

OFFICE COPY
ATTORNEY GENERAL

BILL LOCKYER, Attorney General
of the State of California
THOMAS GREENE
Chief Assistant Attorney General
DENNIS ECKHART
Senior Assistant Attorney General
ALAN LIEBERMAN (State Bar No. 68463)
Deputy Attorney General
1300 I Street, P.O. Box 944255
Sacramento, California 94244-2550
Telephone: (916) 323-3705
Facsimile : (916) 323-0813

F I L E D

Clerk of the Superior Court

FEB 27 2004

By: K SANDOVAL, Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA ex rel.
Attorney General Bill Lockyer,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO COMPANY, a New
Jersey corporation, and U.S. MARKETING &
PROMOTIONS AGENCY INC., a Delaware
corporation.

Defendants.

General Civil

Case No.: GIC 824954

**STIPULATION FOR ORDER
AND [~~PROPOSED~~] ORDER FOR
ENTRY OF FINAL JUDGMENT**

STIPULATION

It is hereby stipulated, understood, and agreed by and between plaintiff People of the State of California and defendants R.J. Reynolds Tobacco Company, a New Jersey corporation, (hereinafter "REYNOLDS"), and U.S. Marketing & Promotions Agency Inc., a Delaware corporation, (hereinafter "USM&P"), as follows:

1.

STIPULATION & ORDER FOR FINAL JUDGMENT

1. The terms of this Stipulation and Final Judgment shall be binding on defendants REYNOLDS and USM&P and their successors, assigns, directors, officers, employees, agents, representatives, subsidiaries, divisions, and any and all others who act under, by, through, or on behalf of defendants.

2. The court has subject matter jurisdiction and personal jurisdiction over the parties in this action for the purposes of entering and enforcing this Stipulation and Final Judgment.

3. To avoid the expense and delay of litigation, the People, by and through the Attorney General, and defendants REYNOLDS and USM&P enter into this Stipulation as a full and final settlement of the claims raised in the Complaint filed in this action. By execution of this Stipulation and agreeing to provide the relief and remedies specified herein, including, but not limited to, payment in lieu of civil penalties, defendant REYNOLDS does not admit any violation of the Consent Decree and Master Settlement Agreement ("MSA") and defendants REYNOLDS and USM&P do not admit any violations of California Health and Safety Code section 118950 or Business and Professions Code section 17200 et seq., or any other law or legal duty, and each defendant specifically denies that it has committed any such violations. Nothing in this Stipulation and resulting Final Judgment shall prejudice, waive, or impair any right, remedy, or defense defendants REYNOLDS or USM&P may have in any other or future legal proceeding brought by anyone other than the Attorney General. This Stipulation and Final Judgment and all proceedings related thereto shall not constitute or be considered an admission, presumption, concession, or evidence of any fact, issue of law, or liability by defendants REYNOLDS and USM&P in any other or future legal proceeding brought by anyone other than the Attorney General. Nevertheless, nothing in this paragraph shall diminish or otherwise affect the obligations, responsibilities, and duties of the parties under this Stipulation and Final Judgment.

4. REYNOLDS and USM&P hereby stipulate that payment of the amounts referred to in paragraphs 15 and 16 herein constitute full satisfaction and discharge of any and all claims, demands, sums of money, actions, rights, causes of action, debts, obligations and

liabilities between REYNOLDS and USM&P.

5. REYNOLDS and USM&P state that it is their intention that this Stipulation shall be effective as a full and final release of, and as a bar to, each and every claim, demand, damage, debt, account, reckoning, liability, obligation, cost, expense, lien, action, and cause of action which they have or had or claim to have against each other. In connection with such waiver and relinquishment, REYNOLDS and USM&P acknowledge that they are aware that their attorneys may hereafter discover facts different from or in addition to the facts which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is REYNOLDS and USM&P's intention to hereby fully, finally, absolutely, and forever release any and all claims, disputes, and differences which now exist, may exist, or heretofore have existed between USM&P and REYNOLDS, and any of them, in particular, so far as such claims, disputes, and differences relate to or arise out of USM&P's marketing and distribution of cigarettes on behalf of REYNOLDS. In furtherance of such intentions, REYNOLDS and USM&P agree and understand that this Stipulation shall not be subject to any claim of mistake of fact, duress, or lack of mental capacity to execute the Stipulation and that it expresses the FULL, COMPLETE, AND FINAL SETTLEMENT of any and all claims between REYNOLDS and USM&P. In furtherance of such intentions, the general release given herein by REYNOLDS and USM&P shall be and remain in effect as a full and complete general release notwithstanding the discovery of any such different or additional facts. REYNOLDS and USM&P acknowledge that they have been informed of, and that they are familiar with, Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

REYNOLDS and USM&P do hereby waive and relinquish all rights under Section 1542 of the California Civil Code.

