

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 09-60646-Civ-Cohn/Seltzer

CAROL D. SMITH, on Behalf of Herself and)
All Others Similarly Situated,)
)
Plaintiff,)
)
vs.)
)
WM. WRIGLEY JR. COMPANY,)
)
Defendant.)
)
_____)

STIPULATION OF SETTLEMENT

Case No. 09-60646-Civ-Cohn/Seltzer

This Stipulation of Settlement is made and entered into by and among Plaintiff Carol D. Smith (“Plaintiff” or “Smith”), on behalf of herself and each of the Settlement Class Members, by and through Class Counsel authorized to settle this Litigation on their behalf, and Defendant Wm. Wrigley Jr. Company (“Defendant” or “Wrigley”) (collectively, the “Parties”), by and through their counsel of record in this Litigation.

I. RECITALS

A. On May 1, 2009, Plaintiff, on behalf of herself and all others similarly situated, filed a class action complaint against Wrigley in the United States District Court, Southern District Court of Florida, Case No. 09-60646;

B. On April 12, 2010, the Parties executed a Memorandum of Understanding (“MOU”) memorializing an agreement to resolve this Litigation on behalf of Settlement Class Members.

C. Prior to execution of the MOU, the Parties engaged in extensive discovery, including the production and review of several hundred thousand pages of documents from Defendant and third parties, and extensive work with expert witnesses and consultants. Additionally, the Parties engaged in extensive and vigorously contested briefing on Wrigley’s motion to dismiss and Plaintiff’s motion for class certification.

D. The Parties also engaged in extensive settlement negotiations, including two-full day mediation sessions and numerous telephonic mediation sessions conducted by mediator Rodney A. Max of Upchurch Watson White & Max Mediation Group. As a result of these mediation sessions and settlement discussions, the Parties have agreed to settle all of the claims asserted in Plaintiff’s lawsuit.

Case No. 09-60646-Civ-Cohn/Seltzer

E. This Stipulation constitutes the resolution of disputed claims and is for settlement purposes only. Defendant has denied and continues to deny any and all allegations of wrongdoing alleged in Plaintiff's lawsuit. Nonetheless, Defendant has concluded that continued litigation could be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to limit further expense, inconvenience, and uncertainty.

II. DEFINITIONS

A. As used in this Stipulation the following capitalized terms have the meanings specified below:

(1) "Claim Form" means the document to be submitted by Claimants seeking payment pursuant to this Stipulation that will accompany the Class Notice and will be available online at the Settlement Website, substantially in the form of Exhibit A and discussed in §IV.A.(5) of this Stipulation.

(2) "Claimant" means a Settlement Class Member who submits a claim for payment as described in §IV of this Stipulation.

(3) "Claims Administration Protocols" means the protocols set forth in the Claim Administration Protocols, attached as Exhibit B.

(4) "Class" means all persons who purchased in the United States the Product at any time up to the date notice is provided to the Class. Excluded from the Class are Defendant's officers, directors and employees and those who purchased the Product for the purpose of resale.

Case No. 09-60646-Civ-Cohn/Seltzer

(5) “Class Action Settlement Administrator” means the company or companies jointly selected by Class Counsel and Defendant’s Counsel and approved by the Court to provide Class Notice and to administer the claims process.

(6) “Class Counsel” means the attorneys of record for Plaintiff.

(7) “Class Notice” means, collectively, the “Notice of Class Action Settlement” and the “Publication Notice,” substantially in the forms of Exhibit C and Exhibit D, respectively, and discussed in §V of this Stipulation.

(8) “Court” means the United States District Court for the Southern District of Florida.

(9) “Defendant” means Wm. Wrigley Jr. Company.

(10) “Defendant’s Counsel” means the following individuals:

Dane H. Butswinkas
Thomas G. Hentoff
Nathan P. Kitchens
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: 202/434-5000

(11) “Effective Date” means the date on which all of the conditions of settlement have been satisfied, as discussed in §IX of this Stipulation.

(12) “Judgment” means the “Judgment, Final Order and Decree” to be entered by the Court, substantially in the form attached as Exhibit E.

(13) “Litigation” means *Smith v. Wm. Wrigley Jr. Company*, Case No. 09-60646-CIV-COHN-SELTZER (S.D. Fla).

