tobacco Company, has a retail contract in place.



11) ITG Brands' retail contracts address the shelf space on merchandising fixtures and/or displays that the retailer will dedicate to ITG Brands' products. In general, ITG Brands' visible merchandising space on each fixture is linked to its market share rank among other manufacturers – meaning that ITG Brands' display space is generally significantly smaller than the visible merchandising space occupied by Philip Morris USA Inc. and R.J. Reynolds Tobacco Company on each fixture, and is often several shelves down from those companies' products.

12) Under the retail agreements, the types of visible merchandising space vary from retailer to retailer according to the type of retail plan at issue and the physical layout of the store. A retailer who is party to an ITG Brands Retail Partnership Agreement is eligible to participate in either a "Back Bar Plan" or a "Counter Display Plan," but not both, by meeting the requirements of the Retail Partnership Agreement and the relevant Plan Description.

13) The Back Bar Plan Description applies for retailers with behind-the-counter retail fixtures and the Counter Display Plan Description applies for retailers with on-counter retail displays. Both Plans require, among other things, that the retailer's merchandise space for ITG Brands' products must be contiguous and proportional to its market share rank among other manufacturers, but not less than one square foot for the Back Bar Plan and not less than one foot wide for the Counter Display Plan. Retailers who meet the requirements of the Agreement and the applicable Plan Description are paid a per-carton rate for qualifying purchases up to a maximum amount. There are different gradations of the Plan Descriptions that provide increasing levels of compensation to stores providing more visible merchandising space to ITG Brands' products.

14) Both the Back Bar Plan and the Counter Display Plan require retailers to place "advertising" pieces within ITG Brands' merchandising space and one off fixture permanent

advertising piece for each of ITG Brands “Focus Brands,” which vary by market. The Agreement provides that “all advertising material/sign(s)” are the property of the retailer, not ITG Brands.

15) ITG Brands’ retail contracts do not mention “header” displays on retail fixtures. Order #1015 defines a “header display” as “[t]he banner that is displayed by a retailer at the top of a cigarette display case, which may show a cigarette brand name, cigarette brand imagery, prices for cigarettes, or promotional offers to consumers.” *United States v. Philip Morris USA, Inc.*, 449 F.Supp.2d 1, 947 (D.D.C. 2006). That definition is consistent with my understanding of a header on a fixture and/or a counter display based on my experience, which is the single banner at the top of each cigarette counter display and/or or fixture.

16) The space for a header on a fixture is typically reserved for manufacturers with market share larger than that held by ITG Brands’ products, such as Philip Morris USA Inc. or R.J. Reynolds Tobacco Company. The sole exception is in stores that primarily sell tobacco products, such as cigarette outlet stores with multiple retail fixtures, which sometimes have a fixture or two stocked only with ITG Brands’ products. In those scenarios, ITG Brands’ merchandising fixtures frequently are stocked not only with the Acquired Brands but also with ITG Brands’ other brands, such as USA Gold, Sonoma, Montclair, and/or Rave.

17) Attached as Appendix A are pictures that show the wide variety of retail fixtures/and or displays. For example, the photograph on page A-41 of Appendix A shows a wide fixture located in a Discount Tobacco Mart in Maryville, TN. The first five rows of this fixture contain other manufacturers’ cigarettes. ITG Brands’ products are displayed in the middle left rows 6, 7, and 8. They are surrounded by other brands, some of which are manufactured by defendants (Marlboro, Camel) and some of which are not (Tahoe, Riverside,

and Baily's). Another example is the photograph on page A-15 of Appendix A, which is of a retail fixture located in an EZ Stop in Maryville, TN. ITG Brands' products are located on the far right, in rows 6, 7, and 8, among other brands, some which are defendants' brands (Pall Mall, American Spirit, L&M), and others of which are not (Pyramid). Note that USA Gold, which is one of ITG Brands' affiliates' products, is also present on the fixture and is not an Acquired Brand. Yet another example is the photograph on page A-20 of Appendix A, which shows a retail fixture in Ridley's Family Market, Buhl, ID. ITG Brands' products are located in the middle, right portion of the fixture. Rows 5 and 7 contain ITG Brands' Acquired Brands (Kool, Winston), but row 6 and part of row 7 contain ITG Brands' products that are not Acquired Brands (USA Gold, Montclair, Sonoma). ITG Brands' products that are not Acquired Brands are surrounded by defendants' brands (Camel, L&M) and brands by manufactures who are not defendants (Pyramid, Eagle). Similar scenarios are shown on pages A-21, A-23, A-24, A-45, A-47, A-49, and A-51 of Appendix A. Finally, on page A-58 of Appendix A is an example of a counter display in TIWA66, Albuquerque, NM that contains only ITG Brands' products, but the top and bottom rows contain Acquired Brands and the middle row contains a brand that is not an Acquired Brand (Montclair). This scenario is also seen in the photograph on page A-54 of Appendix A.

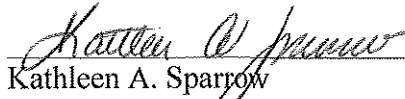
18) Stores' retail fixtures and/or displays, both countertop and otherwise, often contain all of the cigarette brands that the store sells. Thus, the brands ITG Brands acquired from Reynolds and Lorillard are generally located in the same fixture and/or display as non-Acquired Brands. Because the header runs along the top of the fixture, a corrective statement on the header for such a fixture will appear to be on behalf of all brands in the fixture, including non-Acquired Brands such as those sold by ITG Brands and manufacturers who are not parties to

this litigation. Examples of current retail fixtures that include both Acquired Brands and non-Acquired Brands are depicted in the photographs attached as Appendix A to this Declaration. Countertop displays, like other display features, often include the Acquired Brands with other non-Acquired Brands owned by ITG Brands or its affiliates.

19) Additional point of sale requirements imposed on retailers participating in an ITG Brands' retail merchandising program would disproportionally burden ITG Brands because its Acquired Brands have a much smaller market share, and consequently a much smaller merchandising space, than Philip Morris USA Inc. and R.J. Reynolds Tobacco Company. Any corrective statements ITG Brands is required to publish in its retail space will take up a disproportionately large share of that already limited retail space. Generally the presentation of corrective statements in any location on the fixture or display will likely further reduce the amount of total shelf space available. Some retailers may choose to participate only in Philip Morris USA Inc. and R.J. Reynolds Tobacco Company programs rather than incur the additional burden of meeting point-of-sale display requirements for ITG Brands' Acquired Brands, too.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 8, 2018, in Greensboro, North Carolina.

