

FILED July 18 2018  
 ANGIE SPARKS, Clerk of District Court  
 By \_\_\_\_\_ Deputy

**MONTANA FIRST JUDICIAL DISTRICT COURT  
 LEWIS AND CLARK COUNTY**

_____	)	
STATE OF MONTANA ex rel,	)	Cause No. BDV-1997-306
TIMOTHY FOX,	)	
	)	
Plaintiff	)	Hon. Michael McMahon
	)	
vs.	)	
	)	
PHILIP MORRIS, INC., ET AL.	)	<b>CONSENT DECREE</b>
	)	
Defendants.	)	

WHEREAS, Plaintiff State of Montana filed its Motion for Declaratory Order to Enforce Consent Decree and Final Judgment and Master Settlement Agreement on March 27, 2017 (“the Motion”), which sought declaratory rulings from the Court that (1) under MSA § IX(d)(2)(B) Montana had a Qualifying Statute in place; (2) Montana diligently enforced the Statute throughout calendar year 2004; and (3) Montana is therefore not subject to the Non-Participating Manufacturer Adjustment (“NPM Adjustment”) under the MSA for calendar year 2004;

WHEREAS, in filing that Motion, the State invoked this Court’s continuing jurisdiction under the December 1, 1998 Consent Decree and Final Judgment and the 1998 Master Settlement Agreement;

WHEREAS, the following Participating Manufacturers have claims to a 2004 NPM Adjustment and are parties to this resolution of the Motion with Montana memorialized by this Consent Decree: RJ Reynolds Tobacco Company (successor to Brown & Williamson Tobacco Corp. and Lorillard Tobacco Company), Philip Morris USA Inc., Farmer's Tobacco Company of Cynthiana, Inc., Commonwealth Brands, Inc.; Compania Industrial de Tabacos Monte Paz, S.A.; Daughters & Ryan, Inc.; House of Prince A/S; Japan Tobacco International U.S.A., Inc.; King Maker Marketing, Inc.; Kretek International, Inc.; Scandinavian Tobacco Group Lane Ltd. (formerly Lane Limited); Liggett Group LLC; ITG Brands, LLC (formerly Lignum-2 LLC); Peter Stokkebye Tobaksfabrik A/S; P.T. Djarum; Santa Fe Natural Tobacco Company, Inc.; Top Tobacco, L.P.; Von Eicken Group; Sherman's 1400 Broadway N.Y.C., LLC. (collectively "Defendants");

WHEREAS, the parties have reached an agreed resolution of the issues raised in the State's Motion;

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

#### **I. JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter of this action. Venue is proper in this County. Defendants do not waive any right they may have to challenge this Court's jurisdiction over future diligent enforcement disputes.

#### **II. VOLUNTARY ACT OF THE PARTIES**

The parties expressly acknowledge and agree that this Consent Decree is voluntarily entered into as a result of the arms-length negotiations, and all parties hereto were represented by counsel when entering into this Consent Decree.

### **III. DISPOSITION OF THE STATE'S MOTION AND GENERAL AGREEMENTS**

1. Defendants agree that Montana enacted a Qualifying Statute (Montana Code Annotated § 16-11-401 *et seq.*), within the meaning of MSA § IX(d)(2)(B), and that the Statute was continuously in full force and effect during the entire calendar year 2004.

2. Defendants do not contest Montana's claim that it diligently enforced its Qualifying Statute during the entire calendar year 2004, and Montana will be deemed by the Independent Auditor for purposes of Section IX(d)(2)(B) and (C) of the MSA a Settling State that diligently enforced its Qualifying Statute during the entire calendar year 2004 and is therefore not subject to the 2004 NPM Adjustment. Defendants and the State will jointly instruct the Independent Auditor to treat the State in accordance with this paragraph with respect to the 2004 NPM Adjustment.

3. Although Defendants agree that Montana is not subject to the 2004 NPM Adjustment and no portion of any 2004 NPM Adjustment shall be allocated to reduce Montana's share of the payment made under the MSA for Cigarettes sold in 2004, Defendants' consent to this Consent Decree is not a factual concession that Montana in fact did or did not diligently enforce the Montana Qualifying Statute in 2004 or any other year.

4. Defendants that have already deposited funds, or will deposit funds, pursuant to Paragraphs 5-8 of this Decree into the Disputed Payment Account ("DPA") on the basis of a dispute over the 2004 NPM Adjustment agree that Montana's allocable share of such amounts shall be disbursed from the DPA to Montana, together with all earnings or (as agreed and applicable) interest, on such funds.

#### IV. DISTRIBUTION OF FUNDS

5. Any Defendant that has neither made full payment of its undisputed 2004 MSA payment together with the 2004 NPM Adjustment amounts in dispute, such that Montana is already in receipt of its full Allocable Share of such amounts, nor made payment of its disputed 2004 NPM Adjustment amounts into the DPA, shall, prior to July 19, 2018, make payment into the DPA of Montana's Allocable Share of any portion of the Defendant's disputed 2004 NPM Adjustment amount that has not already been paid plus agreed upon interest at prime since the date the funds were initially withheld. The parties agree that these Defendants are Liggett Group LLC and Farmer's Tobacco Company of Cynthiana, Inc.

