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F I L E D
KENNETH E. WILSON
Clerk

DEC - 9 1998

By: M. HADJAPANIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA)
ex rel. DANIEL E. LUNGREN, ATTORNEY)
GENERAL OF THE STATE OF CALIFORNIA;)
S. KIMBERLY BELSHE, DIRECTOR OF)
HEALTH SERVICES OF THE STATE OF)
CALIFORNIA,)

Plaintiffs,)

v.)

PHILIP MORRIS, INC.; R.J. REYNOLDS)
TOBACCO COMPANY; BROWN & WILLIAMSON)
TOBACCO CORPORATION; B.A.T INDUSTRIES,)
P.L.C.; BRITISH AMERICAN TOBACCO)
COMPANY; LORILLARD TOBACCO COMPANY,)
INC.; AMERICAN TOBACCO COMPANY, INC.;)
UNITED STATES TOBACCO COMPANY; HILL &)
KNOWLTON, INC.; THE COUNCIL FOR TOBACCO)
RESEARCH-U.S.A., INC.; TOBACCO INSTITUTE,)
INC.; SMOKELESS TOBACCO COUNCIL, INC.)
and DOES 1-200, inclusive,)

Defendants.)

Case No. J.C.C.P. 4041
(Sacramento Superior
Court Case No.
97AS03031)

CONSENT DECREE
and
FINAL JUDGMENT

WHEREAS, Plaintiffs, the People of the State of California and
S. Kimberly Belshe, Director of Health Services of the State of
California commenced this action on June 12, 1997, by and through
their attorney, Attorney General Daniel E. Lungren, pursuant to his
common law powers and the provisions of state law;

1 **WHEREAS**, Plaintiffs filed their First Amended Complaint on
2 August 29, 1997;

3 **WHEREAS**, the State of California asserted various claims for
4 monetary, equitable and injunctive relief on behalf of the State of
5 California against certain tobacco product manufacturers and other
6 defendants;

7 **WHEREAS**, Defendants have contested the claims in the State's
8 Complaint and First Amended Complaint and denied the State's
9 allegations;

10 **WHEREAS**, the parties desire to resolve this action in a manner
11 which appropriately addresses the State's public health concerns,
12 while conserving the parties' resources, as well as those of the
13 Court, which would otherwise be expended in litigating a matter of
14 this magnitude;

15 **WHEREAS**, the Court has made no determination of any violation
16 of law, this Consent Decree and Final Judgment being entered prior
17 to the taking of any testimony and without trial or final
18 adjudication of any issue of fact or law;

19 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS**
20 **FOLLOWS:**

21

22 **I. JURISDICTION AND VENUE**

23 This Court has jurisdiction over the subject matter of
24 this action and over each of the Participating Manufacturers.
25 Venue is proper in San Diego County.

26

27 **II. DEFINITIONS**

28 The definitions set forth in the Master Settlement

1 Agreement (hereafter referred to as "Agreement" or "MSA;" a copy of
2 which is attached hereto as Exhibit A) are incorporated herein by
3 reference and words defined therein are signified herein by being
4 capitalized.

5
6 **III. APPLICABILITY**

7 A. This Consent Decree and Final Judgment applies only
8 to the Participating Manufacturers in their corporate capacity
9 acting through their respective successors and assigns,
10 directors, officers, employees, agents, subsidiaries,
11 divisions, or other internal organizational units of any kind
12 or any other entities acting in concert or participation with
13 them. The remedies, penalties and sanctions that may be
14 imposed or assessed in connection with a violation of this
15 Consent Decree and Final Judgment (or any order issued in
16 connection herewith) shall only apply to the Participating
17 Manufacturers, and shall not be imposed or assessed against
18 any employee, officer or director of any Participating
19 Manufacturer, or against any other person or entity as a
20 consequence of such violation, and there shall be no
21 jurisdiction under this Consent Decree and Final Judgment to
22 do so.