(14) “Party” or “Parties” means the Plaintiff and Defendant in this Litigation.

Case No. 09-60646-Civ-Cohn/Seltzer

(15) “Person” means a natural person, individual, corporation, partnership, association, or any other type of legal entity.

(16) “Plaintiff” means and includes the class representative, Carol D. Smith.

(17) “Preliminary Approval Order” means the “Order re Preliminary Approval of Class Action Settlement,” substantially in the form of Exhibit F attached hereto, preliminarily approving this Stipulation, providing for notification to the Settlement Class and seeking the scheduling of the Settlement Hearing.

(18) “Product” means the Eclipse gum or mint product labeled with a “NATURAL GERM KILLING” message purchased and sold within the United States after June 1, 2008.

(19) “Released Claims” means, with the exception of claims for personal injury, any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature against the Released Persons, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity arising out of the facts alleged in the Litigation concerning the advertising, marketing, packaging, promotion, sale and distribution of the Product up to the Effective Date of the Settlement, which have been asserted or which could have been asserted by the Class in the Litigation.

(20) “Released Persons” means and includes Defendant and its direct and indirect corporate parents, subsidiaries and affiliates, as well as its distributors, wholesalers, retailers, customers and licensors, including the officers, directors, employees, shareholders, agents, insurers, spokespersons, public relations firms, advertising and production agencies and assigns of all such persons or entities.

Case No. 09-60646-Civ-Cohn/Seltzer

(21) “Settlement Class Member(s)” or “Member(s) of the Settlement Class” means a member of the Class who has not been properly excluded from the Class.

(22) “Settlement Class Period” means the first day the Product was available for retail purchase in the United States up to and including the last date by which Class Notice is to be provided to the Settlement Class Members according to the terms of this Stipulation.

(23) “Settlement Fund” means the \$6 million common fund discussed in §IV.A.(2) of this Stipulation.

(24) “Settlement Hearing” means the hearing(s) to be held by the Court to consider and determine whether the proposed settlement of this Litigation as contained in this Stipulation should be approved as fair, reasonable, and adequate, and whether the Judgment approving the settlement contained in this Stipulation should be entered.

(25) “Settlement Website” means the website to be created for this settlement that will include information about the Litigation and the settlement, relevant documents and electronic and printable forms relating to the settlement, including the Claim Form which can be submitted online or printed and mailed. The Settlement Website shall be activated no later than 60 days before the Settlement Hearing and shall remain active until 101 days after the Effective Date. A link to the Settlement Website may also be available, at Class Counsel’s option, on Class Counsel’s websites.

(26) “Stipulation” means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel for Defendant.

(27) “Supplemental Net Settlement Fund” means the common fund of up to \$1 million, discussed in §IV.A.(3) of this Stipulation.

Case No. 09-60646-Civ-Cohn/Seltzer

B. Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

III. CERTIFICATION OF THE SETTLEMENT CLASS

Defendant hereby consents, solely for purposes of the settlement set forth herein, to the certification of the Class, to the appointment of Class Counsel, and to the conditional approval of Plaintiff as a suitable representative of the Class; provided, however, that if this Stipulation fails to receive Court approval or otherwise fails to be consummated, including, but not limited to, the Judgment not becoming final as provided in §IX.C. of this Stipulation, then Defendant retains all rights it had immediately preceding the execution of this Stipulation to object to the maintenance of this Litigation as a class action by Class Counsel, and in that event, nothing in this Stipulation or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, whether the purported Class is ascertainable, or whether Class Counsel or the Plaintiff can adequately represent the Settlement Class Members under applicable law.

IV. SETTLEMENT RELIEF

The settlement relief includes cash payments and non-monetary relief.

A. Cash Payments

1. Class Members' Cash Recovery

Class members may seek recovery of money spent on the Product. Claimants may recover up to \$5.00 by submitting a simplified Claim Form either by mail or electronically. Claimants may recover up to \$10.00 by submitting a Claim Form and signing the following affirmation under penalty of perjury: "I affirm that I purchased the listed Wrigley Eclipse gum or mints in packaging

Case No. 09-60646-Civ-Cohn/Seltzer

with a ‘NATURAL GERM KILLING’ message in the United States.’” The actual amount paid to individual Claimants will depend upon the number of valid claims made. For each claim made for a subject purchase or purchases, the Claimant will be requested to include in the claim to the extent reasonable, the Product purchased (gum or mints), the approximate dates of purchases (month and year), the approximate dollar amount spent, and the locations of purchases (store, city, and state). Adequate and customary procedures and standards will be used by the Class Action Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims.

