

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

  
**PROPOSED** PRELIMINARY APPROVAL ORDER

The Court having reviewed the Plaintiff's Motion for Preliminary Approval of the Settlement of this Action and 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 good cause appearing therefor, IT IS HEREBY ORDERED AS FOLLOWS:

1. For purposes of this Order, the Court adopts all the defined terms that are used in the Settlement Agreement, and incorporates those terms by reference in this Order.
2. The Court preliminarily approves the Settlement of this Action that is set forth in the Settlement Agreement. Subject to any further submissions that may be made at or prior to the Final Approval Hearing described below, the Court finds that the Settlement is fair, just, reasonable and adequate to the certified Class and its members.

3. This Court has previously certified a Class under M.G.L. c. 93A, consisting of 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").

4. Notice of the pendency of this class action was previously sent to the Class via publication and e-mail in October, 2009.

5. The Court hereby approves the form of Notice attached hereto as Exhibit A and the form of Summary Notice attached hereto as Exhibit B. The Court finds that the Notice and the Summary Notice are reasonably and practicably calculated to apprise the Class of the proposed Settlement, and their rights and obligations thereunder, including, *inter alia*, their rights to submit claims, to object to the Settlement and to attend the Final Approval Hearing.

6. The Court approves the plan of notice and finds that the plan of email, mail, publication and internet notice described in paragraphs 12 through 20 of the Settlement Agreement is appropriate and is reasonably and practicably calculated to apprise the Class proposed Settlement, and their rights and obligations thereunder, including, *inter alia*, their rights to submit claims, to object to the Settlement and to attend the Final Approval Hearing.

7. No later than seven (7) days after the entry of the Preliminary Approval Order, Philip Morris shall provide the Settlement Administrator (in electronic excel format) with the names and the most recent mailing addresses and email addresses of all smokers in its active Adult Smoker Database who (a) have ever identified Marlboro Lights or Marlboro Gold Pack as their preferred brand, and (b) currently have or have ever had a Massachusetts address in the

database, but excluding any members of the database who have specifically requested not to receive further communications from Philip Morris (the “ASD List”).

8. The Settlement Administrator shall implement the plan of Notice in accordance with Paragraphs 13 through 20 of the Settlement Agreement, which includes publication of the Summary Notice, e-mail notice, mail notice and targeted internet notice.

9. The Court finds that dissemination of the Notice and plan of Notice described above and in Paragraphs 12 through 20 of the Settlement Agreement constitutes the best notice practicable, and that it is reasonably calculated, under all the circumstances, to apprise Class members parties of the terms of the Settlement and afford them an opportunity to submit claims or present objections, or otherwise avail themselves of their rights under the Settlement.

10. The Court further finds that the plan of Notice meets the requirements of M.G.L. c. 93A, §9, the Massachusetts Rules of Civil Procedure and the requirements of Due Process of the Constitutions of the United States and the Commonwealth of Massachusetts, as well as any other applicable law and that such Notice constitutes due and sufficient notice to all persons entitled thereto.

11. Not later than seven (7) days before the Final Approval Hearing described below, Class Counsel shall file an affidavit or declaration from the Settlement Administrator attesting to compliance with and completion of the plan of Notice set forth in the Settlement Agreement.

12. The Court hereby approves the Claim Form attached hereto as Exhibit C. To be valid, any Claim Form must be submitted to the Settlement Administrator in the manner provided in the Claim Form, and no later than sixty (60) days after the date of the Final Approval Hearing, subject to extension by the Court.

13. The Final Approval Hearing shall be held at 2:00 p.m. on Sept. 14, 2016, in Courtroom 1309, Suffolk Superior Court, 3 Pemberton Square, Boston, Massachusetts, to determine whether the proposed Settlement of the Action, as set forth in the Settlement Agreement, should be approved as fair, reasonable and adequate to the Class and its members, and whether the Final Order and Judgment approving the Settlement should be entered. At the Final Approval Hearing, the Court also will determine whether Class Counsel's Fee Application and request for Service Awards to the Plaintiffs should be approved. At that hearing the Court will also consider any timely objections to the Settlement Agreement, the Fee Application or the Service Awards, and all responses to objections by the Parties.

