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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule) No. JCCP 4041
1550(b))
TOBACCO CASES I)
Including Actions:)
Cordova vs. Liggett Group, Inc.) San Diego Superior Court No. 651824
Davis vs. R.J. Reynolds Tobacco Co.) San Diego Superior Court No. 706458
County of Los Angeles vs. R.J. Reynolds Tobacco) San Diego Superior Court No. 707651
Co.)
People vs. Philip Morris, Inc.) San Francisco Superior Court No.
980864
People vs. Philip Morris, Inc.) Sacramento Superior Court No. 97AS
03031

RELEASE AND DISCHARGE OF CLAIMS

1 WHEREAS the City/County of _____ (hereinafter the "Undersigned
2 City/County") wishes to receive its allocated share of settlement proceeds as provided for and set
3 forth in the Memorandum of Understanding ("MOU"), a copy of which is attached as Exhibit B to
4 the Consent Decree and Final Judgment agreed to by the State of California and various Participating
5 Manufacturers of Tobacco Products in the matter of People of the State of California, et al. v. Philip
6 Morris Inc., et al., Case No. J.C.C.P. 4041 (originally filed as Sacramento Superior Court Case No.
7 97 AS 03031), which Consent Decree and Final Judgment was entered by the Court on December
8 9, 1998 (a copy of which is attached as Exhibit B to the Agreement Regarding Interpretation of
9 Memorandum of Understanding), and incorporates within it as exhibit A thereto the Master
10 Settlement Agreement ("MSA") entered on November 23, 1998;

11 WHEREAS, the Attorney General of the State of California and representatives of a number
12 of California Counties and Cities entered into the MOU dated August 5, 1998, which allocates a
13 portion of settlement proceeds to certain California Cities and all California Counties that comply
14 with the terms of the MOU, by releasing all Released Claims such City or County may have
15 consistent with the extent of the State's Release, and dismissing any Released Claims from any
16 pending actions with prejudice;

17 WHEREAS, the State of California and certain Participating Manufacturers of Tobacco
18 Products entered into the MSA, the terms of which were approved by the Court by the entry of the
19 Consent Decree and Final Judgment;

20 WHEREAS, certain Cities and Counties within the State of California had, prior to
21 December 9, 1998, commenced litigation asserting various claims for monetary, equitable and
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1 injunctive relief against certain Participating Manufacturers and others as defendants,¹ and other
2 Cities or Counties that have not filed suit can potentially assert similar claims;

3 WHEREAS, the ability of each eligible City and County to share in its portion of the
4 settlement proceeds is conditioned upon a release executed by the eligible City and County of
5 tobacco related claims which is consistent with the extent of the State's release, and dismissal of any
6 Released Claims from any pending actions with prejudice;
7

8 WHEREAS, the Undersigned City/County has obtained any necessary approval to participate
9 in the settlement under the terms and conditions as memorialized in the MOU and the MSA executed
10 between the Attorney General of the State of California and the Participating Manufacturers; and
11

12 WHEREAS, in consideration for receiving its portion of the settlement proceeds as allocated
13 to Cities and Counties in the MOU, the Undersigned City/County executes this Release, consistent
14 with the terms of the MOU and the MSA;

15 NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

16 1. DEFINITIONS
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18 As used herein, the following terms have the same meaning as and are defined the same as
19 they are defined in the Master Settlement Agreement and the Agreement Regarding Interpretation
20 of Memorandum of Understanding² unless specifically modified in this paragraph 1:
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23 ¹ People of the State of California, et al., v. Philip Morris Inc., et al., No. 980864 (San
24 Francisco County Superior Court); The City and County of San Francisco, et al., v. Philip Morris
25 Inc., et al., No. C-96-2090-DLJ (N.D. Cal.); and County of Los Angeles v. R.J. Reynolds
Tobacco Co., et al., No. 707651 (San Diego Superior Court).

26 ² For the purposes of this Release, the meaning of terms appearing herein with initial
27 capitalized letters that are not specifically separately defined in this paragraph 1, have the same
28 definition as such term has in the Master Settlement Agreement or the Agreement Regarding
Interpretation of Memorandum of Understanding.

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(a) The term "City/County" and variations thereon, as used herein means each individual City and/or County which signs this Release and includes all past, present and future agencies, districts, divisions and departments, as well as all past, present and future officers, directors, employees, agents and attorneys of such executing City and/or County.