2. Settlement Fund

In accordance with the payment schedule set forth in §IV.A.(7), below, Defendant shall pay up to \$6 million in trust to a third party institution (the “Fund Institution”) to be selected by Defendant and approved by Class Counsel to establish an interest bearing fund for payments made pursuant to this section.

The Settlement Fund shall be applied as follows:

- (a) To reimburse or pay all of the costs and expenses reasonably and actually incurred by the Settlement Class Administrator in connection with providing notice, locating Settlement Class Members, soliciting Claim Forms, assisting with the filing of claims, administering and distributing the Net Settlement Fund to authorized Claimants, processing Claim Forms and paying escrow fees and costs, if any;
- (b) To pay any necessary taxes and tax expenses related to interest earned by the Settlement Fund;

Case No. 09-60646-Civ-Cohn/Seltzer

(c) To pay Class Counsel's attorneys' fees and expenses with interest thereon in the amount awarded by the Court (the "Fee and Expense Award") and Plaintiff's incentive award and pursuant to §VIII; and

(d) To distribute the balance of the Settlement Fund (the "Net Settlement Fund") to authorized Claimants and any others as allowed by this Stipulation, the Claims Administrator Protocols, or the Court.

(e) The amounts Defendant pays under (a) - (d) shall be the sum total of payments from the Settlement Fund ("Defendant Payments").

3. Settlement Fund: Insufficient or Excess Funds

(a) If the total amount of eligible claims exceeds the Net Settlement Fund, then Wrigley shall supplement the Net Settlement Fund by the amount necessary to pay all eligible claims, up to a maximum of \$1 million of additional payment ("Supplemental Net Settlement Fund"). This amount shall be deposited in a trust into the Fund Institution in accordance with the payment schedule set forth in §IV.A.(7).

(b) If the total amount of eligible claims exceeds the Net Settlement Fund, plus the maximum amount of the Supplemental Net Settlement Fund, then each claim's award shall be proportionately reduced.

(c) Except as provided in this §IV.A.(3) of this Stipulation, the Settling Parties agree that the payments made from the Settlement Fund will not exceed \$6 million.

(d) If the total amount of Defendant Payments is less than \$6 million after all valid claims are paid, the remaining amount in the Net Settlement Fund shall be paid to one

Case No. 09-60646-Civ-Cohn/Seltzer

or more charities agreed upon by the Parties and approved by the Court pursuant to the *cy pres* doctrine.

4. Delivery of Payments to Settlement Class Members

(a) Payment will be made directly to the Settlement Class Members by first class mail after all the eligibility for all claims is determined, and in no event more than 30 days after the close of the Claim-In Period, unless Class Counsel, in consultation with Defendant's Counsel, permits an extension of time to complete the claims determination process.

(b) Failure to provide all information requested in the Claim Form will not result in nonpayment of a claim. Instead, the Class Action Settlement Administrator will take all adequate and customary steps to determine the Settlement Class Member's eligibility for payment and the amount of payment based on the information contained in the Claim Form or otherwise submitted, the amount of money available to pay all valid claims, and such other reasonably available information from which eligibility for payment can be determined.

(c) The Class Action Settlement Administrator shall review all electronic and paper records to determine a Settlement Class Member's eligibility for payment.

5. Claim Form Availability.

The Claim Form will be part of the Publication Notice and will be available for downloading and may be completed and submitted online at the Settlement Website, and the Claim Form will be available for downloading on Class Counsel's websites, at Class Counsel's option. The Claim Form may also be requested by calling the toll-free number provided by the Class Action Settlement Administrator or by writing to the Class Action Settlement Administrator.

