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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CRUZ
12

13 PEOPLE OF THE STATE OF CALIFORNIA ex rel.
Attorney General Bill Lockyer,
14
Plaintiff,
15
v.
16
SWEDISH MATCH NORTH AMERICA INC., a
17 Delaware corporation; and, DOES 1 through 100,
inclusive,
18
Defendants.
19

Case No.: CV 141004

**STIPULATION FOR ORDER
AND [PROPOSED] ORDER FOR
ENTRY OF FINAL JUDGMENT
AND PERMANENT
INJUNCTION**

20 **STIPULATION**

21 It is hereby stipulated, understood, and agreed by and between plaintiff People of
22 the State of California, and defendant Swedish Match North America Inc., a Delaware
23 corporation (hereinafter "SWEDISH MATCH") that:

24 1. The terms of this Stipulation and Final Judgment shall be binding on the
25 defendant, SWEDISH MATCH, personally and through its successors, assigns, directors,
26 officers, employees, agents, representatives, subsidiaries, divisions, other internal organizational
27 units of any kind, and any and all others who act under, by, through, or on behalf of defendant
28 including, but not limited to, The Pinkerton Tobacco Company, a Delaware corporation, and

1 P.T.C. Brands, Inc., a Delaware corporation.

2 2. The court has subject matter jurisdiction and personal jurisdiction over the
3 parties in this action for the purposes of entering and enforcing this Stipulation and Final
4 Judgment.

5 3. To avoid the expenses and delay of litigation, the People, by and through the
6 Attorney General, and SWEDISH MATCH enter into this Stipulation as a full and final
7 settlement of the claims raised in the Complaint filed in this action. By execution of this
8 Stipulation and agreeing to provide the relief and remedies specified herein including, but not
9 limited to, statutory penalties, SWEDISH MATCH does not admit any violations of California
10 Health and Safety Code section 118950 or Business and Professions Code section 17200 et seq.,
11 or any other law or legal duty, and specifically denies that it has committed any such violations.
12 Nothing in this Stipulation and resulting Final Judgment shall prejudice, waive or impair any
13 right, remedy, or defense SWEDISH MATCH may have in any other or future legal proceeding
14 brought by anyone other than the Attorney General. This Stipulation and Final Judgment and all
15 proceedings related thereto shall not constitute or be considered an admission, presumption,
16 concession, or evidence of any fact, issue of law, or liability by SWEDISH MATCH in any other
17 or future legal proceeding brought by anyone other than the Attorney General. Nevertheless,
18 nothing in this paragraph shall diminish or otherwise affect the obligations, responsibilities and
19 duties of the parties under this Stipulation and Final Judgment.

20 4. In this document, the terms “nonsale distribution,” “smokeless tobacco,” and
21 “public grounds” are defined the same as those terms are defined in California Health and Safety
22 Code section 118950, subdivision (c), as follows:

23 “(1) ‘Nonsale distribution’ means to give smokeless tobacco or cigarettes
24 to the general public at no costs, or at nominal cost, or to give coupons or rebate offers for
25 smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution
26 of tobacco products or coupons or rebate offers in connection with the sale of tobacco products
27 or coupons or rebate offers in connection with the sale of another item, including tobacco
28 products, cigarette lighters, magazines, or newspaper shall not constitute nonsale distribution.

1 “(2) ‘Smokeless tobacco’ means (A) a loose or flat, compressed cake form
2 of tobacco that may be chewed or held in the mouth or (B) a shredded, powdered, or pulverized
3 form of tobacco that may be inhaled through the nostrils, chewed or held in the mouth.

4 “(3) ‘Public building, park, playground, sidewalk, street, or other public
5 grounds’ means any structure or outdoor area that is owned, operated, or maintained by any
6 public entity, including, but not limited to: city and county streets and sidewalks, parade
7 grounds, fair grounds, public transportation facilities and terminals, public reception areas, public
8 health facilities, public recreational facilities, and public office buildings.”

9 5. SWEDISH MATCH is in the business of selling or distributing smokeless
10 tobacco.

