

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION**

WAYNE MINER and JAMES EASLEY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PHILIP MORRIS USA, INC., a corporation

Defendant.

CLASS ACTION

Case No.: 60CV03-4661

FINAL JUDGMENT AND ORDER OF DISMISSAL

THIS MATTER comes before the Court upon the “Motion for Final Approval of the Class Settlement” filed by Plaintiffs. This Court, being fully advised of the premises of the Motion, FINDS:

1. Plaintiffs filed their original Complaint on April 18, 2003. The presently operative pleading, the Second Amended Class Action Complaint, was filed on April 15, 2010. Plaintiffs’ Second Amended Class Action Complaint alleges claims for violation of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 to -115 (the “ADTPA”), and unjust enrichment. Plaintiffs are seeking compensatory damages.

2. Plaintiffs allege that, among other things, during the Class Period Philip Morris engaged in the practice of marketing and selling its Marlboro Lights and Marlboro Ultra-Lights cigarettes (collectively “Lights”) as “Lights,” “Ultra Lights,” “lower tar and nicotine,” “low tar and nicotine.” Plaintiffs allege that Defendant falsely represented that Lights were less harmful and that they delivered lower tar and nicotine in comparison to regular Marlboro cigarettes when in fact Lights do not deliver lower tar and nicotine than regular Marlboro cigarettes when

actually smoked. Plaintiffs contend that Lights cigarettes are no less harmful, and might actually be more dangerous, than regular Marlboro cigarettes.

3. The Class previously certified by this Court, as affirmed by the Arkansas Supreme Court, includes the following:

All persons who purchased Defendants' Marlboro Light [or Marlboro Ultra-Light] cigarettes in Arkansas for personal consumption from November 1, 1971, through June 22, 2010. Excluded from the Class are Defendants, any parents, subsidiary, affiliate, or controlled person or Defendants, as well as the officers, directors, agents, servants, or employees of Defendants, and the immediate family members of such persons.

4. The Parties have negotiated a class action settlement (the "Settlement Agreement," Exhibit 1 to the Joint Motion for Preliminary Approval of Class Settlement and Approval of Notice to Class Members (the "Preliminary Approval Motion")). Through this Settlement Agreement, Defendant will fully and completely satisfy any and all claims of Class Members by paying a total payment of \$45,000,000. The cost of administration of the settlement, class representative fees, and attorneys' fees and costs of Class Counsel will be paid from the \$45,000,000. By entering into the Settlement Agreement, neither Plaintiffs nor Defendant make any admissions relating to the claims and defenses raised in this lawsuit.

5. On August 15, 2016, Plaintiffs filed the Preliminary Approval Motion, seeking preliminary approval of a Settlement Agreement that fully, finally and forever resolves, discharge and settles on behalf of Plaintiffs, Class Members and Class Counsel the Released Claims against Defendant.

6. Attached as Exhibit "1" to the Preliminary Approval Motion is the Settlement Agreement describing the claims that are being settled on behalf of the Class (the "Released Claims"), setting forth the terms of the Parties' settlement, and incorporating the terms of this Final Judgment and Order of Dismissal (the "Final Judgment"). The Settlement Agreement is

attached to this Final Judgment as Exhibit 1 and its terms, including the definitions, are incorporated into this Final Judgment as if fully set forth verbatim. The Agreement and Final Judgment shall be referred to collectively in this Final Judgment as the "Settlement."

7. After a hearing on the Parties Preliminary Approval Motion, this Court entered an Amended Order dated August 17, 2016 (the "Amended Preliminary Approval Order") preliminarily approving the Settlement and directing that notice of the proposed settlement be published pursuant to the Court-approved Notice Plan. The Court also set a hearing for November 21, 2016, to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate.

8. In accordance with the Court's Preliminary Approval Order, the Claims Administrator caused to be published via a magazine with nationwide circulation, newspapers (English and Spanish), radio broadcasts, digital banners on various internet sites, sponsored search listings on internet search engines, the issuance of an informational release, and the distribution of radio public service announcements (the "Settlement Notice") in the form approved by the Court in the Preliminary Approval Order. Filed with the Court on November 18, 2016 is the Declaration of Hilsoft Notifications, which provides additional information concerning the publication of Settlement Notice. The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.

