

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

_____)	
THOMAS GEANACOPOULOS, On Behalf of)	
Himself and All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 98-6002-BLS1
)	
)	
PHILIP MORRIS USA INC.,)	
)	
Defendant.)	
_____)	

STIPULATION AND AGREEMENT OF SETTLEMENT

I. PREAMBLE

WHEREAS, Plaintiff Thomas Geanacopoulos and Former Plaintiff Lori Aspinall (“Plaintiffs”) commenced this class action against Philip Morris USA, Inc. (formerly known as Philip Morris, Inc.) (“Philip Morris” or “Defendant”) on November 25, 1998; and

WHEREAS, Plaintiffs alleged that by using the words “Lights” and “Lowered Tar and Nicotine” on packages of Marlboro Lights, Defendant falsely represented that Marlboro Lights were less harmful and that they delivered lower tar and nicotine in comparison to regular Marlboro cigarettes, when in fact Marlboro Lights do not deliver significantly lower tar and nicotine than regular Marlboro cigarettes when actually smoked and were no less harmful than regular Marlboro cigarettes; and

WHEREAS, Plaintiffs alleged that this conduct was unfair and deceptive in violation of Chapter 93A of the Massachusetts' consumer protection law, M.G.L. c. 93A, §§2 and 9; and

WHEREAS, Defendant denied Plaintiffs' allegations, including denying that its use of the terms "Lights" and "Lowered Tar and Nicotine" were misleading, denying that its conduct was unfair and deceptive under M.G.L. c. 93A, and denying that the lawsuit was appropriate for class action treatment; and

WHEREAS, Plaintiffs sought recovery of economic damages related to the purchase of Marlboro Lights cigarettes, together with statutory damages and disgorgement of the profits earned by Defendant from its sales of Marlboro Lights cigarettes to Class members during the Class Period, and have not pursued any other claims on behalf of any class member for personal injury, addiction, or any other health-related damage resulting from smoking or otherwise; and

WHEREAS, by Memorandum and Order dated October 3, 2001, the Court certified a Class under M.G.L. c. 93A, §9, consisting of purchasers of Marlboro Lights cigarettes in Massachusetts during the four years preceding the filing of the Plaintiffs' original complaint; and

WHEREAS, on August 13, 2004, the Supreme Judicial Court affirmed the order of the Court that had certified a Class consisting of purchasers of Marlboro Lights cigarettes in Massachusetts during the four years preceding the filing of the Plaintiffs' original complaint. *Aspinall v. Philip Morris Cos.*, 442 Mass. 381 (2004); and

WHEREAS, by Memorandum and Order dated December 6, 2005, the Court modified the class definition to limit the Class to all persons who, during any portion of the time period from November 25, 1994 to November 25, 1998, were (a) residents of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or (b) residents of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts *Aspinall v. Philip Morris Cos., Inc.*, 2005 Mass. Super. LEXIS 629, 20 Mass. L. Rep. 300 (Mass. Super. Ct. Dec. 6, 2005) (Lauriat, J.); and

WHEREAS, the Court has previously approved a form and procedure for notifying the Class of the pendency of this class action and such notice of the pendency of this class action was sent to the Class via publication and e-mail in October, 2009; and

WHEREAS, on October 4, 2013, Former Plaintiff Lori Aspinall withdrew as a class representative, and voluntarily dismissed the claims she had asserted on behalf of the Class without prejudice to her individual claims; and

WHEREAS, between October 19, 2015 and November 23, 2015, the Court held a bench trial on Plaintiffs' Chapter 93A claims against Philip Morris; and

WHEREAS, on February 19, 2016, the Court denied Philip Morris' motion to decertify the Class after trial; and

WHEREAS, on February 19, 2016, the Court issued its Findings of Fact and Conclusions of Law after trial, which found that Philip Morris had engaged in willful and knowing violations of Chapter 93A, *Geanacopoulos v. Philip Morris USA, Inc.*, 2016 Mass. Super. LEXIS 11 (Mass. Super. Ct. Feb. 19, 2016); and

WHEREAS, the Court further found that Plaintiff and the Class failed to establish with reasonable specificity the dollar amount of damages suffered by the Class, and awarded the Class statutory damages in the amount of \$25 per class member, or a total of \$4,942,500, plus prejudgment interest; and

