

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

THOMAS GEANACOPOULOS, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

PHILIP MORRIS USA INC.,

Defendant.

Civ. Action No. 98-6002-BLS1

Noted Sent to
ALL PARTIES
9/30/16

~~PROPOSED~~ FINAL ORDER AND JUDGMENT

WHEREAS, on May 5, 2016 this Court entered a Preliminary Approval Order, which preliminarily approved the class action settlement set forth in the Stipulation and Agreement of Settlement dated April 26, 2016 (the "Settlement Agreement") between Defendant Philip Morris ("Philip Morris" or "Defendant"), Plaintiff Thomas Geanacopoulos, individually and on behalf of the Class ("Plaintiff"), Shapiro Haber and Urmy LLP, Hagens Berman Sobol Shapiro, LLP, and Brody Hardoon Perkins & Kesten, LLP, and

WHEREAS, pursuant to the plan of Notice approved by the Court, the Class was notified of the terms of the proposed Settlement by e-mail, mail, publication and internet notice, and that at the Final Approval Hearing the Court would determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether judgment should enter dismissing this action with prejudice; (3) whether Plaintiffs' Counsel's Fee Application should be approved, and (4) whether the Service Awards should be approved; and

JUDGMENT ENTERED ON DOCKET 9/30 16
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77
AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77 AS FOLLOWS

WHEREAS, the Court finds that the plan of Notice described in the Settlement Agreement and approved by the Court in the Preliminary Approval Order constitutes the best practicable notice, and was fair, reasonable and adequate, and

WHEREAS, the Court now finds that notice was given to the Class members in the manner ordered by the Court, and

WHEREAS, on September 29, 2016, this Court held a Final Approval Hearing at which the Court considered all of the submissions presented to it with respect to the Settlement.

IT IS HEREBY ORDERED THAT:

1. For purposes of this Order and Judgment, the Court, now adopts all defined terms as set forth in the Settlement Agreement, which are incorporated herein by reference.

2. The Court has jurisdiction over the subject matter of this Action and over all claims raised herein and all Parties hereto, including the Class.

3. By Order dated October 3, 2001, this Court certified a Class under M.G.L. c. 93A, consisting of purchasers of Marlboro Lights cigarettes in Massachusetts during the four years preceding the filing of the Plaintiffs' original complaint. That class certification order was affirmed by the Supreme Judicial Court. *Aspinall v. Philip Morris Cos.*, 442 Mass. 381 (2004).

4. By Order dated December 6, 2005, the Court modified the class definition to limit it to all persons who during some portion of the period from November 25, 1994 to November 25, 1998, inclusive (the "Class Period"), (i) were residents of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or (b) were residents of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts during the Class Period (the "Class").

5. After the trial in this case, by Order dated February 19, 2016, the Court denied Philip Morris' renewed motion to decertify the Class.

6. On September 19, 2016, Class Counsel filed with the Court an affidavit from the Settlement Administrator attesting to compliance with and completion of the plan of Notice set forth in the Settlement Agreement.

7. The Court finds that the plan of Notice as described in paragraphs 12 through 20 of the Settlement Agreement, including the use of email, mail, publication and internet notice, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Class. The Court further finds the plan of Notice satisfied the requirements of M.G.L. c. 93A, §9, the Massachusetts Rules of Civil Procedure and the requirements of Due Process of the Constitution of the United States and the Commonwealth of Massachusetts and any other applicable law, and that such plan provided due and sufficient notice to all persons entitled thereto.

8. The Settlement and Plan of Distribution set forth in the Settlement Agreement is in all respects fair, reasonable, adequate and in the best interests of the Class. This Settlement was negotiated at arms'-length by experienced counsel who were fully informed of the legal and factual issues in this Action. This Settlement was reached after over seventeen years of litigation, including two appeals before the Supreme Judicial Court and a five week trial before this Court. Under the Settlement, the Class is being paid the full amount of statutory damages and prejudgment interest awarded by the Court after trial. The Settlement and the Plan of Distribution set forth therein is hereby approved.

9. The Parties, Plaintiff's Counsel and Defense Counsel shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement and every term and

provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

10. On the Effective Date, the Releasing Parties shall be bound by the Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided thereunder. No other action, demand, suit or other claim may be pursued against the Released Parties with respect to the Released Claims by the Releasing Parties.

11. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of this Final Order and Judgment, shall have fully, and finally and forever released, relinquished and discharged the Released Parties from any and all of the Released Claims. This release is only intended to release the claims for economic damages, statutory damages and disgorgement of profits asserted in the Action. Nothing in the Settlement Agreement, or in this Order, shall preclude any Class member from pursuing any other claims, including any claims for personal injury, addiction, or any other health-related damage resulting from smoking, regardless of the legal theory asserted.

12. The Court hereby awards Plaintiffs' Counsel attorneys' fees, costs and expenses in the amount of \$16,500,000 to be paid by Defendant Philip Morris in accordance with the terms of the Settlement Agreement. This Fee Award is not being paid out of, and will not reduce the Class Recovery. The Court concludes that this the Fee Award is fully justified by, among other things, the papers submitted in support of the Fee Application as well as the exceptional work performed by Plaintiffs' Counsel over the past seventeen years of litigation in this Action, the fact that they have to date received no compensation for that work or any reimbursement of any of the over \$1 million in out of pocket expenses that they have made in support of the claims of the Plaintiff and the Class.

13. The Court hereby approves the payment of Service Awards in the amount of \$25,000 to each of Plaintiff Thomas Geanacopoulos and former Plaintiff Lori Aspinall to be paid out of the Class Recovery as provided in the Settlement Agreement. The Court concludes that these Service Awards are justified in light of the time and effort spent by each of them in the prosecution of this Action.

14. Under the Settlement Agreement, Class members must submit claim forms to the Settlement Administrator by November 28, 2016. Within 60 days following the close of the claims period or such additional time as may be allowed by the Court, Plaintiff shall serve a motion pursuant to Superior Court Rule 9A, (1) seeking the Court's approval of a plan of distribution of the Class Recovery to claimants who have submitted timely and valid claim forms and (2) proposing the manner in which any portion of the Class Recovery not paid to such claimants shall be distributed pursuant to Mass. R. Civ. P. 23(e)(2). Plaintiff shall serve a copy of such motion on the Massachusetts IOLTA Committee, which may submit a response to Plaintiff's proposal in accordance with Superior Court Rule 9A. Following receipt of such papers, the Court will schedule a hearing on Plaintiff's motion.

15. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

16. This Final Order and Judgment shall be effective upon its entry. In the event that this Final Order and Judgment is reversed or vacated pursuant to an appeal or the Settlement Agreement is terminated pursuant to its terms, all orders and Releases delivered in connection herewith shall be null and void, and the Parties shall be returned to their status quo ante.

17. This Action is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Order, the Parties shall bear their own costs and attorneys' fees.

18. Without affecting the finality of the Order and Judgment hereby entered, the Court reserves jurisdiction over the construction, interpretation, consummation, implementation and enforcement of the Settlement Agreement, and over the distribution of the Class Recovery, including jurisdiction to enter such further orders as may be necessary or appropriate.

19. The Clerk of the Court is expressly directed to enter this Final Order and Judgment pursuant to Rule 54 of the Massachusetts Rules of Civil Procedure.

IT IS HEREBY ORDERED.

Dated: September 30, 2016


Justice of the Superior Court

By the Court:
Edward P. Leibensperger
Associate Justice
Superior Court