

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Coordination Proceeding) J.C.C.P. Nos. 4250, 4258, 4259 and 4262
Special Title Rule (Rule 1550(b)))
SMOKELESS TOBACCO CASES I-IV) CLASS ACTION
)
Consolidated with:)
) **SETTLEMENT AGREEMENT**
)
Kelly v. U.S. Smokeless Tobacco, Co, et al.,)
SFSC Case No. CGC-02-412861)
_____) Hon. Richard A. Kramer
) Coordination Trial Judge
THIS DOCUMENT RELATES TO:)
)
ALL ACTIONS)
)
_____)

This Settlement Agreement (“Agreement”) is made and entered into this ___ day of September, 2007, by and among the following Settling Parties: (i) the Plaintiffs (on behalf of themselves and each of the Class Members), by and through their counsel of record in the Litigation (as defined in ¶ 12 of this Agreement); and (ii) the Defendants, by and through their counsel of record in the Litigation. The Agreement is intended by the Settling Parties to effect a full, final resolution, discharge and settlement of the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS the first action in this consolidated coordinated class action was filed on June 10, 2002;

WHEREAS Plaintiffs filed a Master Consolidated Coordinated Class Action Complaint, J.C.C.P. Nos. 4250, 4258, 4259 & 4262 (the “Complaint”), dated March 26, 2003, which is now pending before the Court;

WHEREAS on January 29, 2004 the Court certified this matter as a class action;

WHEREAS Plaintiffs allege in the Complaint that Defendants violated California Business and Professions Code, Sections 16720 and 17200 as well as California’s common law of monopoly;

WHEREAS Plaintiffs have conducted extensive investigations regarding their claims and potential claims against Defendants;

WHEREAS arm’s length settlement negotiations have taken place between Class Counsel and Counsel for Defendants, including Court ordered mediation, the result of which is that this Agreement, which embodies all of the terms and conditions of the settlement between the Settling Parties, has been reached, subject to the approval of the Court;

WHEREAS Class Counsel have concluded, after investigation of the facts and after carefully considering the circumstances of the Complaint and the applicable law, that it would be in the best interests of Plaintiffs and all Class Members to enter into this Agreement in order to avoid the uncertainties and delay of litigation, particularly complex litigation such as this, and to assure a benefit to the Class;

WHEREAS Class Counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of Plaintiffs and all Class Members;

WHEREAS Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by the Plaintiffs in the Litigation and maintain furthermore that they have meritorious defenses;

WHEREAS Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the Plaintiffs (on behalf of themselves and each Class Member) and Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Litigation and Released Claims shall be fully and finally settled, compromised and released, and the Litigation shall be dismissed with prejudice as to Defendants, upon and subject to the following terms and conditions:

A. Definitions

As used in this Agreement the following terms have the meanings specified below. In the event of any inconsistency between any definition set forth below and any

definition set forth in any other document related to the settlement set forth in this Agreement, the definition set forth below shall control.

1. “Approved Claims” means claims submitted by Class Members pursuant to the Plan of Distribution that are approved for payment from the Settlement Fund by the Settlement Administrator.

2. The “Class” means:

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.

3. “Class Counsel” shall mean the law firms of 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; and Hagens Berman LLP.

4. “Class Member” means each and every member of the Class who did not timely and validly elect to exclude him or herself from the Class.

5. “Counsel for Defendants” means the law firms of Howrey LLP and Latham & Watkins LLP.

6. “Court” means the Superior Court of the State of California for the County of San Francisco.

7. “Defendant” or “Defendants” means each of U.S. Smokeless Tobacco Company (“U.S. Smokeless Tobacco”), f/k/a United States Tobacco Company, and the U.S. Smokeless Tobacco corporate parent, subsidiaries, and affiliates that have been or may be named in any of the complaints in the Litigation, including but not limited to U.S.

Smokeless Tobacco Brands Inc., U.S. Smokeless Tobacco Manufacturing Company, and UST Inc.

8. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 43 of this Agreement have occurred and have been met, respectively.

9. “Execution Date” means the date on which this Agreement shall have been executed by all of the undersigned counsel for the parties hereto.

10. “Final” means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining to any order adopting or approving a Plan of Distribution, or to any order issued in respect of an application for attorneys’ fees and expenses pursuant to ¶¶ 39, 40 and 41, below, shall not in any way delay or preclude the Judgment from becoming Final.

11. “Judgment” means an order of judgment and dismissal approving the settlement to be rendered by the Court in the form attached hereto as Exhibit A.