14. No later than forty-five (45) days before the Final Approval Hearing, Plaintiff shall file with the Court and serve on Defense Counsel, his motion for final approval of the Settlement, his Fee Application, and any supporting materials. The memorandum in support of the Settlement and the Fee Application shall also be posted on the Settlement Website.

15. Any Class member wishing to object to the approval of this Settlement Agreement, the Service Awards or the Fee Application shall inform the Court and the Parties in writing of his or her objection by following the procedures and objection deadlines set forth in the Notice. Any Class member who fails to object to the Settlement, the Service Awards or the Fee Application in the manner described in the Notice shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement, the Service Awards or the Fee Application at the Fairness Hearing, and shall be foreclosed from seeking any review of the Settlement, the Service Awards or Fee Application by appeal or other means. As set forth in the Notice, any and all objections must be submitted no later than twenty-four (24) days prior to the Final Approval Hearing and be sent to Class Counsel, Defense Counsel and the

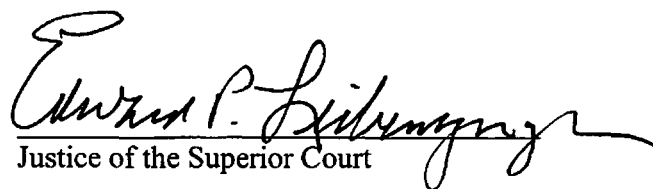
Court. Any Party may file a response to any objection no later than ten (10) days prior to the Final Approval Hearing.

16. The Court hereby directs the Parties, Class Counsel and Defense Counsel to proceed in accordance with the terms of the Settlement Agreement, and hereby authorizes them to take all acts reasonably necessary to implement this Preliminary Approval Order.

17. The Court may, for good cause, change the date of the Final Approval hearing or extend any of the deadlines set forth in this Order without further notice to the Class members.

IT IS HEREBY ORDERED.

Dated: May 5, 2016

  
Justice of the Superior Court

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

# Exhibit A

## **NOTICE OF MASSACHUSETTS MARLBORO LIGHTS CLASS ACTION SETTLEMENT**

*Thomas Geanacopoulos v. Philip Morris USA, Inc.*  
Massachusetts Superior Court, Civil Action No. 98-6002-BLS1

**If, during any portion of the time period from November 25, 1994 to November 25, 1998, you were**

- **a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or**
- **a resident of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts,**

**you may be entitled to payment under the Settlement of the class action described in this Notice.**

**To receive your share of the Class Recovery, you must submit valid Claim Form no later than [insert date 60 days after Final Approval Hearing]. The Claim Form is included with this notice package and also is available online at [insert website].**

➤ **What is the case about?**

Plaintiffs brought this class action lawsuit against Philip Morris USA, Inc. ("Philip Morris") on November 25, 1998, claiming that by using the words "lights" and "lowered tar and nicotine" on packages of Marlboro Lights, Philip Morris falsely represented that Marlboro Lights were less harmful and that they delivered lower tar and nicotine in comparison to Regular Marlboros, when in fact Marlboro Lights do not deliver significantly lower tar and nicotine to human smokers and were no less harmful than Regular Marlboros. Plaintiffs claimed that Philip Morris' conduct was unfair and deceptive and violated the Massachusetts consumer protection law. This lawsuit sought economic damages related to the purchase of Marlboro Lights cigarettes, together with statutory damages and disgorgement of profits.

➤ **Am I a class member?**

The Court has allowed this case to proceed as a class action lawsuit. You are a class member, if during any portion of the time period from November 25, 1994 to November 25, 1998, you were (a) a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or (b) a resident of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts.