(b) The term "Master Settlement Agreement" or "MSA" means that document, including exhibits thereto, which is attached as Exhibit A to the Consent Decree and Final Judgment entered by the San Diego Superior Court on December 9, 1998, in People of the State of California, ex rel Daniel E. Lungren, et al. v. Philip Morris Inc., et al., J.C.C.P. 4041 (originally filed as Sacramento Superior Court No. 97 AS 30301), and includes any subsequent agreements with respect to modifications of the MSA.

(c) The term "Original Participating Manufacturers" means the following: Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company, and the respective successors of each of the foregoing. Except as expressly provided in the Master Settlement Agreement, once an entity becomes an Original Participating Manufacturer, such entity shall permanently retain the status of Original Participating Manufacturer.

(d) The term "Participating Manufacturer" means a Tobacco Product Manufacturer that is or becomes a signatory to the MSA, provided that (1) in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by the MSA and the Consent Decree (or, in any Settling State that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree) in all Settling States in which the MSA and the Consent Decree binds Original Participating Manufacturers (provided, however, that such Tobacco Product Manufacturer need only

1 become bound by the Consent Decree in those Settling States in which the Settling State has filed
2 a Released Claim against it), and (2) in the case of a Tobacco Product Manufacturer that signs the
3 MSA after the MSA Execution Date, such Tobacco Product Manufacturer, within a reasonable
4 period of time after signing the MSA, makes any payments (including interest thereon at the Prime
5 Rate) that it would have been obligated to make in the intervening period had it been a signatory as
6 of November 23, 1998. "Participating Manufacturer" shall also include the successor of a
7 Participating Manufacturer. Except as expressly provided in the MSA, once an entity becomes a
8 Participating Manufacturer such entity shall permanently retain the status of Participating
9 Manufacturer.
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11 (e) The term "Released Claims" means: (1) for conduct, acts or omissions occurring prior
12 to November 23, 1998 (including any damages incurred in the future arising from such past conduct,
13 acts or omissions), those Claims directly or indirectly based on, arising out of or in any way related,
14 in whole or in part, to (A) the use, sale, distribution, manufacture, development, advertising,
15 marketing or health effects of, (B) the exposure to, or (C) research, statements or warnings regarding
16 Tobacco Products (including, but not limited to, the Claims asserted in the actions identified in
17 footnote 1 of this Release, or any comparable Claims that were, could be or could have been asserted
18 now or in the future in those actions or in any comparable action in federal, state or local court
19 (whether or not the Undersigned City/County has brought such action)), except for claims for
20 outstanding liability under existing licensing (or similar) fee laws or existing tax laws (but not
21 excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party
22 with respect to such Tobacco-Related Organizations, which claims are covered by the release and
23 covenants set forth in the MSA); (2) for conduct, acts or omissions occurring after November 23,
24 1998, only those monetary Claims directly or indirectly based on, arising out of or in any way related
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1 to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary
2 course of business, including, without limitation, any future Claims for reimbursement of health care
3 costs allegedly associated with the use of or exposure to Tobacco Products.

4 (g) The term "Released Parties" means all Participating Manufacturers and their past,
5 present and future Affiliates, divisions, officers, directors, employees, representatives, insurers,
6 lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors,
7 advertising agencies, public relations entities, attorneys, retailers and distributors of any Participating
8 Manufacturer (and the predecessors, heirs, executors, administrators, successors and assigns of each
9 of the foregoing). Provided, however, that "Released Parties" does not include any person or entity
10 (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time
11 after November 23, 1998, unless such person or entity becomes a Participating Manufacturer.

12 (f) The term "Represented City," "Represented County" and/or "Represented Cities and
13 Counties" means individually or collectively, the City and County of San Francisco, the Cities of
14 Los Angeles, San Diego and San Jose, and the Counties of Alameda, Contra Costa, Marin,
15 Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis
16 Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta and Ventura who executed
17 contingency fee contracts with private outside counsel to prosecute tobacco-related claims, and the
18 County of Los Angeles who executed a separate contingent fee contract with private outside counsel
19 to prosecute tobacco-related claims.