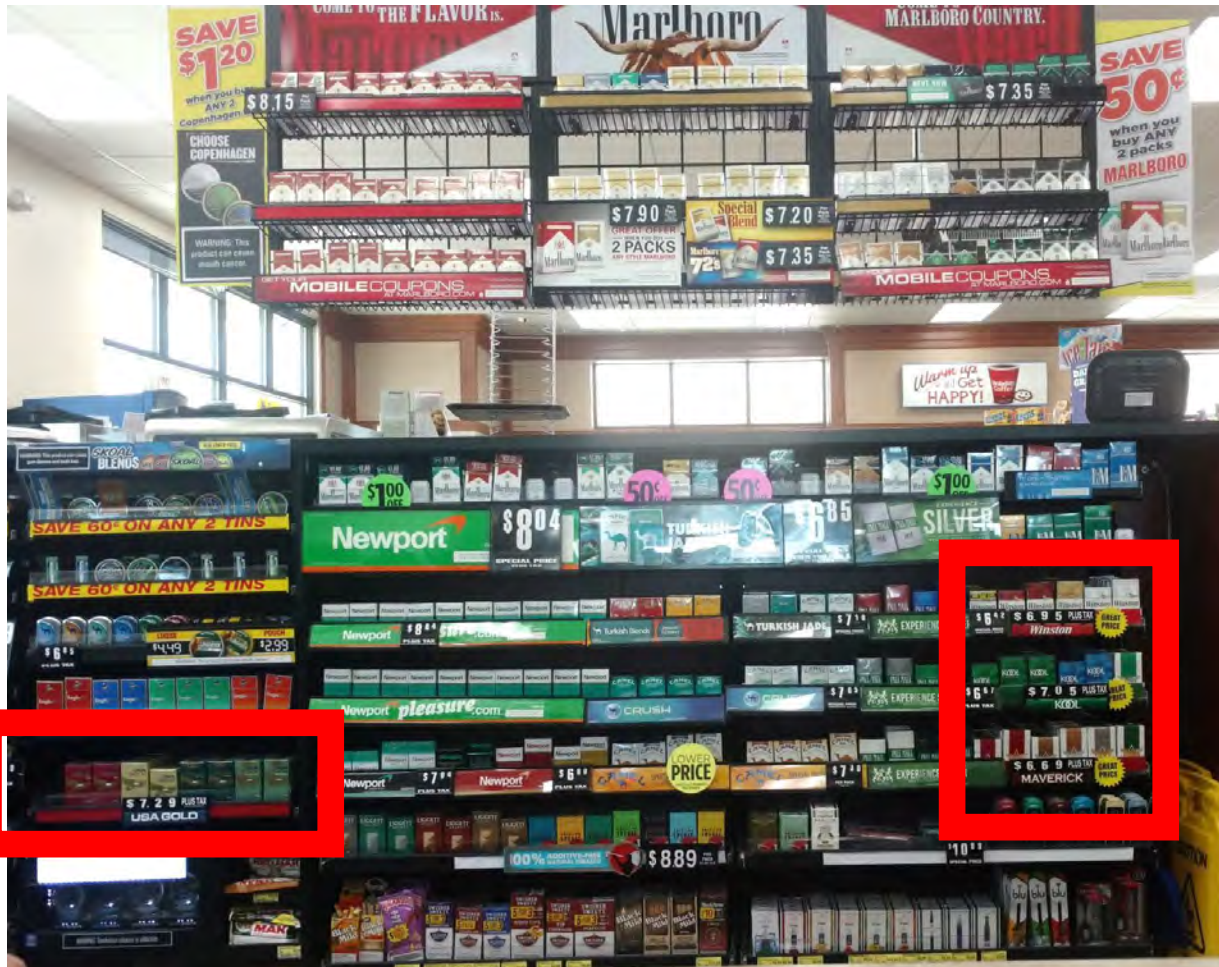
  
Kathleen A. Sparrow

# Appendix A

**No Fixture Card**



Stop N Shop # 5  
281 Hwy 165  
Oakdale, LA 71463



Holiday StationStore  
306 S 18<sup>th</sup> Ave  
Wausau, WI 54401





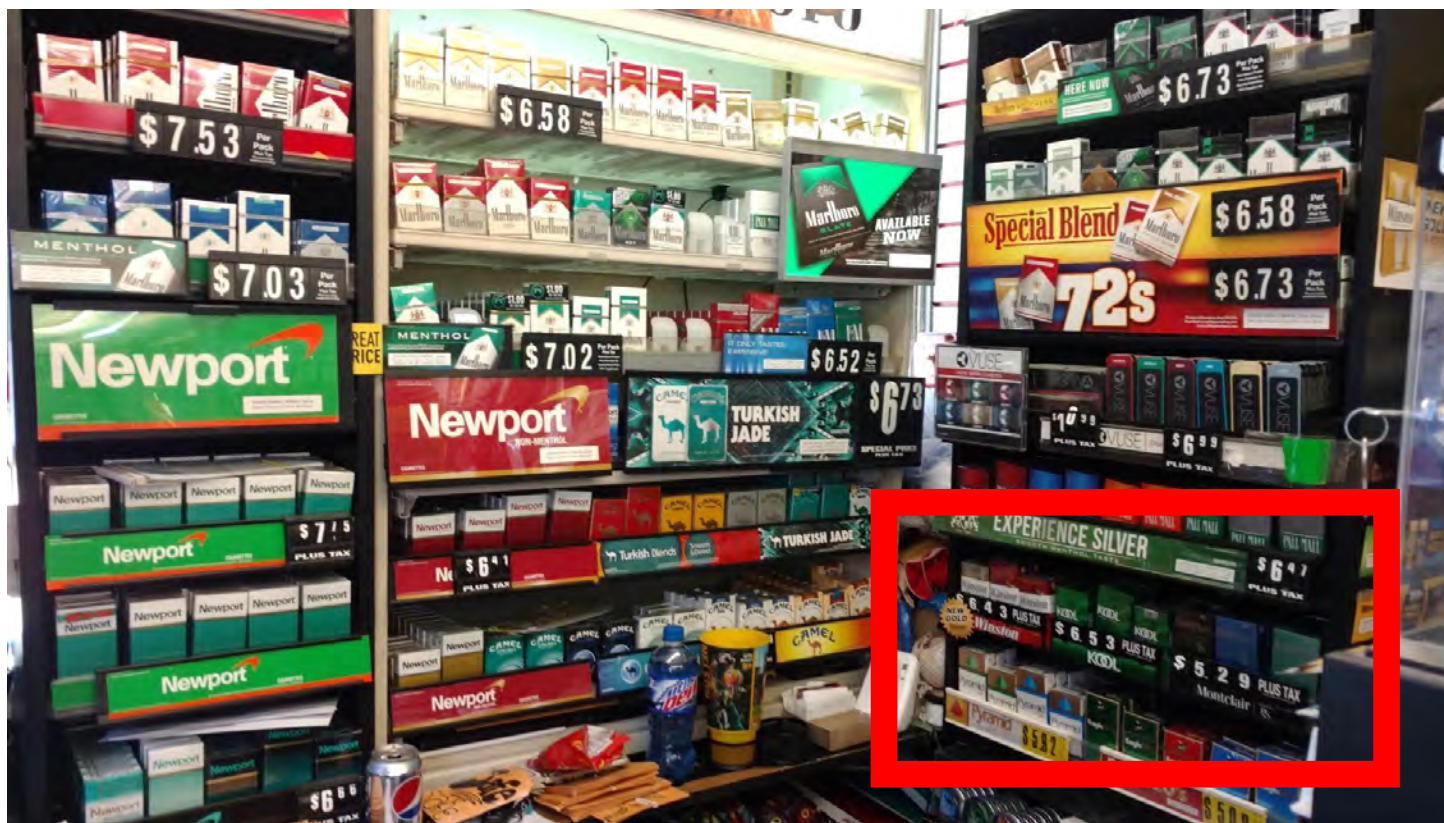
Dollar General #017403  
877 Stateline Rd E  
Southaven, MS 38671





Krist Oil  
1122 Merrill Ave  
Wausau, WI 54401



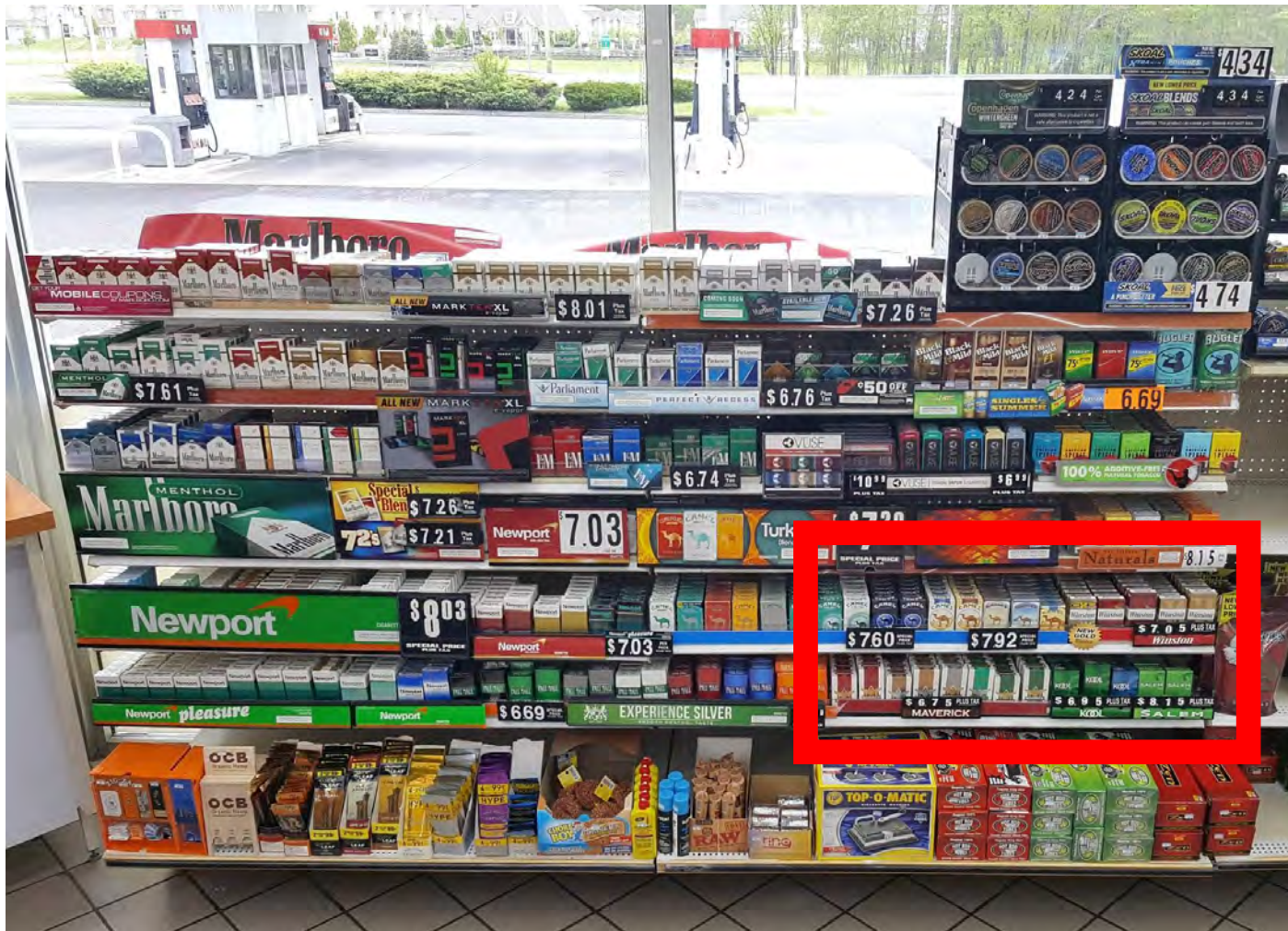


BMW Fuel Mart  
102 3<sup>rd</sup> Ave  
Wausau, WI 54401



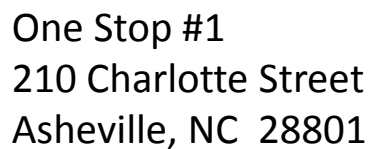
Brokaw Convenience  
5755 N 28<sup>th</sup> Ave  
Brokaw, WI 54417