Case No. 09-60646-Civ-Cohn/Seltzer

6. Eligibility for Cash Payment.

(a) To be eligible for a cash payment, the Settlement Class Member must timely submit a Claim Form which requests his or her name, mailing address, phone number or e-mail address, and the information set forth in §IV.A.(1) above. The Settlement Administrator may pay claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and timely claims in full plus untimely but otherwise valid claims from the Net Settlement Fund, and payment of any such untimely but valid claims is administratively feasible and otherwise reasonable, taking into account the need to timely pay claims. The determination of the Class Action Settlement Administrator concerning the eligibility and amount of payment shall be final. Any Claimant who believes his or her claim was improperly rejected may appeal the rejection by sending written notice of his or her appeal to the designated Class Action Settlement Administrator. The Class Action Settlement Administrator shall decide the appeal.

(b) To be eligible, Claim Forms must be postmarked or submitted online no later than 80 days after the date the Court enters the Judgment (“Claim-In Period”).

(c) Timing of Payments. In the event there is no appeal from the Final Judgment and Order, the Class Action Settlement Administrator shall send payment to eligible Settlement Class Members or, as applicable, a letter explaining the rejection of the claim, within 30 days from the close of the Claim-In Period. In the event there is an appeal from the Final Judgment and Order, the Class Action Settlement Administrator shall send payment to eligible Settlement Class Members or, as applicable, a letter explaining the rejection of the claim, within 60 days of the Effective Date.

Case No. 09-60646-Civ-Cohn/Seltzer

7. Schedule of Payments into the Settlement Fund

Subject to §IV.A.(2) and §IV.A.(3) above, Defendant shall make payments not to exceed \$6 million into the Settlement Fund, and up to but not to exceed \$1 million into the Supplemental Net Settlement Fund, in accordance with the following schedule:

(a) An amount equal to the amount billed by the Class Action Settlement Administrator when such costs become due and owing. This includes payment made sufficiently in advance of the time payment for the cost of publishing the Publication Notice becomes due and owing;

(b) An amount representing the balance of the Settlement Fund to be paid into the Settlement Fund on the following schedule: \$3 million, less amounts already paid to the Class Action Settlement Administrator pursuant to Paragraph 7(a) above, within 20 days of the entry of Judgment by the Court, and the balance within 30 days of the Effective Date;

(c) An amount representing the funds, if any, needed to be paid into the Supplemental Net Settlement Fund, upon written notice by the Class Action Settlement Administrator that such funds are necessary pursuant to §IV.A.(3) above and in time for the Class Action Settlement Administrators to make timely payments to Class Members pursuant to §IV.A.(6) above;

(d) In the event the Effective Date does not occur, all amounts paid into the Settlement Fund and Supplemental Net Settlement Fund, less amounts paid to or on behalf of the Class Action Settlement Administrator and any taxes and tax expenses, shall be returned to Defendant.

Case No. 09-60646-Civ-Cohn/Seltzer

B. Additional Provisions Relating to Injunctive Relief

(1) By December 31, 2010 or within 90 days of the Effective Date, whichever comes later, and for a period of three (3) years from the Effective Date, Wrigley shall refrain from using in its advertising, and manufacturing further Products labeled with, the “germ kill” messages challenged in the complaint filed in the Litigation. In addition, Wrigley, which in the time frame specified in this Paragraph will cease to include the Magnolia Bark Extract (“MBE”) ingredient in the Product, will discontinue use of all “germ kill” messages in the Product advertising and labeling. As used here, advertising includes the packaging of the Product and any type of advertisement or promotion on radio, television, the Internet, newspapers, periodicals, point of purchase displays and all other media.

(2) Defendant shall not be prohibited from making claims about the Product if, at the time they are made, the representations are true and non-misleading and, as appropriate, are supported by competent and reliable scientific evidence that substantiates the representations.

(3) Nothing in this Agreement will prohibit Defendant from making any representation in the labeling of the Products that is specifically permitted by applicable law, regulations, or policies promulgated by the Food and Drug Administration.

(4) Nothing in this Agreement shall prohibit Defendant from communicating the results of one or more clinical studies on the Products provided the results are presented in a truthful and non-misleading fashion.