➤ **What has happened in this case?**

Following a five week trial in late 2015, the Court found that by making health reassurance claims about Marlboro Lights, Philip Morris had in fact engaged in willful violations of the Massachusetts consumer protection laws because it knew that in fact

- Marlboro Lights were no less harmful or safer than Regular Marlboros ; and
- The vast majority of addicted smokers did not get less tar and nicotine from Marlboro Lights than from Regular Marlboros, because smokers changed the way they smoked Marlboro Lights to get as much or more tar and nicotine from Marlboro Lights as those same smokers would have gotten from Regular Marlboros.

The Court found that the Class was injured, but that the Plaintiff had not proven the amount of actual damages suffered by the Class with sufficient certainty. The Court also found that the law did not allow

it to order Philip Morris to disgorge the profits it had made from the sales of Marlboro Lights to the Class. Instead, the Court awarded the Class damages in the statutory amount of \$25 per class member, or a total of \$4,942,500 for the estimated 197,700 Class members, plus prejudgment interest calculated at the rate of 12% per year starting on November 25, 1998. On the date the Settlement Agreement was signed, the prejudgment interest due on the statutory damage award totaled \$10,331,315. The Court further found the lawyers who represented the Class were entitled to an award of attorneys' fees and expenses to be paid by Philip Morris.

➤ **What are the terms of the Settlement?**

Under the proposed Settlement, Philip Morris has agreed to pay the Class the full \$15,273,815 that was awarded by the Court as statutory damages and interest after the trial (the "Class Recovery").

If the Settlement is approved, Class members will be prevented from bringing any further claims against Philip Morris, and its affiliated companies or their officers, directors or employees, for economic damages related to the Class members' purchase of Marlboro Lights cigarettes in Massachusetts. Nothing in the Settlement, or the judgment that will be entered by the Court, will prevent Class members from pursuing any other claims against any such entity or person, including claims for personal injury, addiction, or any other health-related damage resulting from smoking.

➤ **How is the Class Recovery being distributed?**

The lawyers for the Class will ask the Court to award \$25,000 to each of the two plaintiffs who brought this lawsuit to compensate them for their efforts in the case since it was first filed in 1998 to be paid out of the Class Recovery. They will also ask the Court to allow the costs of providing notice and administering the settlement to be paid out of the Class Recovery. After those amounts have been paid, the remaining amounts would be available to be paid to the Class members (the "Net Class Recovery"). If not all Class members submit valid and timely Claim Forms, and there is money left over, the Court will decide how to distribute those funds.

➤ **How much will I get from the Class Recovery?**

If you are a Class member, and you submit a valid and timely Claim Form, you will share equally in the Net Class Recovery with the other members of the Class who have submitted valid and timely Claim Forms, up to a maximum amount of \$225 per Class member. If every Class member submits a valid and timely Claim Form, we estimate the amount you will receive will be approximately \$75.

➤ **How can I get my share of the Class Recovery?**

If you are a Class member, and would like to receive your share of the Class Recovery, you must fill out and submit a Claim Form no later than [insert date 60 days after Final Approval Hearing]. The Claim Form is attached to this Notice and explains the steps you must follow. A copy of the Claim Form is also available at: [Settlement Website] and may be submitted online.

➤ **What if I do not want to be part of the Class?**

Under Massachusetts law, Class members do not have the right to exclude themselves from the Class.

➤ **Who represents the Class in this case?**

The Plaintiffs and the Class have been represented throughout this case by the Boston law firm Shapiro Haber & Army LLP ("Class Counsel). Several other law firms have provided assistance to Class Counsel since the case was begun in 1998.



➤ **How will the lawyers be paid?**

Since the beginning of this case more than 17 years ago, Class Counsel and the other lawyers representing the Class have not received any payment for any of their legal services they have provided the Class or any reimbursement of any of the out-of-pocket expenses they have incurred in the case. Class Counsel plan to ask the Court to award all of the lawyers a total of \$16,500,000 in attorneys' fees and expenses, in addition to the Class Recovery discussed above. Any attorneys' fees and expenses awarded by the Court will be separately paid by Philip Morris and will not reduce the Class Recovery.