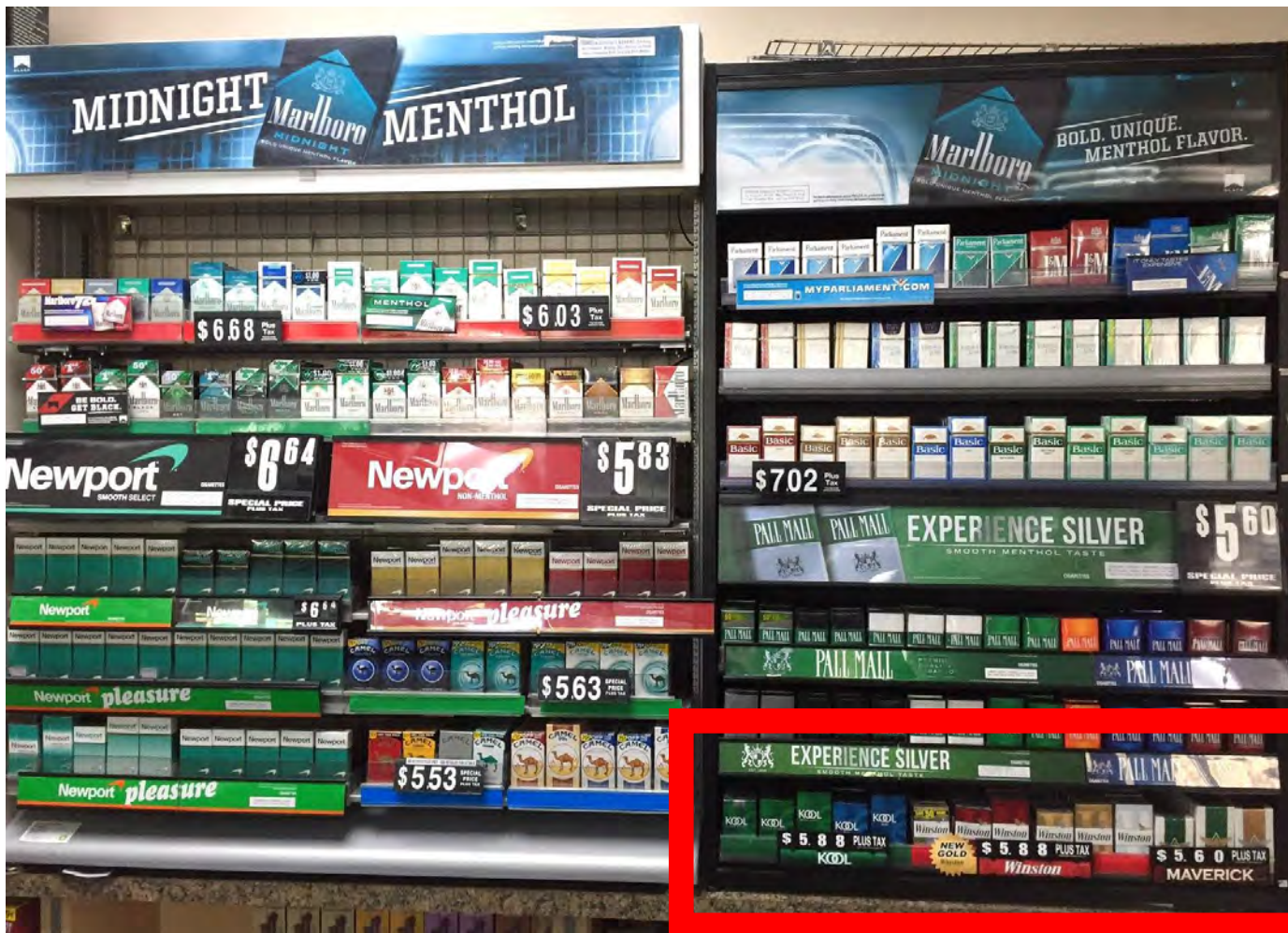




The Mart  
2510 Route 9  
South Howell, NJ 07731







IMAC Gas N Go  
19995 W. 9 Mile  
Southfield, MI 48075





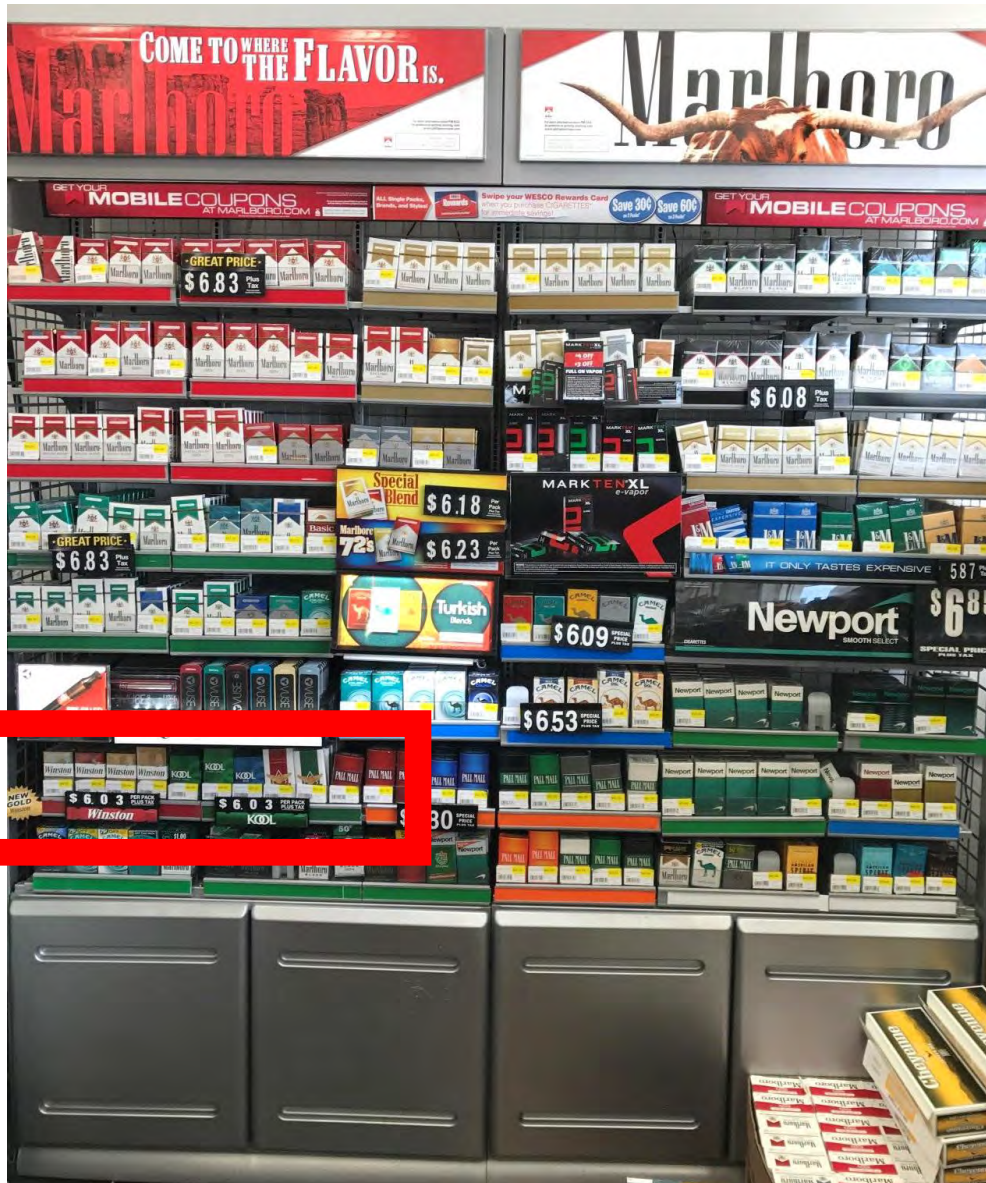
Admiral Tobacco  
805 S. Mitchell  
Cadillac, MI 49227





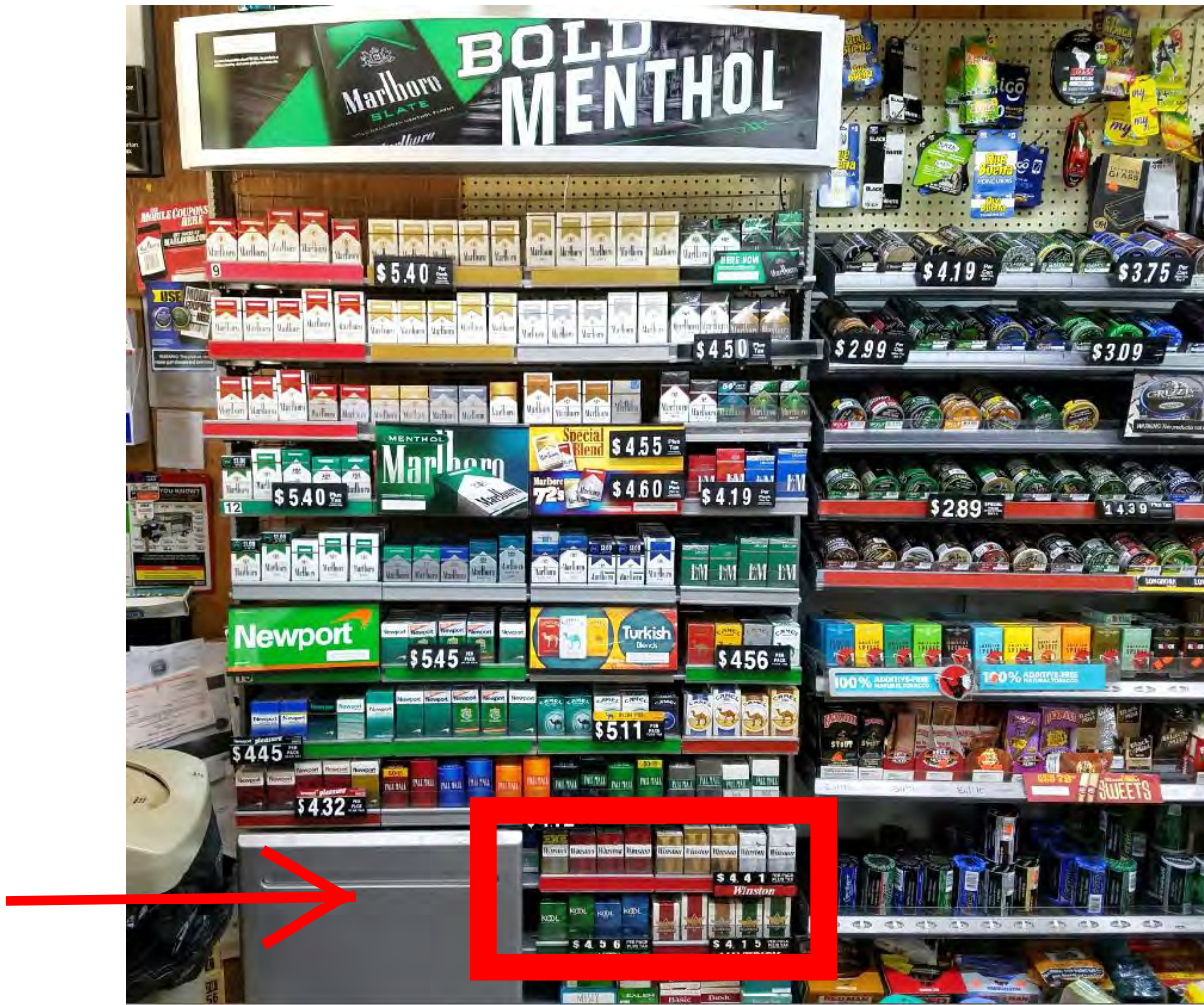
Forward  
511 Maple St.  
Pinconning, MI 48650