Case No. 09-60646-Civ-Cohn/Seltzer

V. NOTICE TO THE CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS MEMBERS AND REDEMPTION OF SETTLEMENT RELIEF

A. Class Notice

The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Class Notice shall set forth the following information:

(1) General Terms. The Class Notice shall:

(a) inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;

(b) contain a short, plain statement of the background of the Litigation, the Class certification and the proposed settlement;

(c) describe the proposed settlement relief outlined in this Stipulation;

(d) explain that the impact of the proposed settlement on any existing litigation, arbitration or other proceeding; and

(e) state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

(2) Notice of Exclusion and Objection Rights. The Class Notice shall inform Settlement Class Members:

(a) that they may exclude themselves from the Class by submitting a written exclusion request postmarked no later than 30 days before the date of the Settlement Hearing;

Case No. 09-60646-Civ-Cohn/Seltzer

(b) that any Settlement Class Member who has not submitted a written request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving a written statement of objections along with proof of membership in the Class no later than 30 days before the Settlement Hearing;

(c) that any Settlement Class Member who has filed and served written objections to the proposed settlement may, if he or she so requests, enter an appearance at the Settlement Hearing either personally or through counsel;

(d) that any Judgment entered in the Litigation, whether favorable or unfavorable to the Class, shall include, and be binding on, all Settlement Class Members who have not been excluded from the Class, even if they have objected to the proposed settlement and even if they have any other claim, lawsuit or proceeding pending against Defendant; and

(e) of the terms of the release.

(3) No later than 60 days before the Settlement Hearing, the Class Notice shall be posted on the Settlement Website and, at their option, on the websites of Class Counsel. The Class Notice shall also be sent via electronic mail or regular mail to those Class Members who so request. The Class Notice shall remain available by these means until 101 days after the Court enters the Judgment.

B. Publication Notice

No later than 60 days before the Settlement Hearing, the Class Action Settlement Administrator will cause to be published in accordance with the media plan, attached as Exhibit G, the Publication Notice, a copy of which is attached as Exhibit D. The Publication Notice shall also be posted on the Settlement Website until 101 days after the Effective Date.

Case No. 09-60646-Civ-Cohn/Seltzer

C. Retention of Class Action Settlement Administrator

Class Counsel shall, subject to the approval of Defendant, retain one or more Class Action Settlement Administrators (including subcontractors) to help implement the terms of the proposed Stipulation.

(1) The Class Action Settlement Administrator(s) shall assist with various administrative tasks, including, without limitation, (a) mailing or arranging for the mailing or other distribution of the Class Notice and Claim Forms to Settlement Class Members, (b) arranging for publication of the Publication Notice, (c) handling returned mail not delivered to Settlement Class Members, (d) attempting to obtain updated address information for Settlement Class Members and for any Class Notice Packages returned without a forwarding address or an expired forwarding address, (e) making any additional mailings required under the terms of this Stipulation, (f) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, (g) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the settlement, (h) establishing the Settlement Website that posts notices, Claim Forms and other related documents, (i) receiving and processing claims and distributing payments to Settlement Class Members, and (j) otherwise assisting with administration of the Stipulation. The cost of the Class Action Settlement Administrator will be paid from the Settlement Fund.

(2) The contract with the Class Action Settlement Administrator shall obligate the Class Action Settlement Administrator to abide by the following performance standards:

Case No. 09-60646-Civ-Cohn/Seltzer

(a) The Class Action Settlement Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Stipulation in communications with Settlement Class Members;

(b) The Class Action Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or Defendant's Counsel.

VI. APPROVAL PROCEDURES AND RELATED PROVISIONS

A. Preliminary Approval and Settlement Hearing

Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the Court and shall jointly apply for entry of a Preliminary Approval Order preliminarily approving this Stipulation, providing for the dissemination of the Class Notice, and scheduling a Settlement Hearing.

B. Requests for Exclusion

(1) Any potential Settlement Class Member who wishes to be excluded from the Class must mail or deliver a written request for exclusion to the Clerk of the Court, care of the address provided in the Class Notice, postmarked or delivered no later than 30 days before the Settlement Hearing, or as the Court otherwise may direct. The written request for exclusion must request exclusion from the Class, must be signed by the potential Settlement Class Member and include a statement indicating that the request is made by a member of the Settlement Class. A list reflecting all requests for exclusion shall be filed with the Court by Defendant at or before the Settlement Hearing.