20 2. Upon the occurrence of State-Specific Finality in California, and the entry of a
21 dismissal with prejudice in People of the State of California, et al. v. Philip Morris Inc., et al., No.
22 980864 (San Francisco County Superior Court), City and County of San Francisco, et al. v. Philip
23 Morris Inc., et al., No. C-96-2090-DLJ (N.D. Cal.) and County of Los Angeles, et al. v. R.J.
24

1 Reynolds Tobacco Co., et al., No. 707651 (San Diego County Superior Court), the Undersigned
2 City/County shall absolutely and unconditionally release and forever discharge all Released Parties
3 from all Released Claims that the Undersigned directly, indirectly, derivatively or in any other
4 capacity ever had, now has, or hereafter can, shall or may have.
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6 3. This Release and Discharge of Claims shall not apply to, and shall be of no force or
7 effect as against, any Participating Manufacturer which is a signatory to the MSA or as to or against
8 the Undersigned City/County if, for any reason whatsoever, State Specific Finality does not occur
9 in California or the provisions of the MSA or the Consent Decree and Final Judgment entered in the
10 matter of People of the State of California, et al. v. Philip Morris, Inc., et al., Case No. J.C.C.P. 4041
11 (originally filed as Sacramento Superior Court Case No. 97 AS 03031) are reversed.
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13 4. The Undersigned City/County covenants and agrees that it shall not after the
14 occurrence of State-Specific Finality in California sue or seek to establish civil liability against any
15 Released Party based, in whole or in part, upon any of the Released Claims, and further agrees that
16 such covenant and agreement shall be a complete defense to any such civil action or proceeding.
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18 5. The Undersigned City/County covenants and agrees that, if a Released Claim brought
19 by the Undersigned City/County against any person or entity that is not a Released Party (a "non-
20 Released Party"), or against any retailer, supplier or distributor who is a Released Party, but who is
21 not released from a Released Claim because of the operation of paragraph 9 below (hereinafter a
22 "non-Released Retailer"), results in or in any way gives rise to a claim-over (e.g., a cross-complaint;
23 on any theory whatever other than a claim based on an express written indemnity agreement) by such
24 non-Released Party or non-Released Retailer against any Released Party (and the Attorney General
25 gives notice to the undersigned and to Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg
26 Weiss"), the City and County of San Francisco, Leiff Cabraser Heiman & Bernstein ("LCHB") and
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1 Robinson, Calcagnie & Robinson ("Robinson") within 30 days of the service of such claim-over and
2 prior to entry into any settlement of such claim-over), the Undersigned City/County:

3 (a) shall reduce or credit against any judgment or settlement it may obtain against
4 such non-Released Party or non-Released Retailer the full amount of any judgment or settlement
5 such non-Released Party or non-Released Retailer may obtain against the Released Party on such
6 claim-over (e.g., if the amount obtained on the claim-over against the Released Party by the non-
7 Released Party or non-Released Retailer is equal to the amount of the settlement or judgment the
8 Undersigned City/County obtains against the non-Released Party or non-Released Retailer, the
9 City/County shall receive no payment on its settlement or judgment since the full amount of such
10 settlement or judgment shall be reduced by the amount obtained on the claim-over against the
11 Released Party by the non-Released Party or non-Released Retailer); and

12 (b) shall, as part of any settlement with such non-Released Party or non-Released
13 Retailer, obtain from such non-Released Party or non-Released Retailer for the benefit of such
14 Released Party a satisfaction in full of such non-Released Party's or non-Released Retailer's
15 judgment or settlement against the Released Party.