12. “Litigation” means that certain case entitled “Smokeless Tobacco Cases I-IV” currently pending in the Superior Court of the State of California County of San

Francisco under J.C.C.P. Nos. 4250, 4258, 4259 and 4262, and all cases consolidated or coordinated therewith.

13. “Moist Smokeless Tobacco Products” means the moist smokeless tobacco products manufactured and sold by any Defendant during part or all of the Class Period, including, Copenhagen®, Skoal®, Rooster®, Red Seal®, Bandits®, Pouches®, and Husky® (and including the different cuts and/or flavors thereof).

14. “Person(s)” shall have the same meanings as in Cal. Bus. & Prof. Code Sections 16702 and 17201 including, an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

15. “Plaintiffs” mean the plaintiffs named in any of the complaints in the Litigation.

16. “Plan of Distribution” means the plan or formula for distribution of the Settlement Fund set forth in Exhibit B, to be approved by the Court, whereby the Settlement Fund shall in the future be distributed. Defendants shall have no responsibility or liability with respect thereto.

17. “Released Claim(s)” means the release and discharge of the Releasees, individually and collectively, 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), 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). Each Class Member hereby is deemed to covenant and agree that, upon the Effective Date, 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. 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.

18. "Releasees" or "Releasee" shall refer, jointly and severally, individually and collectively, to the Defendants; the 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) of Defendants; 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; but in connection with the Released Claims, only.

19. “Releasors” or “Releasor” shall refer, jointly and severally, individually and collectively, to the Plaintiffs, the Class Members, and to any of their respective past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, trustees, parents, associates, subsidiaries, affiliates, partners, heirs, executors, administrators, purchasers, predecessors, successors, assigns and insurers but in connection with the Released Claims, only.

20. “Settlement Administrator” means Rosenthal & Co, appointed by the Court pursuant to this Settlement Agreement to plan and implement the notice and administration requirements of the Settlement.

21. “Settlement Amount” means the principal amount of Ninety-Six Million Dollars (\$96,000,000).

22. The “Settlement Fund” means the Settlement Amount plus any interest that may accrue thereon.

23. “Settling Parties” means, collectively, Defendants and the Plaintiffs (on behalf of themselves and each of the Class Members).

24. “Unknown Claims” means any Released Claim that any Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Releasees that if known by him, her or it, might have affected his, her or its settlement with and release of the Releasees, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Plaintiffs shall

expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment shall have waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Plaintiffs shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment shall have waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code § 1542. The Plaintiffs and Class Members may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but each Plaintiff shall expressly have, and upon the Effective Date, each Class Member shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiffs acknowledge, and the Class Members shall be deemed to have acknowledged, and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

B. Approval of Agreement, Notice, and Dismissal with Prejudice

25. The parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate, including taking all steps and efforts contemplated by this Agreement, and any other lawful steps and efforts which may become necessary by any order of the Court or otherwise, to effectuate this Agreement and the settlement set forth herein.

26. As soon as practicable after the Execution Date, Class Counsel will take all necessary steps to secure the Court's preliminary and final approval of this Agreement and the settlement set forth herein and the dismissal of the Litigation, with prejudice, as to Defendants including but not limited to, filing motions with the Court for preliminary and final approval of the settlement.

27. The preliminary approval order shall be substantially in the form and content of Exhibit C attached hereto and shall include (a) proposed forms of notice to be disseminated to Class Members through publication in newspapers and online, and (b) an order staying the Litigation, except as necessary to effectuate final approval of the Settlement and any matters related thereto and tolling the period provided for trial in Cal. Code of Civ. P. Section 583.310.

28. If the Court grants preliminary approval to the settlement and Agreement, the Settling Parties shall jointly seek entry at final approval of the Judgment, substantially in the form attached hereto as Exhibit A:

- a) Finally approving the settlement provided in this Agreement as being fair, reasonable and adequate as to the Class Members;
- b) Directing that the Litigation and Complaints be dismissed with prejudice and without costs except as specifically provided herein;
- c) Releasing the Releasees as set forth herein;

- d) Determining there is no just reason for delay and directing the entry of Judgment of dismissal with prejudice as to the Litigation;
- e) Permanently barring and enjoining the institution and prosecution, by Plaintiffs and the Class Members, of any other action against the Releasees in any court asserting any Released Claims; and
- f) Reserving exclusive jurisdiction over the settlement and this Agreement, including the administration, consummation and enforcement of the settlement, to the Superior Court of the State of California, County of San Francisco.

