

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

**AMENDED CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER**

This Order supersedes and replaces the Preliminary Approval Order filed in this Action on August 16, 2016. On August 15, 2016, Plaintiffs Wayne Miner and James Easley, on behalf of themselves and the certified Class, Class Counsel, and Defendant Philip Morris USA Inc. (collectively, the “Parties”), executed a proposed Settlement Agreement (the “Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have jointly moved for entry of an order granting preliminary approval to the Settlement provided for in the Settlement Agreement (the “Settlement”). Having reviewed the Settlement Agreement and the Parties’ submissions in support of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as follows:

**I. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

A. Defendant has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the lawsuit and maintained, and continues to maintain, that it has defenses to the claims asserted. Nonetheless, to avoid the burdens and costs of protracted litigation and to

provide timely relief to the Class, the Parties have agreed to an arrangement providing financial recovery to each Class Member who submits a valid Claim Form.

B. On a preliminary basis, and taking into account that (1) the Settlement Agreement provides immediate relief to the Class; (2) the amount obtained for the present Class exceeds amounts recovered on behalf of comparable classes in similar litigation around the country; (3) the defenses that have been asserted by Defendant; (4) the risks to members of the Class that Defendant would successfully defend the claims asserted by Plaintiffs; and (5) the length of time that would be required by the Plaintiffs and the Class to obtain a final judgment through one or more trials and additional appeals, the Settlement appears to be fair, reasonable, and adequate. Moreover, the Parties have reached the settlement after extended, arm's length negotiations with a skilled and qualified mediator. For all these reasons, the Settlement falls within the appropriate range of reasonableness for preliminary approval and does not appear in any way to be the product of collusion.

C. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement and corresponding Settlement are hereby preliminarily APPROVED.

## **II. APPROVAL OF THE CLASS ACTION SETTLEMENT NOTICE**

A. As provided for in the Settlement Agreement, Plaintiffs have submitted a proposed Class Action Settlement Notice (the "Settlement Notice"), a copy of which is attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Approval of Notice to Settlement Class Members as Exhibit 2. The Court finds that the Settlement Notice fairly, accurately, and reasonably provides members of the Class with (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding

this matter and the Settlement Agreement; and (3) appropriate information about how to challenge or exclude themselves from the Settlement, if they wish to do so. The Settlement Notice also fairly, accurately, and reasonably informs members of the Settlement Class that failure to comply with the provisions contained therein could constitute a waiver of their right to challenge or object to the Settlement, at the Fairness Hearing or otherwise, or to appeal from any order or judgment entered by this Court in connection with the Settlement.

B. The Court also finds that the proposed plan for publication of the Settlement Notice 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 is the best notice that is practicable under the circumstances and is reasonably calculated to reach the members of the Class and to apprise them of the Action, the terms and conditions of the Settlement Agreement, their right to opt-out and be excluded from the Class, to object to the Settlement Agreement and to appear at the Fairness Hearing. The Notice Plan satisfies the requirements of Arkansas Rule of Civil Procedure 23 and due process.

C. Accordingly, the Court hereby ORDERS as follows:

1. The form and content of the proposed Settlement Notice is hereby approved.
2. Promptly following the entry of this Order, Plaintiffs shall prepare final versions of the Settlement Notice, incorporating into the Settlement Notice the Fairness Hearing dates and deadlines set forth in Section III of this Order.
3. By September 1, 2016, Plaintiffs shall ensure that the Claims Administrator provided for in subparagraph 6 below has commenced the publication of

notice as described in the Notice Plan. A copy of the Settlement Notice also will be posted on the Class Administrator's website and Class Counsel's websites.

4. By October 1, 2016, the Claims Administrator shall have completed the Publication Notice provided for in the Notice Plan.

5. By October 10, 2016, Plaintiffs shall file with this Court a declaration of compliance with the Notice Plan.

6. Hilsoft Notifications, Inc. is hereby approved as the Claims Administrator, whose reasonable costs in administering the Settlement are to be paid from the Settlement Fund. Plaintiffs bear the costs of administering the Settlement unless and until payment of the Settlement Funds is made, at which time plaintiffs will be reimbursed from that Fund.

7. The Claims Administrator shall perform the following functions in accordance with the Settlement Agreement, this Order, and subsequent orders that may be entered by the Court in this case;

- a. Effectuate publication notice of the Settlement, in accordance with the Notice Plan approved by this Order;
- b. Establish an internet website that enables Class Members to read the Settlement Notice online;
- c. On a weekly basis, provide all claim information to the Co-Masters provided for in subparagraph 8 below;
- d. Process requests for exclusion in accordance with the provisions of the Settlement Agreement;
- e. On a weekly basis, the Claims Administrator will provide Class Counsel and Defendant with a copy of all claim forms received during the prior and a list of all claims to have been paid from the Settlement Fund and the amount of those claims.