11 6. On or about June 23, 2000, SWEDISH MATCH engaged in the nonsale
12 distribution of smokeless tobacco on public grounds by distributing cans and pouches of its
13 smokeless tobacco products at the Watsonville Speedway in Watsonville, California in
14 connection with SWEDISH MATCH’s Timber Wolf Grass Roots Race Program. The
15 Watsonville Speedway is located on the Santa Cruz County Fairgrounds and operates pursuant to
16 a rental agreement between the 14th District Agricultural Association and West Coast Speedways,
17 Inc. Approximately 350 members of the general public received these smokeless tobacco
18 products at no cost. The smokeless tobacco products were not distributed in connection with the
19 sale of another item.

20 7. On or about July 28, 2000, SWEDISH MATCH engaged in the nonsale
21 distribution of smokeless tobacco on public grounds by distributing cans and pouches of its
22 smokeless tobacco products at the Watsonville Speedway in Watsonville, California in
23 connection with SWEDISH MATCH’s Timber Wolf Grass Roots Race Program.
24 Approximately 275 members of the general public received these smokeless tobacco products at
25 no cost. The smokeless tobacco products were not distributed in connection with the sale of
26 another item.

27 8. On or about July 26, 2000 through and including August 6, 2000, SWEDISH
28 MATCH engaged in the nonsale distribution of smokeless tobacco on public grounds by

1 distributing, from a booth Swedish Match rented from the 16th District Agricultural Association,
2 cans and pouches of its smokeless tobacco products at the California Mid-State Fair in Paso
3 Robles, California. Approximately 2450 members of the general public received these
4 smokeless tobacco products at no cost. The smokeless tobacco products were not distributed in
5 connection with the sale of another item.

6 9. Health and Safety Code section 118950, subdivision (b), provides:

7 “It is unlawful for any person, agent, or employee of a person in the business of selling or
8 distributing smokeless tobacco or cigarettes from engaging in the nonsale distribution of any
9 smokeless tobacco or cigarettes to any person in any public building, park or playground, or on
10 any public sidewalk, street, or other public grounds.”

11 10. PERMANENT INJUNCTION. Pursuant to Business and Professions Code
12 section 17203, defendant SWEDISH MATCH personally and through its successors, assigns,
13 directors, officers, employees, agents, representatives, subsidiaries, divisions, other internal
14 organizational units of any kind, and any and all others who act under, by, through, or on behalf
15 of defendant including, but not limited to, The Pinkerton Tobacco Company (a Delaware
16 corporation) and P.T.C. Brands, Inc. (a Delaware corporation), shall be permanently restrained
17 and enjoined from engaging in, directing, facilitating, or participating in any manner in the
18 nonsale distribution on public grounds, in the State of California, of smokeless tobacco or other
19 tobacco products, or coupons, coupon offers, or rebate offers for smokeless tobacco or other
20 tobacco products.

21 Notwithstanding Health and Safety Code section 118950, subdivision (f), this injunction
22 shall apply to any public grounds, even if minors are prohibited by law. This injunction shall
23 also apply to any public grounds leased for private functions, even if minors are denied access by
24 a peace officer or licensed security guard on the premises.

25 11. PAYMENT IN LIEU OF CIVIL PENALTIES. In lieu of a civil penalty
26 under Health and Safety Code section 118950, SWEDISH MATCH shall pay, at the time of entry
27 of this Stipulation and Final Judgment, the sum of three hundred seventy-five thousand dollars
28 (\$375,000.00). Payment shall be by delivery of immediately available funds payable to the

1 “Public Health Institute” and shall be delivered to the Public Health Institute, 505 - 14th Street,
2 Suite 810, Oakland, CA 94612, attention: Marice Ashe.

3 a. The Public Health Institute is a tax-exempt, nonprofit, California public benefit
4 corporation whose mission is to undertake public health research, training, consultation,
5 and educational activities. It has been in operation for more than thirty years. The Public
6 Health Institute is the fiscal sponsor for nearly 200 projects, including tobacco-related
7 projects such as: the Technical Assistance Legal Center whose mission is to change
8 social norms about tobacco by developing policies in California to reduce the health
9 damage caused by the tobacco industry; Tobacco Free Challenge Racing which works to
10 eliminate the association of tobacco products with the excitement of motor sports racing
11 and bring anti-tobacco product messages to these events; and, the California Cancer
12 Registry which conducts epidemiological research into, among other things, causes of
13 cancer such as exposure to tobacco products. The Public Health Institute includes a
14 Public Health Trust project, whose goal is to channel litigation funds into health
15 protection and promotion programs.