Wesco  
1548 N. Mitchell  
Cadillac, MI 49601





Food Mart/Chevron  
9114 Main Street  
Woodstock, GA 30188



EZ Stop #1  
708 Montvale Rd  
Maryville, TN 37801





Cove Mart  
444 W. 22nd St.  
Lombard, IL 60148





7-Eleven #11667  
8900 Edmonston Rd.  
Berwyn Heights, MD 20770



Midtown Food and Beverage  
860 N. Mitchell  
Cadillac, MI 49601



Short Stop  
515 S Reynolds Road  
Toledo, OH 43615





W's Fresh Mart  
4412 Route 9 South  
Freehold, NJ 07728



Wawa  
1090 State Highway  
77 Bridgeton, NJ 08302



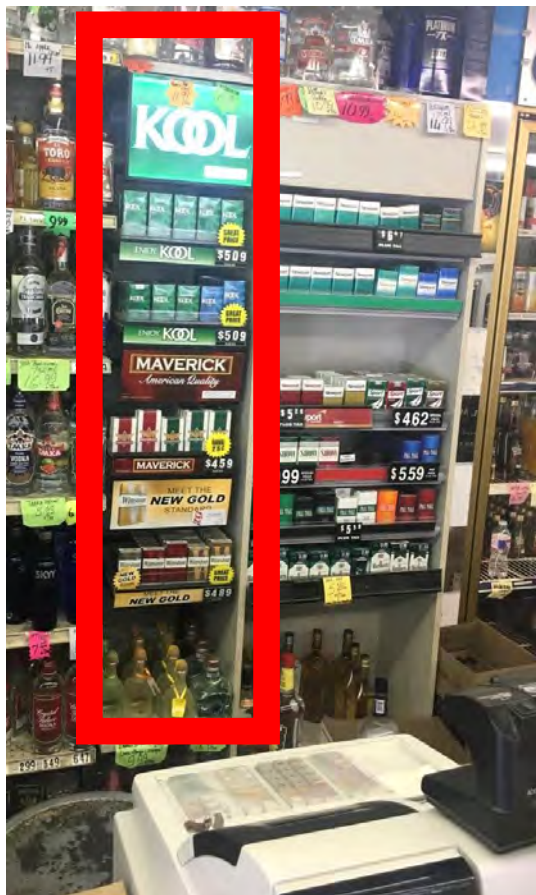


Ridley's Family Market  
705 E Hwy 30  
Buhl, ID 83316



Campos Fast & Easy  
925 S. Main St  
Payette, ID 83661





K&P Discount Liquor  
5608 S Lamar St  
Dallas, TX 75215