23 B. This Consent Decree and Final Judgment is not
24 intended to and does not vest standing in any third party with
25 respect to the terms hereof. No portion of this Consent Decree
26 and Final Judgment shall provide any rights to, or be
27 enforceable by, any person or entity other than the State of
28 California or a Released Party. The State of California may

1 not assign or otherwise convey any right to enforce any
2 provision of this Consent Decree and Final Judgment.

3
4 **IV. VOLUNTARY ACT OF THE PARTIES**

5 The parties hereto expressly acknowledge and agree that
6 this Consent Decree and Final Judgment is voluntarily entered into
7 as the result of arm's-length negotiation, and all parties hereto
8 were represented by counsel in deciding to enter into this Consent
9 Decree and Final Judgment.

10
11 **V. INJUNCTIVE AND OTHER EQUITABLE RELIEF**

12 Each Participating Manufacturer is permanently enjoined
13 from:

14 A. Taking any action, directly or indirectly, to target
15 Youth within the State of California in the advertising,
16 promotion or marketing of Tobacco Products, or taking any
17 action the primary purpose of which is to initiate, maintain
18 or increase the incidence of Youth smoking within the State of
19 California.

20 B. After 180 days after the MSA Execution Date, using
21 or causing to be used within the State of California any
22 Cartoon in the advertising, promoting, packaging or labeling
23 of Tobacco Products.

24 C. After 30 days after the MSA Execution Date, making
25 or causing to be made any payment or other consideration to
26 any other person or entity to use, display, make reference to
27 or use as a prop within the State of California any Tobacco
28 Product, Tobacco Product package, advertisement for a Tobacco

1 Product, or any other item bearing a Brand Name in any Media;
2 provided, however, that the foregoing prohibition shall not
3 apply to (1) Media where the audience or viewers are within an
4 Adult-Only Facility (provided such Media are not visible to
5 persons outside such Adult-Only Facility); (2) Media not
6 intended for distribution or display to the public; (3)
7 instructional Media concerning non-conventional cigarettes
8 viewed only by or provided only to smokers who are Adults; and
9 (4) actions taken by any Participating Manufacturer in
10 connection with a Brand Name Sponsorship permitted pursuant to
11 subsections III(c)(2)(A) and III(c)(2)(B)(i) of the Agreement,
12 and use of a Brand Name to identify a Brand Name Sponsorship
13 permitted by subsection III(c)(2)(B)(ii).

14 D. Beginning July 1, 1999, marketing, distributing,
15 offering, selling, licensing or causing to be marketed,
16 distributed, offered, sold, or licensed (including, without
17 limitation, by catalogue or direct mail), within the State of
18 California, any apparel or other merchandise (other than
19 Tobacco Products, items the sole function of which is to
20 advertise Tobacco Products, or written or electronic
21 publications) which bears a Brand Name. Provided, however,
22 that nothing in this section shall (1) require any
23 Participating Manufacturer to breach or terminate any
24 licensing agreement or other contract in existence as of June
25 20, 1997 (this exception shall not apply beyond the current
26 term of any existing contract, without regard to any renewal
27 or option term that may be exercised by such Participating
28 Manufacturer); (2) prohibit the distribution to any

1 Participating Manufacturer's employee who is not Underage of
2 any item described above that is intended for the personal use
3 of such an employee; (3) require any Participating
4 Manufacturer to retrieve, collect or otherwise recover any
5 item that prior to the MSA Execution Date was marketed,
6 distributed, offered, sold, licensed or caused to be marketed,
7 distributed, offered, sold or licensed by such Participating
8 Manufacturer; (4) apply to coupons or other items used by
9 Adults solely in connection with the purchase of Tobacco
10 Products; (5) apply to apparel or other merchandise used
11 within an Adult-Only Facility that is not distributed (by sale
12 or otherwise) to any member of the general public; or (6)
13 apply to apparel or other merchandise (a) marketed,
14 distributed, offered, sold, or licensed at the site of a Brand
15 Name Sponsorship permitted pursuant to subsection III(c)(2)(A)
16 or III(c)(2)(B)(i) of the Agreement by the person to which the
17 relevant Participating Manufacturer has provided payment in
18 exchange for the use of the relevant Brand Name in the Brand
19 Name Sponsorship or a third-party that does not receive
20 payment from the relevant Participating Manufacturer (or any
21 Affiliate of such Participating Manufacturer) in connection
22 with the marketing, distribution, offer, sale or license of
23 such apparel or other merchandise, or (b) used at the site of
24 a Brand Name Sponsorship permitted pursuant to subsections
25 III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement (during such
26 event) that are not distributed (by sale or otherwise) to any
27 member of the general public.