29. The Judgment shall not constitute an admission by Defendants of any liability or wrongdoing whatsoever.

C. The Settlement Fund

30. In full and complete settlement of all claims which have been, might have been, are now or could be asserted in the Litigation by Plaintiffs and the Class Members against Defendants and the other Releasees, U.S. Smokeless Tobacco shall deposit the Settlement Amount into the Escrow Account. The Settlement Amount shall be paid in two equal installments. The first installment of Forty-Eight Million Dollars (\$48,000,000) shall be wire transferred, within ten (10) business days from the Execution Date, into an escrow account to be administered in accordance with the provisions of paragraph 34 of this Agreement (the “Escrow Account”). The second installment of Forty-Eight Million Dollars (\$48,000,000) shall be wire transferred into the Escrow Account sixty (60) days before the final approval hearing.

31. No amount may be disbursed from the Settlement Fund unless and until the Effective Date, except that: (a) reasonable costs of the notice (“Notice and Administrative Costs”) described in ¶ 27 may be paid from the Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 34(f), below) may be paid from the Settlement Fund as they become due; and (c) any fee and expense award that is

allowed by the Court pursuant to ¶¶ 39, 40 and 41, below, may be paid from the Settlement Fund in accordance with the provisions of ¶¶ 39, 40 and 41, below. Plaintiffs will attempt in good faith to minimize the amount of Notice and Administrative Costs.

32. If the settlement as described herein is disapproved by any court or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow, as then held by the Escrow Agent, will be refunded, reimbursed, and repaid by the Escrow Agent to U.S. Smokeless Tobacco within (10) business days after receiving notice pursuant to ¶ 47 below excluding only Notice and Administrative Costs that are due and owing, Taxes and Tax Expenses that have accrued and will be payable at some later date, and accrued and unpaid fees and expenses of the Escrow Agent. In such event, Class Counsel shall repay any amounts that have been withdrawn from the Escrow Account pursuant to ¶ 41.

33. Under no circumstances will Defendants be required to pay more than the Settlement Amount pursuant to this Agreement and the settlement set forth herein.

34. Escrow Account

a) The Escrow Account will be established at Union Bank of California, 350 California Street, San Francisco, California with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Class Counsel and Counsel for Defendants, such escrow to be administered under the Court's continuing supervision and control.

b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested substantially in such instruments, and shall

reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

c) All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

d) Plaintiffs and Defendants agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph 34, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in paragraph 34(d)) shall be consistent with paragraph 34(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on

the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 34(f) hereof.

f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of paragraphs 34(d) through 34(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph 34(f) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

g) Neither Defendants nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)). Neither Defendants nor any other Releasee is responsible for any such reserves or withholding, nor shall they have any liability therefore. Plaintiffs and Defendants agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 34(d) through 34(f).

D. Supervision and Distribution of Settlement Fund; Class Counsel's Fees And Costs

35. Upon the Effective Date, the Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Class Members and shall oversee distribution of Approved Claims from the Settlement Fund pursuant to the Plan of Distribution.

36. Plaintiffs and Class Members shall look solely to the Settlement Fund for settlement and satisfaction of all claims released herein. Except as provided by order of the Court pursuant to this Agreement, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

37. Except as specifically provided in the Plan of Distribution, neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Distribution, the determination, administration, or calculation of claims, the payment or withholding of Taxes, the distribution of the Settlement Fund, or any losses incurred in connection with any such matters. The Plaintiffs and each Class Member hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability described in this paragraph.

38. The Defendants shall not be liable for any attorneys' fees or expenses of the settlement, the Litigation or any predecessor complaints or actions on behalf of Plaintiffs and the Class Members, or for settlement-related fees and expenses, including without limitation (a) those of any of Plaintiffs' counsel, experts, consultants, agents and representatives; (b) those incurred in providing notice to the Class (except as provided in paragraph 31); or (c) those incurred in administering the settlement or distributing the Settlement Fund including without limitation the compensation, costs and expenses of the claims administrator.

39. Class Counsel shall be entitled to such attorneys' fees and costs as the Court may award from the Settlement Fund. Defendants shall take no position on any application for attorneys' fees and costs or class representative incentive awards. All such fees, costs and incentive awards shall be paid only from the Settlement Fund.

40. Any attorneys' fees and costs paid to Class Counsel from the Settlement Fund shall be paid only to the extent awarded by the Court and only after the Court has entered an order of final judgment approving the settlement and dismissing with prejudice the Defendants from the Complaint. Defendants and their counsel shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel, Plaintiffs and/or to any other Person who may assert some claim to the Settlement Fund. Any application or award of attorneys' fees and expenses to Class Counsel is not a part of this Agreement, and any order of the Court making or relating to such award shall not affect the approval or finality of this Agreement or the validity, effectiveness or enforceability of the releases set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any fee and expense award or Plan of Distribution shall constitute grounds for cancellation or termination of this Agreement.

