

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

_____)	
THOMAS GEANACOPOULOS, On Behalf of)	
Himself and All Others Similarly Situated,)	
	Plaintiff,)	
)	
	v.)	Civ. Action No. 98-6002-BLS1
)	
PHILIP MORRIS USA INC.,)	
	Defendant.)	
_____)	

PLAINTIFF’S MOTION TO AUTHORIZE DISTRIBUTION OF SETTLEMENT FUNDS AND TO REJECT DISALLOWED CLAIMS

Plaintiff Thomas Geanacopoulos, individually and on behalf of the certified class, respectfully moves the Court to authorize (1) the distribution of the settlement funds in the manner described below and (2) the rejection of the claims that the Settlement Administrator has concluded should be disallowed.

After completion of the claims administration, the Settlement Administrator and Class Counsel have determined that out of the 66,770 individual claims that were submitted before the claims deadline of November 28, 2016, 36,064 claims should be allowed and that the persons submitting those claims should be entitled to participate in the settlement distribution. Under the Settlement Agreement and plan of distribution previously approved by the Court, each of the allowed claimants will be entitled to receive \$225, for a total payout to the Class of \$8,114,400, with the balance of the Settlement Fund, after payment of incentive awards and settlement administration expenses, to be distributed pursuant to Mass. R. Civ. P. 23(e).

The Settlement Administrator and Class Counsel have also determined that 30,706 of the

claims submitted to the Administrator were not valid and did not qualify for the settlement distribution, and therefore should be rejected. Another 23 claims were submitted after the claims deadline and should be rejected as well.

In support of this motion, Plaintiff submits the Declaration of Michelle Kopperud (“Kopperud Declaration”), a Project Manager of Analytics Consulting LLC (“Analytics” or “the Settlement Administrator”), and the Affidavit of Michelle H. Blauner (“Blauner Affidavit”), who have together overseen the settlement administration.

As grounds for this motion, Plaintiff states as follows:

1. On September 30, 2016, this Court entered the Final Order and Judgment in this class action, which approved the Settlement and Plan of Distribution set forth in the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Class.

2. Under the Settlement Agreement, the Class Recovery is to be distributed by the Settlement Administrator, at the direction of Class Counsel, and subject to the approval of the Court, as follows:

- a. First, to pay taxes, tax preparation fees, bank fees and accounting fees incurred by the qualified settlement fund into which the Class Recovery will be deposited;
- b. Second, to pay the costs of notice and distribution;
- c. Third, to pay Service Awards not to exceed \$25,000 to each of the Plaintiffs;
- d. Fourth, to pay Class members who have properly and timely submitted Claim Forms in the manner directed by the Court their individual shares of the net proceeds of the Class Recovery. Each such Class member will be entitled to receive his or her pro rata share of the net proceeds of the Class Recovery,

which will be divided equally among Class members who have submitted valid and timely Claim Forms, up to a maximum of \$225 per Class member.

Stipulation, ¶25.

3. The Settlement Agreement further provides that “[a]ny portion of the Class Recovery that shall remain undistributed to Class members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e).” Stipulation, ¶26.

4. Pursuant to the Settlement, on May 17, 2016 Philip Morris paid the Class Recovery of \$15,273,815 into the Settlement Fund and since that time, the funds have been held in escrow in an interest bearing account at the Huntington Trust National Bank. Through December 31, 2016, \$20,642 in interest had accrued on the Settlement Fund.¹ Blauner Affidavit ¶3.

5. When it allowed Plaintiff’s motion for final approval of the Settlement, this Court authorized Class Counsel to pay \$25,000 service awards to each of the two original plaintiffs, and to pay up to \$350,000 out of the Settlement Fund for notice and settlement administration costs. Blauner Affidavit ¶4.

6. To date, \$293,960.08 has been paid out of the Settlement Fund as follows:
- a. A total of \$50,000 has been paid to the two original plaintiffs as service awards;
 - b. \$222,830.12 has been paid to the Settlement Administrator for the costs of notice and the claims administration; and
 - c. \$21,129.96 has been paid to Lexis-Nexis to pay for costs incurred in connection with the verification of the state of residence and the date of birth

¹ Interest will continue to accrue until the Settlement Fund is fully distributed.

of claimants who have submitted claim forms.

Blauner Affidavit ¶5.

7. In addition, the Settlement Administrator expects to incur up to \$63,000 in additional expenses in connection with the distribution of the settlement proceeds to the claimants whose claims have been accepted. The Settlement Administrator has agreed to cap any future fees and expenses at that amount. Plaintiff proposes to reserve an additional \$40,000 to pay taxes, bank fees, and accounting fees incurred by the Settlement Fund, as well as other anticipated expenses. Blauner Affidavit ¶7.

8. Thus, there is approximately \$14,897,497 currently available to be distributed to the 36,064 class members whom the Settlement Administrator has determined have submitted timely and valid proof of claim forms. Blauner Affidavit ¶8. Under the Settlement each of the approved claimants will receive their pro rata share of the net Settlement Fund, up to a maximum of \$225 per class member. Thus, subject to this Court's approval, a total of \$8,114,400 will be distributed the class members. Blauner Affidavit ¶9.