- f. By November 4, 2016, provide to Class Counsel and Defendant's counsel copies of the Requests for Exclusion and a written list of the names and addresses of all persons who submitted Requests for Exclusion.

8. The Court appoints Angie Hopkins of Frost & Co. and Allison Allred of the Allred Law Firm, P.A. as Co-Masters to assist in the administration of the Settlement. Master Hopkins shall be responsible for all of the accounting aspects of the Settlement's administration, and Master Allred shall be responsible for conducting any evidentiary hearings and preparing and submitting any and all Masters' reports to the Court.

- a. The Co-Masters will review the validity of all claims and will recommend the amount to be paid for each claim. The Co-Masters will first determine if the Claim Form is complete and if not, will determine if the claim will be reduced to \$50, due to the incomplete Claim Form;
- b. The Co-Masters will determine the reasonableness of each claim and will verify the information provided;
- c. The Co-Masters may require an evidentiary hearing on the validity of any claim. If the Co-Masters have any issues with the reasonableness of verification of a claim, the Co-Masters will refer the claim for an evidentiary hearing;
- d. In reviewing claims, the Co-Masters may obtain additional information from the claimants and may determine an agreed upon claim amount, without the necessity of an evidentiary hearing. As determined by the Co-Masters, a claimant may be given the option of reducing the claim to an amount determined by the Co-Masters rather than requiring an evidentiary hearing;
- e. At any evidentiary hearing, the Co-Masters will hear testimony under oath and will receive evidence to determine the validity of the claim. At the conclusion of the evidentiary hearing, the Co-Masters will be responsible for a determination of the validity of the claim. The Co-Masters will make the final decision on any claim, subject to final approval by the Court;
- f. The Co-Masters will determine the amount for each claimant and will submit their findings to the Court for final approval;

g. The Co-Masters will review the claims and approve the final payment of all claims. Upon the approval of the claims by the Co-Masters, the claims will be reviewed and approved by the Court. The Claims Administrator will be responsible for administering the payment of all approved claims.

9. Class Counsel shall report in writing to the Court, no less than three (3) days before the Fairness Hearing, the following:

- a. That the Settlement Notice was distributed in the manner directed by the Court, including a description of the manner in which publication notice occurred;
- b. The names of all Class Members who sought to be excluded, the date each such Class Member sought to be excluded, and whether the Class Member's request for exclusion was timely and properly made;
- c. A copy of all documentation concerning each request for exclusion that the Claims Administrator received, with any taxpayer identification number, or other confidential information filed under seal with the Court.

10. The Court hereby approves the Claim Form proposed as Exhibit E to the Settlement Agreement.

11. Class Members shall file all claims on or before December 1, 2016. All Claim Forms must be received by the Claims Administrator online or postmarked no later than December 1, 2016.

### **III. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

#### **A. Fairness Hearing**

1. The Court hereby schedules a hearing at 1:30 p.m. on November 21, 2016, at the Pulaski County Circuit Court, Division 6, 401 West Markham Street, Little Rock, Arkansas 72201 (the "Fairness Hearing"), to determine whether the Settlement Agreement and the Settlement should receive final approval.

2. The Parties will have up to and including 10 days prior to the date of the Fairness Hearing to file their joint motion for final approval of the Settlement and any briefs in support of such motion.

3. The Court stays all further proceedings in this Action as between Plaintiffs and Defendant pending the Fairness Hearing and final determination of whether the Settlement should be approved.

4. The Court enjoins the members of the Class, pending the Fairness Hearing and final determination of whether the Settlement Agreement should be approved, from challenging in any action or proceeding any matter covered by this Settlement Agreement or its release, except for proceedings in this case related to effectuating and complying with the Settlement Agreement.

**B. Deadline for Members of the Class to Request Exclusion from the Settlement**

1. Any member of the Class who does not wish to participate in the Settlement shall have until November 1, 2016 to submit a request for exclusion from the Class.