9. On November 21, 2016, the Court held a hearing on the proposed Settlement, at which time all interested persons were given an opportunity to be heard. No Class Members or other interested parties appeared at the Final Hearing for purposes of objection and no objections

to the Settlement were presented at the hearing. Only one Class Member has requested to be excluded from the Class Settlement. Furthermore, the Court has read and considered all submissions in connection with the Settlement. Having done so, the Court has determined that approval of the Settlement will bestow a substantial economic benefit on the Class, result in substantial savings in time and money to the litigants and the Court and will further the interests of justice, and that the Settlement is the product of good-faith, arm's length negotiations between the Parties.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

10. The Settlement Agreement, including all of the terms defined in the document including but not limited to the definition of "Released Claims," is incorporated into this Final Judgment. The Court has jurisdiction over the subject matter of this litigation and all parties to this litigation, including all members of the Class.

11. The certified Class is defined for purposes of the Agreement and this Final Judgment as set forth in paragraph 3 above.

12. The Settlement was made in good faith and its terms are fair, reasonable, and adequate as to the Class. Therefore, the Settlement is approved in all respects, and shall be binding upon, and inure to the benefit of, all members of the Class.

13. No objections to the Settlement were filed or received by the Court.

14. Only one Class Member has requested to be excluded from the Class. The Class Member who requested exclusion from the Class is not bound by either the Agreement or this Final Judgment. The Excluded Member is identified by name in a Schedule filed

contemporaneously herewith. The Excluded Member may pursue her own individual remedies, if any, as to any of the Released Claims.

15. Class Members who requested exclusion from the Class are not bound by either the Agreement or this Final Judgment and shall not recover any award under the Agreement or the Final Judgment or be paid any amount from the Settlement Fund. The Excluded Members are identified by name in a Schedule filed contemporaneously herewith and under seal. The Excluded Members may pursue their own individual remedies, if any, as to any of the Released Claims.

16. As of the Effective Date, Plaintiffs, Class Members and Class Counsel, and each of them, for themselves and their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, successors and assigns, shall fully and forever release and discharge the Defendant, and its parents, subsidiaries, affiliated entities, predecessors, successors, and assigns and each of its present, former, and future officers, directors, employees, agents, any third party payment processors, independent contractors, successors, assigns, attorneys and legal representatives (collectively, "Defendant Releasees") from any and all of the Released Claims, except for the rights and obligations created by the Settlement Agreement, and shall not commence, participate in, prosecute, or cause to be commenced or prosecuted against the Defendant Releasees any action or other proceeding based upon any of the Released Claims released pursuant to the Settlement Agreement. The relief afforded under the Agreement fully and completely satisfies the Class Members' claims for relief in this case. This Release also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members or by Plaintiffs or the Class Members, or any of them, in connection

with or related in any manner to this litigation, the settlement of this litigation, the administration of this Settlement and/or the Released Claims except to the extent otherwise specified in the Settlement Agreement. This Final Judgment shall not, however, operate or be construed to release any claims the Parties may have against any person or entity who is not a Party to the Settlement Agreement except as provided above.

17. All Released Claims are dismissed with prejudice.

18. Neither this Final Judgment, the Settlement Agreement, nor any documents referred to herein nor any action taken pursuant to – or to carry out – the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence, of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

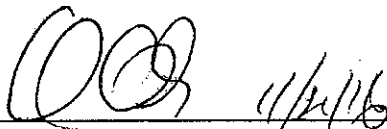
19. The Court reserves jurisdiction over this matter, the Parties, and all counsel herein, without affecting the finality of this Final Judgment, including over (a) implementing, administering, and enforcing this Settlement and any attorneys' fee and expense award or distribution from the Settlement Fund as provided for in the Settlement Agreement; (b) disposition of the Settlement Funds; and (c) other matters related to or ancillary to the foregoing. The Court hereby sets January 17, 2017 at 1:30 p.m. as the date for the hearing on attorneys' fees, class representative incentive awards and expenses. Any objection to the request for attorneys' fees, class representative incentive awards and expenses shall be filed on or before January 7, 2017.

20. . . Nothing set forth in this Final Judgment shall be construed to modify or limit the terms of the Settlement Agreement, but rather, the Settlement Agreement and this Final Judgment are to be construed together as one Settlement between the Parties.

21. The Settlement and this Final Judgment shall have no *res judicata*, collateral estoppel, or other preclusive effect as to any claims other than the Released Claims.

IT IS SO ORDERED.

DATED: November 21, 2017



HONORABLE TIMOTHY D. FOX
PULASKI COUNTY CIRCUIT JUDGE