WHEREAS, as of the date of this Settlement Agreement, the prejudgment interest on the statutory damage award totaled \$10,331,315; and

WHEREAS, the Court further found that as a prevailing party, Plaintiff was entitled to an award of attorneys' fees and costs incurred in connection with this action pursuant to M.G.L. c. 93A, §9; and

WHEREAS, on or before March 21, 2016, the law firms of Shapiro Haber & Urmy LLP, Brody Hardoon Perkins & Kesten, LLP and Hagens Berman Sobol Shapiro LLP, served separate motions seeking attorneys' fees and expenses in the total amount of \$19,628,772.52, consisting of \$18,640,431.50 in attorneys' fees and \$988,341.02 in expenses; and

WHEREAS, to avoid the time and expense associated with further litigation and appeal, and without any admission of liability by Defendant, the Parties desire to fully resolve this matter; and

WHEREAS after Plaintiff's Counsel served their fee applications on Philip Morris, the Parties engaged in arms' length negotiations and reached the resolution set forth herein;

NOW THEREFORE, it is hereby stipulated and agreed by and between defendant Philip Morris, Plaintiff Thomas Geanacopoulos, individually and on behalf of the Class, Shapiro Haber and Urmy LLP, Hagens Berman Sobol Shapiro, LLP, and Brody Hardoon Perkins & Kesten, LLP, that in consideration of the agreements, promises and covenants set forth herein, and subject to the approval of the Court pursuant to G.L. c. 93A, §9, this Action shall be fully and finally resolved on the following terms and conditions:

II. DEFINITIONS

1. As used in this Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

- a. "Action" means the civil action entitled *Geanacopoulos v. Philip Morris USA, Inc.*, Civ. Action No. 98-6002-BLS1 (Mass. Super. Ct.)
- b. "Claim Form" means the claim form attached hereto as Exhibit 1-C.
- c. "Class" means all persons who, during any portion of the period from November 25, 1994 to November 25, 1998, were (a) residents of

Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or
(b) residents of Connecticut, Maine, New Hampshire, New York, Rhode
Island or Vermont who regularly purchased Marlboro Lights cigarettes in
Massachusetts.

- d. "Class Counsel" means the law firm Shapiro Haber & Urmy LLP.
- e. "Class Period" means the period from November 25, 1994 to November 25, 1998, inclusive.
- f. "Court" means the Superior Court of the Commonwealth of Massachusetts for Suffolk County.
- g. "Class Recovery" means the amount that Philip Morris has agreed to pay to Plaintiff and the Class pursuant to paragraph 2 below.
- h. "Class Recovery Escrow Agreement" means the Class Recovery Escrow Agreement attached hereto as Exhibit 3.
- i. "Defendant" means Philip Morris.
- j. "Defense Counsel" means Latham & Watkins LLP.
- k. "Effective Date" means the date on which the Final Order and Judgment becomes Final.
- l. "Escrow Agent" means the escrow agent selected by Class Counsel and Defense Counsel to hold and then disburse the Class Recovery and Fee Award pursuant to the terms of the Escrow Agreements.
- m. "Escrow Agreements" means the Class Recovery Escrow Agreement and the Fee Award Escrow Agreement, pursuant to which the Escrow Agent will hold and then disburse the Class Recovery and Fee Award.

- n. “Fee Application” means the application to the Court by Plaintiff’s Counsel for an award of attorneys’ fees and expenses.
- o. “Fee Award” means the amount awarded by the Court to Plaintiff’s Counsel for attorneys’ fees and expenses, to be paid by Philip Morris pursuant to paragraph 6 below.
- p. “Fee Award Escrow Agreement” means the Fee Award Escrow Agreement attached hereto as Exhibit 4.
- q. “Final” with respect to a judgment or order means the judgment or order as entered on the docket by the Court in this Action, which has not been reversed, stayed, modified, or amended, and as to which (1) the time to appeal under the Massachusetts Rules of Civil Procedure has expired and no appeal, further appeal or motion to extend the time for filing an appeal has been timely filed, or (2) any appeal has been resolved by the highest court to which it was appealed upholding or affirming the judgment.
- r. “Final Approval Hearing” means the hearing at which the Court shall: (1) determine whether to grant final approval to this Settlement Agreement; (2) consider any timely objections to this Settlement Agreement and all responses to objections by the Parties; and (3) rule on the Fee Application and Service Awards.
- s. “Final Order and Judgment” means the Final Order and Judgment substantially in the form attached hereto as Exhibit 2, in which the Court grants final approval of this Agreement and authorizes the entry of a final judgment and dismissal of the Action.