16 b. In consultation with the Tobacco Control Section of the State of California
17 Department of Health Services, and consistent with the purposes of and findings set forth
18 in Health and Safety Code section 118950, the Public Health Trust shall disburse the
19 funds from this settlement to address the same or similar public harm as that allegedly
20 caused by SWEDISH MATCH by its conduct described in paragraphs 6 through 8 of this
21 Stipulation. The funds may be used for projects throughout the State of California;
22 however, preference shall be given to projects serving Santa Cruz County and/or San
23 Luis Obispo County.

24 Examples of appropriate uses of the funds may include, but are not limited to, the
25 following:

26 (1) Funding the Public Health Institute and/or other appropriate entity to develop
27 and conduct trainings throughout the state on how to monitor events in California
28 at which there is some likelihood of activity in violation of Health and Safety

1 Code section 118950 or other legal restrictions on tobacco product promotion
2 (including, but not limited to: fairs, auto races, rodeos, or any events sponsored
3 by entities in the business of selling or distributing tobacco products) for the
4 purposes of ensuring compliance with, and identifying violations of, Health and
5 Safety Code section 118950 and other legal restrictions on tobacco product
6 promotion;

7 (2) Funding a local public health program to conduct tobacco product use
8 prevention, education, and/or cessation public health projects at or related to
9 county fair grounds or other venues (including, but not limited to, those hosting
10 fairs, auto races, rodeos, or any events sponsored by entities in the business of
11 selling or distributing tobacco products) likely to have tobacco sponsorship;

12 (3) Funding the Tobacco Education Clearinghouse of California (which is
13 operated by a nonprofit agency, ETR Associates, through a contract with the
14 California Department of Health Services) to produce written and/or audiovisual
15 materials to assist public health agencies and non-profit organizations which work
16 to eliminate tobacco-sponsored events and/or tobacco product use on public
17 grounds;

18 and/or,

19 (4) Funding the production of written and/or audiovisual public education
20 materials about smokeless tobacco products.

21 c. The process by which the Public Health Institute's Public Health Trust will choose
22 grantees is specified in the letter regarding "Method of Selection of Recipients of
23 Settlement Funds" attached hereto as Exhibit A and incorporated herein.

24 d. The Public Health Institute may retain thirty seven thousand five hundred dollars
25 (\$37,500.00), which is ten percent of the settlement payment, for its administrative
26 expenses. This amount shall cover all costs associated with the management and
27 administration of the settlement.

28 12. INVESTIGATIVE COSTS. At the time of entry of this Stipulation and Final

1 Judgment, defendant SWEDISH MATCH shall pay ten thousand two hundred dollars
2 (\$10,200.00) in investigative costs. Payment shall be by immediately available funds payable to
3 the “California Attorney General’s Office” and shall be delivered to the California Attorney
4 General’s Office, Tobacco Litigation and Enforcement Section, 1515 Clay Street, Suite 2000,
5 Oakland, CA 94612-1413, Attn: Amy Hertz, Deputy Attorney General.

6 13. RETENTION OF JURISDICTION. Jurisdiction is retained by the Court,
7 including but not limited to pursuant to California Code of Civil Procedure section 664.6, for the
8 purpose of enabling any party to this Stipulation to apply to the Court at any time for such further
9 orders or directions as may be necessary or appropriate for the construction, modification, or the
10 carrying out of this Stipulation and Final Judgment, for enforcement of compliance herewith, and
11 for the punishment of violations of any provisions hereof. The parties agree that the Court may
12 in its supervision of this Stipulation and Final Judgment use all of its powers including, but not
13 limited to, its contempt power, its power to order injunctive relief, its power to order the payment
14 of money, and its power to order specific enforcement of the terms of this Stipulation and Final
15 Judgment.

