

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

Coordination Proceeding

Special Title Rule (Rule 1550(b))

**SMOKELESS TOBACCO CASES I-IV**

Consolidated with:

*Kelly v. U.S. Smokeless Tobacco, Co, et al.*,  
SFSC Case No. CGC-02-412861

This Document Relates To:

ALL ACTIONS

J.C.C.P. Nos. 4250, 4258, 4259 & 4262

CLASS ACTION

Hon. Richard A. Kramer

Coordination Trial Judge

**NOTICE OF CLASS ACTION SETTLEMENT**

**TO: ALL ADULT CONSUMERS WHO PURCHASED U.S. SMOKELESS TOBACCO COMPANY MOIST SMOKELESS TOBACCO PRODUCTS, INCLUDING COPENHAGEN<sup>®</sup> AND SKOAL<sup>®</sup>, IN THE STATE OF CALIFORNIA AT ANY TIME FROM JANUARY 1, 1990 TO OCTOBER 17, 2007:**

**IMPORTANT:**

**THIS NOTICE IS BEING PROVIDED BY COURT ORDER. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A SETTLEMENT IN PENDING CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS HAS BEEN REACHED.**

**This Notice answers the following questions:**

- 1. Why should I read this Notice?**
- 2. What are the lawsuits about?**
- 3. What are U.S. Smokeless Tobacco's moist smokeless tobacco products?**
- 4. Who is an indirect purchaser?**
- 5. Who are the members of the class?**
- 6. What are the terms of the proposed Settlement Agreement?**
- 7. How will the settlement proceeds be distributed?**
- 8. How can I make a claim for a cash payment?**
- 9. Who represents the class and what are the associated costs and expenses?**
- 10. What are the reasons for the settlement?**
- 11. What claims are being released?**
- 12. How can I exclude myself from the settlement and release?**
- 13. What is the settlement approval procedure and how can I make my views known?**
- 14. Where can I get additional information?**

**1. WHY SHOULD I READ THIS NOTICE?**

Your rights may be affected by class action lawsuits filed by Plaintiffs in this litigation (the "Litigation"). The purpose of this Notice is to inform individuals who purchased U.S. Smokeless Tobacco's moist smokeless tobacco products in California at any time during the period commencing January 1, 1990 through October 17, 2007 (the "Class Period"), that: (1) settlement of the Litigation against defendants (the "Settlement Agreement") has been preliminarily approved by the Court in California; (2) a hearing has been scheduled at 1:30 p.m. on March 11, 2008, in the Courtroom of the Honorable Richard A. Kramer, Judge of the San Francisco Superior Court, Department 304, located at 400 McAllister Street, San Francisco, California 94102, to consider the fairness, adequacy, and reasonableness of the Settlement Agreement; and (3) a hearing has also been scheduled at 1:30 p.m. on March 11, 2008, in the Courtroom of the Honorable Richard A. Kramer, Judge of the San Francisco Superior Court, Department 304, located at 400 McAllister Street, San Francisco, California 94102, to consider Class Counsel's requests for attorneys' fees, expenses and costs.

This Settlement Agreement, if finally approved at the Fairness Hearing, will resolve the Litigation.

## 2. WHAT ARE THE LAWSUITS ABOUT?

Plaintiffs, on behalf of themselves and all other similarly situated individuals in California, have alleged that U.S. Smokeless Tobacco and related entities (collectively, "U.S. Smokeless Tobacco") engaged in sales practices that made it possible for U.S. Smokeless Tobacco to monopolize the market for moist smokeless tobacco products in violation of the antitrust and/or consumer protection laws of the State of California. Plaintiffs allege that, as a result of U.S. Smokeless Tobacco's alleged conduct, Class Members were injured because they paid more for U.S. Smokeless Tobacco moist snuff tobacco products than they would have absent the alleged conduct.