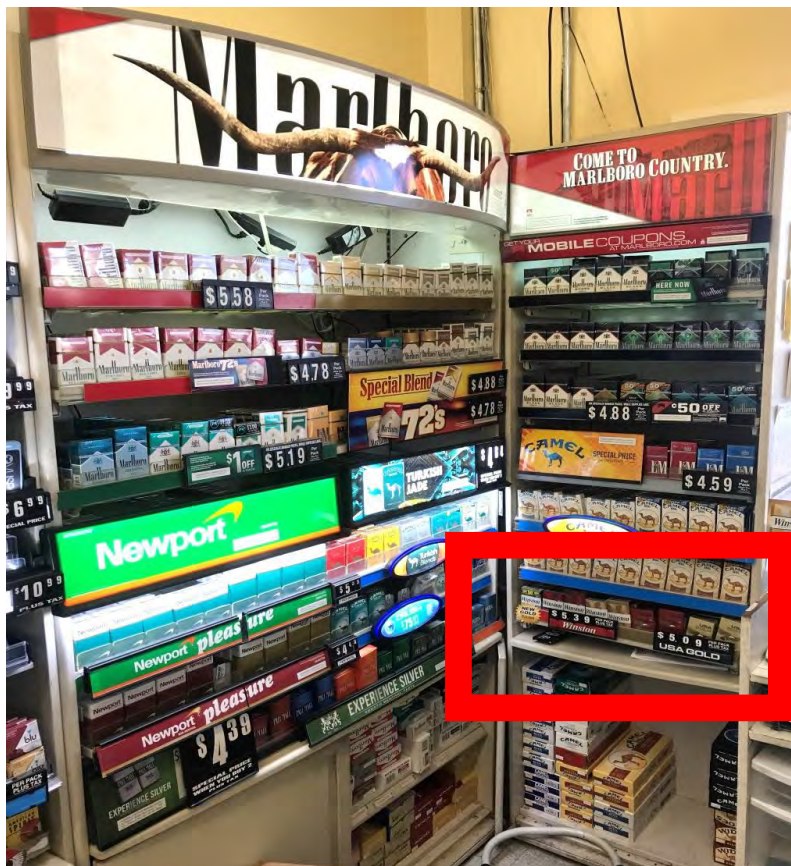


Landpark Gas  
4000 S. Landpark Dr.  
Sacramento, CA 95822

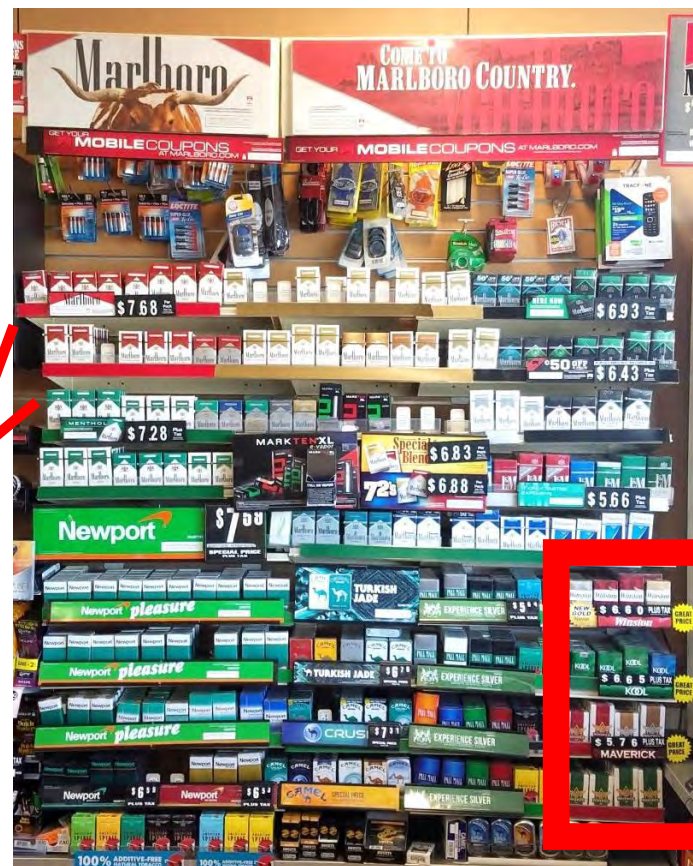


Ridley's Family Market  
430 E Main St  
Middleton, ID 83644

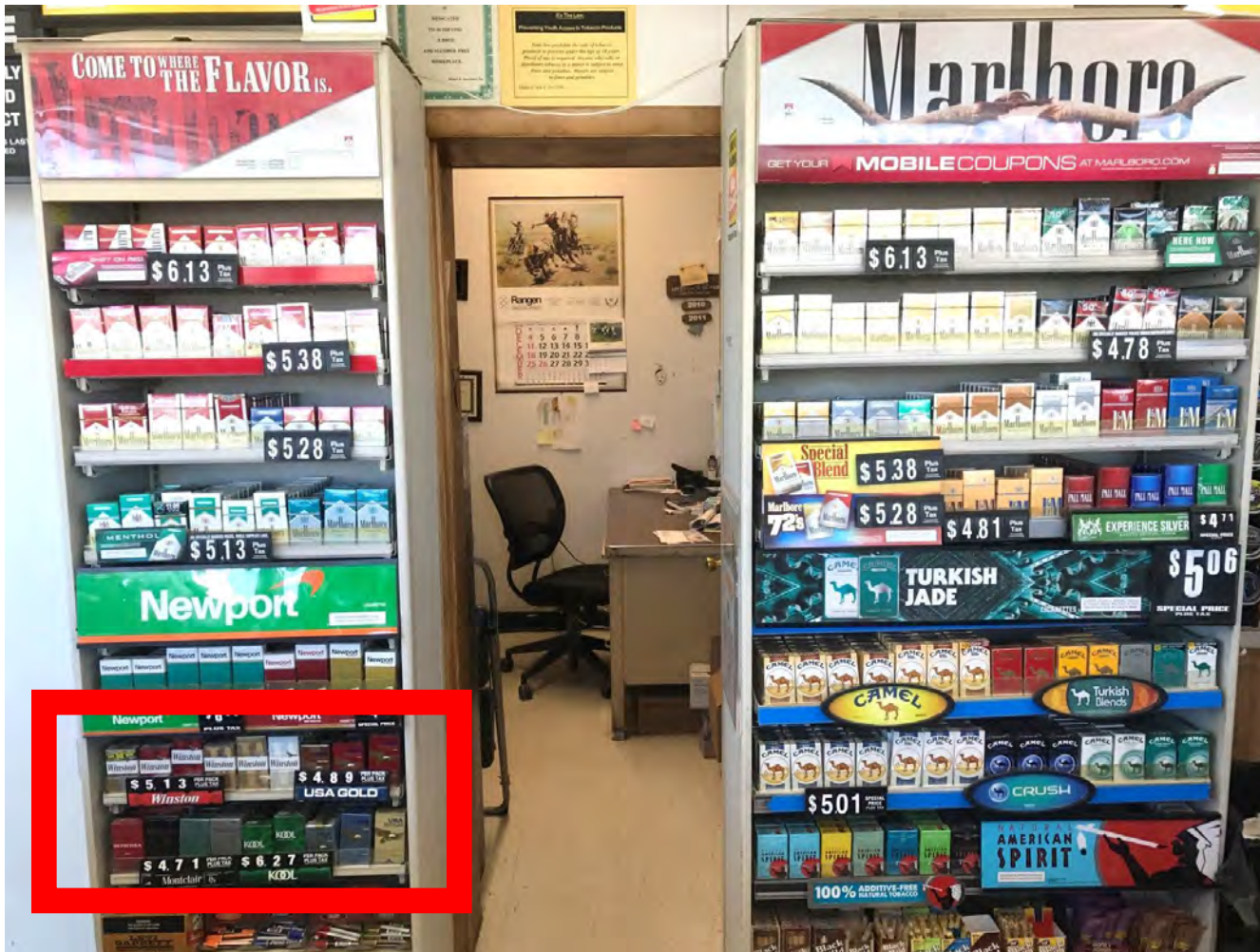




Oasis Stop 'N Go #06  
102 Clear Lake Rd  
Buhl, ID 83316



7- Eleven #35513  
5815 Greenbelt Rd.  
Greenbelt, MD 20770



Corner Mart  
651 Broadway S  
Buhl, ID 82216

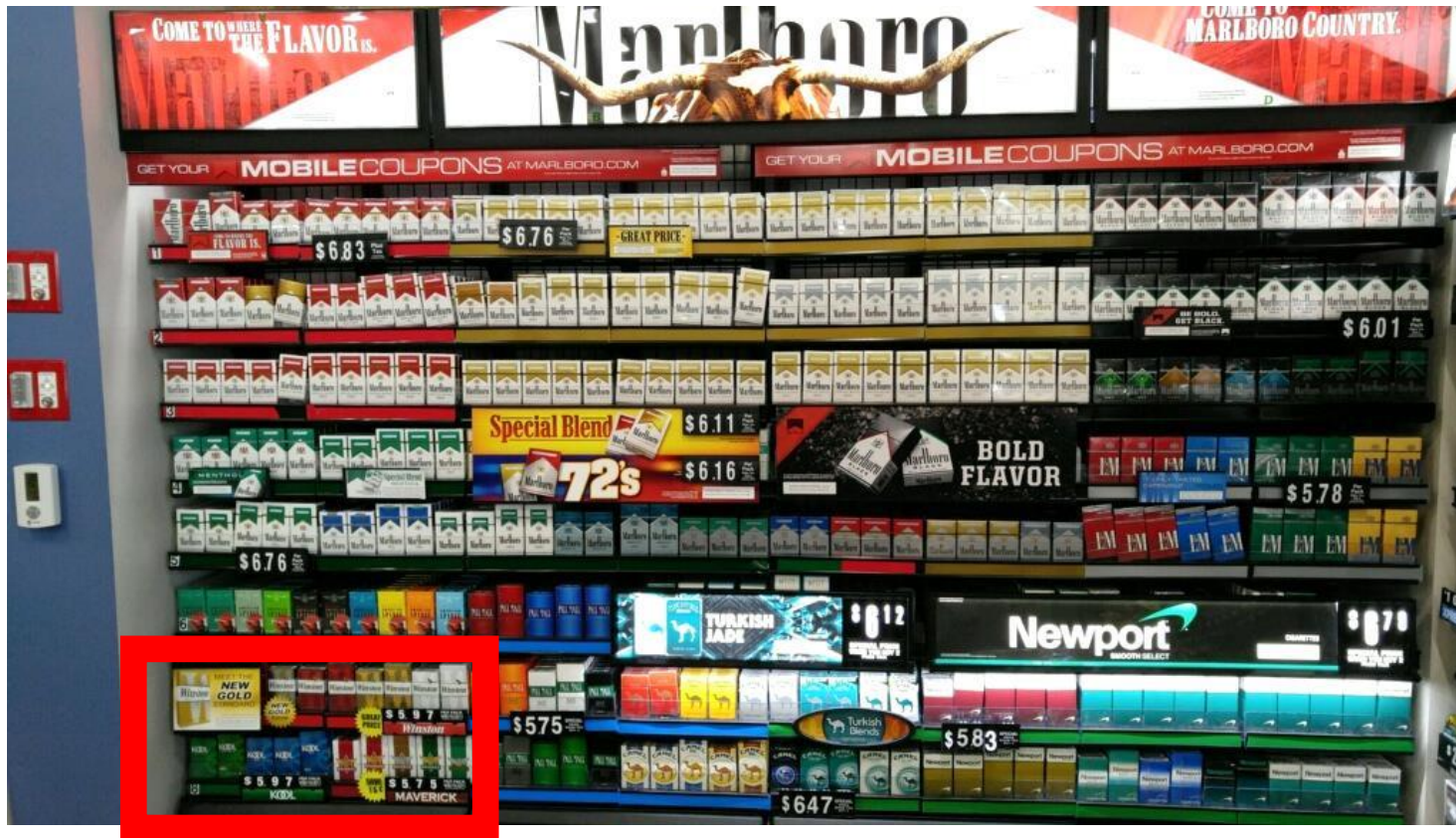




Discount Tobacco House  
6730 Pines RD, Suite 206  
Shreveport, LA 71129

# **Single 3 Wide or 5 Wide Card**





Forwards  
309 Lake St  
Tawas, MI 48763



Wagner Shell  
4611 Stewart Ave  
Wausau, WI 54401





Speedway  
106 S. Huron  
Kawkawlin, MI 48361

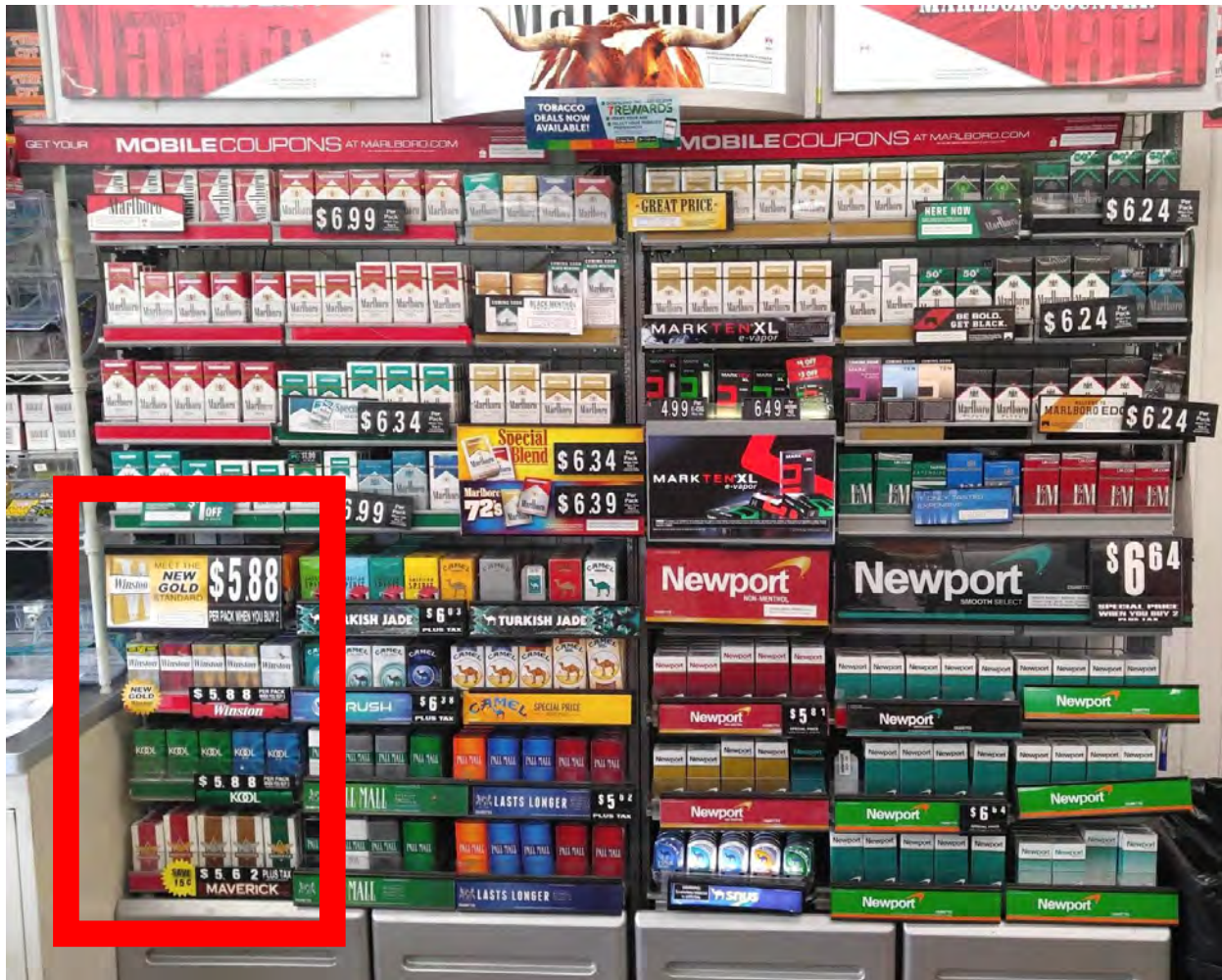