6. In this document, the terms "nonsale distribution," "public grounds," and "private property that is open to the general public" are defined as those terms are defined in California Health and Safety Code section 118950, subdivision (c), as follows:

"(1) 'Nonsale distribution' means to give smokeless tobacco or cigarettes to the general public at no costs, or at nominal cost, or to give coupons, coupon offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. . . .

"(3) 'Public building, park, playground, sidewalk, street, or other public grounds' means any structure or outdoor area that is owned, operated, or maintained by any public entity, including, but not limited to: city and county streets and sidewalks, parade grounds, fair grounds, public transportation facilities and terminals, public reception areas, public health facilities, public recreational facilities, and public office buildings."

"(4) 'Private property that is open to the general public' means any structure or outdoor area that is owned, operated, or maintained by any private entity and that is open for entry or use by the general public, whether or not a fee or charge is imposed for entry or use."

7. Defendant REYNOLDS is in the business of selling and distributing cigarettes.

8. Defendant USM&P provides sales-building promotions and brand-building field-marketing services to its clients.

9. From on or about January 1, 2001 until on or about April 3, 2003, USM&P provided sales-building promotions and brand-building field-marketing services to REYNOLDS. In or about April 2003, REYNOLDS decided to discontinue all of its nonsale distribution and sampling activities in California. REYNOLDS informed plaintiff in writing of its decision on May 2, 2003, advising that it would notify plaintiff if it decided to resume any sampling activity. By letter dated April 3, 2003, REYNOLDS notified USM&P that it was terminating all program activities related to the Master Contract between REYNOLDS and USM&P, effective April 3, 2003.

10. Aside from its work for REYNOLDS, USM&P has not conducted any nonsale distribution of tobacco products in California, and has no present intention to engage in any such distribution in the future.

11. Plaintiff alleges that USM&P has engaged in the nonsale distribution of REYNOLDS' cigarette brands on behalf of REYNOLDS on public grounds in California on January 31, 2003, and on other occasions, whereas USM&P claims that it has not engaged in such distributions and REYNOLDS claims that such distributions, if they did occur, were without its knowledge or authority.

12. Plaintiff also alleges that USM&P has engaged in the nonsale distribution of REYNOLDS' cigarette brands on behalf of REYNOLDS on private property in California that is open to the general public and from which minors were not prohibited by law or at which a peace officer or licensed security guard was not stationed at the entrance to prevent minors from entering the facility on February 20, 2003, and on other occasions, whereas USM&P claims that it has not engaged in such distributions and REYNOLDS claims that any such distributions, if they did occur, were without its knowledge or authority.

13. Health and Safety Code section 118950, subdivision (b), provides: "It is unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco or cigarettes from engaging in the nonsale distribution of any smokeless tobacco or cigarettes to any person in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public."

14. Prior to engaging in, directing, facilitating, or participating in any manner in the nonsale distribution on public grounds or on any private property that is open to the general public in the State of California, of cigarettes or other tobacco products, or coupons, coupon offers, or rebate offers for tobacco products, defendant REYNOLDS shall provide plaintiff notice

of the names, addresses and dates of any locations at which it intends to engage in such distributions in the next month, such notice to be given at least seven (7) days prior to the beginning of each month. Defendant shall send such notices to plaintiff by electronic mail. Such notices shall be REYNOLDS' best estimate of the locations and dates; if Reynolds decides not to engage in such distributions at locations and dates for which it has given said notice, it will endeavor to promptly notify plaintiff of such cancellation by electronic mail. The obligation to provide such notice shall commence on March 24, 2004 and end on December 24, 2005.

Prior to engaging in, directing, facilitating, or participating in any manner in the nonsale distribution on public grounds or on any private property that is open to the general public in the State of California, of cigarettes or other tobacco products, or coupons, coupon offers, or rebate offers for tobacco products, defendant USM&P shall provide plaintiff sixty (60) days' prior written notice of its intention to engage in such distributions.

15. PAYMENT IN LIEU OF CIVIL PENALTIES. In lieu of civil penalties under Health and Safety Code section 118950 and Business and Professions Code section 17203, defendants REYNOLDS and USM&P shall jointly pay, within five (5) business days of the date of entry of this Stipulation and Final Judgment, the sum of sixty thousand dollars (\$60,000). Payment shall be by delivery of immediately available funds payable to the "Public Health Foundation Enterprises, Inc." and shall be delivered to Public Health Foundation Enterprises, Inc. at 13200 Crossroads Parkway North, Suite 135, City of Industry, California, 91746, attention: Johnnie Johnson.

a. Public Health Foundation Enterprises, Inc. (hereinafter, "PHFE") is a tax-exempt, nonprofit, 501(c)(3), California public benefit corporation whose mission is to undertake public health research, training, consultation, and educational activities, and to provide support for organizations that provide public health prevention services. PHFE is dedicated to improving the health and well being of people and communities by providing a wide spectrum of quality management services, and has been in operation for 36 years. PHFE is currently the fiscal sponsor and manager for over 200 projects, including tobacco-related projects such as California Youth Advocacy Network (CYAN), a project funded by the California Department of Health