Case No. 09-60646-Civ-Cohn/Seltzer

(2) Any potential Settlement Class Member who does not file a timely written request for exclusion as provided in the preceding §VI.B.1 shall be bound by all subsequent proceedings, orders and the Judgment in this Litigation relating to this Stipulation, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendant relating to the Released Claims.

VII. RELEASES

As of the Effective Date, Plaintiff and each Settlement Class Member who has not validly excluded himself or herself from the Settlement Class pursuant to §VI.B. of this Stipulation shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. In connection with the Released Claims, each Settlement Class Member shall be deemed as of the Effective Date to have waived any and all provisions, rights, and benefits conferred by §1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code §1542, which reads as follows:

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

VIII. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS

A. Class Counsel agrees to make, and Defendant agrees not to oppose, an application for the Fee and Expense Award in the Litigation not to exceed a total of \$2 million. Defendant further agrees not to oppose a Fee and Expense Award of reasonable, actual out-of-pocket expenses not to exceed \$75,000. Such Fee and Expense Award will be paid from the Settlement Fund on the

Case No. 09-60646-Civ-Cohn/Seltzer

Effective Date. Subject to the terms and conditions of this Stipulation and any order of the Court, Wrigley (or its successor in interest or insurer) shall pay the Fee and Expense Award awarded by the Court to Class Counsel within thirty (30) days of the date on which an order and final judgment approving the Settlement is entered by the Court, which amount shall be paid out of or credited against the Settlement Fund. In the event the Judgment entered pursuant to this settlement shall not become final, Class Counsel shall return the amount of attorneys' fees and expenses paid to them pursuant to this provision, within 30 days of written request by Wrigley for repayment, and Class Counsel and their successors shall be jointly and severally liable for repayment to Wrigley

B. Class Counsel, in its sole discretion, shall allocate and distribute the Court's Fee and Expense Award among Class Counsel.

C. Wrigley further agrees that Plaintiff may seek a class representative incentive award for Plaintiff in an amount of \$10,000.

IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

A. The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

(1) The Court has preliminarily approved this Stipulation;

(2) The Court has entered the Judgment; and

(3) Unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) in the event there is a properly and timely filed objection to entry of the Final Judgment and Order, the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment and Order; (ii) the final dismissal of an appeal from the Final Judgment and Order; (iii) affirmance on appeal of the Final Judgment and Order in

Case No. 09-60646-Civ-Cohn/Seltzer

substantial form; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Judgment and Order, the time to petition for a *writ of certiorari* with respect to such ruling or decision has expired; or (v) if a petition for a *writ of certiorari* with respect to the Final Judgment and Order is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment and Order in substantial form.

B. If all of the conditions specified in §IX.A of this Stipulation are not met, then this Stipulation shall be canceled and terminated unless Class Counsel and Defendant mutually agree in writing to proceed with this Stipulation.

C. In the event that this Stipulation is not approved by the Court or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-settlement positions in the Litigation, including with regard to any agreements concerning tolling and similar agreements, and this entire Stipulation shall become null and void. Defendant shall be responsible for all administrative and notice costs and expenses, including the costs of notifying the Class and any claims administration costs.

X. MISCELLANEOUS PROVISIONS

A. The Parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to promptly effectuate this Stipulation and the terms of the settlement set forth herein, including taking all steps and efforts contemplated by this Stipulation and any other steps and efforts which may become necessary by order of the Court or otherwise.

B. The Parties will issue the Joint Media Statement attached as Exhibit H. The Parties may post an announcement about the settlement on their websites. Any such announcement shall be substantially consistent with Exhibit H. None of the Parties or their counsel shall issue a press

Case No. 09-60646-Civ-Cohn/Seltzer

release or make statements to the press regarding this Stipulation of Settlement inconsistent with Exhibit H without the prior written agreement of all Parties and their counsel.

C. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

D. This Stipulation contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. Except for §I, all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all Parties. The terms of this Stipulation are and shall be binding upon each of the Parties, their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter through any of the Parties, including any Settlement Class Member.