Shell of Batavia  
108 N. Batavia Rd.  
Batavia, IL 60510





Juneau 26  
470 N Main St  
Juneau, WI 53039

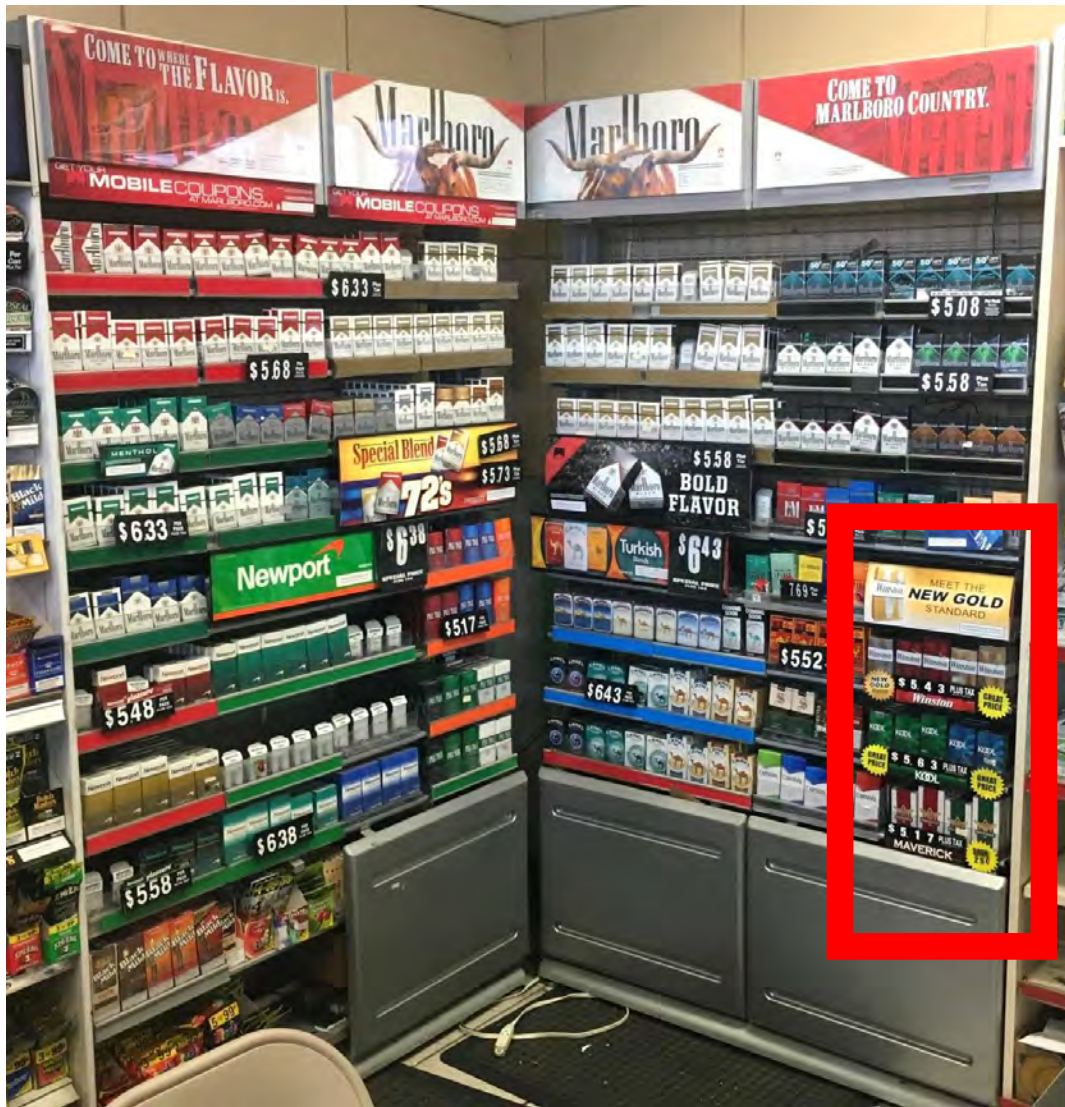


7-Eleven  
801 N. Henry  
Bay City, MI 48707

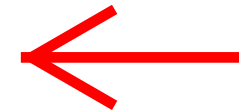




Cigarette City  
719 Ace Memorial Drive  
Hockessin, DE 19707



Carrier Stop  
115 N Carrier  
Grand Prairie, TX 75050





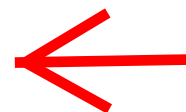
**Double 3 Wide or 5 Wide Card**



Zack's Deli  
73-1 Wilson Avenue  
Manalapan, NJ 07726



C&E Market  
6975 W. Division  
Cadillac, MI 49601







Orchard Fuel Shell  
4100 Orchard Lake Rd  
Orchard Lake, MI 48323



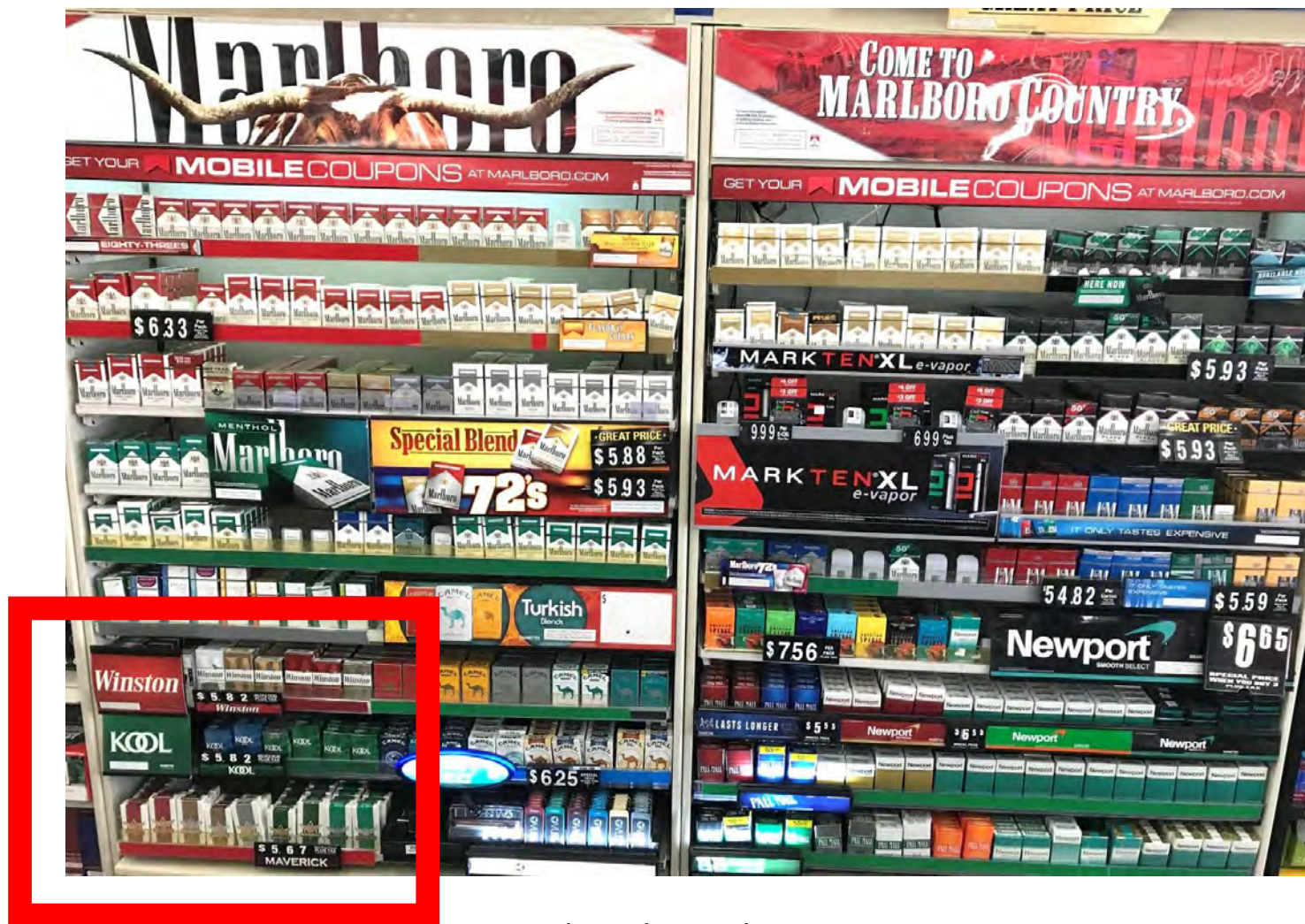
Stop N Shop #101  
4142 Monroe St.  
Toledo, OH 43606