- t. “Notice” means the notice of class action settlement attached hereto as Exhibit 1-A.
- u. “Plaintiff” means Plaintiff Thomas Geanacopoulos.
- v. “Plaintiffs” mean Plaintiff Thomas Geanacopoulos and former Plaintiff Lori Aspinall.
- w. “Plaintiff’s Counsel” means the law firms Shapiro Haber & Urmy LLP, Brody Hardoon Perkins & Kesten, LLP and Hagens Berman Sobol Shapiro LLP.
- x. “Philip Morris” means Defendant Philip Morris USA, Inc.
- y. “Parties” means Plaintiff Thomas Geanacopoulos, individually and as representative of the Class and Defendant Philip Morris.
- z. “Party” means either Plaintiff Thomas Geanacopoulos, individually and as representative of the Class or Defendant Philip Morris.
- aa. “Preliminary Approval Order” means the order, substantially in the form of Exhibit 1 hereto, in which the Court grants its preliminary approval of this Agreement, and authorizes dissemination of notice to the Class.
- bb. “Released Claims” means and is limited to any claims actually asserted in the Action by Plaintiffs on behalf of the Class for economic damages related to the purchase of Marlboro Lights cigarettes, including statutory damages and disgorgement of profits earned by Philip Morris as the result of such purchases. Released Claims do not include any other claim by Plaintiffs or any member of the Class, whether for personal injury, addiction, or any other health-related damage resulting from smoking, or otherwise, regardless of the theory of liability.

- cc. “Released Parties” means Defendant, Defendant’s present and former subsidiaries, parents, affiliates, successors, and predecessors, and each of their present, former, or future officers, directors, employees, representatives, agents, or principals.
- dd. “Releasing Parties” means Plaintiff and each Class Member.
- ee. “Service Awards” means service awards of up to \$25,000 to be paid out of the Class Recovery to each of the Plaintiffs, as may be approved by the Court.
- ff. “Settlement Administrator” means the settlement administrator selected by Class Counsel to provide notice to the Class and distribute the Class Recovery to the Class.
- gg. “Settlement Agreement,” “Settlement” or “Agreement” means this Settlement Agreement, including attached Exhibits.
- hh. “Settlement Website” means the website to be established by the Settlement Administrator pursuant to paragraph 19 below.
- ii. “Summary Notice” means the summary notice of class action settlement attached hereto as Exhibit 1-B.

III. CLASS RECOVERY

2. In full satisfaction of any claims that were asserted in this Action by the Plaintiffs and the Class, Philip Morris will pay to Plaintiffs and the Class the sum of \$15,273,815, which amount shall constitute the Class Recovery. That sum is comprised of the amount awarded by the Court as statutory damages (\$4,942,500), plus prejudgment interest from November 25, 1998 until the date of this Agreement, April 26, 2016, at the statutory simple interest rate of 12% per annum (\$10,331,315).

3. Philip Morris will pay the Class Recovery to the Escrow Agent no later than fourteen (14) days after the date on which the Court enters the Preliminary Approval Order.

4. The Escrow Agent shall hold and disburse the Class Recovery in accordance with the Class Recovery Escrow Agreement.

5. No later than seven (7) days after the Effective Date, Class Counsel and Defense Counsel shall jointly notify the Escrow Agent in writing that the Final Order and Judgment has become Final. Upon receiving such notification, the Escrow Agent shall distribute the Class Recovery, at the sole direction of Class Counsel, who shall cause it to be distributed in the manner described in paragraphs 22-26 below.

IV. ATTORNEYS' FEES AND EXPENSES

6. Subject to the approval of the Court, Philip Morris agrees to pay to Plaintiff's Counsel the aggregate sum of \$16,500,000 in full satisfaction of all claims against Philip Morris for attorneys' fees and expenses for any legal services rendered in this Action. Any Fee Award allowed by the Court will be separately paid by Philip Morris in addition to the Class Recovery.

7. Philip Morris will not oppose a Fee Application seeking attorneys' fees and expenses equal to or less than \$16,500,000, and will not appeal from a Fee Award by the Court awarding attorneys' fees and expenses to Plaintiff's Counsel, equal to or less than \$16,500,000.