6. In the case of the Defendants addressed in the foregoing paragraph, such Defendants and Montana shall jointly instruct the IA to transfer to Montana's account, on July 19, 2018, or as soon as practicable thereafter, the payments made into the DPA representing Montana's Allocable Share of any outstanding 2004 NPM Adjustment amount and agreed upon interest at prime.

7. Any Defendant that had paid its disputed 2004 NPM Adjustment amounts into the DPA shall, together with Montana, instruct the IA to transfer to Montana's account, on July 19, 2018, or as soon as practicable thereafter, Montana's Allocable Share of all amounts paid into the DPA on the basis of a dispute over the 2004 NPM Adjustment.

8. Each Defendant that has paid its disputed 2004 NPM Adjustment amounts into the DPA relinquishes any claim to earnings on Montana's Allocable Share of all amounts paid into the DPA on the basis of a dispute over the 2004 NPM

Adjustment. Such Defendants together with Montana shall instruct the IA to transfer

such earnings to the State of Montana on July 19, 2018, or as soon as practicable thereafter, for deposit with the Montana Department of Justice for reimbursement of litigation expenses.

9. Upon release from the DPA as referenced in paragraphs 5-6 above, Montana agrees that, with respect to the 2004 NPM Adjustment, its claim to any portion of the amounts first withheld from payment and then deposited into the DPA for release to Montana has been satisfied. Upon release from the DPA as referenced in paragraphs 7-8 above, Montana agrees that, with respect to the 2004 NPM Adjustment, its claim to any portion of the amounts released from the DPA has been satisfied.

10. Any Defendant that has paid its share of the 2004 NPM Adjustment amounts in dispute to the states, such that Montana is already in receipt of its full Allocable Share of such amount, shall have no further obligations with respect to such amounts under this Consent Decree.

#### **V. MISCELLANEOUS PROVISIONS**

11. Except as provided in paragraph 8, each party shall bear its own costs and attorneys' fees.

12. The Court shall retain jurisdiction of the original cause number in this matter for the continued purpose of implementing and enforcing the Master Settlement Agreement and the Court's December 1, 1998 Consent Decree and Final Judgment.

13. The Court retains jurisdiction over the State's Motion for purpose of implementing and enforcing this Consent Decree.

14. Montana's claim for an NPM Adjustment for 2004 from Reemstma Cigarettenfabriken GmbH (Reemstma) is \$0.52 and from Wind River Tobacco  
2018 Consent Decree  
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Company LLC (Wind River) is \$21.11. Reemstma and Wind River did not participate in these proceedings and Montana contends that they thereby waived any right to dispute the 2004 NPM Adjustment with regard to Montana. For purposes of this consent decree only Reemstma and Wind River each waive their right to contest Montana's diligent enforcement of the MSA with regard to the 2004 NPM Adjustment. The parties agree that Montana has already received payment for the Reemstma and Wind River amounts above.

15. The State reserves the right to file such motions as necessary regarding parties that did not timely appear in this case.

Dated this 18<sup>th</sup> day of July, 2018.

  
MICHAEL F. McMAHON  
District Court Judge

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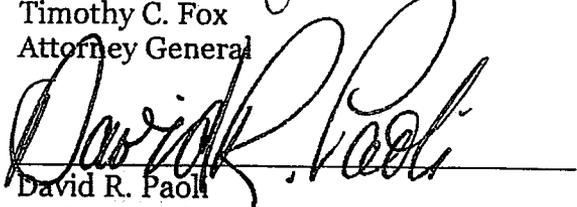
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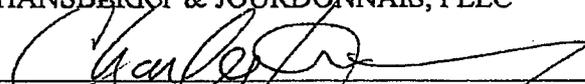
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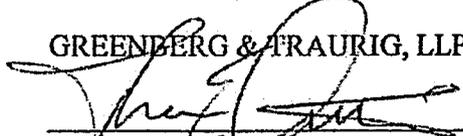
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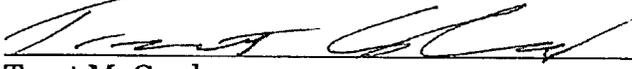
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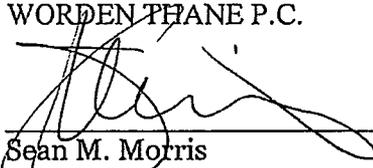
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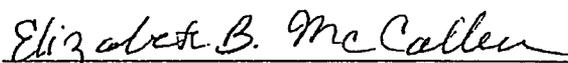
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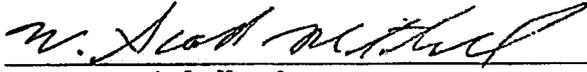
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