28 / / /

1 E. After the MSA Execution Date, distributing or
2 causing to be distributed within the State of California any
3 free samples of Tobacco Products except in an Adult-Only
4 Facility. For purposes of this Consent Decree and Final
5 Judgment, a "free sample" does not include a Tobacco Product
6 that is provided to an Adult in connection with (1) the
7 purchase, exchange or redemption for proof of purchase of any
8 Tobacco Products (including, but not limited to, a free offer
9 in connection with the purchase of Tobacco Products, such as
10 a "two-for-one" offer), or (2) the conducting of consumer
11 testing or evaluation of Tobacco Products with persons who
12 certify that they are Adults.

13 F. Using or causing to be used as a brand name of any
14 Tobacco Product pursuant to any agreement requiring the
15 payment of money or other valuable consideration, any
16 nationally recognized or nationally established brand name or
17 trade name of any non-tobacco item or service or any
18 nationally recognized or nationally established sports team,
19 entertainment group or individual celebrity. Provided,
20 however, that the preceding sentence shall not apply to any
21 Tobacco Product brand name in existence as of July 1, 1998. For
22 the purposes of this provision, the term "other valuable
23 consideration" shall not include an agreement between two
24 entities who enter into such agreement for the sole purpose
25 of avoiding infringement claims.

26 G. After 60 days after the MSA Execution Date and
27 through and including December 31, 2001, manufacturing or
28 causing to be manufactured for sale within the State of

1 California any pack or other container of Cigarettes
2 containing fewer than 20 Cigarettes (or, in the case of
3 roll-your-own tobacco, any package of roll-your-own tobacco
4 containing less than 0.60 ounces of tobacco); and, after 150
5 days after the MSA Execution Date and through and including
6 December 31, 2001, selling or distributing within the State of
7 California any pack or other container of Cigarettes
8 containing fewer than 20 Cigarettes (or, in the case of
9 roll-your-own tobacco, any package of roll-your-own tobacco
10 containing less than 0.60 ounces of tobacco).

11 H. Entering into any contract, combination or
12 conspiracy with any other Tobacco Product Manufacturer that
13 has the purpose or effect of: (1) limiting competition in the
14 production or distribution of information about health hazards
15 or other consequences of the use of their products; (2)
16 limiting or suppressing research into smoking and health; or
17 (3) limiting or suppressing research into the marketing or
18 development of new products. Provided, however, that nothing
19 in the preceding sentence shall be deemed to (1) require any
20 Participating Manufacturer to produce, distribute or otherwise
21 disclose any information that is subject to any privilege or
22 protection; (2) preclude any Participating Manufacturer from
23 entering into any joint defense or joint legal interest
24 agreement or arrangement (whether or not in writing), or from
25 asserting any privilege pursuant thereto; or (3) impose any
26 affirmative obligation on any Participating Manufacturer to
27 conduct any research.

28 / / /

1 I. Making any material misrepresentation of fact
2 regarding the health consequences of using any Tobacco
3 Product, including any tobacco additives, filters, paper or
4 other ingredients. Provided, however, that nothing in the
5 preceding sentence shall limit the exercise of any First
6 Amendment right or the assertion of any defense or position in
7 any judicial, legislative or regulatory forum.