U.S. Smokeless Tobacco expressly denies that it engaged in any wrongful or illegal sales practices or other conduct, and has asserted numerous defenses to the Plaintiffs' claims in the Litigation. The Court has not decided in favor of the Plaintiffs or U.S. Smokeless Tobacco. Instead, both sides agreed to enter into negotiations, and the parties reached this settlement with the help of a neutral mediator. This Notice is not to be construed as an admission or concession of liability by U.S. Smokeless Tobacco. Given the expense and duration of any trial and/or appeal and the uncertain outcome and risks of litigation, Plaintiffs and Class Counsel have concluded that this settlement is in the best interests of the class. On November 5, 2007, the Court entered an order granting preliminary approval of the Settlement Agreement, and ordered that this Notice be made available to the members of the class.

**THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE PARTIES, AND THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT REGARDING THE MERITS OR LACK THEREOF OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS.**

## 3. WHAT ARE U.S. SMOKELESS TOBACCO'S MOIST SMOKELESS TOBACCO PRODUCTS?

U.S. Smokeless Tobacco's moist smokeless tobacco products ("Moist Smokeless Tobacco Products") include the Moist Smokeless Tobacco Products manufactured and sold by U.S. Smokeless Tobacco during part or all of the Class Period, including, Copenhagen<sup>®</sup>, Skoal<sup>®</sup>, Rooster<sup>®</sup>, Red Seal<sup>®</sup>, Bandits<sup>®</sup>, Pouches<sup>®</sup> and Husky<sup>®</sup> (and including the different cuts and/or flavors thereof).

## 4. WHO IS AN INDIRECT PURCHASER?

An indirect purchaser is a person who bought U.S. Smokeless Tobacco's Moist Smokeless Tobacco Products from someone other than U.S. Smokeless Tobacco.

## 5. WHO ARE THE MEMBERS OF THE CLASS?

The class consists of the following:

"All persons who purchased moist snuff products, indirectly from defendants, in the State of California from January 1, 1990, through October 17, 2007 ('Class Period') for their own use and not for resale. Specifically excluded from the Class are the defendants herein; officers, directors, or employees of any defendants; any entity in which any defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs or assigns of any defendant. Also excluded are any federal, state or local governmental entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs."

**YOU NEED NOT TAKE ANY ACTION IF YOU WISH TO REMAIN A MEMBER OF THE CLASS.**

You need not take any action to remain in the class and your rights as a beneficiary of the Settlement Agreement will be represented by Plaintiffs.

If you wish to exclude yourself from the class you must submit, as more fully explained below, a request for exclusion postmarked on or before January 25, 2008, to the Settlement Administrator at the address provided below.

**IF YOU CHOOSE TO REMAIN IN THE CLASS YOU MAY, BUT ARE NOT REQUIRED TO, APPEAR IN PERSON AT THE SETTLEMENT FAIRNESS HEARING AND/OR SUBMIT COMMENTS REGARDING THE FAIRNESS, ADEQUACY AND REASONABLENESS OF THE SETTLEMENT AGREEMENT.**

**IF THE SETTLEMENT AGREEMENT IS FINALLY APPROVED BY THE COURT, THE JUDGMENT WILL BIND ALL PERSONS IN THE CLASS WHO DO NOT TIMELY EXCLUDE THEMSELVES, AND THEIR CLAIMS AGAINST THE DEFENDANTS SHALL FOREVER BE RELEASED AND DISMISSED.**

## 6. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT?

In exchange for the release of claims of the Class Members (as more fully described in the Settlement Agreement), U.S. Smokeless Tobacco has agreed to pay a total of Ninety-Six Million Dollars (\$96,000,000) (the "Settlement Fund").