411 Discount Tobacco Mart  
2729 Hwy 411 S  
Maryville, TN 37801





Admiral Petroleum  
1377 N. Mitchell  
Cadillac, MI 49601

# **Triple 3 Wide or 5 Wide Card**



Speedway #8709  
4950 Garfield Rd  
Auburn, MI 48611





Remington Oil  
4805 W Stewart Ave  
Wausau, WI 54401



Quick Chek #86  
868 Broadway  
West Long Branch, NJ 07764



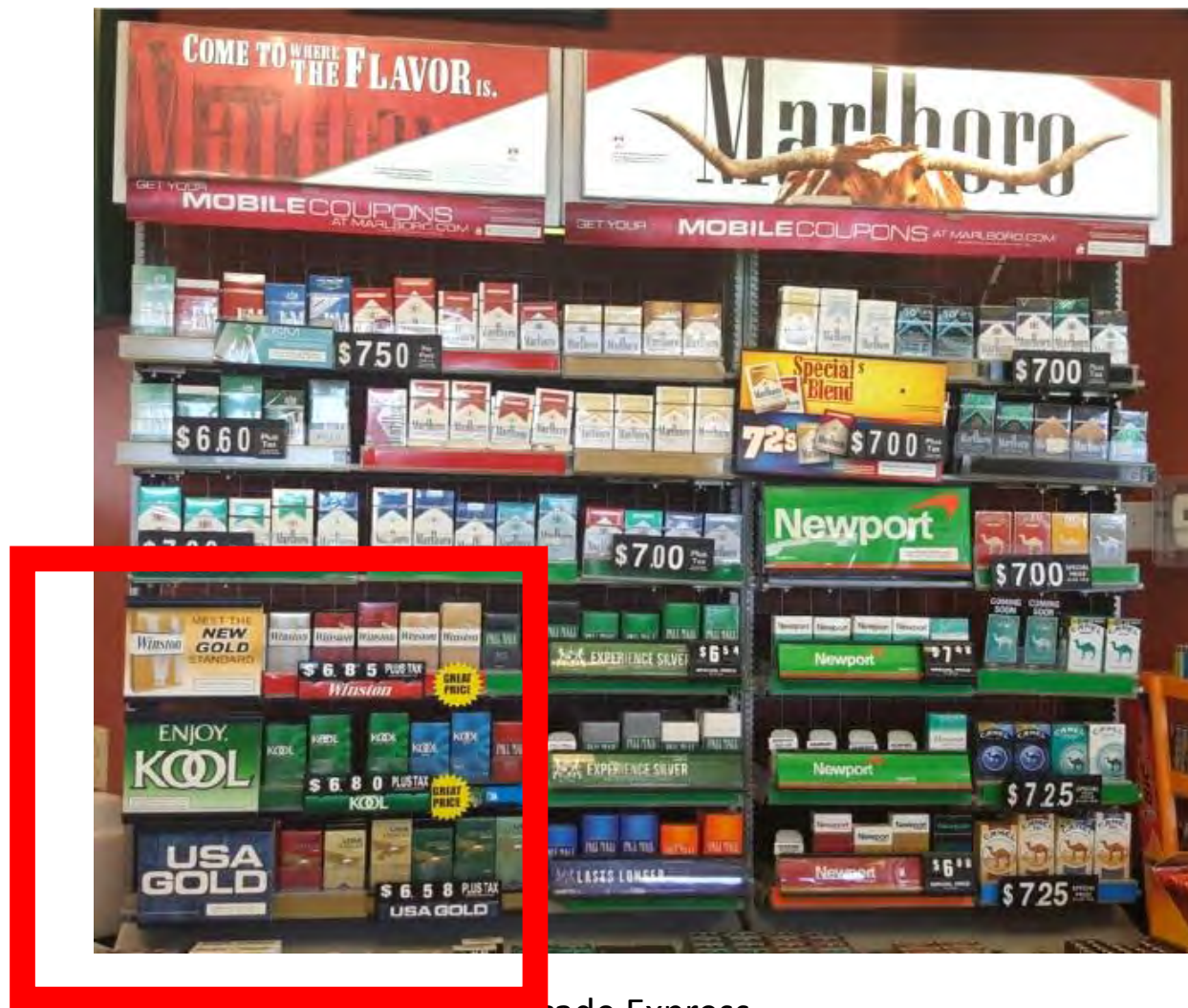


Tobacco World Plus  
1042 Morrell Avenue  
Connellsville, PA 15425





R Store #31  
207 Central Bridge St  
Wausau, WI 54401



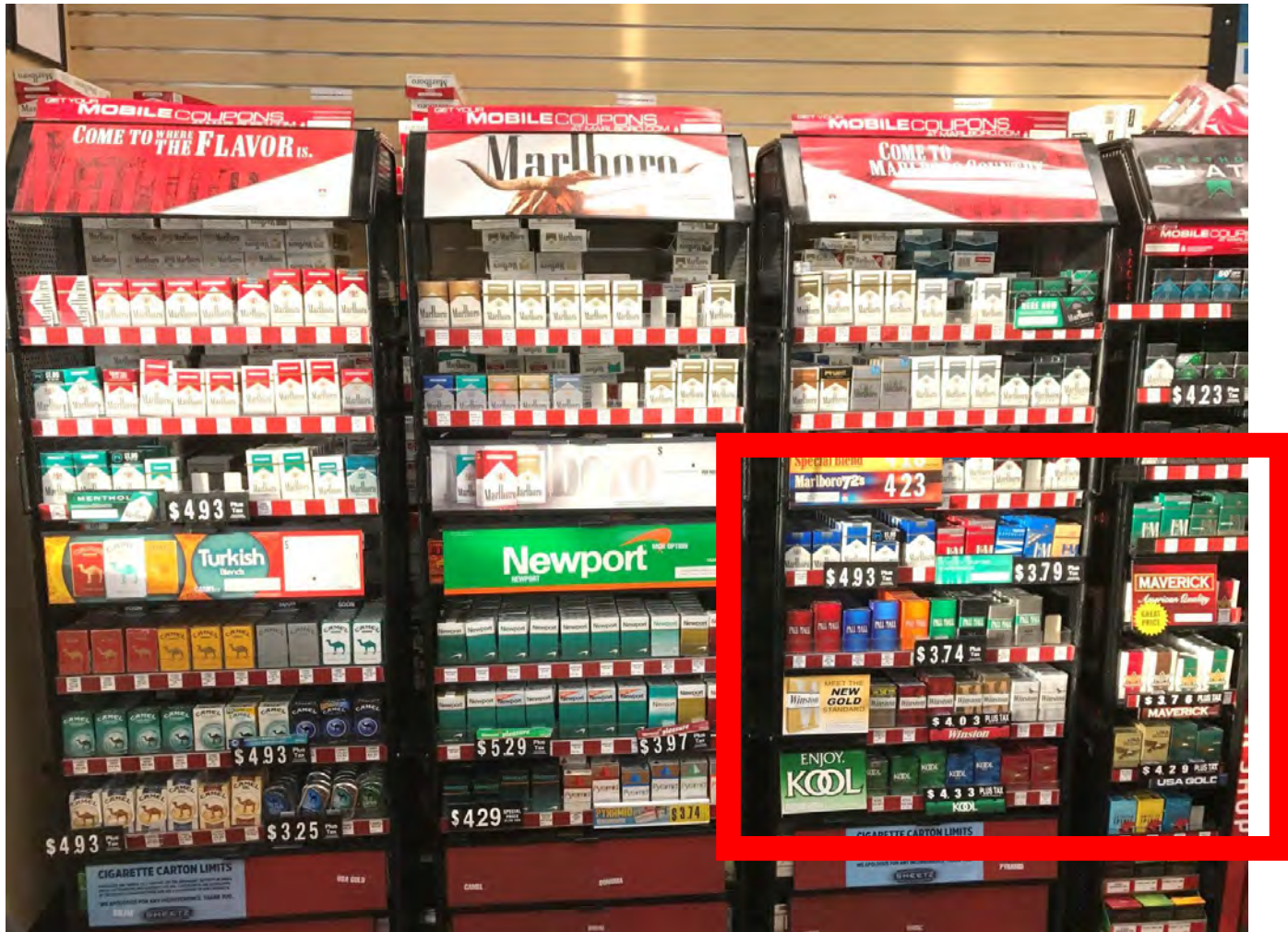
Cascade Express  
500 South Cascade Street  
New Castle, PA 16101