8
9 **VI. MISCELLANEOUS PROVISIONS**

10 A. Jurisdiction of this case is retained by the Court
11 for the purposes of implementing and enforcing the Agreement
12 and this Consent Decree and Final Judgment and enabling the
13 continuing proceedings contemplated herein. Whenever
14 possible, the State of California and the Participating
15 Manufacturers shall seek to resolve any issue that may exist
16 as to compliance with this Consent Decree and Final Judgment
17 by discussion among the appropriate designees named pursuant
18 to subsection XVIII(m) of the Agreement. The State of
19 California and/or any Participating Manufacturer may apply to
20 the Court at any time for further orders and directions as may
21 be necessary or appropriate for the implementation and
22 enforcement of this Consent Decree and Final Judgment.
23 Provided, however, that with regard to subsections V(A) and
24 V(I) of this Consent Decree and Final Judgment, the Attorney
25 General shall issue a cease and desist demand to the
26 Participating Manufacturer that the Attorney General believes
27 is in violation of either of such sections at least ten
28 Business Days before the Attorney General applies to the Court

1 for an order to enforce such subsections, unless the Attorney
2 General reasonably determines that either a compelling
3 time-sensitive public health and safety concern requires more
4 immediate action or the Court has previously issued an
5 Enforcement Order to the Participating Manufacturer in
6 question for the same or a substantially similar action or
7 activity. For any claimed violation of this Consent Decree
8 and Final Judgment, in determining whether to seek an order
9 for monetary, civil contempt or criminal sanctions for any
10 claimed violation, the Attorney General shall give good-faith
11 consideration to whether: (1) the Participating Manufacturer
12 that is claimed to have committed the violation has taken
13 appropriate and reasonable steps to cause the claimed
14 violation to be cured, unless that party has been guilty of a
15 pattern of violations of like nature; and (2) a legitimate,
16 good-faith dispute exists as to the meaning of the terms in
17 question of this Consent Decree and Final Judgment. The Court
18 in any case in its discretion may determine not to enter an
19 order for monetary, civil contempt or criminal sanctions.

20 B. This Consent Decree and Final Judgment is not
21 intended to be, and shall not in any event be construed as, or
22 deemed to be, an admission or concession or evidence of (1)
23 any liability or any wrongdoing whatsoever on the part of any
24 Released Party or that any Released Party has engaged in any
25 of the activities barred by this Consent Decree and Final
26 Judgment; or (2) personal jurisdiction over any person or
27 entity other than the Participating Manufacturers. Each
28 Participating Manufacturer specifically disclaims and denies

1 any liability or wrongdoing whatsoever with respect to the
2 claims and allegations asserted against it in this action, and
3 has stipulated to the entry of this Consent Decree and Final
4 Judgment solely to avoid the further expense, inconvenience,
5 burden and risk of litigation.

6 C. Except as expressly provided otherwise in the
7 Agreement, this Consent Decree and Final Judgment shall not be
8 modified (by this Court, by any other court or by any other
9 means) unless the party seeking modification demonstrates, by
10 clear and convincing evidence, that it will suffer irreparable
11 harm from new and unforeseen conditions. Provided, however,
12 that the provisions of sections III, V, VI and VII of this
13 Consent Decree and Final Judgment shall in no event be subject
14 to modification without the consent of the State of California
15 and all affected Participating Manufacturers. In the event
16 that any of the sections of this Consent Decree and Final
17 Judgment enumerated in the preceding sentence are modified by
18 this Court, by any other court or by any other means without
19 the consent of the State of California and all affected
20 Participating Manufacturers, then this Consent Decree and
21 Final Judgment shall be void and of no further effect.
22 Changes in the economic conditions of the parties shall not be
23 grounds for modification. It is intended that the
24 Participating Manufacturers will comply with this Consent
25 Decree and Final Judgment as originally entered, even if the
26 Participating Manufacturers' obligations hereunder are greater
27 than those imposed under current or future law (unless
28 compliance with this Consent Decree and Final Judgment would

1 violate such law). A change in law that results, directly or
2 indirectly, in more favorable or beneficial treatment of any
3 one or more of the Participating Manufacturers shall not
4 support modification of this Consent Decree and Final
5 Judgment.

6 D. In any proceeding which results in a finding that a
7 Participating Manufacturer violated this Consent Decree and
8 Final Judgment, the Participating Manufacturer or
9 Participating Manufacturers found to be in violation shall pay
10 the State's costs and attorneys' fees incurred by the State of
11 California in such proceeding.