## 7. HOW WILL THE SETTLEMENT PROCEEDS BE DISTRIBUTED?

The amount of the Settlement Fund available for distribution is \$96,000,000, plus any interest that accrues thereon, less Court-approved costs, expenses, taxes, and attorneys' fees. The Settlement Agreement contains a proposed Plan of Distribution for all amounts in the Settlement Fund. Under the Plan of Distribution, at least \$5 million of the Settlement Fund will be distributed *cy pres* to charitable or non-profit organizations in California in satisfaction of the claims of Class Members who purchased fewer than thirty (30) cans of Moist Smokeless Tobacco Products indirectly from U.S. Smokeless Tobacco during each of three specified time periods. Class Members who purchased more than thirty (30) cans of Moist

Smokeless Tobacco Products indirectly from U.S. Smokeless Tobacco in the State of California during any of the three purchase periods for their own use and not for resale may submit Claim Forms. As described below, Class Members whose Claim Forms are approved may receive payments up to \$585 from the Settlement Fund. After payment of Court-approved costs, expenses, taxes, and attorneys' fees, and after all of the aforementioned claims have been satisfied, the remaining balance of the Settlement Fund, if any, will be distributed *cy pres* to charitable or non-profit organizations in California.

## **8. HOW CAN I MAKE A CLAIM FOR A CASH PAYMENT?**

To make a claim for a cash payment, you must fill out a Claim Form under oath. Valid and timely claimants may receive \$195, \$390 or \$585 payments from the Settlement Fund depending upon the amount and length of time of their purchases of Moist Smokeless Tobacco Products, and upon the number of valid and timely claims received from all Class Members.

Specifically, claimants may be eligible to receive a \$195 payment for each of the following time periods during which they purchased 30 or more cans of U.S. Smokeless Tobacco moist snuff:

- Purchase Period A: Any time from January 1, 1990 to December 31, 1995;
- Purchase Period B: Any time from January 1, 1996 to December 31, 2001; and/or
- Purchase Period C: Any time from January 1, 2002 to October 17, 2007.

Claimants may claim for one or more Purchase Periods and any combination of Purchase Periods, and may receive \$195, \$390 or \$585. A pro-rata reduction by claimant per Purchase Period of the estimated payment amounts may be made depending upon the settlement funds available for such payments and the total number of valid and timely claims made by Class Members.

**Claim Forms must be postmarked by April 10, 2008.** You may be required as a condition to participating in any recovery to verify information in your Claim Form with a Settlement Administrator or the Court. To learn more about the Plan of Distribution, the claims process or any related deadlines, go to [www.CaliforniaSmokelessTobaccoSettlement.com](http://www.CaliforniaSmokelessTobaccoSettlement.com).

## **9. WHO REPRESENTS THE CLASS AND WHAT ARE THE ASSOCIATED COSTS AND EXPENSES?**

The Court has appointed the following law firms to serve as Plaintiffs' Executive Committee: Saveri & Saveri, Inc., The Mogin Law Firm, P.C., The Furth Firm; Zelle, Hofmann, Voelbel, Mason & Gette, LLP, Kellogg, Huber, Hansen, Todd, Evans and Figel, P.L.L.C., Cotchett, Pitre & McCarthy LLP, Hagens Berman LLP and Blumenthal & Markham. Plaintiffs' Executive Committee, and other law firms representing Plaintiffs (collectively "Class Counsel") have been prosecuting this Litigation since 2002 on a contingency fee basis (that is, without compensation) while advancing litigation costs and expenses. Class Counsel will apply to the Court for reimbursement of these costs and expenses from the Settlement Fund. All such reimbursements will be subject to approval by the Court and will be paid out of the Settlement Fund; Class Members are not personally responsible for any costs or expenses. In addition, Class Counsel will ask the Court for an award of attorneys' fees for prosecuting the Litigations in an amount not to exceed 33 and 1/3 % of the Settlement Fund and will seek incentive awards for class representatives in an amount not to exceed \$10,000 each. Class Counsel's attorneys' fees are to be paid from the Settlement Fund and must be authorized by the Court; Class Members are not personally responsible for payment of any attorneys' fees or incentive awards. The Court has scheduled a Hearing on Class Counsel's application for attorneys' fees, costs, and incentive award for class representatives at 1:30 p.m. on March 11, 2008, in the Courtroom of the Honorable Richard A. Kramer, Judge of the San Francisco Superior Court, Department 304, 400 McAllister Street, San Francisco, California 94102. If you choose to remain in the class and you wish to comment in writing in support of or in opposition to any aspect of Class Counsel's application for attorneys' fees, costs, and incentive awards for class representatives, you may do so by submitting your comments or objections in writing to the California U.S. Smokeless Tobacco Settlement Administrator, c/o Rosenthal & Company LLC, P.O. Box 6175, Novato, CA 94948-6175, on or before January 25, 2008. Your submission must also include your name and current address and the case caption, Smokeless Tobacco Cases I-IV, San Francisco Superior Court J.C.C.P. Nos. 4250, 4258, 4259 & 4262. You or your attorney may appear at the Fairness Hearing in support of your comments.