2. A member of the Class may effect such exclusion by sending a written request to the Claims Administrator. The written request must be signed by the Class Member seeking exclusion, or an authorized representative of that person, and provide all of the following information:

- a. The name of this lawsuit, *Wayne Miner and James Easley, individually and on behalf of all others similarly situated v. Philip Morris USA Inc.*, Case No. 60CV03-4661;
- b. A statement of the Class Member's full name, address, telephone number, and the period of time (including approximate dates) over which the Class Member purchased in Arkansas Marlboro Lights and/or Marlboro Ultra-Lights;

- c. A statement that the Class Member desires to be excluded from the Class; and
  - d. For authorized representatives, a statement of the basis for the signing person's authority to sign on behalf of the Class Member requesting exclusion.
3. If the number of Class Members requesting exclusion are collectively greater in number than the number of Class Members specified in a separate Supplemental Agreement between the Parties, Defendant shall have the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement.

**C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing and for Filing Requests to Appear and Present Argument or Evidence**

1. All objections to the Settlement and/or the Settlement Agreement shall be made in writing and, no later than November 1, 2016, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

2. Any written objection must include all of the following:
  - a. The name of this lawsuit, *Wayne Miner and James Easley, individually and on behalf of all others similarly situated v. Philip Morris USA Inc.*, Case No. 60CV03-4661;
  - b. The objector's full name, address, telephone number, and e-mail address;
  - c. Information sufficient to establish that the objector is a member of the Class;
  - d. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
  - e. The identity of all counsel representing the objector;
  - f. The identity of all counsel representing the objector who will appear at the Fairness Hearing;

- g. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation);
- h. A list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement;
- i. A list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement;
- j. A list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as lead plaintiff class counsel.

3. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the Settlement or the Settlement Agreement must file with the Court and serve on Class Counsel and Defendant's counsel, no later than November 1, 2016, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

4. At least 10 days before the Fairness Hearing, Class Counsel will file and serve on Defendant's counsel all supporting papers seeking the Court's final approval of the Settlement Agreement.

**D. Approval of Attorneys' Fee Awards, Expense Reimbursements, and Incentive Awards**

1. The Court will set a hearing at the Pulaski County Circuit Court, Division 6, 401 West Markham Street, Little Rock, Arkansas 72201 (the "Fee Hearing"), to consider any request that may be made by Class Counsel for an award of attorneys' fees and costs to Class Counsel and for an incentive award to Plaintiffs, all in accordance with the Settlement Agreement.

2. Only Class Counsel identified in the Stipulation of Settlement shall be entitled to submit fee requests. Counsel who have not been appointed Class Counsel shall not be entitled to submit fee requests. Any award of attorneys' fees shall be paid from the Settlement Fund. Defendant shall not be responsible for the payment of attorneys' fees under any circumstances, other than as awarded by the Court to be paid from the Settlement Fund. Class Co-Counsel Thomas P. Thrash, Thrash Law Firm, P.A. and Joe Fisher, Provost Umphrey will be responsible for allocation of Court awarded attorneys' fees and expenses among Class Counsel.

3. Class Counsel will have up to and including 20 days prior to the date of the Fee Hearing to file their motion for approval of fees and expenses and an incentive award to Plaintiffs, with any brief in support.

4. All objections to Class Counsel's request for fee and incentive awards, and reimbursement of expenses, shall be made in writing and, no later than 10 days prior to the date of the Fee Hearing, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

5. Any written objection filed pursuant to the preceding paragraph must include all of the following:

- a. The name of this lawsuit, *Wayne Miner and James Easley, individually and on behalf of all others similarly situated v. Philip Morris USA Inc.*, Case No. 60CV03-4661;
- b. The objector's full name, address, telephone number, and e-mail address;
- c. Information sufficient to establish that the objector is a member of the Class;
- d. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- e. The identity of all counsel representing the objector;

- f. The identity of all counsel representing the objector who will appear at the Fee Hearing;
- g. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation);
- h. A list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action fee award;
- i. A list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action fee award;
- j. A list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as lead plaintiff class counsel.

6. All persons wishing to appear at the Fee Hearing, either in person or by counsel, for the purpose of objecting to Class Counsel's request for fee and incentive awards and reimbursement of expenses must file with the Court and serve on Class Counsel and Defendant's counsel, no later than 10 days prior to the date of the Fee Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fee Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fee Hearing on behalf of the objector.

#### **IV. ABSENCE OF ANY ADMISSION OF LIABILITY; DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY**

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Nothing contained in this Order, the Settlement Agreement, the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation and Agreement of Settlement or 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. In entering this Order with this provision and other limiting provisions, this Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce such limiting provision.

IT IS SO ORDERED.

DATED: August 17, 2016

 8.17.2016 *cyf*  
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HONORABLE TIMOTHY D. FOX  
PULASKI COUNTY CIRCUIT JUDGE