E. Whenever this Stipulation requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by facsimile and/or next day (excluding Sunday) express delivery service as follows:

(1) If to Plaintiff, then to:

Jonathan M. Stein
Robbins Geller Rudman & Dowd LLP
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000

(2) If to Defendant, then to:

Thomas G. Hentoff
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: 202/434-5000

Case No. 09-60646-Civ-Cohn/Seltzer

F. All time periods set forth herein shall be computed in business days if seven days or less and calendar days if eight days or more unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day as not one of the aforementioned days. As used in this subsection, "legal holiday" includes New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

G. The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Stipulation in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Stipulation.

H. This Stipulation may be amended or modified only by a written instrument signed by Class Counsel and any of Defendant's Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

I. The exhibits to this Stipulation are an integral part of the Settlement and are hereby incorporated and made a part of this Stipulation.

Case No. 09-60646-Civ-Cohn/Seltzer

J. Neither this Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendant, or of the propriety of Class Counsel maintaining the Litigation as a class action; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, except that Defendant may file this Stipulation or the Judgment in any action that may be brought against any Released Person in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

K. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

L. This Stipulation shall be deemed to have been executed upon the last date of execution by all of the undersigned.

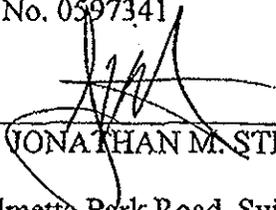
M. This Stipulation may be executed in counterparts, each of which shall constitute an original.

Case No. 09-60646-Civ-Cohn/Seltzer

IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed by their duly authorized representatives.

DATED: May 26, 2010

ROBBINS GELLER RUDMAN
& DOWD LLP
JONATHAN M. STEIN
Florida Bar No. 009784
CULLIN A. O'BRIEN
Florida Bar No. 0597341

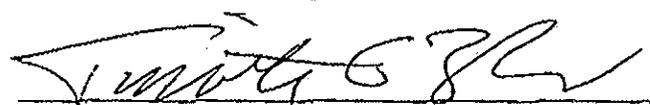


JONATHAN M. STEIN

120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
jstein@rgrdlaw.com
cobrien@rgrdlaw.com

DATED: May 26, 2010

BLOOD HURST & O'REARDON LLP
TIMOTHY G. BLOOD
THOMAS J. O'REARDON II



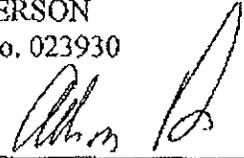
TIMOTHY G. BLOOD

600 B Street, Suite 1550
San Diego, CA 92101
Telephone: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com
toreardon@bholaw.com

Case No. 09-60646-Civ-Cohn/Seltzer

DATED: May 26, 2010

BALKAN & PATTERSON, LLP
ADAM BALKAN
Florida Bar No. 0044880
JOHN PATTERSON
Florida Bar No. 023930



for JOHN PATTERSON

601 S. Federal Highway, Suite 302
Boca Raton, FL 33432
Telephone: 561/750-9191
561/750-1574 (fax)
adam@balkanpatterson.com
john@balkanpatterson.com

Attorneys for Plaintiff

DATED: May ___, 2010

WILLIAMS & CONNOLLY LLP
DANE H. BUTSWINKAS
THOMAS G. HENTOFF
NATHAN P. KITCHENS

THOMAS G. HENTOFF

725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: 202/434-5000
202/434-5029 (fax)
dbutswinkas@wc.com
thentoff@wc.com
nkitchens@wc.com

Attorneys for Defendant

Case No. 09-60646-Civ-Cohn/Seltzer

DATED: May _____, 2010

BALKAN & PATTERSON, LLP
ADAM BALKAN
Florida Bar No. 0044880
JOHN PATTERSON
Florida Bar No. 023930

JOHN PATTERSON

601 S. Federal Highway, Suite 302
Boca Raton, FL 33432
Telephone: 561/750-9191
561/750-1574 (fax)
adam@balkanpatterson.com
john@balkanpatterson.com

Attorneys for Plaintiff

DATED: May 27, 2010

WILLIAMS & CONNOLLY LLP
DANE H. BUTSWINKAS
THOMAS G. HENTOFF
NATHAN P. KITCHENS



THOMAS G. HENTOFF

725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: 202/434-5000
202/434-5029 (fax)
dbutswinkas@wc.com
thentoff@wc.com
nkitchens@wc.com

Attorneys for Defendant