➤ **Will the Court review the fairness of the Settlement and Class Counsel's fee request?**

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2016, at \_\_\_ in Courtroom \_\_\_ at Suffolk Superior Court, 3 Pemberton Square, Boston, MA 02108. The Court may re-schedule the hearing without further notice. At the hearing, the Court will consider whether: (a) the Settlement is fair, reasonable and adequate; (b) the Court should approve payment of \$25,000 service awards to each of the Plaintiffs who brought this lawsuit; and (c) the Court should approve Class Counsel' request for attorneys' fees and expenses to be paid by Philip Morris.

➤ **What should I do if I object to the Settlement?**

If you are a Class Member, you may object to any aspect of the Settlement, including the applications for services awards to each of the original plaintiffs and the award of attorneys' fees and expenses. In order to object, you must, on or before [insert date 24 days prior to Final Approval Hearing]:

- Submit a written notice to the Suffolk Superior Court, 3 Pemberton Square, Boston, MA 02108, which contains: (a) the case name and number, (b) your name, address and telephone number, (c) a statement setting out your objections and the basis for them, along with any documentation you intend to rely on at the Fairness Hearing, (d) a statement of whether you intend to appear at the Fairness Hearing, and (e) a statement indicating the number of times in the past three years you and/or your counsel have objected to a class action settlement, listing each one by name of case, jurisdiction, docket number and outcome of the objection.
- Send copies of all of these materials by first-class mail to counsel at:

Class Counsel

Thomas V. Urmy, Jr.  
Shapiro Haber & Urmy LLP  
2 Seaport Lane  
Boston, MA 02210

Philip Morris' Counsel

Kenneth J. Parsigian  
Latham & Watkins LLP  
200 Clarendon Street  
Boston, MA 02116

➤ **How can a Class member get more information?**

This Notice is a summary and does not describe all the details of the Settlement. You are encouraged to read the Settlement Agreement, the Preliminary Approval Order, the Findings of Fact and Conclusions of Law After Trial, and other documents, all of which are available to you at: [insert website address]. You may also obtain further information regarding the Settlement on the settlement website, or by telephoning the Settlement Administrator toll-free at 1-800 [ ] or by emailing questions to the Settlement Administrator at [ ].

You may also contact Class Counsel with any questions by mail at Shapiro Haber & Urmy LLP, 2 Seaport Lane, Boston, MA 02210, by toll-free telephone at (800) 287-8119, or by email at shu@shulaw.com.

**PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION OR LEGAL ADVICE.**

# **Exhibit B**

## **NOTICE OF MASSACHUSETTS MARLBORO LIGHTS CLASS ACTION SETTLEMENT**

If, during any portion of the time period from November 25, 1994 to November 25, 1998, you were

- a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or
- a resident of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts,

you may be entitled to payment under the Settlement of the class action described in this Notice.

➤ **What is the case about?**

Plaintiff brought a class action lawsuit against Philip Morris, claiming that by describing Marlboro Lights as "light" cigarettes that delivered "lowered tar and nicotine," Philip Morris falsely represented that Marlboro Lights were less harmful and delivered lower tar and nicotine than Regular Marlboros, when that was not true.

Following a five week trial, the Court found that Philip Morris willfully violated the Massachusetts consumer protection laws because it knew that Marlboro Lights were no less harmful than Regular Marlboros, and that the vast majority of addicted smokers did not get less tar and nicotine from Marlboro Lights than from Regular Marlboros.

The Court awarded the Class statutory damages of \$25 per class member, or a total of \$4,942,500, plus prejudgment interest at a rate of 12% per year. As of the date of the settlement agreement that interest totaled \$10,331,315.

