

BILL LOCKYER, Attorney General  
of the State of California  
RICHARD M. FRANK  
Chief Assistant Attorney General  
DENNIS ECKHART (State Bar No. 70730)  
Senior Assistant Attorney General  
PETER M. WILLIAMS (State Bar No. 180533)  
Deputy Attorney General  
1300 I Street, 15th Floor  
Sacramento, CA 95814

Attorneys for Plaintiff  
PEOPLE OF THE STATE OF CALIFORNIA  
ex rel. Attorney General Bill Lockyer

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF PLACER

PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
Attorney General Bill Lockyer,  
  
Plaintiff,  
  
v.  
  
U.S. SMOKELESS TOBACCO COMPANY, and  
DOES 1 through 100, inclusive,  
  
Defendants.

Case No.:

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

**STIPULATION**

It is hereby stipulated, understood, and agreed by and between plaintiff People of the State of California (“People”), and defendant U.S. Smokeless Tobacco Company (hereinafter “USSTC”) that:

1. The terms of this Stipulation and Final Judgment shall be binding on the defendant, USSTC, in its corporate capacity acting through its successors, assigns, directors, officers, employees, agents, representatives, subsidiaries, divisions, other internal organizational units of any kind, and any and all others who act under, by, through, or on behalf of defendant.

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.

1                   3. To avoid the expense and delay of litigation, the People, by and through the  
2 Attorney General, and USSTC enter into this Stipulation as a full and final resolution of the  
3 claims raised in the Complaint filed in this action. By executing this Stipulation and agreeing to  
4 provide the relief and remedies specified herein including, but not limited to, statutory penalties,  
5 USSTC does not admit any violations of California Health and Safety Code section 118950 or  
6 Business and Professions Code section 17200 et seq., or any other law or legal duty, and  
7 specifically denies that it has committed any such violations. Nothing in this Stipulation and  
8 resulting Final Judgment shall prejudice, waive or impair any right, remedy, or defense USSTC  
9 may have in any other or future legal proceeding brought by anyone other than the Attorney  
10 General. This Stipulation and Final Judgment, the prior negotiations, and all proceedings related  
11 thereto shall not constitute or be considered an admission, presumption, concession, or evidence  
12 of any fact, issue of law, or liability by USSTC in any other or future legal proceeding, and shall  
13 not be admissible, except that the Stipulation and Final Judgment may be admissible in an action  
14 by the Attorney General to enforce its terms. Nevertheless, nothing in this paragraph shall  
15 diminish or otherwise affect the obligations, responsibilities and duties of the parties under this  
16 Stipulation and Final Judgment.

17                   4. In this document, the terms “nonsale distribution,” “smokeless tobacco,” and  
18 “public grounds” are defined the same as those terms are defined in California Health and Safety  
19 Code section 118950, subdivision (c), as follows:

20                   “(1) ‘Nonsale distribution’ means to give smokeless tobacco or cigarettes  
21 to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, or rebate  
22 offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost.  
23 Distribution of tobacco products, coupons, coupon offers, or rebate offers in connection with the  
24 sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers  
25 shall not constitute nonsale distribution.

26                   “(2) ‘Smokeless tobacco’ means (A) a loose or flat, compressed cake form  
27 of tobacco that may be chewed or held in the mouth or (B) a shredded, powdered, or pulverized  
28 form of tobacco that may be inhaled through the nostrils, chewed or held in the mouth.

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

6 5. USSTC is in the business of manufacturing and distributing smokeless tobacco  
7 products.

8 6. On or about April 17 and 18, 1999, USSTC engaged in the nonsale distribution  
9 of smokeless tobacco on public grounds by distributing cans of its smokeless tobacco products to  
10 adults in an Adult-Only Facility “Wild West Stampede” in Auburn, California. The “Wild West  
11 Stampede” took place on the Gold Country Fairgrounds which is located on public property. At  
12 the event, approximately 629 samples of smokeless tobacco were given out to adult members of  
13 the general public for no cost. The smokeless tobacco products were not distributed in  
14 connection with the sale of another item. As stated in paragraph 3, USSTC believes in good faith  
15 that its conduct was consistent with California law.