8. Philip Morris agrees that it will pay the sum of \$16,500,000 to the Escrow Agent no later than fourteen (14) days following the date of the Court's Preliminary Approval Order. The Escrow Agent shall hold and disburse those funds pursuant to the terms of the Fee Award Escrow Agreement.

9. No later than seven (7) days after the Fee Award becomes Final, Class Counsel and Defense Counsel shall jointly notify the Escrow Agent in writing that the Fee Award has

become Final, and shall authorize the Escrow Agent to disburse the Fee Award in the manner required by the Fee Award Escrow Agreement and the Court's Final Order and Judgment.

10. Nothing in this Agreement shall preclude Plaintiff's Counsel from appealing any Fee Award by the Court in a total amount less than \$16,500,000, provided, however, that nothing in this Agreement shall require Philip Morris to pay attorneys' fees or expenses totaling more than that amount.

11. An appeal of the Fee Award made by the Court shall not operate to terminate or cancel any other term of this Settlement Agreement, which will remain in effect notwithstanding the disposition of such appeal.

V. NOTICE

12. No later than seven (7) days after the entry of the Preliminary Approval Order, Philip Morris shall provide the Settlement Administrator (in electronic excel format) with the names and the most recent mailing addresses and email addresses of all smokers in its active Adult Smoker Database who (a) have ever identified Marlboro Lights or Marlboro Gold Pack as their preferred brand, and (b) currently have or have ever had a Massachusetts address in the database, but excluding any members of the database who have specifically requested not to receive further communications from Philip Morris (the "ASD List"). The ASD List will be marked "Highly Confidential" and the Settlement Administrator shall agree to be bound by the terms of the Protective Order entered in this Action on March 7, 2002, including by way of executing the Confidentiality Acknowledgement attached as Exhibit A to that Order.

13. No later than thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Notice substantially in the form attached hereto as Exhibit 1-A to potential class members as follows:

- a. For each person on the ASD List for whom an email address is provided, the Settlement Administrator shall first disseminate the Notice by email.
- b. For each person on the ASD List for whom only a mailing address is provided, the Settlement Administrator shall disseminate the Notice by first class mail.

14. If an email Notice sent to any Class member is undeliverable or unopened for a period of seven (7) days after it was sent, and if a mailing address is also provided for the same person on the ASD List, the Settlement Administrator shall re-send notice to that Class member by first class mail, within seven (7) days after being notified that the email notice was undeliverable or unopened.

15. If a mailed Notice is returned as undeliverable, and a forwarding address is provided by the U.S. Postal Service, the Settlement Administrator shall, within seven (7) days after being notified that the mailed Notice was undeliverable, re-mail the Notice to such forwarding address.

16. Prior to mailing any Notice to be disseminated by mail, the Settlement Administrator shall check to determine whether a more current address for that person is available through the National Change of Address (“NCOA”) database, and if a more recent address is obtained, the Settlement Administrator shall mail the Notice to such address.

17. No later than thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall provide internet notice primarily targeted to residents of Massachusetts, Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont who are age 35 and older and have shown an interest in Marlboro brand cigarettes or in cigarettes or smoking.

18. No later than thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Summary Notice substantially in the form attached hereto as Exhibit 1-B to be published once a week for two consecutive weeks in the following newspapers in Massachusetts and the surrounding states:

Boston Globe	Springfield Union News and Republican
Boston Herald	Worcester Telegram & Gazette
Boston Metro	El Mundo
The Berkshire Eagle	Vocero Hispano
Cape Cod Times	Burlington Free Press (VT)
Fitchburg Sentinel & Enterprise	Hartford Courant (CT)
Lawrence Eagle-Tribune	The New York Times (NY)
Lowell Sun	Portland Press Herald (ME)
The New Bedford Standard Times	The Providence Journal (RI)
The Quincy Patriot Ledger	The Manchester Union Leader (NH)

19. Prior to the earliest date on which notice is given to pursuant to paragraphs 13, 17 and 18 above, the Settlement Administrator shall establish a Settlement Website which will contain, *inter alia*, the Settlement Agreement and Exhibits; the Motion for Preliminary Approval of the Settlement and all documents filed in support thereof; the Preliminary Approval Order; the Notice; the Claim Form; and the Court's Findings of Fact and Conclusions of Law After Trial. The Settlement Website shall remain open and accessible until one-hundred and twenty (120) days after the Effective Date.