16 6. The Undersigned City/County further agrees that in the event that the provisions of
17 paragraph 5 do not fully eliminate any and all liability of any Original Participating Manufacturer
18 (or of any person or entity that is a Released Party by virtue of its relation to any Original
19 Participating Manufacturer) with respect to claims-over (on any theory whatever other than a claim
20 based on an express written indemnity agreement) by any non-Released Party or non-Released
21 Retailer to recover in whole or in part any liability (whether direct or indirect, or whether by way of
22 settlement judgment or otherwise), of such non-Released Party or non-Released Retailer to the
23 Undersigned City/County arising out of any Released Claim, (to the extent that the Attorney General
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1 has given notice to the undersigned and to Milberg Weiss, the City and County of San Francisco,
2 LCHB and Robinson within 30 days of the service of such claim-over and prior to entry into any
3 settlement of such claim-over), such Original Participating Manufacturer shall receive a continuing
4 dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any
5 person or entity that is a Released Party by virtue of its relation to such Original Participating
6 Manufacturer) on any such claim-over liability as against the payment the Original Participating
7 Manufacturer is to make pursuant to the MSA (determined as described in step "E" of clause
8 "Seventh" of §IX(j) of the MSA) up to the full amount of such Original Participating Manufacturer's
9 share of the MSA Allocated Payment each year, until all such amounts paid on such claim-over
10 liability have been offset. The Undersigned City's/County's MOU Proportional Allocable Share shall
11 likewise be reduced dollar-for-dollar until the full claim-over amount of the Original Participating
12 Manufacturer's offset has been deducted from the MOU Proportional Allocable Share owing to the
13 Undersigned City/County. The amount deducted from the MOU share owing to the Undersigned
14 City/County will be distributed, pursuant to the terms of the MOU, 50% to the State and 50% to the
15 other cities and counties which did not bring the original action against the non-Released Party or
16 non-Released Retailers which gave rise to the claim-over.
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20 7. The Undersigned City/County does not purport to waive or release any claims on
21 behalf of Indian tribes.

22 8. The Undersigned City/County does not waive or release any criminal liability based
23 on federal, state or local law.

24 9. Notwithstanding the foregoing (and the definition of Released Parties), this release
25 and covenant shall not apply to retailers, suppliers or distributors to the extent of any liability arising
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1 from the sale or distribution of Tobacco Products of, or the supply of component parts of Tobacco
2 Products to, any non-Released Party.

3 10. As provided under the MOU, Private Outside Counsel for the Represented Cities and
4 Counties will make their best efforts to obtain their fees and costs from the Original Participating
5 Manufacturers as provided for in the MSA. Any attorneys fees and costs obtained shall be credited
6 against the amounts owed Private Outside Counsel under their contingency fee agreements. To the
7 extent, if any, that the arbitration award is insufficient to satisfy the outstanding contingency fee
8 contracts, and to the extent, if any, private counsel seek to enforce such contracts, all cities and
9 counties receiving an allocated share of settlement proceeds pursuant to the MOU will share the risk
10 that attorneys fees and costs may be due and owing to Private Outside Counsel who prosecuted the
11 tobacco actions identified in footnote 1 herein. Accordingly, the Undersigned City/County, as well
12 as every other non-litigating County covenants and agrees that, to the extent that any of the
13 Represented Cities and Counties pay attorney's fees to their Private Outside Counsel, in any year,
14 to compensate Private Outside Counsel for work done in the Cities' and Counties' suits against the
15 Participating Manufacturers, the settlement proceeds to be paid to the Undersigned City/County in
16 that year (or as soon thereafter as possible) will be decreased by an offset equal to the Undersigned
17 City's/County's "Proportional Share Percentage" of the sum of fees and costs paid by any
18 Represented City or County. The amount of the offset shall be added to the settlement proceeds to
19 be paid to the Represented City or County that made the private counsel fee payment, provided
20 however, that no Represented City or County shall be subject to an offset for attorneys' fees or costs
21 paid by any other Represented City or County to Private Outside Counsel. For the purpose of this
22 paragraph, "Proportional Share Percentage" shall mean the Undersigned City's/County's allocation
23 percentage of the total amount payable to California local governments (as determined by the
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1 allocation formula set forth in the MOU, calculated as of the year of the fee payment in question),
2 multiplied by the amount of the fee payment made by the Represented City or County in question.
3 A separate offset will be calculated for and paid to each Represented City and County that makes
4 a fee payment to private counsel in any given year.

5 11. Except as otherwise stated herein, notwithstanding any provision of law, statutory or
6 otherwise, which provides that a general release does not extend to claims which the creditor does
7 not know or suspect to exist in its favor at the time of executing the release, which if known by it
8 must have materially affected its settlement with the debtor, the releases set forth herein release all
9 Released Claims against the Released Parties, whether known or unknown, foreseen or unforeseen,
10 suspected or unsuspected, that the Undersigned City/County may have against the Released Parties,
11 and the Undersigned City/County understands and acknowledges the significance and consequences
12 of waiver of any such provision and hereby assumes full responsibility for any injuries, damages or
13 losses that the Undersigned City/County may incur.

14 DATED: _____

CITY/COUNTY OF _____

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20 BY: _____