16 7. On or about June 12 and 13, 1999, USSTC engaged in the nonsale distribution  
17 of smokeless tobacco on public grounds by distributing cans of its smokeless tobacco products to  
18 adults in an Adult-Only Facility at the Livermore Rodeo in Livermore, California. The  
19 Livermore Rodeo took place at Robertson Park which is located on public property. At the  
20 event, approximately 771 samples of smokeless tobacco were given out to adult members of the  
21 general public for no cost. The smokeless tobacco products were not distributed in connection  
22 with the sale of another item. As stated in paragraph 3, USSTC believes in good faith that its  
23 conduct was consistent with California law.

24 8. Health and Safety Code section 118950, subdivision (b), provides in pertinent  
25 part: “It is unlawful for any person, agent, or employee of a person in the business of selling or  
26 distributing smokeless tobacco or cigarettes from engaging in the nonsale distribution of any  
27 smokeless tobacco or cigarettes to any person in any public building, park or playground, or on  
28 any public sidewalk, street, or other public grounds. . . .”

1 9. PERMANENT INJUNCTION. Defendant USSTC in its corporate capacity  
2 acting through its successors, assigns, directors, officers, employees, agents, representatives,  
3 subsidiaries, divisions, other internal organizational units of any kind, and any and all others who  
4 act under, by, through, or on behalf of defendant, shall be permanently restrained and enjoined  
5 from engaging in, directing, facilitating, or participating in any manner in the nonsale distribution  
6 on public grounds, in the State of California, of smokeless tobacco or other tobacco products, or  
coupons, coupon offers, or rebate offers for smokeless tobacco or other tobacco products.

7 Notwithstanding Health and Safety Code section 118950, subdivision (f), this injunction  
8 shall apply to any public grounds, even if minors are prohibited by law. This injunction shall  
9 also apply to any public grounds leased for private functions, even if minors are denied access by  
10 a peace officer or licensed security guard on the premises.

11 10. PAYMENT. USSTC shall pay within ten (10) business days after the  
12 expiration of time by which a non-party can challenge the entry of this Stipulation and Final  
13 Judgment, the sum of one hundred seventy-one thousand dollars (\$171,000.00) as follows; one  
14 hundred-fifty thousand dollars (\$150,000.00) shall be payable to the “Public Health Institute”;  
15 and twenty-one thousand dollars (\$21,000.00) shall be payable to the California Department of  
16 Justice. These payments shall be made by wire transfer directly to the Public Health Institute and  
17 California Attorney General, respectively, at account numbers to be separately specified by the  
18 California Attorney General. The California Attorney General states that it is authorized to  
19 receive its payment and that the entities identified above are the legal and proper payees. The  
20 foregoing payments shall constitute full satisfaction of USSTC’s economic obligations under this  
21 Stipulation and Final Judgment, including any claim for attorneys’ fees.

22 Set forth below in subdivisions (a) - (e) are statements of the People, not attributable to  
23 USSTC:

24 a. The Public Health Institute is a tax-exempt, nonprofit, California public benefit  
25 corporation whose mission is to undertake public health research, training, consultation, and  
26 educational activities. It has been in operation for more than thirty years. The Public Health  
27 Institute is the fiscal sponsor for nearly 200 projects, including tobacco-related projects such as:  
28 the Technical Assistance Legal Center whose mission is to change social norms about tobacco by

1 developing policies in California to reduce the health damage caused by the tobacco industry;  
2 Tobacco Free Challenge Racing which works to eliminate the association of tobacco products  
3 with the excitement of motor sports racing and bring anti-tobacco product messages to these  
4 events; and, the California Cancer Registry which conducts epidemiological research into, among  
5 other things, causes of cancer such as exposure to tobacco products. The Public Health Institute  
6 includes a Public Health Trust project, whose goal is to channel litigation funds into health  
7 protection and promotion programs.