## **10. WHAT ARE THE REASONS FOR THE SETTLEMENT?**

Class Counsel have made a thorough investigation into the facts and circumstances relevant to the claims in the Litigation. Class Counsel also have considered the expense and length of time necessary to prosecute the Litigation through trial and any appeals; the uncertainties associated with the outcome of this or any litigation; and the benefits provided by the proposed Settlement Agreement. Based upon their investigation and their evaluation of the claims and defenses thereto, Class Counsel have concluded that it is in the best interests of the class to resolve the claims against the defendants on the terms outlined herein, as reached after extensive, arm's-length negotiations.

## **11. WHAT CLAIMS ARE BEING RELEASED?**

If the Settlement Agreement is approved by the Court, each Class Member will release and dismiss the defendants, including, but not limited to, their present and former direct and indirect parents, subsidiaries, divisions, affiliates, partners or associates (as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934); the present and former stockholders, officers, directors, employees, agents and legal representatives of any of the foregoing entities (with respect to any conduct of any of those entities); and the predecessors, heirs, executors, administrators, successors and assigns of any of the foregoing persons or entities (collectively "Releasees"), from any and all claims, demands, rights, actions, suits, liabilities, causes of action for damages (whether compensatory, punitive or otherwise), restitution, disgorgement, unjust enrichment, civil or statutory penalties, injunctive and/or declaratory relief, and any other rights and

causes of action, known or unknown, (including, but not limited to, "Unknown Claims" as defined in the Settlement Agreement), derivative or direct, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, whether in law or in equity (including, without limitation, claims which have been asserted or could have been asserted in the Litigation or arising out of the matters alleged in the Complaint) that any Releasor now has, ever had, could have had or may have had as of October 17, 2007 (whether or not such Releasor objects to the settlement and whether or not he/she or it makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) whether for monetary or injunctive relief, with respect to any and all indirect purchases of Moist Smokeless Tobacco Products in the State of California, or relating in any way to supplying, manufacturing, pricing, distributing, causing to be distributed, reselling, acquiring, or purchasing any Moist Smokeless Tobacco Products, insofar as they relate to indirect purchases, and have been asserted or could have been asserted in the Litigation or arising out of the matters alleged in the Complaint, and which are based on any federal, state or other antitrust, unfair competition, unfair or deceptive trade practices, consumer protection or similar statutory common law (including but not limited to Sections 16700-16760 of the California Business and Professions Code, Section 17200, et seq., of the California Business and Professions Code, Section 17045, et seq., of the California Business and Professions Code, the common law of monopoly, or any other similar laws). Notwithstanding the foregoing, the release provided herein shall not release claims, if any, that are unrelated to the conduct alleged in the Complaint, including without limitation personal injury claims, product defect claims, labor and employment claims, securities claims, intellectual property claims, or environmental claims. ("Released Claims").

Each Class Member hereby is deemed to covenant and agree that, upon the Effective Date (as defined in the Settlement Agreement), he/she/it shall not hereafter seek, and each hereby is enjoined from seeking, to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims. The Release provided herein shall not release any claims other than as set forth in this Paragraph.