16 14. The parties agree to negotiate in good faith to try to resolve any disputes that
17 may arise related to this Stipulation and Final Judgment. The Attorney General shall give
18 SWEDISH MATCH thirty (30) days notice before filing a motion or other pleading seeking
19 contempt of court or other sanctions for violation of this Stipulation and Final Judgment. The
20 Attorney General may shorten the 30-day notice period if, in the Attorney General’s judgment, a
21 time-sensitive public health or safety concern requires more immediate action.

22 15. This Stipulation and Final Judgment does not limit the remedies available to
23 the Office of the Attorney General in connection with any future violation of California laws or
24 regulations by SWEDISH MATCH. If any violations of this Stipulation and Final Judgment
25 constitute subsequent violations of Health and Safety Code section 118950 or other laws
26 independent of the Stipulation and Final Judgment and/or those alleged in the Complaint, the
27 Attorney General is not limited to enforcement of the Stipulation and Final Judgment, but may
28 seek in this or another action whatever fines, costs, penalties or other remedies are provided for

1 by law for failure to comply with Health and Safety Code section 118950 or other laws.

2 16. Nothing in this Stipulation and Final Judgment shall be deemed to permit or
3 authorize any violation of the laws or regulations of California or otherwise be construed to
4 relieve SWEDISH MATCH of any duty to comply with the applicable laws and regulations of
5 California.

6 17. This Stipulation and Final Judgment applies to the defendant only in its
7 corporate capacity, acting through its respective successors and assigns, directors, officers,
8 employees, agents, subsidiaries, divisions, or other internal organizational units of any kind.

9 18. This Stipulation and Final Judgment is a full and final judgment with respect
10 to all matters that are the subject of this Stipulation and Final Judgment.

11 19. This Stipulation and Final Judgment embodies the entire agreement between
12 the parties with respect to the matters addressed by this Stipulation and Final Judgment and
13 supersedes (i) all prior agreements and understandings relating to such matters, whether written
14 or oral, and (ii) all purportedly contemporaneous oral agreements and understandings relating to
15 such matters. This Stipulation and Final Judgment may be modified upon written approval of
16 the parties and upon entry of a modified Final Judgment by the Court thereon, or upon duly
17 noticed motion of any party as provided by law and upon entry of a modified Final Judgment by
18 the Court.

19 20. The parties agree to use their best efforts and to cooperate with each other to
20 cause this Stipulation and Final Judgment to become effective, to obtain all necessary approvals,
21 consents, and authorizations, if any, and to execute all documents and to take such other actions
22 as may be appropriate in connection herewith. Consistent with the foregoing, each party agrees
23 that it will not encourage any challenge to this Stipulation and Final Judgment by any other
24 person, and will support the integrity and enforcement of the terms of this Stipulation and
25 Judgment.

26 21. Each signatory to this Stipulation and Final Judgment certifies that he or she
27 is fully authorized by the party he or she represents to enter into and execute this Stipulation and
28 Final Judgment on behalf of the party represented and legally to bind that party.

1 22. This Stipulation and Final Judgment shall take effect immediately upon entry
2 thereof, without further notice to defendant.

3 IT IS SO STIPULATED.

4 Dated: BILL LOCKYER
5 Attorney General of the State of California
6 RICHARD M. FRANK
7 Chief Assistant Attorney General
8 DENNIS ECKHART
9 Senior Assistant Attorney General
10 AMY J. HERTZ
11 Deputy Attorney General

12 By: _____
13 AMY J. HERTZ
14 Attorneys for Plaintiff
15 PEOPLE OF THE STATE OF CALIFORNIA

16 Dated: By: _____
17 LENNART FREEMAN
18 President
19 SWEDISH MATCH NORTH AMERICA INC.

20 Dated: By: _____
21 GERARD ROERTY
22 Vice President, Secretary, and General Counsel
23 SWEDISH MATCH NORTH AMERICA INC.
24 Attorney for Defendant

25 **FINAL JUDGMENT ORDER**

26 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

27 **The clerk is ordered to enter this Stipulation and Final Judgment forthwith.**

28 Dated: _____

JUDGE OF THE SUPERIOR COURT