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FILED
Clerk of the Superior Court
AUG 17 2007
By: K SANDOVAL, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General of the State of California, Plaintiff, v. U.S. SMOKELESS TOBACCO COMPANY, a Delaware corporation, Defendant.	**Case No.: JCCP 4041** Tobacco Cases I **STIPULATION FOR ENTRY OF JUDGMENT AND [~~PROPOSED~~] FINAL JUDGMENT** Action Filed: July 27, 2005
U.S. SMOKELESS TOBACCO COMPANY, a Delaware corporation, Cross-Complainant, v. PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General of the State of California; BILL LOCKYER in his official capacity as the Attorney General of the State of California; and the NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, Cross-Defendants.	

STIPULATION

It is hereby stipulated, understood, and agreed by and among plaintiff and cross-defendant People of the State of California (the "People"), cross-defendant the Attorney General, in his official capacity (the Attorney General, in his official capacity, "Attorney General"), and defendant and cross-complainant U.S. Smokeless Tobacco Company ("USSTC") (collectively, the "Parties") that:

1. The terms of this Stipulation and Final Judgment shall be binding on USSTC, in its corporate capacity, acting through any and all of its respective successors, assigns, directors, officers, employees, agents, representatives, subsidiaries, divisions, other internal organizational units of any kind, and any and all others who act under, by, through, or on behalf of USSTC.

2. The terms of this Stipulation and Final Judgment shall be binding on the People and the Attorney General, acting through any and all of their respective successors, assigns, officers, employees, agents, representatives, and any and all others who act under, by, through, or on behalf of them.

3. The court has subject matter jurisdiction and personal jurisdiction over the Parties for the purposes of entering and enforcing this Stipulation and Final Judgment.

4. The People and USSTC are signatories to the Smokeless Tobacco Master Settlement Agreement ("STMSA"), which settled the litigation entitled People of the State of California, et al. v. Philip Morris Inc., et al., Sacramento Superior Court 97AS03031, Judicial Council Coordination Proceeding No. 4041, and other claims and matters as described therein. Pursuant to the STMSA, this Court entered a Consent Decree and Final Judgment ("Consent Decree") on December 9, 1998, retaining continuing jurisdiction for the purposes of implementing and enforcing the STMSA and Consent Decree.

5. On or about July 27, 2005, the People filed a Complaint in this Court against USSTC alleging that USSTC's Brand Name Sponsorship[1] ("BNS") related to the National Hot Rod Association ("NHRA") and Don Prudhomme Racing, Inc. ("Don Prudhomme") violates the

[1] All capitalized terms herein that are defined in the STMSA and/or Consent Decree shall have the same meaning as in the STMSA and/or Consent Decree, unless otherwise specified.

STMSA and Consent Decree (the Complaint and all subsequent amendments thereto collectively referred to herein as the "Complaint"). The People's Complaint alleges, among other things, that USSTC's BNS includes "paid participants or contestants" who are under eighteen years of age in violation of STMSA § III(c)(1)(C) and constitutes a multiple BNS in violation of STMSA § III(c)(2)(A). USSTC subsequently filed answers denying the material allegations of the Complaint.

6. On or about October 14, 2005, USSTC filed a Cross-Complaint in this Court against the People, the Attorney General, and the National Association of Attorneys General ("NAAG") alleging that their conduct relating to USSTC's BNS violates the STMSA and/or Consent Decree (the Cross-Complaint and all subsequent amendments thereto collectively referred to herein as the "Cross-Complaint"). The People, the Attorney General, and NAAG subsequently filed answers denying the material allegations of the Cross-Complaint.

7. To avoid the expense and delay of continued litigation, the Parties enter into this Stipulation and Final Judgment as a full and final settlement of the claims raised in the Complaint and the claims against the People and the Attorney General raised in the Cross-Complaint.