**IF YOU DO NOT EXCLUDE YOURSELF FROM THE CLASS AND THE SETTLEMENT AGREEMENT IS APPROVED BY THE COURT, YOU WILL BE BOUND BY ALL OF THE COURT'S ORDERS AND JUDGMENTS ENTERED PURSUANT TO THE SETTLEMENT AGREEMENT, INCLUDING THE DISMISSAL AND RELEASE OF ANY OF THE ABOVE CLAIMS YOU MAY HAVE AGAINST THE RELEASEES.**

## **12. HOW CAN I EXCLUDE MYSELF FROM THE SETTLEMENT AND RELEASE?**

Anyone electing to be excluded from the class must submit a written request for exclusion to the Settlement Administrator so that it is postmarked on or before January 25, 2008. The name, address, and phone number of the Settlement Administrator to whom your written request for exclusion must be mailed is as follows: California U.S. Smokeless Tobacco Settlement Administrator, c/o Rosenthal & Company LLC, P.O. Box 6175, Novato, CA 94948-6175, 1-888-271-6739 . The request must indicate the person's name and address. Members of the class may not exclude themselves by filing such requests for exclusion as a group. However, multiple persons may use the same notice to transmit their respective requests for exclusion, but each such person must be individually and specifically identified within the notice and sign the notice.

**IF YOUR REQUEST FOR EXCLUSION SENT TO THE SETTLEMENT ADMINISTRATOR IS POSTMARKED ON OR BEFORE JANUARY 25, 2008, YOU WILL RETAIN YOUR RIGHTS, IF ANY, TO PURSUE AVAILABLE REMEDIES AGAINST THE DEFENDANTS AT YOUR OWN COST AND EXPENSE. YOU MUST SUBMIT A REQUEST FOR EXCLUSION EVEN IF YOU HAVE ALREADY FILED OR YOU INTEND TO FILE A LAWSUIT AGAINST THE DEFENDANTS CONCERNING THE ALLEGED CONDUCT.**

## **13. WHAT IS THE SETTLEMENT APPROVAL PROCEDURE AND HOW CAN I MAKE MY VIEWS KNOWN?**

The Court has scheduled a Fairness Hearing at 1:30 p.m. on March 11, 2008, in the Courtroom of the Honorable Richard A. Kramer, Judge of the San Francisco Superior Court, Department 304, 400 McAllister Street, San Francisco, California 94102.

At the Fairness Hearing, the Court will consider, among other matters, whether the Settlement Agreement should be granted final approval as fair, adequate and reasonable, and in the best interests of Class Members. The Court will also review and approve or deny the proposed Plan of Distribution. Although you may attend the Fairness Hearing in person or through your own attorney, you are not required to do so. If you choose to remain in the class and you wish to comment in writing in support of or in opposition to any aspect of the proposed Settlement Agreement, you may do so by submitting your comments or objections in writing to the California U.S. Smokeless Tobacco Settlement Administrator, c/o Rosenthal & Company LLC, P.O. Box 6175 , Novato, CA 94948-6175, postmarked on or before January 25, 2008. Your submission must also include your name and current address and the case caption, Smokeless Tobacco Cases I-IV, San Francisco Superior Court J.C.C.P. Nos. 4250, 4258, 4259 & 4262. You or your attorney may appear at the Fairness Hearing in support of your comments.

## **14. WHERE CAN I GET ADDITIONAL INFORMATION?**

This Notice only contains a summary of the proposed Settlement Agreement. You may appear in person during regular business hours at the Clerk's office of the San Francisco Superior Court, 400 McAllister Street, San Francisco, California and review the Settlement Agreement in its entirety, as well as the pleadings, records and other papers on file with the Court. The Settlement Agreement is also available on an internet website at **[www.CaliforniaSmokelessTobaccoSettlement.com](http://www.CaliforniaSmokelessTobaccoSettlement.com)**. If you need further information, please contact the California U.S. Smokeless Tobacco Settlement Administrator, c/o Rosenthal & Company LLC, P.O. Box 6175, Novato, CA 94948-6175, telephone number **1-888-271-6739**. All questions you may have concerning the Settlement Agreement or this Notice should be directed to the Settlement Administrator, at the address or telephone number listed above.

**PLEASE DO NOT TELEPHONE OR ADDRESS INQUIRIES TO THE COURT.**