➤ **What will the Class get under the Settlement?**

Philip Morris has agreed to pay the Class the full amount that was awarded by the Court after the trial, which totals \$15,273,815. **Class members who submit valid and timely Claim Forms will receive equal shares of the net recovery, up to a maximum amount of \$225 per Class member.**

➤ **How can a Class member get his or her share of the recovery?**

If you are a member of the Class and would like to receive a share of the recovery, you must submit valid Claim Form no later than [insert date 60 days after Final Approval Hearing]. You can obtain a Claim Form by contacting the Settlement Administrator toll-free at 1-800-\_\_\_\_-\_\_\_\_ or by email at [claims@\\_\\_\\_\\_\\_](mailto:claims@_____). The Claim Form is also available and may be submitted online at: [www.\\_\\_\\_\\_\\_](http://www._____).

➤ **Can a Class member object to the Settlement?**

The Court will hold a hearing on the fairness of the Settlement on \_\_\_\_\_, 2016. If you are a Class Member, you may object to the Settlement or any aspect of it. The full Notice explains the requirements for filing and serving an objection. The deadline for objections is [insert date 24 days prior to Final Approval Hearing].

➤ **How can a Class member get more information?**

This Notice is a summary and does not describe all the details of the Settlement. You are encouraged to read the Full Notice, the Settlement Agreement, the Preliminary Approval Order, the Findings of Fact and Conclusions of Law After Trial, and other documents, all of which are available to you at: [insert website address]. You may also obtain further information regarding the Settlement on the settlement website, or by telephoning the Settlement Administrator toll-free at 1-800 [ ] or by emailing questions to the Settlement Administrator at [ ].

You may also contact Class Counsel with any questions by mail at Shapiro Haber & Urmy LLP, 2 Seaport Lane, Boston, MA 02210, by toll-free telephone at (800) 287-8119, or by email at [shu@shulaw.com](mailto:shu@shulaw.com).

# **Exhibit C**

**MASSACHUSETTS MARLBORO LIGHTS CLASS ACTION SETTLEMENT**

c/o Analytics  
P.O. Box \_\_\_\_\_  
Chanhasen, MN 55317-2009  
www.

[Insert Name and Address]

Claim Number:

**CLASS ACTION CLAIM FORM**

***Geanacopoulos v. Philip Morris USA Inc., No. 98-6002-BLS1 (Mass. Super. Ct.)***

If, during any portion of the period from November 25, 1994 to November 25, 1998, you were (i) a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts, or (ii) a resident of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts, you may be entitled to payment under the Settlement.

To receive a payment, please complete this form, sign it, and return it to the Settlement Administrator no later than [insert date 60 days after Final Approval Hearing] by any method listed below. **ALL CLAIMS ARE SUBJECT TO VERIFICATION.**

1. During some portion of the time period between November 25, 1994 to November 25, 1998, I was:  
(check any that apply)

- a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts
- a resident of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont who regularly purchased Marlboro Lights cigarettes in Massachusetts

2. Please identify a city or town in Massachusetts, Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont, where you lived during the period November 25, 1994 and November 25, 1998? \_\_\_\_\_

City/Town, State

3. What is your date of birth? \_\_\_\_\_

Month/Day/Year

By signing below, I hereby certify that the information I have provided in this Claim Form is true to the best of my knowledge and belief:

\_\_\_\_\_  
Claimant's Name (Please Print)

\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Date Signed

**Current Contact Information:** The Settlement Administrator will use this information to contact you about this claim, and will send your check to this address. Please let us know if your address changes to make sure that your payment is sent to the correct address.

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

City, State & Zip Code: \_\_\_\_\_

**You may submit your claim form to the settlement administrator no later than [insert date 60 days after Final Approval Hearing] by any of the following methods:**

**Mail to:** Massachusetts Marlboro Lights Settlement      **Email to:** claims@  
c/o Analytics  
P.O. Box      **Online via:** www.  
Chanhassen, MN 55317-2009