8. By execution of this Stipulation and agreeing to entry of judgment providing the relief and remedies specified herein, the Parties do not admit any violations of the STMSA or Consent Decree, or of any other law or legal duty, and specifically deny that they have committed any such violations. Except as otherwise specified herein, nothing in this Stipulation and Final Judgment shall prejudice, waive or impair any right, remedy, or defense the Parties may have in any other or future legal proceeding brought by anyone, including the Parties. This Stipulation and Final Judgment and all proceedings related thereto shall not constitute or be considered an admission, presumption, concession, or evidence of any fact, issue of law, or liability in any other or future legal proceeding brought by anyone, including any of the Parties. In addition, this Stipulation and Final Judgment shall be inadmissible in any other or future legal proceedings, except any proceedings brought by any of the Parties to enforce its terms.

9. Nevertheless, nothing in the foregoing paragraph shall diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Stipulation and Final Judgment.

10. On July 6, 2007, the NHRA announced that it has changed its Official Rules such that any under-18-year-old drivers will be prohibited from racing at National Events[2] that include races within USSTC's BNS, be it any racing series that occurs at National Events, whether in professional class, sportsman class, or exhibition races, effective as of the first National Event that takes place in 2008.

11. The Parties agree that based on the NHRA's having changed its Official Rules, as described in paragraph 10:

(a) USSTC may continue to engage in its BNS related to National Events, including in years beyond the term of the current sponsorship agreement between U.S. Smokeless Tobacco Brands, Inc. ("USSTB") and the NHRA, dated on or about June 19, 2006. USSTC agrees not to expand its BNS with the NHRA beyond one series (e.g., the POWERade Drag Racing Series) and one point competition (e.g., the Skoal Showdown);

(b) USSTC may also continue, together with the BNS related to National Events referenced in subparagraph 11(a), to engage in its BNS related to one racing vehicle under Don Prudhomme in the POWERade Drag Racing Series (e.g., the Skoal Racing Chevy Funny Car currently driven by Tommy Johnson Jr.), including in years beyond the term of the current sponsorship agreement between USSTB and Don Prudhomme, dated on or about December 7, 2004. Alternatively, USSTC may elect to sponsor one racing vehicle under a different entity or person instead of Don Prudhomme. USSTC agrees not to expand its BNS with any such entity or person to include more than one racing vehicle; and

[2] For purposes of this Stipulation and Final Judgment only, the term "National Events" shall mean and refer to the events that the NHRA holds nationally each year that include professional class races. There are currently 23 National Events in the 2007 NHRA racing season. These events currently include POWERade Drag Racing Series professional class races, along with certain sportsman class races, such as certain Lucas Oil Drag Racing Series races or certain Summit Racing Series races. For purposes of this Stipulation and Final Judgment only, the term "National Events" shall also mean and refer to whatever form National Events may take in the future.

(c) USSTC will terminate the BNS related to National Events referenced in subparagraph 11(a) if at any time the NHRA changes its rules to again permit under-18-year-old drivers to race at National Events that include races within USSTC's BNS, be it any racing series that occurs at National Events, whether in professional class, sportsman class, or exhibition races. In addition, USSTC agrees that all future contracts with the NHRA relating to its BNS will be made with an explicit provision to the effect that USSTC will terminate its BNS related to National Events referenced in subparagraph 11(a), if at any time the NHRA changes its rules to again permit under-18-year-old drivers to race at National Events that include races within USSTC's BNS, be it any racing series that occurs at National Events, whether in professional class, sportsman class, or exhibition races. (If such a rule change is made prior to the start of a new race year [e.g., between December 1, 200X, and January 30, 200X+1], USSTC's BNS related to National Events referenced in subparagraph 11(a) will terminate before the first National Event in 200X+1. If this rule change occurs after the first National Event of the year, USSTC's BNS will end by December 31 of that year.)

12. Nothing herein shall require USSTC to select the NHRA, including the POWERade Drag Racing Series races, the Skoal Showdown, or Don Prudhomme, as its one BNS in a 12-month period under the STMSA.

13. Within 10 business days from the date on which this Stipulation and Final Judgment is executed by all the Parties and signed and entered by the Court, USSTC will make the following payments:

(a) $680,000 to the California Department of Justice for attorneys fees and costs related to these proceedings;

(b) $500,000 to the State of California for other expenditures related to these proceedings; and

(c) $320,000 to the National Association of Attorneys General for attorneys fees and costs related to these proceedings.