20. No later than ten (10) days before the Final Approval Hearing, the Settlement Administrator will provide Class Counsel and Defense Counsel with an affidavit or declaration attesting that the Notice and Summary Notice have been disseminated in accordance with the Preliminary Approval Order. Class Counsel shall file the affidavit or declaration with the Court no later than seven (7) days prior to the Final Approval Hearing.

21. Other than as set forth herein, Philip Morris will play no part in selection of the Settlement Administrator or in the notice process and will have no responsibility for payment of any portion of the costs of notice.

VI. DISTRIBUTION

22. The distribution of the Class Recovery to the Class members shall be made pursuant to a plan of distribution proposed by Plaintiff and approved by the Court.

23. To be entitled to a share of the Class Recovery a Class member must submit a valid Claim Form substantially in the form attached hereto as Exhibit 1-C no later than the claim deadline established in the Preliminary Approval Order, or any later date set by the Court.

24. A copy of the Claim Form shall be disseminated with the Notice. In addition, the Settlement Website shall contain a Claim Form which may be downloaded from the Settlement Website or completed and submitted via the Settlement Website. A Class member may submit the Claim Form on or prior to the deadline for submitting Claim Form either (a) electronically via the Settlement Website, (b) by email to the email address listed in the Claim Form or (c) by mailing (via the United States Postal Service or private mail carrier) a paper copy to the mailing address listed in the Claim Form. The deadline for submitting a Claim Form shall be no later than sixty (60) days after the Final Approval Hearing, subject to extension by the Court.

25. The Class Recovery shall be distributed by the Settlement Administrator, at the direction of Class Counsel, and subject to the approval of the Court, as follows:

- a. First, to pay for taxes, tax preparation fees, bank fees and accounting fees incurred by the qualified settlement fund into which the Class Recovery will be deposited;
- b. Second, to pay for the costs of notice and distribution;

- c. Third, to pay for Service Awards not to exceed \$25,000 to each of the Plaintiffs;
- d. Fourth, to pay Class members who have properly and timely submitted Claim Forms in the manner directed by the Court their individual shares of the net proceeds of the Class Recovery. Each such Class member will be entitled to receive his or her pro rata share of the net proceeds of the Class Recovery which will be divided equally among Class members who have submitted valid and timely Claim Forms, up to a maximum of \$225 per Class member.

26. Any portion of the Class Recovery that shall remain undistributed to Class members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e).

27. No later than thirty (30) days after the entry of the Preliminary Approval Order, Class Counsel shall give notice to the Massachusetts IOLTA Committee pursuant to Mass. R. Civ. P. 23(e)(3), for the limited purpose of allowing the committee to be heard on whether it ought to be a recipient of any or all residual funds.

28. After the Court issues the Final Order and Judgment, under no circumstances shall any portion of the Class Recovery revert to Philip Morris, or any of the Released Parties.

29. Other than as set forth herein, Philip Morris will play no part in the distribution process and will have no responsibility for payment of any portion of the costs of distribution.

VII. RELEASE

30. On the Effective Date, the Releasing Parties shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided

hereunder. No other action, demand, suit or other claim may be pursued by the Releasing Parties against the Released Parties with respect to the Released Claims.

31. On the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all of the Released Claims.

32. The Parties agree that the release is only intended to release the claims for economic damages asserted in the Action, specifically claims for economic loss resulting from the purchase of Marlboro Light cigarettes. Nothing herein, or in the Final Order and Judgment, shall preclude any Class member from pursuing any other claims, including specifically any claims for personal injury, addiction, or any other health-related damage resulting from smoking, regardless of the legal theory asserted.