Star Shell  
925 N Beltline Rd  
Grand Prairie, TX 75050

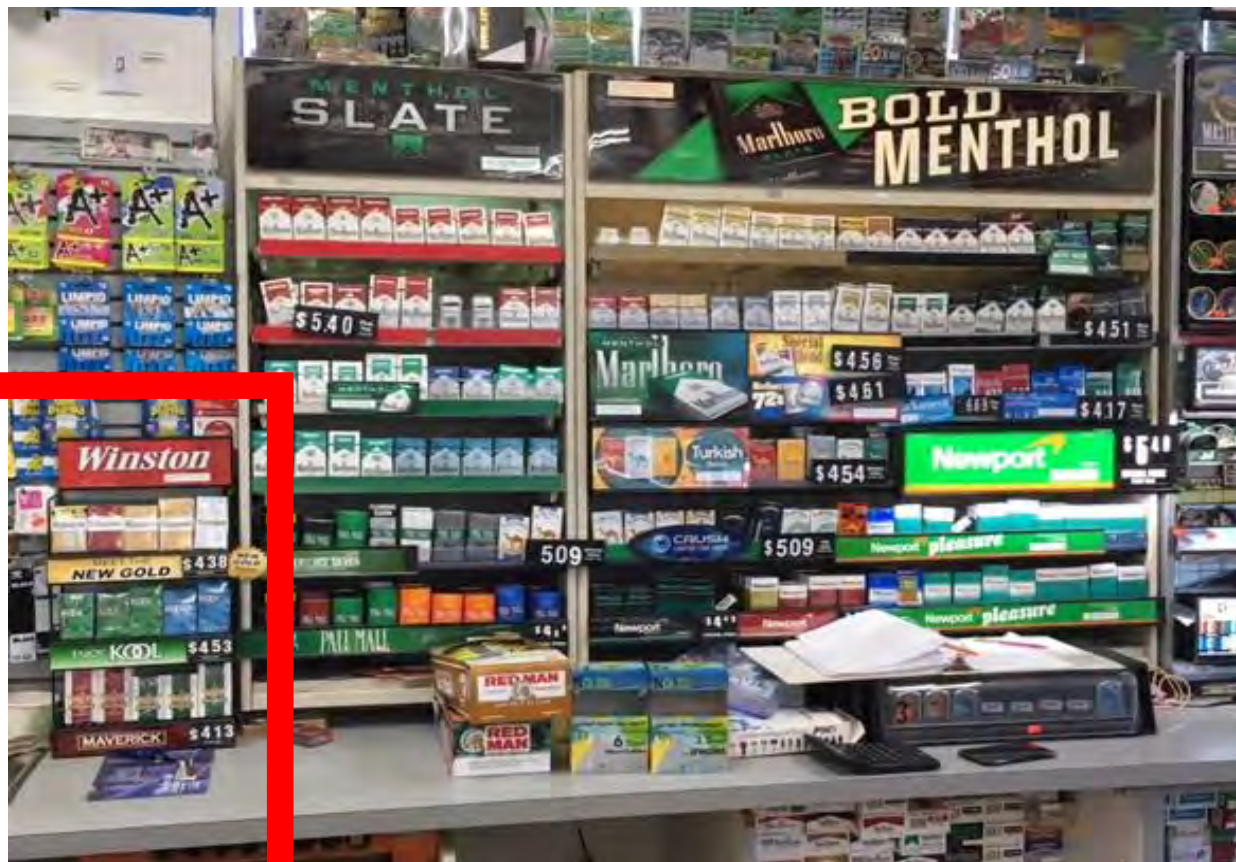




Sheetz #590  
1175 Harrisonville Road  
Harrisonville, VA 22554

# Counter Display





Shell Food Mart  
2700 Buford Hwy, Suite A  
Duluth, GA 30096



Schofield Ave Shell  
3001 Schofield Ave  
Schofield, WI 54476





Marathon Gas Station  
931 E. Roosevelt Rd  
Lombard, IL 60148





Rebel Food Store  
2850 Center Ave  
Essexville, MI 48732





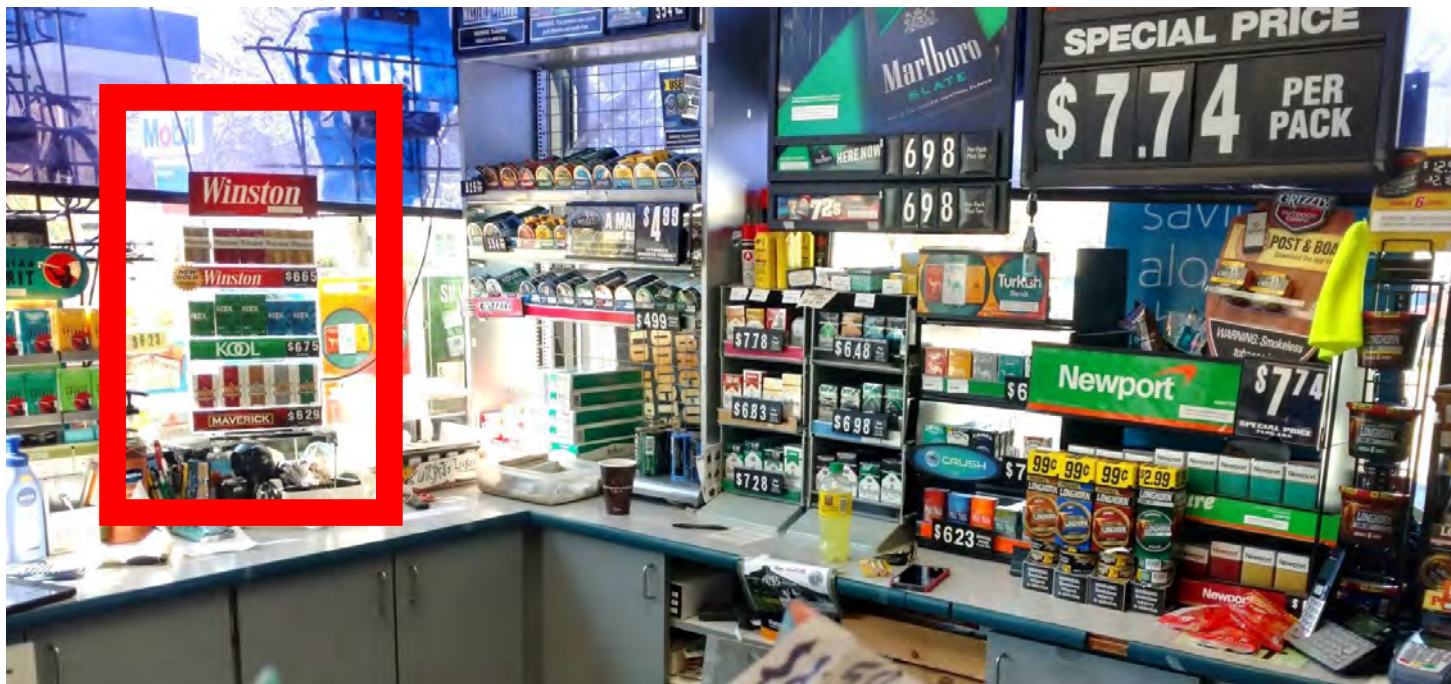
Shell Mart  
37500 12 Mile Rd  
Farmington Hills, MI 48331



TIWA 66  
I-25 & Tramway  
Albuquerque, NM 87184



# Kiosk Display

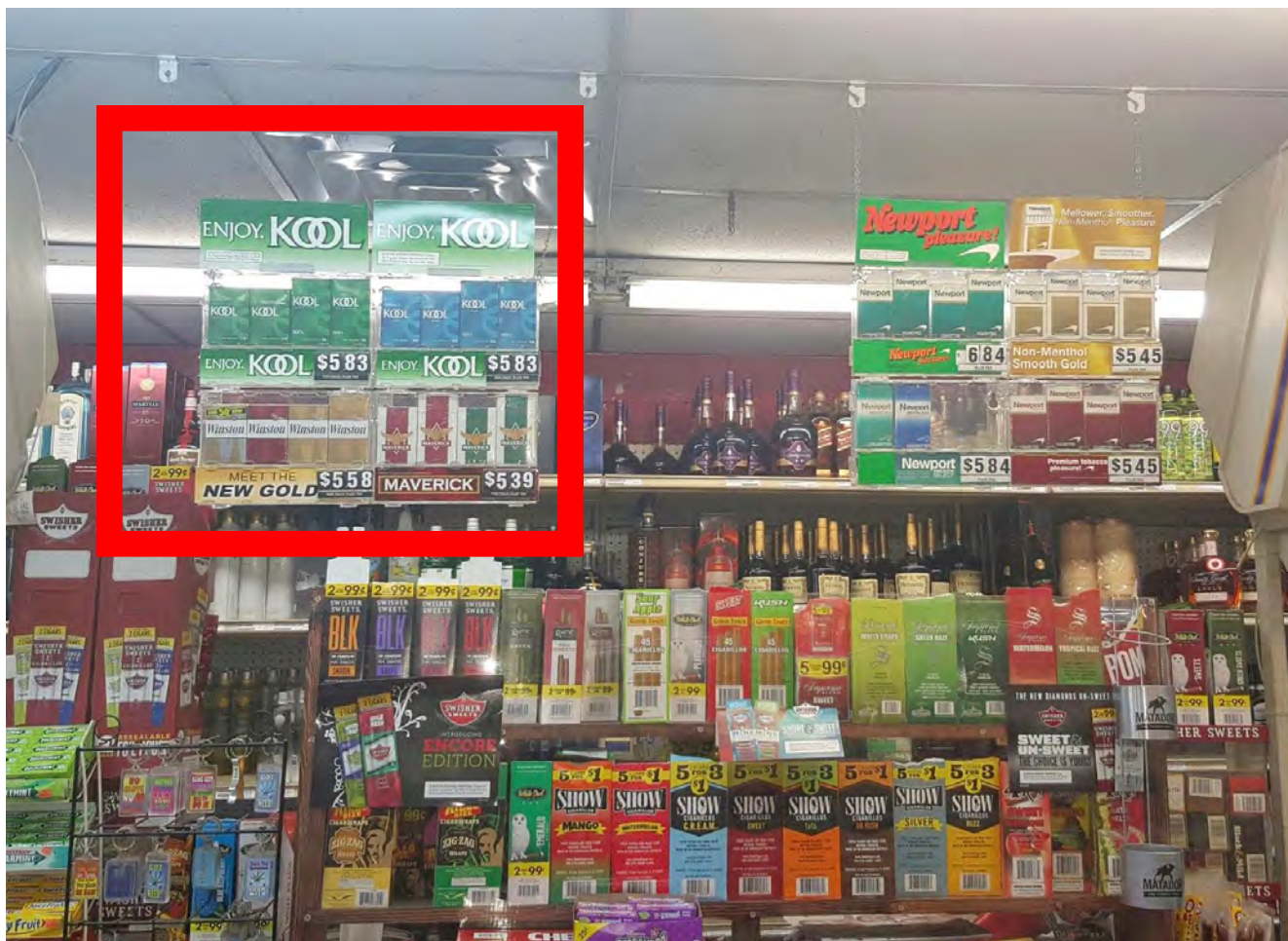


Fast Fuel Mart  
802 E Wausau Ave  
Wausau, WI 54401





Spring Butterfield Shell  
301 W. Butterfield Rd  
Elmhurst, IL 60126



Monroe Carry Out  
2839 Monroe St.  
Toledo, OH 43606





Lennon Quick Stop  
11941 E. Corunna Rd  
Lennon, MI 48849