9. If those distributions are approved, there will remain approximately, \$6,783,097, in residual funds to be distributed pursuant to Mass. R. Civ. P. 23(e). Blauner Affidavit ¶10. A separate motion to distribute the residual funds is being served herewith.

10. As detailed in the Declaration of Richard Simmons, dated September 16, 2016 (see Kopperud Declaration, Exhibit A), the Settlement Administrator distributed the Class Notice to Class Members via e-mail, mail, and through an internet and published notice program, in the manner directed by the Court in its preliminary approval order.

11. In response to the notice program, the Settlement Administrator received 71,658 claims from potential class members. After eliminating duplicate claims, the Settlement

Administrator determined that there were 66,770 individual claims submitted before the claims deadline. Kopperud Declaration ¶12. 20 of those claims were subsequently withdrawn. Kopperud Declaration ¶21.

12. As more fully detailed in the Kopperud Declaration, the Settlement Administrator has recommended allowance of 36,064 claims and rejection of 30,706 claims. An additional 23 claims, which were submitted after the claims deadline, have also been rejected as having not been timely filed. Kopperud Declaration ¶¶13-14.

13. The Claim Form, attached to Kopperud Declaration as Exhibit B, requested the following information from each claimant:

1. During some portion of the time period between November 25, 1994 to November 25, 1998, I was: <i>(check any that apply)</i>		
<input type="checkbox"/>	a resident of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts	
<input type="checkbox"/>	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	
<input type="text"/>	<input type="text"/>	
3. What is your date of birth?		
Month	Day	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

In addition, claimants were required to provide current contact information to which any claim payment would be sent. Kopperud Declaration ¶¶9-10 and Exhibit B; Blauner Affidavit ¶13.

14. By signing the claim form, each claimant certified that the information he or she had provided was true to the best of his or her knowledge and belief. On the claim form, each claimant was advised that “**ALL CLAIMS ARE SUBJECT TO VERIFICATION.**” (emphasis in original). Blauner Affidavit ¶14; Kopperud Declaration Exhibit B.

15. In light of the evidence about teenage smoking, Class Counsel recognized that

people under 18 (which was the legal age to purchase cigarettes in Massachusetts during the Class Period), likely could have purchased cigarettes during the Class Period. However, Class Counsel made the determination that anyone born on or after November 26, 1985, was not in the Class because he or she would have been only 12 years old (or younger) on the last day of the Class Period. Kopperud Declaration ¶15; Blauner Affidavit ¶15.

16. Accordingly, any claimant who reported a date of birth on or after November 26, 1985 on his or her claim form was determined to not be in the Class. There were 2,181 claimants who were determined to not be in the class due to the age reported on their claim forms. The Settlement Administrator notified each of those claimants that their claims had been rejected for that reason. Claimants were given 21 days after receiving notice of their rejected claims within which to dispute this determination and 20 claimants did so. One of the claimants later provided a photocopy of his legal identification, and his claim was allowed. The remaining 19 disputed claims were rejected. Kopperud Declaration ¶¶15-16 and Exhibit C. A summary of the 20 disputed and rejected claims is attached to the Kopperud Declaration as Exhibit D.

17. Many claimants submitted multiple claims. In some cases, individuals submitted multiple claims under their own names or similar names. In other cases, multiple claims were submitted by purportedly different persons from the same household address. Based on criteria agreed upon with Class Counsel, the claims of any person or single household submitting five or more claims were rejected as fraudulent. This resulted in a total of 8,234 additional claims being rejected. The majority of such claims came from addresses where persons had submitted hundreds of claims in short periods of time or from individuals who were persons whom the Settlement Administrator believed to be known perpetrators of fraud based on their conduct in other class actions. The Settlement Administrator notified each of these persons that they were

not eligible to participate in the Settlement because it had determined that their claims was likely fraudulent. Each of those claimants was given the opportunity to dispute this determination within 21 days of receiving the Notice of Fraudulent Claim. 46 of the 8,234 persons to whom the letters sent, disputed the rejections. The Settlement Administrator determined that 5 of those claimants had submitted valid claims and were allowed. The balance were rejected. Kopperud Declaration ¶¶17-18 and Exhibit E. A summary of the 41 disputed and rejected claims is attached to the Kopperud Declaration as Exhibit F.

18. The Settlement Administrator also identified 664 claim forms as deficient because they were incomplete or missing information. 640 of those claimants cured their deficiencies, and 24 claimants did not. The Settlement Administrator rejected the 24 deficient claims, and submitted the remaining claims for further review by Lexis-Nexis Risk Data Management, Inc. (“Lexis Nexis”) as more fully described below. Kopperud Declaration ¶¶19-20.

19. The Class is limited to residents of Massachusetts who purchased Marlboro Lights cigarettes in Massachusetts during the period from November 25, 1994 to November 25, 1998, and to residents of six neighboring states (Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont) who regularly purchased Marlboro Lights cigarettes in Massachusetts during the period from November 25, 1994 to November 25, 1998. Kopperud Declaration ¶22; Blauner Affidavit ¶12.