Services, Tobacco Control Section.

b. CYAN is dedicated to the support of youth and young adult tobacco control advocacy throughout California. It has been in operation since March 1997. In December 2003, CYAN's "Campuses Organized and United for Good Health" program received an Innovation in Prevention Award from U.S. Department of Health and Human Services Secretary Tommy G. Thompson for promoting healthy lifestyles.

c. PHFE shall disburse fifty-four thousand dollars (\$54,000) to CYAN. CYAN shall use the funds for projects that support youth and young adult tobacco control advocacy in California. CYAN shall consult with the State of California Department of Health Services Tobacco Control Section to determine an appropriate use for the funds. Examples of appropriate uses of the funds include, but are not limited to: (1) supporting adoption of comprehensive tobacco-free policies on junior college and college campuses, and (2) supporting the Statewide Youth Advocacy Coalition, a collection of high-school aged youth throughout California working toward solving tobacco-related problems at the local and statewide levels.

d. PHFE may retain six thousand dollars (\$6,000) for its administrative expenses. This amount shall cover all direct and indirect costs associated with management and administration of the settlement.

16. INVESTIGATIVE COSTS. Within five (5) business days of the date of entry of this Stipulation and Final Judgment, defendants REYNOLDS and USM&P shall jointly pay thirty-five thousand dollars (\$35,000) in investigative costs. Payment shall be by immediately available funds payable to the "California Attorney General's Office" and shall be delivered to the California Attorney General's Office, Tobacco Litigation and Enforcement Section, 1300 I Street, Sacramento, CA 94244-2550, Attn: Alan Lieberman, Deputy Attorney General. Such payment shall be deposited in the Attorney General's Public Rights Division Law Enforcement Special Fund to be used for enforcement of section 118950, the MSA and Consent Decree, or

other tobacco-related laws and regulations.

17. Jurisdiction is retained by the Court, including but not limited to pursuant to California Code of Civil Procedure section 664.6, for the purpose of enabling any party to this Stipulation to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for carrying out of this Stipulation and Final Judgment, for enforcement of compliance herewith, and for the punishment of violations of any provisions hereof. The parties agree that the Court may in its supervision of this Stipulation and Final Judgment use all of its powers including, but not limited to, its powers to order injunctive relief and to order specific enforcement of the terms of this Stipulation and Final Judgment.

18. The parties agree to negotiate in good faith to try to resolve any disputes that may arise related to this Stipulation and Final Judgment. The Attorney General shall give thirty (30) days notice before filing a motion or other pleading seeking contempt of court or other sanctions for violation of this Stipulation and Final Judgment.

19. This Stipulation and Final Judgment does not limit the remedies available to the Office of the Attorney General in connection with any future violation of California laws or regulations by either defendant REYNOLDS or defendant USM&P.

20. Nothing in this Stipulation and Final Judgment shall be deemed to permit or authorize any violation of the laws or regulations of California or otherwise be construed to relieve defendant REYNOLDS or defendant USM&P of any duty to comply with the applicable laws and regulations of California.

21. This Stipulation and Final Judgment applies to each defendant only in its corporate capacity, acting through its respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind.

22. This Stipulation and Final Judgment embodies the entire agreement between the parties with respect to the matters addressed by this Stipulation and Final Judgment and supersedes (i) all prior agreements and understandings relating to such matters, whether written or oral, and (ii) all purportedly contemporaneous oral agreements and understandings relating to such matters. This Stipulation and Final Judgment may be modified upon written approval of

the parties and upon entry of a modified Final Judgment by the Court thereon, or upon duly noticed motion of any party as provided by law and upon entry of a modified Final Judgment by the Court.

23. Each signatory to this Stipulation and Final Judgment certifies that he or she is fully authorized by the party he or she represents to enter into and execute this Stipulation and Final Judgment on behalf of the party represented and legally to bind that party.

24. This Stipulation and Final Judgment shall take effect immediately upon entry thereof.

IT IS SO STIPULATED.

Dated: February 18, 2004

BILL LOCKYER
Attorney General of the State of California
THOMAS GREENE
Chief Assistant Attorney General
DENNIS ECKHART
Senior Assistant Attorney General

By: _____
ALAN LIEBERMAN, Deputy Attorney General
Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

Dated: February 11, 2004

By: _____
MICHAEL J. MADIGAN, Senior Counsel

R.J. REYNOLDS TOBACCO COMPANY

Dated: February 13, 2004

By: _____
RUSS MEISELS, Chief Financial Officer
U.S. MARKETING & PROMOTIONS AGENCY

INC.

ORDER FOR ENTRY OF FINAL JUDGMENT

The parties having stipulated to entry of judgment on the terms set forth above,
IT IS SO ORDERED, ADJUDGED, AND DECREED.

The clerk shall enter this Stipulation and Order for Entry of Final Judgment forthwith.

Dated: MAR 23 2004

RONALD S. PRAGER
JUDGE OF THE SUPERIOR COURT