14. The payments set forth in subparagraphs 13(a) and (b) shall constitute full satisfaction of any monetary claims whatsoever of any nature against USSTC by the People and/or the Attorney General arising from or asserted in the instant litigation.

15. RETENTION OF JURISDICTION. Jurisdiction is retained by the Court, including but not limited to pursuant to California Code of Civil Procedure section 664.6, for the purpose of enabling any Party to this Stipulation and Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction, modification, or the carrying out of this Stipulation and Final Judgment, for enforcement of compliance herewith, and for the punishment of violations of any provisions hereof. The Parties agree that the Court may use all of its powers in its supervision of this Stipulation and Final Judgment.

16. The Parties agree, as provided for by STMSA § VII(c)(6), that whenever possible, they shall seek to resolve an alleged violation of this Stipulation and Final Judgment by discussion. The Parties shall give each other thirty (30) days notice in writing before filing a motion or other pleading seeking to enforce this Stipulation and Final Judgment. As provided in STMSA § VII(c)(2), the Attorney General may shorten the 30-day notice period if, in the Attorney General's judgment, a time-sensitive, public health or safety concern requires more immediate action.

17. Except as otherwise specified herein, USSTC releases the People and the Attorney General of and from any and all Claims asserting that the People and/or the Attorney General violated the STMSA and/or Consent Decree as alleged in the Cross-Complaint. To the extent that the People and/or the Attorney General initiate an enforcement action in the future, pursuant to the terms of the STMSA and/or Consent Decree, relating to USSTC's sponsorship, USSTC reserves any and all of its rights and defenses and does not release any Claims asserting that such future enforcement violates the STMSA and/or Consent Decree based on any conduct that USSTC believes supports such Claims.

18. Except as otherwise specified herein, the People and/or the Attorney General release USSTC and its past, present, and future affiliates, including, but not limited to USSTC's

parents, and the respective divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, trade organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers, and distributors of USSTC or of any such affiliate (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) ("USSTC Released Parties") of and from any and all Claims asserting that any of the USSTC Released Parties violated the STMSA and/or Consent Decree as alleged in the Complaint. Notwithstanding any of the foregoing, if at any time the NHRA changes its rules to permit under-18-year-old drivers to race at National Events that include races within USSTC's BNS, be it any racing series that occurs at National Events, whether in professional class, sportsman class, or exhibition races, and USSTC opts to continue its BNS of one racing vehicle (be it through Don Prudhomme or another entity or person), the People and/or the Attorney General reserve the right to initiate an enforcement action, pursuant to the terms of the STMSA and/or Consent Decree, with respect to any future conduct after the NHRA rule change by the USSTC Released Parties in connection with USSTC's continuation of such sponsorship that the People believe constitutes a violation of the STMSA and/or Consent Decree. Similarly, to the extent that USSTC expands its BNS in the future beyond the terms of this agreement, the People and/or the Attorney General reserve any and all rights to initiate an enforcement action, pursuant to the terms of the STMSA and/or Consent Decree, with respect to any such future conduct. USSTC also reserves any and all of its rights and defenses and does not release any Claims asserting that such future enforcement violates the STMSA and/or Consent Decree based on any conduct that USSTC believes supports such Claims.

19. Notwithstanding any of the foregoing, nothing in this Stipulation and Final Judgment shall constitute a waiver or release of any Party's right to seek in the future a declaration under the STMSA and/or Consent Decree that construes any of their terms.

20. Nothing in this Stipulation and Final Judgment shall be deemed to permit or authorize any violation of the STMSA, Consent Decree, or law or regulations of California or otherwise be construed to relieve any of the Parties of any duty to comply with the STMSA,

Consent Decree, or applicable laws and regulations of California. Nothing in this paragraph shall diminish or otherwise affect the rights of the Parties under this Stipulation and Final Judgment.

21. This Stipulation and Final Judgment does not limit the remedies available to the Parties in connection with any future violations of the STMSA, Consent Decree, and/or California laws and regulations by any of the Parties. If any violations of this Stipulation and Final Judgment also constitute violations of the STMSA, Consent Decree, or other laws independent of the Stipulation and Final Judgment and/or those alleged in the Complaint and/or Cross-Complaint, the Parties are not limited to enforcement of the Stipulation and Final Judgment but may seek in these or other proceedings whatever fines, costs, penalties or other remedies are provided for by law for the violation(s). The Parties reserve all rights and defenses any of them believes arise from any such future actions.