20. In order to facilitate the claims process, Class Counsel made the determination that any claimant who currently resided in Massachusetts, Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont or who was on the Philip Morris Adult Smoker database list (which only consisted of individuals with a current or historical address in Massachusetts) would meet the Class residency requirement. Kopperud Declaration ¶25; Blauner Affidavit ¶16.

21. Class Counsel retained Lexis-Nexis to review all claims, excluding those flagged as “Non-Class Due to Age” or “Fraudulent,” to determine whether based on publicly available records the claimant had a reported address in Massachusetts or one of the six neighboring states at any time in the past. Class Counsel also asked Lexis-Nexis to provide them with publicly available information about the month and year of birth for each of these claimants. 56,339 claims were submitted to Lexis-Nexis for review in this fashion. Kopperud Declaration ¶23; Blauner Affidavit ¶¶17-19.

22. Class Counsel determined that any claim submitted by a claimant whom the public records showed was born on or before November 26, 1985 and who had had a current or historical address in Massachusetts, Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont, would be allowed. Based on the Lexis-Nexis review of the publicly available information about the claimants’ residencies and their publicly reported dates of birth, Class Counsel and the Settlement Administrator determined that 34,889 claimants met the criteria for membership in the Class and their claims were allowed. Kopperud Declaration ¶26; Blauner Affidavit ¶20.

23. As a result of the Lexis-Nexis Review, Class Counsel identified 47 possible duplicate claims from people who otherwise met the class criteria. Letters or emails were sent to these 47 claimants, who were notified that only the first claim would be accepted unless they provided legal identification for each claimant. None of the claimants responded, and for all of these claimants only their first claim was accepted. As a result, a total of 23 those claims were accepted and 24 were rejected. Kopperud Declaration ¶27.

24. The remaining 21,403 claims were marked as deficient for one of three reasons:

a. Non-Residency: If the Lexis-Nexis data showed that the claimant’s date of

birth was prior to November 26, 1985, but that there was no historical address in Massachusetts or any of the six neighboring states, a Non-Residency Deficiency email or letter was sent. In total, 18,276 of these notifications were sent.

- b. Date of Birth: If the Lexis-Nexis data reported a historical address in Massachusetts or one of the six neighboring states, but the date of birth was later than November 1985, a Date of Birth Deficiency email or letter was sent. In total, 1,182 such communications were sent.
- c. Non-Residency and Date of Birth: If the Lexis-Nexis data showed that there was no historical address in Massachusetts or any of the six neighboring states and a date of birth later than November 1985, a Non-Residency and Date of Birth Deficiency email or letter was sent. In total, 1,945 of those communications were sent.

Kopperud Declaration ¶28.

25. Each claimant who received one of the foregoing deficiency letters was given 21 days to provide either documentary proof that they had lived in Massachusetts or one of the six neighboring states at some point in the past, or legal identification showing that their date of birth was prior to November 26, 1985 or both, where appropriate. Out of the 21,403 claimants who were sent Non-Residency, Date of Birth or Non-Residency and Date of Birth deficiency letters, 1,146 submitted acceptable evidence of residency and/or their date of birth. Their claims were allowed. The remainder were deemed rejected. The Settlement Administrator subsequently determined that 28 of those rejected claims were duplicates. The duplicate claims were consolidated, and the remaining 20,229 claims were rejected. Kopperud Declaration ¶29.

26. The Settlement Administrator has identified 36,064 claimants who will receive payment if the Court approves this motion and 30,706 persons, who will not receive payment if the court approves this motion. Kopperud Declaration ¶¶14, 30-31.

27. The Table below sets forth a summary of the allowed and rejected claims:

	Accepted Claims	Rejected Claims	Totals
Non-Class - Age Letters	1	2,180	2,181
Non-Class - Fraud Letters	5	8,229	8,234
Standard Deficiencies	0	24	24
Claims Withdrawn	0	20	20
Lexis Nexis Review - No Deficiency	34,889	0	34,889
Lexis Nexis - Possible Duplicate Letter (First Claim Allowed)	23	24	47
Lexis Nexis – Non Residence and/or Date of Birth Letter	1,146	20,257	21,403
Removal of Duplicate Rejected Claims		-28	-28
TOTAL	36,064	30,706	66,770

Kopperud Declaration ¶¶30-31.

28. For all the foregoing reasons, Plaintiff respectfully requests that this Court :

- a. Approve the payment of the costs of notice and settlement administration out of the Settlement Fund in the amount of \$244,059.58 as detailed above;
- b. Approve the reservation of \$103,000 to pay for future settlement administration costs as detailed above;
- c. Approve payment to each of the 36,064 approved claimants of the sum of \$225, for a total payout of \$8,114,400; and
- d. Approve the disallowance of each of the 30,706 rejected claims described above along with any other claim that has been or may hereafter be filed after the November 28, 2016 claims deadline.

Dated: February 6, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michelle Blauner, hereby certify that the above was served upon Kenneth J. Parsigian, Douglas W. Salvesen, Esq., Andrew A. Rainer, Esq., and Thomas M. Sobol, Esq., a by e-mail and regular mail on February 6, 2017.



Michelle Blauner