8 b. In consultation with the Tobacco Control Section of the State of California  
9 Department of Health Services, and consistent with the purposes of and findings set forth  
10 in Health and Safety Code section 118950, the Public Health Trust shall disburse the  
11 funds from this resolution to address the same or similar public harm as that allegedly  
12 caused by USSTC by its conduct described in paragraphs 6 and 7 of this resolution. The  
13 funds may be used for projects throughout the State of California; however, preference  
14 shall be given to projects serving Placer County and/or Alameda County.

15 Examples of appropriate uses of the funds may include, but are not limited to, the  
16 following:

17 (1) Funding the Public Health Institute and/or other appropriate entity to develop  
18 and conduct trainings throughout the state on how to monitor events in California  
19 at which there is some likelihood of activity in violation of Health and Safety  
20 Code section 118950 or other legal restrictions on tobacco product promotion  
21 (including, but not limited to: fairs, auto races, rodeos, or any events sponsored  
22 by entities in the business of selling or distributing tobacco products) for the  
23 purposes of ensuring compliance with, and identifying violations of, Health and  
24 Safety Code section 118950 and other legal restrictions on tobacco product  
25 promotion;

26 (2) Funding a local public health program to conduct tobacco product use  
27 prevention, education, and/or cessation public health projects at or related to  
28 county fair grounds or other venues (including, but not limited to, those hosting  
fairs, auto races, rodeos, or any events sponsored by entities in the business of

selling or distributing tobacco products) likely to have tobacco sponsorship;  
(3) Funding the Tobacco Education Clearinghouse of California (which is operated by a nonprofit agency, ETR Associates, through a contract with the California Department of Health Services) to produce written and/or audiovisual materials to assist public health agencies and non-profit organizations which work to eliminate tobacco-sponsored events and/or tobacco product use on public grounds;  
and/or,  
(4) Funding the production of written and/or audiovisual public education materials about smokeless tobacco products.

c. The process by which the Public Health Institute's Public Health Trust will choose grantees is specified in the letter regarding "Method of Selection of Recipients of Settlement Funds" attached hereto as Exhibit A and incorporated herein.

d. The twenty-one thousand dollar (\$21,000.00) amount payable to the California Department of Justice, as set forth above, reimburses the Attorney General's Office for its investigative and enforcement costs and attorneys' fees, and is to be paid from the total resolution amount of one hundred seventy-one thousand dollars (\$171,000).

e. As to the one hundred-fifty thousand dollar (\$150,000.00) amount payable to the Public Health Institute, as set forth above, the Public Health Institute may retain fifteen thousand dollars (\$15,000.00), which is ten percent of the one hundred-fifty thousand dollar (\$150,000.00) amount, for its administrative expenses. The fifteen thousand dollar (\$15,000) amount shall cover all costs associated with the management and administration of the resolution of this matter.

11. RETENTION OF JURISDICTION. Jurisdiction is retained by the Court for the purpose of enabling either 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 the construction, modification, or the 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 use all of its powers in its supervision of this Stipulation and Final Judgment.

12. 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 USSTC 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.

13. 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 USSTC. If any violations of this Stipulation and Final Judgment constitute subsequent violations of Health and Safety Code section 118950 or other laws independent of the Stipulation and Final Judgment and/or those alleged in the Complaint, the Attorney General is not limited to enforcement of the Stipulation and Final Judgment, but may seek in this or another action whatever fines, costs, penalties or other remedies are provided for by law for failure to comply with Health and Safety Code section 118950 or other laws.

14. 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 USSTC of any duty to comply with the applicable laws and regulations of California.

15. This Stipulation and Final Judgment applies to the 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. Any remedies that may be imposed or assessed in connection with a violation of this Stipulation and Final Judgment (or any order issued in connection herewith) shall only apply to the parties, and shall not be imposed or assessed against any employee, officer or director of either party, or against any other person as a consequence of such violation, and there shall be no jurisdiction under this Stipulation and Final Judgment to do so.