12 E. The remedies in this Consent Decree and Final
13 Judgment are cumulative and in addition to any other remedies
14 the State of California may have at law or equity, including
15 but not limited to its rights under the Agreement. Nothing
16 herein shall be construed to prevent the State from bringing
17 an action with respect to conduct not released pursuant to the
18 Agreement, even though that conduct may also violate this
19 Consent Decree and Final Judgment. Nothing in this Consent
20 Decree and Final Judgment is intended to create any right for
21 California to obtain any Cigarette product formula that it
22 would not otherwise have under applicable law.

23 F. No party shall be considered the drafter of this
24 Consent Decree and Final Judgment for the purpose of any
25 statute, case law or rule of interpretation or construction
26 that would or might cause any provision to be construed
27 against the drafter. Nothing in this Consent Decree and Final
28 Judgment shall be construed as approval by the State of

1 California of the Participating Manufacturers' business
2 organizations, operations, acts or practices, and the
3 Participating Manufacturers shall make no representation to
4 the contrary.

5 G. The settlement negotiations resulting in this
6 Consent Decree and Final Judgment have been undertaken in good
7 faith and for settlement purposes only, and no evidence of
8 negotiations or discussions underlying this Consent Decree and
9 Final Judgment shall be offered or received in evidence in any
10 action or proceeding for any purpose. Neither this Consent
11 Decree and Final Judgment nor any public discussions, public
12 statements or public comments with respect to this Consent
13 Decree and Final Judgment by the State of California or any
14 Participating Manufacturer or its agents shall be offered or
15 received in evidence in any action or proceeding for any
16 purpose other than in an action or proceeding arising under or
17 relating to this Consent Decree and Final Judgment.

18 H. All obligations of the Participating Manufacturers
19 pursuant to this Consent Decree and Final Judgment (including,
20 but not limited to, all payment obligations) are, and shall
21 remain, several and not joint.

22 I. The provisions of this Consent Decree and Final
23 Judgment are applicable only to actions taken (or omitted to
24 be taken) within the States. Provided, however, that the
25 preceding sentence shall not be construed as extending the
26 territorial scope of any provision of this Consent Decree and
27 Final Judgment whose scope is otherwise limited by the terms
28 thereof.

1 J. Nothing in subsection V(A) or V(I) of this Consent
2 Decree shall create a right to challenge the continuation,
3 after the MSA Execution Date, of any advertising content,
4 claim or slogan (other than use of a Cartoon) that was not
5 unlawful prior to the MSA Execution Date.

6 K. If the Agreement terminates in this State for any
7 reason, then this Consent Decree and Final Judgment shall be
8 void and of no further effect.

9
10 **VII. FINAL DISPOSITION**

11 A. The Agreement, the settlement set forth therein, and
12 the establishment of the Escrow provided for therein are
13 hereby approved in all respects, and all claims are hereby
14 dismissed with prejudice as provided therein. The Memorandum
15 of Understanding ("MOU"; a copy of which is attached hereto as
16 Exhibit B and incorporated herein by this reference as though
17 set forth in full) which was entered into on or about August
18 5, 1998, by counsel for the various plaintiffs in the cases
19 coordinated in J.C.C.P. 4041, and which provides for the
20 establishment of an escrow account from which California
21 Cities and Counties may, pursuant to the MOU, receive payment,
22 is approved in all respects.

23 B. The Court finds that the persons signing the
24 Agreement have full and complete authority to enter into the
25 binding and fully effective settlement of this action as set
26 forth in the Agreement. The Court also finds that the persons
27 signing the Stipulation for Entry of Consent Decree and Final
28 Judgment have full and complete authority to enter into said

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Stipulation. The Court further finds that entering into this settlement is in the best interests of the State of California.

C. The First Amended Complaint on file herein against Does 2-200, is ordered dismissed.

D. The Court Clerk is ordered to enter this Consent Decree and Final Judgment forthwith.

Dated: December 9, 1998

Ronald S. Prager

RONALD S. PRAGER
JUDGE OF THE SUPERIOR COURT