22. This Stipulation and Final Judgment embodies the entire agreement between the Parties with respect to the matters addressed by this Stipulation and Final Judgment and supersedes (i) all prior agreements and understandings relating to such matters, whether written or oral, and (ii) all purportedly contemporaneous oral agreements and understandings relating to such matters. This Stipulation and Final Judgment may be modified upon written approval of the Parties and upon entry of a modified Final Judgment by the Court thereon, or upon duly noticed motion of any Party as provided by law and upon entry of a modified Final Judgment by the Court.

23. The Parties agree to use their best efforts and to cooperate with each other to cause this Stipulation and Final Judgment to become effective, to obtain all necessary approvals, consents, and authorizations, if any, and to execute all documents and to take such other actions as may be appropriate in connection herewith. Consistent with the foregoing, each Party agrees that it will not encourage any challenge to this Stipulation and Final Judgment by any other person, and will support the integrity and enforcement of the terms of this Stipulation and Final Judgment. In the event that the Court does not approve or enter this Stipulation and Final Judgment, or in the event that the Court or any other court, subsequent to approval and entry of this Stipulation and Final Judgment, issues an order or ruling denying approval or entry of this Stipulation and Final Judgment that is not subject to further review or appeal, then this Stipulation and Final Judgment

shall become null and void, except for paragraphs 8 and 23, and any monies paid by USSTC under this Stipulation and Final Judgment shall be returned to USSTC with interest.

24. The normal rule of construction that any ambiguities are to be resolved against the drafter will not be employed in the interpretation of this document.

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

26. The Parties agree that in view of the reservation of rights set forth herein the claims asserted in the Complaint will be dismissed without prejudice and that the Cross-Complaint will be dismissed without prejudice as to the People and the Attorney General as set forth below in the Order for Entry of Final Judgment.

27. This Stipulation and Final Judgment is expressly conditioned on the execution by the Parties and NAAG of a separate stipulation of dismissal without prejudice of the Cross-Complaint as to NAAG.

28. This Stipulation and Final Judgment shall take effect immediately upon notice of entry thereof.

29. This Stipulation and Final Judgment may be executed in counterparts. Facsimile, photocopied, or electronically imaged signatures shall be considered as valid signatures as of the date affixed, although the original signature pages shall thereafter be appended.

IT IS SO STIPULATED.

DATED: August 7, 2007

EDMUND G. BROWN JR.
Attorney General of the State of California
DENNIS ECKHART
Senior Assistant Attorney General
SHARI B. POSNER
Deputy Attorney General

By: SHARI POSNER
Deputy Attorney General
Attorneys for Plaintiff PEOPLE and Cross-Defendants
PEOPLE and ATTORNEY GENERAL

DATED: August 7, 2007

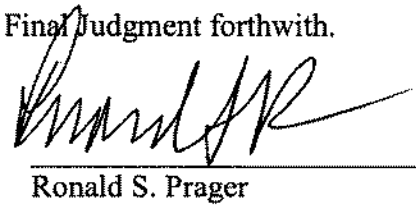
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: PETER J. McKENNA
Attorneys for Defendant and Cross-Complainant
U.S. SMOKELESS TOBACCO COMPANY

ORDER FOR ENTRY OF FINAL JUDGMENT

The parties having stipulated to entry of judgment on the terms set forth above, and the Court, having reviewed the terms of this Stipulation and Final Judgment, IT IS SO ORDERED, ADJUDGED AND DECREED, and (i) this Court approves this Stipulation and Final Judgment as a fair and reasonable resolution of the issues in the Complaint and Cross-Complaint, (ii) all claims asserted in the Complaint are hereby dismissed without prejudice, in accordance with the terms set forth above, and (iii) all claims asserted in the Cross-Complaint are hereby dismissed without prejudice as to the People and the Attorney General, in accordance with the terms set forth above. The clerk shall enter this Stipulation and Final Judgment forthwith.

DATED: AUG 20 2007



Ronald S. Prager
JUDGE OF THE SUPERIOR COURT