VIII. COURT APPROVAL OF SETTLEMENT

33. The Parties, Class Counsel and Defense Counsel shall use their respective best efforts to obtain Court approval of this Settlement. The process for obtaining Court approval of this Settlement shall be as follows:

- a. Preliminary Approval. No later than fourteen (14) days after the execution of this Settlement Agreement, Plaintiff shall move the Court for entry of a Preliminary Approval Order substantially in the form of Exhibit 1 attached hereto. That motion will not be opposed by Philip Morris.
- b. Notice. Following entry of the Preliminary Approval Order, Plaintiff shall cause notice to be given to the Class members in the manner directed by the Court in the Preliminary Approval Order.

c. Final Approval. On the date set forth in the Preliminary Approval Order, or on such other date as may be set by the Court, the Court shall conduct a Final Approval Hearing in order to: (1) determine whether to grant final approval to this Settlement Agreement; (2) consider any timely objections to this Settlement and all responses to objections by the Parties; (3) rule on the Fee Application; and (4) rule on the Service Awards. At the Final Approval Hearing, Plaintiff shall ask the Court to give final approval to the Settlement, the Fee Application, and the Service Awards, and to enter a Final Order and Judgment substantially in the form attached hereto as Exhibit 2, which will not be opposed by Philip Morris. The Final Approval Hearing shall be held no earlier than one-hundred and twenty (120) days after the entry of the Preliminary Approval Order.

34. No later than forty-five (45) days before the Final Approval Hearing, Plaintiff shall file with the Court and serve on Defense Counsel his motion for final approval of the Settlement, his Fee Application, and any supporting materials. Plaintiff's memorandum in support of the Settlement and the Fee Application shall also be posted on the Settlement Website.

35. Any Class member wishing to object to the approval of this Settlement, and/or to oppose the Fee Application, shall inform the Court and the Parties in writing of his or her objection by following the procedures and objection deadlines set forth in the Notice. Any Class member who fails to object to the Settlement in the manner described in the Notice shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement or the Fee Application at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or Fee Application by appeal or other

means. All objections must be served upon Class Counsel and Defense Counsel and filed with the Court no later than twenty-four (24) days prior to the Final Approval Hearing. Any Party may file a response to any objection no later than ten (10) days prior to the Final Approval Hearing.

IX. EFFECTIVE DATE, TERMINATION OR MODIFICATION

36. The Settlement shall become effective on the Effective Date.

37. If, for any reason, the Court fails to grant final approval to this Settlement or to enter the Final Order and Judgment, or if the Final Order and Judgment is reversed or rendered void in any material respect as a result of an appeal, then either Party, at its sole discretion, may terminate this Settlement Agreement by providing written notice of that Party's intent to terminate the Settlement to the other Party within fourteen (14) days after such triggering event.

38. If as a condition of preliminary approval or final approval of the Settlement Agreement the Court orders any material modification to the Settlement Agreement that has not been previously agreed to by the Parties, then the Parties, and each of them, shall have the option to terminate the Settlement Agreement if they are not willing to accept any such modification, by providing written notice of the Party's intent to terminate the Settlement to the other Party within fourteen (14) days after such triggering event.

39. Notwithstanding the foregoing, the failure of the Court to approve the Fee Award requested by Plaintiff's Counsel, or any modification of or appeal from the Fee Award, shall not delay the Effective Date, or be a basis for either Party to terminate the Settlement. If the Settlement is terminated by either Party pursuant to the provisions of this Agreement, then the Settlement Agreement shall be null and void and of no force and effect, and all Parties to this Settlement Agreement shall be returned to the status quo ante, and stand in the same position,

without prejudice, as if the Settlement Agreement had neither been entered into nor filed with the Court, with all rights that existed prior to entering the Settlement Agreement being preserved.

X. MISCELLANEOUS PROVISIONS

40. This Agreement shall be binding upon and inure to the benefit of the Parties and the Class members and their respective heirs, trustees, executors, successors and assigns.

41. The Parties, Plaintiff's Counsel and Defense Counsel agree that the terms and conditions of this Settlement Agreement are the result of arms-length negotiations between the Parties and that this Agreement shall not be construed in favor or against any of the Parties by reason of the extent to which any of the Parties, or their counsel, participated in the drafting of this Agreement.

42. This Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

43. Construction and interpretation of the Agreement shall be determined in accordance with the laws of the Commonwealth of Massachusetts, irrespective of the Commonwealth of Massachusetts' choice of law principles.

44. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties, Plaintiff's Counsel and Defense Counsel, in respect of the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties, Plaintiff's Counsel and Defense Counsel, with respect to the settlement of this Action. This Agreement may not be changed,

altered or modified, except in a writing signed by the Parties, Plaintiff's Counsel and Defense Counsel, and approved by the Court.