16. This Stipulation and Final Judgment is a full and final judgment with respect to all matters that are the subject of this Stipulation and Final Judgment.

17. 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

1 such matters. This Stipulation and Final Judgment may be modified upon written approval of  
2 the parties and upon entry of a modified Final Judgment by the Court thereon, or upon duly  
3 noticed motion of any party as provided by law and upon entry of a modified Final Judgment by  
4 the Court.

5 18. The parties agree to use their best efforts and to cooperate with each other to  
6 cause this Stipulation and Final Judgment to become effective, to obtain all necessary approvals,  
7 consents, and authorizations, if any, and to execute all documents and to take such other actions  
8 as may be appropriate in connection herewith. Consistent with the foregoing, each party agrees  
9 that it will not encourage any challenge to this Stipulation and Final Judgment by any other  
10 person, and will support the integrity and enforcement of the terms of this Stipulation and  
11 Judgment.

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

15 20. This Stipulation and Final Judgment shall take effect upon service of notice  
16 of entry of the judgment.

17 21. No portion of this Stipulation and Final Judgment shall provide any rights  
18 to, or be enforceable by, anyone other than the parties. Plaintiff may not assign or otherwise  
19 convey any right to enforce any provision of this Stipulation and Final Judgment.

20 22. The parties expressly acknowledge and agree that this Stipulation and Final  
21 Judgment is voluntarily entered into by the parties as the result of arms length negotiations,  
22 during which the parties were represented by counsel.

23 23. This Stipulation and Final Judgment may be executed in one or more  
24 counterparts which, taken together, shall be deemed to constitute one and the same document.

25 24. Facsimile or photocopied signatures shall be considered as valid signatures  
26 as of the date of this Stipulation and Final Judgment, even though the original signature pages  
27 shall thereafter be appended to this Stipulation and Final Judgment.

28 25. Neither of the parties shall be considered to be the drafter of this Stipulation  
and Final Judgment, or any provision in it, for the purpose of any statute, case law or rule of

1 interpretation or construction that would or might cause any provision to be construed against the  
2 drafter. References to or use of a singular noun or pronoun in this Stipulation and Final  
3 Judgment shall include the plural, unless the context implies otherwise.

4 26. The headings of the sections of this Stipulation and Final Judgment are not \\  
5 binding and are for reference only and do not limit, expand, or otherwise affect the contents or  
6 meaning of this Stipulation and Final Judgment.

7 IT IS SO STIPULATED.

8 Dated:

9 BILL LOCKYER  
10 Attorney General of the State of California  
11 RICHARD M. FRANK  
12 Chief Assistant Attorney General  
13 DENNIS ECKHART  
14 Senior Assistant Attorney General  
15 PETER M. WILLIAMS  
16 Deputy Attorney General

17 By: \_\_\_\_\_  
18 PETER M. WILLIAMS  
19 Attorneys for Plaintiff  
20 PEOPLE OF THE STATE OF CALIFORNIA

21 Dated:

22 By: \_\_\_\_\_  
23 RICHARD H. VERHEIJ  
24 Executive Vice President and  
25 General Counsel  
26 U.S. SMOKELESS TOBACCO COMPANY

27 **FINAL JUDGMENT ORDER**

28 **IT IS SO ORDERED, ADJUDGED, AND DECREED, AND THE ABOVE-  
CAPTIONED ACTION IS DISMISSED WITH PREJUDICE WITH THE COURT  
RETAINING JURISDICTION PURSUANT TO CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 664.6 IN ORDER TO ENFORCE THE TERMS OF THE  
UNDERLYING STIPULATION FROM WHICH THIS JUDGMENT  
ORIGINATES.**

**The clerk is ordered to enter this Stipulation and Final Judgment forthwith.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**