41. Prior to the Effective Date, and five days after the Court grants final approval of the settlement, Class Counsel shall be entitled, at their option, to withdraw from the Escrow Account the amount of attorneys' fees awarded by the Court, subject to an undertaking by each firm in a form mutually agreed upon by the Settling Parties to repay such amounts pending exhaustion of all appeals.

E. Release and Discharge

42. In addition to and included in the effect of any Final Judgment entered in this matter, upon the occurrence of the Effective Date, the Releasors, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the

future) through or on behalf of them, and regardless of whether any such Plaintiff or Class Member ever seeks or obtains by any means, including, without limitation, by submitting a proof of claim, any distribution from the Settlement Fund, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees and shall have covenanted not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees.

F. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

43. The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events: (a) the Court has approved the settlement as described herein, following notice to the Class and a hearing, and has entered the Judgment; and (b) the Judgment has become Final, as defined in ¶ 10.

44. Upon the occurrence of all of the events referenced in ¶ 43, any and all remaining interest or right of Defendants in or to the Settlement Fund shall be absolutely and forever extinguished.

45. If all of the conditions specified in ¶ 43 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶ 46 and 47, below, unless Class Counsel and Counsel for Defendants mutually agree in writing to proceed with this Agreement.

46. If the Court does not enter the Judgment substantially in the form of Exhibit A hereto, or if the Court enters the Judgment and appellate review is sought and, on such review, the entry of the Judgment is finally vacated, modified, or reversed, then this Agreement and the settlement incorporated therein shall be cancelled and terminated, unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date of the mailing of such ruling to such parties, provide written

notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Plaintiffs and the Class Members by Class Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; *provided, however*, that no order of the Court concerning any fee and expense application or Plan of Distribution, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party.

47. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the settlement as described herein is not approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, then:

a) within ten (10) business days after written notification of such event is sent by Counsel for Defendants to the Escrow Agent, the Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow, as then held by the Escrow Agent, will be refunded, reimbursed, and repaid by the Escrow Agent to U.S. Smokeless Tobacco, excluding only Notice and Administrative Costs that are due and owing, Taxes and Tax Expenses that have accrued and will be payable at some later date, and accrued and unpaid fees and expenses of the Escrow Agent. In such event, Class Counsel shall repay any amounts that have been withdrawn from the Escrow Account pursuant to paragraph 41.

b) at the written request of Counsel for Defendants, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to U.S. Smokeless Tobacco, after deduction of any fees or expenses reasonably

incurred in connection with such application(s) for refund, pursuant to such written request;

c) the Settling Parties shall be restored to their respective positions in the Litigation as of May 1, 2007, with all of their respective claims and defenses preserved as they existed on that date;

d) the terms and provisions of this Agreement, with the exception of ¶¶ 1-24, 31, 32, 34, 37, 41, 43, 45-50, and 51-59 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Litigation or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

e) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

48. From and after the Effective Date, the Settling Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Settling Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the exclusive jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than the implementation and enforcement of the Agreement.

G. No Admissions

49. The Settling Parties intend the settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Litigation and to compromise claims that are contested, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Litigation.

50. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Litigation, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

H. Miscellaneous

51. The undersigned counsel represent that they are fully authorized to enter and to execute this Agreement on behalf of their respective clients and expressly authorized to take all appropriate action required or permitted to be taken pursuant to this

Agreement to effectuate its terms and to enter into any modifications or amendments to this Agreement that they deem appropriate.

52. All of the Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

53. This Agreement and the exhibits attached hereto constitute the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

54. All terms of this Agreement are contractual and not mere recitals (other than headings, and the recitals commencing with the word "Whereas"). This Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto, their successors and assigns, and upon all other persons claiming an interest in the subject matter hereof through any of the parties hereto, including any Class Member.

55. Any disputes between or among the Defendants and any Class Member concerning matters contained in this Agreement, if they cannot be resolved by negotiation and agreement, shall be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement, and

the Settling Parties submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

56. None of the parties hereto shall be considered to be the drafter of this Agreement or the exhibits referenced hereto or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

57. All terms of this Agreement and the exhibits attached hereto shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

58. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The written waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

59. This Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof.

Dated: September ____, 2007

By:

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