45. After entry of the Final Order and Judgment, the Court shall retain jurisdiction with respect to enforcement of the terms of this Settlement, and all Parties, their counsel and Class Members shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to the enforcement of any dispute with respect thereto.

46. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties to the terms and conditions hereof.

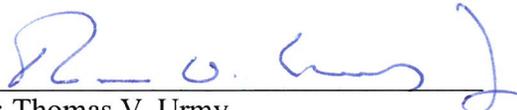
47. To the extent permitted under applicable law, any failure of any of the Parties, Plaintiff's Counsel or Defense Counsel to comply with any obligation, covenant, agreement or condition set forth herein may be expressly waived in writing, by the person or entity entitled to the benefit of such obligation, covenant, agreement or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

48. Any notice to a Party that is required under this Settlement Agreement, or the Exhibits hereto, must be provided in writing as follows:

- a. If to Plaintiff, Plaintiff's Counsel or Class Counsel, by giving notice to Shapiro Haber & Urmy, LLP, 2 Seaport Lane, Boston, MA 02210.
- b. If to Philip Morris or Defense Counsel, by giving notice to Latham & Watkins, LLP, 200 Clarendon St, Boston, MA 02116.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS SETTLEMENT AGREEMENT ON THE DATE LAST SET FORTH BELOW:

SHAPIRO HABER & URMY LLP,
Attorneys for the Plaintiff and the
Certified Class



By: Thomas V. Urmey



Date

THOMAS GEANACOPOULOS,
Individually and as Representative of
the Certified Class

Thomas Geanacopoulos

Date

LATHAM & WATKINS, LLP,
Attorneys for Defendant Philip Morris
U.S.A., Inc.

By: Kenneth J. Parsigian

Date

PHILIP MORRIS U.S.A., Inc.

By:
Position:

Date

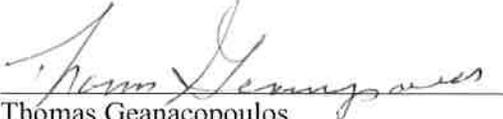
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS SETTLEMENT AGREEMENT ON THE DATE LAST SET FORTH BELOW:

SHAPIRO HABER & URMY LLP,
Attorneys for the Plaintiff and the
Certified Class

By: Thomas V. Urmey

Date

THOMAS GEANACOPOULOS,
Individually and as Representative of
the Certified Class



Thomas Geanacopoulos

4/20/14

Date

LATHAM & WATKINS, LLP,
Attorneys for Defendant Philip Morris
U.S.A., Inc.

By: Kenneth J. Parsigian

Date

PHILIP MORRIS U.S.A., Inc.

By:
Position:

Date

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS SETTLEMENT AGREEMENT ON THE DATE LAST SET FORTH BELOW:

SHAPIRO HABER & URMY LLP,
Attorneys for the Plaintiff and the
Certified Class

By: Thomas V. Urmey

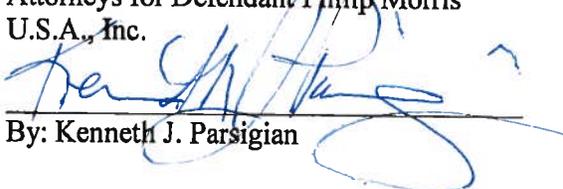
Date

THOMAS GEANACOPOULOS,
Individually and as Representative of
the Certified Class

Thomas Geanacopoulos

Date

LATHAM & WATKINS, LLP,
Attorneys for Defendant Philip Morris
U.S.A., Inc.



By: Kenneth J. Parsigian

April 26, 2016
Date

PHILIP MORRIS U.S.A., Inc.



By: Murray R. Garnick

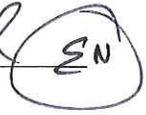
Position:

SVP, Altria Client Services LLC
on behalf of Philip Morris USA

April 26, 2016
Date

HAGENS BERMAN SOBOL SHAPIRO, LLP


By: Thomas M. Sobol



Date 4/20/16

BRODY HARDOON PERKINS & KESTEN, LLP

By: Andrew A. Rainer

Date

HAGENS BERMAN SOBOL SHAPIRO, LLP

By: Thomas M. Sobol

Date

BRODY HARDOON PERKINS & KESTEN, LLP



By: Andrew A. Rajner

4/26/16

Date